

TOPIC 8

REGULATORY AGENCIES, OFFENCES AND PENALTIES

TOPIC OVERVIEW

The Companies Act relies on a system of administrative enforcement combined with a minimum number of criminal sanctions. Enforcement of the Companies Act takes place through various bodies and by way of various mechanisms.

The Companies Act also makes provision for instances that are deemed to be an offence. These instances include

- disclosing any confidential information concerning the affairs of any person, obtained in a certain way
- false statements, reckless conduct and noncompliance with a compliance notice
- hindering, obstructing or improperly attempting to influence the Commission and certain other parties when they are exercising a power or performing a duty in terms of the Act

The Act, in section 216, also makes provision for penalties for contravention of sections 213 to 215.

In section 218, the Act provides for civil actions where loss suffered can be recovered from a person who contravened any provision in the Act and section 219 provides for a limited time to initiate complaints.

Bear in mind that this topic as a whole is on knowledge level 1, which entails that you should gain a basic understanding of the sections of the Act covered in the topic.

Topic 8 is divided into the following learning units:

Learning unit	Title
8.1	Regulatory agencies and their functions
8.1.1	Regulatory agencies and their functions (sec 185–204)
8.2	Breach of confidence, false statements, reckless conduct and non-compliance, hindering administration of the Act and penalties
8.2.1	Breach of confidence, false statements, reckless conduct and non-compliance, hindering administration of the Act and penalties (sec 213–216)
8.3	Civil actions and the limited time for initiating complaints
8.3.1	Civil actions (sec 218)
8.3.2	Limited time for initiating complaints (sec 219)

TEXTUAL AMENDMENTS AND ADDITIONS

Before proceeding with the study of this topic, please refer to Tutorial Letter 102 for this module to acquaint yourself with any textual amendments and additions that may have been indicated.

LEARNING OUTCOMES

Learning unit	In this topic, we will focus on the following learning outcomes:	Level
8.1 Regulatory agencies and their functions	<ul style="list-style-type: none"> Gain a basic understanding of the Companies Act requirements for regulatory agencies. 	1
8.2 Breach of confidence, false statements, reckless conduct and non-compliance, hindering administration of the Act and penalties	<ul style="list-style-type: none"> Gain a basic understanding of the requirements regarding breach of confidence, false statements, reckless conduct and noncompliance, hindering administration of the Act and penalties. 	1
8.3 Civil actions and limited time for initiating complaints	<ul style="list-style-type: none"> Gain a basic understanding of civil actions and limited time for initiating complaints. 	1

LEARNING UNIT 8.1

REGULATORY AGENCIES AND THEIR FUNCTIONS

INTRODUCTION

Enforcement of the Companies Act takes place through various bodies and by way of various mechanisms.

The regulatory agencies under the Act are

- the Companies and Intellectual Property Commission (CIPC)
- the Companies Tribunal (CT)
- the Take-Over Regulation Panel (TORP or Panel)
- The Financial Reporting Standards Council (FRSC)

Each of the agencies has specific functions.

8.1.1 REGULATORY AGENCIES AND THEIR FUNCTIONS (SEC 185–204)

The **Companies and Intellectual Property Commission (CIPC)** (section 185–192), which was previously known as CIPRO, registers companies, juristic persons and intellectual property rights, maintains information on companies, inter alia, and enforces the Companies Act and other Schedule 4 acts. You need to know that the Close Corporations Act is one of these acts.

The **Companies Tribunal (CT)** (section 193–195), which is an independent juristic person, has to perform its functions impartially and without fear, favour or prejudice and in a transparent manner. The Minister appoints its members and the functions of these members are to adjudicate on any application made to it in terms of the Act, assist in voluntary resolutions of disputes, and perform functions assigned to it in terms of the Companies Act or other acts included in Schedule 4. It functions basically as an appeal body.

The **Take-Over Regulation Panel (TORP or Panel)** (section 196–202) has been long in existence and is an independent juristic person that must perform its functions impartially without fear, favour or prejudice. Its members include the Commissioner (the head of the CIPCO) and stipulated positions. The Minister appoints other members of the Panel. The duties of the Panel are to regulate and investigate complaints about affected transactions and offers (that is, mergers), to apply to the court to wind up a company in certain cases, and to consult with the Minister about amendments to the Take-over Regulations.

The last agency is the **Financial Reporting Standards Council (FRSC)** (section 203–204), which is established by the Minister and which members are appointed by the Minister in terms of requirements of the Act (for example, four practising

auditors, two persons knowledgeable about company law, etc). The duties of the FRSC are to receive and consider any relevant information on the reliability of and compliance with financial reporting standards, to advise and consult with the Minister on financial reporting standards, and to make regulations establishing financial reporting standards.



STUDY

Study sections 185 to 204 in the Companies Act. You are only expected to know what is stated above.

SUMMARY

In this learning unit, we explained the requirements for regulatory agencies in terms of the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, you should:

Have a basic understanding of regulatory agencies.
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LEARNING UNIT 8.2

BREACH OF CONFIDENCE, FALSE STATEMENTS, RECKLESS CONDUCT AND NON-COMPLIANCE, HINDERING ADMINISTRATION OF THE ACT, AND PENALTIES

INTRODUCTION

The Companies Act makes provision for instances where certain actions may lead to offences (sec 213–215) and eventually to penalties (sec 216).

8.2.1 BREACH OF CONFIDENCE, FALSE STATEMENTS, RECKLESS CONDUCT AND NON-COMPLIANCE, HINDERING ADMINISTRATION OF THE ACT, AND PENALTIES (SEC 213–216)

Diagram 8.2.1 below summarises sections 213 and 214. An example of an offence in terms of false statements is a company that issues a prospectus to the public in order to invite subscribers to subscribe to securities/shares they want to issue. As the prospectus must contain the prescribed specifications and all the information that an investor may reasonably require to assess the assets and liabilities, as well as the company's financial position, profits and losses, cash flow, etc, it may very well happen that the preparer includes untrue statements. The sections mentioned are therefore included for the protection of investors. You have to be aware of the applicable penalties.

Diagram 8.2.1 Penalties

Breach of confidence (sec 213)	
It is an offence to disclose any confidential information concerning the affairs of any person obtained in performing any function in terms of the Act or participate in any proceeding in terms of the Act [sec 213(1)(a) & (b)]	Note 1: A person convicted of breaching this section is liable to a fine or imprisonment (not exceeding 10 years), or both [sec 216(a)]
Note 2: Does not apply to information disclosed [sec 213(2)]	
<ul style="list-style-type: none">• for the purpose of proper administration or enforcement of this Act• for the purpose of administering justice• at the request of a regulatory agency entitled to receive the information• when required to do so by any court or under any law	
False statements, reckless conduct and noncompliance (sec 214)	
A person is guilty of an offence if he or she	
<ul style="list-style-type: none">• is party to the falsification of any accounting records• knowingly provided false or misleading information, with a fraudulent purpose• was knowingly a party to<ul style="list-style-type: none">— conducting the business recklessly, with gross negligence, and with the intent to defraud any person or for any fraudulent purpose— trading of business under insolvent circumstances— an act or omission calculated to defraud a creditor, employee or security holder or with other fraudulent purpose• is a party to the preparation, approval, dissemination or publication of financial statements, knowing that the statements do not comply with the requirements of section 19 or knowing that they are false or misleading	



STUDY

Study sections 213 to 216 in the Companies Act.

SUMMARY

In this learning unit, we explained the requirements regarding breach of confidence, false statements, reckless conduct and noncompliance, hindering administration of the Act, and penalties in terms of the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, you should:

Have a basic understanding of the breach of confidence, false statements, reckless conduct and non-compliance, hindering administration of the Act, and penalties.

LEARNING UNIT 8.3

CIVIL ACTIONS AND THE LIMITED TIME FOR INITIATING COMPLAINTS

INTRODUCTION

This learning unit gives a broad overview of civil actions with regard to any person who contravenes any provision of the Act as well as the limited time for initiating complaints in terms of the Act.

8.3.1 CIVIL ACTIONS (SEC 218)

Section 218 provides that any person who contravenes any provision of the Act is liable to any person for any loss or damage suffered by that person because of that contravention.

This section also provides that nothing in the Act renders void any other agreement, resolution or provision of an agreement, MOI or rule of a company that is prohibited, voidable or that may be declared unlawful in terms of this Act, unless a court has made a declaration to that effect.

8.3.2 LIMITED TIME FOR INITIATING COMPLAINTS (SEC 219)

Section 219 provides that complaints in terms of the Act may not be initiated by or made to the Commission (that is, complaints concerning alleged contraventions of the Act [sec 187(2)(c)] or the Panel (that is, complaints relating to the affected transactions and offers [sec 201(1)(b)], more than three years after the act or omission that is the cause of the complaint; or in the case of a course of conduct or continuing practice, the date on which the conduct or practice ceased.

SUMMARY

In this learning unit, you learned about the requirements for civil actions and the limited time for initiating complaints in terms of the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, you should:

Have a basic understanding of civil actions and the limited time for initiating complaints.

CONCLUSION

In this topic about **regulatory agencies, offences and penalties**, we explained the requirements regarding regulatory agencies and their functions, breach of confidence, false statements, reckless conduct and noncompliance, hindering administration of the Act, and penalties. We also discussed civil actions and the limited time for initiating complaints. Can you explain the link to the other learning units? In the following topic, which is the last topic of our study guide, we will deal with the schedules to the Companies Act, as well as other legislation that is applicable to companies.