



Companies and Intellectual
Property Commission

a member of the **dtic** group

GUIDELINE 1 OF 2025

CONSEQUENCES OF NON-COMPLIANCE WITH DIRECTOR DUTIES

This Guideline is issued in terms of Regulation 4 of the Companies Regulations 2011 and aims to sensitize directors on the consequences for non-compliance with their duties to a company.

A director differs from a shareholder in terms of function, power and authority and is legally distinct from the company itself.

A director of a company must exercise the powers and perform the functions of a director in good faith and for proper purpose and in the best interest of the company. Further, he/she should not use the position of director to knowingly cause harm to the company.

Section 77 (3) of the Companies Act No. 71 of 2008 (as amended) (Companies Act), emphasizes that a director of a company in his/her personal capacity may incur **civil liability** in the event that the company of which he/she is a director incurred loss or damage as a result of said director:

- Acting on behalf of the company without the necessary authority;
- Trading recklessly;
- Being a party to an act or omission by a company calculated to defraud;
- Being a party to false and misleading financial statements;
- Being a party to a prospectus or written statement that contains an untrue statement; or
- Is/was present at a meeting and failed to vote against an unauthorized or inconsistent provision of the Companies Act.

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A director in his/her personal capacity may be held **criminally liable** in terms of sections: 213; 214 and/or 215 (2) (e) of the Companies Act for:

- Disclosing confidential information concerning the affairs of any person obtained in carrying out any function in terms of the Companies Act.
- The falsification of the company's accounting records.
- Providing false and misleading information.
- Is a party to an act or omission by a company calculated to defraud.
- Is a party to a prospectus or written statement that contains an untrue statement.
- Failing to satisfy a compliance notice.

In terms of section 216 of the Companies Act any person convicted of contravening section 213(1) or section 214(1) is liable to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and imprisonment or in any other case, for example contravening section 215(2) (e), to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and imprisonment.

Further, although section 78 of the Companies Act clearly sets out the requirements of indemnification and directors' insurance, the CIPC has found that directors of companies often fail to fully appreciate the requirements of this section, which should be read with sections 75,76,77,213, 214 and 215. This leads to an incorrect perception that there will be indemnification irrespective of a breach of section 75, 76, 77, 213, 214 and/or 215 of the Companies Act.

Directors of companies should therefore carefully understand the provisions of the Companies Act that relate to the governance of companies, including, but not limited to:

- Section 75 – Director's personal financial interests.
- Section 76 – Standards of directors conduct.
- Section 77 – Liability of directors and prescribed officers.
- Section 78 – Indemnification and directors' insurance.
- Section 213 – Breach of confidence.
- Section 214 – False statements, reckless conduct and non-compliance.
- Section 215 – Hindering administration of Act.

ADV. RORY W. VOLLER
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