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COMPANIES AND INTELLECTUAL PROPERTY COMMISION

BUSINESS CASE

31 March 2009

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FINANCIAL SECTOR PROGRAM

BUSINESS CASE FOR THE ESTABLISHMENT OF THE COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION

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ACRONYMS

CCRD	Consumer and Corporate Regulation Division
CD	Chief Director
CEO	Chief Executive Officer
CIPRO	Companies and Intellectual Property Registration Office
DPSA	Department of Public Service and Administration
DTI	Department of Trade and Industry
ECM	Enterprise Content Management
FRSC	Financial Reporting Standard Council
FSP	Financial Sector Program
ICT	Information and Communication Technology
IP	Intellectual Property
IRBA	Independent Regulatory Board for Auditors
KPA	Key Performance Area
KPI	Key Performance Indicator
MOU	Memorandum of Understanding
NPA	National Prosecuting Authority
OCIPE	Office of Companies and Intellectual Property Enforcement
PCT	Patents Cooperative Treaty
PFMA	Public Finance Management Act
RBM	Results Based Management
SACRO	South African Companies Registration Office
SADC	Southern Africa Development Community
SAPTO	South African Patents and Trade Marks Office
SARS	South African Revenue Service
SLA	Service Level Agreement
SME	Small and Medium-size Enterprises
SPO	Strategic Policy Objectives
SWOT	Strengths, Weaknesses, Opportunities and Threats
USAID	United States Agency for International Development
WIPO	World Intellectual Property Organization

EXECUTIVE SUMMARY

The Companies Bill 2008 is the result of a broader corporate law reform process in South Africa intended to modernize the current Companies Act 61, 1973. The current Act is based on some outdated concepts that are not aligned with international best practices and standards.

The Companies Bill development process began in earnest over four years ago using guidance developed in the Department of Trade and Industry (the dti) policy document titled *South African Company Law for the 21st Century: Guidelines for Corporate Law Reform* (May 2004). The ultimate goal of the reform was to ensure that the regulatory framework for enterprises [of all types and sizes] promoted "growth, employment, innovation, stability, good governance, confidence and international competitiveness."

While regulatory reform is critical to stimulate economic growth, it was deemed equally important to establish a structure with clearly prescribed functions that would deliver against the Companies Bill mandate. As a result, the Companies Bill provides for the establishment of a Companies and Intellectual Properties Commission (Companies Commission) which combines and enhances the services of two existing agencies: Office of Companies and Intellectual Property Enforcement (OCIPE) and Companies and Intellectual Property Registration Office (CIPRO). Both organizations operate within the dti's Consumer and Corporate Regulation Division (CCRD), one of dti's eight divisions.

OCIPE was established as a Directorate in 2005 within CCRD's Enforcement and Compliance sub-programme. Also operating within this business unit are the Office of Consumer Protection and the National Liquor Authority.

OCIPE's mandate is to "effectively and efficiently enforce Company and Intellectual Laws and thereby create a competitive and enabling economic environment that promotes economic participation and inspires investor confidence." OCIPE delivers this mandate through: company and intellectual property investigations, resolution of corporate related complaints and monitoring compliance with legislation and education and capacity building programs.

CIPRO was established as a trading entity in 2002 as a result of the merger of two dti directorates: the South African Companies Registration Office (SACRO) and the South African Patents and Trade Marks Office (SAPTO). In 2005, the Cooperatives Unit was incorporated into CIPRO from the Department of Agriculture. As a trading entity, CIPRO is aligned with CCRD's Regulatory Services sub-programme.

CIPRO's mandate is the "registration of companies, close corporations, cooperatives and intellectual property rights (patents, trademarks, copyrights and designs). Related services include the disclosure of information, protection of intellectual property and corporate rights and dispute resolution arising from infringement of those rights".

Organizationally, CIPRO delivers its mandate through Corporate and Intellectual Property business divisions.

The Companies Bill will result in new and enhanced functions for the Companies Commission including: promotion of education and awareness of company and intellectual property laws, research and analysis relating to the Commission's mandate, promoting reliability of financial statements and enhanced enforcement powers. The full scope of the functions is contained in Section 5.1.3.

Objective and Scope

This report develops the business case for the establishment of the Companies Commission. The USAID Financial Sector Program (FSP) provided technical assistance to the dti from 1 December 2008 through 31 March 2009 to develop this business case.

One of the focus areas of the USAID/(FSP) in South Africa is promoting reforms to commercial laws, regulations and administrative practices affecting the private sector and small and medium enterprises (SME) development. In developing this business case, FSP worked closely with the project's steering committee comprised of the CCRD Deputy Director General, OCIPE Chief Director, CIPRO Director of Legal Services, CIPRO Chief Executive Officer and CCRD Director of Company Law.
The business case development relied on guidance provided by the National Treasury in the *Guide for Creating Public Entities at the National Sphere of Government* and complemented by other best practices. The methodology encompassed the following components:

- Situational analysis
- Risk Assessment
- Service Delivery Options
- Corporate Governance
- Benefits Assessment
- Performance Management Plan
- Implementation Plan
- Financial Projections

1) Situational Analysis Summary

A strengths, weaknesses, opportunities and threats (SWOT) assessment of the current organization was conducted through interviews, participatory workshops and document reviews. The detailed Findings and Recommendation are contained in Section 3.1.2. The SWOT was structured around four key pillars: Mandate and Mission, Service Delivery, Business Model and Human Capital. Among the key findings:

Mandate and Mission

Both organizations currently have clear mandates but deliver sub-optimally. The Companies Bill provides the organizations with an integrated mandate against that empowers their functions. Training on all aspects of the Companies Bill will be critical to enable them deliver effectively against the Commission's mandate.

Service Delivery

OCIPE and CIPRO currently do not deliver their respective functions optimally although various initiatives are in place to automate critical business functions and reengineer business processes. Additionally, expanded Companies Bill functions and structures will facilitate improved service delivery.

Business Model

OCIPE and CIPRO utilize different business models to deliver their mandates. While self-funding is a clear goal for CIPRO, and is achieved, revenue generation is not optimized and fee structures are not based on reality. The Commission will present an opportunity to redefine the current fees in relation to economic growth objectives.

Human Capital

The value proposition of the Commission to all staff needs to be articulated as a retention strategy. Change management will also be required to develop an integrated Commission team as cultural differences currently exist.

2) Risk Assessment Summary

Risk areas were evaluated based on their likelihood and impact of occurrence. Detailed risk results, including justification, are contained in Section 4. A summary is shown below:

Type of Risk	L	I	Risk	Mitigation
1. Legislative Risk				
a) Delays in signing of Companies Bill (likelihood is medium because there are no constitutional issues with the Bill but delay continues)	M	H	H	Engage with the highest level of leadership and ensure the Bill fast tracked and signed by President
b) Lack of alignment of Companies Bill with pertinent legislation	L	M	M	Conduct a thorough analyses of current and future laws (some already included in the Companies Bill) to determine their impact on the Companies Bill; develop implementation strategies and time-frames.
c) Enactment of Companies Bill may lead to increased costs	M	M	M	Evaluate affordability and funding sources (i.e., additional budget request, increased product/service fees or hard savings from implementing operational/process improvements)
2. Policy Risk				
a) Policy changes deviate from drivers of the Companies Bill	L	M	M	Engage early with current and future administrations to shape potential policy decisions that may affect the Commission
b) Failure to achieve economic growth objectives	M	H	H	Track impact of Companies Bill prior to repeal of Close Corporations Act

3. Operational				
a) Cultural differences with integrating CIPRO and OCIPE	H	H	H	Develop and implement change management plan
b) Commission organization understanding of new legislation and operational readiness	H	H	H	Conduct a variety of training/information sessions/ & communications to educate all staff
c) Companies Tribunal independence	M	M	M	Define core competencies for the Tribunal; develop processes and procedures to ensure independence is achieved and maintained
d) Labor union may protest aspects Commission organization	H	H	H	Engage and partner with Labor Relations Dept as soon as possible
4. Market Risk				
a) Lack of understanding/acceptance of new legislation by customers	M	H	H	Develop a public communications plan
b) Demand for product/services deviates significantly from expectation	M	H	H	Conduct a market segmentation study and develop a marketing strategy
5. Technology Risk				
a) Ability to support current and future ICT requirements including data integrity	M	H	H	Implement a strategy-based technology plan to facilitate and optimize processes
b) Availability of skills to support ICT requirements	H	H	H	Develop a strategy-based recruitment and retention plan; exercise occupational dispensation options

The highest rated risk areas in terms of likelihood and impact are with cultural differences between OCIPE and CIPRO, Commission staff understanding on the new Bill and operational readiness, labor unions and ICT skills availability to implement systems to enable new business processes. Because these are all critical areas, they have been addressed in the implementation plan and will need to be monitored for progress.

3) Service Delivery Alternatives

To ensure the service delivery option selected to support the Commission establishment was the most effective, the following alternatives were considered:

Alternatives Description

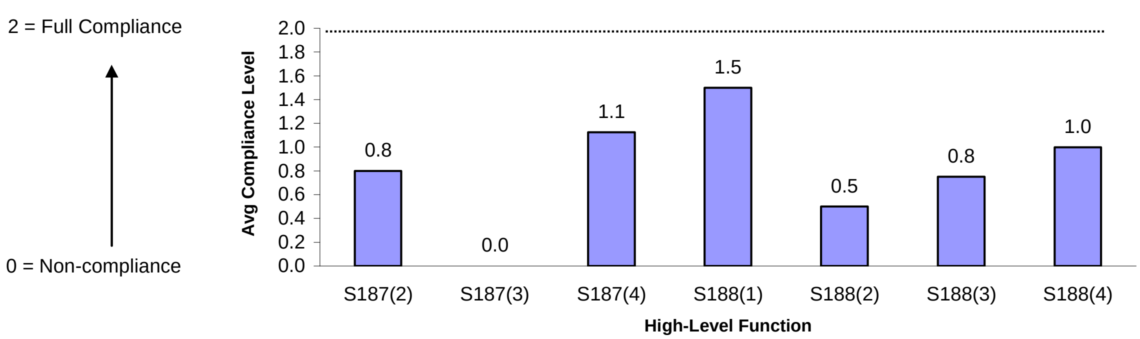
Alternative	Description
Status Quo	This alternative is simply maintaining the current environment based on OCIPE and CIPRO operating as separate entities**. The alternative is not viable due to Companies Bill prescribed mandate of combined services.**
Commission Partial Functional Integration	This alternative assumes CIPRO and OCIPE migrate to the Commission structure to deliver against the full mandate of the Companies Bill but maintain their status quo structures. **This alternative is deemed not viable as it does not leverage existing structures/functions and best practices to deliver against the Companies Bill mandate.**
Commission Full Functional Integration	This alternative consists of CIPRO and OCIPE aligning optimally to deliver against mandated functions and leverages best practices of similar organizations and employing a combination of strategies, i.e., combination and sharing of services, effecting business process improvements, centralizing or decentralizing services, etc. **This alternative is deemed optimal and forms the basis of the Commission service delivery model.**

To determine the level of compliance of the current organizations with the prescribed functions a gap analysis was conducted using workshop inputs for validation. A summary of the results show that most of the high-level functions are only partially compliant with the required functions, primarily due to the new/enhanced functions and also the constraints highlighted in the SWOT analysis**.**

High Level Functions

Section	Provision
S187(2)	Enforce Companies Bill
S187(3)	Promote Reliability of Financial Statements
S187(4)	Registration
S188(1)	Reporting to Minister on Bill policy and legislation and volume and nature of registration and enforcement activities
S188(2)	Increase knowledge of the nature, dynamics and public awareness of company and IP law and promote public awareness
S188(3)	Liaise with any regulatory agency on matters of common interest and facilitate information exchange
S188(4)	Commission may liaise with national and international authorities

Functional Compliance

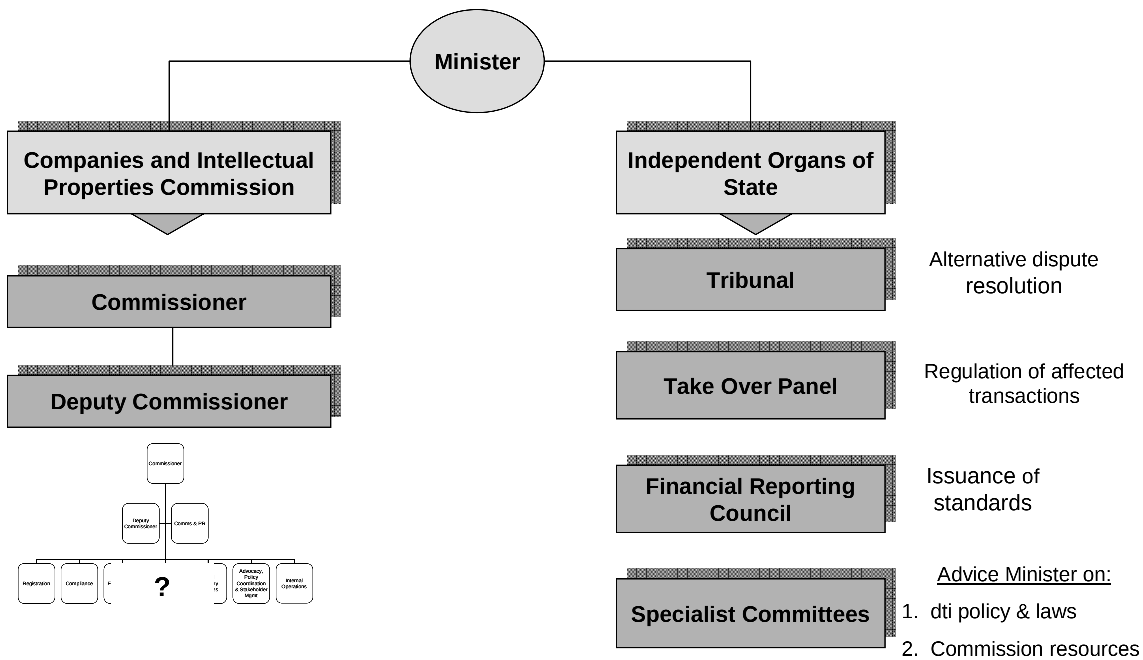


Section 5.1.3 contains details of the functional gap analysis that will be critical for the Commission to address.

4) Corporate Governance

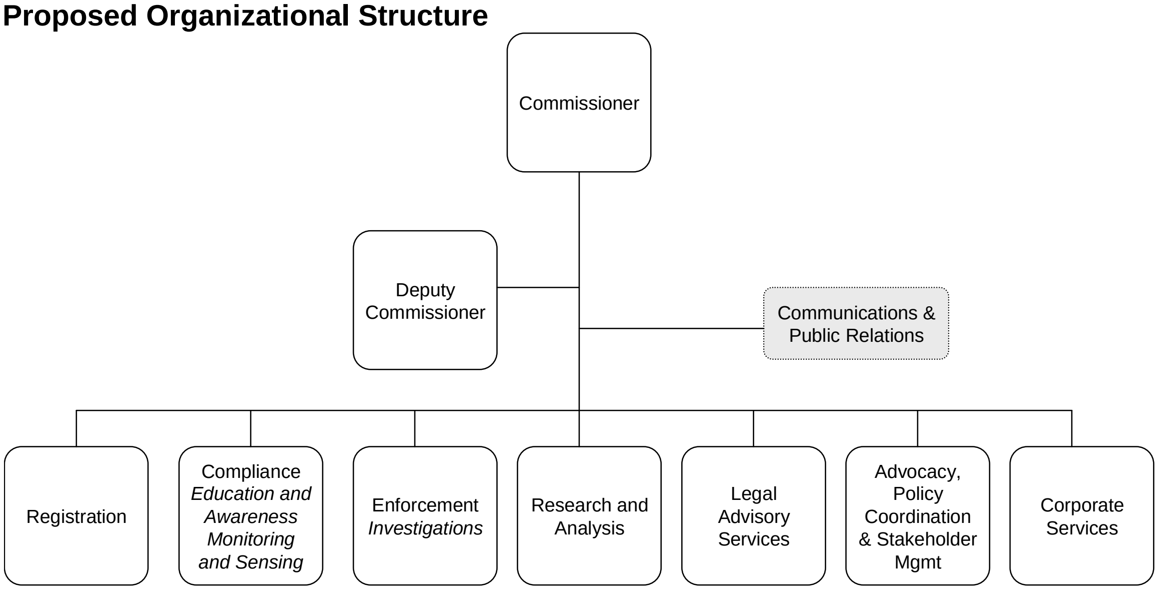
To determine the optimal functional clustering and organization alignment to effectively and efficiently meet the requirements of the Companies Bill, results from the SWOT, functional gap analysis and international best practices were considered. While the Bill does not mandate the organizational structures, it does prescribe some key functions:

Prescribed Commission Entities



Based on functional clusters developed in Section 6.2.1, the following organization structure emerged:

Proposed Organizational Structure



Associated, incremental human resource requirements were developed resulting in an initial incremental 56 FTE, primarily in the areas of compliance (education and awareness and monitoring and sensing) and enforcement (investigations). New functions include Research and Analysis while enhanced functions include Legal Advisory Services and Advocacy, Policy Coordination and Stakeholder Management, all recommended as shared functions for the Commission structure's business units.

6) Benefits Assessment and Performance Management Plan

Socio-economic benefits realization will be measured in terms of how effectively the Commission delivers against the strategic policy objectives which are intended to promote "economic growth, employment, innovation, stability, good governance, confidence and international competitiveness". Section 7 assesses the benefits in terms of the Companies Bill policy objectives:

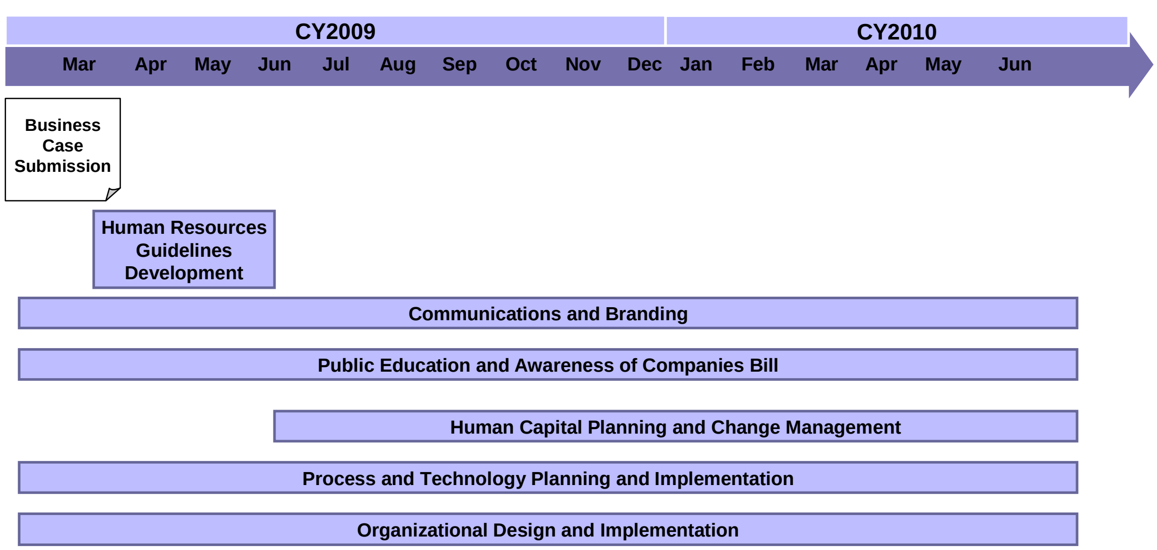
- Encourage entrepreneurship and enterprise development
- Promote innovation and investment in South Africa
- Promote efficiency of companies and their management
- Encourage transparency and high standards of corporate governance
- Make company law more harmonious with international best practice

Based on the assessment, the Commission will be in a position to contribute to broader economic objectives. A framework is provided to measure progress in achieving stated goals.

7) Implementation Plan

An implementation plan was developed in collaboration with an integrated Commission implementation Team comprised of CPRO an OCIPE participants resulting in the following high-level plan. Section 9 contains the details of the Plan.

High-Level Implementation Plan



The implementation plan will need to be monitored closely and variances elevated for corrective action to ensure operational readiness in 2010. Additionally, strong coordination and integration with CCRD, OCIPE and CIPRO will be required to ensure effective and efficient delivery against the plan.

8) Financial Projections

The Commission's incremental requirements were delineated into investment and recurring costs and include labor and non-labor costs. Section 10 provides a detailed assessment of financial projections and budget implications.

Human resource requirements for incremental staff were based on functional requirements and existing gaps while requirements for prescribed functions were derived from the Companies Bill.

Human Resources Requirements

Current Organization	2009/10
CIPRO	**587**
Filled	547
Vacant	40
OCIPE	**31**
Filled	28
Vacant	3
Total OCIPE & CIPRO	618

Commission	2010/11	2011/12	2012/13	Total
Current Staff	618			
Incremental	32	19	11	62
Commission Cumulative Total	**650**	**669**	**680**	**680**
Commissioner and Deputy	2			
Commissioner and Deputy Cumulative Total	**2**	**2**	**2**	**2**
Tribunal	10	4	-	14
Tribunal Cumulative Total	**10**	**14**	**14**	**14**
Financial Reporting Standards Council	9	4	-	13
FRSC Cumulative Total	**9**	**13**	**13**	**13**
Takeover Panel	No additional requirements			
Specialist Committees	No additional requirements			

Non-labor operating expenses are estimated at 30% of employee compensation while investment costs are driven by requirements developed by the Commission implementation team.

Commission Budget Implications

The Commission's *incremental* requirements delineated by investment (one-time) and recurring costs are shown in the table below. A detailed breakdown of costs is provided in Appendix H. The Commission related costs are phased in over four years with investment costs occurring prior to Commission launch to ensure operational readiness.

Commission Incremental Financial Requirements-Summary

Labor, Investment and Non-Labor Operating Expenses: Constant Rand

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	10,450,000	1,175,000		
Total Investment	**10,450,000**	**1,175,000**	**-**	**-**
Recurring				
Commission Staffing		26,371,792	41,533,103	50,478,881
Commissioner & Deputy		2,748,111	2,802,621	2,861,547
Companies Tribunal		12,139,410	17,043,282	17,401,621
Financial Reporting Standards Council		10,518,821	15,390,547	15,714,137
Total Recurring	**-**	**41,259,313**	**61,379,006**	**70,742,049**
TOTAL Investment & Recurring	**10,450,000**	**42,434,313**	**61,379,006**	**70,742,049**
Recurring Cumulative minus Investment		**41,259,313**	**102,638,319**	**173,380,369**

Labor, Investment and Non-Labor Operating Expenses: Inflated Rand at 8%

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	10,450,000	1,270,175	-	-
Total Investment	**10,450,000**	**1,270,175**	**-**	**-**
Recurring				
Commission Staffing		28,507,908	48,533,965	63,765,652
Commissioner & Deputy		2,970,708	3,275,034	3,614,747
Companies Tribunal		13,122,703	19,916,115	21,981,979
Financial Reporting Standards Council		11,370,845	17,984,793	19,850,325
Total Recurring	**-**	**44,601,318**	**71,725,113**	**89,362,378**
TOTAL	**10,450,000**	**45,871,493**	**71,725,113**	**89,362,378**
Recurring Cumulative minus Investment		**44,601,318**	**116,326,430**	**205,688,809**

Investment costs are estimated at R10.7M in 2009/10 and relate to organization transformation activities, including systems and processes.

Total Commission-related recurring costs, adjusted for inflation, are estimated at ~R45M in 2010/11, increasing to ~R116M in the second year. The Commission structure, including the prescribed independent organs of state, is assumed to reach full operational capability in 2012/13 with a steady state incremental cost of R206M (inflated).

Potential Commission and Related Institutions Funding Sources

Cost Element	Short-Term 2009/10	Medium Term 2010/13	Long Term 2014-
Investment	CIPRO Retained Earnings		
Recurring			
Commission Staff (Incremental)	n/a	Commission	Commission
Commissioner & Deputy		Commission	Commission
Companies Tribunal		DTI	DTI
Financial Reporting Standards Council		DTI	DTI
Takeover Panel		Self-funded	Self-funded
Specialist Committees		Self-funded	Self-funded

The Commission is expected to be self-sustaining from inception based on the following assumptions:

1) Regulations

The current fee structure is solely based on registration-related services and products and does not necessarily reflect the delivery costs. The Companies Bill regulations will need to incorporate a fee structure informed by revenue and expense expectations. For short and long-term viability of the Commission, the following are recommended:

a) An in-depth analysis of current and potential revenue sources. Some revenue sources, e.g., Share Capital will cease to exist and the impact will need to be evaluated. New functions will also be introduced with the establishment of the Commission, e.g., Research and Analysis for which the revenue generation potential will need to be assessed.

b) Related to a) is the rationalization of the cost components and resultant fee structure. This analysis will entail an in-depth activity-based costing analysis including cost allocations to the various products and services to inform the fee structure. In determining the product and service costs, allocations should be made for mandated functions that do not directly generate revenue but provide second-order benefits (e.g., public education and awareness may lead to an increase in registrations). The results of this analysis should be proposed with the new regulations in order to optimize on the revenue potential while meeting economic growth objectives.

2) Economic Conditions

The Commission's financial performance will be directly impacted by broader economic activity which will leave it vulnerable during economic downturns. It will be critical to closely monitor the Commission's financial performance and elevate funding requirements critical to the Commission's mission to the appropriate Specialist Committees.

3) Rate of Conversion to Companies

The uncertainty associated with the rate of conversion from close corporations to companies and from unregistered entities to companies following enactment of the Companies Bill makes company registrations and annual returns an unpredictable source of income in the short term. A successful public education and awareness program coupled with an incentivized fee structure will potentially increase registrations and downstream revenue.

4) Conclusion

From a Commission implementation perspective, the immediate priorities entail the formalization of an integrated implementation team, education and awareness of the Companies Bill (internal and external), business model definition and change management.

1 INTRODUCTION

This section describes the background, objectives and scope, methodology employed, and the content of the report.

1.1 BACKGROUND

One of the focus areas of the USAID/Financial Sector Program (FSP) in South Africa is promoting reforms to commercial laws, regulations and administrative practices affecting the private sector and small and medium enterprises (SME) development.

Under this policy reform component of the program, FSP is working closely with the Consumer and Corporate Regulation Division (CCRD) of the Department of Trade and Industry (the dti) to improve the regulatory framework affecting the development of SMEs. The initial priority for this policy reform component is to develop a business case for the establishment of the Companies and Intellectual Property Commission (Companies Commission) that will emerge from the new Companies Bill. In November 2008 the Bill was passed by Parliament and forwarded to the President for signature.

1.2 OBJECTIVES AND SCOPE

The FSP provided technical assistance to the dti to develop the business case for the establishment of the Companies Commission from 1 December 2008 through 20 March 2009. The business case is a National Treasury requirement for all new public entities in South Africa.

Although the dti is not establishing a new public entity under the Companies Bill, it is setting up an institution that will offer and improve the combined services of two existing public entities, Office of Companies and Intellectual Properties Enforcement (OCIPE) and Companies and Intellectual Properties Registration Office (CIPRO). Additionally, the Companies Bill prescribes new functions, not previously mandated in existing legislation.

The Companies Commission will be established by the Companies Act as an organ of state within public administration but as an institution outside public service. The high-level objectives of the Companies Commission stipulated in the Companies Bill include:

- The efficient and effective registration of: i) corporate entities, in terms of the Companies Act or any other relevant legislation; and ii) intellectual property rights, in terms of any relevant legislation.
- The maintenance of accurate, up-to-date and relevant information concerning companies, corporate entities and intellectual property rights, and the provision of that information to the public and to other organs of state.
- The promotion of education and awareness of company and intellectual

property laws, and related matters.

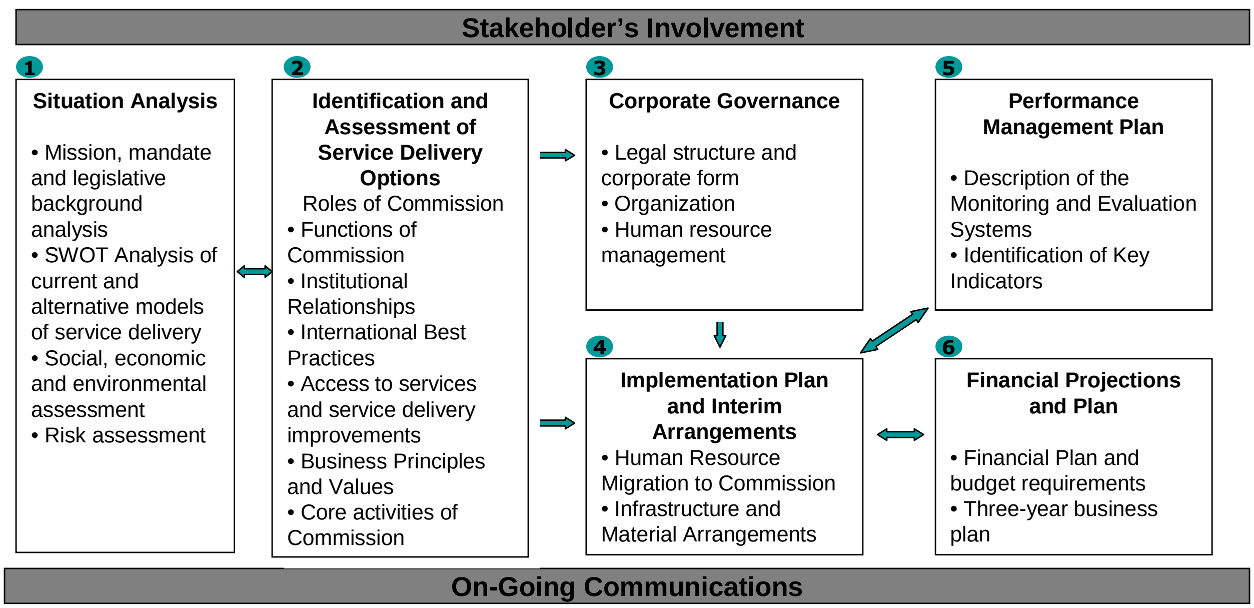
- The promotion of compliance with the Companies Act, and any other applicable legislation.
- And the efficient, effective and widest possible enforcement of the Companies Act, and any other relevant legislation.

Delivering against these objectives is expected to contribute to broad macro-economic goals by simplifying company registration and maintenance processes, enhancing corporate governance and encouraging business management best practices to promote business growth and sustainability.

1.3 METHODOLOGY

The methodology used to develop the business case is based on guidance provided by the National Treasury in the *Guide for Creating Public Entities at the National Sphere of Government* complimented with other best practices. Figure 1 provides a summary of the methodology used in developing the business case.

Figure 1: Business Case Methodology



This business case is organized into sections corresponding to the above framework:

- **Mandate Background.** Provides a background of the Companies Bill including policy drivers and key features.

- **Situational Analysis.** Provides results of the strengths, weaknesses, opportunities and threats (SWOT), and a risk assessment, including mitigation strategies.

- **Identification and Assessment of Service Delivery Options.** Includes role, functions, core activities and values of the Companies Commission, relationships between the Commission, the dti and other prescribed entities.

- **Corporate Governance.** Presents overarching themes for Commission drawn from an analysis of organizational and functional. This section also proposes human resource management guidelines.

- **Benefits Assessment.** Discusses potential benefits attributable to the Commission.

- **Performance Management Plan.** Provides a results-based Performance Management Plan, description of proposed monitoring and evaluation system, performance indicators and data collection and analysis methodology.

- **Implementation Plan and Interim Arrangements.** Presents an implementation strategy and interim arrangements to minimize disruption to services provided by existing organizations.

- **Financial Projections and Business Plan.** Evaluates the Commission business model, costs and budgetary requirements.

- **Appendices**.

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2 COMPANIES BILL 2008 BACKGROUND

This section provides a brief background of the Companies Bill including the policy drivers and key features of the Bill.

2.1 POLICY DRIVERS

The policy drivers underlying the Companies Bill are outlined in the dti policy document titled *South African Company Law for the 21st Century: Guidelines for Corporate Law Reform* (May 2004). This document provided a background of the current corporate laws and proposed guidelines that were adopted during the formulation of the Companies Bill.

Whereas previous reforms in South African company law were undertaken on a case by case basis, it was felt that a comprehensive review and reform of the commercial law was necessary. The ultimate goal of the reform was to ensure that the regulatory framework for enterprises [of all types and sizes] promoted "growth, employment, innovation, stability, good governance, confidence and international competitiveness." Consequently, the following strategic policy drivers were identified (p.10):

- Encouraging entrepreneurship and enterprise diversity by simplifying the formation of companies and reducing costs associated with formalities of forming a company and maintaining its existence, thereby contributing to the creation of employment opportunities
- Promoting innovation and investment in South African markets and companies by providing a predictable and effective regulatory environment and flexibility in the formation and management of companies
- Promoting the efficiency of companies and their management
- Encouraging transparency and high standards of corporate governance, recognizing the broader social role of enterprises
- Ensuring compatibility and harmonization with best practice jurisdictions internationally

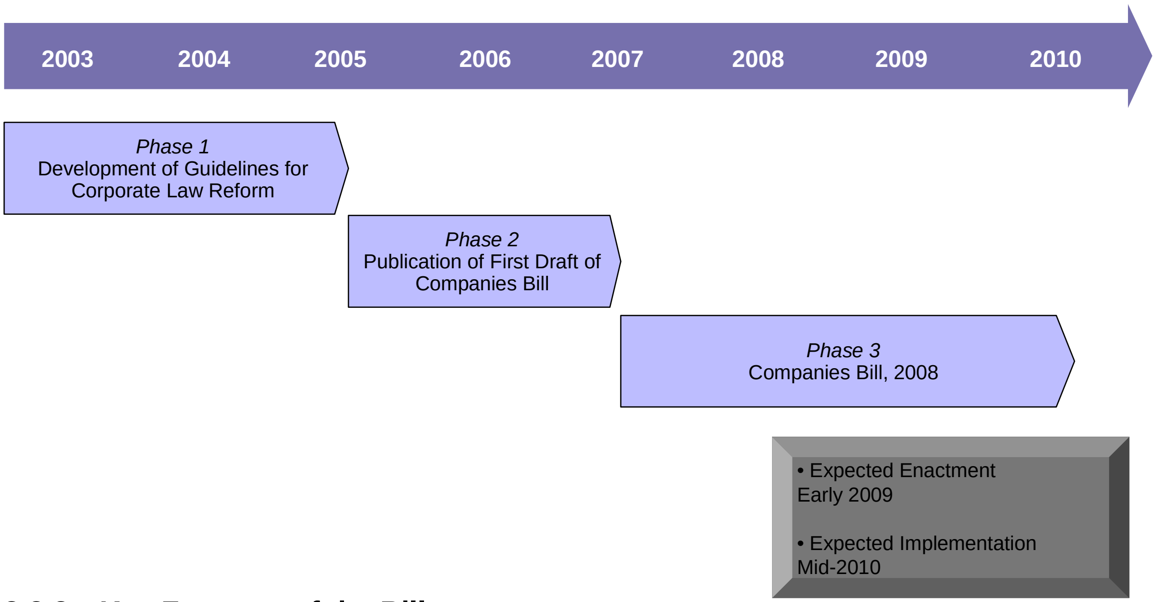
The company law review encompassed all commercial and non-commercial entities even those not governed by the Companies Act 1973. While these entities will stand to benefit from implementation of the Commission, respective legislation will need to be amended to optimally fulfill intended policy drivers.

2.2 KEY FEATURES OF THE COMPANIES BILL

2.2.1 Development Process

The Companies Bill development followed a structured and consultative legislative process that started in 2003 and is expected to come into effect fully in 2010. Prior to publication of the Bill in 2008, the dti conducted nationwide workshops, conferences, discussions and meetings to seek feedback from stakeholders resulting in 134 written comments contained in over 2,000 pages. Figure 2 depicts the Companies Bill development timeline and current status.

Figure 2: Companies Bill High Level Timeline



2.2.2 Key Features of the Bill

From an economic growth perspective, the Companies Bill aims to create an enabling regulatory environment underpinned by simplicity, flexibility, efficiency and transparency: The Companies Bill 2008 is structured into nine thematic chapters and seven supporting schedules. Key features include:

2.2.2.1 Company Categories, Formation and Dissolution

Company Categories: The Bill provides a more flexible structure for the creation of companies while maintaining the distinction between listed and unlisted companies. Consequently, two types of companies may be incorporated under the Companies Bill:

a) For Profit

- State-owned enterprise
- Private company (not publicly listed)
- Personal liability company (not publicly listed)
- Public company

b) Not for Profit (formerly Section 21 companies)

Depending on the structure and nature of the company, exemptions may for sought if they are deemed inappropriate (e.g., Annual General Meetings for a personal liability company). Under Companies Act, 1973 only two types of companies administered, i.e., Private (inclusive of Section 53B companies) and Public(inclusive of Section 21 companies and External companies).

Company Formation: The Bill provides for a flexible, simplified and expedient process for the formation of companies, once the appropriate business structure is determined. The enhancements include the following:

- Electronic lodgement of registration documents (versus originals) and electronic recordkeeping.
- Naming of companies involve a simplified process, flexible naming options, and is optional. A company can commence trading with a registration certificate and company number pending requested name, if desired.
- Enforcement of name reservation trading for profit purposes to prevent abuse.
- Memorandum of Incorporation replaces the Memorandum and Articles of Association and has been simplified to include mandatory, optional and default requirements depending on the structure and nature of the company.
- Foreign/External companies can use their home jurisdictions (under comparable South African laws) for registration in South Africa.

Company Dissolution: The Bill recognizes different requirements for winding-up companies:

- Solvent companies may be wound up and liquidated voluntarily through a special resolution or court order.
- Insolvent companies will continue to be governed by the Companies Bill 1973 pending enactment of the Insolvency and Business Rescue Bill spearheaded by the Department of Justice.

2.2.2.2 *Corporate Governance and Accountability*

The Bill makes provisions to protect shareholders, investors and promote business management best practices through:

- Codification and disclosure of directors’ duties and remuneration
- Disqualification of directors for delinquency if pronounced by the courts
- Expanded manner and forms for shareholder meetings (i.e., proxies, resolutions, etc)
- Maintenance of accurate accounting records by all companies
- Submission of compliant annual financial statement, unless exempt

2.2.2.3 *Corporate Finance*

The Bill harmonises corporate finance with international best practice to provide flexibility in financing mechanism while protecting all shareholders and investors.

- Antiquated finance mechanisms of par value shares and nominal value are replaced by more flexible and expedient but managed mechanisms for raising capital, e.g., debt versus equity.
- Funding assistance for share purchases can be provided if the company passes a "solvency-liquidity test".

2.2.2.4 *Takeovers and Fundamental Transactions*

The Bill establishes a Takeover Regulation Panel as a regulator of affected transactions to replace the Securities Regulations Panel. The Bill:

- Defines an affected transaction where more than 35% of voting rights in listed company are affected.
- Provides for special shareholder resolution for takeover transactions.
- Provides for remedies for minority shareholders opposed to takeover transactions.
- Sets requirements for takeover transactions.

2.2.2.5 *Business Rescue and Remedies*

For financially distressed companies and aggrieved individuals, the Bill:

- Sets out proceedings, rights, powers, and duties largely administered by Companies versus the judicial administration of failing companies
- Provides an explicit regime to protect whistle blowers and an extended regime for aggrieved individuals

Chapter 8 of the Bill addresses the establishment of the Companies Commission to administer the Companies Bill. The remainder of this business case is focused on the establishment of the Companies Commission.

3 SITUATIONAL ANALYSIS

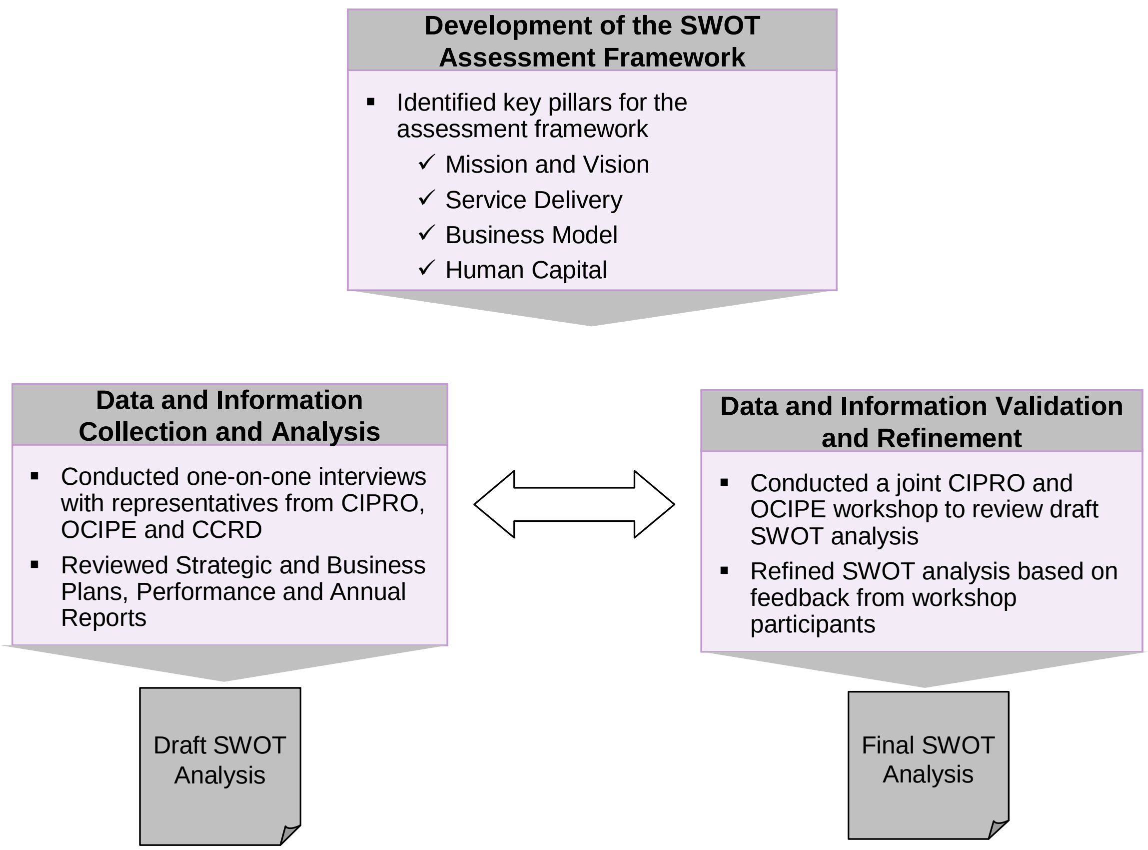
3.1 CURRENT ORGANIZATIONAL ASSESSMENT

This section discusses the methodology and results of the strengths, weaknesses, opportunities and threats (SWOT) analysis conducted with inputs from externally and internally facing components of OCIPE, CIPRO and CCRD organizations.

3.1.1 SWOT Methodology

Figure 3 depicts the iterative and interactive methodology was used to conduct the SWOT analysis:

Figure 3: SWOT Methodology



The data collection, analyses and validation process yielded results contained in the SWOT analysis. The detailed report is contained in Appendix A.

3.1.2 SWOT Findings and Recommendations

The SWOT analysis used four key pillars to assess the current state of affairs within OCIPE and CIPRO:

- Mandate and Mission: assesses the mandates and mission that drive OCIPE and CIPRO
- Services delivery: assesses OCIPE and CIPRO products and services and how they are accessed by customers (processes, people and systems) against goals of efficiency and effectiveness.
- Business model: assesses the business and funding model in terms of sustainability, value for money, fair price to the customer and fair cost to the government.
- Human capital: assesses life-cycle human resource management in terms of recruitment and retention, capacity and capability.

3.1.2.1 Mandate and Mission

Finding #1: Both OCIPE and CIPRO have clear mandates that drive their respective organizations with CIPRO providing for the registration of companies, close corporations, cooperatives and intellectual property rights; disclosure of information and dispute resolution from infringement of rights. OCIPE's mandate is the enforcement of company and intellectual property laws. Even though OCIPE and CIPRO individually have clear mandates, they operate independently leading to sub-optimization and creating operational inefficiencies. The Companies Bill provides a clear integrated mandate for OCIPE and CIPRO under the Companies Commission that empowers both organizations.

Recommendation #1: During the SWOT workshop, the participants acknowledged their level of understanding of the Companies Bill was relatively low. While the workshop enhanced their understanding, it is critical that the entire Companies Commission staff understand their new mandate and drive towards its achievement so they can provide efficient and effective service to their customers. Conducting various workshops and seminars for staff prior to implementation will assist in focusing staff on their mandate.

3.1.2.2 Service Delivery

Finding #1: CIPRO and OCIPE have varying quality managements systems

- CIPRO is ISO 9001 certified for quality management with well documented and executed business and intellectual property registration processes and procedures. A dedicated Total Quality Manager is responsible for quality control.
- OCIPE follows documented processes and procedures but does not have a formal quality management system.

Recommendation #1: Leverage CIPRO's quality management function to ensure consistency and optimization of functions and processes across the Commission. The Companies Bill prescribes new or enhanced functions and the Commission needs to incorporate quality management from the Commission planning phase through implementation to ensure quality certification is maintained.

Finding #2: CIPRO and OCIPE's processes are primarily manual and not supported optimally by technology.

- CIPRO business and intellectual property registration processes are largely paper-based resulting in sub-optimal turnaround and processing times. Limited automation is based on disparate legacy systems that do not support CIPRO's efficiency and effectiveness objectives and are no longer supported in the market.
- CIPRO is currently automating critical tasks, e.g., registration name reservations and annual returns filing.
- CIPRO recently tendered for an enterprise-wide ICT solution (e-CIPRO) that is scalable and adaptable for new requirements.
- CIPRO's information database is unreliable and inaccurate
- OCIPE's ICT infrastructure is almost non-existent with pertinent enforcement information stored in stand-alone individual user desktops.

Recommendation #2: Leverage technology to enhance business processes and information reliability

- Re-define e-CIPRO requirements to encompass full scope of the Companies Bill functions to ensure value for money is attained. Engage OCIPE staff as soon as possible in identifying requirements to ensure optimal ICT integration.
- Establish a minimum technology standards for Commission employees based on their function or other measure

Finding #3: The scope of CIPRO's intellectual property registration services is varied, primarily mandated by legislation

- Trademarks registration process is governed by the Trademarks Act and associated regulations while coding complies with the Vienna classification standard. The trademarks office processes over 30,000 applications filed exclusively in South Africa.
- Patents registration is administered by the Patents Act 57 of 1978, associated regulations, and various international memberships/agreements, i.e., WIPO, Paris Convention, TRIPS Agreement, Budapest Treaty and the Patents Cooperative Treaty (PCT).
- Patents registration office processes ~10,000 patents annually from both national and international applicants; the majority (~85%) is enabled by the PCT. Patent registration is entirely procedural (mandated).
- Designs registrations are governed by the Designs Act of 1995 and associated regulations with about 2,000 design applications processed per year (all filed in South Africa).

- Copyrights registration process includes film copyrights and is governed by the Cinematograph Films Act 62 of 1977 with an annual workload of ~100 applications a year. Associated copyright legislation includes Copyrights Act 1978, Performer's Protection Act of 1967 and Collecting Societies Regulations. The Traditional Knowledge Bill currently awaiting signature will also impact the copyrights workload.

Recommendation #3: Evaluate the scope of IP products and services and assess the impact of accession to international treaties and enactment of pending Bills on the Commission structure

- Finalize process for accession to the Madrid Protocol and Hague Agreements for Trademarks and Designs, respectively to expand registration scope and economic impact. Plan for a potentially dramatic increase in workload as a result of the accession.
- Evaluate opportunities to engage in substantive research on Patents and Design and amend legislation to expand service offering as necessary.
- Assess the impact of the Traditional Knowledge Bill on Commission resources.

Finding #4: Monitoring and complaints function is not fully optimized

- Services are provided primarily using a reactive approach; potential non-compliance instances are obtained from either referrals or complainants. Majority of Companies investigations entails referrals from the IRBA.
- IP compliance services are almost non-existent and rely heavily on other law enforcement agencies due to lack of capacity or jurisdiction

Recommendation #4: Enhance capacity, capability and impact of the monitoring and complaints function

- Utilize more proactive monitoring tools and strategies
- Formalize MOUs/SLAs with law enforcement agencies to enhance service delivery and avoid duplication

Finding #5: Company investigations process is lengthy and appears ineffective

- Company investigations average turnaround times of 24 months is ineffective due to mandated approval requirements contained in the Companies Act 1973
- Company investigation measures are not well defined, i.e., real outcomes of investigation findings are not always known making it difficult to measure impact

Recommendation #5: Leverage Commission structure to measure impact

- Companies Tribunal will provide the opportunity to shorten turnaround investigation times but processes will need to be developed to facilitate efficient processing
- Investigations and outcomes will be recorded for cases that utilize the Companies Tribunal

- Develop robust legal advisory competencies to facilitate efficient court proceedings

Finding #6: Business and IP dispute resolution mechanism is primarily voluntary

- Companies, Closed Corporations, Cooperatives and IP disputes are currently facilitated by the court system
- Under the Companies Bill, the Companies Tribunal will provide a mechanism for dispute resolution but only for Companies

Recommendation #6: Expand the scope of the Tribunal to include other business entities

- Amend Co-operatives and IP laws to enable the Companies Tribunal to accommodate the full range of the Commission's business entities

Finding #7: Education and capacity building capabilities exist in both OCIPE and CIPRO

- OCIPE's has an established Education and Capacity Directorate focused on internal and external training of companies and IP enforcement legislation
- CIPRO's training function is more internally focused

Recommendation #7: Consolidate the Education and Awareness function to effectively deliver against the Companies Bill public education provision

- Develop a public education and awareness strategy to cover the full scope of the Commission (business entities, IP and their respective mandates)
- Collaborate with the decentralization program to deliver training nationwide

Finding #8: CIPRO has an established Business Relations and Marketing and Communications group tasked with internal and external communications; OCIPE relies on the dti structure to meet its requirements

- OCIPE and CIPRO leverage planned activities brand promotion
- CIPRO's BRMC's relationship with business units is not optimized
  - business unit planning for marketing activities is not consistent
  - due to capacity constraints, business subject matter experts are not available to attend marketing events
- Market segmentation studies to inform strategy are not currently performed

Recommendation #8: Ensure in-depth communications of the Commission's service offering

- Leverage the Commission's public education and awareness function in developing content of services and products, including processes.

Finding #9: CIPRO customer service interface is multi-faceted and is employing a variety of strategies to improve customer service

- CIPRO's decentralization strategy is in the process of a phased nationwide implementation encompassing a sub-set of CIPRO products and services utilizing varied partners to deliver services
- CIPRO's Call Center (currently co-located with dti) operates on a restricted schedule
- Intermediaries continue to play an active role in the delivery of CIPRO services

Recommendation #9: Incorporate the full scope of the Commission's products and services into the customer service strategy:

- Reduce the role of intermediaries by providing in-house expertise on client needs; if necessary, accredit intermediaries on Commission's services and products to ensure optimum service delivery is attained and honesty and integrity is upheld.
- Implement dedicated Call Center with strategies to ensure customer service is maximized, i.e., extended work hours, 24-hour hot-line, web access.

Finding #10: Stakeholder management is highly decentralized across the business units:

- OCIPE and CIPRO manage a wide range of relationships; governmental, inter-governmental, national, international, commercial, etc.
- Stakeholder relationships are not fully developed due to capacity constraints and are mainly managed on a case by case basis.

Recommendation #10: Formalize and consolidate stakeholder management to fully develop relationships.

Finding #11: Policy and legislation coordination is not fully optimized:

- Co-operative policy function continues to reside with dti under the Enterprise and Industrial Development Division even after the function migrated to CIPRO.
- Coordination between CCRD (policy and regulations development unit) and CIPRO is suboptimal.

Recommendation #11: Maximize policy and legislation coordination:

- Migrate Co-operatives policy function to CCRD.
- Improve processes to ensure effective coordination and participation in policy and legislation development/review.

3.1.2.3 Business Model

Finding #1: OCIPE and CIPRO utilize different business model to deliver their mandated functions:

- CIPRO operates as a trading entity and is self-funded with a total budget of R277M in 2007/08; the entity generated a surplus of R126M during the same period.
- OCIPE, as a Directorate within the dti and receives an annual budget from the department (R18M for 2008/09).

Recommendation #1: Redefine business model to accommodate Commission's functions:

- Determine funding gap between current operations and Commission requirements (included in this business case).
- Employ a portfolio based approach to managing the Commission's resources (some Commission activities are policy-driven with no associated revenue while others generate or have the potential to generate additional surpluses).

Finding #2: Fee structure is complex and does not reflect the cost of doing business:

- While CIPRO accounting is cost center based (good for management and accountability), it is largely based on cost allocations that do not employ activity based costing for product and service pricing.
- CIPRO fee structure has not been amended since 2003 (and prior to that 1989).

Recommendation #2: Establish a Commission fee structure informed by cost and broad economic objectives:

- Simplify the fee structure to make it understandable to a wide range of existing and potential customers (this will also help reduce prevalent fraudulent behaviors when intermediaries are involved).
- Conduct a thorough activity based costing analysis to understand product and service costs for Commission services.
- Propose sliding scale fees based on company revenue to promote registrations and enterprise growth.

Finding #3: CIPRO's revenue base is not fully optimized and is susceptible to economic fluctuations:

- CIPRO derived ~50% of its income from annual returns in 2007/08 with this income expected to increase as annual returns were introduced for closed corporations in 2008/09.
- Company and close corporation activities accounted for ~26% while intellectual property generated ~13% of revenue
- Data and corporate information sales contributed less than 5% to the revenue base with data integrity as a major growth constraint.
- Share capital revenue of ~5% will cease to exist with the enactment of the Companies Bill.
- Develop a business continuity/recovery plan to minimize business disruptions.

Recommendation #3: Explore opportunities to increase revenue while facilitating economic growth objectives:

- Promotion of companies and intellectual property registrations, particularly conversion of businesses operating in the informal sector to the formal sector.
- Leverage CIPRO's Enterprise Content Management (ECM) implementation and data cleansing initiatives to provide a robust and reliable data and information sales capability

3.1.2.4 Human Capital

Finding #1: CIPRO and OCIPE present different employment profiles:

- CIPRO had ~500+ positions in 2007/08 compared to 31 in OCIPE.
- Senior management (levels 13-16) at CIPRO comprise ~4% of staff complement compared to 23% in OCIPE.

Recommendation #1: Review current and open positions against Commission requirements and harmonize employee levels:

- Realign staff to meet Commission functions and objectives; leverage existing staff to fill new functions.

Finding #2: CIPRO and OCIPE face similar challenges with respect to recruitment:

- CIPRO and OCIPE face competition for specialized skills (IT, forensic accounting, legal) resulting in over reliance on consultants with no reciprocal skills transfer.
- CIPRO is actively involved in developing and implementing various recruitment and retention strategies (e.g., Employee of Choice Strategy).

Recommendation #2: Establish recruitment and retention strategies for the Commission

- Communicate a "win-win" value proposition; new functions will create opportunities for both CIPRO and OCIPE staff.
- Utilize Commission status to determine applicable aspects of compensation, performance and development.
- Exercise Occupational Dispensation options to attract and retain staff.
- Establish and develop a pool of scarce resources to be shared across the organization to effectively meet the needs of the Commission.

Finding #3: Cultural differences exist between CIPRO and OCIPE staff:

- Differences exists primarily due to current business models and disparate functions
- Staff are willing to overcome their differences to deliver against their new mandate

Recommendation #3: Bridge cultural differences through change management and functional/physical integration:

- Implement change management prior to and during the Commission implementation phase.
- Co-locate staff to give a senses of team belonging and provide for better work environment.

3.1.3 Conclusion

The above results of the SWOT analysis provide focus areas upon which the Commission can incorporate into its planning and implementation strategies to ensure future success.

4 RISK ASSESSMENT

This section identifies and analyzes potential risks associated with the proposed Companies Commission.

4.1 METHODOLOGY

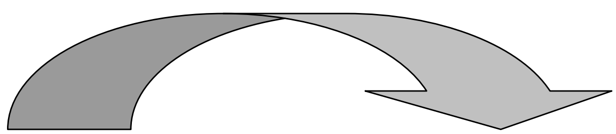
To conduct the risk and sensitivity assessments, broad categories of risks defined by the National Treasury were used in conjunction with other best practice program management risk elements.

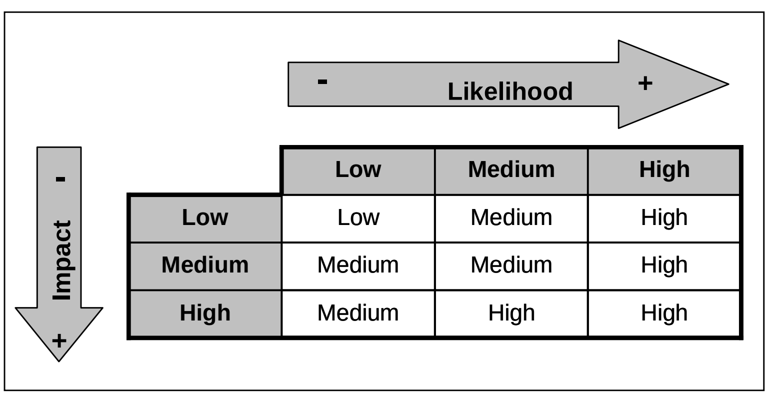
Major risk categories used for this assessment included the following

- Policy Risk
- Legislative Risk
- Market Risk
- Operational Risk
- Change Management Risk
- Technology Risk
- Project Management Risk

Risk areas were evaluated based on their likelihood and impact of occurrence using the scale in Figure 4.

Figure 4: Risk Scoring Guidance





	Low	Medium	High
Low	Low	Medium	High
Medium	Medium	Medium	High
High	Medium	High	High

- *High Risk*: There is a high likelihood that this risk factor poses, or will pose, a serious problem, impacting the ultimate objectives of CIPC. It will require sustained executive attention
- *Medium Risk:* There is a moderate likelihood that this risk could materialize and have an impact CIPC objectives. If not mitigated, it could eventually pose a serious risk. Requires program management involvement.
- *Low Risk:* There is little foreseeable risk to the CIPC objectives posed by this area of risk, or the risk has been identified and is being managed effectively.

4.2 RISK ASSESSMENT JUSTIFICATION

The following section provides a risk assessment, justification and plans mitigation strategies.

Table 1: Legislative Risk

Risk Area	Likelihood	Impact	Risk	Justification
1.a) Delay in Enactment of Companies Bill 2008 The Bill has been passed by Parliament and is pending Presidential signature	M	H	H	• The likelihood of occurrence is rated medium because the Bill has been passed in Parliament and has no constitutional issues. • The impact is high because the Companies Commission implementation (targeted for CY2010) and the realization of associated benefits would be delayed.
<u>Plan for Mitigation / Elimination / Management</u> • Engage with the highest level of leadership and ensure the Bill fast tracked and signed by President				
1.b) Alignment of Companies Bill with pertinent legislation The scope of the Companies Bill extends beyond the merging entities and consequently is impacted or impacts other existing or future legislation. A lack of comprehensive assessment of the full scope of these legislations may result in sub-optimal implementation of the Companies Bill	L	H	H	• The likelihood of occurrence is rated medium because although pertinent and related laws have been reviewed, their implementation time-line and impact to the Commission is uncertain. • The impact is high but will be largely driven by specific legislation provisions, e.g., if the Income Tax Act is not amended to take into account the tax implications of asset disposal/payments in instances of a merger, it could create an unfavorable situation for companies, shareholders of the government.
<u>Plan for Mitigation / Elimination / Management</u> Conduct a thorough analyses of current and future laws (some already included in the Companies Bill) to determine their impact on the Companies Bill; develop implementation strategies and time-frames.				
1. c) Enactment of Companies Bill 2008 May Lead to Increased Costs • The Companies Bill prescribes the creation of a new governance structure not previously budgeted • The effective implementation of the Companies Bill may require an increase in infrastructure and service delivery costs	M	M	M	• The likelihood of increased costs is high since new bodies will be created to strengthen prescribed functions; additionally, current infrastructure will need to be enhanced to support service delivery. • The impact is medium because CIPRO currently generates a surplus that may partially offset additional costs
<u>Plan for Mitigation / Elimination / Management</u> • Conduct a complete cost analysis and financial plan to include all costs • Define the competencies and staff mix to ensure value for money • Evaluate affordability and funding sources (i.e., additional budget request, increased product/service fees or hard savings from implementing operational/process improvements				

Table 2: Policy Risk

<table>
<tr><th>Risk Area</th><th>Likelihood</th><th>Impact</th><th>Risk</th><th>Justification</th></tr>
<tr><td>2.a) Policy changes deviate from drivers of the Companies Bill

One of the drivers of the Companies Bill is the dti policy paper (2004) that sets out a 5-point statement of economic growth objectives. Policy changes incongruent to these objectives would present an implementation risk</td><td>L</td><td>M</td><td>M</td><td>• The likelihood of major policy changes occurring is low because the Companies Bill was based on a highly consultative process that endorsed policy objectives.
• The impact of policy changes to more inward facing, restrictive and less transparent polices would be high and would impact the Companies Commission’s functions.</td></tr>
<tr><td colspan="5"><u>Plan for Mitigation / Elimination / Management</u>
• Stay abreast of current and potential policies and continually assess their impact on the Companies Commission
• Engage early (particularly with the future administration) to shape any potential policy decisions that may affect the Companies Commission</td></tr>
<tr><td>2.b) Lack of achievement of dti economic growth objectives

Procedures for forming new companies and associated costs remain complex to potential companies</td><td>M</td><td>H</td><td>H</td><td>• The potential eventual phasing out of the Closed Corporation may stifle SME growth due to perceived or real more complex procedures and costs associated with establishing and maintaining a company.
• The impact would be high as potential companies may choose not to register hindering the realization of economic growth objectives.</td></tr>
<tr><td colspan="5"><u>Plan for Mitigation / Elimination / Management</u>
• Develop performance indicators to measure effectiveness of the Companies Commission and review these regularly to measure progress
• Obtain feedback from stakeholders to assess the achievement of goals and objectives
• Evaluate other legislation and practices that may hinder the realization of economic growth objectives</td></tr>
</table>

Table 3: Operational Risk

<table>
<tr><th>Risk Area</th><th>Likelihood</th><th>Impact</th><th>Risk</th><th>Justification</th></tr>
<tr><td>3.a) Cultural differences with integrating CIPRO and OCIPE under the Commission will be a constraint.

Effort is not made to integrate the two entities from the planning stages of the transition through the implementation.</td><td>H</td><td>H</td><td>H</td><td>• The likelihood is high because differences exist.
• The impact of “business-as-usual” would be high because it would prevent the organization from operating collaboratively, efficiently and effectively.</td></tr>
<tr><td colspan="5"><u>Plan for Mitigation / Elimination / Management</u>
• Develop and communicate the Companies Commission vision, mission and goals to all affected staff.
• Develop a change management plan to ensure all employees and support infrastructure is aligned to the Companies Commission’s vision, mission and goals.
• Develop an organization-wide, harmonized, performance based compensation strategy aligned to the Companies Commission’s goals.</td></tr>
<tr><td>3.b) Companies Commission employees understanding of new legislation.

Employees do not have a complete understanding of the Companies Bill to enable them to effectively and efficiently perform their function and also act in an advisory/consultative capacity to existing and potential customers.</td><td>H</td><td>H</td><td>H</td><td>• The likelihood of a lack of understanding is high because most staff are not aware of the major changes and the impact to their operations.
• The impact is high because it could cause frustration among the employees (and customers) and hinder their ability to perform. As a result, the organization could experience staff turnover and unsatisfied customers.</td></tr>
<tr><td colspan="5"><u>Plan for Mitigation / Elimination / Management</u>
Develop a training strategy to include employees at all levels. Educate employees on the Companies Bill and impact on their work; use different training delivery mechanisms to implement the training (i.e., on the job, classroom training, train the trainer, coaching, online, etc.).</td></tr>
<tr><td>3.c) Companies Tribunal independence

The Companies Bill prescribes the formation of a Companies Tribunal as a critical component of corporate governance guided Commission’s cores value of independence, integrity, impartiality, etc. Compromising the independence of the Tribunal would present a risk to the Commission.</td><td>M</td><td>H</td><td>H</td><td>• The likelihood of the lack of the Tribunal independence is Medium as the Bill prescribes clear standards/rules of behavior and consequences for their violation
• The impact of the lack of independence would be High as this would result in the loss of public and investor confidence thus impacting the realization of policy objectives and the Companies Bill.</td></tr>
<tr><td colspan="5"><u>Plan for Mitigation / Elimination / Management</u>
• Establish a stringent selection process for the Tribunal to ensure proven, reputable, impartial members lead the Commission
• Develop processes to ensure Tribunal independence is achieved and maintained</td></tr>
</table>

Table 4: Market Risk

Risk Area	Likelihood	Impact	Risk	Justification
4.a) Lack of market understanding of new Companies Bill Customers do not have a complete understanding of new legislation.	M	H	H	• The likelihood is medium because although some stakeholders were involved in the drafting of the new legislation, there is still some ambiguity in certain areas. Individuals or entities who were not involved in the drafting process will need to understand the Bill's provisions and implications. • The impact of a lack of understanding of the new Bill would be high and could lead to confusion thus deterring potential customers.
<u>Plan for Mitigation / Elimination / Management</u> • Develop an external training strategy and plan for existing and potential customers. • Develop an organization-wide, harmonized, performance based compensation strategy aligned to the Companies Commission's goals.				
4.b) Demand for products/services deviates significantly from expectation One of the policy objectives underlying the Companies Bill is to encourage entrepreneurship and investments in South African markets. A significant deviation from expectation will have an impact on growth objectives and Commission workload	M	H	H	• The likelihood of significant changes in demand for Commission's products and services as a result of implementing the Companies Bill's is Medium because potential customers, e.g., SMEs may find forming a Company vs a Close Corporation more costly and complex. • The impact of significant changes in demand would be Medium as the Commission would need to scale (up or down) to accommodate the changes.
<u>Plan for Mitigation / Elimination / Management</u> Conduct a market segmentation study and use finding to develop and implement a marketing plan for the Commission products and services; actively market the offerings and registration benefits to potential customers, e.g., SMEs.				

Table 5: Technical Risk

Risk Area	Likelihood	Impact	Risk	Justification
5.a) Ability to support current and future ICT requirements. Enterprise-wide systems architecture optimization for the implementation of the Companies Bill .	M	H	H	• The likelihood of the ICT infrastructure's inability to support current and future requirements in Medium. Although the current system is already in the process of automating certain provisions (e.g., name reservations), the full scope of system requirements still needs to be developed and implemented. • The impact of the inability of the ICT infrastructure to meet the requirements would be High as it would result in inefficient operations and a potential increase in customer dissatisfaction due to delays, inaccuracies, etc.
<u>Plan for Mitigation / Elimination / Management</u> Develop and implement a strategy-based technology plan that leverages technology to the fullest extent possible to facilitate and automate processes associated with the Companies Bill. Implement a comprehensive enterprise-wide architecture (business, applications, data, security and technical) to ensure an efficient and effective enabling function.				
5.b) Availability of skills to support ICT systems. Lack of skilled ICT staff to support current and future requirements is likely to impact the effective implementation of the Companies Bill.	H	H	H	• The likelihood of a lack of skilled staff to perform the ICT requirements is High due to high competition for these skills in the market. • The impact of a lack of ICT support would be High as productivity loss would occur thus delaying the achievement of the benefits associated with the Companies Bill implementation.
<u>Plan for Mitigation / Elimination / Management</u> • Develop and implement a human resource strategy and plan to ensure the ICT function is able to recruit and retain talented staff. • Conduct on-going systems and business related training to ensure ICT staff can perform their function optimally.				

5 SERVICE DELIVERY OPTIONS

This section identifies and assesses the Commission's service delivery options, including role, functions, core activities and values of the institution, relationships between the Commission, the dti and other prescribed entities.

5.1 IDENTIFICATION AND ASSESSMENT OF SERVICE DELIVERY OPTIONS

Service delivery options for the Companies Commission were evaluated based on guidance provided by the National Treasury in the *Guide for Creating Public Entities at the National Sphere of Government* and other best practices. The National Treasury guidance provides various options for assessing the advantages of "agencification" against other service delivery options.

As mentioned in Section 1.2, the dti is not establishing a new public entity under the Companies Bill but instead is setting up an institution that will offer and improve the combined services of two existing public entities, Office of Companies and Intellectual Properties Enforcement (OCIPE) and Companies and Intellectual Properties Registration Office (CIPRO). Additionally, the Companies Bill prescribes new functions, not previously mandated in existing legislation.

5.1.1 Service Delivery Alternatives

To ensure that the service delivery options selected to support the establishment of the Commission was most effective, the following alternatives were assessed:

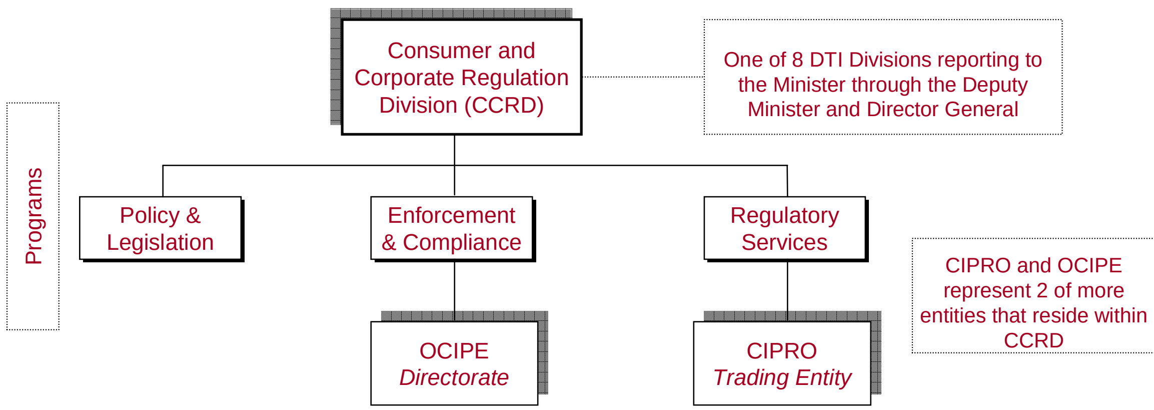
Table 6: Alternative Descriptions

Alternative	Description
Status Quo	This alternative is simply maintaining the current environment based on OCIPE and CIPRO operating as separate entities**. The alternative is not viable due to Companies Bill prescribed mandate of combined services.**
Commission Partial Functional Integration	This alternative assumes CIPRO and OCIPE migrate to the Commission structure to deliver against the full mandate of the Companies Bill but maintain their status quo structures. **This alternative is deemed not viable as it does not leverage existing structures/functions and best practices to deliver against the Companies Bill mandate.**
Commission Full Functional Integration	This alternative consists of CIPRO and OCIPE aligning optimally to deliver against mandated functions and leverages best practices of similar organizations and employing a combination of strategies, i.e., combination and sharing of services, effecting business process improvements, centralizing or decentralizing services, etc. **This alternative forms the basis of the Commission service delivery model.**

5.1.2 Companies Bill Impact on Current Structures

The current environment consists of CIPRO and OCIPE operating independently within CCRD, with OCIPE as a Directorate and CIPRO a trading entity:

Figure 5: Current OCIPE and CIPRO Organizations within DTI



Implementation of the Companies Bill will have an impact on the current structures:

Figure 6: Current CIPRO and OCIPE Operating and Functional Alignments

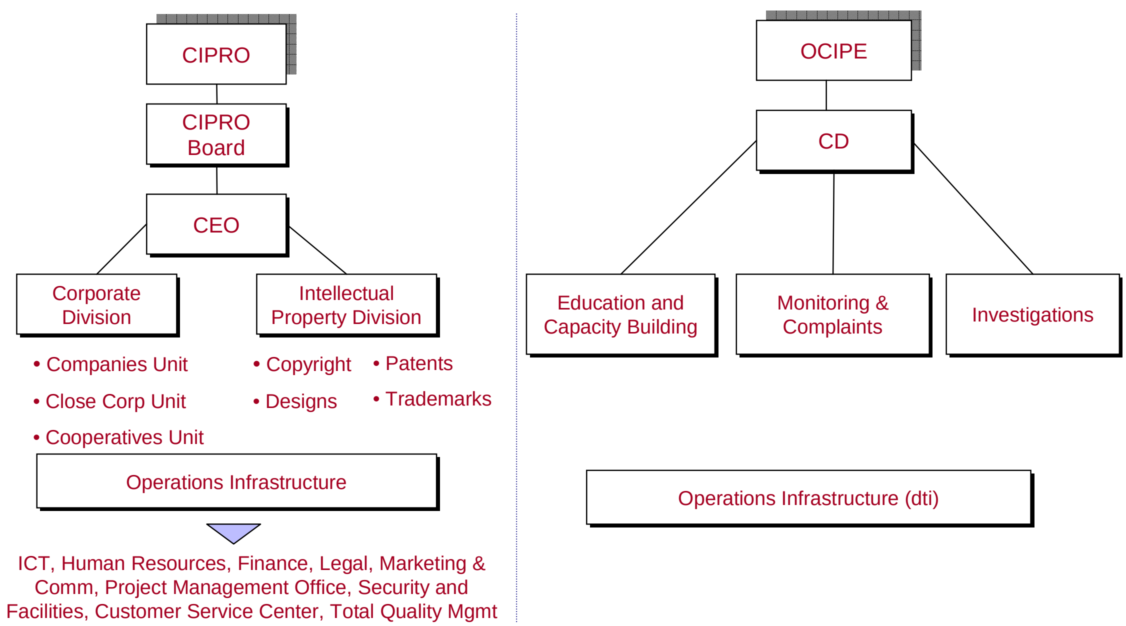
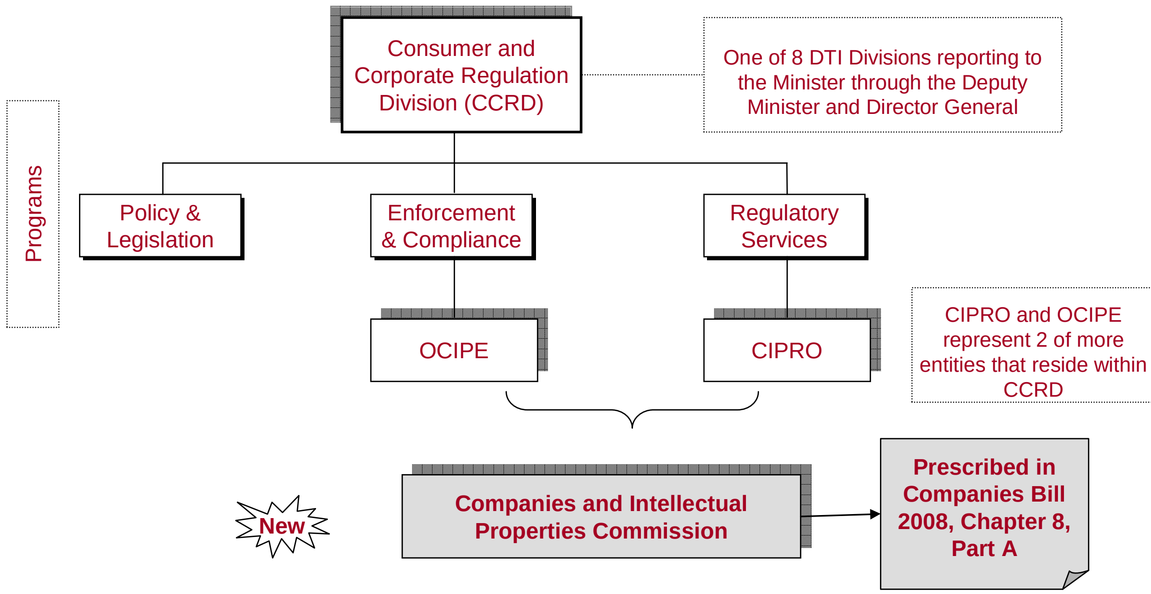


Figure 7: Impact of Companies Bill on CCRD Structure



5.1.3 Functional Gap Analysis

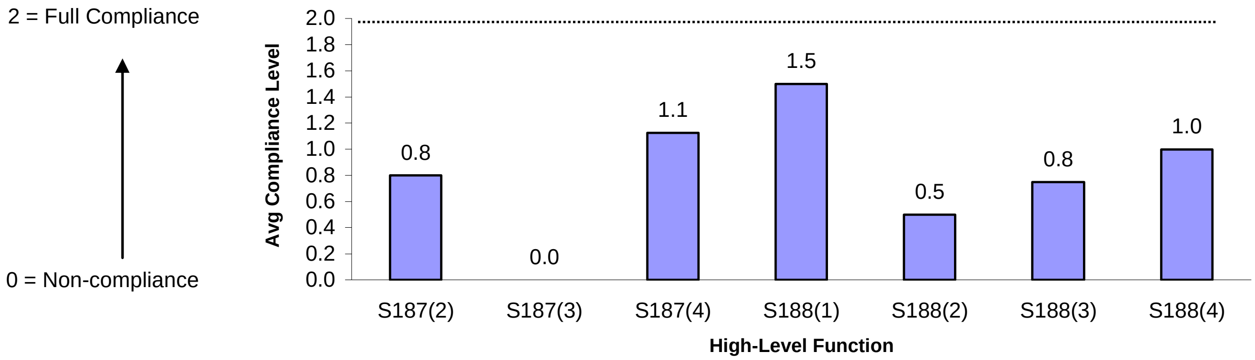
The Companies Bill prescribes the Commission's functions in Chapter 8, Part A, S186. The functional gap analysis reviewed each subsection of the functions to determine the current organizations' current compliance with the Companies Bill requirements.

To determine the compliance level, a workshop was conducted with OCIPE and CIPRO managers/directors where participants reviewed a draft gap analysis and validated or justified the scoring. Each functional area was rated using the following scale:

0 = Function does not currently exist
1 = Function exists but only delivered partially
2 = Function exists and delivered fully

A summary of the functional gap analysis is shown in Figure 8; a detailed analysis is contained in Appendix D.

Figure 8: Functional Compliance



High Level Functions Legend

Section	Provision
S187(2)	Enforce Companies Bill
S187(3)	Promote Reliability of Financial Statements
S187(4)	Registration
S188(1)	Reporting to Minister on Bill policy and legislation and volume and nature of registration and enforcement activities
S188(2)	Increase knowledge of the nature, dynamics and public awareness of company and IP law and promote public awareness
S188(3)	Liaise with any regulatory agency on matters of common interest and facilitate information exchange
S188(4)	Commission may liaise with national and international authorities

To determine the level of functional compliance of the current organizations with the prescribed functions, a gap analysis was conducted using workshop inputs for validation. A summary of the results shows the status quo functions are only partially compliant with the Companies Bill high-level functions, primarily due to the new or enhanced functions and also the constraints highlighted in the SWOT analysis**.**

Table 7 provides a summary of the functional analysis findings and recommendations.

Table 7: Functional Gap Summary Findings and Recommendations

Key Findings	Key Recommendations
S 187(2) Enforce Companies Bill	
• Limited dispute resolution mechanisms with courts as the primary recourse.	• Leverage and promote Companies Tribunal tol facilitate dispute resolution with Legal Advisory support. • Amend IP and Cooperative legislation to enable Companies Tribunal to accommodate respective disputes.
• Monitoring and Compliance function exists but is primarily reactive and decentralized across OCIPE, CIPRO and within CIPRO. • Process and capacity constraints exist within the compliance and enforcement functions leading to limited companies investigations (i.e., minority protection).	• Consolidate capability and scale up function to include analytical and investigative competencies (e.g., accounting and business law). • Develop effective processes, tools and strategies for proactive monitoring and investigations.
• The legal function encompassing negotiation through court appearances is primarily non-existent.	• Develop full capability to support the full scope of the Commission's offerings.
S 187(3) Promote Reliability of Financial Statements	
• Function is non-existent and requires monitoring patterns of compliance and contraventions of financial standards and making recommendations to the Financial Reporting Standards Council (FRSC).	• Develop capability in terms of people, processes and systems with functional competencies focused on accounting, particularly forensic accounting. • To optimize relationships with the FRSC, streamline/develop an advocacy and policy coordination function to ensure objectives are effectively met.
S 187(4) Registration	
• Registration function exists but not delivered optimally; largely paper-based, data resides in disparate systems, data is not always reliable, highly centralized in Pretoria (>70% walk-in customers.	• Process automation and decentralization initiatives are currently in process. • Implement and test Companies Bill requirements (new and enhanced) prior to launching the Commission.
S188(1) Reporting to Minister on Bill policy and legislation and volume and nature of registration and enforcement activities	
• Function currently exists in CCRD with CIPRO/OCIPE inputs.	• Effective coordination will be required with CCRD and Specialist Committee on resource management issues. • Revised performance measures will ensure Commission alignment with strategic objectives.

<table>
<tr><th>Key Findings</th><th>Key Recommendations</th></tr>
<tr><td colspan="2">S188(2) Increase knowledge of the nature, dynamics and public awareness of company and IP law and promote public awareness</td></tr>
<tr><td>• Public education and awareness partially exists within OCIPE with no concerted/integrated program across OCIPE and CIPRO.
• Research function does not currently exist within CIPRO and OCIPE.
• Policy and legislation review function resides in CCRD and is executed with CIPRO and OCIPE inputs.</td><td>• Establish a Commission-wide public education and awareness program as part of a broader compliance strategy.
• Establish a stand-alone Commission-wide research and analysis capability as a shared service; populate with specialized resources to support research requirements.
• Policy and legislation review will require effective coordination with CCRD.</td></tr>
<tr><td colspan="2">S188(3) Liaise with any regulatory agency on matters of common interest and facilitate information exchange</td></tr>
<tr><td>• Liaison on matters of common interest with regulatory agencies is partially performed within CIPRO and OCIPE.
• Negotiations of agreements with regulatory agencies, when performed, are on a case-by-case basis and long term relationships are not formalized.
• Participation is proceedings and information exchange with other regulatory agencies is only partially performed.</td><td>• Broaden, redefine and consolidate stakeholder management to encompass regulatory agencies, among other stakeholders.</td></tr>
<tr><td colspan="2">S188(4&5) Commission may liaise with national and international authorities</td></tr>
<tr><td>• Liaison with international authorities with similar functions exists in a limited capacity, particularly within the intellectual property capability, e.g., WIPO.
• Referrals to regulatory agencies concerns related to their respective legislation are performed partially by CIPRO and OCIPE.</td><td>• Capacity will need to be enhanced to include other authorities e.g., Interpol, country bi-laterals, international bodies, etc.
• Enhance function through proactive monitoring and referrals (e.g., Competition Commission, SARS, IRBA issues).
• Enhance coordination and formalize relationships with other regulatory agencies.</td></tr>
</table>

5.1.4 Companies Bill Impact on Current Processes

In addition to the functional gap analysis, a process and procedures gap was also conducted to ensure new or enhanced requirements arising from the Companies Bill were identified. A review of the entire Bill against current processes was conducted and as follows:

1) New processes: these would require new processes to be developed and may need new forms.

2) Enhanced processes: these would require current processes to be amended and possibly enhanced forms.
3) Current processes: these would require some new forms to be developed or current forms adapted.

These process requirements will be incorporated into the e-CIPRO initiative with joint CIPRO and OCIPE participation to encompass all Companies Bill requirements. This business case incorporates the implementation of these activities as a critical milestone for the Commission's establishment.

5.2 CONCLUSION

Based on the functional gap analysis, it is evident that the Commission presents an opportunity for CIPRO and OCIPE to align optimally to deliver against prescribed functions. As a result, the service delivery option that entails full integration of functions within the Commission is strongly recommended with this business case.

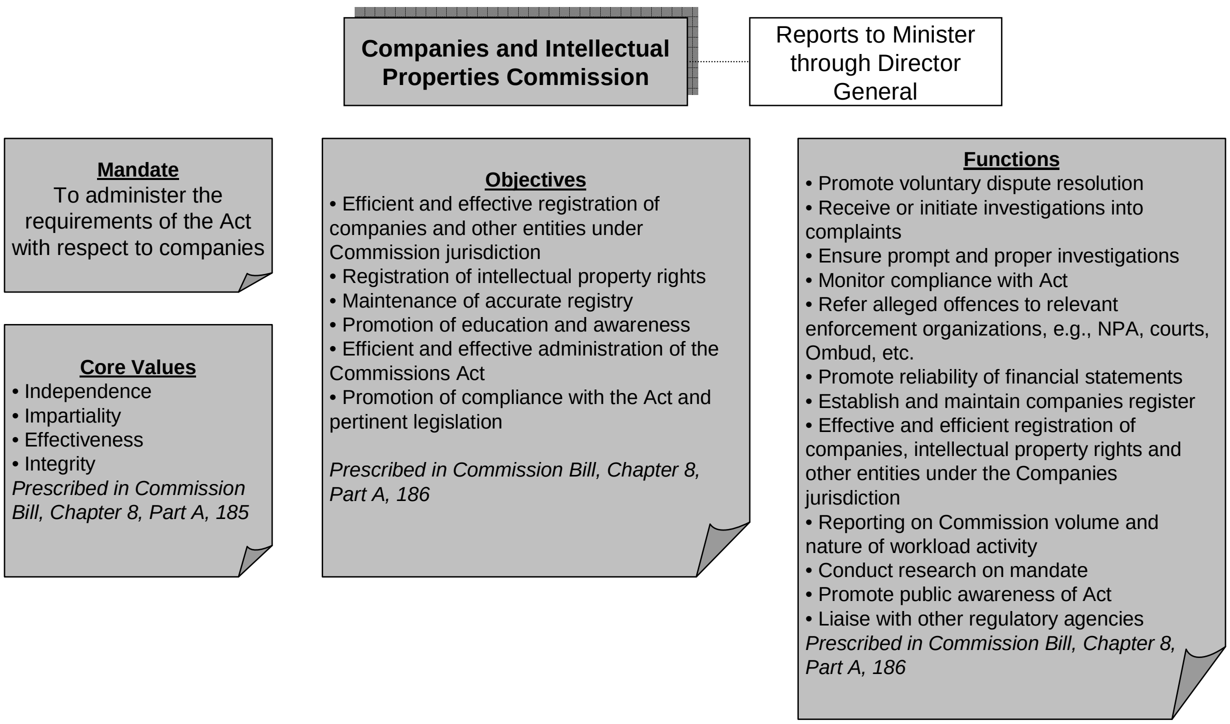
6 CORPORATE GOVERNANCE

This section takes into account the results of SWOT and functional gap analyses to propose the optimal functional alignment necessary to effectively meet the requirements of the Companies Bill. The functional alignment also incorporates results of a high-level desk top assessment of organizations performing similar functions. Additionally, human resource requirements are also identified.

6.1 LEGISLATED ENTITIES

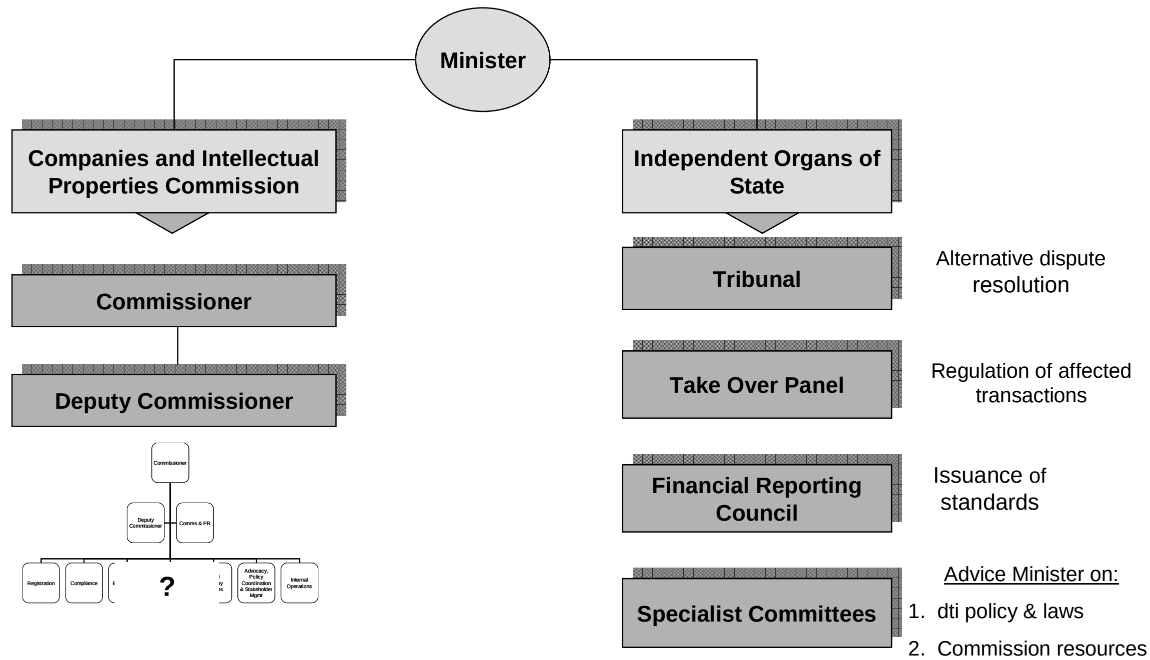
The Companies Bill prescribes the roles, functions, core activities and offerings of the Commission as depicted in Figure 9.

Figure 9: Commission Mandate, Core Values, Objectives and Functions



The Companies Bill also prescribes key entities critical to the functioning of the Commission as shown in Figure 10.

Figure 10: Prescribed Commission Entities



The working relationships between the independent organs of state and the Commission as well as the Commission and the dti will be established with the Companies Bill regulations. The Bill does not mandate the organizational structure against which the Commission should deliver the prescribed functions.

6.2 ORGANIZATIONAL BEST PRACTICES

To serve as a starting point for developing alternative organizational structures, a high-level desktop review of functions was conducted of the Competition Commission (South Africa), South African Revenue Service (SARS), Internal Revenue Service (USA) and Securities and Exchange Commission (USA), Competition Commission (Malaysia), Federal Trace Commission (USA), Competition Commission (India). The common denominators across these commissions were:

- Enforcement (mainly investigations and inspections)
- Compliance
- Complaints
- Legal Services
- Policy Planning
- Research and Analysis
- Public Affairs
- Registration (specific to Companies Commission)

To further inform the structures, the SWOT and functional gap analysis were heavily relied in addition to best practices related to organizational effectiveness, e.g., optimization of functional value chain, shared services, etc.

6.2.1 Functional Clusters

Figures 11-13 represent the functional clusters and their proposed high-level functions.

Figure 11: Customer Facing: Business Units

Registration	Compliance	Enforcement
▪ Establish and maintain appropriate registers as defined by relevant Acts for Companies, Closed Corporations, Cooperatives, Trademarks, Copyrights, Patents and Designs ▪ Receive and deposit registration documents in appropriate registry ▪ Disclosure of relevant documents to public (e.g., to public, state departments, regulatory bodies, etc) ▪ Assisting customers with registration services ▪ Provide quality customer interface ▪ Leverage Compliance public education function for content and Legal Advisory for interpretation	▪ Foster compliance with Companies, Close Corporations, Cooperatives and IP laws through ✓ Public education and awareness ✓ Monitoring and sensing (including issuance of compliance notices) • Escalate egregious violations to Enforcement • Ensure implementation of Financial Reporting Standards • Leverage Legal Advisory function for interpretation of compliance related matters	▪ Conduct investigations of Companies, Closed Corporations, Cooperatives and IP law violations ▪ Enforce compliance notices ▪ Promote voluntary dispute resolution ▪ Refer alleged offences to Companies Tribunal/courts and other regulatory agencies (liaise with Legal Advisory function) on prosecutions

Figure 12: Customer Facing: Shared Services

Research and Analysis	Legal Advisory Services	Advocacy, Policy Coordination and Stakeholder Management
▪ Conduct research relating to Commission's mandate and occasionally publish results ▪ Support business units with specialized research/analysis to facilitate decision making	▪ Promote voluntary dispute resolution (e.g., representing/escalating issues to Companies Tribunal) ▪ Support business units with interpretation of Act or alleged contraventions (e.g., preparing cases for prosecutions or referrals to other regulatory agencies) ▪ Represent Commission in Takeover Panel ▪ Assist in the negotiation and concluding undertakings and court orders	▪ Coordinate liaison efforts with national and international authorities (establish necessary agreements, e.g., SLAs, MOUs) ▪ Facilitate information sharing with regulatory agencies ▪ Review current Companies, IP, Cooperatives, Closed Corporation policy and legislation and coordinate developments with CCRD and Special Committee

Figure 13: Internal Facing (Operations): Corporate Services

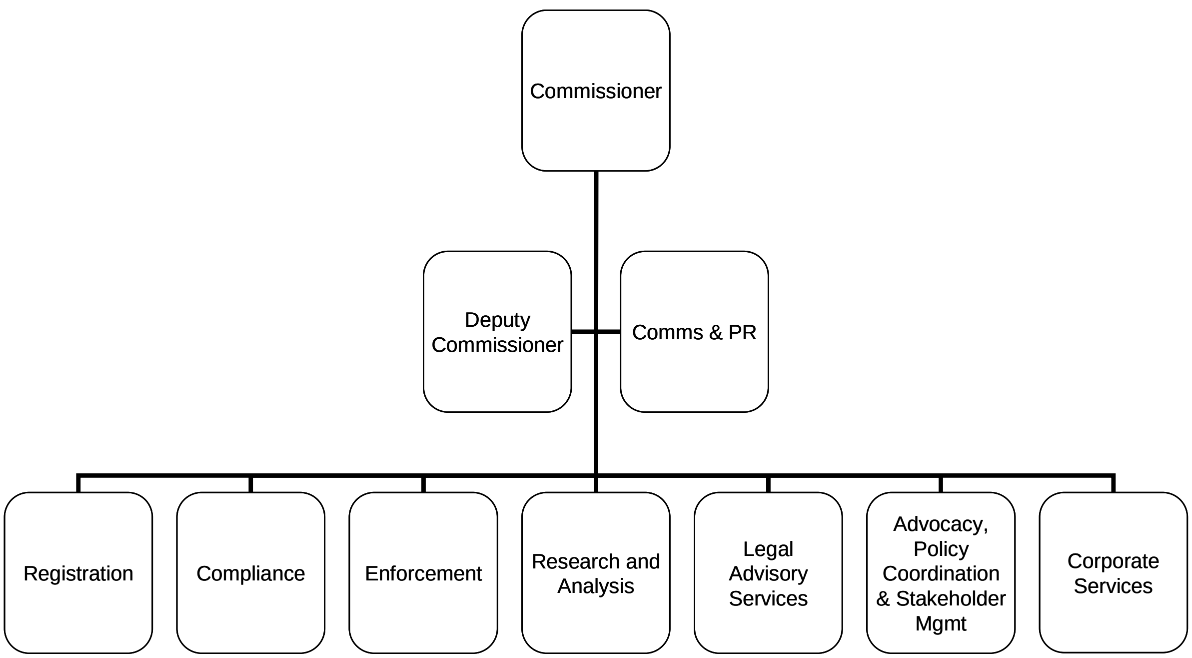
Internal Operations (Corporate Services)	
▪ Human Resources (including Training) ▪ Finance ▪ ICT ▪ Legal	• Compliance Audit & Risk • Security and Facilities • Strategic Services

Note: Leverages CIPRO's current structure but includes an internal Legal function

6.2.2 Proposed Organizational Structure

The resultant high-level organization structure derived from the functional clusters is depicted in Figure 14. The Commissioner may create an Executive Committee to include the cluster heads, including critical internal corporate functions, e.g., CFO and CIO. This business case recommends an executive level position for each of the seven clusters shown in Figure 14.

Figure 14: Proposed Commission Organization Structure



6.2.3 Human Resource Requirements

Based on the situational and functional gap analysis, a high-level review of required competencies was conducted to determine additional requirements for the Commission structure. A detailed skills audit currently being prepared by the dti was not available by the time of drafting this business case. An in-depth review of existing competencies against Commission requirements is a recommended milestone of the Commission's implementation plan.

For this business case, a draft report indicating current competencies proved invaluable for developing the initial requirements. The report provides an indication of the existing competencies within CIPRO:

Table 8: CIPRO Staff Competencies

Specialization	Number	Percentage
Accounting	9	2%
Auditing	2	0%
Commerce	14	3%
Communications	8	2%
Company Law	3	1%
Computer Studies	6	1%
Developmental Studies	1	0%
Human Resource	21	5%
ICT	1	0%
Law	32	8%
Leadership	1	0%
Less than Matric	51	12%
Logistics	1	0%
Management	3	1%
Matric	244	57%
Philosophy	1	0%
Policing	1	0%
Psychology	7	2%
Public Management	7	2%
Research	1	0%
Science	1	0%
Secretarial	9	2%

While similar data is not readily available for OCIPE, the predominant staff competencies are in law enforcement, business law and commerce. Additionally, 23% of OCIPE staff are Director-level and above versus only 5% for CIPRO which is reflective of their respective functions.

Registration (including Customer Management): The registration function is performed by ~260+ staff while Customer Interface support accounts for ~109. Both functions comprise ~65% of CIPRO's staff complement and are predominantly production staff. No incremental requirements are foreseen with this function although ICT implementation and business improvement activities are expected to have an impact on staff deployment in the future.

Compliance: The Compliance function is defined broadly by public education and awareness (to promote compliance) and monitoring and complaints handling. It is recommended that the CIPRO name reservation function migrate to the Registrar's office and consultations occur with the Legal Advisory function as necessary.

The OCIPE *Monitoring and Complaints* function is currently comprised of the following OCIPE positions: 1 Director, 2 Deputy Directors, 4 Assistant Directors and a vacant Team Assistant position. Because of capacity constraints, this staff primarily focuses on intellectual property monitoring and would need to expand the capability to include Cooperatives, Companies and Close Corporations. At a minimum, an additional 6 Director-level positions will be required to support currently neglected areas and expanded requirements, i.e., financial forensics. Because financial forensic capabilities are a scarce resource, it is envisioned that they will initially be a shared Commission resource until scale is achieved. As needs develop over time, additional monitoring may be required by intellectual property domain (i.e., Patents, Trademarks, etc).

Public Education and Awareness is conducted by the OCIPE function utilizing 1 Director, 2 Deputy Directors and assisted by 2 Assistant Directors. Because the expanded mandate, this function will need to be increased significantly to ensure nation-wide coverage. It is recommended that over the course of the next three years, the Commission deploy 2 senior staff per province (18 staff) to ensure comprehensive, in-depth and focused coverage. This function will collaborate closely with the decentralization program for maximum effectiveness.

Enforcement: This function is currently performed by OCIPE with a staff complement of 13 (4 Directors, 5 Deputy Directors, 2 Assistant Directors and 1 Team Assistant). This function is currently limited to company investigations and because of the mandated long approval process for investigations under the Companies Act, the average investigation turnaround time impacted on the workload.

With the Companies Bill, the team should be prepared to handle an increased and more intense workload with expanded responsibilities to encompass Cooperatives, Close Corporations, intellectual property and the various types of companies (e.g., external and international, listed and unlisted, multinationals and local conglomerates, etc.). Highly skilled and experienced competencies will be required to effectively perform this function, i.e., forensic accountants and analytical capabilities in international business law, law commerce, etc. An additional 6 Directors and 9 Deputy Directors are envisioned resulting in a total staff complement of 28 over the next 3 years.

Research and Analysis: This is a new function that will need to be established. Because this is a shared function, it is recommended that the composition of staff includes multiple disciplines as well as scarce skills that can benefits the organization. At a minimum, the function should include competencies in financial forensics, business, economics and commercial law. The initial recommendation is for 1 Director, 1 Deputy Director, 1 Assistant Director and a Team Assistant. This function can also contract out specialized research needs to manage capacity and quality.

Legal Advisory Services: The current legal advisory function (Compliance) within CIPRO primarily performs services related to annual returns compliance, name reservations and objections. The Companies Bill includes an expanded function that requires additional legal competencies, e.g., prosecutions, negotiations and concluding of undertakings and consent orders, alternative dispute resolutions, court and Companies Tribunal representations, etc. This function is envisioned to be a shared service to support the business units. While the projected workload is difficult to predict, the initial recommendation is for 3 Directors and a Team Assistant.

Advocacy, Policy Coordination and Stakeholder Management: This function is highly decentralized within OCIPE and CIPRO and is performed in a case by case basis by the business units. Establishing a dedicated structure to perform the prescribed functions will lead to organizational efficiencies and effectiveness. At a minimum, it is recommended that 3 Directors and Deputy Directors aligned to the Public Sector, Private Sector and International be considered to formalize these functions.

Corporate Services: In terms of human resources, an increase in staffing is not anticipated; however, incremental ICT costs for system modifications to accommodate Commission requirements will be included in the business plan.

Table summarizes the incremental requirements (~62 staff) to be included in the business plan, phased in over 3 years.

Table 9: Human Resources Incremental Requirements

Function	Level	2010/11	2011/12	2012/13	Total
Registration	Executive	1			1
Compliance	Executive	1			1
Monitoring & Sensing	Sr Manager	3	3		6
Public Education & Awareness	Sr Manager	3	3	2	8
	Manager	3	3	2	8
Total		10	9	4	23
Enforcement (Investigations)	Executive	1			1
	Sr Manager	2	2	2	6
	Manager	3	3	3	9
Total		6	5	5	16
Research & Analysis	Executive	1			1
	Sr Manager	1			1
	Manager	1			1
	Analyst	3	2	2	7
Total		6	2	2	10
Legal Advisory Services	Executive	1			1
	Sr Manager	2	1		3
Total		3	1	0	4
Advocacy, Policy Coordination & Stakeholder Mgmt	Executive	1			1
	Sr Manager	2	1		3
	Manager	2	1		3
Total		5	2	0	7
Corporate Services	Executive	1			1
Total		32	19	11	62
Cumulative Total		32	51	62	

7 COMPANIES COMMISSION BENEFITS

This section identifies the potential social and economic benefits resulting from the Companies Commission.

7.1 BENEFITS ASSESSMENT

Implementing the Commission will result in the realization of qualitative and quantitative benefits within the Commission and also externally. Because the Companies Bill provides for the combined and improved services of OCIPE and CIPRO, including expanded functions, the Commission will be well positioned to have an impact on the economic at large.

Socio-economic benefits realization will be measured in terms of how effectively the Commission delivers against the strategic policy objectives which are intended to promote "economic growth, employment, innovation, stability, good governance, confidence and international competitiveness". The following section assesses the benefits in terms of the Companies Bill policy objectives:

- Encourage entrepreneurship and enterprise development
- Promote innovation and investment in South Africa
- Promote efficiency of companies and their management
- Encourage transparency and high standards of corporate governance
- Make company law more harmonious with international best practice

7.1.1 Encourage Entrepreneurship and Enterprise Development

In South Africa, the private sector contributes ~80% of total employment, with small and medium sized enterprises (SMEs) accounting for ~42% of employment in the formal economy. Additionally, there is an estimated 2 million of informal business operating across the country.[1] A survey conducted by AfriScope in Gauteng province revealed SME's had very limited knowledge of the registration process and associated benefits. Of the registered entities, the overwhelming business vehicle was the closed corporation. A review of the CIPRO database confirms this preference with close corporations comprising ~78% of the total registered entities.

Implementation of the Companies Bill will present an opportunity to promote companies as vehicles for development through several means:

- Enhanced public education and awareness. Successful implementation of this function nation-wide, coupled with the Commission's decentralization program has the potential to convert more business from the informal sector to the formal sector and close corporations to corporations. Because the close corporation will no longer be a choice for business incorporation, the value proposition of establishing a company will need to be articulated.

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[1] FinScope. Small Business Survey Gauteng 2006, p.10.

- Simplified processes for establishing companies will encourage entrepreneurship, i.e., electronic filing of documents, simplified MOI, flexible company naming options, etc.

7.1.2 Promote Innovation and Investment in South Africa

Promoting innovation and investments in South Africa has potential benefits in terms of job creation and skills development. While South Africa has a conducive and open investment climate, the Commission's role has the potential to further increase innovations and investments through:

- National and international public awareness of the Commission's service offerings and associated benefits.
- Reducing the registration burden on foreign companies investing in South Africa (e.g., under the Companies Bill, foreign companies can use their home registration office for registration purposes in South Africa).
- Ratification of international intellectual property treaties providing more cost effective means of filing applications.
- Increase in investor confidence arising from enhanced implementation of business best practices and corporate governance with the potential to increase company growth or sustainability.

7.1.3 Promote Efficiency of Companies and their Management

The Commission will be enabled by the Companies Bill to promote the efficiency of companies, including their management:

- Promotion of sound business principles and practice will enable companies to manage and plan more proactively for the future to ensure growth and sustainability.
- Promotion of electronic filing (and storage) of documents has the potential to reduce compliance costs, particularly storage and travel costs.
- Company administered business rescue proceedings set out in the Companies Bill will potentially reduce costs associated with judicial administration of companies in financial distress.
- Simplified and expedient mergers and acquisitions process facilitated by the Takeover Panel will allow for shareholder resolutions and provide protection to dissenting minority shareholders.

7.1.4 Encourage Transparency and High Standards of Corporate Governance

Encouraging openness and best practice corporate governance will potentially provide benefits related primarily to reduction in fraudulent activities and abuse:

- Codification and disclosure of directors' duties and remuneration will ensure active leadership of companies potentially leading to growth.
- Disqualification of delinquent directors and greater shareholder involvement in corporate issues will protect shareholders and the public from abuse.
- Active monitoring of compliance and enforcement of contraventions has the potential to detect early stages of fraudulent behaviors.

- Leveraging the Companies Tribunal for dispute resolution has the potential to reduce individual and corporate costs associated with formal court proceedings.

7.1.5 Make Company Law More Harmonious with International Best Practice

Through research and analysis, the Commission will have the potential to stay abreast of developments in company law and either adopt or customize to suit South Africa’s needs:

- Harmonization provides for a predictable company law regime and increases investor confidence.
- Leveraging best practice will also minimize the costs associated with creating and administering company laws.

The above potential benefit areas will need to be monitored closely to ensure their realization.

8 PERFORMANCE MANAGEMENT PLAN

This section proposes the Commission's performance management plan which includes a coherent Results Based Management (RBM) framework, a description of the proposed monitoring and evaluation system, a list of reliable and verifiable indicators and methods of data collection and analysis.

8.1 CURRENT ORGANIZATION PERFORMANCE MANAGEMENT

CIPRO and OCIPE currently use the dti's performance management system which is guided by the Public Finance and Management Act (PFMA) and Treasury Regulations related to strategic planning. These legislated requirements are applicable to all government departments and include agencies such as CIPRO and other public entities.

While the framework and guidelines are legislated by PFMA and Treasury, each department/agency is responsible for identifying its targeted outcomes, key performance indicators, methods for collecting and analyzing data and information and corrective actions, if required. Additionally, each institution's accounting officer is responsible for establishing procedures to facilitate performance monitoring and evaluation.

Given the requirements above, a review of the current OCIPE and CIPRO monitoring and evaluation system was conducted to assess whether any gaps or improvement opportunities exist that could be improved under the Commission structure.

The main finding was that both organizations follow the prescribed guidelines with OCIPE reporting as a directorate within dti and CIPRO as a trading entity through dti. Because of its trading entity status within dti, CIPRO has an established MOA with the dti that outlines, *inter alia*, CIPRO's strategic objectives and reporting requirements.

While the CIPRO organizational performance system is based on strategic goals, these are primarily operationally focused:

- To ensure that CIPRO provides value-added effective and efficient service delivery
- To implement new relevant legislative changes
- To establish and entrench enterprise governance
- To establish and ensure broad geographical access to CIPRO services

While these measures are invaluable to the entity's operations and immediate priorities, it is important to broaden them to include external impact.

OCIPE's strategic priorities reveal a more external focus, primarily due to its core functions and operating environment within the dti:

- Develop and maintain partnerships with relevant stakeholders
- Create awareness of intellectual property and company laws
- Contribute to the acceleration of entrepreneurial activities
- Foster relationships with SADC regulatory bodies

8.2 PERFORMANCE-BASED MANAGEMENT FRAMEWORK

A quality performance management system will enable the Commission to monitor results of activities, track progress, make informed decisions and also serve as a communication tool for internal and external stakeholders. The performance-based management plan will provide a multi-dimensional perspective and metrics that reflect customer and stakeholder needs and expectations directed to the satisfaction of strategic objectives.

With migration to the Commission, CIPRO and OCIPE will have the opportunity to implement an integrated performance management system that will ensure effective administration of the Companies Bill. The following section proposes the establishment of a robust performance management system that is linked to the Companies Bill strategic policy objectives and hence dti's broader strategy. Figure 15 - **Error! Reference source not found.** provide a framework for establishing a performance-based management plan based on the following components:

- Strategic Policy Objectives (SPO),
- Key Performance Area (KPA) and
- Key Performance Indicator (KPI)
- Key Output Indicator (KOI)

Figure 155: Strategic Policy Objectives

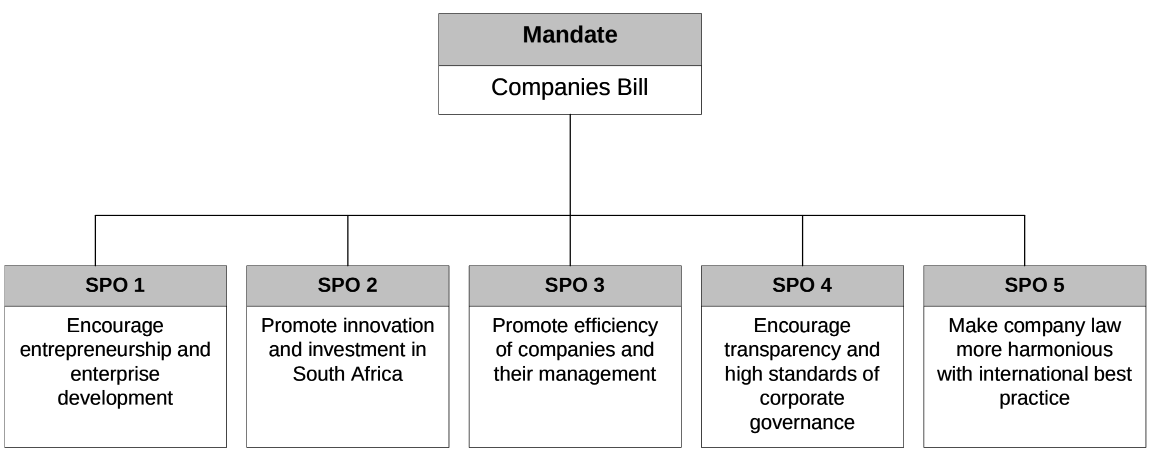


Figure 166: Strategic Policy Objective 1

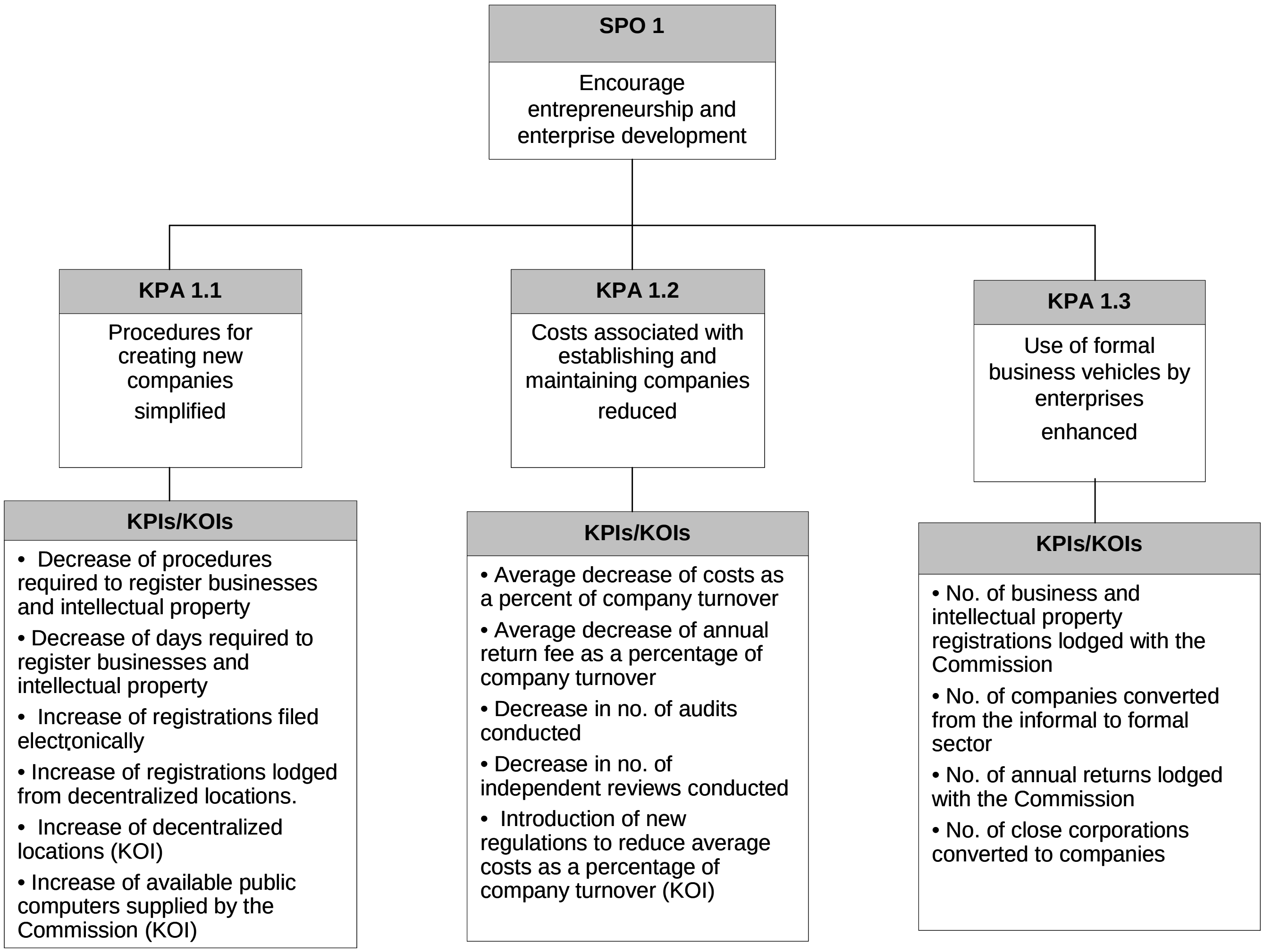


Figure 177: Strategic Policy Objective 2

SPO 2

Contribute to promote innovation and investment in South Africa

KPA 2.1

Public education and awareness improved

KPIs

- No. and type of stakeholders reached
- Level of knowledge, and appreciation, of legal and regulatory framework by category of stakeholders
- No. of dissemination / promotion workshops, conferences and seminars conducted by the Commission (KOI)
- No. of legal and regulatory education and awareness delivery mechanisms offered by the Commission (KOI)

KPA 2.2

Registration process of foreign businesses and intellectual property investing in South Africa improved

KPIs

- No. of foreign companies using their home registration office for registration in South Africa
- No. of international promotion initiatives taken by the Commission (KOI)

KPA 2.3

Investor satisfaction Increased

KPIs

- Level of investor satisfaction with commission services
- No. of surveys conducted to assess Investor satisfaction (KOI)

Figure 18: Strategic Policy Objective 3

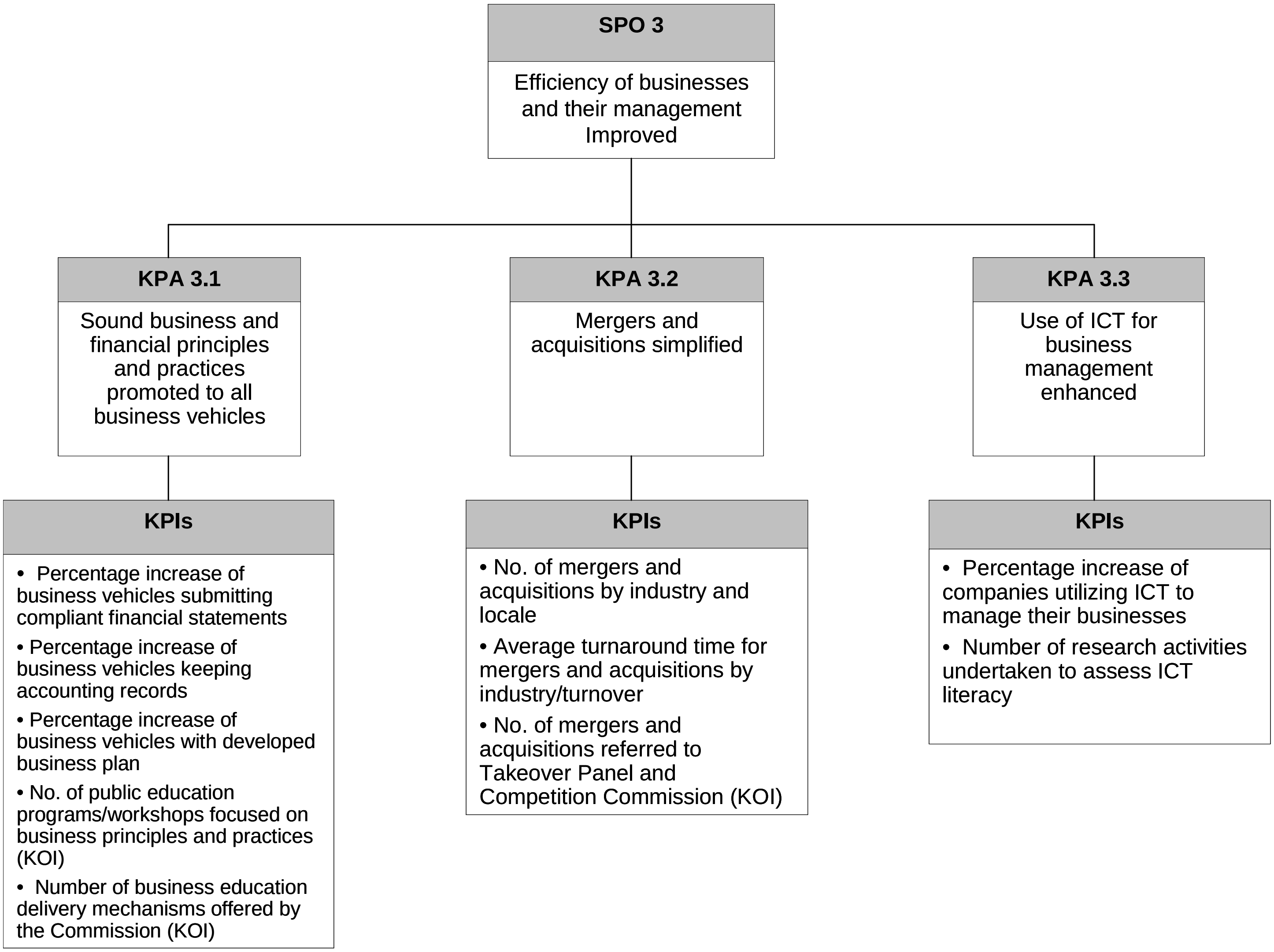


Figure 19: Strategic Policy Objective 4

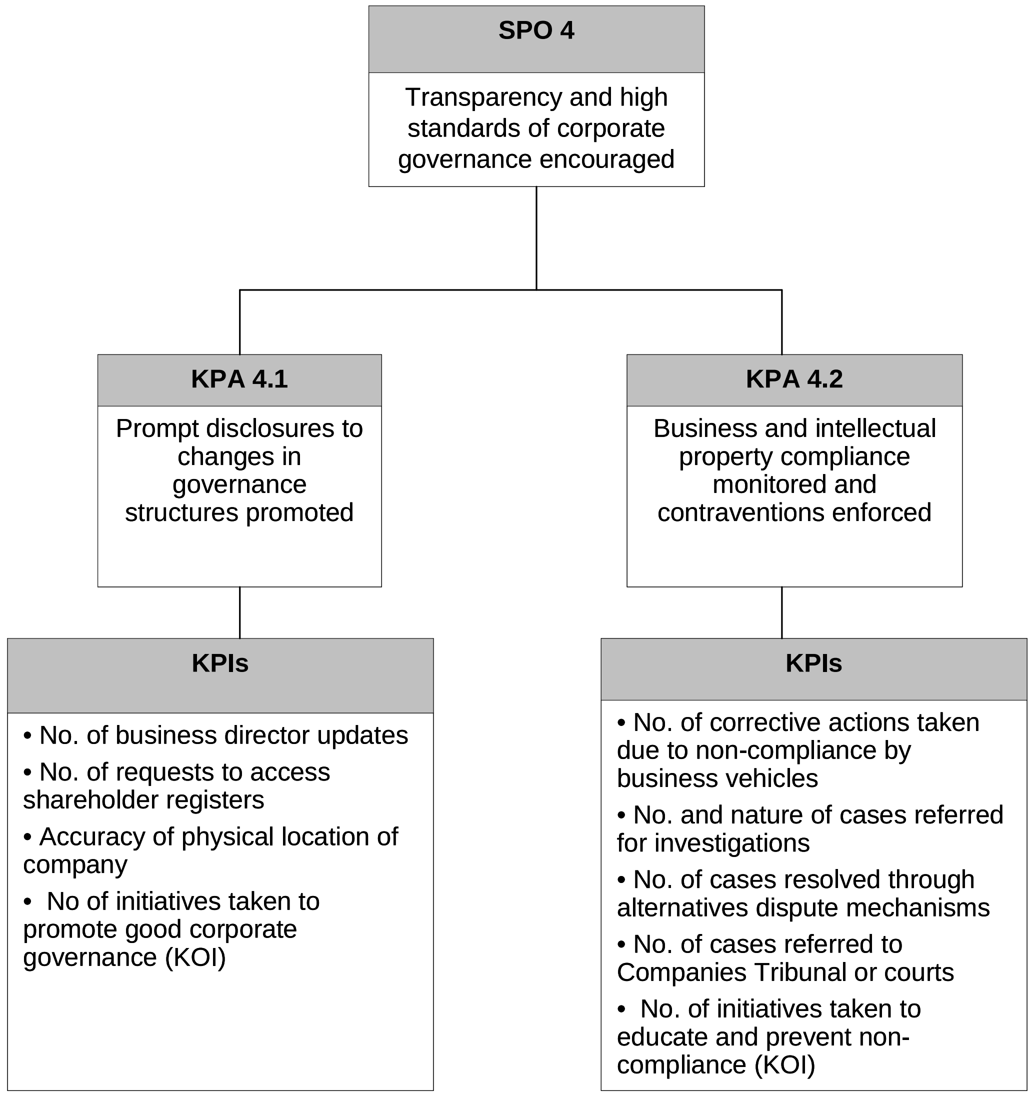
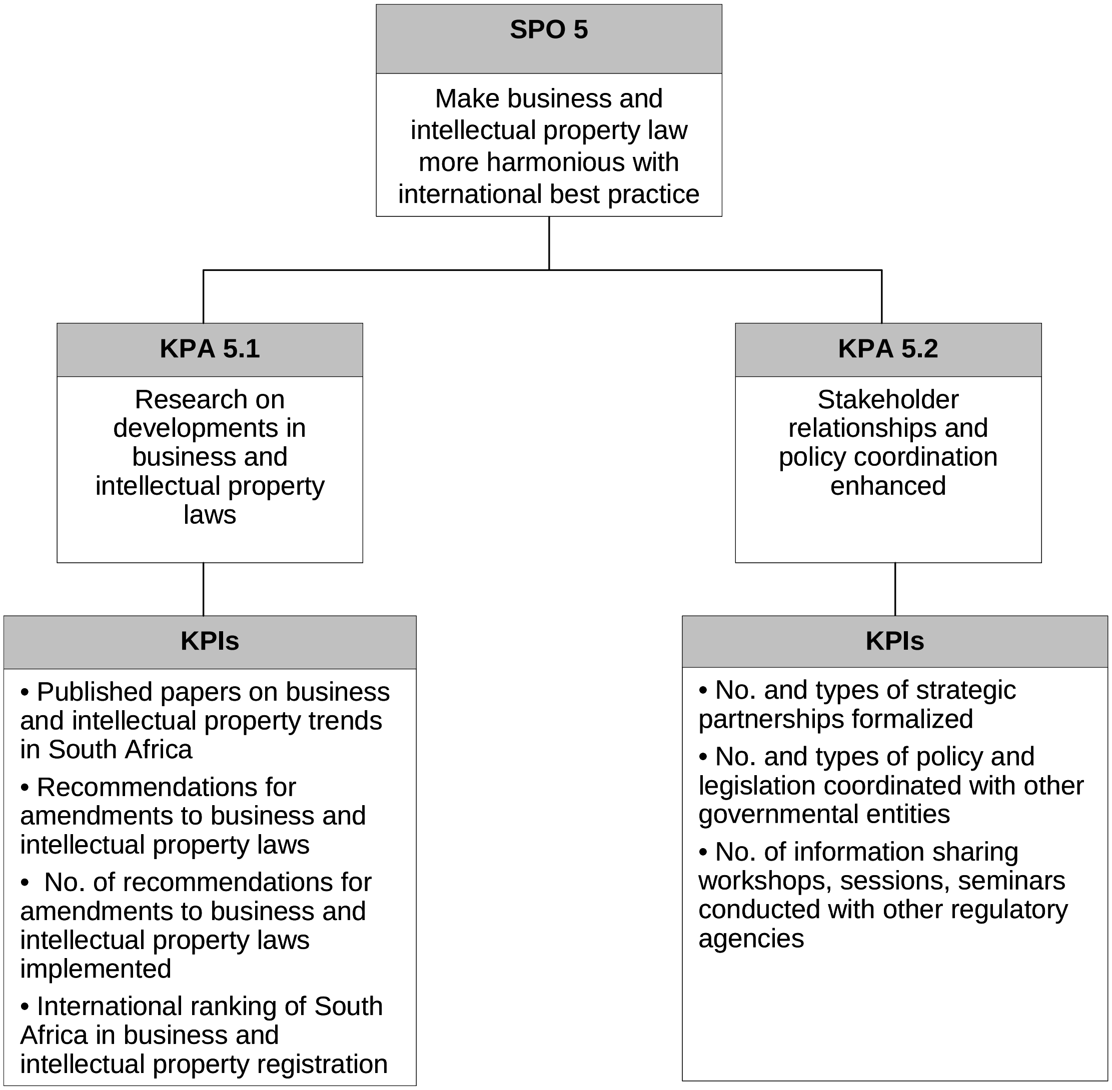


Figure 18: Strategic Policy Objective 5



The Commission's organization performance management function will be responsible for collaboratively validating and establishing the KPA's, KPI's and KOI's with applicable functions, including establishing baselines and targets. To ensure comprehensive, useful and quality metrics are established and collected, a sample *Indicator Information Reference Sheet* is attached as Appendix F for the Commission's use.

9 IMPLEMENTATION PLAN

This section proposes the implementation plan for the Commission and was developed in collaboration with an integrated Commission implementation team comprised of CIPRO and OCIPE participants.

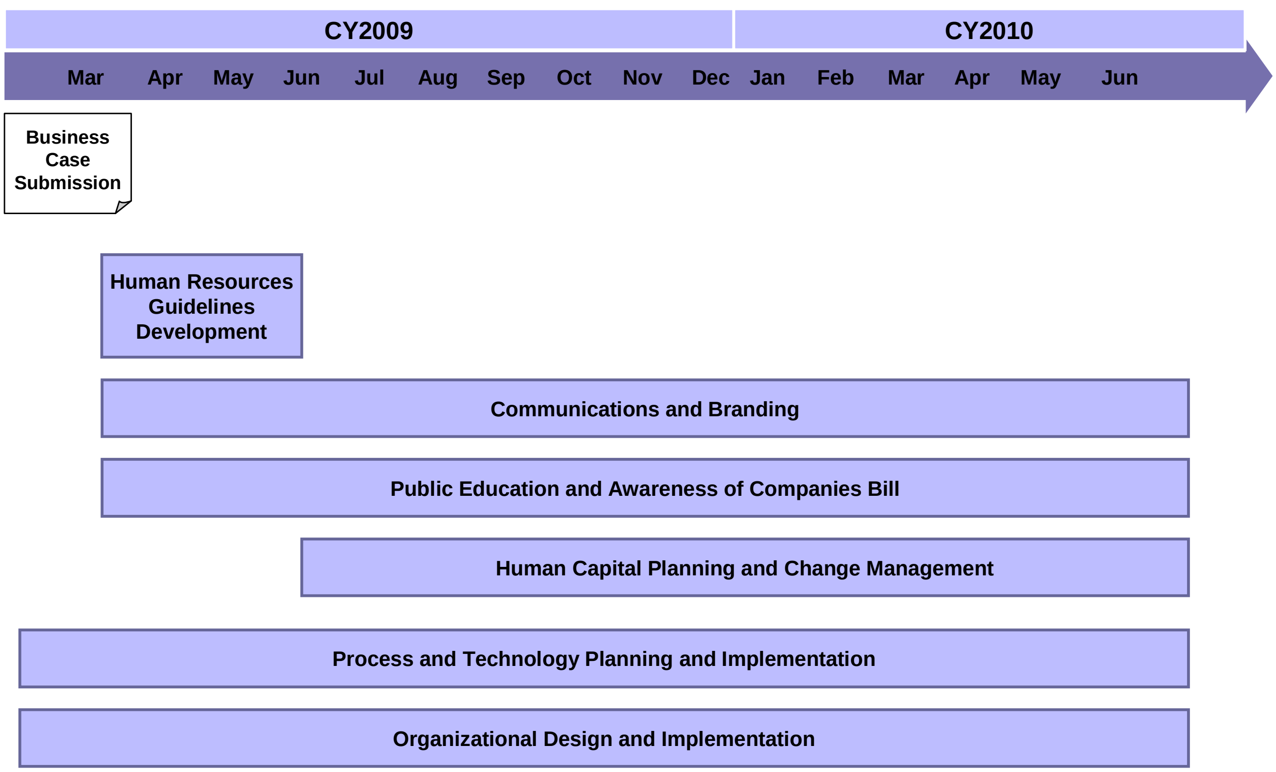
9.1.1 High-Level Plan Assumptions

The implementation plan assumes the following:

- Enactment of the Companies Bill in March 2009.
- Commission will be operational by mid-June 2010.
- Regulations will be approved in 2009.
- Concurrent ICT implementation projects will be on plan

Figure 1 depicts the high-level implementation plan. A more detailed plan is contained in Appendix E while a Microsoft Office Project Plan is under the custodianship of the Commission's implementation team.

Figure 21: High-Level Implementation Plan



9.1.2 High-Level Milestones

This section provides an overview of the high-level milestones:

9.1.2.1 Human Resources Guidelines Development

Following submission of the business case, the Commission will need to engage with the Department of Public Service and Administration (DPSA) to seek guidance and support in terms of labor relations and CIPRO and OCIPE employee migration to the Commission. At a minimum, the Commission will need to human resource guidelines in the following areas:

- Human resource management
- Position management
- Payroll system
- Pension administration
- Leave system
- Labor relations

This milestone is expected to last 2 months.

9.1.2.2 Communications and Branding

This milestone involves development and rollout of the Commission's communications plan and constitutes the following activities:

- Identification of the communication audiences (internal and external)
- Identification of communications channels
- Development of communication channels and protocols
- Delivery of messages
- Design and development of Commission brand
- Rollout of Commission brand

This milestone will occur throughout the planning and implementation phases of the transition.

9.1.2.3 Public Education and Awareness of the Companies Bill

This critical milestone will occur concurrently with the communications task and will provide more in-depth content on the Companies Bill to a variety of audiences. The milestone will comprise of the following high-level activities:

- Development of the initial public awareness and education strategy
- Delivery of initial workshops, seminars, etc. on the Companies Bill

This milestone will occur throughout the planning and implementation phases and will be incorporated as an on-going capability within the Commission.

9.1.2.4 Human Capital

Using guidance developed in 7.1.2.1, this milestone will include the following activities:

- Finalize skills audit
- Finalize human resource requirements
- Develop human capital management strategies, policies and procedures
- Develop skills development strategies and plans
- Develop change management plans
- Implement HR and recruitment plans
- Implement change management plan

The development activities are estimated to last 5 months while implementation will be an ongoing activity.

9.1.2.5 Process and Technology

This activity has already commenced and is being spearheaded by a recently integrated Commission implementation team (CIPRO and OCIPE). The implementation team reviewed the Companies Bill and documented its impact on the current operational processes and procedures, including ICT:

- Develop and document new processes and procedures
- Develop ICT requirements to support impacted processes
- Develop ICT systems to support requirements
- Train staff on new processes

The development activities are ongoing and will be performed with the goal of having critical functions operational prior to Commission establishment.

9.1.2.6 Organizational Design and Development

The initial planning for this milestone is a component of this business case. Various activities will need to occur prior to the Commission rollout; specifically:

- Finalize and communicate Commission structure
- Establish new structures and functions
- Refine organizational performance management
- Implement performance management plans
- Develop product and service fee structure
- Implement new fee structures
- Develop new policies, processes and procedures

The development activities should be completed prior to Commission implementation.

10 FINANCIAL PROJECTIONS

This section presents that financial projections associated with the Commission establishment.

10.1.1 Business Model

As mentioned in the situational analysis, OCIPE and CIPRO currently utilize different models to deliver against their respective mandates: CIPRO operates as a self-funded entity while OCIPE does not generate revenue. Additionally, some components of CIPRO do not generate enough revenue to fund their mandate but do provide services that advance the public good (e.g., Cooperatives).

Migration to a Commission structure with expanded functions that will not directly generate revenue means the Commission will need to explore other sources of revenue to support mandated functions. Section 3.1.2.3 summarizes the findings and recommendations associated with the business model.

10.1.2 Commission Financial Requirements

The Commission's budgetary requirements are based on the following assumptions:

- Government salaries for additional staffing requirements are based on the top end of the DPSA salary scale (DPSA will provide guidance on compensation parameters as specified in the implementation guidelines)
- Human resource requirements for incremental staff are based on functional requirements and current gaps
- Human resource requirements for the prescribed functions are derived from the Companies Bill
- Current year costs were escalated by 8.1% (January 2009 CPI)
- Contractor costs are based on historical costs or vendor quotes
- Non-labor operating expenses are estimated at 30% of employee compensation
- CIPRO's future facility, planned to accommodate ~650 staff, will be adequate for the Commission staff in the short term

Human resource requirements consist of 3 primary components:

- Current CIPRO and OCIPE staff
- Incremental Commission staff
- Prescribed entities staff (Commissioner, Deputy Commissioner, Tribunal, Financial Reporting Standards Council)

Table 10 depicts a summary of the human resource requirements phased in over a period of three years. Detailed requirements are contained in Appendix H.

Table 8: Human Resource Requirements-Commission and Related Institutions (Summary)

Current Organization	**2009/10**
CIPRO	**587**
Filled	547
Vacant	40
OCIPE	**31**
Filled	28
Vacant	3
Total OCIPE & CIPRO	618

Commission	**2010/11**	**2011/12**	**2012/13**	**Total**
Current Staff	618			
Incremental	32	19	11	62
Commission Cumulative Total	**650**	**669**	**680**	**680**
Commissioner and Deputy	2			
Commissioner and Deputy Cumulative Total	**2**	**2**	**2**	**2**
Tribunal	10	4	-	14
Tribunal Cumulative Total	**10**	**14**	**14**	**14**
Financial Reporting Standards Council	9	4	-	13
FRSC Cumulative Total	**9**	**13**	**13**	**13**
Takeover Panel	No additional requirements			
Specialist Committees	No additional requirements			

10.1.3 Commssion Budget Implications

The Commission's *incremental* requirements delineated by investment (one-time) and recurring costs are shown in Table 11. A detailed breakdown of costs is provided in Appendix H. The Commission related costs are phased in over four years with investment costs occurring prior to Commission launch to ensure operational readiness.

Table 9: Financial Requirements-Commission and Related Institutions (Summary)

Labor, Investment and Non-Labor Operating Expenses: Constant Rand

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	10,450,000	1,175,000		
Total Investment	**10,450,000**	**1,175,000**	**-**	**-**
Recurring				
Commission Staffing		26,371,792	41,533,103	50,478,881
Commissioner & Deputy		2,748,111	2,802,621	2,861,547
Companies Tribunal		12,139,410	17,043,282	17,401,621
Financial Reporting Standards Council		10,518,821	15,390,547	15,714,137
Total Recurring	**-**	**41,259,313**	**61,379,006**	**70,742,049**
TOTAL Investment & Recurring	**10,450,000**	**42,434,313**	**61,379,006**	**70,742,049**
Recurring Cumulative minus Investment		**41,259,313**	**102,638,319**	**173,380,369**

Labor, Investment and Non-Labor Operating Expenses: Inflated Rand at 8%

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	10,450,000	1,270,175	-	-
Total Investment	**10,450,000**	**1,270,175**	**-**	**-**
Recurring				
Commission Staffing		28,507,908	48,533,965	63,765,652
Commissioner & Deputy		2,970,708	3,275,034	3,614,747
Companies Tribunal		13,122,703	19,916,115	21,981,979
Financial Reporting Standards Council		11,370,845	17,984,793	19,850,325
Total Recurring	**-**	**44,601,318**	**71,725,113**	**89,362,378**
TOTAL	**10,450,000**	**45,871,493**	**71,725,113**	**89,362,378**
Recurring Cumulative minus Investment		**44,601,318**	**116,326,430**	**205,688,809**

Investment costs are estimated at R10.5M in 2009/10 and relate to organization transformation activities, including systems and processes.

Total Commission-related recurring costs, adjusted for inflation, are estimated at ~R45M in 2010/11, increasing to ~R116M in the second year. The Commission structure, including the prescribed independent organs of state, is assumed to reach full operational capability in 2012/13 with a steady state incremental cost of R206M (inflated).

Table 12 presents potential funding sources for the Commission and related institutions.

Table 10: Potential Commission Funding Sources

Cost Element	Short-Term 2009/10	Medium Term 2010/13	Long Term 2014-
Investment	CIPRO Retained Earnings		
Recurring			
Commission Staff (Incremental)	n/a	Commission	Commission
Commissioner & Deputy		Commission	Commission
Companies Tribunal		DTI	DTI
Financial Reporting Standards Council		DTI	DTI
Takeover Panel		Self-funded	Self-funded
Specialist Committees		Self-funded	Self-funded

The Commission is expected to be self-sustaining from inception based on the following assumptions:

1) Regulations

The current fee structure is solely based on registration-related services and products and does not necessarily reflect the delivery costs. The Companies Bill regulations will need to incorporate a fee structure informed by revenue and expense expectations. For short and long-term viability of the Commission, the following are recommended:

a) An in-depth analysis of current and potential revenue sources. Some revenue sources, e.g., Share Capital will cease to exist and the impact will need to be evaluated. New functions will also be introduced with the establishment of the Commission, e.g. Research and Analysis for which the revenue generation potential will need to be assessed.

b) Related to a) is the rationalization of the cost components and resultant fee structure. This analysis will entail an in-depth activity-based costing analysis including cost allocations to the various products and services to inform the fee structure. In determining the product and service costs, allocations should be made for mandated functions that do not directly generate revenue but provide second-order benefits (e.g. public education and awareness may lead to an increase in registrations). The results of this analysis should be proposed with the new regulations in order to optimize on the revenue potential while meeting economic growth objectives.

2) Economic Conditions

The Commission's financial performance will be directly impacted by broader economic activity which will leave it vulnerable during economic downturns. It will be critical to closely monitor the Commission's financial performance and elevate funding requirements critical to the Commission's mission to the appropriate Specialist Committee.

3) Rate of Conversion to Companies

The uncertainty associated with the rate of conversion from close corporations to companies and from unregistered entities to companies following enactment of the Companies Bill makes company registrations and annual returns an unpredictable source of income in the short term. A successful public education and awareness program coupled with an incentivized fee structure will potentially increase registrations and downstream revenue.

11 CONCLUSION

The creation of the Companies Commission has the potential to provide for effective and efficient administration of the Companies Bill. This document assessed several components the Commission will need to address during its establishment and on an ongoing basis.

While all the areas addressed by this business case are deemed priority areas, the most immediate priorities to ensure success from inception include the following:

Education and awareness of the Companies Bill

Internally, staff will need to be trained on the provisions of the Companies Bill and the impact to their functions. Developing an in-depth understanding internally will also assist customers and potential customers more effectively.

External education to the public will also be critical, particularly once the Bill is enacted. Although a highly consultative process was used during the Bill's development, there are likely some marginal groups, e.g., SMEs and non-profit organizations who were not as engaged. Proactively targeting and educating this group of customers will mitigate confusion or misunderstanding. With the close corporation ceasing to exist, special focus will need to be paid to communicating the available options for setting up a simple, small, business entity similar to the closed corporation.

ICT and Business Process Improvements

While several ICT and business improvements are underway within CIPRO, and are incorporating the Commission's requirements, it is critical that they stay on track to ensure a high level of service delivery is achieved from the onset. Because of the large manual, paper processes that currently exist, it will be critical to automate these functions to allocate more effort to value-added functions, e.g., raising awareness in the informal sectors on the benefits of registering a company.

Business Model

The current registration revenue model is outdated and the Commission establishment presents an opportunity to rationalize the underlying fee structure. It is strongly recommended that the regulations development be backed by an informed activity-based costing and allocation study to determine the true cost of providing the services (particularly in the future process reengineered and IT enabled environment). The fee structure should also be guided by the policy objectives so as not to stifle growth. For example, in promoting entrepreneurship, registration fees may be waived for a small unlisted company but as revenue is generated, it may provide a source of income through annual returns.

Change Management

Because the Commission will entail organizational as well as functional changes, it will be critical to manage staff's expectations. Communicating and involving staff in the establishment of the Commission from the planning phases will develop a feeling of ownership.

Other priority areas that the Commission will need to focus on are addressed in the Performance Management Plan and will be crucial to develop appropriate key metrics to evaluate the Commission's effectiveness.

APPENDIX A

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Situational Analysis Interviewee List

Name	Title	Organization
Adriaan Taljaard	Deputy Director: Marketing and Communications	CIPRO
Ali Mabitsela	Operations Support Manager	CIPRO
Amanda Lotheringen	Director: Monitoring and Complaints	OCIPE
Banela Dalasile	Director: Company Investigations	OCIPE
Claude Bekker	Deputy Director: Service Level Management	CIPRO
Davida Ngozwana	Director: Human Resource Development	CIPRO
Dr. Elsabe Conradie	Interim Executive Manager	CIPRO
Elma Pinkham	Manager: Cooperatives	CIPRO
Elena Zdravkova	Acting Registrar: Patents & Designs	CIPRO
Fanfan Gaba	Director: Company Investigations	OCIPE
Fleurette Coetzee	Senior Manager: Trade Marks Division	CIPRO
Flip Dwinger	Legal Advisory Services	CIPRO
Kadi Petje	Manager: Patents Designs and Copyrights	CIPRO
Lana van Zyl	Director: Company Investigations	OCIPE
Logan Chetty	Regional Director: Decentralization	CIPRO
Lungile Dukwana	Executive Manager: Strategic Support	CIPRO
Luyanda Sinqaudu	Deputy Director: Human Resources Reporting	CIPRO
Mkhuseli Vimba	Director: Education and Awareness	OCIPE
MacDonald Netshitenzhe	Director: Consumer and Corporate Regulatory Division	CCRD
Mandla Mnyatheli	Chief Director: OCIPE	OCIPE
Melanie Bernard-Fryer	Chief Operations Officer	CIPRO
Michael Twum-Darko	Chief Information Officer	CIPRO
Ntsiki Matyana	PMO	CIPRO
Pieter Engelbrecht	PMO	CIPRO
Rector Rapoo	Registrar: Co-operatives	CIPRO
Renier Du Toit	Chief Financial Officer	CIPRO
Rehelda Williams	Manager: Organization Performance	CIPRO
RJ Mathekga (Joey)	Senior Manager: Registrar of Companies and Close Corporations	CIPRO
Rory Voller	Director: Legal Services	CIPRO
Keith Sendwe	CEO: CIPRO	CIPRO
Tintswalo Nkuna	Executive Manager: Compliance Audit & Risk	CIPRO
William Nape	Manager: Human Resource Development	CIPRO

APPENDIX B

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Workshop Participant List

Name	Title	Organization
Amanda Lotheringen	Director: Monitoring and Complaints	OCIPE
Aphiwe Mazomba	Manager: OCIO	CIPRO
Desmond Ramabalana	Deputy Director: Company Law and Policy	CCRD
Davida Ngozwana	Director: Human Resource Development	CIPRO
Elena Zdravkova	Acting Registrar: Patents & Designs	CIPRO
Fanfan Gaba	Director: Company Investigations	OCIPE
Flip Dwinger	Legal Advisory Services	CIPRO
Jeanette Abreu	Deputy Director: Total Quality Management	CIPRO
Kadi Petje	Manager: Patents Designs and Copyrights	CIPRO
Lana van Zyl	Director Company Investigations	OCIPE
Logan Chetty	Regional Director Decentralization	CIPRO
Lungile Dukwana	Executive Manager: Strategic Support	CIPRO
Luyanda Sinqaudu	Deputy Director: Human Resources Reporting	CIPRO
Mkhuseli Vimba	Director: Education and Awareness	OCIPE
MacDonald Netshitenzhe	Director: Company Law and Policy	CCRD
Ntsiki Matyana	PMO	CIPRO
Pieter Engelbrecht	PMO	CIPRO
Rector Rapoo	Registrar: Co-operatives	CIPRO
Rehelda Williams	Manager: Organization Performance	CIPRO
RJ Mathekga (Joey)	Senior Manager: Registrar of Companies and Close Corporations	CIPRO
Sampe Pretorius	Information Security Officer: Compliance Audit and Risk	CIPRO
Sizwile Makhubu	Account Executive: Human Resource Development	CIPRO
Tintswalo Nkuna	Executive Manager: Compliance Audit & Risk	CIPRO
William Nape	Manager: Human Resource Development	CIPRO

APPENDIX C

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Strengths, Weaknesses, Threats and Opportunities (SWOT)

1. Mission and Mandate	
Current Strengths	**Current Weaknesses**
<u>CIPRO</u> • Clear mandate "registration of companies, close corporations, cooperatives and intellectual property rights. Related services include the disclosure of information and dispute resolution arising from infringements of these rights" **<u>OCIPE</u>** • Clear mandate "effectively and efficiently enforce Company and Intellectual Laws and thereby create a competitive and enabling economic environment that promotes economic participation and inspires investor confidence"	• Companies Act, 1973 does not mandate a consolidated implementation structure. The Act implementation is therefore sub-optimized leading to operational inefficiencies.
Opportunities	**Threats**
• The new Companies Bill provides a clear mission/ mandate with a common sense of purpose	• Lack of timely communication or misunderstanding of mandate may lead to confusion and frustration

2. Service Delivery	
Current Strengths	**Current Weaknesses**
• Both CIPRO and OCIPE separately provide products and services prescribed by relevant legislation • CIPRO entity is ISO 9001 certified for quality management • Both organizations use informal and formal intergovernmental MOUs/SLAs to enhance service delivery • CIPRO has established an enterprise-wide ICT business case that is scalable for new requirements • CIPRO is currently automating tasks (e.g., name reservations, electronic filing of returns, etc.) to support the Companies Bill requirements • OCIPE investigations function utilizes an intra-dti, multi-disciplinary screening committee (Enforcement Committee)	• Both organizations operate independently leading to process sub-optimization • OCIPE does not have a formal quality management system • Company investigations measures are not well defined (i.e., real outcomes of investigation findings are not always known making it difficult to measure impact) • Company investigations avg turnaround time of 24 months is ineffective due to mandated approval requirements contained in the Companies Act , 1973 • OCIPE services are provided using a reactive approach (either from complainants or referrals) • OCIPE's ICT infrastructure is not conducive to productivity (stand-alone desktops) • OCIPE's IP compliance services are underdeveloped due to capacity issues • Current CIPRO ICT is based on legacy systems that do not support CIPRO objectives and strategies

2. Service Delivery	
Current Strengths	**Current Weaknesses**
• CIPRO business and intellectual registration functions have well documented and executed processes and procedures • Patents and Design depository system is efficient and relatively inexpensive • Trademarks processing metrics have improved significantly and are in-line with Madrid Protocol standards (pre-requisite for accession) • Trademarks registration business actively involved nationally and internationally with relevant trade associations • CIPRO's decentralization strategy is in the process of a phased nationwide implementation encompassing CIPRO's current product/service offerings • Enthusiasm of regions and partners to participate in CIPRO's decentralization efforts	• CIPRO business and intellectual property registration processes are largely paper-based resulting in sub-optimal turnaround and processing times • Cooperatives and intellectual property dispute resolution is facilitated by the court system; Companies Bill will provide an alternative following amendment of IP laws • Highly specialized intellectual property skills are in short supply and present a challenge to recruitment and retention • Delay in accession to the Madrid Protocol is a growth limitation for the potentially lucrative Trademarks business • Lack of CIPRO mandate and capacity to conduct substantive research on Patents and Design reduces this offering's revenue potential • Majority of CIPRO's clients access business and intellectual property registration services in-person • Linkage between policy/legislation development (CCRD) and implementation (CIPRO) is suboptimal • Coops policy and legislation function resides with the dti under Enterprise and Industrial Development Division (EIDD)

2. Service Delivery	
Current Strengths	**Current Weaknesses**
• CIPRO has an established Business Relations and Marketing and Communications (BRMC) group tasked with internal and external communications • CIPRO's BRMC group leverages planned activities and contractors for brand promotion • OCIPE has an established Education and Capacity Directorate focused on internal and external training on companies and IP enforcement legislation • CIPRO's education and awareness capabilities resides in the HR function	• CIPRO's BRMC relationship with business units (e.g., registration) is not well defined (business unit planning for marketing activities is not consistent) • Marketing segmentation studies to inform CIPRO strategy are not currently performed • All training programs conducted by OCIPE are unaccredited (e.g., university courses or law enforcement training programs)

2. Service Delivery	
Opportunities	**Threats**
• Companies Bill prescribes efficient and effective implementation of the Act • Review product and service mix to streamline offerings • Expanded use of ICT as an enabler and integrator of processes across all the prescribed functions • Leverage the Commission structure to reduce investigation turnaround times • Formalization of MOUs/SLAs to enhance service delivery • Companies Bill will provide the opportunity for more proactive analysis and monitoring • Linkage of intellectual property database to companies database will result in more effective service delivery • Leverage Copyrights mandate to conduct audits of financial distribution copyrights collecting societies to newly enacted Traditional Knowledge Act and Companies Bill (forensic accounting) • Accession to the Madrid Protocol and Hague Agreement for Trade Marks and Designs, respectively, will present a potentially significant growth opportunity for the Trade Marks business	• Resistance to change (maintain stove-pipes) • Lack of adoption of ICT as an enabler by users • Lack of understanding of the impact of the Companies Bill • Fraudulent activity is highly prevalent internally and externally • Decentralization strategy is executed via SLAs; lack of delivery against the SLAs could jeopardize stated goals

2. Service Delivery
Opportunities
• Adequately improve capacity of decentralization partners to reap maximum benefit and periodically audit performance against SLAs to minimize risk • Evaluate possibilities of controlling use of intermediaries; where intermediaries are required consider accreditation as an indicator of quality and trust • Proactive involvement with companies and potential companies (education) • Implement various strategies to improve customer service (extended work hours, automation, creating awareness, etc) • Automation of the registration process (work flow) will minimize opportunities to engage in fraudulent activities • Conduct market segment studies to inform Commission growth and service delivery strategies • Re-define supply chain management processes to enhance acquisition processes (particularly turnaround) • Develop a robust training strategy and program to build internal and external capacity

3. Business Model	
Current Strengths	**Current Weaknesses**
• CIPRO operates as a trading entity and is self funded generating a surplus of R126M in 2006/07 (Budget R226M) – surplus reinvested to benefit the business • OCIPE is a directorate within the dti and receives its budget annually from the dti (~18M for 2008/09) • CIPRO derives ~50% of its revenue from annual returns and ~25% from companies and closed corporations • CIPRO accounting is cost centre based (good for management and accountability) • CIPRO has a Strategy and PMO function that monitors critical initiatives	• OCIPE's budget is insufficient to support its strategic goals • Annual returns are dependent on submissions which fluctuate with economic conditions • CIPRO fee structure is complicated and does not reflect the true cost of doing business (not activity based) • Cost allocation methodology used does not provide an accurate picture of cost centre performance • Employee's lack of a business mind-set • CIPRO performs various policy-driven activities without associated revenue (e.g., Co-op deregistration) • CIPRO's product/service mix is overwhelming

3. Business Model	
Opportunities	**Threats**
• The Commission's budget authority will encompass all functions • Recently introduced annual returns for CCs has the potential to increase revenue • Potential for increased intellectual property registration revenue is high but needs to be promoted • Promoting company registrations through public education and awareness has the potential to increase revenue • Opportunity to instil a business mind set in employees	• Under the Companies Bill, share capital revenue (~5% of total revenue) will cease to exist • If current fee structure is maintained, higher fees for registering companies (compared to cc) may discourage potential registrants • Business sustainability during economic downturns

4. Human Capital & Facilities	
Current Strengths	**Current Weaknesses**
• CIPRO employee morale has been relatively high in recent years due to focus on employee wellness and people transformation initiatives • Both entities follow similar job profile and evaluation levels (benchmarked at the dti/govt level) • CIPRO is actively involved in implementing and developing new recruitment and retention strategies • CIPRO has implemented an e-Learning program for all staff	• Relatively high employee turnover rates in OCIPE • Team spirit and cohesiveness appears lacking in OCIPE • OCIPE staff appear confused about the implications of the Companies Bill and potential implications • Inability to attract and retain talent due to compensation, particularly legal and IT skills leading to an over reliance on consultants • CIPRO and OCIPE staff occupy a facility that is not conducive to their investigative work

4. Human Capital & Facilities	
Opportunities	**Threats**
• Commission will present the opportunity to develop accounting forensic capability to meet mandated requirements • Flexibility to determine some aspects of compensation, performance and development • Expanded mandate will provide opportunities for career enhancement • Exercise Occupational Dispensation options to attract and retain staff • Co-locate all staff to give a sense of team belonging and provide for a better work environment • Engage with labor union from planning to implementation phases of Commission transition	• Competition for skills with legal, IT and accounting firms • High turnover may result due to uncertainty, particularly with OCIPE who feel their career options will be limited by joining the Commission vs remaining in the dti • Labor union unrest may protest certain aspects of Commission migration if not involved from planning stage

APPENDIX D

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Functional Gap Analysis

Companies Bill Provision	Baseline		Commission
Section 187 (2): Enforce the Companies Bill by			
2a) Promoting voluntary dispute resolution	1	• Limited responsibility with current Companies Act using Alternative Dispute Resolution and informal hearings • Courts are the primary recourse	• Companies Tribunal will provide structure for dispute resolution and will need to be promoted by Commission (processes, systems, people will need to be developed) • Companies Tribunal will only accommodate disputes arising from contravention of the Companies Bill; Intellectual Properties and Cooperatives dispute escalation will remain with the courts (pending amendment to relevant legislation) • Legal Advisory services may represent/escalate issues to Companies Tribunal
2b) Monitor compliance with Acts	0.5	• Monitoring compliance is distributed across existing entities (i.e., CIPRO Legal Services and OCIPE Monitoring and Complaints and possible Customer Interface Unit); function is primarily reactive	• Scale up this function to include analytical competencies in accounting, economics, business law • Develop effective tools and strategies for proactive monitoring • Develop new forms and processes to support new requirements (i.e., issuance of Compliance notices)
2c) Receiving, initiating and evaluating complaints Investigating complaints	1 1	• Same as above (S 187 2b) • Function currently exists within OCIPE encompassing pre-investigation and investigation but not optimized due to approval requirements mandated by Companies Act 1973 • Process and capacity constraints exist within the monitoring and complaints function which is a precedent for formal investigations • Current capacity only accommodates companies investigations for minority protection and does not include investigations related to corporate governance and financial statements • IP investigations are not conducted to the desired level	• Same as above •Streamline processes and develop resource requirements for pre-investigation to investigation (both companies and trademarks and copyrights) • Define role of OCIPE's Enforcement Committee vis a vis the Companies Tribunal (filter mechanism for Tribunal) • Develop forms and processes to support new requirements (i.e., issuance of summons--S176) • Build capability/capacity in legal, finance and economic competencies
2d) Receiving direction from Minister for investigations	1	• Requirement exists within OCIPE	• Same as above

Companies Bill Provision	Baseline		Commission
Section 187 (2): Enforce the Companies Bill by (Cont'd)			
2e) Ensuring contraventions are promptly and properly investigated	1	• Current lengthy approval process (mandated) impacts negatively on turnaround times for investigations	• Develop new and efficient approval process and systems for investigations • Identify resource requirements to support a potential increase in workload (in-depth investigative competencies can be shared)
2f) Negotiating and concluding undertakings and consent orders	0	• Function does not currently exist	• Develop capability to include processes, systems and people (legal, finance and negotiation competencies)
2g) Issuing and enforcing compliance notices	1	• Limited functionality exists (e.g., issuance of compliance notices, deregistration resulting from non-submission of annual returns)	• Develop capability to include people, processes and systems
2h) Referring alleged offences to the NPA [and other relevant agencies]	1	• Function currently resides with OCIPE but limited to companies	• Expand capability to include IP • Develop systems and processes to include Legal Services approvals
2i) Referring matters to a court and appearing before the court or Companies Tribunal	0	• Function does not currently exist	• Processes and guidelines will need to be developed for when matters are referred to courts vs Companies Tribunal • Utilize Legal Services or contract relevant prosecution attorney
Section 187 (3): Promote the Reliability of Financial Statements by			
3a) Monitoring patterns of compliance and contraventions of financial reporting standards	0	• Function does not currently exist	• Function and capability does not currently exist and will need to be developed in terms of people, systems and processes • Functional competencies in accounting/forensic accounting will be required
3b) Making recommendations to Financial Reporting Standards Council	0	• Function does not currently exist	• New function responsible for advocacy and policy coordination will be required to address this function, among others

Companies Bill Provision		Baseline	Commission
Section 187 (4): Registration			
4a) Establish and maintain appropriate registers	1	• Register requirements and processes defined by current Act • Current function resides with registrars although some processes, e.g., name reservations are handled by Legal Services • Data and information reside in disparate databases that are not easily accessible • Data integrity issues limit data reliability	• High-level functional requirements* to support the Companies Bill have been provided to the CIO for incorporation into the future system (defined in e-CIPRO business case) • Digitization mission-critical information will be required • Determine net effect of automation/BPR and new requirements on Registrar function and resource requirements
4b) Receive and deposit registration documents in registry	1.5	• Function resides with Registrars and Customer Interface Unit and is primarily centralized in Pretoria with >70% walk-ins • Decentralization and electronic lodgement initiatives are currently in process	• Automation and decentralization projects are in process • New or enhanced processes and documents will need to be created to support the Companies Bill
4c) Disclosure of relevant documents to the public	1	• Function currently resides with process owners • Access to information is primarily manual	• Centralize function in Customer Management but with required controls • Digitize relevant documents • Explore revenue optimization from data sales
4d) Register and deregister companies, director and business names and intellectual property rights	1	• Function currently resides with appropriate registrars, each with distinct requirements and mandates	• Evaluate opportunities for integration (functional/systems) for effectiveness • New or enhanced processes and documents will need to be created to support the Companies Bill
a) Advise the Minister on policy related to company and intellectual property law	1	• Function currently resides in CCRD with CIPRO/OCIPE inputs	• Commission will require effective coordination with CCRD
b) Report to Minister on volume and nature of registration and enforcement activities	2	• Function currently resides with CIPRO and OCIPE; CIPRO produces Annual Report as part of its SLA with the DG while OCIPE is a reporting unit under CCRD	• Establish revised metrics for Commission to include mapping to the Commission's new objectives and functions • Engage with Specialist Committee on resource management issues

Companies Bill Provision (S 187)		Baseline	Commission
Section 188 (2): Increase knowledge of the nature, dynamics and public awareness of company and intellectual property law and promote public awareness			
2a) Implement education and information measures to develop public awareness of the Act	1	• Function exists within OCIPE with no concerted/integrated program across CIPRO and OCIPE	• Establish Commission-wide public education and awareness program as part of a broader compliance strategy
2b) Provide guidance to the public by outlining procedures related to the Act and seeking court advice as needed	0	• Function does not currently exist (public notes are ocassionally issued)	• Integrate with public education and awareness program
2c) Conduct research relating to the Commission's mandate and occasionally publish results	0	• Function does not currently exist	• Establish a stand-alone Commission-wide research and analysis capability as a shared service; populate with resources to support specialized research requirements
2d) Review legislation and public regulation on companies and intellectual property and report to the Minister	1	• Function currently resides in CCRD with CIPRO/OCIPE inputs	• Commission will require effective coordination with CCRD
Section 188 (3): Liaise with any regulatory agencies on matters of common interest and facilitate information exchange pertaining			
3a) Liaison on matters of common interest; specific complaint or investigation	1	• Limited function performed within CIPRO and OCIPE	• Enhance stakeholder management to include inter- and intra-governmental functions
3b) Negotiation of agreements with any regulatory agency regarding jurisdiction and application of company and intellectual property legislation	0	• OCIPE utilizes MOUs or other agreements with relevant regulatory agencies e.g., SARS, SAPS, IRBA, etc.	• Enhance coordination with law enforcement agencies and DG-level clusters
3c) Participate in the proceedings of any regulatory authority	1	• Limited function performed by CIPRO (e.g., Legal Services participation in the Takeover Panel)	• Expand function to include participation in Companies Tribunal, Competition Commission, Consumer Tribunal, National Credit Tribunal, etc
3d) Advice or receive advice from any regulatory agency	1	• Limited function primarily in the form of referrals	• Enhance relationships with regulatory agencies to enable proactive engagement with regulatory agencies

Companies Bill Provision	Baseline		Commission
Section 188 (4&5): Commission may liaise with national and international authorities			
4) Liaise with international authorities with similar functions	1	• Limited function performed within Companies and IP (e.g., WIPO)	• Enhance capability in international legal/business competencies
5a) Refer to Competition Commission concerns regarding the Competition Act	1	• Limited function performed by CIPRO Legal Services and OCIPE	• Enhance function through proactive monitoring
5b) Refer to SARS concerns regarding legislation within SARS jurisdiction	1	• Limited function performed by CIPRO and OCIPE (e.g., matters concerning liquidations, taxation, returns)	• Enhance coordination with law enforcement agencies
5c) Refer to the IRBA concerns regarding the Auditing and Professions Act	1	• Same as above	• Same as above
5d) Refer to other regulatory agencies concerns regarding their respective legislations	1	• Same as above	• Same as above
Section 189 – 191: Commissioner & Deputy Commissioner and Specialist Committees			
189. Functions of the Commissioner and Deputy Commissioner(s)	0	• New functions (executive functions of current entities are performed by CCRD, CIPRO and OCIPE)	• Independent function prescribed by Bill • Staffing profile prescribed in Companies Bill • Relationship between CCRD and Commission to be defined
191. Functions of the specialist committees to advise Minister on (a) company law and policy and b) management of Commission resources	0	• New function (currently performed by CCRD, CIPRO, OCIPE)	• Independent function prescribed by Bill • Staffing profile prescribed in Companies Bill • Relationship between CCRD and Commission to be defined
Section 193 – 204: Companies Tribunal, Takeover Regulation Panel and Financial Reporting Standards Council			
193-195. Functions of the Companies Tribunal	1	• Limited responsibility with current Companies Act using Alternative Dispute Resolution and informal hearings • Courts are the primary recourse	• Independent function prescribed by Bill • Staffing profile prescribed in Companies Bill
196-201. Functions of the Takeover Panel	1	• Function currently performed by the Securities Regulation Panel (SRP)) with CIPRO Legal Services participation	• Independent function prescribed by Bill • Resource requirements not expected to change from baseline per se
203&204. Functions of the Financial Reporting Standards Council	0	• New function with mandate to set and advise Minister on financial reporting standards	• Independent function prescribed by Bill • Staffing profile prescribed in Companies Bill • Commission will require capability to implement approved standards

APPENDIX E

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
PROJECT PLAN

High level project plan is depicted on following page. The Commission implementation team is the custodian of the detailed Microsoft Office Plan.

			CY 2009										CY 2010					
Milestone	**Responsible**	**Dependencies**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**
1) Formalize Commission Implementation Team (CIT)	**Steering Committee (SC)**	Business Case																
Draft team charter and project structure																		
Identify team resources																		
2) Submit Business Case	**SC**																	
3) Human Resources Guidelines Development	**SC, CIT, DPSA**	Enactment of Companies Bill, dti HR																
Notify the DPSA about Commission establishment																		
Develop Human Resources Guidelines																		
4) Communications & Branding	**SC, CIT**																	
Develop Commission's communications plan		Enactment of Companies Bill, dti																
Identify communications audiences (internal and external)																		
Identify communications channels																		
Develop communication messages and protocols																		
Deliver communications messages																		
Design and develop Commission brand																		
Rollout Commission brand																		
5) Public Education of Companies Bill	**SC, CIT**	Enactment of Companies Bill																
Develop initial education strategy on Companies Bill																		
Conduct initial workshops on Companies Bill																		
6) Human Capital	**SC, CIT**																	
Finalize skills audit																		
Finalize resource requirements																		
Develop human capital management strategy & policies																		
Develop skills development strategy and plan																		
Develop recruitment strategy and plan																		
Implement HR and recruitment plans																		
Develop change management plan																		
Implement change management plan																		
7) Process and Technology	**SC, CIT**																	
Develop and document new processes																		
Develop ICT requirements to support new processes																		
Develop ICT systems to support requirements																		
Train staff on new processes																		
8) Organization	**SC, CIT**																	
Finalize and communicate Commission org structure		Enactment of Bill																
Establish new structures and mandates		Regulations																
Refine organization performance measures																		
Implement performance measurement plans																		
Develop product and service fee structure		Regulations																
Implement new fee structures																		
Develop new policies		Regulations																
Implement new policies		Regulations																

APPENDIX F

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Performance Indicator Reference Sheet-Sample

Instructions for Completing the Performance Indicator Reference Sheet
Strategic Objective (SO): Enter the title of the SO: **Key Performance Area (KPA):** Enter the title of the Key Performance Area **Key Performance Indicator (KPI):** Enter the full title and number of the indicator.
DESCRIPTION
Precise Definition(s): Define the indicator more precisely. Define specific words or elements within the indicator. **Unit of Measure:** Enter the unit of measure (e.g. *number of…*, *percent of…*, *Rand*, etc.). **Disaggregated by:** List planned data disaggregations (companies/cc, urban/rural, region, etc.) **Justification & Management Utility:** Briefly describe *why* this particular indicator was selected and how it will be useful for managing performance.
PLAN FOR DATA ACQUISITION BY THE PROJECT
Data Collection Method: Describe the *tools* and *methods* through with the data will be collected. **Data Source(s):** Identify who is responsible for providing the data (e.g., M&E contractor, specific team member, etc.). **Frequency and Timing of Data Acquisition:** Describe *how often* data will be received and *when*.
Estimated Cost of Data Acquisition: Estimate the cost (in dollars and/or level of effort) of collecting the data. **Responsible Individual at the Project:** Name the team member who will be *directly responsible* for acquiring the data.
DATA QUALITY ISSUES
Date of Initial Data Quality Assessment: Enter the date of initial data quality assessment and the responsible party. **Known Data Limitations and Significance (if any):** Describe any data limitations discovered during the initial data quality assessment. Discuss the significance of any data weakness that may affect conclusions about the extent to which performance goals have been achieved. **Actions Taken or Planned to Address Data Limitations:** Describe how you have or will take corrective action, if possible, to address data quality issues. **Date of Future Data Quality Assessments:** Enter the planned date for subsequent data quality assessments. **Procedures for Future Data Quality Assessments:** Describe *how* the data will be assessed in the future (e.g., spot checks, financial audit, etc.).
PLAN FOR DATA ANALYSIS, REVIEW, & REPORTING
Data Analysis: Describe *how* the raw data will be analyzed, *who* will do it, and *when*. **Presentation of Data:** Describe how tables, charts, graphs, or other devices will be used to present data, either internally within the project team, or externally to management and leadership. **Review of Data:** Describe *when* and *how* project management will review the data and analysis (e.g., mid-term evaluation, quarterly reports, etc.) **Reporting of Data:** List any internal or external reports that will feature data for this indicator (e.g., quarterly reports)
OTHER NOTES
Notes on Baselines/Targets: ***Explain how the baselines and targets were set and identify any assumptions made. If baselines and targets have*** **not** ***been set, identify*** **when** ***and*** **how** ***this will be done.*** *Other Notes:* ***Use this space as needed.***

PERFORMANCE INDICATOR VALUES			
Year	*Target*	*Actual*	*Notes*
2008	***Enter target value***	***Enter actual value***	***Enter any explanation here***
2009			
THIS SHEET LAST UPDATED ON: mm/dd/yy			
To avoid version control problems, enter the date of most recent revision to the reference sheet.			

Performance Indicator Reference Sheet
Strategic Objective:
Key Performance Area:
Key Performance Indicator:
DESCRIPTION
Precise Definition(s):
Unit of Measure:
Disaggregated by:
Justification & Management Utility:
PLAN FOR DATA ACQUISITION
Data Collection Method:
Data Source(s):
Frequency/Timing of Data Acquisition:
Estimated Cost of Data Acquisition:
Responsible Individual(s) at the Project:
DATA QUALITY ISSUES
Date of Initial Data Quality Assessment:
Known Data Limitations and Significance (if any):
Actions Taken or Planned to Address Data Limitations:
Date of Future Data Quality Assessments:
Procedures for Future Data Quality Assessments:
PLAN FOR DATA ANALYSIS, REVIEW, & REPORTING
Data Analysis:
Presentation of Data:
Review of Data:
Reporting of Data:
OTHER NOTES
Notes on Baselines/Targets:
Other Notes:

PERFORMANCE INDICATOR VALUES			
Year	*Target*	*Actual*	*Notes*
THIS SHEET LAST UPDATED ON: / /			

APPENDIX G

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Companies Bill Impact on SMEs

One of the focus areas of the USAID/Financial Sector Program (FSP) in South Africa is promoting reforms to commercial laws, regulations and administrative practices affecting the private sector and small and medium enterprises (SME) development.

While enactment of the Companies Bill will impact on all types of business entities, it is important to assess the potential impact to SMEs for two primary reasons:

1) SMEs contribution to employment and economic growth in South Africa

In South Africa, the private sector contributes ~80% of total employment, with small and medium sized enterprises accounting for ~42% of employment in the formal economy. Additionally, there is an estimated 2 million of informal businesses operating across the country.[2] Results of a survey conducted by AfricaScope in Gauteng province revealed SME's had very limited knowledge of the registration process and associated benefits.

2) Phasing out of the Close Corporation

The Close Corporation Act governs the full life-cycle of close corporations from formation to liquidation. Based on above-referenced AfricaScope survey, small businesses show an overwhelming preference for the close corporation as a business vehicle. Additionally, the companies and intellectual properties database shows close corporations comprising ~78% of the total registered entities with 20%+ annual growth rates.

One of the guiding principles during the corporate law reform process was to incorporate elements of the Close Corporation Act into the Companies Bill to accommodate the close corporation entity. Once the Companies Bill is enacted, close corporations will be phased out over a period of 10 years

Impact Assessment

Given the above two reasons, it is important to assess how the Companies Bill may potentially impact SMEs throughout the life-cycle of the business, namely:

- Categories
- Formation
- Dissolution
- Corporate Governance and Accountability

[2] FinScope. Small Business Survey Gauteng 2006, p.10.

a) Company Categories

The Companies Act 1973 provides for four types of Companies: Private, Public, Section 21, External and Off the Shelf. The Companies Bill enhances these distinctions and provides for more flexible structures:

a) For Profit: State-owned, private, personal liability company, and Public Company
b) Not for Profit (formerly Section 21)

Because of the characteristics of SME's enterprises, the most applicable company category would be the non-listed, for profit companies, i.e., Private and Personal Liability companies.

Recommendation

The Commission will need to educate potential and current SMEs that the Companies Bill is all encompassing and provisions for structures that are relevant for their business. These entities also provide for conversion flexibility from a personal liability company to a private company and eventually a public company, if desired.

b) Company Formation

Once the business structure is selected, the Companies Bill provides for a simplified and expedient process for the formation of a company. The Companies Bill provides several enhancements for all business vehicles, regardless of structure, e.g., electronic lodgement of registration documents, a simplified and expedient name reservation process and enforcement of name reservation trading for profit purposes to prevent abuse. These provisions will potentially benefit the close corporations, among other entities.

On the cost side, the name reservations fees will be prescribed by regulations. Current fees are the same for companies and close corporations, i.e., R50.

The most notable difference for close corporations will be with the company formation documents. Currently, close corporations complete a simplified "Close Corporation Founding Statement" (CK1) which costs R100. The Companies Bill requires all companies to complete a Memorandum of Incorporation (MoI) which will replace the Articles of Association. Under the Companies Act 1973, the minimum cost for filing incorporation is R350.

The prescribed MoI intended for use by all types of companies has been simplified from the Companies Act 1973 document and includes model constitutions and mandatory, optional and default requirements that vary with the structure and nature of the company.

Recommendations:

- The MoI, although simplified for companies, contains clauses/elections that may be difficult for SME business owners to decipher. To prevent potential applicants from engaging intermediaries to assist with the founding documents (or even discouraging registration), it is recommended the Commission:
  - Ensure staff are adequately trained to effectively assist registrants

  - Include the MoI component in the public education and awareness training
  - Further simplify the MoI section that relates more to SMEs to resemble the close corporation founding document

- If the current Companies Act fee structure is maintained, the formation cost burden on potential SMEs will be between a minimum of R400 versus the current R150 associated with name reservation and incorporation. These fees may deter potential businesses from registering their operations. To promote economic growth and equity, it is recommended the Commission consider either developing a sliding scale fee structure based on turnover or incentivize the SMEs by eliminate the registration fees.

c) Company Dissolution

Winding up provisions of the Companies Act 1973 applied to the Close Corporation Act and therefore has the same impact for SMEs. The Companies Bill will recognize the difference in winding up solvent and insolvent companies. Depending on the structure of the company, solvent companies may be wound up and liquidated voluntarily through a special resolution or court order. Insolvent company winding up will continue to be court administered pending enactment of the Department of Justice Insolvency and Business Rescue Bill. This Bill will need to be evaluated separately for SME impact but in all likelihood will provide for proceedings that will minimize judicial administration costs.

Recommendations:

- Educate SMEs on the new and pending legislation and winding up options and implications.

d) Corporate Governance and Accountability

The Companies Bill makes provisions to protect shareholders, investors and the public. The potential impact on SMEs will depend on the company category selected and regulation thresholds. The latter will be determined based on annual turnover, size of workforce and nature and extent of activities. For personal liability companies or where the directors are also the shareholders of a company, exemptions may be granted if no public protections are deemed necessary.

Under the Close Corporations Act, the corporation is required to keep accurate accounting records and annual financial statement to represent business operations. This best practice will remain a requirement with the Companies Bill and the company category and thresholds will determine whether an audit or independent review will be required.

Because of enhanced governance and accountability, SMEs may be less susceptible to fraud, particularly fronting activity. Because companies will be required to codify and disclose directors' duties, needed insight will be provided into fronting and other fraudulent practices.

Recommendations:

- Stay abreast of the new accounting standards for SMEs spearheaded by South African Institute of Chartered Accountants (SAIC). The Commission through the Financial Reporting Standards Council (FRSC) will need to collaborate and promote the most appropriate and least burdensome option to SMEs.
- Develop specific measures to disclose and track fraudulent activities and trends by company size and type.

Conclusion

Implementation of the Companies Bill will present an opportunity to promote companies as vehicles for development. For SMEs:

1) Successful implementation of the public education and awareness function nation-wide, coupled with the Commission's decentralization program has the potential to convert more business from the informal sector to the formal sector and close corporations to companies. Because the close corporation will no longer be a choice for business incorporation, the value proposition for establishing a company will need to be clearly articulated.

2) Implementing practical measures like simplifying company registration, reporting processes and reducing fees will help mitigate risks associated with non-registration or regulatory compliance.

3) While electronic filing and storage of documents has the potential to cut costs (transport and storage), most SMEs, particularly those in rural areas may not have access to computer facilities. The Commission should enhance their work with other SME public and private entities to ensure potential and current SMEs leverage technology for service delivery.

4) Although no conclusive study has been conducted, one of the desired outcomes of the company structure is that it will lead to increased investor confidence resulting in increased options for SME financing and consequently growth.

APPENDIX H

USAID Financial Sector Program
Support to the Department of Trade and Industry
Business Case for the Establishment of the Companies and Intellectual Properties Commission
Cost Details and Assumptions

1) Commission Incremental Staffing Requirements

Function	Level	2010/11	2011/12	2012/13	Total
Registration	Executive	1			1
Compliance	Executive	1			1
Monitoring & Sensing	Sr Manager	3	3		6
Public Education & Awareness	Sr Manager	3	3	2	8
	Manager	3	3	2	8
Total		10	9	4	23
Enforcement (Investigations)	Executive	1			1
	Sr Manager	2	2	2	6
	Manager	3	3	3	9
Total		6	5	5	16
Research & Analysis	Executive	1			1
	Sr Manager	1			1
	Manager	1			1
	Analyst	3	2	2	7
Total		6	2	2	10
Legal Advisory Services	Executive	1			1
	Sr Manager	2	1		3
Total		3	1	0	4
Advocacy, Policy Coordination & Stakeholder Mgmt	Executive	1			1
	Sr Manager	2	1		3
	Manager	2	1		3
Total		5	2	0	7
Corporate Services	Executive	1			1
Total		32	19	11	62
Cumulative Total		32	51	62	

Function	Level	2010/11	2011/12	2012/13	Total
Registration	Executive	815,913	-	-	815,913
Compliance	Executive	815,913	-	-	815,913
Monitoring & Sensing	Sr Manager	2,019,492	2,019,492	-	4,038,984
Public Education & Awareness	Sr Manager	2,019,492	2,019,492	1,346,328	5,385,312
	Manager	1,418,274	1,418,274	945,516	3,782,064
Enforcement (Investigations)	Executive	815,913	-	-	815,913
	Sr Manager	1,346,328	1,346,328	1,346,328	4,038,984
	Manager	1,418,274	1,418,274	1,418,274	4,254,822
Research & Analysis	Executive	815,913	-	-	815,913
	Sr Manager	673,164	-	-	673,164
	Manager	472,758	-	-	472,758
	Analyst	1,196,415	797,610	797,610	2,791,635
Legal Advisory Services	Executive	815,913	-	-	815,913
	Sr Manager	1,346,328	673,164	-	2,019,492
Advocacy, Policy Coordination & Stakeholder Mgmt	Executive	815,913	-	-	815,913
	Sr Manager	1,346,328	673,164	-	2,019,492
	Manager	945,516	472,758	-	1,418,274
Corporate Services	Executive	815,913	-	-	815,913
Total		19,913,760	10,838,556	5,854,056	36,606,372
Cumulative Total		19,913,760	30,752,316	36,606,372	
Cumulative Inflated Total		**21,526,775**	**35,935,957**	**46,241,698**	

2) Companies Tribunal (Constant Rand)

Level	2010/11	2011/12	2012/13	Total
Chair (DG Level)	1			1
Members (CD Level)	7	3		10
Sr Managers (Dir Level)	2	1		3
Total	10	4	-	14
Cumulative Total	10	14	14	

Level	2010/11	2011/12	2012/13	Total
Chair (DG Level)	1,355,766	-	-	1,355,766
Members (CD Level)	6,338,766	2,716,614	-	9,055,380
Sr Managers (Dir Level)	1,472,130	736,065	-	2,208,195
Total	9,166,662	3,452,679	-	12,619,341
Cumulative Total	9,166,662	12,619,341	12,619,341	
Cumulative Inflated Total	**9,909,162**	**14,746,470**	**15,940,934**	

3) Financial Reporting Standards Council (Constant Rand)

Level	2010/11	2011/12	2012/13	Total
Chair (DDG Level)	1			1
Members (18 members; 9 FTE)-CD Level	6	3		9
Sr Managers (Dir Level)	2	1		3
Manager				-
Total	9	4	-	13
Cumulative Total	9	13	13	

Level	2010/11	2011/12	2012/13	Total
Chair (DDG Level)	1,037,571	-	-	1,037,571
Members (18 members; 9 FTE)-CD Level	5,433,228	2,716,614	-	8,149,842
Sr Managers (Dir Level)	1,472,130	736,065	-	2,208,195
Total	7,942,929	3,452,679	-	11,395,608
Cumulative Total	7,942,929	11,395,608	11,395,608	
Cumulative Inflated Total	**8,586,306**	**13,316,463**	**14,395,097**	

4) Commissioner and Deputy Commissioner (Constant Rand)

Level	2010/11	2011/12	2012/13	Total
Chief Executive	1			1
Sr Executive	1			1
Total	2	-	-	1
Cumulative Total	2	2	2	

Level	2010/11	2011/12	2012/13	Total
Chief Executive	1,037,571	-	-	1,037,571
Sr Executive	1,037,571	-	-	1,037,571
Total	2,075,142	-	-	2,075,142
Cumulative Total	2,075,142	2,075,142	2,075,142	
Cumulative Inflated Total	**2,243,229**	**2,424,930**	**2,621,349**	

5) Investment and Labor Operating Expenses-Incremental (Constant Rand)

Investment & Labor: Constant Rand

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	10,450,000	1,175,000		
Total Investment	**10,450,000**	**1,175,000**	**-**	**-**
Recurring				
Commission Staffing		19,913,760	30,752,316	36,606,372
Commissioner & Deputy		2,075,142	2,075,142	2,075,142
Companies Tribunal		9,166,662	12,619,341	12,619,341
Financial Reporting Standards Council		7,942,929	11,395,608	11,395,608
Total Recurring	**-**	**31,155,564**	**45,446,799**	**51,300,855**
TOTAL	**10,450,000**	**32,330,564**	**45,446,799**	**51,300,855**
Recurring Cumulative-Labor Expenses		**31,155,564**	**76,602,363**	**127,903,218**

Investment & Labor: Inflated Rand at 8%

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	10,450,000	1,270,175	-	-
Total Investment	**10,450,000**	**1,270,175**	**-**	**-**
Recurring				
Commission Staffing		21,526,775	35,935,957	46,241,698
Commissioner & Deputy		2,243,229	2,424,930	2,621,349
Companies Tribunal		9,909,162	14,746,470	15,940,934
Financial Reporting Standards Council		8,586,306	13,316,463	14,395,097
Total Recurring	**-**	**33,679,165**	**53,107,357**	**64,803,981**
TOTAL	**10,450,000**	**34,949,340**	**53,107,357**	**64,803,981**
Recurring Cumulative-Labor Expenses		**33,679,165**	**86,786,522**	**151,590,502**

6) Non-Labor Operating Expenses-Incremental (Constant Rand)

Non-Labor Operating Expenses: Constant Rand

Cost Element	2009/10	2010/11	2011/12	2012/13
Recurring				
Commission Staffing		6,458,032	10,780,787	13,872,509
Commissioner & Deputy		672,969	727,479	786,405
Companies Tribunal		2,972,748	4,423,941	4,782,280
Financial Reporting Standards Council		2,575,892	3,994,939	4,318,529
Total Recurring	**-**	**10,103,749**	**15,932,207**	**19,441,194**
TOTAL	**-**	**10,103,749**	**15,932,207**	**19,441,194**
Recurring Cumulative-Non-Labor Expenses		**10,103,749**	**26,035,956**	**45,477,151**

Non-Labor Operating Expenses: Inflated Rand at 8%

Cost Element	2009/10	2010/11	2011/12	2012/13
Investment				
Contractor	-	-	-	-
Total Investment	**-**	**-**	**-**	**-**
Recurring				
Commission Staffing		6,981,133	12,598,007	17,523,954
Commissioner & Deputy		727,479	850,104	993,398
Companies Tribunal		3,213,541	5,169,645	6,041,045
Financial Reporting Standards Council		2,784,539	4,668,330	5,455,228
Total Recurring	**-**	**10,922,153**	**18,617,756**	**24,558,397**
TOTAL	**-**	**10,922,153**	**18,617,756**	**24,558,397**
Recurring Cumulative-Non-Labor Expenses		**10,922,153**	**29,539,909**	**54,098,306**

7) Investment Costs

Contractor Component	2009/10	2010/11	2011/12	Total
Human Resources Guideline Development	100,000			100,000
Communications and Branding	500,000			500,000
Public Education and Awareness	500,000			500,000
Human Capital Planning	200,000			200,000
Change Management	200,000	100,000		300,000
Organizational Design	200,000			
ICT and Process				
Companies-Forms Development	200,000			200,000
BPR Specialist x2	400,000			400,000
CC Transition	200,000			200,000
Cooperatives-Forms Development	200,000			200,000
BPR Specialist x2	400,000			400,000
CC Transition	200,000			200,000
ICT-ECM	200,000			200,000
ICT-Columbus		75,000		75,000
ICT-Shared Infrastructure	1,000,000			1,000,000
ICT-Reporting Requirements	500,000			500,000
ICT-Directory	500,000			500,000
E-Learning	200,000			200,000
Service Level Management	3,000,000	500,000		3,500,000
Finance Management	750,000			750,000
Human Resources	1,000,000	500,000		1,500,000
Total	10,450,000	1,175,000	-	11,425,000
Inflated Total	**10,450,000**	**1,270,175**		**11,720,175**

CIPRO FINANCIAL PERFORMANCE

As of January 2009, CIPRO financial performance was positive on the revenue and expenses components as depicted below:

CIPRO Financial Summary

Component	Jan 2009 Act.	2009 Ann'l	% of Rev	2008 Act.	2007 Act.	08/09 YOY	07/08 YOY
Business Revenue							
Intellectual Property	34,195,000	41,034,000	13%	40,301,332	26,332,295	2%	53%
Data Sales		-	0%	1,388,637	1,056,123		31%
Corporate Information	17,327,000	20,792,400	7%	15,365,919	13,004,952	35%	18%
Companies and close corporations	58,535,000	70,242,000	23%	69,902,462	65,114,865	0%	7%
Increase is share Capital	13,748,000	16,497,600	5%	12,558,848	10,516,925	31%	19%
Annual returns	135,888,000	163,065,600	52%	138,201,021	120,531,622	18%	15%
Total Business Revenue	259,693,000	311,631,600	100%	277,718,219	236,556,782	12%	17%
Total Expenditure	158,244,000	189,892,800		181,627,858	133,691,968	5%	36%
Operating Surplus	101,449,000	121,738,800		96,090,361	102,864,814	27%	-7%
Finance Income	40,898,000	49,077,600		30,011,194	13,346,663	64%	125%
Other Operating Revenue	362,000	434,400		334,312	6,142,354	30%	-95%
Net Surplus	142,347,000	170,816,400		126,435,867	122,353,831	35%	3%
Obligated (Special Projects)		154,000,000					
Net (Less Special Projects)*		16,816,400		126,435,867	122,353,831	-87%	3%

* The R16M net surplus does not include outstanding expenses of R49M

On a year over year growth basis, annualized business unit revenue was 12% compared to 17% in the prior year. This decline is more than likely attributable to the economic downturn, particularly during the fourth quarter of 2008 where GDP declined by an annualized 1.8%.

During this reporting period, the major business unit revenue drivers were companies/ close corporations and annual returns, generating 23% and 52% of revenue, respectively on an annualized basis. The 18% growth in the annual returns shows a positive trend although this is due to the fact that this source of revenue was extended to the close corporations in September 2008. As uptake increases, it is expected that this revenue source will partly offset current losses in companies/close corporation registration revenue.

The expenditures show a 5% growth although they are significantly under budget primarily due to vacancies and items pending billing (~R49M). Special initiatives which primarily include ICT improvements were allocated a budget of R159M by National Treasury from CIPRO's retained earnings of which only R5M has been spent. This will more than likely be carried over to the next fiscal year.

As stated, because OCIPE is currently funded by the dti and does not generate business revenue, there is no comparative revenue/expense model. OCIPE's 2008/09 budget was R18M.

CIPRO's 2009/10 *Medium Term Revenue and Expenditure Framework* (MTREF) report projects financial performance based using historical trends and incorporates current economic and business trends. The table below presents a summary of CIPRO's budget projections.

CIPRO Budget Projections (R, 000s)

Component	Budget 2008/09	Projections 2008/09	Budget 2009/10	Budget 2010/11	Budget 2011/12
Total Operating Revenue	308,562	308,587	293,884	301,236	320,000
Retained Earnings	100,000	24,000	263,500	147,700	46,800
Total Income	408,562	332,587	557,384	448,936	366,800
Operating Expenditure	235,599	173,195	293,884	301,236	320,000
Special Programs and Initiatives	159,820	24,000	263,500	147,700	46,800
Total Operating Expenses	395,419	197,195	557,384	448,936	366,800
Surplus/Deficit	13,143	135,392	-	-	-

Source: CIPRO 2009/10 MTREF

The budget components are analyzed in the following section.

1) Operating Revenue

Based on current business performance, revenue is projected to decline by 2% in 2009/10 with marginal increases thereafter. The main revenue drivers by business unit are projected below.

CIPRO Operating Revenue Drivers (R, 000s)

Component	Actual 2007/08	Projections 2008/09	Budget 2009/10	Budget 2010/11	Budget 2011/12
Intellectual Property	40,135	40,139	40,137	40,136	40,138
Companies and CCs	70,926	60,065	69,144	60,721	58,235
Annual Returns Companies	139,587	162,161	131,737	145,042	164,371
Annual Returns CCs	-	7,865	19,316	24,928	25,156
Share Capital	13,173	18,181	15,090	13,002	13,600
Corporate Information	16,486	20,176	18,460	17,407	18,500
Total Income	280,307	308,587	293,884	301,236	320,000

Source: CIPRO 2009/10 MTREF

CIPRO Projected Volumes (Number)

	Historical			Current	Projections		
Component	**2005/06**	**2006/07**	**2007/08**	**2008/09**	**2009/10**	**2010/11**	**2011/12**
Companies Registered	48,900	42,090	33,269	38,513	40,438	48,416	57,970
CC's Registered	197,307	243,557	251,996	250,000	200,000	180,000	170,000
Cooperatives Registered	2,829	6,765	3,140	3,297	3,462	3,289	3,345
Trademarks Applications	28,331	30,149	32,717	34,353	36,071	34,267	35,100
Patents Applications	10,460	10,753	10,667	11,200	11,760	11,712	10,830
Designs Applictaions	1,817	2,065	2,321	2,437	2,559	2,431	2,330
Annual Returns	62,664	146,504	162,553	178,809	196,690	216,358	237,990

Source: CIPRO 2009/10 MTREF

The slowdown in revenue from intellectual property, companies and closed corporation registrations in 2008/09 is supported by the analysis in 10.1.3.1. Additionally, in January and February 2009, close corporations experienced an annualized 18% increase in deregistration related activities from prior year. For 2008, companies deregistration activities increased by 55% from prior year compared to 99% for close corporations.

Annual returns are assumed to increase conservatively at 10% due to expected decline in companies and close corporation revenue. Assuming 2008/09 run rates are experienced during 2010/11, a potential ~R30M could be obtained from this source.

The uncertainty associated with the rate of conversion from close corporations to companies and from unregistered entities to companies following enactment of the Companies Bill makes this an unreliable source of income in the short term. A successful public education and awareness program coupled with an incentivized fee structure will potentially increase registrations and downstream revenue.

Given the current limited sources of revenue and flexibility, it is critical that the Commission explore or fast track other potential sources, especially in data sales and trademarks. Data sales will be highly dependent on data integrity which is closely linked to the current e-CIPRO initiative, while accession to the Madrid Protocol has the potential to increase overseas application filing and resultant revenue.

2) Retained Earnings and Initiatives

In an effort to improve service delivery and enhance its operational effectiveness, CIPRO has identified various critical initiatives. The table below depicts a summary of CIPRO's identified initiatives against its retained earnings.

CIPRO Initiatives Budget Summary

Initiative	Status	2009/10	2010/11	2011/12	Total
e-CIPRO	Approved	96,000	46,000	46,000	188,000
Enterprise Architecture	Pending approval		11,000		11,000
e-Administration	Pending approval	3,500	1,300	800	5,600
New Facility	Approved	104,000			104,000
Commission Transition	Pending approval		30,000		30,000
Scanning and Registry	Pending approval	60,000	59,400		119,400
Total Initiatives		263,500	147,700	46,800	**458,000**

Source: CIPRO 2009/10 MTREF

The approved initiatives comprise 60%+ of CIPRO's accumulated retained earnings. All identified initiatives have been assessed for the Commission's new requirements and required funding has been developed and is part of this business case.

The amount allocated for the Scanning and Registry initiative will need to be motivated with a business case identifying scope, options and supported by a comprehensive cost benefit analysis prior to implementation. This is a critical initiative for the Commission as relates directly to the registry function.

Given that CIPRO's entire retained earnings have been allocated, it will be critical to rebuild the Commission's reserves to at least ensure current liabilities can be accommodated in the future.

3) Operating Expenditures

Projected 2009/10 budget shows an increase of ~25% from prior year primarily due to employee compensation and operating leases. Employee compensation is expected to increase from R67M to R139M to accommodate the approved CIPRO structure. Operating leases are expected to increase by ~R14M attributable to the new facility. While technology improvements are expected to result in hard savings from productivity gains, these benefits will not be realized until the systems have achieved full operational capability in 2011/12. All else equal, potential savings realized will benefit the Commission's financial position.