

## **FREQUENTLY ASKED QUESTIONS (FAQS)**

### **Business rescue practitioners and business rescue administration**

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## Disclaimer

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- This FAQs document was discussed at the SAICA's Business Rescue Interest Group.*
- This is a live document that is subject to change and is non-authoritative.*
- This document has not been subject to any formal process of the Companies and Intellectual Property Commission (CIPC) or SAICA.*
- The concepts of professional scepticism and professional judgement should be applied in all the scenarios described in the FAQs.*

## Introduction and background

### **Business rescue**

Business rescue, as defined by the Companies Act, 71 of 2008 (Companies Act), aims to facilitate the rehabilitation of a company that is "financially distressed" by providing for: the temporary supervision of the company and management of its affairs, business and property by a business rescue practitioner, a temporary moratorium ("stay") on the rights of claimants against the company or in respect of property in its possession and the development and implementation (if approved) of a business rescue plan to rescue the company by restructuring its business, property, debt, affairs, other liabilities and equity. The Companies and Intellectual Property Commission (CIPC) has, on 28 June 2017, accredited the South African Institute of Chartered Accountants (SAICA) as a professional body for business rescue practitioners in terms of Section 138(1) of the Companies Act.

## Frequently asked questions

### Business rescue practitioner's administration

#### 1. How do I apply for a license to be a business rescue practitioner (BRP) with the CIPC?

Please refer to the CIPC Notice 2 of 2019<sup>1</sup>, *Guideline for the application for licensing as a BRP*. The guidelines sets out the required documentation and the manual submission. Please note that the manual licensing has since been replaced by the new E-services, please refer to Question 3 for more information.

#### 2. What qualifications is required to become a BRP?

Section 138(1) of the Companies Act sets out the qualifications to apply for a license to act as a BRP. Please refer to Practice Note 1 of 2018<sup>2</sup>.

#### 3. How do a person apply for BRP license, renew a license and be appointed as BRP?

As from 31 May 2021 the new E-Services<sup>3</sup> is the only available channel for submission of BRP licensing, renewal of license and BRP appointments applications. From 31 May 2021, CIPC will **no longer** accept the submission of such applications via the dedicated mailboxes of: [-businessrescue@cipc.co.za](mailto:-businessrescue@cipc.co.za) / [CoR123.2@cipc.co.za](mailto:CoR123.2@cipc.co.za) / [CoR126.1@cipc.co.za](mailto:CoR126.1@cipc.co.za)  
For more information visit the CIPC [How to step by step guide page](#).

#### 4. How do I resign as a BRP?

At present, the resignation of a BRP is a manual process. A BRP that no longer wishes to practice as a practitioner must submit an email to the CIPC to request removal of their name on the BRP list and the withdrawal of their license. Email to be sent to Veronica van Dyk ([VvDyk@cipc.co.za](mailto:VvDyk@cipc.co.za)) and Vuyani Nkohla ([VNkohla@cipc.co.za](mailto:VNkohla@cipc.co.za)).

For each company the BRP need to provide a resignation letter and inform the company of their resignation as the company would need to appoint another practitioner. The resignation letter to be sent to [cor123.2@cipc.co.za](mailto:cor123.2@cipc.co.za).

<sup>1</sup> [Notice 2 of 2019 Guideline for the application for licensing as a business rescue practitioner](#)

<sup>2</sup> [Practice Note 1 of 2018](#) Qualifications of practitioners in terms of section 138(1)

<sup>3</sup> [Notice 25 of 2021 Automation of business rescue proceedings, business rescue practitioner licensing and business rescue practitioner appointments](#)

If an appointment was done on E-Services (K2 portal) the company may do a simultaneous resignation and appointment. The resignation and acknowledgment from the company must be uploaded on K2.

## 5. How do we appoint two business rescue practitioners jointly for a company?

The E-Service system is designed to cater for joint appointments. The following steps are taken when a company appoint joint business rescue practitioners:

- Go to Practitioner Appointments and click on ADD practitioner;
- Complete and upload all the required documents for the first practitioner;
- Click on SAVE,
- Go back to ADD another practitioner, do the same as bullet two;
- At ACTION INFORMATION by COMMENTS type in joint appointment, once complete, click on SAVE and then SUBMIT.

## 6. Which modules will still be released on the E-services portal?

The following services relating to business rescue will be released at a later date:

- Notice of Termination
- Notice of Substantial implementation
- Reporting

## 7. What is SAICA's involvement in the licensing of BRPs?

Section 138(1) of the Companies Act provides that a person may be appointed as a business rescue practitioner if that persons is a member in good standing of a legal, accounting or business management profession accredited by the Commission.

In terms of the Application for the accreditation of professional bodies for business rescue practitioners<sup>4</sup> SAICA applied for accreditation and was accredited.

When applying for a license a SAICA member have to request a letter of good standing that is submitted together with their application to the CIPC.

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<sup>4</sup> [Application for the accreditation of professional bodies for business rescue practitioners](#)

## Business rescue administration

### 8. Who decides on the fees of a BRP?

The Companies Act, 71 of 2008 section 143 deals with remuneration for business rescue practitioners.

Regulation 128 – Tariff of fees for business rescue practitioners

Section 128(1) The basic remuneration...may not exceed...

- (a) R1,250 per hour, to a maximum of R15,625 per day (inclusive of vat) in the case of a small company;
- (b) R1,500 per hour, to a maximum of R18,750 per day (inclusive of vat) in the case of a medium company;
- (c) R2,000 per hour, to a maximum of R25,000 per day (inclusive of vat) in the case of a large company;

128(2) Subsection 1 does not limit further remuneration

128(3) Practitioner is entitled to be reimbursed for actual costs of disbursements made or expenses incurred

The tariff has not been revised since it was promulgated. Many BRP's agree a further fee that includes an increase in the hourly rates plus perhaps success fees based on outcomes. Any additional arrangements should be agreed to and approved by both creditors and shareholders.

## Business rescue proceedings

### 9. Can a BRP resign from an engagement?

The Companies Act does not deal with resignation of the BRP but only the removal and replacement of a practitioner in section 139. As the BRP is however appointed and accepts the appointment is also follows that the BRP can resign from an appointment. Should a BPR resign from an appointment they would need to inform the CIPC.

### 10. Can a chartered accountant / associate general accountant be appointed as the business rescue practitioner of their client?

The requirements to be business rescue practitioner is outlined in Section 138 of the Companies Act.

Section 138(1) of the Companies Act states that *“A person may be appointed as the business rescue practitioner of a company only if the person—*

- (a) is a member in good standing of a legal, accounting or business management profession accredited by the Commission;*
- (b) has been licensed as such by the Commission in terms of subsection (2) ;*
- (c) is not subject to an order of probation in terms of section 162 (7) ;*
- (d) would not be disqualified from acting as a director of the company in terms of section 69 (8) ;*
- (e) does not have any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; and*
- (f) is not related to a person who has a relationship contemplated in paragraph (d).”*

A chartered accountant / associate general accountant must take the requirements in section 138(1)(e) and (f) as well as the SAICA Code of Professional Conduct (SAICA Code) into consideration before accepting the appointment.

### **SAICA Code of Professional Conduct**

#### **Consideration of the conceptual framework**

The chartered accountant / associate general accountant must also take the SAICA Code into consideration with specific reference to section 120 of the Code, the Conceptual Framework, to identify, evaluate and address any other threats to independence. The conceptual framework requires that professional accountants identify threats to compliance with the fundamental principles, evaluate the threats and address the threats by elimination or reducing them to an acceptable level.

Section 300 of the Code, Applying the Conceptual Framework – Professional Accountants in Public Practice, needs to be considered as well as the additional guidance on identification of threats specifically to independence. The professional accountant considers if there are adequate safeguards that can address the threats.

#### **Independence**

According to the Code, independence is linked to the principles of objectivity and integrity and the professional accountant must apply the conceptual framework approach regarding independence in order to identify any threats to compliance with the independence requirements and to identify safeguards that eliminate the threat or reduce it to an acceptable level.



### **Independence comprises:**

(a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgement, thereby allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

(b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a firm's, or an audit or assurance team member's, integrity, objectivity or professional scepticism has been compromised.

### **Identifying threats**

#### Self-interest threat

There might be a self-interest threat due to the professional accountant receiving remuneration in acting the BRP. This could threaten the fundamental principles of integrity, objectivity and professional competence and due care (paragraph 120.6.A3(a))

#### Familiarity threat

There might be a threat due to a long or close relationship with the client and the professional accountant (paragraph 120.6 A3(d))

#### Self-review threat

There might be a self-review threat that the professional accountant will not appropriately evaluate the results of previous judgements made or an activity performed by another individual (paragraph 120.6 A3(b)).

### **Evaluating threats**

#### ***Are the identified threats at an acceptable level?***

The professional accountant must exercise professional judgement and apply the reasonable and informed third party test to determine whether the threats are at an acceptable level. Consideration of qualitative and quantitative factors is relevant in the evaluation of threats, as is the combined effect of multiple threats, if applicable (paragraph 120.8 A1).

### **Addressing threats**

#### Eliminate circumstances

The professional accountant may be able to eliminate the circumstances, including interests or relationships, that are creating the threats (section R120.10(a)).

- Apply safeguards

The professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influence the professional accountant's professional judgement regarding the activity (paragraph R111.2).

### **Decline or end professional activity**

As the professional accountant cannot eliminate the circumstances creating the threats and no safeguards are available or capable of being applied to reduce the threats to an acceptable level, the professional accountant may need to decline this engagement (paragraph R120.10(c)).

### **Conclusion**

In deciding on whether to accept the appointment the chartered accountant / associate general accountant needs to consider the legislation as well as the Code.

## **11. How must information be submitted to the CIPC on business rescue proceedings (Form CoR123.1) and court orders commencing business rescue proceedings?**

As from 15 June 2021, information relating to the Form CoR123.1 and legal documents in terms of section 129 of the Companies Act 71 of 2008 ("the Act"), as well as court orders commencing business rescue proceedings in terms of section 131 of the Act, must be submitted via the electronic platform new E-Services<sup>5</sup>. As from 15 June 2021, Form CoR123.1 and court orders commencing business rescue will no longer be accepted as being submitted or filed if it was submitted via email to <mailto:businessrescue@cipc.co.za> or in the case of court orders, <mailto:corporatelegalservices@cipc.co.za>.

## **12. How must a business rescue status report (Form CoR125.1) be submitted?**

From 1 April 2020, as set out in Practice 1 of 2020<sup>6</sup> and confirmed in Practice note 3 of 2021 the following documents must be submitted to [businessrescue@cipc.co.za](mailto:businessrescue@cipc.co.za):

- CoR125.1 (duly completed including customer code and signature of the appointed Business Rescue Practitioner); and

<sup>5</sup> [Practice Note 3 of 2021](#) – Business rescue filing procedure

<sup>6</sup> [Practice Note 1 of 2020](#) – Business Rescue filing procedure

- Progress report on the progress of the business rescue proceedings as required in terms of section 132(3) of the Act.

### 13. How must notice of termination of business rescue proceedings (Form CoR125.2) be submitted to the CIPC?

From 1 April 2020, as set out in Practice 1 of 2020<sup>7</sup> and confirmed in Practice note 3 of 2021 the following documents must be submitted to [businessrescue@cipc.co.za](mailto:businessrescue@cipc.co.za)

- CoR125.2 (duly completed including customer code and signature of the appointed business rescue practitioner);
- The grounds on which the proceedings are terminated. The grounds may either be stated on the CoR125.2 or on a letterhead which is attached to the CoR125.2; and
- Confirmation of the grounds of termination.

### 14. Can companies and close corporations in business rescue suspend their compliance obligations?

The CIPC released Notice 61 of 2021<sup>8</sup> reminding companies and close corporations that the Companies Act, 2008 does not suspend the company or close corporations compliance obligations to the Companies Act or Close Corporations Act, 1984 including the following obligations:

- Annual returns for companies and close corporations;
- Keeping accurate and complete records, financial statements and if required audit or independent review of financial statements and subsequent filing of such audited financial statements or financial accountability supplement;
- Keeping of statutory company records for example share register, director register and minutes of meetings;
- Changes to Memorandum of Incorporation;
- Changes to company location of company records;
- Changes to company or close corporation addresses; and
- Changes to company and close corporation financial year ends.

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<sup>7</sup> [Practice Note 1 of 2020 – Business Rescue filing procedure](#)

<sup>8</sup> [Notice 61 of 2021- Compliance obligations of companies and close corporations in business rescue](#)

## 15. Where a plan is submitted that does not comply fully with Section 150(2) Part C, does it constitute a legal BR plan?

The business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan:

- Statement of conditions
- Effect of business rescue plan on employees
- Circumstances when plan will end
- Projected balance sheet and income statement

## 16. Where a BRP is replaced does the timeframes in respect of creditors meetings and business rescue plans apply from date of new appointment?

Section 147 of the Companies Act states the following:

### ***“First meeting of creditors***

*(1) Within 10 business days after being appointed, the practitioner must convene*

### ***148. First meeting of employee’s representatives***

*(1) Within 10 business days after being appointed, the practitioner must convene....”*

Therefore it would seem as if the days are counted when the BRP is appointed.

## 17. Can a BRP be appointed to any client?

No, the Companies Regulations have specific requirements in Regulation 127(3) on the appointment of specific level of BRPs for different level of companies, based on the Public Interest Score (PI Score) as included in the table below.

Client	BRP level
Large company PI Score > 500	Senior practitioner
Medium company Public company : PI Score below 500 Other co (Not SOC): PI Score between 100 and 500	Senior practitioner Experienced practitioner
Small company (exl SOC / Public Co) PI Score < 100	Senior practitioner Experienced practitioner Junior practitioner

18. Why can a junior practitioner not be appointed on a medium to large company, even if the practitioner is an attorney, advocate or chartered accountant?

As stated in Regulation 127(3), (4) and (5) it is clearly stipulated who can be appointed as a business rescue practitioner for specific size of company.