

ACCREDITATION OF PROFESSION AND LICENSING OF BUSINESS RESCUE PRACTITIONERS



Companies and Intellectual
Property Commission
a member of the dti group

Prepared by V Nkohla



PURPOSE OF PRESENTATION

Is to share some light on the role of the Commission with regards to the licensing of Business Rescue Practitioners and the link to their appointment by Companies in Business Rescue.

LEGISLATIVE FRAMEWORK

- Chapter 6 of Companies Act, act no 71 of 2008;
- Companies Amendment Act, act no 3 of 2011; and
- Companies Regulations, 2011

BACKGROUND

Section 138 Qualifications of Practitioners states:-

- (1) *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 Commission;*
 - (b) *Has been licensed as such by the Commission*
 - (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*

ACCREDITATION AND LICENSING

- The Commission established an accreditation model in line with Regulations 126 in 2017.
- We have already 13 professions from Accounting, Legal and Business Management
- We therefore issue out licenses to qualifying applicants who belong to the accredited professional bodies in line with Section 138(1).
- At the time of this presentation we had licensed 315 business rescue practitioners.

APPOINTMENT OF BUSINESS RESCUE PRACTITIONERS

- Within 5 business days after a company has adopted and filed a resolution, CoR123.1 or such longer time as the Commission, on application by the company may allow, the company must appoint a business rescue practitioner in line with Section 138.
- After appointing a practitioner as required, a company must file a notice of the appointment of a practitioner within 2 business days after making the appointment i.e CoR123.2
- This is the form that is date stamped by the Commission as sent back to the company and the above process is in terms of Section 129.
- In terms of Section 131, a court may make an order appointing as interim a person who satisfies the requirements of section 138 and who has been nominated by the affected person who applied for court proceedings.

REMOVAL OF THE PRACTITIONER

- Section 138(2) provides that the Commission may license any qualified person to practice in terms of Chapter 6 and may suspend or withdraw any such license in the prescribed manner
- The question is what happens to the appointed practitioner whose license has been withdrawn or suspended.
- The onus is on the company to apply to court for the removal of the practitioner, since it is only the court empowered by the Act to remove the practitioner in terms of Section 139.

COMPETENCIES OF THE BUSINESS RESCUE PRACTITIONERS

- Since section 138 does not deal with the skills and competencies of the business rescue practitioner.
- Regulations 126 does hint that the Commission must look at the applicant's education and experience sufficient to equip him/her to perform the functions of a business rescue practitioner.
- Having said the above the Commission is in a process of deriving competence framework for the business rescue practitioners.
- The current process in place is the CPD that practitioners have to undergo annually and accumulate points to keep their licenses.

APPLICATIONS DOCUMENTS

- To apply for license an application must be sent to cor126.1@cipc.co.za
- To file for appointment the form must be sent to cor123.2@cipc.co.za
- All other queries may be submitted to our Enquiries platform available on the website.
- Practitioners are also encouraged to make use of their professional bodies to raise issued that will form part of the agenda for the Business Rescue Liaison Committee.
- We also update on regular intervals the information pertaining to Business Rescue Practitioners and make it available on our website.



THE END AND THANK YOU!!!