



PRACTICE NOTE 3 OF 2021

BUSINESS RESCUE FILING PROCEDURE

This practice note is issued in terms of Regulation 4 of the Companies Regulation, 2011 and replaces Practice Note 3 of 2014, and Practice Note 1 of 2020 (Business Rescue Filing Procedure) in its entirety. This practice note is applicable to companies and close corporation Business Rescue filings. Part A took effect on 15 June 2021, while Part B, C, D and E took effect during publication of Practice Note 1 of 2020, namely on 1 April 2020.

Part A: Notice to Commence Business Rescue Proceedings (Form CoR123.1) and court order 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, www.cipc.co.za / On-line Transacting / New E-Services. 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 businessrescue@cipc.co.za or in the case of court orders, corporatelegalservices@cipc.co.za.

In the case of a Form CoR123.1, the company or close corporation must submit the following information on New E-Services:

- Resolution date by the board to commence business rescue proceedings.
- Full name, Surname and Identity Number of an active director (in case of a company) or member (in the case of a close corporation), whose information will be validated with the Department of Home Affairs. The submitted director or member information must be for the director or member who undertook the Sworn Statement.
- Name and registration number of the company or close corporation for whom the Form CoR123.1 is submitted or filed.
- Public Interest (PI) Score break down and total (as indicated in Companies Regulation 26(2)).
- Primary business activity (industry as per Standard Industrial Classification (SIC) Code version 7 issued by SARS) undertaken in the current financial year.
- Main place of business where the majority of the administration of the company or close corporation was undertaken in the current financial year.

In addition, the below documents must be uploaded on New E-Services with the above information:

- Sworn statement which contains *inter alia* the following information:
 - Full name and Surname of person undertaking the sworn statement.
 - Reasons for resolution to start business rescue proceedings.
 - Clear indication as to the causes of financial distress. It is insufficient, for example to state, that financial distress is due to cash flow challenges. The Sworn Statement must clearly state how the cash flow or cause of financial distress occurred, and how it impacted the operations of the company or close corporation.
 - Preliminary plan to address the financial distress.
 - All legal proceedings the company or close corporation is involved in (especially proceedings against the company or close corporation), the nature of such legal proceedings and the status thereof.
(If the company or close corporation is not involved in any legal proceedings such must be indicated as well).

- Resolution commencing business rescue which clearly indicates:
 - The date the resolution occurred.
 - The name and registration number of company or close corporation.
 - That the company or close corporation is financially distressed.
 - That there is a reasonable prospect to rescue the company or close corporation.
 - The active directors or members who resolved to commence business rescue proceedings, must be identifiable and must have signed the resolution either physically or electronically (electronically includes round robin).
 - That majority (51% or more) of the active directors or members resolved to commence business rescue proceedings.

Note:

- The Commissioner of Oaths must be clearly identifiable (Name, Surname, Designation) and traceable (address).
- The date of filing or effective date of commencement of business rescue proceedings will be the date the relevant information was confirmed as correct by a team member of the CIPC, once submitted via New E-Services. Therefore, mere submission of the information and required documents, does not constitute filing. CIPC will confirm the commencement of business rescue proceedings and the effective date of the proceedings, upon the issuing of a confirmation letter which *inter alia* indicates the date of submission and effective date of business rescue proceedings.



In the case of a court order commencing business rescue proceedings, the company, close corporation, or interim business rescue practitioner will be required to submit the following information on New E-Services:

- Effective date is the date the court made the order for commencement of the business rescue proceedings.
- Name and registration number of the company or close corporation for which the information is being submitted.
- Primary business activities (industry as per SIC Code version 7 issued by SARS) undertaken in the current financial year.
- Main place of business where the majority of the administration of the company or close corporation was undertaken in the current financial year.

Note:

- The court order must contain the date of the order and must be signed and dated by the Registrar of the High Court.
- The effective date of the commencement of the business rescue proceedings will be the date of the court order.

Part B: Business Rescue Status Report (Form CoR125.1):

Documents to be submitted to businessrescue@cipc.co.za:

- CoR125.1 (duly completed including customer code and signature of the appointed Business Rescue Practitioner); and
- Progress report on the progress of the business rescue proceedings as required in terms of section 132(3) of the Act.

Part C: Notice of Termination of Business Rescue Proceedings (Form CoR125.2)

Documents to be submitted to 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.

The following confirmations for terminations shall be required depending on the indicated ground:

- A termination on the ground that there is no reasonable prospect to rescue the company or close corporation, the filing of the relevant court order that the business rescue proceedings have been discontinued and the company or close corporation has been placed into provisional or final liquidation as per section 132(2)(a)(ii) read with section 141(2)(a)(i) and (ii) of the Act.
- A termination on the ground that there is no reasonable grounds to believe that the company is financially distressed, and the business rescue process was confirmed by court order in terms of section 130 or initiated by an application to court in terms of section 131, a court order confirming the termination of the business rescue proceedings as per section 141(2)(b)(i) of the Act.
- A termination on the ground that the business rescue plan was not adopted as per section 153(5) of the Act and no further action was taken, minutes of the meeting confirming the outcome of such meeting.

Part D: Notice of Substantial Implementation of Business Rescue Plan (Form CoR125.3):

Documents to be submitted to businessrescue@cipc.co.za:

- CoR125.3 (duly completed including customer code and signature of the appointed business rescue practitioner); and
- Public Interest (PI) Score breakdown and total PI Score (as indicated in Companies Regulation 26(2)) as at end of the implementation of the business rescue plan.

Part E: Court orders relating to discontinuation of business rescue proceedings:

Court orders relating to the discontinuation or setting aside of business rescue proceedings must be submitted to businessrescue@cipc.co.za or alternatively corporatelegalservices@cipc.co.za.

Court orders should be accompanied by a covering letter / e-mail indicating the contact details and customer code of the person submitting the court order to CIPC.

Yours sincerely,



Adv R Voller
Commissioner: CIPC

28 /7 /2021