

(3 November 2017 – to date)

COMPANIES ACT 71 OF 2008

(Gazette No. 32121, Notice No. 421, dated 9 April 2009. Commencement date: 1 May 2011. [Proc. No. R32, Gazette No. 34239, dated 26 April 2011] – with the exception of section 11(1)(a)(ii) and (iii) which shall come into operation three years from the date of commencement of this Act)

PRACTICE NOTE 3 OF 2014 BUSINESS RESCUE FILING PROCEDURE

*Government Notice 1210 in Government Gazette 41224 dated 3 November 2017. Commencement date:
3 November 2017.*

This practice note is issued in terms of Regulation 4 of the Companies Regulations 2011 and is applicable to Business Rescue filings by Companies and Close Corporations.

The following forms and supporting documents are required by the Companies and Intellectual Property Commission (CIPC) regarding business rescue proceedings. All applications stated below must be submitted via e-mail to businessrescue@cipc.co.za.

Notice to Start Business Rescue Proceedings (Form CoR123.1):

Documents to be submitted:

- CoR123.1 (duly completed including customer code and signature of an active director/member as per the CIPC register);
- Certified ID copy of the owner of the customer code;
- Certified ID copy of the director/member undertaking the sworn statement;
- Sworn statement which contains *inter alia* the following information:
 - Full name, surname and ID number of person undertaking the sworn statement;
 - Reasons for resolution to start business rescue proceedings;
 - Physical address where most of the business activities in the current financial year were undertaken; and

Prepared by:

- 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);

- Letter from the business on its letter head stating:
 - PI Score break down and total (as indicated in Companies Regulation 26(2));
 - Primary business activities (industry) undertaken in the current financial year; and
 - Nomination of Business Rescue Practitioner (BRP) with declaration of his independence
- Resolution by the company or close corporation to start business rescue; and
- Letter from the nominated BRP declaring his/her:
 - Capacity to accept the new nomination;
 - Independence from the business; and
 - Not disqualified as prescribed in the Act.

It should be noted that the CoR123.2 cannot be filed together with the CoR123.1. Confirmation of the filing of the CoR123.1 by CIPC will enable the filing of the CoR123.2.

It should be noted further that the date of filing will be the date the minimum legal requirements, completed CoR123.1, sworn statement and resolution are submitted to the CIPC.

Business Rescue Status Report (Form CoR125.1):

Documents to be submitted:

- CoR125.1 (duly completed including customer code and signature of the appointed Business Rescue Practitioner); and
- Progress report which can be in a form of an attachment to the CoR125.1 (optional).

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

Prepared by:

Documents to be submitted:

- CoR125.2 (duly completed including customer code and signature of the appointed business rescue practitioner); and
- Indication by the practitioner, either on a separate letterhead or CoR125.2 itself, of the grounds or circumstances for the termination of the business rescue proceedings e.g. the business rescue plan was not approved and no further action is going to be taken by the practitioner or an affected person, the practitioner is intending to apply to court to start liquidation proceedings since there is no reasonable prospect for the entity to be rescued or, the entity is not financially distressed as initially understood.

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

Documents to be submitted:

- 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.

Court orders relating to business rescue proceedings (including liquidation) and business rescue practitioners:

All court orders relating to business rescue proceedings and BR practitioners must be submitted to businessrescue@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,

(Signed)

Ms. A Ludin

CIPC: Commissioner

22/7/2014