

PRACTICE NOTE 3 OF 2019

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 in its entirety. This practice note is applicable to companies and close corporation Business Rescue filings and shall take effect on 1 October 2019.

The following forms and supporting documents are required by the Companies and Intellectual Property Commission (CIPC) when applying for business rescue proceedings and filing documents relating to the proceedings itself. 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
 - 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 as per SIC Code version 7 issued by SARS) 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 BRP to-be 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 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 on the progress of the business rescue proceedings as required in terms of section 132(3) of the Companies Act, 71 of 2008 ("the Act").

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

Documents to be submitted: -

- 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 confirmation to termination 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 the company or close corporation is not financially distressed, and such termination is filed after three months of commencement of the business rescue proceedings, the reason(s) as to why it took longer than three months to come to such conclusion and to file the CoR125.2.
- A termination on the ground that the business rescue plan was not adopted as per section 153 of the Act, minutes of the meeting confirming the outcome of such meeting.

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 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
____ / ____ /2019