

# **COMPANIES REGULATIONS, 2011**

**In terms of section 223, and Item 14 of Schedule 5, of the Companies Act, 2008 (Act No. 71 of 2008), the Minister of Trade and Industry publishes the following regulations relating to the functions of the Companies Commission, the Takeover Regulation Panel and the Companies Tribunal, and other matters relating to the regulation of companies, to take effect at the time that the Companies Act, 2008 takes effect.**

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Chapter 6 - Business Rescue : Part A – Business Rescue Proceedings

Regulation 123

## Chapter 6 - Business Rescue

### Part A – Business Rescue Proceedings

#### 123. Notices to be issued by a company concerning its business rescue proceedings

*See: s. 129 (3), (4)(b) and (7), and s. 131 (8)*

- (1) A Notice of Commencement of Business Rescue Proceedings, contemplated in section 129, must be in form CoR 123.1, and filed in accordance with section 129, together with a copy of the board resolution to commence business rescue proceedings.
- (2) After filing its Notice of Commencement of Business Rescue Proceedings, the company must publish that Notice as required in section 129 (3)(a), by—
  - (a) delivering a copy of the Notice and resolution to every affected person in accordance with regulation 7; and
  - (b) conspicuously displaying a copy of the Notice—
    - (i) at the registered office of the company, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.
- (3) A Notice of Appointment of a Business Rescue Practitioner by the company, as contemplated in section 129 (3), must be in form CoR 123.2, and filed in accordance with section 129 (4)(a).
- (4) After filing its Notice of Appointment of a Business Rescue Practitioner, the company must publish a copy of that Notice as required in section 129 (4)(b), by either—
  - (a) delivering a copy of the Notice to each affected person in accordance with regulation 7; or
  - (b) informing each affected person of the availability of a copy of the Notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.
- (5) A company whose board is required in terms of section 129 (7) to deliver a notice to affected persons advising that it has not resolved to commence business rescue proceedings, must either—
  - (a) deliver a notice in Form CoR 123.3 to each affected person in accordance with regulation 7; or

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- (b) inform each affected person of the availability of a copy the Notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.
- (6) A company that is placed under business rescue proceedings by a court order in terms of section 131, must notify each affected person, as required by section 131 (8)(b), by—
- (a) delivering a copy of the court order to every affected person in accordance with regulation 7; and
  - (b) conspicuously displaying a copy of the court order—
    - (i) at the registered office of the company, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.

#### **124. Notices to be issued by affected persons concerning court proceedings**

*See s. 130 (3)(b) and 131 (2)(b)*

An applicant in court proceedings who is required, in terms of either section 130 (3)(b) or 131 (2)(b), to notify affected persons that an application has been made to a court, must deliver a copy of the court application, in accordance with regulation 7, to each affected person known to the applicant.

#### **125. Notices to be issued by practitioner concerning business rescue proceedings**

*See s. 132 (3)(b), 141 (2)(b), 144 (3), 145 (1)(a), 146 (a), 151 (2) and 152 (8)*

- (1) A business rescue practitioner who is required by section 132 (3)(b) to report to affected persons on the progress of business rescue proceedings, or required by section 141 (2)(b) to inform the court, the company and affected persons as to the prospects for rescue of the company, must prepare and file a Notice Concerning the Status of Business Rescue Proceedings in Form CoR 125.1, deliver a copy of that Notice to the court and to the company, and must either—
  - (a) deliver a copy of that notice to each affected person in accordance with regulation 7; or
  - (b) inform each affected person of the availability of a copy of that notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.
- (2) A business rescue practitioner must give any notice to which a person is entitled in terms of section 144 (3), 145 (1)(a), 146 (a) or 151 (2), by—

## Chapter 6 - Business Rescue : Part A – Business Rescue Proceedings

## Regulation 125

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- (a) serving any such notice to the head office of a relevant trade union, as required by section 144 (3)(a);
    - (b) either—
      - (i) delivering a copy of any such notice in accordance with regulation 7 to any affected person entitled to receive it, and who has not been served in terms of paragraph (a); or
      - (ii) informing each affected person of the availability of a copy of the notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6; and
    - (c) conspicuously displaying a copy of the notice—
      - (i) at the registered office of the company that is undergoing business rescue proceedings, the principal places of conducting the business activities of the company and any workplace where employees of the company are employed;
      - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
      - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange.
  - (3) A business practitioner must publish a proposed business rescue plan, as required by section 150 (5), by—
    - (a) informing each affected person of the availability of the plan, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6;
    - (b) conspicuously displaying a notice of the availability of the plan—
      - (i) at the registered office of the company that is undergoing business rescue proceedings, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
      - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
      - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange; and
    - (c) providing a free copy of the plan to any affected person who requests such a copy.
  - (4) A Notice of Termination of Business Rescue Proceedings, as contemplated in section 141 (2)(b)(ii), must be in Form CoR 125.2.

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- (5) A Notice of Substantial Implementation of a Business Rescue Plan, as contemplated in section 152 (8), must be in Form CoR 125.3.
- (6) A business rescue practitioner who has filed a Notice of Termination of Business Rescue Proceedings, or a Notice of Substantial Implementation of a Business rescue Plan, must—
- (a) conspicuously display a copy of the notice—
    - (i) at the registered office of the company that is undergoing business rescue proceedings, the principal places of conducting the business activities of the company and at any workplace where employees of the company are employed;
    - (ii) on any website that is maintained by the company and intended to be accessible by affected persons; and
    - (iii) if it is a listed company, on any electronic system maintained by the relevant exchange for the communication and inter-change of information by and among companies listed on that exchange; and
  - (b) either—
    - (i) deliver a copy of the notice to each affected person in accordance with regulation 7; or
    - (ii) inform each affected person of the availability of a copy of that notice, in the manner contemplated in section 6 (11)(b)(ii) and regulation 6.

Chapter 6 - Business Rescue : Part B – Business Rescue Practitioners

Regulation 126

### **Part B – Business Rescue Practitioners**

#### **126. Accreditation of professions and licensing of business rescue practitioners**

*See s. 138 (1)(a), (2) and (3)*

- (1) (a) The Commission must, when considering an application for accreditation of a profession under section 138(1), have due regard to the qualifications and experience that are set as conditions for membership of any such profession, and the ability of such profession to discipline its members and the Commission may revoke any such accreditation if it has reasonable grounds to believe that the profession is no longer able to properly monitor or discipline its members.
- (b) Sub-regulation (2) – (8) do not apply to any person who is eligible to be appointed as a business rescue practitioner in terms of section 138 (1) (a).
- (2) A person may apply to the Commission for a license to serve as a business rescue practitioner, as contemplated in section 138 (1)(b), by filing Form CoR 126.1, together with the fee set out in Table CR 1.
- (3) When considering an application in terms of sub-regulation (2), the Commission may require the applicant to provide—
  - (a) further information relevant to the application; or
  - (b) evidence in support of any facts set out in the application.
- (4) Subject to sub-regulation (5), the Commission may issue a business rescue practitioner's licence to an applicant if the Commission is satisfied that—
  - (a) the applicant is of good character and integrity; and
  - (b) the applicant's education and experience are sufficient to equip the applicant to perform the functions of a business rescue practitioner.
- (5) The Commission must not issue a license to an applicant who is disqualified from appointment as a practitioner in terms of section 138 (1)(c) or (d).
- (6) After considering an application, the Commission must either—
  - (a) issue a license as applied for in Form CoR 126.2;
  - (b) issue a conditional license, on terms that are reasonable having regard to the applicant's education and experience; or
  - (c) refuse to issue the license, by notice in writing to the applicant, setting out the reasons for the refusal.
- (7) The Commission, by notice in writing to a licensee—

- (a) must revoke the license of a person who, after being licensed, becomes disqualified from appointment as a practitioner in terms of section 138 (1)(c) or (d); and
  - (b) may suspend or revoke a license if the Commission has reasonable grounds to believe that the person is no longer qualified to be licensed, or has contravened the conditions of the license.
- (8) An applicant whose application has been refused, or who has been issued a conditional license, or a licensee whose license has been suspended or revoked, may apply to the Tribunal to review the Commission’s decision in the matter, and the Tribunal may partially or entirely confirm or set aside the Commission’s decision.

### 127. Restrictions on practice

*See s. 138 (3)(b)*

- (1) This regulation—
  - (a) applies to any person who is eligible to be appointed as a business rescue practitioner in terms of section 138 (1) (a) and (b), irrespective of whether that eligibility arises in terms of a license issued by the Commission, or otherwise as contemplated in section 138 (1)(a); and
  - (b) is subject to any more restrictive condition imposed by the Commission in terms of regulation 126 (6)(b), in the case of a licensee contemplated in section 138 (1)(b).
- (2) For the purposes of this regulation, and in Regulation 128—
  - (a) **“business turnaround practice”** means activities of a professional nature engaged in before the effective date, that are comparable to the functions of a business rescue practitioner in terms of the Act;
  - (b) Companies undergoing business rescue proceedings are classified in the following three groups:
    - (i) **“large companies”**, being any company, other than a state owned company, whose most recent public interest score, as calculated in terms of regulation 26 (2), is 500 or more;
    - (ii) **“medium companies”** being—
      - (aa) any public company whose most recent public interest score, as calculated in terms of regulation 26 (2), is less than 500; or
      - (bb) any other company, other than a state owned company, whose most recent public interest score, as calculated in terms of regulation 26 (2), is at least 100 but less than 500;; and

## Chapter 6 - Business Rescue : Part B – Business Rescue Practitioners

## Regulation 127

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- (iii) **“small companies”** being any company, other than a state owned or public company, whose most recent public interest score, as calculated in terms of regulation 26 (2), is less than 100; and
- (c) Persons eligible to be appointed as practitioners are classified in the following three groups:
- (i) **“senior practitioner”** means a person who is qualified to be appointed as a business rescue practitioner in terms of section 138 (1) and who, immediately before being appointed as practitioner for a particular company, has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of at least 10 years.
- (ii) **“experienced practitioner”** being a person who is qualified to be appointed as a business rescue practitioner in terms of section 138 (1) and who, immediately before being appointed as practitioner for a particular company, has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of at least 5 years;
- (iii) **“junior practitioner”** means a person who is qualified to be appointed as a business rescue practitioner in terms of section 138 (1) and who, immediately before being appointed as practitioner for a particular company, has either—
- (aa) not previously engaged in business turnaround practice before the effective date of the Act, or acted as a business rescue practitioner in terms of the Act; or
- (bb) has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of less than 5 years.
- (3) A junior practitioner—
- (a) may be appointed as the practitioner for any particular small company; but
- (b) may not be appointed as the practitioner for any medium or large company, or for a state owned company unless as an assistant to an experienced or senior practitioner.
- (4) An experienced practitioner—
- (a) may be appointed as the practitioner for any particular small or medium company; but
- (b) may not be appointed as the practitioner for any large company, or for a state owned company unless as an assistant to a senior practitioner.

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- (5) A senior practitioner may be appointed as the practitioner for any company.

### **128. Tariff of fees for business rescue practitioners**

*See s. 143*

- (1) The basic remuneration of a business rescue practitioner, as contemplated in section 143 (1), to be determined at the time of the appointment of the practitioner by the company, or the court, as the case may be, may not exceed—
- (a) R 1250 per hour, to a maximum of R 15 625 per day, (inclusive of VAT) in the case of a small company.
  - (b) R 1500 per hour, to a maximum of R 18 750 per day, (inclusive of VAT) in the case of a medium company; or
  - (c) R 2000 per hour, to a maximum of R 25 000 per day, (inclusive of VAT) in the case of a large company, or a state owned company.
- (2) Sub-regulation (1) does not apply to, limit or restrict any ‘further remuneration’ for a business rescue practitioner, as contemplated in section 143 (2) to (4).
- (3) In addition to the remuneration determined in accordance with section 143 (1) to (4), and this regulation, a practitioner is entitled to be reimbursed for the actual cost of any disbursement made by the practitioner, or expenses incurred by the practitioner to the extent reasonably necessary to carry out the practitioner’s functions and facilitate the conduct of the company’s business rescue proceedings.