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Business rescue feedback

The Department of Trade and Industry and the Specialist Committee on Company Law hosted a Company Law Symposium on 1 March 2013.

Astrid Ludin, Commissioner of the Companies and Intellectual Properties Commission provided some background on business rescue since the Companies Act, 2008 became effective on 1 May 2011.

Business Rescue is proceedings aimed to facilitate the rehabilitation of a company that is financially distressed by providing for the temporary supervision of the company, and the management of its affairs, business and property, by a business rescue practitioner. It also provides for a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and the development and implementation, if approved, of a business rescue plan to rescue the company by restructuring its business, property, debt, affairs, other liabilities and equity (section 128(1)(b) of the Companies Act, 2008).

A business rescue practitioner is a person or two or more persons jointly appointed, that needs to be appointed by the company that is applying for business rescue.

The CIPC has a role to accredit business rescue practitioners and to receive notices filed by the companies.

As the business rescue practitioner is a new role created in terms of the Companies Act, 2008 a system of interim conditional licenses was introduced to allow for a period of learning by the CIPC and practitioners.

Interim conditional licenses

The process for interim conditional licenses that has been introduced is as follows:

- the financially distressed business that wishes to initiate business rescue may file the necessary notices with the CIPC and identify a prospective practitioner.
- the identified practitioner applies to the CIPC to be issued a conditional license for the specific business rescue project. Such licenses are considered to be on an urgent basis and are issued within 3 days.
- the practitioner are vetted on their first application and the CIPC subsequently assesses whether the specific experience level of the practitioner is appropriate for the specific rescue application.

As at 1 March 2013, the CIPC has licensed a pool of 126 practitioners to conduct 840 business rescue processes. The average turn-around time for these processes is reported as 5.6 months.

Two SAQA accredited training interventions have been developed. The Advanced Short Course in Business Rescue Practice at UNISA, developed with the Law Society of South Africa and the Business Rescue Short Course at the University of Pretoria.

Future plans

The CIPC is planning the following:

- to develop and implement a full accreditation model
- to develop a competency framework for business rescue practitioners
- to enhance available information on companies entering into business rescue as well as compliance monitoring
- to enhance education and awareness of business rescue amongst creditors, businesses and trade unions.