

DEPARTMENT OF TRADE AND INDUSTRY

NO. 1095

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PRACTICE NOTE 01 OF 2018
QUALIFICATIONS OF PRACTITIONERS IN TERMS OF SECTION 138(1)

This practice note is issued in terms of Section 138(1) of the Companies Act of 2008 and is applicable to the licensing of Business Rescue Practitioners for companies and close corporations under supervision.

In 2011 when we commenced with the implementation of the Companies Act of 2008, certain provisions were new in our jurisprudence, *inter alia*, Chapter 6 of the Act which deals with Business Rescue and as a result the provisions of Chapter 6 were introduced in phases in line with the capacity of the organization at that point in time.

Section 138 of the Companies Act reads as follow:

“138 Qualification of practitioners

- (1) A person may be appointed as a business rescue practitioner of a company only if the person –
- (a) is a member in good standing of a legal, accounting or business management profession accredited by the Commission;
 - (b) has been licensed as such by the Commission in terms of subsection (2);
 - (c) is not subject to an order of probation in terms of section 162(7);
 - (d) would not be disqualified from acting as a director of the company in terms of section 69(8);
 - (e) does not have any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; and
 - (f) is not related to a person who has a relationship contemplated in paragraph (d).

Therefore section 138(1)(a)-(f) should be read cumulatively.

Having said the above the Commission didn't accredit the professions as provided for in section 138(1)(a) due to the lack of capacity until December 2015, before then individuals were licensed whether they were members in good standing of a legal, accounting or business management profession or not. This has resulted in an unintended consequence of dual licensing of members in good standing of accredited professional bodies and those who do not belong to accredited bodies.

While there were compelling reasons for the Commission not to stall the process of business rescue thus affording the companies under supervision the protection afforded to them by the Act, however it is clear that the Act does not permit the appointment of individuals who are not members in good standing of legal, accounting or business management professions.

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Therefore henceforth, only individuals who are members in good standing of legal, accounting or business management professions will be licensed as business rescue practitioners and those who have been licensed and are not members of professional bodies their license will come to an end by effluxion of time as indicated in their licenses or affiliate to any of the accredited bodies for a possibility of renewing their licenses.

Adv. Rory Voller
Commissioner

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