

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

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Business Rescue Continuing Professional Development Policy

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BUSINESS RESCUE CPD POLICY

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1. Policy Statement

On 17 May 2019 the Business Rescue Liaison Committee ("BRLC") adopted the Guidelines – CPD programme in terms whereof the BRLC will set out the required CPD for business rescue practitioners.

Business rescue practitioners (BRP's) would be required to take responsibility for undertaking the relevant learning activities that will demonstrate their commitment to lifelong learning and attain the required competencies (abilities, skills and knowledge) for them to practice as BRP's.

2. Definitions and Interpretations

In this policy:

"BRLC"	:	Business Rescue Liaison Committee
"CPD"	:	means continuous professional education.
"the Act"	:	the Companies Act, No 71 of 2008
"Regulations"	:	Companies Regulations 2013
"business rescue cpd"	:	means CPD related to the business rescue field and can include related to all field of business rescue, including, but not limited to accounting, taxation, legislation, human resources

3. Purpose

The purpose of this policy is to:

- Ensure that BRP's are aware of their responsibilities when applying to be business rescue practitioners and future requirements
- Ensure that all stakeholders, professional bodies and BRP's
 - o have a clear and concise understanding of the CPD required to be a registered BRP
 - o understand what will qualify as CPD
 - o understand how CPD will be monitored
 - o understand how non-compliance with the policy will be dealt with.

4. Scope

This policy only applies to BRP's who have applied and are registered with the CIPC as registered business rescue practitioners, it does not matter whether the BRP has in fact been appointed or not to a business rescue.

5. Roles and Responsibilities

The BRLC is the owner of this policy and is responsible for:

- Review of this policy.
- Monitoring the effectiveness of the process.

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The **Accredited Professional Bodies** as accredited in terms of the APPLICATION FOR THE ACCREDITATION OF PROFESSIONAL BODIES FOR BUSINESS RESCUE PRACTITIONERS are responsible for

- Monitoring of the CPD of their relevant members
- Providing opportunities for BRP's to obtain the relevant CPD
- Reporting CPD compliance and non-compliance to the CIPC

The **BRP's** are responsible for:

- Identifying and completion of the relevant CPD
- Keeping records

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- Monitoring of CPD
- Dealing with non-compliance to the policy

6. Background

- 6.1 Section 138 of the Companies Act No. 71 of 2008 (as amended) ("**Act**") provides for the qualifications of Business Rescue Practitioners (BRP).
- 6.2 Regulation 126(1) read in conjunction with Section 138(1):
- 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 professional body, and the ability of such professional body to discipline its members and the Commission may revoke any such accreditation if it has reasonable grounds to believe that the professional body is no longer able to properly monitor or discipline its members.
- 6.3 For the purpose of this application. Section 128(1) (d) of the Act defines "**business rescue practitioner**" as a person appointed, or two or more persons appointed jointly, in terms of Chapter 6 of the Act to oversee a company during business rescue proceedings and "practitioner" has a corresponding meaning.
- 6.4 Section 138(1) provides that a person may be appointed as the 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).
- 6.5 In addition to the accreditation of the professional bodies, the Commission may issue Conditional Licenses to any qualified person to practice in terms of Chapter 6 of the Act and may suspend or withdraw any such license in the prescribed manner.

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6.6 As per the *APPLICATION FOR THE ACCREDITATION OF PROFESSIONAL BODIES FOR BUSINESS RESCUE PRACTITIONERS* section 4 deals with the Applicability of the Applicant to conduct its activities effectively and the CIPC requires the following from the applicant, which is the relevant professional bodies:

4 THE ABILITY OF THE APPLICANT TO CONDUCT ITS ACTIVITIES EFFECTIVELY:

4.2 Every professional body accredited by the Commission whose members are entitled to oversee an entity during business rescue proceedings must demonstrate that;

4.2.1 It has proper mechanisms for ensuring that its members participate in continued professional development and achievement of professional competence;

4.2.2 It has mechanisms to ensure that its members are disciplined where appropriate;

4.2.3 It is, and is likely to continue to be, financially and operationally viable for the foreseen future;

4.2.4 It keeps and maintains a proper register of its members;

4.2.5 It has in place appropriate programmes and structures to ensure that it is actively endeavouring to achieve the objective of being representative of all sectors of the South African population; and

4.2.6 It meets any other requirements that may be determined by the Commission from time to time.

As per 4.2.6 of the accreditation process the Commission has decided to set out a specific CPD requirement for BRP's to be monitored and reported to by the professional bodies.

CPD is a continuation of initial professional development that is the learning and development through which individuals develop the competencies that enable them to perform the role and function for a BRP and is the learning and development that take place after completion of an initial qualification which allows the individual to become a member of the various accredited professional bodies. To continue to be registered and perform the services of a BRP the individual must develop and maintain the competencies, skills and knowledge to act as a BRP.

The BRLC has agreed to an input-based approach which establishes a minimum set of learning activities by means of which individuals can develop and maintain competence.

In view of the above, the BRLC has developed this CPD policy to assist –

- a) Accredited professional bodies to fulfil its obligations in terms of the accreditation process
- b) Individual BRP's in meeting their obligations in terms of competence, skills and knowledge;
- c) Training providers to provide recognisable CPD activities.

7. Policy requirements

The BRLC has adopted the *Input-based approach*

Individuals are required to complete:

- a **minimum** of 20 hours of relevant professional development activity during every calendar year, of which –
 - a **minimum** of 12 (of the above 20 hours) hours must be verifiable; and 4 hours must be directly related to business rescue
 - a **minimum** of 8 hours of learning (verifiable/non-verifiable) must be completed during each of the years.

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Four hours must be directly related to business rescue and the other eight hours can be CPD that is related to the concept / process of business rescue, such as accounting, taxation, management accounting, human resources, management and related labour and other legislation.

Explanation

The input-based approach serves as a proxy for measuring development and maintenance of competence because of the ease of measurement and verification.

This approach is measured in terms of the number of hours which are spent on the relevant learning activity.

Learning activities that do not represent a full hour must be recorded as a portion of an hour with the minimum portion being 0.25 of an hour (15 minutes).

As a test, verifiable CPD can be identified as any activity on which a member can answer 'yes' to the following questions:

- Was the learning activity relevant to your current or future professional development?
- Can you provide verifiable evidence that you undertook the learning activity?

Ultimately, it is the BRP's professional judgement and integrity that determine whether the relevant learning activity will be classified as either verifiable or non-verifiable CPD.

A portion of hours undertaken by members must be verifiable. The concept of verifiability is that the learning activity can be *objectively verified* (i.e. by someone with no direct or vested interest in the learning activity) by a *competent source* (i.e. someone who can provide a true and fair representation that the learning activity has taken place). Although the list below provides examples (list is not exhaustive) of activities of what would constitute a verifiable CPD activity, it is ultimately the members' responsibility to determine whether a learning activity can be regarded as verifiable:

- Participation in:
 - courses, conferences, workshops, seminars, events or arm chair discussions (both third party and accredited professional bodies); and
 - in-house or company-specific training;
- Reading CPD verifiable articles in:
 - the *journals / publications* and answering the related questions.
 These questions must be successfully answered in order for this to qualify as verifiable CPD;
- Viewing webinar offerings and answering the related questions
- Attending meetings that contribute to members' current and / or future roles;
- Undertaking committee work (including preparation for meetings) to the extent that learning is gained from this activity;
- Developing systems and processes;
- Publishing articles related to members' professional development or career paths;
- Giving relevant in-house presentations;
- Developing or delivering a course or CPD session in an area related to one's professional responsibilities;
- Undertaking action-based learning (research initiatives);
- Undertaking further formal or professional qualifications or formal studies, for example MBA, Higher Diplomas, Certificates and Master's degrees in a relevant discipline (only the verifiable portion),
 - including contact time with the lecturer and attendance of lectures and tutorials;
 - preparing for and taking professional examinations;
 - undertaking e-learning, on-line and web-based training; and
 - viewing technical DVDs, podcasts, webinars in group or discussion sessions.

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One aspect of verifiable CPD is that the appropriate records and supporting documentation (underlying records) must be accessible should a member be selected for verification of CPD.

Generally, only the initial preparation time and the first time a repetitive activity is performed (e.g. lecturing introductory accounting to multiple classes), constitute CPD. Thereafter incremental learning may be accounted for which relies on the members' professional judgement.

Verifiable CPD does not necessarily require the member to incur costs or spend a significant amount of time on the attendance of courses and seminars. Accredited professional bodies however do provide a series of products and service offerings to its members that could be used for fulfilling CPD requirements. However, as CPD is specific to the individual and is to be relevant to their individual learning needs, individual BRP's have the freedom to acquire their learning from any applicable source that will ensure that they meet their current and future professional development needs.

8. Reporting period

The reporting period will be for one year, from 1 January to 31 December and the first cycle will commence on 1 January 2020.

For a BRP who registered during the year, he/she may apportion the CPD based on the number of months in the year in respect of which he/she was registered as such. Detailed BRP CPD records must be maintained by individual whether on a CPD system or personal records – for example, excel or word. Note that if the BRP is selected for audit, they will be required to provide the record of CPD as well as related evidence.

9. Members who are member of various professional bodies

BRP's might also be members of various professional bodies. CPD will be monitored and reported by the accredited professional body that the BRP has indicated on its registration application with the CIPC as a BRP.

10. Monitoring

The accredited professional body shall undertake a monitoring process to ensure –

- (a) that CPD undertaken is relevant and appropriate to the current and future role of the individual; and
- (b) that appropriate records and supporting documentation are kept.

In order to assess whether BRP's meet the requirements of this policy, monitoring shall take the form of an annual verification of the CPD of a randomly selected sample of all individuals.

Explanation

The onus rests on the individual to provide evidence to demonstrate that competence was developed or maintained. Individuals are responsible for –

- retaining appropriate records and supporting documents related to their CPD activities; and
- providing, on request, verifiable evidence to demonstrate their compliance with the requirements of the CPD policy.

As part of this monitoring process the accredited professional bodies can require individuals to provide evidence of relevant learning activities or verification of the competencies they have developed and maintained through their chosen programmes of CPD activities.

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On an annual basis, the accredited professional bodies will have to verify whether individuals have met the objective of CPD. This will be done by selecting a random sample of their members to review and assess their compliance with the requirements of CPD and review and assess learning plans or other related CPD documents. Individuals who are selected as part of the random sample are required to submit to accredited professional body their reporting documentation as proof of attendance of courses, etc., or completion of the recorded activities by the required date to be provided each year, taking into consideration reporting obligations to the CIPC.

11. Exemptions

Individuals may apply for exemption from the requirements of this policy in exceptional circumstances. To qualify for an exemption, members must not be professionally active.

Explanation

Members apply for exemption by submitting an application with the relevant information. All applications submitted are assessed on a case-by-case basis. Prior to the submission of an application for an exemption from the CPD policy the member must consider the following aspects:

- The member must not be professionally active – i.e. may not carry out any work that is associated with BRP, regardless of whether it is paid or unpaid work; and
- Should be for an extended period of time, i.e. the member does not plan to do so for a significant period of time.

Once the exemption has been granted to the member, this will remain in place until the circumstances for which the exemption was granted are no longer applicable. The onus is on the member to inform the professional body when the circumstances around the granting of the exemption are no longer applicable.

The following is an example of, but not limited to, circumstances for which an exemption may be granted to a member:

- Members who take extended leave from work for family-related reasons; e.g. a member who decides to take family responsibility leave.

12. Reinstatement

Individuals who are re-instated are required to demonstrate that while they were not licensed as a BRP they maintained and developed their professional competencies and could be required to demonstrate this on re- instatement.

Explanation

Should members resume business rescue activities after a significant period during which such activities were not performed, the accredited professional body may require the individual to undertake additional relevant CPD or to provide a plan which sets out in detail how the members will update their knowledge and ensure they can perform their responsibilities competently and with due care.

13. Disciplinary actions and sanctions

Accredited professional bodies shall inform the CIPC of non-compliance with the policy and this information will be taken into account when the licenses are renewed. Where a BRP has not met the requirements of the policy but is in the process of a business rescue the CIPC will not renew the BRP

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license once the business rescue is completed, unless the BRP can show that remedial action has been taken.

Individuals who do not comply with the requirements of this policy shall be referred to the relevant accredited professional body for disciplinary action.

NOTE: accredited professional bodies will institute disciplinary action but not necessarily suspension of membership. CIPC will have to deal with this in terms of renewal of license

14. Conclusion

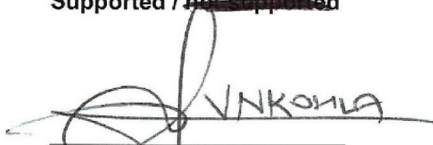
The CIPC and accredited professional bodies cannot provide assurance that all BRP's will provide high quality professional service at all times. Doing so would entail more than merely monitoring professional competence, for high quality professional service entails the application of that knowledge with professional judgement and an objective attitude.

However, despite the inherent limitations it is important to have a CPD programme in place, to make it possible for an individual member to fulfil his/her professional activities and responsibilities and to ensure the maintenance of professional standards, ethics and knowledge.

15. Policy effective date and review

This policy is effective from 1 January 2020 and will be reviewed annually or as required, in order to ensure the terms are current.

Supported / ~~not supported~~



Mr. Vuyani Nkohla

Senior Manager: DMP

Date: 6 / 2 / 2020

Approved / not approved



Adv. Rory Voller

Commissioner: CIPC

Date: 7 / 2 / 2020