

FREQUENTLY ASKED QUESTIONS (FAQS) FOR CREDITORS

This document is for information purposes only and is not intended to replace Chapter 6 of the Companies Act 71 of 2008 (“the Act”) or the Act itself.

BUSINESS RESCUE	
What is business rescue?	<p>A business rescue happens when:</p> <ol style="list-style-type: none">1. A board of directors resolves to place a company into business rescue or2. A court places a company into business rescue; and3. A business rescue practitioner is appointed to provide the temporary supervision of the company and the management of its affairs, business, and property.
What is the objective of a business rescue?	<p>The objective of a business rescue is either to:</p> <ol style="list-style-type: none">1. Restore the company’s performance from a company that is unable to pay its debts when they fall due (financial distress) to one that does (going concern) or2. To wind down a company and obtain a dividend for its creditors that is better than a dividend the creditors would obtain in the event of a liquidation.
What is the primary role of a Business Rescue Practitioner (“BRP”)?	<p>The primary role of a BRP is to develop a business rescue plan that achieves one of the above two objectives of business rescue and table the business rescue plan to creditors to vote on.</p>
Why business rescue over liquidation?	<p>A business rescue may offer various advantages over a liquidation including but not limited to the following:</p> <ol style="list-style-type: none">1. Continued trading with benefits to creditors during business rescue – services and goods acquired post the start of business rescue proceedings are paid from post-commencement finance2. Continued employment for employees, albeit they may be offered revised terms of employment3. Support from lenders and other funders to fund the implementation of a business rescue plan, once it is voted on and adopted by creditors.4. Provide the time and space to maximise the sale of non-core assets and or the business itself as a going concern.5. A business rescue plan may provide for a compromise of the company’s historical debt allowing for its effective restructuring, which improves the ability of the business to continue as a going concern.

THE IMPACT OF BUSINESS RESCUE ON CREDITORS

What happens to the amounts creditors are owed when the company goes into business rescue?

There is a temporary moratorium on the payment of all amounts owing to creditors (alternatively, the **claims** creditors have on the company). Simply, all claims are placed on hold and how they are dealt with will be provided in the business rescue plan.

How do creditors make sure their claims are recognized in the business rescue proceedings?

When business rescue proceedings commence, the BRP will communicate (by way of Notices) to all the company's creditors informing them of the following:

1. The commencement of business rescue proceedings
2. The invitation for creditors to a first meeting of creditors (providing date, time, and agenda)
3. At the 1st meeting the BRP will advise creditors of the process relating to how their claims would be dealt including:
 - a. The claim form and supporting documentation to be submitted
 - b. The manner of submitting claim forms
 - c. Timelines for claims submission
 - d. The process of reconciliation of claims submitted to company records
 - e. The communication for accepted claims
 - f. The process for dealing with disputed or rejected claims

For how long are claims placed on hold?

The business rescue plan to be published will contain proposals from the BRP on how to deal with all amounts owing to creditors and in moratorium

The Plan will detail at least the following:

1. How much will be paid to creditors
2. When the amounts will be paid.

What happens to current contracts providing services/goods to the company?

All goods and services to be provided to the company during the business rescue proceedings are subject to express approval by the BRP.

Once approved, the BRP is responsible for ensuring that all the approved goods and services provided by suppliers and service providers during the business rescue proceedings are paid.

The BRP will send letters of undertaking to continue receiving services/goods from respective suppliers.

THE BUSINESS RESCUE PLAN

<p>What is a business rescue plan?</p>	<p>A business rescue plan (“the Plan”) is a legally binding document prepared by the BRP providing proposals for the effective rescue of the business.</p> <p>Once developed, a BRP may discuss the draft Plan with affected parties after which it will be published.</p>
<p>How is a business rescue plan approved?</p>	<p>Once the Plan has been published, the BRP will publish a notice for the date of the meeting to consider and vote on the Plan.</p> <p>At the meeting to consider and vote on the Plan, the BRP will</p> <ol style="list-style-type: none"> 1. Table the plan to creditors; 2. Allow for any amendments and/ or proposals for adjournment; 3. Allow for employees’ representations; and 4. Conduct the voting of the Plan. <p>The Plan is approved if it is supported by</p> <ol style="list-style-type: none"> 1. More than 75% of the creditors' voting interests, of which 2. 50% of these creditors must be independent creditors.
<p>How are creditors' voting interests calculated?</p>	<p>The voting interest equals the value of the amounts owed to an individual creditor at the time a company goes into business rescue (claim amount) as a percentage of the total amounts owed to all creditors.</p> <p>These amounts are determined by claims that creditors should submit to the company to confirm their amounts owed (details are provided below). In the absence of a submitted and accepted claim, the company records are used as a basis for the claim amount and the voting right.</p> <p>*Therefore, submission of the claim and follow-up of the claims process is very important.</p>
<p>Participation by Creditors</p>	<p>Each creditor has a right to vote to amend, approve, or reject the business rescue plan.</p> <p>Creditors may form a creditors committee and are entitled to consult with the practitioner during the preparation of the business rescue plan by the practitioner.</p>