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The premier professional community dedicated to corporate renewal and turnaround management

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22 September 2009

Mr McDonald Netshitenzhe  
Director: Corporate Law and Policy  
Dti

Dear Sir

**UPDATED APPLICATION TO BE THE REGULATORY AUTHORITY OF CHAPTER 6  
BUSINESS RESCUE PRACTITIONERS**

Following our letter to you on 3 April 2009 to advise you of our intent, and our original application dated 21 August 2009, please find attached our updated application.

The application has been updated followed interaction with TMA International (our certification licensor) and Services SETA (our certification implementation partner).

We have also nominated yourself as a representative of government to serve on the Turnaround Management Governance Board of South Africa.

Please don't hesitate to contact me for any further information and clarification purposes.

Best regards

Yours sincerely

(electronically signed)

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Jan van der Walt

CEO: TMA-SA

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**Turnaround Management Association - Southern Africa (Association incorporated under Section 21)**

**An International Affiliate of the Turnaround Management Association**

**Directors:** Colin Batchelor (*COO*), Lebo Biko, Keith Braatvedt, Andre Bresler (*Cape Regional Director*), Karl Gribnitz, David Harding, Ntombi Langa-Royds (*Chair*), Prof. Anneli Loubser (*Education*), Trevor Murgatroyd, Prof. Marius Pretorius, Dale Pudney, Philip Reynolds (*Secretary*), Jan van der Walt (*CEO*), Frans Van Heerden, Matsotso Vuso (*Treasurer*).

**Registration No.:** 2005/033371/08

**APPLICATION TO BE THE REGULATORY AUTHORITY OF**

**CHAPTER 6 BUSINESS RESCUE PRACTITIONERS**

**BY THE TURNAROUND MANAGEMENT ASSOCIATION – SOUTHERN**

**AFRICA**

**AS THE PROFESSIONAL BODY REPRESENTING TURNAROUND**

**PROFESSIONALS OF ALL DISCIPLINES**

**THROUGH ITS INDEPENDENT TURNAROUND MANAGEMENT**

**GOVERNANCE BOARD OF SOUTH AFRICA**

**AND STANDARDS AND ACADEMIC SUBCOMMITTEES**



22 September 2009

## **Changes to the original application of 21 August 2009**

Changes were prompted primarily by an update in the license agreement requirements regarding the Turnaround Management Governance Board of South Africa of South Africa.

### **Summary of changes:**

- The Turnaround Management Governance Board of South Africa has been renamed as the Turnaround Management Governance Board of South Africa. There are also calls to name the body the Turnaround Management Institute of South Africa (TMISA). A final name can be decided upon later.
- TMA, as the licensor, has relaxed requirements to be a board member on the Turnaround Management Governance Board of South Africa and to be a member of its subcommittees.
- TMA, as the licensor, has firmed up on the experience requirement to become a Certified Turnaround Professional.
- The minimum qualification and experience to become a business rescue practitioner has been redrafted.

## **Executive Summary**

### **Application**

This document serves as the application by the Turnaround Management Association - Southern Africa (TMA-SA) to be appointed as the regulatory authority of business rescue practitioners in terms of Section 138(2) of the Companies Act since it:

- Is committed to achieving the purposes of Chapter 6 with a demonstrated track record of submissions and dti conference attendance. Structures have been set up and nominees to fill the positions have been received to govern a certification process for turnaround professionals as well as to be the regulator of business rescue practitioners.
- Functions predominantly to promote sound principles and good practice of business turnaround and rescue, inter alia because it is affiliated to the 9 000 member international Turnaround Management Association (TMA); and
- Has since 2005 had sufficient resources and adequate administrative procedures and safeguards to enable it to function efficiently and to effectively carry out its functions in terms of Chapter 6.

### **Professional body for turnaround professionals and a certification programme**

TMA-SA is in the process of becoming a professional body for turnaround professionals of all discipline by launching a certification process for turnaround professionals in SA under license from TMA (the international parent body of TMA-SA), and with Services SETA as the implementation partner.

The stratified certification process, which requires different levels of education and experience, as well as exams, provides an ideal platform for minimum qualifications to be admitted as business rescue practitioners.

Signing the license agreement with TMA and further certification implementation with Services SETA is awaiting the decision by dti to (i) appoint TMA-SA as the regulator of business rescue practitioners and (ii) minimum qualifications for business rescue practitioners, since these decisions affect the certification process.

### **Certification and business rescue practitioner regulator structures**

TMA-SA has formed the independent Turnaround Management Governance Board of South Africa (TMGBSA), with Professor Mervyn King as the Chair, and a Standards Subcommittee (admission and disciplinary measures) and an Academic Subcommittee (body of knowledge and exams) to (i) govern turnaround certification matters and (ii) to govern business rescue practitioner regulatory matters. Nominees for positions of all the structures have been received.

The Turnaround Management Governance Board of South Africa is independent from the Board of TMA-SA in the sense that:

- Whilst the Board of TMA-SA appoints members of the initial TMGBSA only, the TMGBSA thereafter becomes a self-perpetuation body i.e. it appoints its members for the following years. Whilst TMA as the licensor requires 50% +1 members of the TMGBSA to be TMA-SA members, the remainder are drawn from industry stakeholders e.g. academics, government, organised labour, etc.
- Only the CEO of the TMGBSA may sit on the TMA-SA board (as Certification Director) and for administrative and financial liaison purposes only. The TMA-SA board is prohibited to instruct or influence the Certification Director regarding certification and business rescue practitioner regulator matters.
- In terms of the license agreement, TMA has a quality control oversight role over the TMGBSA for certification purposes only (not for regulatory matters).

### **Benefit of the Turnaround Management Governance Board of South Africa as the regulator of business rescue practitioners:**

A single body to regulate and certify business rescue practitioners, inclusive of admission and disciplinary action, will avoid duplication in terms of:

- Separate bodies for certification and regulation in South Africa.
- Business rescue practitioners having to pay fees twice to be certified and to be regulated.

### **In this document TMA-SA provides a point of view on:**

- Reasonable conditions imposed by the Minister to be the regulator of business rescue practitioners.
- Minimum qualifications for business rescue practitioners and certification (we recommend a degree from an accredited university as the minimum qualification, but that a business rescue practitioner should also have certain experience as required by the regulator of business rescue practitioners).
- Regulations prescribing procedures to be followed by the Turnaround Management Governance Board of South Africa.
- A tariff of fees (we recommend a negotiable rather than a fixed tariff of fees).

### **Contact information**

For clarification of information in this document, please contact Jan van der Walt, the CEO of TMA-SA, at:

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- [jan@corporate-renewal.co.za](mailto:jan@corporate-renewal.co.za).

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## **1. TMA-SA and TMA**

### **1.1 The organisation**

Established in 1988, the Turnaround Management Association (TMA) has nearly 9,000 members in 45 chapters, including 32 in North America , and one each in Australia, Brazil, the Czech Republic, Finland, France, Germany, Italy, Japan, the Netherlands, Southern Africa, Spain, Taiwan and the UK, with a chapter in formation in China. As such, it is the premier international organisation for turnaround professionals.

The Turnaround Management Association - Southern Africa (TMA-SA), a non-profit association incorporated under Section 21, has been an international affiliate of TMA since 2005 under a license agreement. The Articles of Association and By-laws of TMA-SA, as well as its licensing agreement with TMA are available on request.

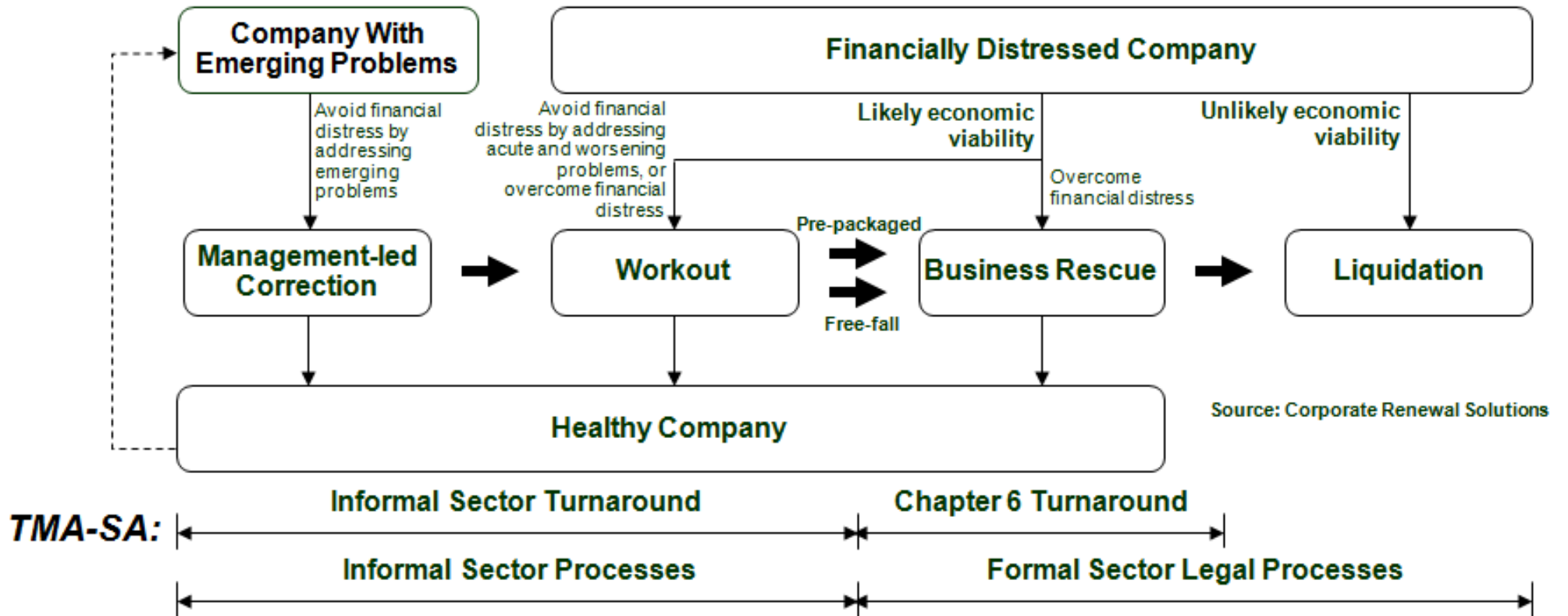
TMA-SA represents the Southern African region - South Africa, Swaziland, Lesotho, Namibia, Angola, Zimbabwe and Mozambique.

### **1.2 Mission**

The mission of TMA-SA is:

- Networking, capturing and disseminating knowledge about turnaround and the turnaround industry, education, and promotion of the turnaround industry and its members.
- With the turnaround industry's business domain that of management correction, workout and business rescue (judicial management at present and Chapter 6 once the new Companies Act has been implemented) as diagrammatically illustrated in Figure 1 below. Note that TMA-SA's business domain does not include insolvency or liquidations.

Figure 1: TMA-SA and turnaround in the informal sector and formal Chapter 6 sector



- 1) In financial distress if commercially or technically insolvent in the immediately ensuing 6 months – Section 128(1)(f) of the Companies Act.
- 2) A compromise with creditors is an alternative procedure to business rescue irrespective of whether it is in financial distress – Section 155 of the Companies Act.

TMA-SA members share in invaluable turnaround knowledge exchange and networking with TMA. In future, this will include practical business rescue/reorganisation knowledge exchange with regard to the Chapter 11 in the USA that is applicable to the SA Chapter 6.

Turnaround in the informal sector will continue after implementation of Chapter 6 has replaced the current ineffective judicial management since management correction and workout represent proactive action to prevent financial distress; and workout, sale, merger and Chapter 6 compromise with creditors represent alternatives to Chapter 6 business rescue to overcome financial distress.

### **1.3 Members**

Membership of TMA-SA does not confer any qualification on a member. A member must become certified in terms of the planned turnaround professional certification programme to hold a turnaround designation or qualification.

Membership of TMA-SA is open to turnaround professionals of all disciplines:

- Corporate turnaround managers and interim turnaround managers.
- Service providers to financially distressed companies:
  - Turnaround practitioners and consultants.
  - Judicial managers.
  - Future Chapter 6 business rescue practitioners.
  - Advisors including attorneys, accountants and financial advisors.
- Financiers of financially distressed companies:
  - Workout / restructuring executives of lenders e.g. banks and Development Fund Institutions such as the IDC.
  - Investment executives of institutional investors, venture capital and private equity investors, Development Fund Institutions, etc.

Many TMA-SA members are also members of the SA Institute of Chartered Accountants (SAICA), the Law Society of SA (LSSA), Banking Association of SA (BASA), and Institute of Directors (IoD).

Most present turnaround practitioners and consultants, and many more members of TMA-SA from other disciplines, are expected to become business rescue practitioners too when Chapter 6 is implemented.

TMA-SA presently has 100 members. Many more free-ride on TMA-SA's present open website at [www.tma-sa.com](http://www.tma-sa.com) and attend its monthly networking and educational events. Membership is expected to increase dramatically once its turnaround certification programme is launched, and especially if TMA-SA is appointed as the regulatory authority of business rescue practitioners.

#### **1.4 New governance structures**

To give effect to (i) certification of turnaround professionals of disciplines, (ii) becoming a professional body for turnaround professionals of all disciplines, and (iii) becoming the regulator of business rescue practitioners, TMA-SA has formed an independent Turnaround Management Governance Board of South Africa with Professor Mervyn King as the chair, and supported by a Standards Subcommittee (admission and disciplinary measures) and an Academic Subcommittee (body of knowledge and exams). These structures are discussed in detail in Section 3 below.

#### **1.5 Certification of turnaround professionals of all disciplines**

In keeping with its mission of educating turnaround professionals of all disciplines, TMA-SA is in the process of launching a turnaround professional certification programme in SA. To this end, TMA-SA has already in principle concluded a license agreement with TMA. Signing of the license agreement is pending a decision by dti to appoint TMA-SA as the regulator of business rescue practitioners since this decision impacts on the certification programme.

Services SETA has agreed to be the implementation partner for the turnaround professional certification programme and also awaits the final certification programme pending dti's decision on regulation.

In terms of this license agreement, the body of knowledge, inclusive of turnaround management, law and turnaround-related finance/accounting of TMA

will be transferred to TMA-SA, with regular exams made available by TMA to the Turnaround Management Governance Board of South Africa's Academic Subcommittee to ensure that SA exams are of international standard. The Academic Subcommittee will customise the body of knowledge (completely redoing the law component to be reflective of Chapter 6 and other appropriate SA laws) and exams for SA requirements.

The certification programme, discussed in Section 5 below, is for turnaround professionals in both the informal sector (management correction and workout) and formal sector (Chapter 6 business rescue practitioners).

The certification programme consists of a number of professional designations, some of which are qualifications in their own right. It allows for standards inter alia to be admitted to be business rescue practitioners, a code of ethics and disciplinary measures.

### **1.6 Professional body for turnaround professionals of all disciplines**

Turnaround in SA will comply with the four requirements to be a profession: <sup>1</sup>

- **Requirement 1:** Once the certification license agreement with TMA has been concluded, TMA-SA will have a common turnaround body of knowledge, including business rescue, resting on a well-developed, widely accepted theoretical base.

The body of knowledge includes turnaround management, law (including Chapter 6) and turnaround-related finance/accounting, provided under a license agreement from TMA, and customised by the Academic Subcommittee for South African conditions and requirements.

- **Requirement 2:** Once the certification license agreement with TMA has been concluded, TMA-SA will have a system for certifying that individuals have mastered that body of knowledge through awarding qualifications and

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<sup>1</sup> Requirements to be a profession are as stipulated by Professor Rakesh Khurana of Harvard Business School.

designations based on education, experience and examination, and for certifying that individuals possess such knowledge before being admitted.

This will be accomplished by the Academic Subcommittee setting, administering and marking exams, and the Standards Subcommittee governing admission criteria. Certain qualifications and designations will allow holders to be admitted as business rescue practitioners (see Section 5 below).

- **Requirement 3:** TMA-SA already has a Code of Ethics, with provisions for monitoring individual compliance with the Code of Ethics and a system of sanctions for enforcing it. Once the license agreement has been concluded, disciplinary action will be taken by the Standards Subcommittee if the Code of Ethics or regulations pertaining to Chapter 6 of the Companies Act are transgressed. Extensive regulations exist for warnings, probation, suspension and revocation of membership.
- **Requirement 4:** TMA-SA has a commitment to use its specialised knowledge for the public good.

*We wish to emphasise that turnaround as a future profession (once its certification programme is in place), and with TMA-SA as its professional body, spans the informal sector (management correction and workout) and the formal Chapter 6 sector as described under Mission in 1.2 above, and represents turnaround professionals from various disciplines as described in Members in 1.3 above.*

*Given this context, it is proposed that certification be open to all turnaround professionals, that TMA-SA be the professional body of all turnaround professionals, but that only turnaround professionals active in the formal sector as business rescue practitioners are regulated.*

*It is important that turnaround professionals in the informal sector not be neglected, since in practice informal sector turnarounds may convert into Chapter 6 business rescues as per Figure 1 above, and many turnaround professionals will practice in both sectors.*

### **1.7 Regulator of business rescue practitioners**

The board of TMA-SA has authorised TMA-SA's mission to be expanded to become the regulator of business rescue practitioners in terms of Chapter 6 of the Companies Act No. 71 of 2008. The application to be appointed is contained in Section 2 below.

## **2. TMA-SA as the regulatory authority of the practice of persons as business rescue practitioners**

TMA-SA, as the body representing turnaround as a profession, hereby applies to the Minister to be appointed as the regulatory authority of the practice of persons as business rescue practitioners in terms of Section 138(2) of the Companies Act no. 71 of 2008.

TMA-SA, through its Turnaround Management Governance Board of South Africa and the Standards and Academic Subcommittees of the latter, qualifies as follows:

### **2.1 Member in good standing of a profession subject to regulation by a regulatory authority prescribed by the Minister**

Section 138(1)(a) of the Companies Act: A person may be appointed as a practitioner of a company only if the person *is a member in good standing of a profession subject to regulation by a regulatory authority prescribed by the Minister* in terms of section 138(2) of the Companies Act.

Turnaround, with TMA-SA as the professional body, is a profession with **its members qualifying as business rescue practitioner subject to regulation** once TMA-SA has been appointed by the Minister as the regulatory authority of business rescue practitioners.

### **2.2 TMA-SA is committed to achieving the purposes of Chapter 6**

Section 138(2)(a) of the Companies Act: TMA-SA *is committed to achieving the purposes of Chapter 6*.

TMA-SA, as an international affiliate of TMA, was formed in 2005 for the specific purposes of being an association for turnaround professionals of all disciplines, and as per its letter to dti dated 14 April 2009, to become a professional body for turnaround professionals of all disciplines, and the regulator of business rescue practitioners.

TMA-SA's commitment to Chapter 6 is further illustrated by (i) its submissions to dti regarding past version of Chapter 6 of the Companies Bill, (ii) its participation

in the dti workshop on Chapter 6, (iii) its planned certification programme for turnaround professionals, including business rescue practitioners, and (iv) its new governance structures for certification and regulatory matters.

### **2.3 TMA-SA functions predominantly to promote sound principles and good practice of business turnaround and rescue**

Section 138(2)(b) of the Companies Act: TMA-SA *functions predominantly to promote sound principles and good practice of business turnaround and rescue.*

This is achieved through providing networking, knowledge about turnaround and business rescue and the turnaround and business rescue industries, education about turnaround and business rescue, certification of members, and promotion of the turnaround and business rescue industries and the services of its members as described in Mission in Section 1.2 above.

It is noteworthy that Chapter business rescue procedures essentially represent a codification of informal sector turnaround procedures (investigation of the affairs of the company, development of a business rescue plan, creditor committees, employee committees, other aspects of stakeholder management, voting to adopt the business rescue plan, implementation of the business rescue plan, etc.) within a legal framework, plus additional requirements e.g. that the practitioner takes over management of the company.

Chapter 6 business rescue therefore equates to formal sector turnaround and the procedures and principles other than legal aspects will not be new to present informal sector turnaround practitioners.

TMA-SA welcomes Chapter 6 business rescue as a replacement for the ineffective judicial management since it mitigates or overcomes the deficiencies of turnaround during workout as follows:

- The moratorium on claims overcomes harassment by creditors whilst providing breathing space for a business rescue plan to be developed.
- The business rescue plan mitigates information asymmetries between debtor and creditor, and amongst creditors.

- Further relief provided by the right to cancel or suspend contracts.
- Voting rules mitigates creditor coordination problems such as holdout and dissenting minority creditors derailing agreements.
- The practitioner and transparent process mitigates negotiation and control asymmetries between debtor and creditor, and amongst creditors.
- A capable practitioner will overcome management and board deficiencies, should they exist.
- Protection of property interests and the rights of all stakeholders, etc.

#### **2.4 TMA-SA has sufficient resources, and adequate administrative procedures and safeguards**

Section 138(2)(c) of the Companies Act: TMA-SA *has sufficient human, financial and operational resources, and adequate administrative procedures and safeguards, to enable it to function efficiently and to effectively carry out its functions in terms of Chapter 6.*

TMA-SA has successfully functioned since 2005 with administrative functions in place. New governance structures to manage certification and regulation are in place, with nominations received and accepted to fill positions, as discussed in Section 3 below (Turnaround Management Governance Board of South Africa and Standards and Academic Subcommittees).

#### **2.5 Reasonable conditions imposed by the Minister**

Section 138(3)(a) of the Companies Act: The Turnaround Management Governance Board of South Africa will accept *reasonable conditions imposed by the Minister in terms of subsection 138(2) with respect to the carrying out of its functions and powers in terms of Chapter 6.*

TMA-SA's point of view on reasonable conditions is contained in Section 4 below.

## **2.6 Regulations prescribing minimum qualifications**

Section 138(3)(b)(i) of the Companies Act: The Turnaround Management Governance Board of South Africa will administer the Minister's regulations prescribing *minimum qualifications for admission of a person to the practice of a business rescue practitioner*.

TMA-SA's point of view on proposed minimum qualifications is contained in Section 5 below.

## **2.7 Regulations prescribing procedures to be followed by TMA-SA**

Section 138(3)(b)(ii) of the Companies Act: TMA-SA will administer the Minister's regulations prescribing *procedures to be followed by TMA-SA in terms of Section 138(2) in carrying out its functions and powers in terms of Chapter 6*.

TMA-SA's point of view on proposed regulations prescribing procedures to be followed is contained in Section 6 below.

## **2.8 Regulations prescribing a tariff of fees and expenses**

Section 143(6) of the Companies Act: The Turnaround Management Governance Board of South Africa will administer the *Minister's regulations prescribing a tariff of fees and expenses that a practitioner is entitled to charge as an amount to the company for the remuneration and expenses of the business rescue practitioner* as per section 143(1) of the Companies Act.

TMA-SA's point of view on a tariff of fees is contained in Section 7 below.

*The amendments to TMA-SA's by-laws to allow for certification and regulation, and the Rules and Regulations for the certification programme is currently being finalised with TMA, and will be available on request once completed.*

### **3. Certification and regulatory governance structures**

#### **3.1 Turnaround Management Governance Board of South Africa (TMGBSA)**

The Board of TMA-SA has created an independent Turnaround Management Governance Board of South Africa, with an Academic and a Standards Subcommittee.

The Turnaround Management Governance Board of South Africa will consist of established leaders and respected individuals in the turnaround and business rescue fields such as turnaround professionals, workout lenders from banks, attorneys, and judges. Additionally, other stakeholders in turnaround certification may also form part of the TMGBSA as representatives from other constituencies e.g. academics, government and organised labour.

The Board of TMA-SA appoints only the initial 15-person Turnaround Management Governance Board of South Africa and its officers (nominations received are listed below). After the initial terms have elapsed, the Turnaround Management Governance Board of South Africa become self-perpetuating by appointing its Chairperson and Deputy Chairpersons (which will be TMA-SA members), as well as new board members for the next year, provided 50% plus one of board members are TMA-SA members.

*Should the Minister wish to approve appointments to the TMGBSA, or make nominations, to ensure representation of all stakeholders and the B-BBEE imperative, TMA-SA is open for discussions to arrive at a practical dispensation that satisfies the license requirements of TMA.*

All turnaround practitioners and advisors who are initial TMGBSA members must agree to become certified as soon as feasible.

The Turnaround Management Governance Board of South Africa appoints its Standards and Academic Subcommittees.

The CEO of the TMGBSA functions as the Certification Director on the Board of TMA-SA for purposes of administrative and financial liaison matters. To ensure independence of the TMGBSA (i) no other person, bar any transitional arrangements, may be a member of both the TMA-SA board, and the TMGBSA and its subcommittees, and (ii) the board of TMA-SA may not instruct or influence the Certification Director regarding certification or regulatory matters.

The Certification Oversight Board of TMA:

- Oversees the Turnaround Management Governance Board of South Africa for certification purposes relating to the following qualifications and designations in terms of the licence agreement between TMA and TMA-SA:
  - Certified Turnaround Professional (CTP).
  - Honourary Certified Turnaround Professional (H-CTP).
  - Certified Turnaround Professional – Designate (CTP-D).
  - Certified Turnaround Professional – Designate (Business rescue) (CTP-DBR).
- Does not oversee the Turnaround Management Governance Board of South Africa for certification purposes relating to the following qualifications and designations:
  - Turnaround Professional Candidate Level 1 (TP-C1).
  - Turnaround Professional Candidate Level 2 (TP-C2).
  - Associate Turnaround Professional (ATP).
  - Associate Turnaround Professional – Designate (ATP-D).
- Does not oversee the Turnaround Management Governance Board of South Africa for purposes of regulating business rescue practitioners.

The Association of Business Administrators of South Africa (ABASA) was created in 2004 on request of the Department of Justice to regulate business rescue practitioners, and commendable preparatory work was done in this regard.

ABASA, however, duplicated structures with the Turnaround Management Governance Board of South Africa of TMA-SA as the vehicle for certification of turnaround professionals. To avoid duplication, and since TMA could only license its certification programme to TMA-SA and not to ABASA, the Board of ABASA agreed on 30 March 2009 to merge its member into the Turnaround Management Governance Board of South Africa and its subcommittees. Ex-ABASA member nominations for the Turnaround Management Governance Board of South Africa and its subcommittees are listed below.

### **3.1.1 Functions of the Turnaround Management Governance Board of South Africa**

- Administer the regulations of the Minister regarding business rescue practitioners.
- Define and administer standards of education, experience and professional conduct.
- Review and approve the format of all application and reference forms.
- Determine whether an applicant has met standards for certification.
- Grant waivers or modifications of specific certification requirements for good causes.
- Hear and resolve complaints relating to a certified professional's failure to maintain standards of professional performance.
- Decide all requests for reconsideration of denials of or revocations of certification.
- Review and approve or deny continuing professional education credit requests that fall outside normal established parameters.
- Annually review certified professionals who fail to meet requirements.

### **3.1.2 Nominated members of the Turnaround Management Governance Board of South Africa**

The license agreement with TMA originally stipulated that 2/3 of the Turnaround Management Governance Board of South Africa be very experienced turnaround professionals that are members of TMA-SA. After negotiation with TMA, the requirement has been decreased to 50% plus one to be TMA-SA members to allow for other stakeholders in turnaround and business rescue to be represented.

#### **3.1.2.1 Chairs and deputy chairs**

All must be TMA-SA members.

- Chairperson nominee: Professor Mervyn King

Chairman of Brait, a Senior Counsel and former Judge of the Supreme Court of South Africa. He has chaired and been a director of several companies listed on the Johannesburg Stock Exchange, including First National Bank Holdings Limited, Capital Alliance Ltd, Metro Cash & Carry Ltd and Frame Group Holdings. In South Africa, he is Professor Extraordinaire at the University of South Africa on Corporate Citizenship, Chairman of the King Committee on Corporate Governance in South Africa, President of the Advertising Standards Authority, First Vice President of the Institute of Directors Southern Africa, a member of the Securities Regulation Panel which oversees all mergers and acquisitions in South Africa, and Chairman of the Appeal Committee of the United Cricket Board of South Africa. He was the first President of the Commonwealth Association of Corporate Governance, a former Governor of the International Corporate Governance Network, the South African representative of the International Chamber of Commerce International Court of Arbitration in Paris and Chairman of the Board of Governors of the Wits University Foundation. He is a member of the Private Sector Advisory Group to the World Bank on Corporate Governance, a member

of the international advisory boards of Stern Stewart of the USA, Tomorrow's Company of the United Kingdom and the Central European Corporate Governance Association. He is the Chairman of the Asian Centre of Corporate Governance, Chairman of the United Nations Committee on Governance and oversight and Chairman of the Global Reporting Initiative. He is presently Chairman of the Automobile Association of South Africa, Strate, the settlement arm of trades in equities and other instruments in South Africa, Brait Societe Anonyme listed in Luxembourg, London and Johannesburg and a director of JD Group listed in Johannesburg. He has consulted, advised and spoken on legal, business and corporate governance issues in 32 countries and has received many awards.

- Deputy Chairperson 1 appointment: David Harding (turnaround practitioner at Corporate Renewal Solutions and present TMA-SA Board member). Appointed by the TMA-SA Board on 19 March 2009.
- Deputy Chairperson 2 nominees: Themba September (Senior executive at Ingerop, ex-ABASA), or Patrick Daly (practising attorney at Daly Maqubela Oliphant, ex-ABASA, King III Business Rescue Task Force, LSSA).

### **3.1.2.2 Other TMGBSA members**

- Nominee: Themba September (Senior executive at Ingerop, ex-ABASA member) or Patrick Daly (practising attorney at Daly Maqubela Oliphant, ex-ABASA member, King III Business Rescue Task Force member, member of the Law Society) depending on who is not elected as Deputy Chairperson.
- Nominee: Ntombi Langa-Royds (management consultant at Nthake Consultants, 2009 Chair of TMA-SA).
- Appointment: Professor Anneli Loubser (a professor of law at UNISA, King III Business Rescue Task Force member, doctoral student in law, present

TMA-SA Board member, a statutory position on the TMGBSA as Chair of the Academic Subcommittee in terms of certification by-laws).

- Nominee: Judge Ralph Zulman (retired judge, King III Business Rescue Task Force member).
- Nominee: Danile Nyalunga (Head of Workout and Restructuring, IDC).
- Nominee: A nominee from organised labour is awaited.
- Nominee: A nominee of government is awaited e.g. Mr. McDonald Netshitenzhe, Director: Corporate Law and Policy at the dti.
- CEO: Jan van der Walt (a turnaround practitioner at Corporate Renewal Solutions, ex-ABASA member, King III Business Rescue Task Force member, member of the Institute of Directors, doctoral student in business rescue, presently on the TMA-SA Board as the 2009 CEO and Certification Director in terms of certification by-laws, member of the Academic Subcommittee and Chair of the Standards Subcommittee). Appointed by the TMA-SA Board on 19 March 2009.
- Secretary: Philip Reynolds (a turnaround practitioner at Deloitte, SAICA member, presently on the TMA-SA Board as Secretary). Appointed by the TMA-SA Board on 19 March 2009.
- Nominee: Karl Gribnitz (a turnaround practitioner and turnaround financier at Gandalf Trust, presently on the TMA-SA Board).
- Nominee: Gert Holtzhauzen (Banking executive at Nedbank, Banking Association of SA member, AIPSA, past Chair of TMA-SA).
- Nominee: John Sherrat (turnaround practitioner at JWS Advisors, an experienced corporate turnaround manager who established a certification programme with Services SETA before).
- Nominees: One of Alistair Moffat or Lindsay Robertson (both turnaround practitioner at FRM Strategies), with the other as Alternate Director (permission for Alternates are still to be obtained).

Note that whilst the TMGBSA is limited to 15 directors, a total of 16 nominations have been received.

### **Stakeholder representation**

In the nominations above, most stakeholders in Chapter 6 business rescue are represented:

- Boards of directors: Professor Mervyn King (who also represents the Institute of Directors).
- Affected persons in terms of Chapter 6:
  - Shareholders: Professor Mervyn King (who also represents the Institute of Directors).
  - Creditors: secured creditors are represented by Gert Holtzhauzen of Nedbank and the Banking Association. Unsecured creditors are not represented.
  - Employees/trade unions: Provision is made for a representative of organised labour.
  - Government: Provision is made for a representative of organised labour e.g. Mr. McDonald Netshitenzhe, Director: Corporate Law and Policy at the dti.
- Business rescue practitioners: A number of nominees will qualify as business rescue practitioners in terms of the programme's certification programme.

## **3.2 Standards Subcommittee**

### **3.2.1 Functions of the Standards subcommittee**

- Reviewing, approving, rejecting or deferring the applications of all applicants for certification, and reviewing inquiries and appeals regarding certification, in accordance with such rules and regulations relating to

granting and maintaining certification as the Turnaround Management Governance Board of South Africa may adopt.

- Establishing and maintaining ethical and other professional standards for turnaround professionals.
- Investigating confidentially any allegation that a turnaround professional has violated the standards so established.
- Implementing confidentially appropriate disciplinary measures against turnaround professionals found to have violated those standards.

### **3.2.2 Nominated members of the Standards Subcommittee**

Two thirds must be TMA-SA members.

- Chair: Jan van der Walt. Appointed by the TMA-SA Board on 19 March 2009.<sup>2</sup>
- Appointed: Philip Reynolds (a turnaround practitioner at Deloitte, SAICA member, presently on the TMA-SA Board as Secretary). Appointed by the TMA-SA Board on 19 March 2009.<sup>3</sup>
- Nominee: Dale Pudney (a turnaround practitioner at Dale Pudney & Associates, presently a TMA-SA Board member).
- Nominee: Garrath Rosslee (a turnaround practitioner at One World Consulting, ex-TMA-SA Board member). With his HR background, Garrath is ideal for this position.
- Nominee: Jill Oliphant (a practising attorney at Daly Maqubela Oliphant, ex-ABASA member, member of the Law Society).

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<sup>2</sup> Technically, in terms of the latest certification by-laws, the TMGBSA should make this appointment.

<sup>3</sup> Technically, in terms of the latest certification by-laws, the TMGBSA should make this appointment.

- Nominee: John Evans (a turnaround practitioner at RS Advisors, ex-ABASA member, SAICA member).
- Nominee: Riza Moosa (a practising attorney at Deneys Reitz Attorneys. He has not yet accepted his nomination.
- Further nominations are awaited.

Ideally, membership of this subcommittee should represent a spread of:

- The Turnaround Management Association - Southern Africa (TMA-SA).
- Banking Association of South Africa (BASA).
- Law Society of South Africa (LSSA).
- South African Institute of Chartered Accountants (SAICA).

with solid representation by Black persons (where are the volunteers with turnaround experience?).

### **3.3 Academic Subcommittee**

Two thirds must be TMA-SA members.

#### **3.3.1 Functions of the Academic subcommittee**

- Preparing for approval by the Standards Subcommittee a South African body of knowledge required for certification, customised from the body of knowledge of TMA.
- Preparing, administering and scoring South African certification examinations, with reference to the examinations made available by TMA.
- Administering the continuing education and recertification programmes.

#### **3.3.2 Nominated members of the Academic Subcommittee**

- Chairperson:
  - Professor Anneli Loubser (Professor in law at UNISA, King III Business Rescue Task Force member, doctoral student in law,

present TMA-SA Board member, a statutory position on the TMGBSA as Chair of the Academic Subcommittee in terms of certification by-laws). Appointed by the TMA-SA Board on 19 March 2009.<sup>4</sup>

- Law:
  - Professor Anneli Loubser (see above).
  - Nominee: Professor David Burdette (Professor in law at Nottingham Trent University, ex-ABASA member, King III Business Rescue Task Force member, ex-TMA-SA Board member).
  - Nominee: Lawrence Ngobeni (The Insolvency Firm, ex-ABASA, King III Business Rescue Task Force, doctoral student in law).
- Turnaround Management:
  - Nominee: Professor Marius Pretorius (Associate Professor in Strategy, Leadership and Turnaround in the Department of Business Management, University of Pretoria).
  - Nominee: Frans van Heerden (Associate director of and lecturer at Wits Business School).
- Finance and Accounting:
  - Nominee: Professor Ebo Oost (UP).
  - Nominee: Christiaan Lamprecht (USB).
- General:
  - Nominee: Professor Neil Harvey (Seidman College of Business, Grand Valley State University in Michigan, founder member of TMA-SA). He and Frans van Heerden have convened and lectured at the Managing a Turnaround and Corporate Renewal programme at Wits Business School from 2002 to date.
  - Nominee: Jan van der Walt (doctoral student in business rescue).

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<sup>4</sup> Technically, in terms of the latest certification by-laws, the TMGBSA should make this appointment.

**4. Point of view of TMA-SA regarding reasonable conditions imposed by the Minister to be the regulator of business rescue practitioners**

TMA-SA will accept any reasonable conditions. The principles below come to mind.

TMA-SA is required to:

- Remain committed to achieving the purposes of Chapter 6 as per Section 138(2)(a) of the Companies Act.
- Continue to function predominantly to promote sound principles and good practice of business turnaround or rescue as per Section 138(2)(b) of the Companies Act.
- Maintain sufficient human sufficient human, financial and operational resources, and adequate administrative procedures and safeguards, to enable it to function efficiently and to effectively carry out its functions in terms of Chapter 6 as per Section 138(2)(c) of the Companies Act.
- Administer the Minister's regulations prescribing minimum qualifications for admission of a person to the practice of a business rescue practitioner as per Section 138(3)(b)(ii) of the Companies Act.
- Administer the Minister's regulations prescribing procedures to be followed by TMA-SA regarding the first 3 points above (TMA-SA's point of view on proposed regulations prescribing procedures to be followed is contained in Section 5 below).

Furthermore, TMA-SA is required to:

- Form regulatory governance structures independent from the Board of Directors of TMA-SA in the form of the Turnaround Management Governance Board of South Africa with Standards and Academic Subcommittees.
- Maintain a body of knowledge on turnaround.

- Maintain a system for certifying that individuals have mastered that body of knowledge through awarding qualifications and designations based on education, experience and examination, and for certifying that individuals possess such knowledge before being admitted as business rescue practitioners.
- Maintain a programme for continual education after certification.
- Maintain a Code of Ethics, with provisions for monitoring individual compliance with the Code of Ethics and a system of sanctions for enforcing (i) the Code of Ethics, (ii) provisions as set out in Section 138(1) of the Companies Act (qualifications of practitioners) and Section 128(2) of the Companies Act (removal and replacement of practitioners) and (iii) the regulations of TMA-SA, in order to ensure professional and ethical conduct and integrity of business rescue practitioners.
- Promote Broad-Based Black Economic Empowerment (B-BBEE).
- Publish an annual report on its regulatory activities.
- Interact with the Minister on developing new or revised regulations to improve the effectiveness of regulation, and amendments to Chapter 6 to improve the effectiveness of business rescue at the Minister's request.

## **5. Point of view of TMA-SA regarding minimum qualifications**

### **5.1 Minimum qualifications overseas**

The R3 Association of Business Recovery Professionals in the UK, which represents but does not regulate insolvency practitioners (which in that jurisdiction means both liquidators and turnaround professionals), requires members to be either CAs or attorneys since such members are regulated by their own professions.

INSOL also calls for business rescue practitioners to be CAs or attorneys for the same reason.

In South Africa though, there will be a regulator of business rescue practitioners i.e. there is no need to only admit only CAs and attorneys.

### **5.2 Our recommendation**

Section 138(3)(b)(i) of the Companies Act requires regulations prescribing minimum **qualifications** for admission of a person to the practice of a business rescue practitioner.

*We recommend that (i) the minimum qualification should be a degree from an accredited university, but that (ii) certain experience requirements should be met as required by the regulator of business rescue practitioners.*

#### **Motivation for any degree from an accredited university as the minimum qualification**

- In practice, one degree does not have an advantage over another since a chartered accountant may need to be advised by an attorney on legal matters, an attorney may need to be advised by a chartered account on financial matters, an engineer may need to be advised by a chartered accountant and attorney, and any of these may need to be advised by a turnaround expert regardless of the degree of the latter, etc.

- For a 40-year old turnaround professional his or her original degree obtained 15 years ago is of little significance.
- Many leading turnaround professionals are engineers, MBAs, etc. – even medical doctors – and it will be discriminatory against these persons and not in the interest of Chapter 6 if they are not allowed to practice as business rescue practitioners.
- The regulator will have further experience requirements, which are listed in Section 5.4 below.

We submit the **capabilities** required of a successful turnaround professional, including a business rescue practitioner, are defined by that person's **skills** and **knowledge**, which in turn are gained through that person's **education** and **experience**.

In addition to a degree from an accredited university, we propose that the regulator further requires **qualifications** or **designations** indicative of (i) past education, (ii) past experience, (iii) examination in the body of knowledge of turnaround, including turnaround management, law and accounting/finance as per the Certified Turnaround Professional (CTP) exams, (iv) and at least an attendance course in King III directorship.

- Note that Services SETA certification requires an exam component for a qualification i.e. whilst education, experience and attendance courses are sufficient to earn a certain **designation** for purposes of TMA-SA, they are not sufficient to earn a Services SETA **qualification**.
- **Designations** that are awarded based on an exam component in addition to education and experience requirements therefore serve as **qualifications** in their own right.

### **5.3 How high or low should qualifications and designation standards be?**

Since a practitioner has full management control of a company in substitution for its board and pre-existing management as per Section 140(1)(a) of the Companies Act, and since a business rescue practitioner will have the

responsibilities, duties and liabilities of a director of the company as per Section 140(3)(b) of the Companies Act, it implies that a practitioner should have (i) significant management education and/or experience, and (ii) significant director education and/or experience.

Furthermore, in an ideal world, practitioners should have significant turnaround education (which is not available in SA until the turnaround certification programme is implemented) and significant turnaround experience.

We submit that if the admission standards for turnaround practitioners are set too high in terms of education and experience in management, directorship and turnaround, there will be too few business rescue practitioners to give effect to Chapter 6, and that it will be seen as protective and exclusionary to the advantage of a small number of practitioners.

In any event, the Certified Turnaround Professional (CTP) exams will not be ready by 1 July 2010, the expected implementation date of Chapter 6, since the body of knowledge of TMA and its exams still needs to be customised for SA requirements.

On the other hand, if admission standards for turnaround practitioners are set too low, financially distressed companies will have no way of knowing who the experts are, and the practice of business rescue practitioners will suffer from credibility problems.

We therefore propose stratification of levels of designations, inclusive of interim designations during an interim period valid for the first two years after the first CTP exams has been written, to allow for all to write the CTP exams over time.

#### 5.4 Stratification of levels of qualifications and designations for admission of a person to the practice of a business rescue practitioner

As summarised in Table 1 below, we propose that a range of stratified qualification and designation levels be available to:

- Provide recognition for those persons that achieved the highest level of certification in terms of education, experience and examination:
  - The Certified Turnaround Professional (CTP) qualification, **which is a requirement of the TMA certification licence agreement.**
  - The Honourary Certified Turnaround Professional (HCTP) designation. The HCTP is for veterans that have made a substantial contribution to the industry only.

Both of the above qualifies a person to be a business rescue practitioner.

- Ensure that the practice of business rescue practitioners is not exclusionary by providing a lower level qualification and lower level designations.
  - The Certified Turnaround Professional – Designate (Business Rescue) (CT P-DBR) qualification, which is for a TP-C2 (see below) that has passed the CTP exams. A CTP-DBR has sufficient experience to be a business rescue practitioner but not sufficient experience to be a CTP. **The CTP-DBR is a variant of the CTP-D qualification (see below) the latter is a license requirement of the TMA certification licence agreement.**
  - The Turnaround Professional Candidate Level 1 (TP-C1) designation. A TP-C1 has sufficient experience to be a business rescue practitioner and to become a CTP, but has not written the CTP exams yet.
  - The Turnaround Professional Candidate Level 2 (TP-C2) designation. A TP-C2 has sufficient experience to be a business rescue

practitioner, but not sufficient experience to be CTP, and has not written the CTP exams yet.

- Ensure a sufficiently large number of business rescue practitioners available on 1 July 2010, when the CTP exams are not ready yet, through interim designations valid for an interim period (the TP-C1 and TP-C2 designations above). The interim period is the first two years after the date of the first CTP exams (or should it be one year?). Within this interim period, a TP-C1 must convert to a CTP, and a TP-C2 must convert to a CTP-DBR by writing the CTP exams. During this period, a TP-C2 may convert to a TP-C2 if sufficient experience has been gained.
- Ensure an exam-based feeder programme to become a CTP:
  - The Certified Turnaround Professional – Designate (CTP-D) qualification. **This qualification is a license requirement of the TMA certification license agreement.** A CTP-D passed the CTP exam, but does not have sufficient experience to become a CTP-DBR or CTP, and therefore does not qualify to be admitted to be a business rescue practitioner.
- Ensure a feeder program to higher level qualifications, and to open turnaround and business rescue to a wider section of the population:
  - The Associate Turnaround Professional (ATP) qualification. This requires lower education and experience requirements compared to a CTP, and an entry level exam.
  - The Associate Turnaround Professional - Designate (ATP-D) qualification. This means that a candidate passed the entry level ATP exams, but does not have sufficient experience yet to be an AT P.

Holders of these qualifications are not meant to conduct turnaround assignments on their own, but only under supervision of a CTP, H-CTP, CTP-DBR or TP-C1. They therefore do not qualify to be business rescue practitioners.

We further propose that qualification/designation holders be compelled to disclose the education, experience and examination nature of their qualifications/designations to prospective clients, and that it will be for the market to decide which professionals to choose from. Typically, large complicated cases will seek out higher qualifications/designations (asking higher fees), whilst smaller companies will seek out lower qualifications/designations (asking lower fees). Note that TMA-SA is hesitant to recommend a fixed tariff of fees, and recommend negotiated fees instead for reasons detailed in Section 7 below where TMA-SA's point of view on a tariff of fees is discussed.

In summary, until the first CTP exams are written (expected late 2010 or early 2011) designations qualifying to be business rescue practitioners will be the TP-C1 and TP-C2 designations.

By passing the CT P exams within the first two years of the first CTP exams, a TP-C1 can earn the CTP qualification and a TP-C2 can earn the CTP-DBR qualification.

The certification flow diagram are summarised in Figures 2 and 3 below.

### **5.5 Optional attendance courses**

We propose that a King III Directorship attendance course be made compulsory for designations and qualifications allowing persons to be business rescue practitioners.

In addition, TMA-SA will arrange for optional courses in turnaround management, Chapter 6 business rescue, and finance/accounting. We feel that these courses should not be compulsory for a TP-C1 and TP-C2 since very little time will be left between promulgation of the Chapter 6 regulations and the implementation date of Chapter 6 for TMA-SA to have such courses developed. Once developed, however, it will stand a TP-C1 and TP-C2 in good stead to attend these on a voluntarily basis.

## **5.6 Certification role of Services SETA**

The Services SETA (Services Sector Education and Training Authority) is currently in the process of developing professional qualifications for each of the industries represented in the services sector.

As part of this process, the Services SETA is partnering with TMA-SA in developing the above professional turnaround designations and qualifications and a continual professional development (CPD) plan for the turnaround industry.

Note that a qualification cannot be awarded based on past education and experienced only; an exam is required.

**Table 1: Turnaround qualifications and designations qualifying a holder to be a business rescue practitioner**

	<b>Designation</b>	<b>Qualification</b>	<b>Qualification</b>	<b>Designation</b>	<b>Designation</b>
	<b>H-CTP</b> Honourary Certified Turnaround Professional	<b>CTP</b> Certified Turnaround Professional	<b>CTP-DBR</b> Certified Turnaround Professional – Designate (Business rescue)	<b>TP-C1</b> Turnaround Professional Candidate Level 1	<b>TP-C2</b> Turnaround Professional Candidate Level 2
Education	A bachelor's degree from an accredited university.				
Experience	Experience in executive or senior management, interim management, senior consulting, senior loan workout/ restructuring, or practising in the legal or accounting professions or as a business rescue practitioner or liquidator.				
	By a once-off invitation of the Standards Subcommittee only.  Over the age of 55.  Substantial contribution to the turnaround industry in terms of leadership, promotion or education.	A minimum of five (5) years of experience as listed above, three (3) years of which must be fulltime cumulative in turnaround leading or playing a leading role in the turnaround of companies suffering financial distress or in a financial crisis, plus requirements as listed in <sup>3)</sup> below too.	A minimum of three (3) years of fulltime cumulative experience as listed above.	A minimum of five (5) years of experience as listed above, three (3) years of which must be fulltime cumulative in turnaround leading or playing a leading role in the turnaround of companies suffering financial distress or in a financial crisis, plus requirements as listed in <sup>3)</sup> below too.	A minimum of three (3) years of fulltime cumulative experience as listed above.
Examinations	Waived, but must purchase and study course material.	Successfully completed the written CTP examinations in management, law and finance/accounting prepared and graded by the Academic Subcommittee.			
Required attendance courses	King III Directorship				

	<b>Designation</b>	<b>Qualification</b>	<b>Qualification</b>	<b>Designation</b>	<b>Designation</b>
	<b>H-CTP</b> Honourary Certified Turnaround Professional	<b>CTP</b> Certified Turnaround Professional	<b>CTP-DBR</b> Certified Turnaround Professional – Designate (Business rescue)	<b>TP-C1</b> Turnaround Professional Candidate Level 1	<b>TP-C2</b> Turnaround Professional Candidate Level 2
Optional attendance courses				Chapter 6 business rescue, turnaround management, and finance/accounting	
Continuing professional education	After certification, complete at least 50 hours of continuing professional education during each two-year period, including two hours of ethics credit.				
Attendance courses approved by the Standards Subcommittee	King III directorship.				
Continuing professional education	After certification, complete at least 50 hours of continuing professional education during each two-year period, including two hours of ethics credit.				
Letters of recommendation	Provide recommendations from three professional peers of the candidate.				
Client reference letters		Submit letters from at least three (3) clients confirming the turnaround nature of the assignments undertaken. Clients will not be asked to evaluate the candidate's performance.		Submit letters from at least three (3) clients confirming the turnaround nature of the assignments undertaken. Clients will not be asked to evaluate the candidate's performance.	

	<b>Designation</b>	<b>Qualification</b>	<b>Qualification</b>	<b>Designation</b>	<b>Designation</b>
	<b>H-CTP</b> Honourary Certified Turnaround Professional	<b>CTP</b> Certified Turnaround Professional	<b>CTP-DBR</b> Certified Turnaround Professional – Designate (Business rescue)	<b>TP-C1</b> Turnaround Professional Candidate Level 1	<b>TP-C2</b> Turnaround Professional Candidate Level 2
Case studies		Submit five (5) case studies confirming the turnaround nature of the assignments undertaken.		Submit five (5) case studies confirming the turnaround nature of the assignments undertaken.	
Declarations	Reveal any pending disciplinary action or prior public discipline, any criminal conviction, any malpractice judgment or admission of malpractice and any refusal, denial or revocation of a license to practice or certification by another professional body.				
	Not subject to an order of probation in terms of Section 162(7) of the Companies Act.				
	Would not be disqualified from acting as a director of the company under supervision in terms of Section 69(8) of the Companies Act.				
Code of Ethics	Agree to support and adhere to the Code of Ethics of the Turnaround Management Association.				
Fees	Payment of all required fees.				

\*) The candidate must have substantial, demonstrated experience in the financial, legal and managerial components of a turnaround as well as all aspects of strategic evaluation and planning, crisis management, and business reconfiguration, which includes managing cash in crisis situations, negotiating with creditors and vendors, and knowledge of the various aspects of law (whilst accepting that Chapter 6 will only be implemented in 2010) as they relate to corporate renewal.

Table 2: Turnaround qualifications and designations not qualifying a holder to be a business rescue practitioner

	<b>CTP-D</b> Certified Turnaround Professional - Designate	<b>ATP</b> Associate Turnaround Professional	<b>ATP-D</b> Associate Turnaround Professional - Designate
Education	A bachelor's degree from an accredited university.	A bachelor's degree from an accredited university or a diploma from a university of technology.	
Experience		A minimum of three (3) years of experience in management, interim management, consulting, loan workout/restructuring, or practising in the legal or accounting professions or as a business rescue practitioner or liquidator, one (1) year of which must be fulltime cumulative in turnaround (no requirement of companies suffering financial distress or in a financial crisis).	
Examinations	Successfully completed the written CTP examinations in management, law and finance/accounting prepared and graded by the Academic Subcommittee.	Successfully completed the written entry level ATP examinations in management, law and finance/accounting prepared and graded by the Academic Subcommittee.	
Required attendance courses	King III Directorship		
Continuing professional education	After certification, complete at least 50 hours of continuing professional education during each two-year period, including two hours of ethics credit.		
Letters of recommendation	Provide recommendations from three professional peers of the candidate.		

	<b>CTP-D</b> Certified Turnaround Professional - Designate	<b>ATP</b> Associate Turnaround Professional	<b>ATP-D</b> Associate Turnaround Professional - Designate
Client reference letters		Submit letters from at least two (2) clients confirming the turnaround nature of the assignments undertaken. Clients will not be asked to evaluate the candidate's performance.	
Case studies		Submit two (2) case studies confirming the turnaround nature of the assignments undertaken.	
Declarations	Reveal any pending disciplinary action or prior public discipline, any criminal conviction, any malpractice judgment or admission of malpractice and any refusal, denial or revocation of a license to practice or certification by another professional body.		
Code of Ethics	Agree to support and adhere to the Code of Ethics of the Turnaround Management Association.		
Fees	Payment of all required fees.		

Figure 2: Turnaround certification flow diagram for the first two years following the first CTP exams

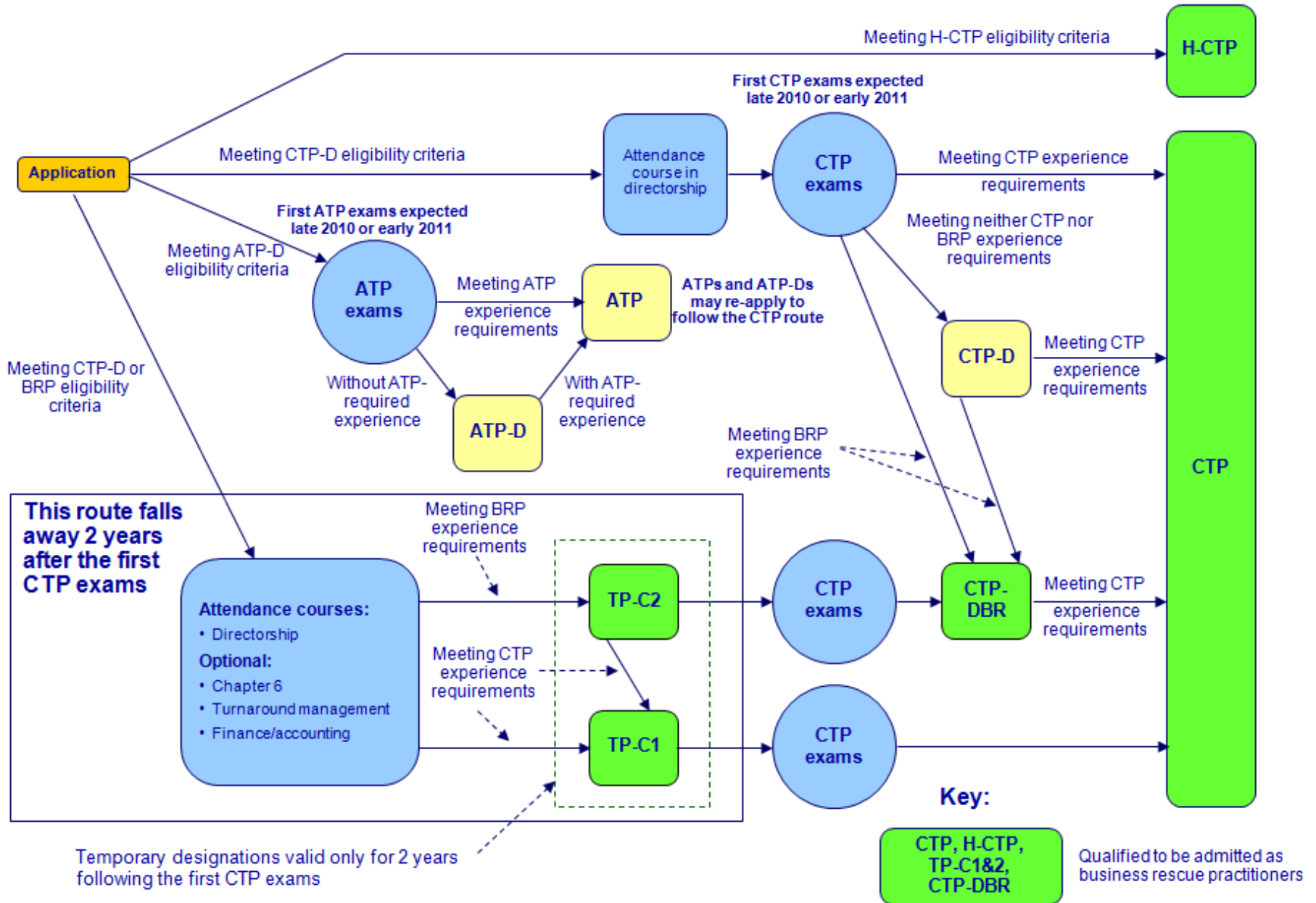
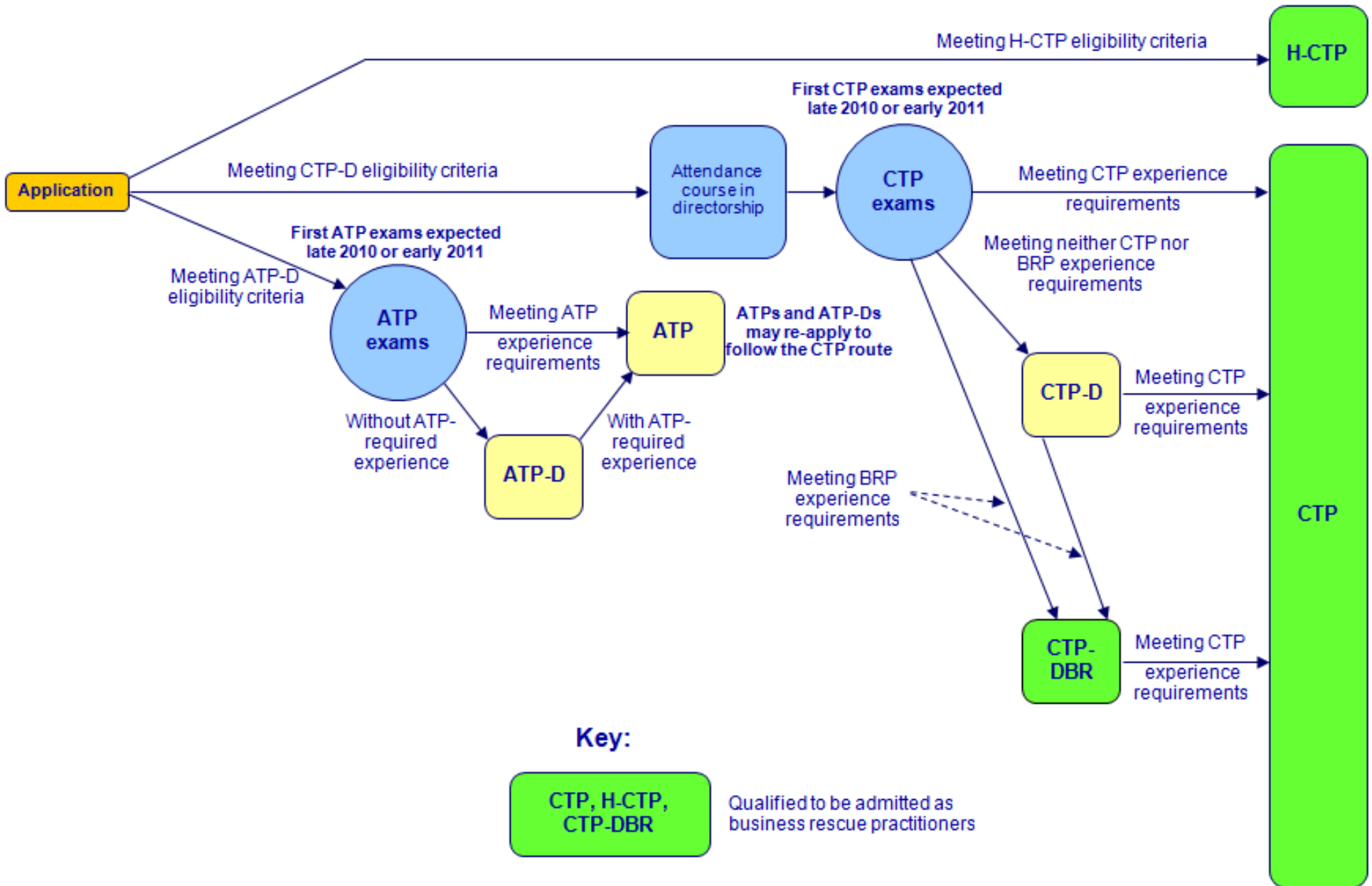


Figure 3: Turnaround certification flow diagram following the first two years following the first CTP exams



## 6. Point of view of TMA-SA regarding regulations prescribing procedures to be followed by the regulator

- TMA-SA is required to form:
  - An independent Turnaround Management Governance Board of South Africa (with functions as set out in Section 3.1.1 above).
  - Supported by a Standards Subcommittee (with functions as set out in Section 3.2.1 above); and
  - Supported by an Academic Subcommittee (with functions as set out in Section 3.3.1 above).<sup>5</sup>
- The Turnaround Management Governance Board of South Africa will certify turnaround professionals based on education, experience and examination and have standards for which qualifications or designations awarded in this manner will allow persons to be admitted as business rescue practitioners.
- The Turnaround Management Governance Board of South Africa will maintain a register of persons admitted to be business rescue practitioners and post their names and the qualification or designation of individuals on its website.<sup>6</sup>
- The Standards Subcommittee may admit a firm to be a business rescue practitioner only if at least one of its employees is a business rescue practitioner.
- The Standards Subcommittee will furnish each certified member with a certificate setting out the educational, experience and examination basis of the designation or qualification.

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<sup>5</sup> These three structures are required in terms of the turnaround certification licence agreement with TMA-SA; it follows that duplication can be avoided if these same structures function as the governing structures for the regulation of business rescue practitioners.

<sup>6</sup> A person in S138 (1) can be a natural or juristic person.

- A practitioner will be required to present his/her certificate to the board and affected persons of a company in financial distress, and disclose the specific past education, experience and exam components that relate to the practitioner's certification status.
- The Turnaround Management Governance Board of South Africa will a Code of Ethics, with provisions for monitoring individual compliance with the Code of Ethics and regulations pertaining to Chapter 6 of the Companies Act, and a system of sanctions for enforcing it, including warnings, probation, suspension and revocation of membership.
- The Turnaround Management Governance Board of South Africa will maintain a statistical database on business rescue for purposes of tracking the success record of business rescue, and to enable research on how business rescue may be improved, in cooperation with the Companies and Intellectual Properties Commission.
- The Turnaround Management Governance Board of South Africa will craft Practice Notes for business rescue practitioners with reference to Chapter 6 provisions and best practice overseas.
- A practitioner will be required to provide security for the value of the assets of the company.<sup>7</sup>
- The Turnaround Management Governance Board of South Africa will craft Practice Notes for business rescue practitioners with reference to Chapter 6 provisions and best practice overseas.
- Etc.

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<sup>7</sup> Chapter 6 does not require this except if an objection to the company resolution is made as per S130(1)(c). The King III Commission on Governance has included the directive that the practitioner should provide security for the value of the assets under all circumstances i.e. irrespective of whether business rescue is commenced via S129 or S131.

## 7. Point of view of TMA-SA regarding a tariff of fees

Annexure A contains the 2009 Auditor-General rates for chartered accountants which are commonly used in the turnaround industry as a referenced point.

- First, the problem with these prescribed rates is that the “partner” rate of R1 957/hour is the same high rate for a partner of an international firm as for a partner of a 1-person firm.
- Second, everybody claims to be a “specialist” to earn the specialist rate of R1 957/hour.
- Third, these rates are so high that smaller companies cannot afford it.
- Fourth, the different turnaround qualifications and designations in Section 5 above represent different levels of education and experience, and therefore warrant different “partner” and “specialist’ rates.
- Fifth, a practitioner will have expenses in terms of advisors’ fees (legal, forensic auditing, financial, marketing, operations, HR, IT, etc) where each will also charge some kind of tariff or another.

In the informal sector, turnaround fees are presently concluded on a negotiated basis. In a competitive market, rates of leading turnaround practitioners may exceed the maximum Auditor-General rates, but lower level rates are in the order of R700/hour.

TMA-SA recommends that:

- A tariff of business rescue practitioner fees and their advisors should be:
  - Negotiated with companies on a case by case basis as per section 143(2) of the Companies Act and approved by affected persons as per Section 143(3) of the Companies Act.
  - Possible capped by the Auditor-General rates (but that may deter the highest qualified and experienced turnaround professionals to become business rescue practitioners.

- A business rescue practitioner must provide a budget for monthly estimated fees based on negotiated tariffs and expenses and estimated duration of the business rescue proceedings when negotiating with the company as per section 143(2) of the Companies Act and when negotiating with affected persons as per Section 143(3) of the Companies Act.
- As mentioned before, a practitioner must be required to present his/her certificate to the company as per section 143(2) of the Companies Act and to affected as per Section 143(3) of the Companies Act, and disclose the specific past education, experience and Certified Turnaround Professional exam components that relate to the practitioner's certification status. This will help those with a higher certification status to be able to negotiate higher fees than those with a lower certification status.

**8. Annexure A: Auditor-General rates**

# **GUIDELINE ON FEES FOR AUDITS DONE ON BEHALF OF THE AUDITOR-GENERAL**

The Auditor-General has confirmed that the charge out rates set out in the .01  
annexure to this circular are considered to be appropriate for audit work  
performed by members on behalf of the Auditor-General. These rates  
apply from 1 April 2009 to 31 March 2010.

The Auditor-General determined these rates after consultation with the .02  
Standing Committee on the Auditor-General (SCoAG) and the National  
Treasury. In addition, when discussing the rates with the Auditor-General,  
representatives of the South African Institute of Chartered Accountants  
(SAICA) take cognisance of the state of the economy, Government's  
Budgetary Policy, and the steps taken by Government to contain the rate  
of inflation.

The revised scale starts with an hourly rate of R71 (2008: R71) for .03  
monthly earnings of R2 500 (2008: R2 500) and includes rates for  
monthly earnings of up to R70 000 (2008: R60 000). The rate for monthly  
earnings of R70 000 is R1 684 (2008: R60 000 at a rate of R1 570). The  
rate for partners has been increased from R1 649 to R1 957 per hour and  
for specialists from R1 649 to R1 957 per hour.

Rates are calculated by dividing the monthly earnings by recoverable .04  
hours and multiplying by a factor of 2.86 (2008: 2.86) to accommodate  
overhead costs. The rate per category continues to be calculated using the  
midpoint of the earnings. The recoverable hours were revised as part of  
the 2008/9 negotiation process and reviewed for 2009/10, in order to keep  
pace with the change in recoverability trends in the profession over the  
last few years.

Fees should be based on the time spent on audits. Time records should be .05  
kept for individual staff or grades of staff and should indicate the actual  
time spent on the audit. Where fee estimates are given to a client, such  
estimates should be based on time expected to be spent on audits, on the  
basis of past experience. Should it be necessary to spend more time than  
expected as a result of exceptional circumstances, such as unforeseen  
problems requiring additional work to be performed to express an

opinion, the Auditor-General should be advised prior to any work being carried out. The increase in fees for these circumstances should be negotiated with the Audit Controller.

- .06 Members are reminded that invoices to the Auditor-General must be accompanied by a schedule setting out the monthly earnings category for each employee, the associated rate and number of hours charged in respect of that invoice. Supporting schedules setting out the composition of the monthly earnings category of each employee, in terms of the items listed in the annexure, must be available for inspection by the Auditor-General, at members' offices.
- .07 Professional liability for a member performing work on behalf of the Auditor-General is limited to a maximum of two (2) times the fees billed for the specific work.
- .08 Members are encouraged to review their audit approach to their various audits to ensure that up to date techniques are used so as to reduce to a minimum the time spent on audits. The audit approach should be in line with the International Standards of Auditing and take into account the Auditor-General guidelines as indicated in directives issued from time to time, in terms of the Public Audit Act. Members should also consider any other directives that may be issued during the period covered by the circular and should consult with the Audit Controllers in this regard. However, auditors should carry out their duties free from any restrictions whatsoever.
- .09 It is acceptable practice for public sector clients to make interim payments on account of fees. Such interim fees should not exceed the total fees for time spent up to the date of rendering the account.
- .10 These rates are only applicable to audit work performed by members on behalf of the Auditor-General, as they are based on factors existing in this environment. Fees for other work performed for government entities should be negotiated directly with the entities concerned.

**Johannesburg  
31 March 2009**

**M P Matlwa  
Executive President**

**Annexure**

**RATES FOR AUDITS DONE ON BEHALF OF THE AUDITOR-GENERAL**

**PERIOD: 1 APRIL 2009 TO 31 MARCH 2010**

**RATES (excluding Value Added Tax)**

**PARTNERS** R1 957 per hour  
**SPECIALISTS (maximum)** R1 957 per hour

**STAFF**

<b>MONTHLY EARNINGS</b>	<b>R</b>	<b>RATE PER HOUR</b>	<b>R</b>
2 500	and more	71	
2 700	and more	76	
2 900	and more	82	
3 100	and more	87	
3 300	and more	93	
3 500	and more	99	
3 800	and more	108	
4 100	and more	116	
4 400	and more	124	
4 700	and more	132	
5 000	and more	140	
5 300	and more	148	
5 600	and more	156	
5 900	and more	165	
6 200	and more	174	
6 600	and more	185	
7 000	and more	196	
7 400	and more	207	
7 800	and more	218	
8 200	and more	229	
8 600	and more	240	
9 000	and more	250	
9 400	and more	261	
9 800	and more	278	
(continued on page 4)			

(continued from page 3)

<b>MONTHLY EARNINGS</b>	<b>RATE PER HOUR</b>
<b>R</b>	<b>R</b>
10 600 and more	299
11 400 and more	321
12 200 and more	343
13 000 and more	343
13 800 and more	364
14 600 and more	384
15 400 and more	405
16 200 and more	425
17 000 and more	446
17 800 and more	466
18 600 and more	487
19 400 and more	494
20 200 and more	514
21 000 and more	534
21 800 and more	554
22 600 and more	574
23 400 and more	594
24 200 and more	644
25 000 and more	664
25 800 and more	685
26 600 and more	706
27 400 and more	727
28 200 and more	761
30 000 and more	817
32 500 and more	883
35 000 and more	948
37 500 and more	1014
40 000 and more	1079
42 500 and more	1144
45 000 and more	1210
47 500 and more	1275
50 000 and more	1341
52 500 and more	1406
55 000 and more	1471
57 500 and more	1537
60 000 and more	1602
62 500 and more	1668
65 000 and more	1733
67 500 and more	1798
70 000 and more	1864

**Audit fee budget**

Before the commencement of the audit, auditors should perform the normal risk assessment to determine whether there have been any changes in the risk profile of the client. Where there is a change in the circumstances that might affect the audit fee budget, this change and its impact on the fee budget should be discussed and cleared with the Audit Controller. All audit fees should be motivated and negotiated with the Audit Controller prior to any additional work being performed (refer para 05).

**Monthly earnings**

Monthly earnings include the total cost of the employee's remuneration package and are limited to the following:

- Basic salary;
- Travel allowance (as part of the salary structure);
- Housing allowance/subsidy (as part of the salary structure);
- Annual bonus (guaranteed portion only);
- Fringe benefit on the use of a company vehicle (as part of the salary structure);
- Computer allowance, irrespective of whether it is a salary sacrifice or not. The allowance should not necessarily be included in payslip;
- Proportionate amount of annual subscriptions payable to SAICA and/or the Independent Regulatory Board for Auditors;
- Company contributions to medical aid fund, pension fund, provident fund, group life insurance and unemployment insurance fund;
- Entertainment allowance (as part of the salary structure).

Should any uncertainty exist in respect of the composition of employees' packages, the SAICA Project Director – Public Sector should be contacted.

**Reimbursement of expenses**

Claims should comply with the requirements as stipulated in the *Reporting Guideline* issued from time to time by the Auditor-General. The Guideline can be obtained from the Auditor-General.

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