

A step towards possible reform

As the country emerges out of the Covid-19 lockdown, it is evident that many companies were not able to survive the almost six-month period of limited income. Some industries never had any income at all until the announcement of Level 1 restrictions.

This has placed a lot of companies in distress and has increased the need for business turnaround and business rescue professionals whose skills are sorely needed. However, this need has also highlighted the unfortunate weak points that our current legislation has.

In an effort to address this, the Companies and Intellectual Property Commission (CIPC) recently formed the Business Rescue Liaison Committee (BRLC) which hopes to look at Chapter 6 of the Companies Act (71 of 2008) and make specific recommendations which will hopefully lead to change.

The Turnaround Management Association of Southern Africa (TMA-SA) has representation on the BRLC and attended the first meeting on 21 September. Below are the minutes from that meeting.

| | Discussion | Person Responsible | Timeline |
|----|--|--------------------|----------|
| 1. | Opening/Welcome and Opening remarks | | |
| | The Chairperson opened the meeting at 11h30 and welcomed all present. | LS | |
| 2. | Attendance and Apologies | | |
| | Apologies were noted as per Teams attendance. | LS | |
| 3. | Adoption of Agenda | | |
| | Agenda was adopted with no changes. | All | |
| 4. | Matters Arising of Previous Meeting / Decision register | | |
| | <p>a) Function of committee During the BRLC meeting held 13/08/2020, it was decided to create a sub-committee (Forum) to brainstorm issues / challenges with regards to Chapter 6. (to discuss and debate possible legislative change requirements on Chapter 6)</p> <p>The members were selected to start the process. The work done by this forum is independent from the Companies Act Regulatory Impact Study (RIA) currently driven by the dtic, and therefore it was felt that more investigation was warranted for "possible" further amendments to the Act and Regulations.</p> <p>b) Basic groundwork A decision was taken that the Forum will start with each heading in Chapter 6, break it down into topics and work on it, only those with more "issues" will be brainstormed on and discussed in the Forum meetings.</p> | Committee | |

| Discussion | | Person Responsible | Timeline |
|------------|--|--|--|
| | A list will be prepared and compiled and submitted to dtic, | | |
| 7. | Tasks | | |
| | <p>The following task was decided upon</p> <ul style="list-style-type: none"> Prof Loubser will structure a list of topics the team will work on and send to secretariat. Secretariat to forward the list of topics to the team. Timeframes set for discussion will be provided and forwarded to team. | <p>AL</p> <p>VVD</p> <p>VVD</p> | <p>22/09/2020</p> <p>22/09/2020</p> <p>23/09/2020</p> |
| 8. | Closure of meeting | | |
| | <ul style="list-style-type: none"> The Chairperson thanked all present and the meeting was adjourned at 12h33. The Chairperson indicated that the meetings would continue via Teams until further notice. Date of next meeting will be communicated via e-mail to members. | <p>LS</p> <p>VVD</p> | |

Below are some of the topics that were agreed upon at the meeting on 21 September. These topics will be dealt with in further detail at future meetings.

| Topic | Issue to be dealt with | Sections |
|---------|--|---|
| Topic 1 | Definitions and commencement | Sections 128 to 131; 132(1) |
| Topic 2 | Moratorium, protection of property interests and contracts | Sections 133; 134; 136(2) |
| Topic 3 | Rights of employees | Sections 136(1); 144; 148 |
| Topic 4 | Post-commencement finance and ranking of claims | Section 135 |
| Topic 5 | Creditors | Sections 145; 147; 149 |
| Topic 6 | Shareholders and directors | Sections 137, 142, 146 |
| Topic 7 | The business rescue practitioner | Sections 138; 139; 140; 141; 143 |
| Topic 8 | The business rescue plan | Sections 150; 151; 152; 153; 154 |
| Topic 9 | Termination of business rescue proceedings | Sections 132(2) (read with s 141(2) and s 153(5)) |

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|-------------|---------------------------|-------------|
| Topic 10 | Compromise with creditors | Section 155 |
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The BRLC is open to suggestions regarding what needs to be discussed and debated by the Committee. Should you have any recommendations on possible topics, please send them to the TMA-SA's representative on the committee, Alex Elliott.

Emails can be sent to legal@tma-sa.com