Companies and Intellectual Property Commission

a member of the dti group

NOTICE TO CUSTOMERS

BUSINESS RESCUE: FILING

Notice 23 of 2020 published by the CIPC has reference.

It has come to our attention that various entities have entered into business rescue proceedings during the lockdown period, and that several steps have been taken by appointed business rescue practitioners in the business rescue process.

Regulation 165 of the Companies Act Regulations, specifically subparagraph (3) provides for the regulatory office (CIPC) to close to the public in exceptional circumstances or accept documents or filing on any day and at any time (thus outside office hours). In terms of the declaration by the President of a national lockdown as a result of the COVID-19 pandemic, the CIPC offices closed in full and no processing of documents and/or acceptance of filing could be done during the lockdown period being 24 March – 30 April 2020.

Filing of an application in terms of normal CIPC practice entails a **document or application to be received in the manner and form prescribed and accepted** by the CIPC to constitute a valid filing. However exceptional circumstances such as these require exceptional processing practices by the CIPC in order to assist the economy and the general public at large to effectively re-start.

Business rescue processes and the endorsement of an appointed business rescue practitioner requires immediate assistance and thus in these exceptional circumstances the CIPC will tend to business rescue matters in the following way:

1. Voluntary business rescue applications filed with the CIPC in the prescribed manner and form, during the period 24 March – 30 April 2020 will be processed by the CIPC to reflect the dates on which it was filed;

2. The appointment of business rescue practitioners filed in the prescribed manner and form, during the period 24 March – 30 April 2020 will be endorsed by the CIPC to reflect the dates on which it was filed.

3. Entities starting with business rescue proceedings (filed in the prescribed manner and form) will automatically receive a five (5) day extension with regards to the appointment of a business rescue practitioner as stipulated in Section 129(3) of the Companies Act, 2008.

Section 129(2)(b) of the Companies Act, 2008 indicates clearly that a resolution to begin business rescue proceedings, has no force or effect until it has been filed. Which means that the resolution must be filed in the prescribed manner and form and accepted by the CIPC to have complied with the Companies Act provisions.

CAVEAT: Should any of the applications to begin business rescue proceedings or the applications for endorsement of business rescue practitioner appointments not comply with the Companies Act and Regulations requirements, or not be filed in the prescribed manner and form as required, then the application will be rejected by the CIPC and dealt with on a case by case basis in order to assist in the continuance of the business rescue process if possible. If a filing cannot be salvaged, then the process is invalid and must be filed anew.

We are committed to assist every single business affected by this pandemic in the best way possible, while still adhering to legislative requirements as well as normal CIPC best practice.

Adv. Rory Voller
Commissioner
Date : 01/7/2020