




**INSOL**  
INTERNATIONAL



# The business rescue practitioner

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# The business rescue practitioner

- Who and what is the business rescue practitioner?
  - What does the business rescue practitioner do?
  - What are the powers, duties and obligations of a business rescue practitioner?
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# Qualifications

- Member in good standing of a professional body
- Licenced by CIPC
- Independent of the company
- Must not be disqualified from being a director

# Appointment of a BRP

- Follows from the commencement process and is thus appointed by either:
  - The Board of Company by resolution

or

- The Court

# Removal of a BRP

- Can only be done by order of court on specific grounds
  - is not qualified to be a BRP
  - is not independent
  - lacks the necessary skills
  - is incompetent or fails to fulfill his duties as a BRP
  - engages in illegal acts
  - has a conflict of interest
  - is incapacitated

# Appointment of a replacement BRP

- If a BRP is removed by the courts or resigns the appointment of the replacement follows the same route as appointment of the original BRP

# BRP Fees and costs

- Statutory hourly fees
  - Tariff set in the Companies Regulations
  - Must establish if the company is small, medium or large
  - R1,250 per hour incl VAT (Daily max – R15,625) – Small Company
  - R1,500 per hour incl VAT (Daily max – R18,750) – Medium Company
  - R1,750 per hour incl VAT (Daily max – R25,000) – Large Company

# BRP Fees and costs

- Contingency (Success Fees)
  - Negotiated between the BRP and the Company
  - Becomes binding (and enforceable by the BRP) if it is approved by creditors and shareholders
  - Success fees can lead to conflicts so must be very carefully considered



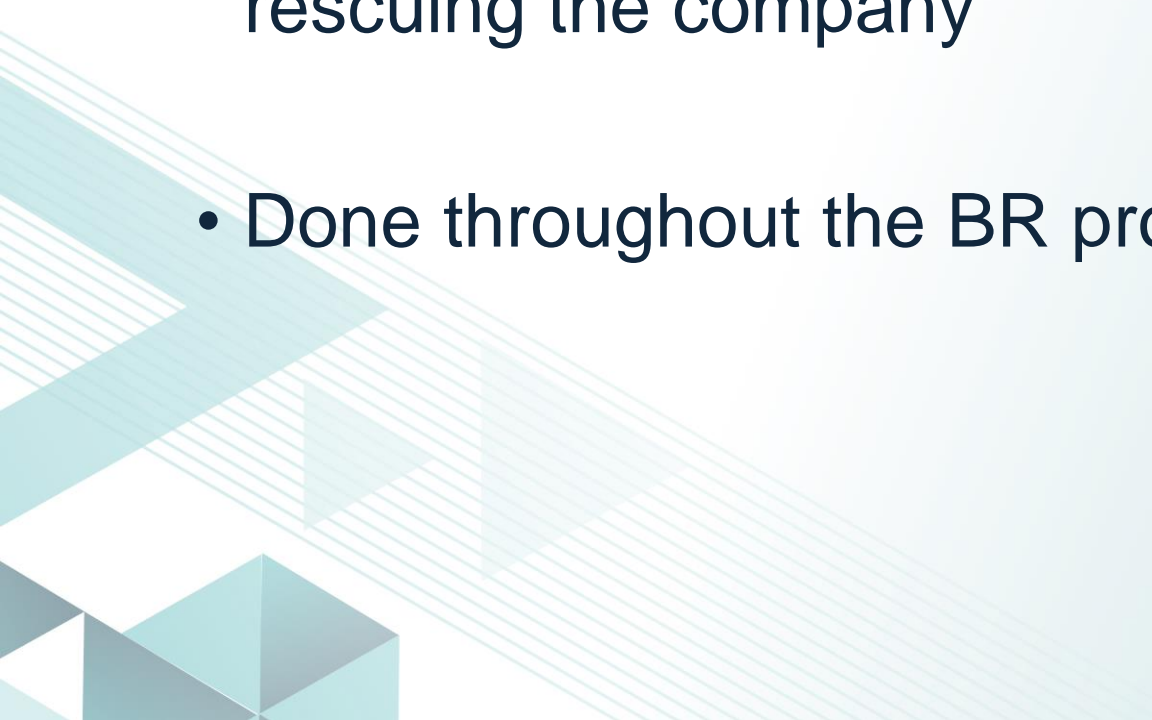
# BRP Fees and costs

- Disbursements and cost recovery
  - Recovery of actual costs and disbursements incurred
  - Must however be reasonably necessary to carry out the duties of a BRP

# General powers and duties

- Main duty is to prepare and publish a business rescue plan
- Other duties include
  - Notices and communication with affected persons
  - Consult with employees, creditors and shareholders
  - Convene and preside over meetings
  - Determine voting interests
  - Protect the interests that secured creditors have in property of the company

# Investigation into the affairs of a company

- Must be done as soon as practicable after appointment
  - Aim is to determine whether there is a reasonable prospect of rescuing the company
  - Done throughout the BR process
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# Managing the company

- BRP has full management control
- BRP can delegate authority to directors
- Directors can only act with the BRP express authority to do so

# Directors' roles during business rescue

- Remain in office and must continue to fulfil their fiduciary duties
- Must attend to the requests of the BRP and are obliged to assist
- Must disclose information about the company's affairs
- Functions of Governance remain the responsibility of directors

# Ethics and the BRP

- Must maintain high ethical standards
  - Reinforced throughout Chapter 6
  - Confirmed by recent judgements
- Avoiding potential conflicts is key for a BRP