



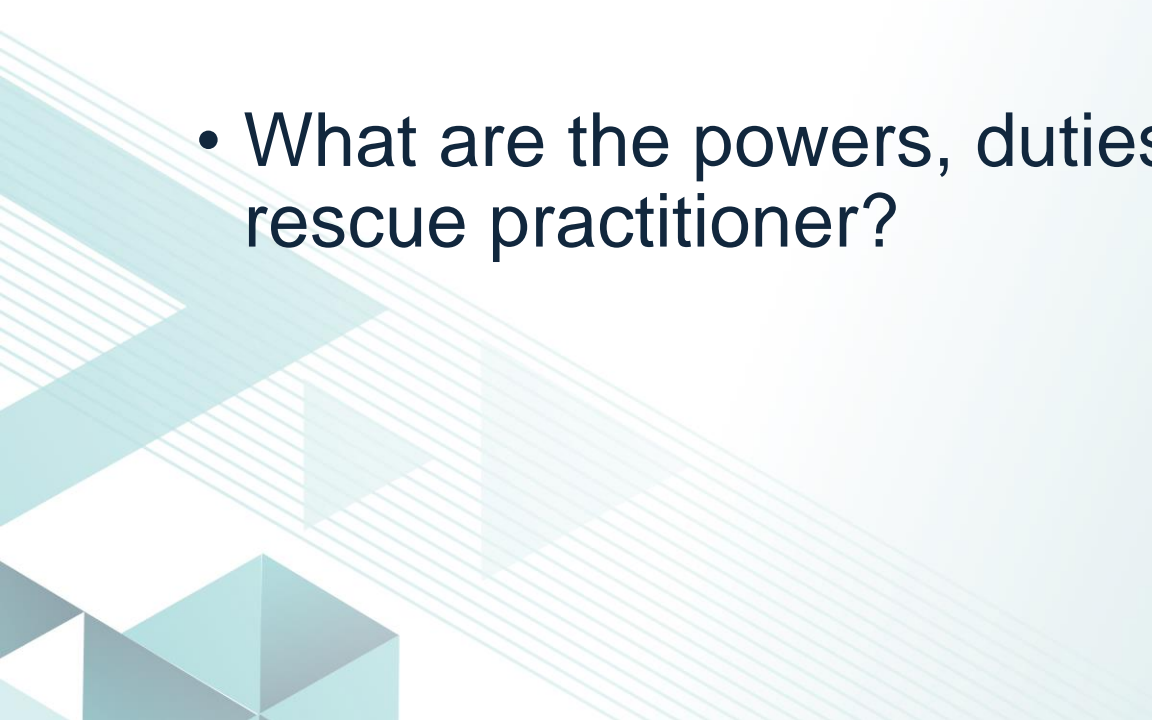
INSOL
INTERNATIONAL



The business rescue practitioner

John Evans, RS Advisors, Johannesburg

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?
- 

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

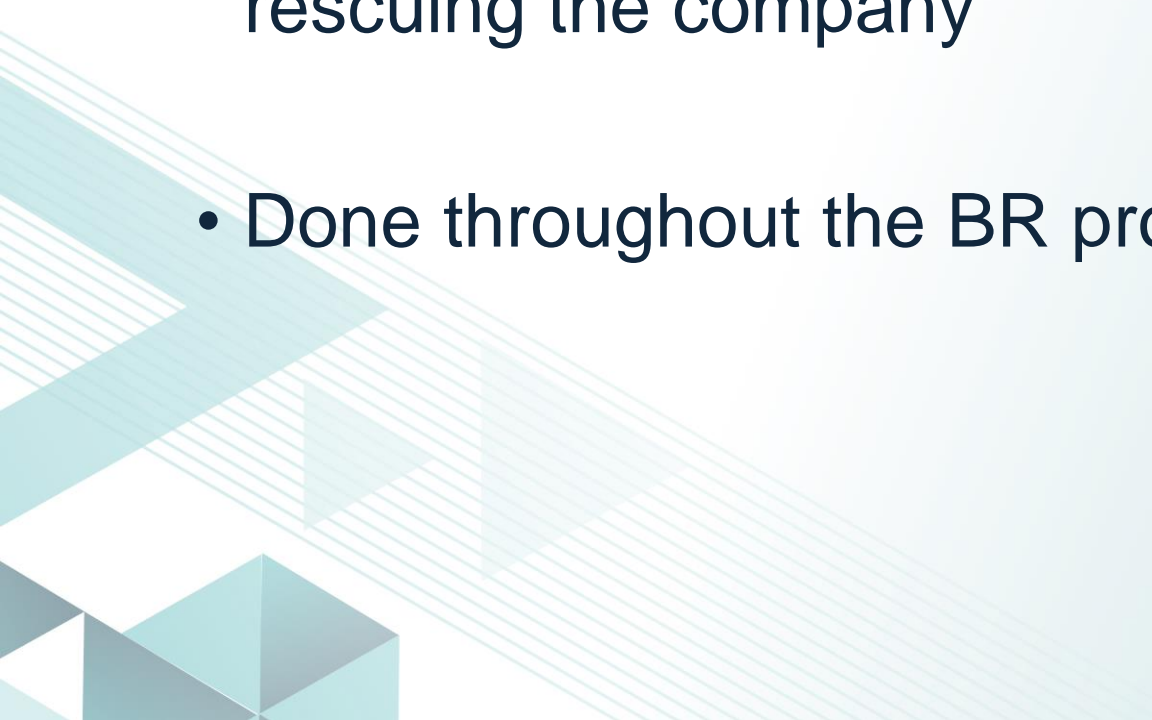
BRP Fees and costs

- 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
- 

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