



Companies and Intellectual
Property Commission

a member of the dti group

TO: THE INDEPENDENT REGULATORY BOARD FOR AUDITORS

DATE: 15 September 2016

SUBJECT: COMMENTS ON THE PROPOSED GUIDE FOR IRBA AUDITORS – JULY 2016

BACKGROUND

Upon receipt of the proposed guide for registered auditors around considerations for an Auditor or a Reviewer of a Company which is factually insolvent, the following are our comments.

COMMENTS

1. A "Definitions" page is recommended to avoid confusion and ensure consistency in interpreting and applying the guideline.
2. The definition for **Factual/Technical Insolvency** and **Commercial Insolvency** to be drawn from case law but preferably from an Accounting context.
3. Point No.50:

This point needs to be qualified. If not qualified, it can be read to mean that the whole of Section 128(1)(f) relates to factual insolvency as well, as to commercial insolvency. Section 128(1)(f)(ii) refers to 'insolvency' in general, which is inclusive of 'factual insolvency'.

It is therefore our recommendation to provide a set of criteria for the Accounting Officer (AO), Auditor or Reviewer to take into consideration when applying his/her professional judgement as to whether the company is factually insolvent or not. These criteria may include (must not be regarded as an exhaustive list since the AO, Auditor or Reviewer must be able to take any material issue into consideration when making the determination):

- History and its business activities;
- Background to the financial position;
- Industry in which the company operates;
- Reasons for the factual insolvency in a point in time;
- Financial and business forecasts;

The dti Campus (Block F - Entlofukweni), 77 Meintjies Street, Sunnyside, Pretoria | P O Box 429, Pretoria, 0001

Tel: +27 12 394 3990 | Call Centre: 086 100 2472

Email: Jmathekga@cipc.co.za | Website: www.cipc.co.za



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- Likelihood of recovery to a stable financial position.

It is clear that professional judgement needs to be used in considering the criteria as to whether the company is factually insolvent and thus requiring the compliance with Section 129(7). A too broad interpretation of subsection (ii) will result in unreasonable and impractical implications.

We therefore recommend the following amendment to point No. 50, '*If a company is regarded as factually insolvent by applying the above set of criteria, then it falls within ...*'

4. The Guide needs to include scenarios where an Independent Reviewer, also being an Auditor is serving as an AO of a close corporation. In terms of Section 62 of the Close Corporations Act, AO's have a duty to report to the Commission whenever a close corporations' liabilities exceed assets.
5. Appendix 1, No. 3:
"Reporting" needs to be "Particulars of the Reportable Irregularity".
6. Point No. 53:
Point No. 53 provides a definition of what constitutes a 'reportable irregularity', which includes '*an act or omission..... (ii) is fraudulent and amounts to theft...*'. However in point 58 reference is made to a company that '**IS, OR APPEARS TO BE, trading recklessly or fraudulently.**' The word IS must be removed, as it is clear from the definition that if a company IS fraudulent or amounts to theft, then this must be reported as a reportable irregularity. Therefore **CONSIDERATION** by an independent reviewer should only be exercised if it **APPEARS** to be the case. In other words, the former situation is not discretionary, but the latter is.

It is trusted that the above is of assistance.

Yours faithfully,

Adv RW Voller
Acting Commissioner

CIPC

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