

154. Discharge of debts and claims.—(1) A business rescue plan may provide that, if it is implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.

(2) If a business rescue plan has been approved and implemented in accordance with this Chapter, a creditor is not entitled to enforce any debt owed by the company immediately before the beginning of the business rescue process, except to the extent provided for in the business rescue plan.

#### Notes

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**General Note.**—The purpose of s 154 is to clarify the position regarding the discharge of debts and claims against the company once a business rescue plan has been approved and implemented. The approval of the business rescue plan, and the implementation of its terms and provisions thereafter, results in the relevant creditor losing the right to later enforce a debt or part of it if the creditor has acceded to the discharge of the whole or part of that debt as part of the approved plan. Similarly, no creditor is entitled to enforce pre-business rescue debts against the company in circumstances where a business rescue plan has been approved and implemented, unless the enforcement stems from the provisions of the business rescue plan itself.

- (c) must act independently of the practitioner to ensure fair and unbiased representation of creditors' or employees' interests.
- (2) A person may be a member of a committee of creditors or employees, respectively, only if the person is—
  - (a) an independent creditor, or an employee, of the company;
  - (b) an agent, proxy or attorney of an independent creditor or employee, or other person acting under a general power of attorney; or
  - (c) authorised in writing by an independent creditor or employee to be a member

### Notes

**General Note.**—§ 149 sets out the functions, duties and membership of the creditors' committee and the committee of employees' representatives. From the provisions of this section it is clear that the committees concerned do not have any real powers, as they may not direct or instruct the business rescue practitioner in any way regarding the business rescue proceedings. However, these committees can prove to be very effective when representing large groups of creditors and/or employees, and will be of great assistance to the business rescue practitioner who will then not need to consult with a large number of creditors and employees on an individual basis. Although the purpose of these committees is to represent the interests of the creditors or the employees on a collective basis, it is submitted that there is nothing in Chapter 6 or the Act generally that precludes creditors or employees from consulting with the business rescue practitioner on an individual basis.

**Subsection (2).**—As to the meaning of "independent creditor", see s 128 *vis Independent creditor*.

### *Part D: Development and approval of business rescue plan*

**150. Proposal of business rescue plan.**—(1) The practitioner, after consulting the creditors, other affected persons, and the management of the company, must prepare a business rescue plan for consideration and possible adoption at a meeting held in terms of section 151

(2) The business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan, and must be divided into three Parts, as follows:

- (a) **Part A—Background**, which must include at least—
  - (i) a complete list of all the material assets of the company, as well as an indication as to which assets were held as security by creditors when the business rescue proceedings began;
  - (ii) a complete list of the creditors of the company when the business rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
  - (iii) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
  - (iv) a complete list of the holders of the company's issued securities;
  - (v) a copy of the written agreement concerning the practitioner's remuneration; and
  - (vi) a statement whether the business rescue plan includes a proposal made informally by a creditor of the company.