

Subject: Comments on ABARP (now ABASA) documents

1. MEMORANDUM OF ASSOCIATION

As far as the name of the association is concerned, may I suggest that it perhaps too early to speak of "rescue professionals". Until such time as business administrators have become a profession, and can justify calling itself that, I suggest that the name be changed to THE ASSOCIATION OF BUSINESS ADMINISTRATORS OF SOUTH AFRICA (ABASA).

From the memorandum of association it is unclear as to whether this association also regulates the businesses of persons currently involved in the informal creditor workout industry. In other words, does this association also regulate the work that you currently conduct in the informal market Jan? I see no reason why this association should also regulate the informal market, and I suggest that the association be formed only if it is to regulate the formal business rescue market as provided for in the Draft Business Administration Bill that has apparently been submitted to the Minister of Justice and Constitutional Development for consideration.

2. ARTICLES OF ASSOCIATION

Definition of "business administration and rescue" - I suggest that this definition should be amended to read : "means the professional practice and application of business administration within the scope of the Business Administration Act."

It is unclear to me why corporate entities should be allowed to register as a members of the association. I am assuming of course that only individuals will be allowed to practice as business administrators as such, and for this reason I do not understand why corporate entities will be allowed to register as members. What benefits will flow from such membership, considering that corporate entities cannot be appointed as business administrators? If membership is allowed in order to boost membership fees, I can understand, but will this type of membership not allow additional voting by persons who are registered as individuals and also represent a corporate member (perhaps I haven't read all the documents properly, but this aspect does concern me)? This aspect is particularly concerning considering that a distinction is made between "non-practicing corporate members" and "practicing corporate members".

I realise that the proponents of this new industry wish to regulate themselves, but I would suggest that at least one non-partisan professional person be appointed to the executive to provide the association with some credibility.

I suggest that provision be made for non-members of the Association to be co-opted onto sub-committees established in terms of article 16.1 (see for example clause 15.2 of the Rules which allows for this).

The quorum of only 6 members in article 21.7 seems to me to be a bit low, especially considering the consequences that can flow from decisions taken at such a meeting.

The indemnity clauses contained in article 24 seem to protect a member no matter what type of conduct the person has been found guilty of. Should this whole clause not be made subject to the relevant person acting within the rules of the association?

3. RULES OF THE ASSOCIATION

As you well know, I have a problem with the current membership rules as set out in the Rules of the association. Besides allowing corporate members to become "practicing members", I also have a problem with the rules relating to individual membership. In a nutshell, I fail to see how an attorney

or accountant with three years' experience, or a liquidator with eight years' experience, suddenly undergoes a metamorphosis and becomes a business rescue professional or expert. Surely there should be some type of entrance or admission examination that applies to ALL individuals who wish to enter this profession, or cognisance taken of previous experience in this field? Some type of admission examination, based on at least the legal, accounting and management disciplines, should be set before any person is allowed to practice as a business rescue professional. I have no problem if, for example, admitted attorneys are exempt from the legal exam, or accountants are exempt from the accounting exam, but I strongly feel that some form of admission requirement should be set. I see that the rules do make provision for an examination to be set at a later stage, for example when new entrants to the profession apply for membership - I just find it interesting that the same requirement will not be set for the persons who initially establish this association. It should also be borne in mind that the current entrance requirements, especially the requirement that liquidators must have 8 years' experience, will exclude many of the previously disadvantaged individuals that are currently on the Master's panel and who may wish to enter this profession as well. I stand to be corrected, but I don't think that AABIP, for example, has even been in existence for 8 years.

In addition to the above, I also feel that it is imperative that the court should decide who is fit and proper to be appointed as business administrators. I don't know what the Draft Business Administration Bill provides for, but I would like to think that (formal) business rescue professionals would be appointed as officers of the court. To this end all business administrators should have to apply to the court for certification as a fit and proper person (admitted attorneys, of course, already qualify in this regard).

Please note that clause 13.1.17 appears to be in direct conflict with article 29.2 of the articles of association.

Clause 14.3 of the Rules may be problematic, especially considering that the Competition Commission recently rapped the Law Society over the knuckles for the tariff fees laid down by the Law Society. Obviously the provision is aimed at preventing corruption, but to state that a person may not agree to accept a lesser fee, or agree to take equity in a company in lieu of fees, would to my mind be problematic. Perhaps this clause could be worded differently?

As far as the disciplinary power of the executive is concerned (see clause 15 of the Rules), would it not be a good idea to also set out the rights of a member where disciplinary steps are to be taken against them? For example, what right of appeal will a member have when charged under the rules of the association? There are many aspects here, and I suggest that more, rather than less, be included under the Rules for the sake of clarity. Under the current wording the Rules appear to be tilted rather arbitrarily in favour of the executive.

Unless the rules are to apply to all members of the association, the provisions relating to clerkship (clause 18) appear to be a bit harsh. From the current wording it would appear that the initial members of the association will not be subjected to articles of any form, but the executive may introduce such rules for new entrants to the profession. That is wonderful for the initial members, but will operate harshly against new entrants, making it very difficult indeed for prospective administrators to enter the profession (was this the intention?). If the same rule applies to all, including the initial members, I have no problem with the provision except to suggest that the period be reduced to one year.

While I have no problem with the payment of travelling, accommodation and other expenses of members (clause 19) in the execution of their duties, I have a problem with remuneration being paid for services rendered by executive members and members of sub-committees. The services of the executive members should be provided free of charge. If remuneration is to be paid, it should only be done so in exceptional circumstances.

Kind regards
David

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