

BUSINESS RESCUE PROCEEDINGS – A BRIEF OVERVIEW

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INTRODUCTION:

The Companies Act^[1] (“the Act”) introduced the concept of business rescue into the South African Law. This article aims to provide a brief overview of what business rescue entails and the implications of the institution of business rescue proceedings on various stakeholders.

WHAT DOES BUSINESS RESCUE MEAN?

Business rescue is the statutory process which may be implemented in an attempt to facilitate the rehabilitation of businesses that are financially distressed. In other words, the aim of business rescue is to take measures in order to save businesses from financial ruin.

THE BUSINESS RESCUE PROCESS:

Business rescue proceedings may be instituted by way of an Order of a High Court or by way of a resolution of business in circumstances where it is likely that the business will either be unable to pay its debts or become insolvent within the following six months.

After the decision is taken to institute business rescue proceedings a business rescue practitioner is appointed to take over the financial affairs of the business. The practitioner will hold meetings with the business creditors as well as with employees and invite interested parties to make proposals for the content of the business rescue plan and the implementation thereof.

The aim of the business rescue plan is to put viable measures in place in order to save the business. Saving the business is generally in the interest of the business, employees of the business as well as creditors of the business, each of which may be seriously adversely affected by the closure of the business.

Generally, there will be significant changes made to a business in order to ensure that it is viable in future and thereby ‘rescued’. This may include restructuring or retrenchments which will be done during the course of the business rescue proceedings under the watch of the Business Rescue Practitioner.

GENERAL MORATORIUM ON LEGAL PROCEEDINGS:

After the commencement of business rescue proceedings an automatic general moratorium^[2] is in place which prohibits the institution or prosecution of legal proceedings against the business, including proceedings to recover monies owed, for the duration of the business rescue proceedings. The aim of this moratorium is to give the business a ‘breathing opportunity’ to assist with the implementation of the Plan. Litigation may be instituted or permitted to continue with the written consent of the Practitioner, who must not unreasonably refuse such consent.

CONCLUSION OF BUSINESS RESCUE PROCEEDINGS:

Business rescue proceedings may be terminated or concluded through the successful rescue of the business or a decision to close the business due to inability to rescue it. In the event that the business rescue process is deemed unsuccessful the business will generally be placed in liquidation and the assets sold to repay the debts of the business. Creditors of the business, including its employees, will be paid in order of preference of claims in accordance with the prescripts of insolvency law.

^[1] Act 71 of 2008, as amended

^[2] Section 133 of the Act