



Business rescue is a process instituted by the directors of a company, or affected person(s), to facilitate the financial rehabilitation of a company that is financially distressed. Attie Schlechter and Koos Benadie, attorneys and experienced business rescue practitioners, and Olga Kotzé, a business rescue practitioner and financial advisor registered with the Financial Services Board, explain the procedure

The Companies Act, 71 of 2008, (“the Act”) came into effect on May 1, 2011. One of the purposes of the Act is to provide for the efficient rescue and recovery of financially distressed companies.

In terms of the Act, a “company” includes companies (both Ltd and (Pty) Ltd) and close corporations. Therefore, all references to companies include close corporations, and, likewise, all references to directors will include the members of a close corporation.

A company is financially distressed if it appears unlikely that it will be able to pay its debts when they become due, or may even become insolvent, within the following six-month period.

Are there obligations that rest on directors of a distressed company?

The directors may pass a resolution to voluntarily begin business rescue proceedings. Alternatively, they must inform all affected persons that the company is financially distressed and provide reasons for not adopting such a resolution. “Affected persons” – including creditors, shareholders, employees or their representatives, as well as trade unions – all have rights in these proceedings.

Depending on the individual circumstances of each company, the directors of the company may be held personally liable for the payment of any damages suffered by the company and/or affected persons for trading in distressed circumstances.

Is this a structured procedure?

Yes. The whole process is clearly outlined in the Act and all parties to business rescue proceedings, for instance the practitioner, directors, company, employees and creditors are bound by the prescriptions of the Act.

Business rescue proceedings begin when the directors file a resolution with the Companies and Intellectual Property Commission (referred to as “CIPC”) to place the company in business rescue. The directors of a financially distressed company can pass a resolution to commence business rescue proceedings despite a liquidation application by a creditor.

How does the rehabilitation process work?

A business rescue practitioner is appointed to conduct a financial investigation and temporarily supervise the management of the company. This is a person who complies with the requirements of the Act, and who is certified by the CIPC as qualified to manage the affairs of a company. This person is appointed by the directors of a company in a voluntary business rescue.

The business rescue practitioner has to prepare a business rescue plan which, if approved, would outline the financial restructuring of the company in such a manner that the likelihood of its continued existence on a solvent basis is maximised.

What are the advantages of placing a company in business rescue?

The Act also provides a temporary moratorium (commonly referred to as a “hold”) in respect of any legal action against the company. Creditors are barred from obtaining the return of assets that are the subject of any form of credit agreement.

Business Rescue: A lifeline to companies experiencing financial difficulty

Written by Gavin Myers

Thursday, 30 June 2016 20:00

The company can, therefore, continue to use the assets in its possession (for instance machinery or equipment) to continue its operations. The company is therefore given “a breather” to get its house in financial order, while continuing to do business and using the assets at its disposal.

For more information, please contact Sindisa Consulting on (012) 660 0041 | rescue@sindisa.net | www.sindisa.net