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Business Rescue: A tool for the realignment of capital resources in a distressed environment

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In September 2024, corporate restructuring and business rescue remains an active area of practice. The market is seeing financial distress at the SME level and where directors of distressed companies are considering various options in an effort to realign their business to ongoing economic challenges. In these circumstances, directors require optionality – be it a consideration of an informal turnaround, a formal restructuring through a business rescue process or a default into liquidation.

Many of these directors are caught up in the proverbial "rabbit in the headlights" scenario, not knowing which way to turn and where increased pressure from their creditors (mainly trade suppliers) forces them to consider filing for business rescue, and sometimes even liquidation, if the company is too far gone.

So in many instances, business rescue is simply unavoidable.

What is clear is that many South African companies are still feeling the effect of the power outages that were prevalent last year and which seriously affected their numbers and their ability to trade profitably. It does seem, however, that the pressure of load shedding is something of the past.

STATS SA recently reported (July 2024) that 892 companies have filed for liquidation in the first 7 months of 2024. Many of these companies defaulted into a winding up process because their directors were not alive to the option of business rescue and where a restructuring professional could have been brought in to possibly turn the company around.

In the last few weeks/months, we have seen an uptick in business rescue filings and it is likely that we are going to see more. We are seeing some casualties in the retail market with the recent business rescue filings of West Pack Lifestyle (approximately 52 stores across SA, and which employs just under 1000 people), Autozone (190 leased premises, with over 140 employees) and Cross Trainer (67 stores, with approximately 400 employees). All of these companies had different reasons for financial distress, and their reasons for filing are quite diverse and range from an ongoing depressed SA economy, debt exposure to suppliers (unable to meet payments to creditors), stock/inventory and pricing issues, cash flow issues, the knock on effect of the civil unrest in June/July in 2021 (which reportedly cost the SA economy approximately R 50 billion in losses), to company bankers refusing to continue with their current debt exposure and calling in their loans, and just general constraints in trading.

The SA Post Office, Wescoal, Ellies and Tongaat Hulett remain actively in its business rescue phase with no immediate end in sight.

Hohm Energy (solar company), has gone into business rescue due to a rapid cool down in the South African solar energy market. So as Eskom keeps the power on, demand for solar power is falling off, and so we are going to see some fallout in the solar sector.

What is clear, is that business rescue affects a wide and diverse spectrum of industries and sectors.

So, financial distress remains an issue out there and where the option of business rescue is a very real prospect.

The other interesting and active spin off from companies filing for business rescue is the opportunity for a buyout/acquisition of the distressed company out of its business rescue process. Acquirors of these businesses are often cash flush with access to significant capital, earmarked for distressed acquisitions. The opportunity to pick up good assets, at discounted prices, the business as a going concern or the company itself, is becoming very much a real thing, with an active and growing market for distressed M&A and corporate finance transactions. In many of the examples mentioned, the business rescue practitioners are running a formal process and where data rooms are

being set up, so that prospective buyers can consider what is on offer. Of course what is key, and which will influence any buy out, will be the timing of the company having entered its business rescue process. If it is too late down the distressed curve, then there is not much left to rescue and value goes out the window.

We have recently (in the last few months) seen approaches being made by distressed funds, both local and international, and often by family offices (all cash-flush), and where they are all looking to buy in to distressed assets. Some are looking for certain assets classes, while others are looking for specific assets in a particular sector. A lot of these funds are USD/UK Pound based and where they have access to substantial funds to do these transactions. It does appear that South Africa is a good investment case for distressed investors.

These distressed funds also understand the need for post commencement finance (PCF) in a business rescue scenario and where PCF is often used to prop up the company in its business rescue process, while the transaction is being negotiated to its conclusion.

So the reallocation of capital (cash) into the distressed environment, bodes well for successful buy-outs and acquisitions across varied sectors of the economy.

What is evident is that our business rescue practitioners have to be very much alive to these opportunities.

So, business rescue remains dynamic and very active. Business rescue remains an important tool in the restructuring tool box and is not going anywhere soon. Whether we like it or not, business rescue is very much part and parcel of corporate South Africa, and where it remains an important contributor to job preservation, to the survival of viable companies and to ensure that these companies do not default into liquidation.



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