



INSOLVENCY & BUSINESS RESCUE

Navigating the Distressed Horizon – Restructuring South African Businesses in 2026

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by Dr Eric Levenstein, Director and Head of Insolvency and Business Rescue

Looking ahead to 2026, restructuring of businesses are set to increase as continued pressures brought about by tough trading conditions continue to impact the survival of corporates in South Africa. One of the key indicators of continued financial pressure for corporates into 2026, are some of the delistings on the Johannesburg Stock Exchange (JSE) in 2025 due to filings for business rescue. Both PSV Holdings and Murray & Roberts are set to delist in January 2026 amid financial challenges.

We have also recently seen filings for business rescue in Daybreak Foods (chicken farming), Prax South Africa (oil) and where the South African Post Office, and Mango Airlines continue in their business rescue processes.

After four years of uncertainty, Stefanutti Stocks (construction) has managed to stay out of business rescue after settling with Eskom (R580 million) in regard to work done at the Kusile Power Station, and by reaching new terms with its lenders. The informal restructuring of the entity was run by Metis Advisory after being appointed in 2019, to assist navigating potential financial constraint brought about by a cash flow crunch.

Whether corporates are in need of an informal turnaround or by participating in a formal business rescue process, what is certain is that many struggling companies require independent intervention in order to be able to fend off potential liquidation and closure.

Our current business rescue framework supports the case for robust practical workarounds for companies that are entering positions where they cannot meet obligations to creditors, and where they need a breathing space from creditors to negotiate terms for repayment.

The objective of business rescue is to preserve value, to allow for a moratorium (stay) on claims against the company so that the appointed business rescue practitioner can work towards the rehabilitation or preservation of the company as a going concern.

What is important for struggling companies to understand is that the option of a formal business rescue process allows these companies to reset, take a hard look as to the manner in which they trade, and to get independent advice from experts in turnarounds and restructuring, namely from the restructuring advisor/business rescue practitioner, so as to allow it to continue to trade and participate in the South African economy. All rescue efforts are focused on averting a final closure of the entity in a liquidation scenario.

The current business rescue regime that was introduced in Chapter 6 of the 2008 Companies Act in 2011, is company (debtor) centric and rescue-driven. The primary objective of business rescue is the ability to compromise historical debt, renegotiate prejudicial contracts, reconfigure the company's workforce and ultimately work together with all stakeholders to develop and implement a business rescue plan that enables the company to continue operating as a going concern. Only where this is not possible, does the process default to a secondary objective, to provide creditors with a better return than they would receive in an immediate liquidation. This shift in focus demonstrates a deliberate legislative intention to preserve value, safeguard jobs, protect investment, and maintain economic participation wherever possible. The objective being to provide a distressed company with the opportunity for a "fresh start", and where the company is provided with a runway to trade its way out of distress, through a restructuring process and where the company would have the opportunity to trade out to a position of solvency into the future.

In practice, however, business rescue is underutilised. This is because, business rescue is often considered very late in the distressed curve and where directors fear handing over the reins to an independent person, namely the business rescue practitioner, and where they would lose control of the company and the restructuring process. Directors are also reluctant to admit having traded the company into a period of financial difficulty and which behaviour would reflect on poor leadership, and often is reflective of a failure to timeously take the necessary steps to prevent financial collapse.

In reality, business rescue is a highly effective restructuring tool, but its success depends on being utilised at the right time. It provides companies with a mechanism to remain economically active while offering potential investors opportunities to acquire assets or equity, and provide creditors with the prospect of a better return and the unlocking of value, compared to what would result in a liquidation.

In April 2025, a significant development in insolvency and business rescue practice came about with the introduction of the Johannesburg High Court's Pilot Project, namely the formation of a Dedicated Insolvency Court, which established both an Insolvency Motion Court and an Insolvency Trial Court. Alongside sequestration and liquidation proceedings, business rescue matters are now also handled by this specialised court. The new Insolvency Court, is staffed with judges trained in insolvency law, which promises more equitable and informed decisions. Equally important was that prior to the introduction of the new Insolvency Court, there were significant delays in court hearings. Insolvency and business rescue matters are inherently urgent. Under the Insolvency Court, hearings follow a four-week cycle from date of enrolment, a welcome improvement, given the time-sensitive nature of business rescue and the critical importance of swift action to protect value and preserve companies who find themselves in financial distress. The new Insolvency Court in Johannesburg adds a refreshing and very exciting dimension to insolvency practice, for all of us involved in the insolvency and business rescue. We are hoping that in 2026, we are going to see the roll out of other insolvency courts in the other divisions of the High Court country-wide.

Business rescue is important for South Africa's economy in that it allows for –

- **Job creation and preservation** – in many business rescue matters we see the preservation of jobs and employment, particularly when we are able to rescue the company and where it does not collapse into liquidation, causing the ultimate demise/end of the company's life, with the consequent loss of jobs and retrenchments. By offering continued employment to a large part of the workforce, assists in keeping unemployment figures down, and where companies can continue to trade, albeit with a reduced number of employees, cutting overheads and the cost of running the business.
- **Distressed companies having access to finance** – often companies go into rescue because they are financially distressed – they cannot pay their debts in the ordinary course of business. By filing for business rescue, these companies have the opportunity for distressed funding lines in the form of "post-commencement finance" – PCF, and where anyone providing such PCF would be preferent in a business rescue. This promotes new capital and would enable a company to be restructured. PCF provides a funding lifeline and where the company can buy some time (breathing space) to have its restructuring BR plan approved by creditors, have the plan implemented and where the company can exit from rescue on a solvent basis, enabling the company to continue to trade on into the future. This can only be a positive for the company, its stakeholders (particularly for its suppliers of goods and services) and to the SA economy as a whole.
- **Potential for increased investment in distressed companies** – over the last decade we have seen a marked increase in the opportunity for cash flush investors to acquire assets or distressed companies out of business rescue. We have seen multiple examples of this and where third party offerors have concluded transactions at deep discounts and where these acquirors have walked away with value assets and companies. So the opportunities available to bed down these distressed M&A transactions have increased. These transactions have occurred in the mining/resource space, and in retail and manufacturing, and where we have seen consolidation of sectors as a result of these transactions happening out of rescue.
- **Supports entrepreneurship – fresh start principles of restructuring** – the chance for a company to be rescued and have a second chance (a fresh start) is of course fundamental to restructuring models in most jurisdictions across the globe, and we have certainly seen this with some of the successful rescues that have taken place in South Africa over the last few years.

It is important that a country like South Africa has viable and effective restructuring mechanisms whether it be on an informal basis (as seen in Stefanutti Stocks) or where a formal intervention such as business rescue is required.

Successful rescue regimes promote investment, bolster the economy and where jobs and viable businesses are preserved through the rescue process. Companies which were on the verge of collapse, are restructured and brought back from the cliff edge of disaster, and where they are placed back into local economies for the benefit of all stakeholders. The important challenge is for South Africa to ensure that it continues to have a reliable and workable framework for turnarounds of distressed companies. This would enable positive outcomes for SA Inc, and where skilled practitioners are able to implement and supervise these opportunities for rescue. If creditors and banks are confident in the rescue regime applicable, they will continue to support the company after its exit from the rescue process.

In 2026, it is very important that practitioners continue to highlight successful rescues and restructuring outcomes and where they promote the benefits of the process. Examples of companies having been successfully restructured or rescued, and where a better return to creditors has been achieved as to what would have resulted in a liquidation, must be shared with all stakeholders and the South African public as often as possible. This promotes confidence in the local economy and where creditors know that they will be able to maximize returns in distressed situations. Restructuring and formal business rescue processes remains active, and we are seeing more and more boards of directors starting to consider the urgent need for a formal restructuring alternative at a much earlier stage in the distressed curve, and where such intervention averts the potential for significant destruction in value brought about by liquidation.



Eric Levenstein

Head of Insolvency & Business Rescue

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