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The Role of the Corporate Doctor – Saving Distressed Companies in South Africa

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South African corporates continue to face significant challenges in surviving economic constraints and turmoil in the market place. Looking at recent fallout in South Africa, we have seen major filings for business rescue by Tongaat Hulett, the South African Post Office and Ellies Electrical. Liberty Coal purchased Optimum Coal out of business rescue in March this year. Nampak is going through an informal restructuring process and appointed a CRO (a Chief Restructuring Officer) to manage its turnaround process. Liquidations remain on the increase, with the latest victim being Habib Overseas Bank.

With ever increasing economic pressure (both in South Africa and globally), we continue to see companies in South Africa being left with little choice but to consider either a business rescue or an insolvency process. The cost of trading in 2024, caused by the ongoing pressure of sustained loadshedding, is impacting companies in just about every sector of the economy. StatsSA recently reported that 138 companies were placed into liquidation in South Africa in March 2024, and where financing, insurance, real estate and business services led the charge (at 46 companies) followed by trade, catering and accommodation (33), followed by manufacturing (5) and construction (3). It has further been reported that South Africa's SOEs remain financially distressed, with Eskom posting annual losses of more than R20 billion in the last 7 years, followed by SAA, Prasa, the SABC, PetroSA and Denel, all having consistently performed in a loss making position. Clearly financial distress remains agnostic and cuts across all sectors of the economy.

With all of this turmoil raging around our economy, South African companies are fortunately able to turn to a pool of significantly skilled restructuring and business rescue practitioners to assist in alleviating financial distress and thereby promoting the rescue of struggling companies. These practitioners have the tools provided by the South African Companies Act, 2008 as well as the Insolvency Act, 1936 at their disposal.

Restructuring tools are diverse and focus on bringing rampant debt under control, decreasing costs and overheads, alleviating ongoing pressure from creditors caused by weak cash flow and reorganising the manner in which distressed companies trade. This might also include an urgent requirement to reconfigure management, the board of directors and employees. The ability to renegotiate onerous (and prejudicial) contracts also remains an option, especially in a (formal) rescue scenario. These restructuring tools remain varied and adoption and implementation will depend on the company, the nature (cause) of the distress and the attitude and level of support of stakeholders, especially that of the financial institutions exposed to the distressed company.

Insolvency professionals need to adopt a holistic approach to dealing with the issues and root causes for the company's position of distress and decide on the most effective tool to be adopted in the peculiar circumstances facing the distressed company. These may include an informal restructuring (solvent restructuring), a business rescue process or an insolvency/liquidation process.

Insolvency professionals must recognise that in order to add real value to the restructuring process they will need to become aware of and bring themselves up to speed in respect of all restructuring disciplines (as mentioned above) and in order to become effective "corporate doctors".

One cannot practice in this area of speciality without being in touch with and understanding all of the mechanics and tools of restructuring companies in distress. This includes the informal restructuring process (the solvent restructuring), the makeup and mechanism of the section 155 compromise procedure, all of the business rescue mechanisms and workings of Chapter 6 of the Companies Act, and the intricacies and machinery of the insolvency process. For example, an understanding of the comparison between a business rescue dividend as opposed to a liquidation dividend is an essential factor in being able to decide which way the restructuring process should unfold. Having a multi-faceted approach to the tools available and being able to call on these skills at any time (depending on the situation faced) can only improve better outcomes for companies in financial distress. Adopting a one-dimensional approach does not provide value to the board, the company, the creditors or the employees of the distressed entity. In corporate South Africa, it is vitally important that stakeholders can recognize a multiple skill set on the part of insolvency practitioners and where the practitioner is skilled in all disciplines in order to be able to successfully restructure, rescue or wind up the company for the benefit of all affected persons.



Eric Levenstein

Head of Insolvency & Business Rescue

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