

Short Notes on:

BUSINESS RESCUE BAILOUT IN SOUTH AFRICA

Introduction

South Africa is still recovering from the Covid-19 pandemic, the looting and the most recent floods in KwaZulu Natal. So, how will South Africa's economy recover, if ever? The pandemic and all the other "crises" have left businesses in significant financial distress. The Companies Act, 71 of 2008¹ (the Act) has shed some light on companies left in the dark. The remedy is called business rescue.

What Is Business Rescue?

Business rescue is a process aimed at rehabilitating a company that is financially distressed by providing temporary supervision of the company and managing its affairs, businesses and property by a business rescue practitioner².

What Is The Objective Of Business Rescue?

The objective of business rescue is to restructure the affairs of a company in the possibility of the company continuing in existence on a solvent basis or resulting in a better return for the company's creditors.³

When Should A Company Start With Business Rescue?

A company should start at its first stage as described in s128(1)(a) of the Act. The business rescue process will depend on whether the company can pay all its debt in six months or the likelihood that the company will become insolvent in six months.

How To Place A Company Placed Under Business Rescue?

¹ The Companies Act 71 of 2008.

² Section 128 (1) (b), The Companies Act 71 of 2008.

³ Section 128(1)(b)(iii), The Companies Act 71 of 2008.

In terms of the Act,⁴ there are two main ways a company can be placed under business rescue. Namely, when the board of directors of a company resolves that the company voluntarily started with business rescue⁵ or when an affected person makes a formal application to the court for an order placing a company under business rescue⁶. An affected person in a business rescue process is a shareholder of the business, a creditor of the company, an employee (or their representative) or a registered trade union representing the company's employees.⁷ Section 131 will only apply if the company has not been placed under business rescue in terms of section 129 of the Act.

How Can You Object To The Business Rescue?

An affected person may, at any time after the business rescue resolution adoption, apply to the High Court for an order in terms of section 130 of the Act, object to the business rescue to set it aside because (i) there is no reasonable basis for believing that the company is financially distressed; (ii) there is no reasonable prospects for rescuing the company (iii) the company has failed to satisfy the procedural requirements in terms of section 129. The above are only a few reasons why an affected person may object to the business rescue.

Conclusion

Therefore, business rescue proceedings are often the more desired approach for companies. Consequently, it is crucial to consider all your options before placing your company under business rescue, as an affected person may object to your company to place it under business rescue.

Contact an expert at SchoemanLaw for any of your commercial needs.

⁴ Act 71 of 2008.

⁵ Section 129, The Companies Act 71 of 2008.

⁶ Section 131, The Companies Act 71 of 2008.

⁷ Section 128(1)(a), The Companies Act 71 of 2008.