



Companies and Intellectual
Property Commission
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MEDIA STATEMENT

13 APRIL 2022

JUDGEMENT: SARS v LOUIS PASTEUR INVESTMENTS (PTY) LTD, ADRIAAN EVERT PRAKKE N.O. AND 3 OTHERS – CASE NUMBER: 12194/2017

It is with gratification that the CIPC learned of the outcome of the above matter in the High Court of South Africa (Gauteng Division, Pretoria), in the form of an electronic judgment issued on 11 April 2022. The CIPC is concerned about the conduct of business rescue practitioners during business rescue proceedings in general.

The purpose of business rescue as set out in the Companies Act, 71 of 2008 is to facilitate the rehabilitation of a company that is financially distressed by providing for the temporary supervision of the company by way of implementation of a business rescue plan (if approved). The purpose of the business rescue plan is to-

“maximise the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company”

The court found that a business rescue practitioner is ultimately an officer of the court and as such has a duty to apply for liquidation if circumstances where there is no reasonable prospect of rescuing the company exist, or no possibility for a better return for creditors or shareholders through continued implementation of a business rescue plan exist. This judgment was handed down, no less than 10 years after the company, Louis Pasteur Investments (Pty) Ltd entered into business rescue proceedings. Business rescue must be a temporary process, and it is clear from the decision by Judge Millar, that it was the duty of the business rescue practitioner(s) to apply for liquidation of this company, long before the matter was brought before court.

The court further showed its displeasure with the conduct of the business rescue practitioner, by awarding a punitive cost order against the practitioner in his personal capacity.

It is encouraging that our courts are confirming the duty of a business rescue practitioner towards the company he/she is tasked to rescue, and that there may be severe consequences in the event that such a duty is neglected.

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The judgment mentioned above is available on the *CaseLines* system of the Gauteng Local Division of the High Court as well as on SAFLII. Interested parties and all business rescue practitioners are urged to study the judgment and ensure that their duty towards a company in business rescue is not neglected.

ENDS

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