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Companies and Intellectual
Property Commission

a member of **the dtic** group

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INTRODUCTION

- Objective of the webinar is to bring into awareness and educate directors and members on business rescue under the **Companies Act 71 of 2008** and on how to navigate the complex legal landscape in the rehabilitation of a company.
- Premised on the objective of the Commission in terms of S186(1)(c) of the Companies Act (the promotion of education and awareness of company and intellectual laws).
- The education and awareness of business helps to ensure compliance with statutory duties, minimizes personal liability for directors (e.g., for reckless trading), and maximizes the chances of a successful rescue or a better return for creditors than immediate liquidation.
- The CIPC has undertaken to compile training specifically designated for directors and members on the business rescue regime.
- The business rescue legal phenomenon found in chapter 6 of the 2008 companies act was incepted to remedy the shortcomings of the former corporate rescue procedure, judicial management.
- The reform in policy from the previous creditor friendly judicial management regime to a debtor-creditor friendly business rescue regime aims to aid in the economic growth and preservation of jobs.

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THE IMPORTANCE OF BUSINESS RESCUE

- Slow economic growth (Quarter 2 of 2025 indicated a growth of 0.8% in the GDP) the shift in policy is vital in aiding economic growth where there are failures.
- Failures can be influenced by internal and/or external factors
- Business rescue policy can assist where there are failures (failed business model, unavailability of funding, abandoned contracts etc)
- Business rescue provisions are important because they provide a legal framework to rehabilitate financially distressed companies, preventing their immediate liquidation.
- This process allows for the **temporary supervision** of the company by a business rescue practitioner, a temporary moratorium on creditor actions, and the restructuring of operations to improve solvency.
- The importance lies in preserving jobs, protecting the company's going-concern value to provide a better return for creditors, and ultimately, giving the business a chance to survive and operate on a solvent basis.

THE IMPORTANCE OF BUSINESS RESCUE CONTINUATION:

- **Preventing liquidation:** Before the Act, financially distressed companies often faced liquidation, which means the business ceased to exist. Business Rescue offers an alternative to keep the company operating.
- **Provides a temporary moratorium:** A stay on legal and enforcement proceedings against the company is put in place to give the business breathing room to restructure without immediate creditor pressure.
- **Facilitates restructuring:** The business rescue practitioner can restructure the company's affairs, including its business model, assets, and agreements, to restore solvency.
- **Balances stakeholders' interests:** The process is designed to balance the rights of various stakeholders, such as creditors, employees, and shareholders, to reach a rescue plan that is acceptable to all parties.
- **Preserves jobs and economic value:** By saving the company, business rescue helps to preserve jobs and retains the company's value as a going concern, which is often higher than its value when sold off as liquid assets.
- **Offers a better outcome for creditors:** The aim is to provide a better return for creditors and shareholders than would be possible through immediate liquidation.

THE ROLES OF DIRECTOR(S)/MEMBER(S) IN BUSINESS RESCUE

- Companies that in BR are deemed to be experiencing temporary setbacks, therefore members/directors should not abandon their duties and vacate their offices.
- In respect to appointment of business rescue practitioners' directors and members are encouraged conduct due diligence processes (interviews or referrals).
- During business rescue, members/directors' roles are to **assist and cooperate with the business rescue practitioner (BRP)** under the practitioner's authority, providing all necessary information.
- Directors/members are **not incapacitated** but must operate within the limits set by the BRP, retaining some management control subject to the BRP's directions.
- Their pre-rescue duty includes advising stakeholders of financial distress if a rescue is not filed, with failure to cooperate potentially leading to personal liability or disqualification.
- Over 50% of entities that returned to "In business" have been susceptible to the deregistration process due to non-compliance with the filing of Annual Returns.
- Directors and members are advised that the placing of a company under business rescue does not suspend its compliance requirements in terms of the Companies Act.

THE ROLES OF DIRECTORS/MEMBERS IN BUSINESS RESCUE CONTINUATION:

- **Section 137(2)(a)-(d):** Outlines the roles of the director during business
 - A) Continue the functions of a director under the discretion of the practitioner
 - B) The duty to exercise management functions with the express instruction of the BRP
 - C) Remained bound by the requirements of Section 75 concerning personal financial interest
- **Cooperate with the BRP:** Directors/Members must attend to the BRP's requests, provide company records, and supply any information about the company's affairs (S137(3))
- **Manage under BRP's authority:** They continue to exercise management functions but only under the express instructions and direction of the BRP.
- **Support the BRP:** Directors/Members must assist the practitioner in their efforts to rescue the company.
- **Retain specific powers:** Although their general management powers are transferred to the BRP, directors/members retain certain powers and duties, and their role is not to be completely incapacitated.

KEY EDUCATIONAL AREAS FOR DIRECTORS/MEMBERS

- **Understanding Financial Distress and Early Warning Signs**

Directors must be able to recognize signs of financial distress as defined by the Act, which includes situations where the company is unlikely to pay debts within six months (commercial insolvency) or is likely to become insolvent within six months (factual/balance sheet insolvency). Early recognition and action are key to increasing the chances of a successful rescue. (Early detection)

- **The Mechanics of Commencing Business Rescue**

Directors need to be aware of how business rescue can be initiated: either through a voluntary board resolution if financial distress and a reasonable prospect of rescue exist, or via a court application by any "affected person" like a creditor or employee. It's vital to understand the strict procedural requirements and deadlines for filing notices, as non-compliance can invalidate the process.

- **The Role and Powers of the Business Rescue Practitioners (BRP)**

Once appointed the BRP takes full control of the company's management, can delegate tasks, or even remove existing management. The BRP investigates the company to assess the prospect of rescue.

KEY EDUCATIONAL AREAS FOR DIRECTORS/MEMBERS

- **Directors' Retained Duties and Liabilities**

Directors and members should understand that duties are not entirely suspended during business rescue. Directors must still perform their functions under the BRP's authority, maintain fiduciary duties, cooperate with the BRP, and can remain personally liable for actions like reckless trading. Understanding the distinction between governance and management functions is important, as some powers stay with the board.

- **The removal of directors**

S137(5) prescribes that at any time during the business rescue proceedings, the appointed BRP may apply to court for an order to remove a director from office on the grounds listed from S137(5)(a)-(b).

PROCESS TO PLACE ENTITY IN BUSINESS RESCUE

- There are two prescribed processes to place a company/CC in business rescue namely:

1) **Section 129 process (Voluntary placing of company into BR)**

- Section 129 of the companies Act of 2008 provides for the board of a company to voluntarily commence business rescue proceedings, and place the company under supervision, through a resolution of the board of the company.
- Section 129(3) and (4) specifically outline the administrative requirements that must be complied with to successfully bring an application of proceedings under S129,
- The resolution may not be taken if a company is in liquidation or a liquidation application.

2) **Section 131 procedure**

- An affected party may apply to court at any time for an order of court to place the company under supervision.
- Affected party also includes employees.

CONCLUSION:

- Educating directors and members in business rescue under the Companies Act 71 of 2008 is critical for the effective and successful application of the business rescue mechanism.
- A clear understanding of their roles, duties, and limitations is vital to ensure compliance with the Act, avoid personal liability, and ultimately maximize the chances of rescuing a financially distressed company. comprehensive education for directors and members transforms business rescue from a poorly understood, last-resort measure into a strategic tool that can genuinely promote the efficient rescue and recovery of viable businesses, balancing the interests of all stakeholders as intended by the Companies Act.



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The End: Thank You😊.