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Introduction to the business rescue regime.



Companies and Intellectual
Property Commission

a member of **the dtic** group

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Introduction

- The objective of the Commission amongst others, is the promotion of education and awareness of the company and intellectual property laws and related matters, in terms of S186 of the Act.
- Educating members of the public, directors and members of CCs on business rescue under the **Companies Act 71 of 2008** is critical for the early identification of financial distress and for navigating the complex legal landscape to attempt to rehabilitate a company.
- This education helps 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.

Introduction and historical background of business rescue

- Business Rescue is a legal concept(proceedings) that is aimed at the facilitation of the rehabilitation of a company that is financially distressed by providing a) a temporary supervision of a company, management of its affairs, property and business, b)a temporary moratorium on the rights of claimants against the company or in respect of property in its possession and c) the development and implementation of a business rescue plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities.
- Provisions found under chapter 6 of the Companies Act 71 of 2008,
- The concept was introduced to remedy/reform the shortcomings of the former creditor friendly corporate rescue procedure “Judicial Management”, to a regime that balance both the rights of creditors and debtors,
- Key reforms introduced through business rescue include the introduction of Section 129 proceedings (the right of companies to voluntarily begin business rescue which was not found in the predecessor regime of judicial management.
- Companies that qualify to enter into business rescue are companies that are financially distressed and have a reasonable prospect to be rescued,
- 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 thrive again.

Importance of business rescue

- **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.

Filing for business rescue

•Business Rescue Proceedings begin when ;

1. The board passes a resolution that the company voluntarily begin business rescue proceedings (**section 129**)
 - Such a resolution may not be adopted if liquidation proceedings have been initiated against the company,
 - Section 129(4) and (5) of the Companies Act outlines the administrative requirements for the filing of the resolution with the CIPC.
 - Non-compliance with the Act does not automatically render the proceedings to be a nullity (*Panamo Properties v Nel NNO 2015 (5) SA 63 (SCA)*)
2. An affected person (shareholder, creditor, employee or organized labour) applies to court for an order for the commencement of business rescue proceedings (**section 131**)

Key role players and the role of business rescue practitioners

- Shareholders or creditors
 - Registered trade union representing the employees of the company
 - Employees of a company that are not represented by a trade union
 - Business rescue practitioners
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- **Role of business rescue practitioners**
 - Has full management control of the company
 - Investigate the affairs of the company
 - Developing and implementing an adopted business rescue plan
 - May delegate any power or function of the practitioner to a person who was part of the board or pre-existing management of the company

The role of directors and members

- 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 and following their instructions.
- 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.
- **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.
- **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.

- **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 Practitioner (BRP)**

Education must clarify the BRP's authority. 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 Business Rescue Plan and Stakeholder Rights**

Directors and members must be informed about the business rescue plan process. The BRP develops the plan, which is subject to consultation and voting by "affected persons". Once approved, the plan is binding on all affected parties. Members, as shareholders, typically vote only if their rights are impacted by the plan. Comprehensive education in these areas helps companies proactively address financial distress and work towards better outcomes for all involved.

Learn iBiz training

- The CIPC has undertaken to compile an online training specifically designed to simplify the provisions of Chapter 6 for members of the public, employees, directors and members of CC to understand business rescue.
- The training module guide covers the meaning of business rescue, advantages of business rescue as opposed to liquidation, commencement of business rescue, duties of directors during business rescue and the termination of business rescue proceedings.
- The Module contents have been finalized, and the training is now available on the CIPCs website for enrolment, a webinar will be held on the 11 June 2026 on the training.

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.
- Kindly provide topics you would want to be discussed on the next webinar to the following emails: TNkuna@cipc.co.za and Mmalinda@cipc.co.za



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The end: Thank you 😊😊😊😊