



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Companies Act, 2008

**PRESENTATION TO THE PORTFOLIO COMMITTEE ON
TRADE AND INDUSTRY
THE REVIEW OF BUSINESS RESCUE (BR)
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PURPOSE

- The purpose of the presentation is to brief the Portfolio Committee on Trade and Industry on the developments in Business Rescue (BR) and the outcomes of a study to review Business Rescue, commissioned by the Companies and Intellectual Property Commission (CIPC) on behalf of the Specialist Committee on Company Law (SCCL).

BACKGROUND

- Concept of Business Rescue is designed to provide rescue mechanism to a company that has financial difficulties but has not reached stage of insolvency.
- Business Rescue is not intended to deal with insolvency but financially distressed companies.
- The expression “Financially distressed” is properly defined and it does not give an impression that business rescue is associated with “insolvency.”
- This creates a current challenge in that most companies initiate Business Rescue when they are late and on verge of insolvency.

BACKGROUND

- Judicial Management has been discontinued and replaced with Business Rescue due to the fact that almost all companies that went through it ended up in liquidation.
- In Business Rescue, speed is of essence. Therefore Business Rescue Practitioner (BRP) is given appropriate powers (s140) to control the process including power to suspend transactions temporarily (s136).
- Western Cape as well as the Gauteng high court played a leading role in the interpretation of the principles around Business Rescue.



BACKGROUND

- Business Rescue revives the livelihood of families by saving jobs
- UK experts advised that high numbers of success are not important as long as there are few companies in the current situation are being saved.
- Success stories include, Meltz Clothing chain, Moyo Restaurant chain, ATE group military technology.
- Glencore subsidiary, Optimum coal has initiated business rescue to save jobs.

WORKER'S INTERESTS

- Notably, Business Rescue protects the interests of workers by –
 - Providing access to financial statements
 - recognising them as creditors of the company with a voting interest to the extent of any unpaid remuneration,
 - requiring consultation with them in the development of the business rescue plan,

WORKERS' INTERESTS

- permitting them an opportunity to address creditors before a vote on the plan, and
- according them, as a group, the right to buy out any dissenting creditor who has voted against approving a rescue plan.
- Claims of the workers are aligned with Insolvency Act, for consistency with regard to equal treatment of those claims. This is also in line with the preferred ranking of employee claims in terms of Insolvency Act and International Labour Organisation (ILO) Convention.

Business Rescue Plan

- The Business rescue practitioner develops the Business rescue plan to be considered by all stakeholders and implements it after it has been adopted.
- Business Rescue Practitioners' report is made available to the trade unions and employees, in terms of the Act.



CHALLENGES

- **Post commencement finance**-Any remuneration, reimbursement for expenses or any other amount of money relating to employment to an employee during business rescue becomes “post commencement finance” will be treated equally but will have preference over all claims against the company. **the dti** and the Standing Committee in Company Law (SCCL) held seminars where Judges, academics and British experts highlighted that “post rescue finance” is still a problem.
- **Negotiations**-Some creditors like Banks and landlords refuse to buy in to the Business Rescue plan and price to buy them out is expensive.



Challenges

- **Interpretation-** There are different approaches in interpretation between the divisions of the high court.
- **Fees-** Fees of BRP are sometimes expensive.
- **Adoption of Business rescue plan-** The adoption can take time due to disagreements among parties involved.

STUDY

- The Standing Committee on Company Law (SCCL) requested the CIPC to commission a study.
- The study is based on the status of Business Rescue for the first 3.25 years since inception.

TERMS OF REFERENCE OF STUDY

- Determine and evaluate the status quo of the business rescue industry by parties involved (Regulators, Business Rescue practitioners, government, employees and others).
- Guide on future actions to address problems.
- Potentially guide amendments to the Companies Act.

CONCLUSION

- If all identified problems are addressed, the Business Rescue mechanisms will contribute immensely to the economy.

STUDY

CIPC and the consultant will go into the details of the study.



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THANK YOU