

SOS for business rescue

The current economic climate is placing businesses under severe pressure resulting in large numbers going out of business, filing for bankruptcy or turning to business rescue as a possible lifeline.

During 2012 the success rate for businesses that applied for business rescue was only 8 %. Initially unfavourable tax demands, stringent legal regulations, unviable business plans and the skills set of the appointed practitioners, all contributed to the low success rate of business rescue attempts.

Statistics circulated by the Companies and Intellectual Property Commission (CIPC) during 2013 however reveals, the real rate of success of all businesses that have concluded their rescue operations is between 12 % – 15 %.

During 2013, the number of appointments in the Western Cape alone was 15.8 % less than in 2012. This gives some credence to the interpretation that companies are benefitting from Chapter 6 of the Act, which came into effect in May 2011.

Why does business rescue fail?

Although business rescue is functionally non-judicial in nature, the current trend in South Africa places the decision of whether to file for business rescue in the hands of the board of directors and a trusted team of attorneys.

Major decisions in the process are based on the business plan prepared by the directors and employees, often overlooking the inherent emotionally charged bias stemming from their desire to see the business succeed.

A further reason for the failure of the rescue proceedings is the over-optimistic operational and financial projections which overstate the forecast cash flows and understate the funding requirements of the business.

Legal vs financial focus

At a Turnaround Management Association of Southern Africa meeting during 2013, the questions were posed whether business rescue in South Africa is too legally focussed, and whether key financial considerations were overlooked in favour of legal consideration.

The CIPC indicated that a sure-fire solution would be to increase financial analysis prior to the filing for business rescue. There is a far greater role for financial specialists to play in providing an objective and realistic view on the business plan, prior to filing for business rescue.

This independent viewpoint will enable both attorneys and the board of directors to take clear view on the integrity of the business plan and whether business rescue is a viable option.

Seeking this sort of advice can only improve the success rate of business rescue in South Africa by excluding those companies which have followed the process as a last ditch attempt to rescue an ultimately doomed company.

It is becoming increasingly evident that if you don't adequately prepare for financial distress and business rescue, chances are you probably won't survive it.



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