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memorandum

to
cc
from
date

Gary Oertel

our ref
your ref

BUSINESS RESCUE PROCEEDINGS**Introduction**

1. Business rescue is a formal process which was introduced by the Companies Act, 71 of 2008, as amended ("Companies Act"). Attached marked "A" is a general memorandum on business rescue proceedings.
2. Business rescue entails a "Part A", namely, the restructuring of the company which allows the company to continue in existence on a solvent basis or a "Part B", which results in a better return for the company's creditors or shareholders than as would result in the immediate liquidation of the company.
3. Business rescue proceedings result in a moratorium on legal proceedings- however business rescue does not prevent counterparties to contracts concluded with the company from exercising their contractual remedies such as a right to cancel the contract.
4. Business rescue proceedings can be commenced with a board resolution (no shareholders resolution required). The board appoints the business rescue practitioner ("practitioner").
5. The practitioner assumes management control of the company and is required to develop a business rescue plan which achieves either a Part A or a Part B rescue of the company.
6. The current management and directors remain in place but are subject to the authority of the practitioner.
7. Business rescue is a creditor driven process as creditors are required to approve or reject the

business rescue plan. In addition, and especially in respect of larger business rescue matters, the creditors form a creditors' committee – the practitioner will consult with this committee on an on-going basis regarding the progress of the business rescue proceedings and regarding the development of the business rescue plan.

8. The voting thresholds required to approve a business rescue plan are as follows:

8.1. First tier vote: the plan will be approved on a preliminary basis if holders of more than 75% of the creditors' voting interest, that were voted, and those votes included at least 50% of the independent creditors' voting interest, if any, that were voted, vote in favour of the business rescue plan;

8.2. Second tier vote: in the event that the business rescue plan alters the rights of the holders of any class of the company's securities, then such holders must also approve the business rescue plan.

9. In general the key factors to a successful business rescue includes the following:

9.1. Obtaining the support of critical stakeholders including the following:

9.1.1. Sufficient level of support from funders and creditors required to pass a business rescue plan;

9.1.2. Key employees and management;

9.1.3. Main customers and suppliers (they need comfort that the company can continue to perform during the business rescue process and that the company will have the requisite funding to meet its commitments – it must be borne in mind that it is costly and disruptive for customers to suddenly change service providers and therefore they prefer not to cancel, however, they will do so if they feel at risk);

9.1.4. Any other stakeholders who are essential to the business of the company such as key suppliers, landlords, etc.

9.2. Post-commencement funding – most business rescues fail due to lack of post commencement funding;

9.3. The appointment of the correct business rescue practitioner;

9.4. Conducting a pre-assessment; and

9.5. Preparatory steps undertaken by the company before commencing business rescue based on recommendations of the pre-assessment.

Advantages of business rescue proceedings

10. The practitioner will assist the creditors in forming a creditors' committee which will allow the creditors to consult with the practitioner on the progress of the business rescue process as well as on developing a plan. Separate creditors committee can be formed representing creditor groups with different interests.
11. Section 112 of the Companies Act, which requires a special resolution from shareholders in the event that a company disposes of the greater part of its assets, does not apply to any disposals pursuant to an adopted business rescue plan. Therefore a section 112 resolution would not be required in respect of disposals in terms of an adopted business rescue plan.
12. Business rescue will facilitate any business related restructurings such as cancelling onerous contracts which may assist in maximising the realisation value of the businesses.
13. Business rescue may also assist in expediting a competition approval process by using the "failing firm" argument.
14. In the event that the assets do not generate sufficient funds to pay all the creditors, then the business rescue could be used as a mechanism to compromise the claims of creditors.
15. Business rescue will allow the company to implement the disposal process without the threat of a liquidation by any creditor who may try to use this to hold the process to ransom.

Risks of Business Rescue

16. The risks of instituting business rescue proceeding include the following:
 - 16.1. The key counter parties terminate their contracts
 - 16.2. The loss of key employees and key members of management.
 - 16.3. Inability to raise sufficient post commencement finance to enable the company to funds its operating costs and other funding costs.
 - 16.4. The funders are unable to agree to a plan which results in the failure of the plan. Any affected person will have the option of applying to Court to set aside the votes of any creditor who voted against the plan but this could result in extended litigation
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