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16-09-2013

Date – Datum

Plaintiff -

Case - Saak

Def. - Verw.

Our Reference

A.Murugan

Ref. - Verwys.

**Dear Colleagues**

**BUSINESS RESCUE PROCEEDINGS IN TERMS OF CHAPTER 6  
OF THE COMPANIES AMENDMENT ACT NO 3. OF 2011:**

**THE EFFECT ON THE SHERIFFS FUNCTION**

I am sure that by now you or your deputy has come across a director or manager of a company refusing to allow you to make an attachment or removal of assets under attachment, OR accept summons, due to the company being under the Business Rescue Proceedings. (BRP)

South Africa's new business rescue legislation is contained in Chapter 6 of the Companies Act no. 71 of 2008 and Chapter 6 of the Companies Amendment Act 3 of 2011. The legislation came into effect on 1 May 2011.

Basically, Business rescue facilitates the rehabilitation of a company that is financially distressed by providing for a temporary supervision of the company and of the management of its affairs, business and property by the Business Rescue Practitioner (BRP).

It is the duty of the BRP to formulate a Business Rescue Plan which may include restructuring business affairs, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the company continuing in existence on a solvent basis. If it is not possible for the company to so continue in existence, the Business Rescue Plan may envisage a return for the company's creditors or shareholders than would result from the immediate liquidation of the company.

All debt which occurred before the date marking the beginning of business rescue proceedings falls within business rescue and will be addressed in the business rescue plan. All post-business rescue financing is preferent to the debt owed before business rescue.

**During business rescue proceedings, there is a moratorium against all legal proceedings, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession.**

The legislation provides for a business rescue period of three months. In practice, the duration of business rescue proceedings is between six and nine months.

**Please refer to the legislation in terms of the Companies Amendment Act No.3 of 2011 for more clarity:**

Section 133 ( 1) During business rescue proceedings, no legal proceedings ,including enforcements action, against the company, or the relation to any property belonging to the company, or lawfully in its possession ,may be commenced or proceeded with in any forum, except-

- a) With the written consent of the practitioner:
- b) With the leave of the court and in accordance with any terms the court considers suitable:
- c) As a set –off against any claim made by the company in any legal proceedings irrespective whether those proceedings commenced before or after the business rescue proceedings began:
- d) Criminal proceedings against the company or any of its directors or officers :  
or
- e) Proceedings concerning any property or right over which the company exercises the powers of a trustee.

(2). During business rescue proceedings, a guarantee or surety by a company in favour of any other person may not be enforced by any person against the company except with leave of the court and in accordance with any terms the court considers just and equitable in the circumstances.

(3). If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit , the measurement of that time must be suspended during the company’s business rescue proceedings.

**Colleagues, the above information is merely distributed to provide you with a brief understanding of this new legislation and the onus is on you to investigate the individual circumstances that may arise in your office.**

**It is therefore important to communicate with the Business Rescue Practitioner, should you be faced with this situation.**

Regards

Allan Murugan o.b.o. SASS