

SOS for Business Rescue



THE STATS

- There are currently 160 conditionally licenced business rescue practitioners with interim conditional licences. The majority of practitioners are practicing in Gauteng (54 %) and the Western Cape (21 %).
- The average turn-around time reported is 5.6 months which is substantially shorter than liquidation proceedings.
- During a recently conducted web survey it was found that only 25% of jobs were lost in the business rescue process.

The current economic climate is placing businesses under severe pressure, resulting in many companies floundering, filing for bankruptcy or turning to business rescue specialists as a possible lifeline...

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

However, statistics circulated by the Companies and Intellectual Property Commission (CIPC) during 2013 reveal that the real rate of success of all businesses that have concluded their rescue operations is between 12 % and 15%. During 2013, the number of appointments made by the Master, Cape Town, in companies that were wound up was 15.8% less than in 2012. This gives some credence to the interpretation that companies are benefitting from the business rescue process, which came into effect in May 2011.

Legal emphasis a reason for failure rate?

In some instances the business rescue process is used for the wrong reasons. For example, the company in financial distress can't afford to settle its monthly obligations, and so commence the rescue process to prevent its creditors from instituting legal action. The process creates an automatic moratorium on legal action to the benefit of the company in business rescue.

Although business rescue as a process 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 of the company in question 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 over-optimistic operational and financial projections, which overstate the forecast cash flows and understate the funding requirements of the business.

At a meeting of the Turnaround Management Association of Southern Africa during 2013, the questions were posed whether business rescue in South Africa is too legally focussed, and whether key financial considerations are being 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 relevant board of directors to obtain a clear view on the integrity of the business plan and whether business rescue is indeed a viable option. Seeking this sort of advice can only improve the success rate of business rescue services in South Africa, by excluding those companies that 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 proceedings, chances are you won't survive the process.

Daniel Terblanche is Director of Business Rescue Services at global audit, tax and advisory firm, Mazars. The Mazars Business Rescue team is resourced to attend to assignments nationwide, and is skilled in assisting financially distressed companies find the best possible solution, irrespective of the situation.