

Quality is remembered long after the price is forgotten.

## **BUSINESS RESCUE – EFFECT ON DIRECTORS**

**Business rescue** is defined as a proceeding to facilitate the rehabilitation of a company which is financially distressed by providing for:

- the temporary supervision of the company, and the management of its affairs, business and property;
- a temporary moratorium on the rights of claimants against the company; and
- the development and implementation, of a plan to rescue the company by restricting its affairs, business, property, liabilities and equity in a manner that maximizes the likelihood of the company continuing in existence.

The New Companies Act stipulates various effects that business rescue proceedings would have on directors.

### **In summary:**

1. The Act requires that each director continues to exercise the function of a director, subject to the reasonable authority of the practitioner.
2. The director remains bound by the regulations concerning personal financial interests.
3. During the company's business rescue proceedings, each director of the company must attend to the requests of the practitioner at all times, and provide information as required. Should the board, or one or more directors of the company, purport to take any action on behalf of the company that requires approval of the practitioner, that action is void unless approved by the practitioner.

During the business rescue proceedings, the practitioner may apply to court for an order removing a director from office on the grounds that the director has failed to comply with a requirement of Chapter 6 of the new Companies Act, alternatively, has by act or omissions impeded the practitioner to perform his powers and functions.

*Law & Laughter*

Q: Have you heard about the lawyers' word processor?  
A: No matter what font you select, everything come out in fine print.

# SEQUESTRATION VS ADMINISTRATION ORDERS

**Insolvency** is defined as a monetary condition in terms of which:

1. A legal entity or a natural person's liabilities exceeds their assets, generally referred to as 'balance-sheet' insolvency; or
2. When a legal entity or natural person can no longer meet their debt obligations as they become due, commonly referred to as 'cash-flow' insolvency.

Even though insolvency in itself is not a crime, criminal charges could follow the sequestration of an estate. These charges may relate to a failure to keep proper records or to common law crimes such as fraud.

If an estate is insolvent, an out-of-court settlement with the creditors may be sought in order to surrender the estate, alternatively the insolvent may apply to court for an administration order.

Sequestration proceedings are designed to freeze an insolvent's estate and to place same under the control of a trustee, who liquidates same and distributes the proceeds among the various creditors.

However if the debts of an estate do not exceed R50 000, an application to court for an administration order would be the suitable form of relief. This provides for a degree of leeway by allowing the insolvent to pay off its debts, usually in the form instalments. Only debts that are due, or overdue, for payment on the date of the application are included in the total. A copy of the application for administration must be delivered to all creditors.

Once an order for administration has been issued, no further debts may be incurred and no credit may be raised without notifying the other party that an order of administration is applicable. Whilst an administration order is in force, no creditor has any legal remedy to collect money owing, subject to some exceptions (for instance, a mortgage bond), without the permission of the court.

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