

BUSINESS RESCUE, RESTRUCTURING & INSOLVENCY NEWSLETTER



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Business Rescue,
Restructuring &
Insolvency

Just when we thought we had noticed a little flicker of light - the tunnel was extended. Personally, I didn't think that the lockdown would be extended. Our economy couldn't even handle the first three weeks.

I hope that everyone enjoyed the Easter weekend. Easter celebrations normally come with big family gatherings, church services and the general sense of relaxation. We now have a new normal and I assume that the dining room tables weren't nearly as full as last year. For some, this was the first Easter without their families. I have become accustomed to video calls, but I draw the line at virtual Easter celebrations.

The news platforms are filled with predictions on the effects of COVID-19 on the economy. The most alarming one that I picked up last week was that the South African Reserve Bank predicts 370,000 job losses and 1,600 business being declared insolvent. This was before the extension of the lockdown and was also labelled as "early predictions".

Before the lockdown began, the government announced a series of measures to cushion the economic effects. In this edition we include a summary of the available relief measures to assist ailing businesses. These measures are desperately required in the small to mid-size enterprises. In a cry for help from the SME sector, we already saw that the R1 billion Sukuma Relief Programme, started by the Rupert family and Remgro, is oversubscribed and was closed temporarily after receiving applications in the total value of R2,8 billion.

We also provide a brief consideration of legislative reform in foreign jurisdictions. There are still no amendments on home ground. However, and as a result of the extension of the lockdown period, keep an eye out for some possible movement on this front.

The most important article to take note of in this week's edition deals with the concept of business rescue. Many businesses may be financially distressed as a result of the lockdown and may require breathing space to restructure its affairs.

Cashflow and earnings are now even more under threat for businesses of all sizes. Yesterday, Impala Platinum announced that they will seek leave to restart some of its operations and the liquor industry is pressurising the government to relax certain regulations. Perhaps we should consider reopening certain parts of the economy. After all, we are all too familiar with load shedding schedules.

Until next week. Hopefully by then I will still be married.....

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Business Rescue 101 – An introduction - Part 1

The detrimental impact of COVID-19 has caused many businesses in South Africa to suffer financial distress. Thankfully, Chapter 6 of the Companies Act 71 of 2008 dealing with business rescue provides relief to businesses during these challenging and testing times.



The mechanism of business rescue provides a company with breathing space to restructure its affairs under the management of a business rescue practitioner, and for a business rescue plan to be prepared to take the business forward. Business rescue should be seen as an opportunity to restructure and organise the company's affairs, rather than be seen as the failure of the company.

Our Business Rescue, Restructuring and Insolvency team at CDH has specialist knowledge, skill and experience in all aspects of the business rescue process.

We also represent all role players in the business rescue process, including business rescue practitioners, creditors, employees, shareholders and directors.

Since business rescue will be at the forefront of fighting the aftermath of the COVID-19 pandemic and since we anticipate for many companies to consider going into business rescue in the coming weeks and months, we will deal with the business rescue process (and related aspects) over two editions of our newsletter, so as to ensure that you are equipped with all the most important information on business rescue (no matter which role player you are in the process).

In this edition we deal with the definition and objectives of business rescue, the modes of commencement and requirements for placing a company under business rescue and the legal consequences of business rescue proceedings.

Definition of "Business Rescue"

"Business Rescue" is defined in section 128(1)(b) of the Companies Act 71 of 2008 (Companies Act) as "*proceedings to facilitate the rehabilitation of a company that is financially distressed*".

The proceedings are aimed at aiding a company which is in financial distress, by allowing it to reorganise and restructure its affairs, assets, equity, debts, property and liabilities.

In order to aid the rescue of a financially distressed company, Chapter 6 of the Companies Act affords the company under business rescue with various procedural and substantive protections and advantages during the business rescue procedure, which will be dealt with in detail hereunder.

Objectives of business rescue

In terms of section 128(1)(b)(iii) of the Companies Act, business rescue has one of the following two objectives:

- to restructure the affairs of the company in an attempt to ensure that the company continues in existence on a solvent basis; or
- if it is not possible for the company to so continue in existence, that the business rescue results in a better return for the company's creditors and shareholders than would ordinarily result from the immediate liquidation of the company.

Tools to achieve the business rescue objectives

Chapter 6 of the Companies Act provides the following tools to achieve the abovementioned objectives:

- the temporary supervision of the company, and the management of its affairs, business and property, by a business rescue practitioner (BRP);

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- a temporary moratorium on the rights of claimants against the company or in respect of property belonging to the company or lawfully in the possession of the company; and
- the development and implementation, if approved, of a business rescue plan to rescue the company by restructuring its affairs.

Modes of commencing business rescue proceedings

There are two ways in which a company can be placed under business rescue, namely:

- *Voluntary business rescue proceedings* – when the board of directors of a company passes a resolution to place the company under business rescue. This process is regulated by section 129 of the Companies Act; and
- *Compulsory business rescue proceedings* – when application is made to court to place the company under business rescue by an affected person. This process is regulated by section 131 of the Companies Act.

Since the requirements for both modes listed above are different, and since both modes are regulated by different provisions, we will discuss them both separately hereunder.

Requirements for placing a company under voluntary business rescue

A board of directors of a company can, in terms of section 129 of the Companies Act, resolve to place the company under business rescue if (i) the company is financially distressed; and (ii) there is a reasonable prospect of rescuing the company.

A company will be financially distressed in terms of section 128(1)(f) of the Companies Act if:

- It appears to be reasonably unlikely that the company will be able to pay all of its debts as and when they become due and payable within the immediately ensuing 6 months (commercial insolvency); or
- if its liabilities will exceed its assets within the ensuing six months (factual or balance sheet insolvency).

The Companies Act does not provide any guidance on how to determine whether there is a reasonable prospect of rescuing a company, however there is plethora of case law where our South African courts have given meaning to the term 'reasonable prospect'.

It is important to be cognisant of the fact that in order for a company to be "rescued", only one of the two objectives set out in section 128(1)(b)(iii) of the Companies Act, need to be met (as listed above). Therefore, even if it is clear that the company which will be placed under business rescue will never trade on a solvent basis again, there could still be a reasonable prospect of the company being "rescued", if the business rescue will result in better returns for the company's creditors and shareholders, than if the company was placed under immediate liquidation.

Requirements for placing a company under business rescue by way of a court order

As alluded to above, section 131 of the Companies Act makes provision for placing a company under business rescue by way of a court order.

The aforementioned section states that unless a company has adopted a resolution contemplated in section 129 of the Companies Act, an affected person may apply to a court at any time for an order placing a company under supervision and commencing business rescue proceedings.

An "affected person" is defined in section 128(1)(a) of the Companies Act as:

- A shareholder or creditor of the company;
- Any registered trade union representing employees of the company; and
- If any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives.

In order to succeed with an application to place a company under compulsory business rescue, the "affected person" must satisfy the court that there is a reasonable prospect of rescuing the company and that:

- the company is financially distressed; or
- the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment related matters; or
- it is otherwise just and equitable to do so for financial reasons.

The business rescue proceedings will commence as soon as the business rescue order is granted by the court.

CHAMBERS GLOBAL 2017 - 2020 ranked our Dispute Resolution practice in Band 1: Dispute Resolution.

CHAMBERS GLOBAL 2017 - 2020 ranked our Dispute Resolution practice in Band 2: Restructuring/Insolvency.

Tobie Jordaan ranked by CHAMBERS GLOBAL 2020 as an up and coming Restructuring/Insolvency lawyer.



Business Rescue 101 – An introduction - Part 1...continued

Legal consequences of business rescue proceedings

When a company has been placed under business rescue (voluntarily or by way of a court order), there are legal consequences for a number of the company's activities and stakeholders, including creditors. The objective is to protect a company while the BRP attempts to return it to a viable position.

In summary, the primary consequences of business rescue proceedings on stakeholders are as follows:

- civil legal proceedings against the company, including enforcement action, are stayed until the end of the business rescue process. There are some exceptions which will be dealt with below;
- the disposal of the company's property is restricted;
- the refinancing of the company is facilitated by allowing for unencumbered company assets to be used to secure loans;
- employment contracts are generally protected. There are however some exceptions which will be dealt with below; and
- other contracts of the company may be cancelled, or the company's obligations may in certain circumstances be entirely, partially or conditionally suspended by the BRP.

Some of these consequences are briefly dealt with hereunder.

(i) General Moratorium on Civil Legal Proceedings

In terms of section 133(1) of the Companies Act, no legal proceedings, including enforcement action, may be commenced or continued with in any forum against the company, or in relation to any property belonging to the company, or lawfully in its possession, during the business rescue proceedings. This moratorium provides the company with "breathing space", while the BRP attempts to rescue and restructure the company through the implementation of a business rescue plan.



(ii) Protection of Property Interests

The power of a company to deal with its property is restricted during business rescue and the company may only dispose of property if such disposal takes place:

- in the ordinary course of its business; or
- in a *bona fide* transaction at arm's length for fair value approved in advance by the BRP in writing; or
- as part of an approved business rescue plan.

In terms of section 134(1)(c) of the Companies Act, no person may exercise any right in connection with any property that is in the lawful possession of the company, irrespective of whether the company is the owner of the property, unless the BRP has given his/her written consent. This provision is mainly intended to ensure that the company will be able to retain equipment and assets required for the continuation of its business. However, the BRP may not unreasonably withhold his/her consent taking into consideration the purpose of business rescue proceedings, the circumstances of the company, the nature of the property and the right claims in respect of it.

Business Rescue 101 – An introduction - Part 1...continued

If, during business rescue, the company wants to sell any property over which a creditor has security or title interest, the company must:

- obtain the prior consent of that creditor, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that creditor's security or title interest; and
- promptly pay to that creditor the sale proceeds attributable to that property up to the amount of the company's indebtedness to that creditor; or
- provide security for the amount of those proceeds, to the reasonable satisfaction of that creditor.

(iii) Business Rescue and the Company's Employees

In terms of section 136(1)(a) of the Companies Act, during business rescue, employees who were employed before the commencement of business rescue proceedings, continue to be employed on the same terms and conditions subject to (i) changes occurring in the ordinary course of attrition; or (ii) the employees and the company agreeing different terms which complies with the applicable labour laws.

Furthermore, in terms of section 136(1)(b) of the Companies Act, any retrenchments in terms of any business rescue plan, must be conducted in terms of section 189 or 189A of the Labour Relations Act 66 of 1995, and other applicable employment related legislation.

Lastly, it is important to note that in terms of section 144 of the Companies Act, an employee is a preferred unsecured creditor for any monies owing to such employee which became due and payable to an employee before business rescue

commenced and had not been paid to that employee before the commencement of business rescue. Any money that becomes due to the employee after the commencement of the business rescue proceedings, will be regarded as PCF.

(iv) Effect of Business Rescue on the Company's Contracts

During business rescue proceedings, the BRP may with regard to any obligation of the company that (i) arises under an agreement to which the company was a party at the commencement of the business rescue proceedings; and (ii) would otherwise become due during those proceedings:

- entirely, partially or conditionally suspend such obligation for the duration of the business rescue proceedings, in terms of section 136(2)(a) of the Companies Act; or
- apply urgently to a court to entirely, partially or conditionally cancel such obligation, on any terms that are just and reasonable in the circumstances, in terms of section 136(2)(b) of the Companies Act.

The purpose of section 136 of the Companies Act is to regulate the company's position in respect of its obligations under existing contracts that may apply at the time the business rescue proceedings commence. The Companies Act enables the company, through the BRP, to extricate itself, whether temporarily or permanently, from onerous contractual provisions that are preventing it, or may prevent it, from becoming a successful concern.

In terms of section 136(3) of the Companies Act, any agreement, or provision of an agreement, that has been suspended or cancelled, will give rise to a claim for damages in favour of a party affected

thereby. However, the damages claim will be paid in terms of the business rescue plan, and since it will only be a concurrent claim against the company, the full damages amount will rarely be paid to the claimant.

Conclusion

As COVID-19 continues to wreak havoc in our South African economy, many businesses find themselves in severe financial distress, making them the right candidate for business rescue. It will provide the necessary relief for the various ailing businesses left in the wake of COVID-19.

It is important for companies considering business rescue to familiarise themselves with the basics of the business rescue proceedings provided for in Chapter 6, in order to make informed decisions for their businesses going forward.

Look out for next week's edition of the newsletter, which will include Part 2 of this article dealing with Business Rescue 101. We will in particular be dealing with the appointment of the BRP, the general powers and duties of the BRP, the business rescue plan, post-commencement finance, the ranking of claims against a company in business rescue and the termination of business rescue proceedings.

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COVID-19 - What the State is doing for you

Since the onset of COVID-19 (Coronavirus) restrictions, the State has been rolling out measures to alleviate the negative effects of these restrictions.

We thought it would be useful to provide a summary of what is out there – particularly what is available to assist businesses. What is provided below is for high level reference. Further details will be made available upon inquiry. More measures will be rolled out and we will inform you of these as they happen.

The main thrust of these measures has been to promote a coordinated and efficient response to the pandemic, as well as alleviate impacts on the financial consequences to businesses and labour relations. This article highlights the most relevant business-oriented regulations.

Trade, industry, competition and tax

- Hospitals and healthcare facilities are exempted from certain practices that would ordinarily be anti-competitive in order to co-ordinate, as part of the COVID-19 response, the optimal allocation of healthcare facilities such as medical care and pharmaceutical resources.
 - The DTI has also published regulations to protect consumers and customers, under threat of severe penalties, from unconscionable, unfair, unreasonable unjust and improper commercial practices in relation to specified food, emergency services, medical supplies and emergency clean up products by profiteering from shortages of supply through excessive pricing or inequitable distribution. Enforcement of complaints under Section 8(1)(a) of the Competition Act ie for excessive pricing, will be give urgent priority.
 - The DTI has further published regulations giving a block exemption to banks to co-ordinate otherwise anti -competitive practices to alleviate the negative impact on customers of the pandemic.
- This is aimed at assisting customers to manage their finances (and more specifically their debt), during and post COVID-19. Measures are provided to allow continuing operation of essential payment systems, bank notes to ATMs and electronic payment systems. Debt relief is catered for through permissible co-ordination of steps to extend credit, provide payment holidays, and limit asset repossessions. No specifics are provided – it is up to the banking sector to implement these measures in response to the pandemic.
- Similar regulations have been published to alleviate the impact of COVID-19 on the retail property sector – with the focus on designated retail tenants including small independent retailers – specifically clothing, footwear and home textile retailers, personal care services and restaurants - to manage their finances due and post the national disaster. This permits otherwise anti-competitive practices aimed at payment holidays, rental discounts, limitations on evictions and lease variations aimed at protecting viability. Once more the regulations do not direct what should be done – they merely permit such arrangements to be made.
 - Regulations have been published dealing with the provision of quarantine facilities by the hotel sector.
 - Certain medical care goods, like face masks and hand sanitisers, cannot be exported without a permit.
 - CIPC will not issue notices in terms of section 22 to companies believed to be carrying on businesses which is temporarily insolvent but still trading where such insolvency is caused by COVID-19.
- Two Bills have been introduced to provide for tax relief under COVID-19, namely the 2020 Draft Disaster Management Tax Relief Bill and the 2020 Draft Disaster Management Tax Relief Administration Bill (Tax Relief Bills). The relief measures are aimed at assisting, amongst others, small to medium sized businesses. The relief provided for in the Tax Relief Bills was discussed by our Tax & Exchange Control Department in their alerts dated 3 April 2020 and 9 April 2020 and deal with the following:
 - Deferral of employees' tax and provisional tax obligations for tax compliant small to medium sized businesses, as discussed in our [Tax & Exchange Control Alert](#) of 3 April 2020;
 - Expansion of the employment tax incentive regime, as discussed in our [Tax & Exchange Control Alert](#) of 3 April 2020; and
 - Donations to funds established for purposes of assisting with COVID-19 disaster relief efforts, as discussed in our [Tax & Exchange Control Alert](#) of 9 April 2020.
 - Certain measures have been put in place to enable customs assistance and trade in essential goods during lockdown, as well as reduction in port congestion linked to sanitisation measures. SARS has issued a binding general ruling to assist exporters who may be affected by the lockdown from a VAT perspective, which is discussed in our [Tax & Exchange Control Alert](#) of 27 March 2020.

COVID-19 - What the State is doing for you...*continued*



Small businesses

The following is noteworthy:

- The Small Business Development Department has made funding available aimed at assisting businesses which are negatively affected, directly or indirectly, due to the Coronavirus pandemic. In order to get this assistance, a business must be registered with CIPC, and SARS and UIF compliant (this may bring into the net smaller businesses that were previously operating informally). Rental and payroll relief is contemplated. What will be made available or its terms is not disclosed. Perhaps this will emerge in due course.
- The Small Business Development Department has also made available funding to set up small businesses meeting the qualifying criteria which will be able to take advantage of supply opportunities caused by shortage of goods in the local market. These measures are aimed at supporting smaller businesses who can assist in the manufacture and supply of goods that are needed towards the management of the impact of COVID-19.
- GNR 450 is aimed at assisting SMME's operating grocery stores and spaza shops, including those operating without licenses in the informal sector. This sets out guidelines permitting operation to provide food and necessities, opening hours, staff engagement and so forth.

The State has been pro-active in initiating measures to cope with the COVID-19 pandemic. What the stated aid packages lack is specificity as to what will actually be given. Perhaps the government does not itself know yet because it does not know what it has available to give, so it cannot create unrealistic expectations. Delivery will however be more relevant and useful than words, so people seeking assistance need to keep a close eye on developments. We will update our clients as soon as we know.

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The Ripple Effect: Policy changes across the globe, will South Africa follow suit?



Introduction: The economic impact of COVID-19 and the need for policy reform

On 5 April 2020, Her Majesty Queen Elizabeth II delivered a statement to the world, wherein she made a profound observation. She highlighted that the fight against COVID-19 is like no global crisis she has faced before. What makes COVID-19 unique is that all nations have come together in a common endeavour. The world is united, combining advances in science and our instinctive compassion to heal, and

to overcome the virus and its devastating effects. It is therefore unsurprising that various nations have been looking to one another for guidance.

In an effort to curb the effect of COVID-19 on businesses and economies, governments across the globe have undertaken to adopt and amend various pieces of legislation. We discuss these policy changes below.

As yet, South Africa has not followed suit from an insolvency and business rescue perspective. The question is, to what extent can we expect similar policy changes going forward?

A brief consideration of legislative reform in similar jurisdictions

The United States of America (USA)

With the World Health Organization warning that the USA has the potential to become the new epicentre of the COVID-19 pandemic, there have been some noteworthy policy changes adopted in different states and jurisdictions in an effort to alleviate the effects that COVID-19 has had on the US economy to date. The CARES Act (Coronavirus Aid, Relief and Economic Security) (CARES Act) has been adopted in

The Ripple Effect: Policy changes across the globe, will South Africa follow suit?...continued

the USA in order to support both businesses and individuals through government funding schemes. The CARES Act has provided for relief in many areas including, *inter alia*:

- Paycheque Protection, allowing for eligible businesses to maintain their payroll and certain overhead expenses through the period of emergency; and
- Allowing the deferral of employer taxes for 2020, with 50% of payroll tax payments for 2020 being due in 2021 and the remaining 50% being due in 2022.

Other policy changes include:

- The Federal Reserve (Fed) has reduced interest rates to essentially zero. The rate of emergency lending at the discount window for banks has been reduced by 125 basis points to 0,25% and the term of loans lengthened to 90 days;
- The Fed also cut the reserve requirements for many banks to zero; and
- There have been many Loan Mortgage Corporations that have implemented a 60-day suspension of foreclosures/ evictions and plans to reduce/suspend mortgage payments for up to twelve months for those affected by COVID-19.

The United Kingdom (UK)

The UK has adopted a series of temporary measures to combat the disruption caused by COVID-19. These include:

- The Monetary Policy Committee voted to cut Bank rates to 0,1%;
- Subject to eligibility, an allowance for a three-month VAT payment deferment has been adopted;
- Business rates holidays for retail, hospitality and leisure businesses have been extended for the 2020 and 2021 tax year;



- The Coronavirus Business Interruption Loan Scheme has been temporarily introduced in order to provide loans, overdraft facilities and other financing options to SMEs;
- The Bank of England will, under the new COVID-19 Financing Facility, buy short term debt from larger companies, allowing companies to finance short term liabilities;
- Under the new Coronavirus Bill, commercial tenants unable to pay their rent due to COVID-19 will be temporarily protected from eviction; and
- The Prudential Regulatory authority set out supervisory expectations that banks should not increase dividends or other distributions in response to policy actions.

Asia Pacific

Australia

On 22 March 2020, Australian Treasurer Joshua Frydenberg announced amendments to the Corporations Act 2001 to provide temporary relief for financially distressed businesses caused by COVID-19. As a result, the Coronavirus Economic Response Package Omnibus Act (CERPO Act) was passed by Parliament on 23 March 2020. The amendments introduced by the CERPO Act will apply for a six-month period but may be extended or have effects beyond this timeline. The CERPO Act introduces the following amendments:

- An insolvent trading safe harbour, constituting a 6-month moratorium on insolvent trading liability for directors in respect of debts incurred "in the ordinary course of the company's business";

The Ripple Effect: Policy changes across the globe, will South Africa follow suit?...continued

- The current minimum threshold for creditors to issue a statutory demand on a company has also been increased from \$2,000 to \$20,000 for the next six months;
- Companies will have six months to respond to a statutory demand. This is an increase from the previous 21-day timeframe which is a precursor to winding up proceedings being commenced by creditors; and
- The Treasurer has been given instrument-making power to amend provisions of the Corporations Act 2001 to provide relief from, or modify, obligations under that Act.

Singapore

On 7 April 2020, the Singapore government introduced the COVID-19 (Temporary Measures) Act 2020 (the COVID-19 Act). These temporary measures will remain in place for six months and may be extended for up to twelve months. The COVID-19 Act makes the following amendments to bankruptcy and insolvency proceedings:

- The monetary threshold for company bankruptcy filings has been increased from S\$10,000 to S\$100,000;
- The time period to respond to statutory creditor demands has been extended from 21 days to six months;
- Directors will temporarily be relieved from their obligations to prevent their companies from trading while insolvent if the debts are incurred in the company's ordinary course of business, during the prescribed period and before the appointment of a judicial manager or liquidator of the company. However, they remain criminally liable if the debts are incurred fraudulently; and

- The contractual rights of banks, other than the right to commence legal action for default on a loan covered under the COVID-19 Act, are not affected by the temporary measures. Importantly, the banks' rights to charge fees and interest for non-payment or late payment of loan obligations are not affected by the COVID-19 Act.

Spain

Following the declaration of a state of emergency on 14 March 2020, the Spanish government has introduced several Royal Decree-Laws (RDLs) to mitigate the impact of COVID-19. The RDLs make the following amendments to bankruptcy and insolvency proceedings:

- A three-month moratorium on mortgage payments for habitual residence for borrowers experiencing difficulties in making mortgage payments as a result of COVID-19. This moratorium has also been extended to:
 - (i) individuals who are professionals or entrepreneurs as it pertains to their professional/ business premises; and
 - (ii) mortgages for the acquisition by individuals of housing to be rented when the owner ceases to receive the rent as a result of COVID-19.
- During the moratorium, lenders cannot demand mortgage payments or any repayments of principal or interest and no interest or late payment interest will accrue;
- A three-month moratorium on repayments for consumer credit and other non-mortgage loans for individuals experiencing difficulties in making payments as a result of COVID-19, with no interest or late payment interest accruing;

- Creditors' petitions for compulsory liquidation will not be allowed until two months have passed after the state of emergency has ended, and debtors' own filings will be given priority even if submitted later; and
- While the state of emergency is in effect, debtors are not required to file for insolvency proceedings (within two months of insolvency), even where they applied for protection from creditors under Spanish insolvency law and the stipulated negotiation period has elapsed.

Legislative measures already taken in South Africa

Much like the nations mentioned above, South Africa has embarked on several policy amendments to not only combat the spread of the virus, but also to protect business and individuals from its devastating economic effect. The most noteworthy legislative measures taken by the South African government thus far are as follows:

The Department of Trade, Industry and Competition (DTIC) published regulations (Regulations) in terms of section 10(10) of the Competition Act 89 of 1998 (Competition Act) whereby the retail property sector has been exempt from Chapter 2, more specifically, sections 4 and 5 of the Competition Act, which sections ordinarily prohibit entities in horizontal and vertical relationships from entering into agreements or engaging in practices which prevent or lessen competition in the market.

Under the Regulations, retail tenants and retail property landlords may conclude agreements allowing for rental payment holidays, rental discounts, limitations on the eviction of tenants and the suspension of or adjustment to lease agreement clauses which are restrictive to the retail tenant from undertaking reasonable measures required to

The Ripple Effect: Policy changes across the globe, will South Africa follow suit? *...continued*



protect viability during the national disaster. Similar block exemptions have been issued to the healthcare and banking sectors as well as the hotel industry. Furthermore, the DTIC has also introduced the Consumer and Customer Protection and National Disaster Management Regulations and Directions under the auspices of the Competition Act and the Consumer Protection Act 68 of 2008, the aim of which is to protect consumers from unfair, unreasonable, improper or unjust commercial practices in response to a surge in demand during the National Disaster.

As mentioned in our previous Newsletter, the Companies and Intellectual Property Commission (CIPC) has undertaken not to invoke its powers under section 22 of the Companies Act 71 of 2008 (Companies Act)

and will therefore not be issuing notices to companies where the company has continued to trade even while temporarily insolvent due to COVID-19. A general extension has been provided by the CIPC for business rescue proceedings which commenced, but which did not complete the procedure as stated in section 129 of the Companies Act, until 30 April 2020.

Conclusion

Much like other jurisdictions, South Africa has implemented several general legislative amendments and exemptions in order to combat the economic impact of COVID-19, however South Africa has not implemented any specific legislative amendments from an insolvency or business rescue perspective. It will be interesting to note the ripple effect of the insolvency-related legislative

amendments taking place world-wide and the extent to which South Africa will follow suit. Struggling South African businesses will most certainly welcome such type of amendments to our insolvency and business rescue legislation and are accordingly waiting in anticipation whether South Africa will follow suit.

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