

# RECOVERY AND RESTRUCTURING

Companies across the board have been impacted by COVID-19, with many expected to turn to business rescue. How effective is the process in South Africa? **Delia du Toit** reports

**E**arly in May, the Companies and Intellectual Property Commission (CIPC) revealed that there had been a sharp increase in the number of companies applying for business rescue since the beginning of the first phase of South Africa's lockdown in March. As embattled businesses feel the crunch of the shrinking economy, experts predict this number will increase.

Justine Hoppe, a director at Mazars Recovery and Restructuring, believes South Africa will see an unprecedented surge in new business-rescue cases over the next six months. "There are thousands of South African businesses that were already operating under severe financial strain as a result of the weak economic landscape of the last few years," says Hoppe. "For many of these companies, the national lockdown and the coming economic challenges are likely to be the final blow."

Juanita Steenekamp, project director of governance and non-IFRS reporting at The South African Institute of Chartered Accountants (SAICA), says business in the hospitality and tourism industry are especially vulnerable, including restaurants, hotels and venues for hire, as well as the service industry such as beauty salons, health spas and hair salons. "The property industry is also severely



Juanita Steenekamp

affected as consumers are not visiting shops in malls, or the shops have been closed through lockdown, and therefore the owners of the shops are affected in terms of being able to pay rent and services," says Steenekamp.

## ESSENTIAL STEPS

Business rescue is still relatively new in South Africa, with legislation having been introduced in 2011. Top TV, Pearl Valley Golf Estate, Meltz and Ellerines are some of the success stories, with most being bought out by third parties.

The key to success is timeliness, says Hoppe: "Business rescue can save a company, but success rates are

contentious in the country because often the process is entered into much too late. Many only ask for help when they reach the point where they have no access to liquidity or cash.

By then, there aren't many options left to save the company and the only way forward is to liquidate. It's crucial to initiate business-rescue proceedings before the company is projected to come to a financial standstill, as access to funding is vital in making the process a success."

Steenekamp says it's also of utmost importance that the appointed practitioner has financial and legal experience, and knowledge of the company's industry.

## THE WAY FORWARD

A business-rescue practitioner essentially creates a plan to turn the company around, and while the process is ongoing, the company has the advantage of some breathing space, says Steenekamp. "While in business rescue, the company is supervised by a business-rescue practitioner, and there is a temporary moratorium on the rights of claimants and on legal proceedings against the company. The practitioner may entirely, partially or conditionally suspend any obligations of the company, with the exception of employment contracts."

But these advantages are only attainable if the rescue process is begun as early as possible, reiterates Hoppe. "I can't stress enough that businesses need to take a proactive stance and plan ahead. It's human nature to avoid difficult decisions for as long as possible, but that only exacerbates the problem. Rather be prepared for any eventuality than be caught off guard." ■

## THE PROCESS

Filing for business rescue is reasonably easy, says Juanita Steenekamp. It involves creating an affidavit stating that the company is in financial difficulty and that the result of business rescue will likely be better than that achieved by immediate liquidation.

The company then has five days to publish a notice of the resolution to every affected person and to appoint a business-rescue practitioner, and a further two days to file a notice of the appointment with the CIPC.



Justine Hoppe