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Effect of Business Rescue on Employees and Contracts

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Status of Employees When Business Rescue Commences

1. “Status” as defined in the Oxford dictionary – “The rank or position of an individual, and the responsibilities and privileges that go with it. Status may be achieved (as a result of the actions and works of the individual) or ascribed”.
2. Section 7 (K) – How does an employees status fit into this provision?
3. Chapter 6 is designed to prevent job losses by elevating an employee status during the business rescue proceedings.
4. Status of employees during rescue proceedings as opposed to their status during liquidation proceedings

Rights of Employees When Business Rescue Commences

1. “Rights” as defined in the Oxford dictionary- “a moral or legal claim to have or get something or to behave in a particular way”
2. Ranking and preference of claims both pre and post commencement of business rescue, employee rights are elevated above other affected persons
3. Does section 136 provide a guarantee of employment? Consider other jurisdictions and rights of employees and the obligations of employees to the BRP and the Company
4. Applicable case law and section 189 of LRA:
South African Airways SOC Ltd and others v National Union of metalworkers of South Africa obo members and others
5. Unions and the power of the employees during business rescue proceedings

Suspension of Contracts by the Practitioner

1. A practitioner is given a “Tool box” to restructure a business through a business rescue process
2. The ultimate goal of the rescue is to return the company to solvency and the suspension of contractual obligations are an important aspect of the “Tools” available to a practitioner to restore solvency
3. Often management enter into onerous contracts when financial distress is at their door
4. “Entirely, partially or conditionally” – Use your powers wisely- Shield vs Sword
5. Practical Examples – Lawfully possession, terminated contracts and the general mortarium

Cancellation of Contracts by the Practitioner

1. A practitioner is given a “Tool box” to restructure a business through a business rescue process, but the powers to cancel contracts must be exercised by way of a court application, which appears to give inherent urgency by the Companies Act.
2. The ultimate goal of the rescue is to return the company to solvency and the cancellation of contractual obligations are an important aspect of the “Tools” available to a practitioner to restore solvency
3. Often management enter into onerous contracts when financial distress is at their door
4. Discretion on what is considered “just and equitable” for the judge- Damages Claims?
5. Practical Examples

Questions

Thank you,
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