



TOTAL: 40/50 = 80%  
Very good!

SUMMATIVE (FORMAL) ASSESSMENT: MODULE 7D

SOUTH AFRICA

***This is the*** summative (formal) assessment for Module 7D ***of this course and must be submitted by all candidates who*** selected this module as one of their elective modules.

The mark awarded for this assessment will determine your final mark for Module 7D. ***In order to pass this module, you need to obtain a mark of 50% or more for this assessment.***



## INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

- 1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.**
- 2. All assessments must be submitted electronically in Microsoft Word format, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters - please do not change the document settings in any way. DO NOT submit your assessment in PDF format as it will be returned to you unmarked.**
- 3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).**
- 4. You must save this document using the following format: [studentID.assessment7D]. An example would be something along the following lines: 202223-336.assessment7D. Please also include the filename as a footer to each page of the assessment (this has been pre-populated for you, merely replace the words "studentID" with the student number allocated to you). Do not include your name or any other identifying words in your file name. Assessments that do not comply with this instruction will be returned to candidates unmarked.**
- 5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6. The final submission date for this assessment is 31 July 2023. The assessment submission portal will close at 23:00 (11 pm) BST (GMT +1) on 31 July 2023. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.**
- 7. Prior to being populated with your answers, this assessment consists of 9 pages.**



**ANSWER ALL THE QUESTIONS**

QUESTION 1 (multiple-choice questions) [10 marks in total] [9/10 marks]

**Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow.** Select only ONE answer. Candidates who select more than one answer will receive no mark for that specific question.**

Question 1.1

**Choose the correct statement in relation to the insolvent debtor and rehabilitation (discharge):**

- (a) If no claims have been received against the estate within six months of the date of sequestration, the debtor is automatically rehabilitated.**
- (b) Once a period of 10 years has lapsed after the sequestration of his estate, the debtor may apply to court for an order of rehabilitation.**
- (c) If the Master has approved a plan of distribution to repay all of the claims against the estate as well as all costs in full, the debtor may apply to the court for rehabilitation.**

**(d) None of the above are correct.**

Question 1.2

**Choose the incorrect statement/s in relation to the recognition of a foreign officeholder:**

- (i) The foreign officeholder must apply to the Magistrate's Court for recognition.**
- (ii) In the court order the court will include provisions to protect local creditors.**
- (iii) The court order must be published in the Government Gazette.**
- (iv) The foreign officeholder will only be required to provide appropriate security, and nothing more.**

**Choose the correct answer:**

- (a) Option (ii).**

- (b) Options (ii) and (iv).**
- (c) Option (iii).**

**(d) Options (i) and (iv).**

Question 1.3

Choose the correct statement:

- (a) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds immovable property as security for his claim is required to give written notice of this fact before the first meeting of creditors to the Master and to the trustee.**
- (b) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds movable property as security for his claim is required to give written notice of this fact before the first meeting of creditors to the Master and to the trustee.**
- (c) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds immovable property as security for his claim is required to give written notice of this fact before the second meeting of creditors to the Master and to the trustee.**
- (d) In terms of section 83(1) of the Insolvency Act 24 of 1936, a creditor who holds movable property as security for his claim is required to give written notice of this fact before the second meeting of creditors to the Master and to the trustee.**

Question 1.4

**Which of the following factors may persuade the court in exercising its discretion whether to recognise foreign proceedings:**

- (i) That it is equitable and convenient if the insolvent is resident outside of South Africa.**
- (ii) Assets in South Africa are not a prerequisite for recognition.**
- (iii) Preference for single proceeding directed by court of domicile.**
- (iv) If the order was granted by the court of domicile and the insolvent has movables only it is a mere formality, but for immovable property the court will apply its discretion.**

Choose the correct answer:

- (a) Option (i).**

**(b) Options (ii) and (iii).**

**(c) Options (i), (ii) and (iii).**

**(d) All of the above.**

Question 1.5

**In March 2022 Company XYZ was placed in liquidation. The liquidator of Company XYZ became aware of the fact that Company XYZ disposed of property worth ZAR 22,000 to Company ABC for an amount of ZAR 15,000 during October 2021. Directly after the disposition, Company XYZ's liabilities exceeded its assets by ZAR 5,000. If the disposition is set aside -**

**(a) Company ABC will be required to return ZAR 22,000 to the liquidator of Company XYZ.**

**(b) Company ABC will be required to return ZAR 15,000 to the liquidator of Company XYZ.**

**(c) Company ABC will be required to return ZAR 5,000 to the liquidator of Company XYZ.**

**(d) Company ABC will be required to return ZAR 7,000 to the liquidator of Company XYZ.**

Question 1.6

**Choose the correct statement:**

**(a) In respect of a general notarial bond over the movable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.**

**(b) In respect of a general notarial bond over the immovable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.**

**(c) In respect of a special notarial bond over the movable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.**

**(d) In respect of a special notarial bond over the immovable property of the debtor, a creditor in whose favour the bond has been registered will have a secured claim in terms of the Insolvency Act 24 of 1936 upon the sequestration of the debtor's estate.**

Question 1.7

**A cause of action established by a foreign judgment can be enforced if certain common law requirements are met. Which of the following is not such a common law requirement:**

**(a) The foreign court must have had international competence as determined by South African law.**

**(b) The enforcement of the judgment must not be contrary to South African public policy or the concept of natural justice, but the judgment need not be final and conclusive.**

**(c) The enforcement of the judgment must not be contrary to South African public policy or the concept of natural justice.**

**(d) The judgment must not have been obtained fraudulently.**

Question 1.8

**Cluck Company Limited (the company) wishes to obtain funding in order to expand its poultry and egg enterprises. As part of the security package negotiated with the lender, the lender requires that the company provide its tractors and incubators to it as security. The company makes use of the tractors and incubators on a daily basis. This form of security required is a:**

**(a) Pledge.**

**(b) Hypothec.**

**(c) Cession in security of a debt (*in securitatem debiti*).**

**(d) Special notarial bond.**



Question 1.9

**Which of the following is / are incorrect in relation to the recognition of foreign judgments:**

- (a) All foreign judgments are enforced in terms of the Enforcement of Foreign Civil Judgments Act 32 of 1988.**
- (b) All foreign judgments are enforced in terms of the common law.**
- (c) Foreign judgments are directly enforceable in South Africa.**
- (d) All of the above.**

Question 1.10

**In accordance with the South African common law dealing with cross-border insolvency, the assets of an insolvent are governed as follows:**

- (a) Movable property is governed by the law of the natural person's domicile (*lex domicilii*).**
- (b) Movable property is governed by the law of the natural person's domicile (*lex situs*).**
- (c) Immovable property is governed by the law of the place where the immovable property is situated (*lex domicilii*).**
- (d) Immovable property is governed by the law of law of the natural person's domicile (*lex situs*).**

QUESTION 2 (direct questions) [10 marks in total]

Question 2.1 [maximum 3 marks] [3/3]

**List any three proceedings that are excluded from the moratorium under business rescue proceedings imposed by section 133 of the Companies Act 71 of 2008.**

***Criminal proceedings against the company or any of its directors<sup>1</sup>;  
Proceedings against the company by a regulatory authority in the execution of its duties;<sup>2</sup> and***

<sup>1</sup> Companies Act 71 of 2008, s 133(1)(d).

<sup>2</sup> Companies Act 71 of 2008, s 133(1)(f).

*Proceedings concerning any property or right over which the company exercises the powers of trustee.<sup>3</sup>*

Question 2.2 [maximum 5 marks] [5 marks]

**Rearrange the following costs/claims in the free residue account in order of preference:**

- (a) Costs of sequestration;**
- (b) Funeral expenses;**
- (c) Income tax;**
- (d) Claim secured by a general bond;**
- (e) Employee's claims.**

*Funeral expenses*

*Costs of sequestration*

*Employee's claims*

*Income Tax*

*Claim secured by a general bond*

Question 2.3 [maximum 2 marks] [0/2]

**Below is an extract from the business rescue plan of Mapochs Mine Proprietary Limited (Mapochs), a South African mining company that was placed under business rescue on 20 April 2015.**

<b>EVENT</b>	<b>DATE</b>
Board Resolution to commence Business Rescue filed at the CIPC	20 April 2015
BRPs appointed	21 April 2015
First Employees' Meeting	28 April 2015
First Creditors' Meeting	6 May 2015
First Creditors' Committee Meeting	26 May 2015
First Employees' Committee Meeting	7 October 2015
Second Creditors' Committee Meeting	15 October 2015
Third Creditors' Committee Meeting	10 November 2015
Business Rescue Plan published	20 November 2015
Meeting to consider the Business Rescue Plan (in terms of section 151 of the Companies Act)	30 November 2015

<sup>3</sup> Companies Act 71 of 2008, s 133(1)(c).

**With reference to the above extract, how and by whom would the joint business rescue practitioners (referred to in the extract above as “BRPs”) have been appointed?**

*The BRPs are to be appointed within 5 business days after business rescue filing on 20 April 2015 by Mapochs. The BRPs must fulfil the requirements under s. 138 Companies Act 2008 and consent to be appointed. After the appointment within two days Mapochs must file a notice of appointment and publish the notice any relevant person.<sup>4</sup>*

- *By the board of Mapochs Mine Proprietary Limited, as the above is an example of voluntary business rescue proceedings.*
- *In the board resolution placing the company under business rescue.*

QUESTION 3 (essay-type question) [15 marks] **[12] Very good answer!**

**Chances are that when an insolvent company is placed under liquidation proceedings it is party to an executory contract. Write an essay on the treatment of executory contracts under liquidation proceedings, including any exceptions to the general rule. Your essay should include a brief discussion of any exceptions that may apply.**

*An executory contract in South Africa is a contract which has not been performed entirely or there is partial performance, sometimes referred to as an ‘uncomplete contract’.<sup>5</sup> There can be issues arising when a company is placed under liquidation in terms of an executory contract because there are still obligations that require to be met either by the debtor or the creditor. The question which arises is what the position under the South African law of execution contract during liquidation is.*

*The general rules on the effect of liquidation on executory contract are in common law. [1] The basic principle is liquidation does not lead to automatic termination of the executory contract.<sup>6</sup> [1] The effect of the basic rule is the parties to the executory contract in its creation would not have been able to include a term which stated that commencement of liquidation automatically terminates the contract. Additionally in the basic rule, the executory contract is not automatically suspended due to*

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<sup>4</sup> Companies Act 2008, s 129(4)

<sup>5</sup> *Smith and another v Parton NO* [1980] (3) SA 724 (D) [728H]–[729A]; *Tangney and Others v Zive’s Trustee* [1961] (1) SA 449 (W) [452]–[453]; *Edkins v Registrar of Deeds, Johannesburg and Others* [2012] (6) SA 278 (GSJ) [5].

<sup>6</sup> *Nedcor Investment Bank v Pretoria Belgrave Hotel (PTY) Ltd* 2003 (5) SA 189 (SCA) para 6.

liquidation.<sup>7</sup> Liquidation, therefore generally does not affect the expectation of performance of the executory contract by the creditor or debtor.

The liquidator can choose whether to perform [1] the executory contract or repudiate [1] it if the debtor still has obligations under the executory contract.<sup>8</sup> In relation to creditor's performance, the performance of the executory contract is a right which in turn is an asset for the debtor that the liquidator controls.<sup>9</sup> The liquidator's decision to repudiate or suspend the executory contract is made with the best interest of the creditors [1] and thus must seek authorisation of the creditors to take that step.<sup>10</sup> If the liquidator repudiates or suspends the executory contract, the other party to the contract (who have accepted suspension or repudiation) are barred from claiming specific performance of the contract. [1]<sup>11</sup> *May only rely on remedies for breach of contract (being damages and cancellation)*. As a result the creditor becomes a concurrent creditor who is entitled to a monetary compensation.

- *If the liquidator elects to abide by the contract, he 'steps into the shoes of the insolvent' and is entitled to receive any performance owed to the insolvent and is bound to render any reciprocal performance due to the other party*
- *Once the liquidator has exercised this election right he cannot change his mind*

There are exemptions to the general rule of common law election right found statute in certain executory contracts. The following section will look at different executory contracts where the common law election right is limited.

a) Sale of immovable property [1]

The law treats executory contract for sale of immovable property differently depending on whether the seller or the purchaser is in liquidation. Where the seller is in liquidation before the transfer of the immovable property, the exemption to the common law election right in the Alienation of Land Act 68 of 1981 becomes applicable.<sup>12</sup> The effect is that the liquidator cannot choose to either suspend or repudiate the contract, however, for this to apply certain conditions must be present: i) The sale of the immovable property must be in instalments;<sup>13</sup> ii) the executory contract concerns land for residential purposes; iii) the land can be registered in the Deed office; iv) The executory contract is recorded in the Deeds Office by an endorsement against the title of the land; and v) costs of the transfer and other particular cost must be paid. If the above conditions are met the liquidator should authorise the transferred of the land to the purchaser, hence performance of the executory contract by the seller's estate is done. [1]

*In the event where the buyer enters liquidation before the immovable property is transferred to them, the liquidator can elect to enforce the contract or*

<sup>7</sup> Robert sharrock and others, Hockly, Insolvency Law (9 edn, Juta Law 2012) 91.

<sup>8</sup> *Smith and another v Parton NO* [1980] (3) SA 724 (D) 728.

<sup>9</sup> Insolvency Act, s 77.

<sup>10</sup> *Richter NO v Riverside Estates (Pty) Ltd* 1946 OPD 209.

<sup>11</sup> *Ward v Barrett NO and Another NO* [1963] (2) SA 546 (A) [552H]–[553(B)].

<sup>12</sup> Alienation of Land Act 68 of 1981, ss 18 – 22 and 27.

<sup>13</sup> *Sarrahwitz v Martiz N.O. and Another* [2015] (8) BCLR 925 (CC).

repudiate it.<sup>14</sup> This appears to be a similar position to the common law election right.<sup>15</sup> There is a time period of 6 weeks that the buyers liquidator needs to communicate their decision. If the buyer's liquidator does not communicate their decision, the seller can apply to the court to cancel the executory contract. The effect to the seller of the application is the seller is barred from claiming specific performance of the contract. The seller can apply for the land to be restored back to them. The seller still will be entitled to damages together with other creditors as a concurrent creditor. In conclusion, if the buyer is in liquidation, the executory contract can be enforced or repudiated by the buyer's liquidator.

**b) Sale of movable property: cash sale[1]**

Executory contracts dealing with sale of movable property are dealt with differently depending on whether the seller or the buyer is in liquidation. If the buyer is in liquidation the applicable law is s 36 of the Insolvency Act. In the instance where the buyer has received the movable property but not yet payment is made to the seller, the seller can give written notice with 10 days to the liquidator to return the property. The effect is that the executory contract will be terminated, and the parties will return to their original positions.

If the seller is in liquidation, the applicable law is common law. The seller's liquidator has the common law election right.<sup>16</sup> The liquidator with the creditor's authorisation can choose to enforce, suspend, or terminate the contract. The buyer does not have the right to sue for specific performance, as discussed above and will be treated as a concurrent creditor if the contract is terminated.<sup>17</sup>

**c) Sale of movable property: Instalment agreement[1]**

In the event where the buyer has purchased goods on instalment, the executory contract is treated differently depending if the seller or the buyer is in liquidation. If the buyer is in liquidation and they have not completed the instalment, the property will pass to the buyer on liquidation.<sup>18</sup> However, the seller is granted hypothec over the goods in the executory contract, meaning that the seller has a preference against the buyer's estate.<sup>19</sup>

If the seller is in liquidation, the applicable law to the executory contract is common law. The executory contract can be enforced, suspended, or terminated by the liquidator with authorisation from the creditor. The buyer does not have the right to specific performance and becomes a concurrent creditor.

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<sup>14</sup> Insolvency Act 1936, s 35.

<sup>15</sup> *Nedcor Investment Bank v Pretoria Belgrave Hotel (PTY) Ltd* 2003 (5) SA 189 (SCA) para 6.

<sup>16</sup> *Nedcor Investment Bank v Pretoria Belgrave Hotel (PTY) Ltd* 2003 (5) SA 189 (SCA) para 6.

<sup>17</sup> *Ward v Barrett NO and Another NO* [1963] (2) SA 546 (A) [552H]–[553(B)].

<sup>18</sup> Insolvency Act 1936.

<sup>19</sup> Insolvency Act 1936, s 84.

**d) Lease Agreements[1]**

*According to s 37 of the Insolvency Act 1936, the effect of liquidation on a lease is not automatic termination. The liquidator can terminate the lease by written notice and the lessor becomes a concurrent creditor. There is an automatic termination of the lease if the liquidator does not cancel the lease within 3 months from the date of appointment.<sup>20</sup> Once the executory contract is terminated the lessor becomes a concurrent creditor.*

**e) Employment contracts[1]**

*On the commencement of liquidation, employment contracts are suspended and become terminated after 45 days from the date of appointment of the liquidator.<sup>21</sup>*

*In conclusion, the general rule is that executory contracts can be suspended, enforced and terminated by the liquidator under common law. However, statute has provided exemption to the rule of various types of executory contracts.*

**QUESTION 4 (fact-based application-type question) [15 marks] [11] Good answer!**

***The directors of ABC (Pty) Ltd (the company) foresee the reasonable likelihood that the company will, within the next six months, be unable to pay its debts as they become due in the ordinary course of business, and will most likely reach a situation where its liabilities exceed its assets. The directors therefore elect to initiate business rescue proceedings and adopt the relevant board resolution, which is subsequently filed with the Companies and Intellectual Property Commission (CIPC). Donovan Jones is appointed as the company's business rescue practitioner. Various parties are affected by the company's decision. The following parties approach you as a collective seeking legal advice:***

- (a) *Charlie White, a successful businessman, lent the company ZAR 500 000 which the company failed to repay. He initiated proceedings against the company in the High Court to reclaim his money, and at the time that the company was placed under business rescue proceedings, the court proceedings were almost finalised. Charlie is unsure what the effect of business rescue will be on the money owed to him.***

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<sup>20</sup> Insolvency Act 1936, s 37 (2).

<sup>21</sup> Insolvency Act 1936, s. 38 (1) and (9).

**(b) Rowena Gonzales has worked for the company for the last five years and she is concerned about the effect that business rescue will have on her employment contract.**

**(c) Mario Miles leases office space to the company and he is concerned about the effect of the business rescue proceedings on the lease agreement with the company.**

**(d) Trudy Pather is a shareholder of the company and is unsure whether she will lose her shareholding now that the company has been placed under business rescue.**

**(e) Henry Jean is a director of the company and is unsure as to his position and role now that business rescue proceedings have commenced.**

**Write a single legal memorandum to all the above-mentioned persons wherein you explain their legal rights, and / or the potential outcome of their respective situations, taking into consideration that the company has been placed under business rescue. The memorandum should further make mention of any potential remedies at their disposal; any practical implications of their respective situations; and also include any considerations in respect of the business rescue plan that the business rescue practitioner needs to take cognisance of.**

Charlie White

**A moratorium will be applicable against the claim despite the fact that it commenced before the business rescue.<sup>22</sup> The implication is that the claim may not continue unless the business rescue practitioner gives written consent for the claim to continue or consent from the court.<sup>23</sup> The moratorium does not prevent Charlie from writing a demand letter to the company to ask for the money.<sup>24</sup> As a creditor, Charlie White is able to vote on the proposed business rescue plan.<sup>25</sup> **Claim to be proved at first meeting of creditors****

Rowena Gonzales

**The employment contract will remain the same as it was immediately before the business rescue.<sup>26</sup> However, the employment contract can be changed if it is as a result of ordinary course of attrition or the Rowena and the company agree to change the terms of the contract in accordance with labour laws.<sup>27</sup> Rowena as an employee is in the preference category and therefore her employment contract obligations are protected, meaning that she is entitled to be paid her salary.<sup>28</sup>**

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<sup>22</sup> Companies Act 2008, s 133(1).

<sup>23</sup> Companies Act 2008, s 133.

<sup>24</sup> Companies Act 2008, s 131 (1).

<sup>25</sup> Companies Act 2008, s150(2).

<sup>26</sup> Companies Act 2008, s 136(1)(a).

<sup>27</sup> Companies Act 2008, s 136(1)(a).

<sup>28</sup> Companies Act 2008, s 135(2) and (3).

Mario Miles

**The lease is termed as an agreement that was concluded before the business rescue. The lease will therefore not fit into the definition of a 'post commencement financing' and costs arising out of the costs of business rescue proceedings' meaning that Mario does not have a preference above other creditors and will be treated as an unsecured creditor termed as concurrent creditors.<sup>29</sup> The lease will remain intact but if the BRP wishes to terminate the contract they may do so. Mario can still claim damages for non-performance of the contract.<sup>30</sup> **Case discussion: Cloete Murray, Kythera, BP Southern Africa****

- **Practical discussion - pre-commencement claims form part of the business rescue plan**
- **Claim to be proved at first meeting of creditors**
- **Current position: The current position is that the landlord's claim for rent falling due in business rescue (based on an executory lease agreement) is neither "financing" nor is it "costs of the business rescue proceedings" and is therefore not a preferential claim (mention potential amendment to Companies Act 2008 in this regard)**

Trudy Pather

**Trudy's shareholding would generally not be altered unless it is in the ordinary course of business, by order of the court or in pursuant of a provision of the business rescue plan.<sup>31</sup> As a shareholder Trudy is entitled to vote on the business rescue plan depending on her shareholding as she is termed as an affected person.<sup>32</sup> The restructuring plan may result in diluting her shareholding.**

Henry Jean

**Henry as a director will continue to exercise his function as a director and is still bound by some of the duties of the directors, duty to disclose personal financial interest or those of a related person.<sup>33</sup> However, Henry's management functions must be exercised in accordance with the BRP as the BRP will take the management function of the board of directors.<sup>34</sup> The BRP will need to give Henry express instructions and directions to the extent that it is reasonable to do so to Henry to carry out the management function. Henry should note that if the BRP investigates the affairs of the company and finds that Henry had failed to perform material obligations relating to the company, the BRP will take the necessary actions to sort the matter.<sup>35</sup>**

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<sup>29</sup> *The South African Property Owners Association v Minister of Trade and Industry and Others* 2018 (2) SA 523 (GP) (29 November 2016); and Companies Act 2008, s 135(2) and (3).

<sup>30</sup> Karabo Motshwane, 'Overview of the South African Business Rescue Process' (2017) 3 Emerging market Restructuring Journal 1.

<sup>31</sup> Karabo Motshwane, 'Overview of the South African Business Rescue Process' (2017) 3 Emerging market Restructuring Journal 1.

<sup>32</sup> Companies Act 2008, s 128(1)(a)

<sup>33</sup> Companies Act 2008, ss 75, 137(2)(c),

<sup>34</sup> Companies Act 2008, 140(1)(a).

<sup>35</sup> Companies Act 2008, 141(2)(c)(i).



- *These are all affected persons*
- *Rights may be affected in terms of the business rescue plan*
- *In respect of approval of the business rescue plan - any affected person, or combination of affected persons, may make a binding offer to purchase the voting interests of one or more persons who opposed adoption of the business rescue plan, at a value independently and expertly determined on the request of the practitioner to be a fair and reasonable estimate of the return to that person, or those persons, if the company were to be liquidated*
- *Cram-down - bound by majority vote*

\* End of Assessment \*