

Abusing Business Rescue Proceedings by a Director and Its Impact on the Ethics of Good Corporate Governance

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Abstract : In the past few years, the impact of Covid 19 in South Africa has given rise to the need for business rescue proceedings where businesses are financially distressed. Even more, the looting unrest and floods in certain parts of South Africa have also played an impact on businesses' financial stress. To help financially distressed companies in South Africa, the Companies Act ("the Act") has introduced a business rescue procedure aimed at helping those ailing companies. This mechanism is aimed at rehabilitating financially distressed companies so that they become solvent again and if it is not possible, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company. Unfortunately, since the introduction of business rescue, evidence has shown that sometimes companies resort to business rescue proceedings to seek refuge from creditors even if the facts do not justify that the company should commence business rescue. In most cases, the abuse of business rescue is done by directors who pass a resolution that the company should embark on business rescue even if evidence shows that the company should not commence the proceedings. This is done notwithstanding the principles of King Code IV which requires ethics and good governance on the part of directors. This paper demonstrates how the abuse of business rescue can impact the principles of good governance and ethics of King Code IV. It argues that directors should rethink their corporate practices, and ethical standards when passing a resolution to commence business rescue proceedings.

Keywords : business rescue, king code, corporate governance, ethics

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