

## **INSOLVENT DEBTOR? CONSIDER YOUR OPTIONS – Siphho Ziga (Commercial Partner)**

Often, when creditors are faced with an insolvent debtor which is a company, there is a misconception that the only option is to place the company under liquidation. There are alternatives which could avert the need for liquidation which, as we know, has disastrous consequences such as retrenchments and very little prospects of recovery, in particular by the trade creditors, who are often not secured.

As an alternative to liquidation, a creditor is entitled to apply for judicial management if it persuades the Court that by reason of mismanagement or any other cause, it is just and equitable that the debtor be placed under judicial management.

This presents a more flexible option for the insolvent company, unlike liquidation, it provides the company with the opportunity to restructure the business and settle its debts without affecting its ability to trade in future.

A judicial manager is appointed to manage the business for a specified period of time reporting to creditors and assisting in determining the most appropriate course of action the company should take to discharge or trade itself out of debt. The advantages for judicial management are as follows:

- Once an administration order is granted by the Court, all legal actions against the company by its creditors could be stayed. This gives breathing space to formulate and implement a recovery or restructuring strategy.
- The administrator works for the benefit of the creditors. As such, the solutions proposed and implemented are likely to generate a better return than simply winding up the business.
- Administration gives the opportunity for restructuring within a company. Non profitable parts of the business can be disposed of, therefore the remaining business is able to continue to trade and sustain employment into the future.

Another alternative in insolvency is in the form of a creditor compromise. A compromise results in cancellation of all or part of the debts of the company or varying the rights of creditors on the terms of debt or alteration of the company's constitution that affects the likelihood of the company being able to pay a debt.

The Companies Act has a short form compromise which is not dependent on Court sanction, and a long form compromise which is dependent on a Court sanction.

Under the short form procedure, a creditor compiles a list of creditors detailing the amounts owing and the votes they are entitled to cast on the compromise resolution. The proposal is then given to each known creditor, with information as prescribed in the Act which advises the intended creditors' meeting, to vote on the creditors' compromise. Thereafter a meeting is held, and if the proposal is passed 50% by number and 75% by value of each class of creditor in favour, the compromise will be given effect.

Under the long form compromise the creditor prepares the proposal and applies to Court for procedural orders. The proposal is voted for at the meeting where the designated majority is obtained, the proponent then applies to Court to sanction the compromise.

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