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Embrace corporate rescue mechanisms to save your business from failure

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Uganda was in the recent past ranked among the world's most entrepreneurial countries by Global Entrepreneurship Monitor (GEM) Report, 2016. The report, however, also showed that the rate of failure of businesses in Uganda was also one of the highest in the world, citing that for every business that was started, another closed. This high rate of failure is attributed to inadequate entrepreneurial and business management skills, financial illiteracy, lack of basic corporate governance structures among others. Of recent, the advent of COVID-19 and the resultant public health measures have greatly affected businesses and induced a number of them either to struggle or collapse. These factors result into accumulation of debts from unpaid loans and high operational costs which eventually cause the businesses to collapse.

Legislative support

However, not all hope is lost. The good news is that the Insolvency Act, 2011, which is the principal legislation governing insolvency, provides a legal framework for financially stressed entities to deploy business rescue mechanisms to revive operations of a business back to profitability. The Act allows financially struggling companies to seek protection from court and negotiate with creditors on the restructuring of the businesses to regain financial stability.

For example, the Act provides for Administration which enables the company to get breathing space within which to reorganize its affairs with an aim of turning around the business to profitability and achieving better results for the creditors. The company applies for an interim protective order and appoints the provisional administrator who comes up with a plan to revive the business and seeks the consent of the creditors.

The Companies Act, 2012 also provides for Compromises, where the debtor and creditor agree on how to settle the outstanding liabilities. The beauty of a compromise is that the management of the company does not necessarily change during the existence of the compromise. However, during this period the company is protected from against creditors actions of debt recovery.

Government intervention

Uganda Registration Services Bureau (URSB) is the implementing agency of the Insolvency Act, 2011 and is taking initiatives to support the implementation of corporate rescue mechanisms. URSB recently hosted the 5th annual Insolvency Conference from 23rd - 24th March, 2022 at Mestil Hotel in Kampala under the theme “Emerging Trends in Corporate Restructuring in Uganda: What to expect and How to Prepare”. This theme was carefully selected to reflect the challenges many entities have faced with the advent of the COVID-19 pandemic.

The conference was attended by Lawyers, Judicial Officers, Certified Public Accountants and Chartered Secretaries. The insolvency eco-system is comprised of the above stakeholders and each of them has a critical role to play. These stakeholders must work together to provide a sustainable solution to financially ailing businesses. Judicial Officers make orders that affect businesses whereas Lawyers, Certified Public Accountants and Chartered Secretaries are charged with advisory, management and business reorganisation roles. The purpose for this engagement was to bring together practitioners from diverse backgrounds to discuss the new approaches in restructuring financially ailing businesses.

Judicial support

The Principal Judge who presided over the training of Judicial Officers during the conference recognised the need for special consideration by courts for financially struggling businesses. The Attorney General while presiding over the Insolvency Practitioners training at the conference re-affirmed Government’s commitment to support ailing businesses. The Government has put in place business recovery loans provided by Uganda Development Bank to resuscitate business operations of companies hit hard by the pandemic.

As the regulator of Insolvency Practice in Uganda, URSB will continue to work with stakeholders to strengthen their capacity, strengthen the legal framework to ease the exit of entities that must exit the market, create a favorable environment for those that must be supported such as providing for post commencement financing.

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