Restructuring of companies in financial distress is on the increase globally. In line with this trend, Chapter 6 of the new Companies Act, No. 71 of 2008 (the Act) introduces business rescue to the South African business landscape.

South African companies which are financially distressed or which trade in insolvent circumstances in South Africa now have an opportunity to reorganise and restructure. This has far reaching effects on creditors, financial institutions, shareholders, employees and restructuring specialists.

The members of Werksmans substantial Insolvency, Business Rescue and Restructuring team have carefully considered the new legislation and the manner in which business rescue proceedings are to be implemented. This includes advising on the manner in which companies should file for business rescue proceedings; the appointment of business rescue practitioners to supervise business rescue proceedings; as well as the duties and liabilities of all parties involved in the business rescue process.

The purpose of business rescue is to maximise the likelihood of the company continuing in existence on a solvent basis. The key to business rescue will be the successful development and implementation, if approved by creditors, of a business rescue plan to rescue the company by restructuring its affairs, business, property, debt, other liabilities and equity. In the event that this is not possible, the implementation of a business rescue plan should result in a better return for the company’s creditors or shareholders than would result from an immediate liquidation of the company.

Werksmans is able to advise business rescue practitioners, directors, stakeholders, employees and creditors during all stages of the business rescue process. This includes providing guidance to creditors in respect of strategic decisions (such as whether or not to vote in favour of a business rescue plan or whether or not to embark on the winding up process as an alternative to business rescue) and advice on protecting their security, particularly when it comes to financing and lending transactions in the business rescue scenario.

Speed is of the essence in the business rescue process. Very short time periods are set out in the Act and it is important that all stakeholders have proper legal support to call upon at short notice.
Werksmans approach to business rescue is proactive and focuses on advising creditors in a way that ensures that they achieve maximum returns in the business rescue process.

If business rescue is not recommended, or fails, members of the Werksmans Insolvency, Business Rescue and Restructuring team are able to assist directors, stakeholders, liquidators and creditors during the liquidation process. This includes advising on the commencement of winding-up proceedings as an alternative to litigation and providing support in the conduct of insolvency enquiries.

In insolvency matters, cross-border recovery skills are key. The team's expertise in this field extends into African countries and international jurisdictions, with proceedings having been successfully instituted in many countries around the world.

**Insolvency, business rescue and restructuring services include:**

- advising directors of companies trading in what may be insolvent circumstances
- advising on whether or not a company should pass a resolution for business rescue
- advising on whether or not creditors should make application for business rescue as opposed to liquidation
- advising creditors whether or not to oppose business rescue proceedings
- assisting creditors in attending meetings and dealing with their claims and securities in business rescue
- liaising with the business rescue practitioner and existing directors
- advising in relation to the provision of post commencement finance
- advising on the general moratorium on legal proceedings against a company which has filed for business rescue
- protection of property interests
- advising on the effect of business rescue on contracts
- advising on whether or not to vote in favour of remuneration arrangements made by the business rescue practitioner
- advising on the structure, implementation and approval of the business rescue plan
- dealing with the section 155 compromise between the company and its creditors
- advising on the commencement and administration of the insolvency process including proof of claims
- advising on cross-border recognition of liquidators and the attachment of assets in foreign jurisdictions
- advising on directors' liability issues in terms of the new provisions relating to trading recklessly and in insolvent circumstances
- providing support in forensic legal issues arising from liquidation proceedings
- recovery of assets in the liquidation scenario
- advising on sequestration proceedings
- assistance with insolvency inquiries

Establised in the early 1900s, Werksmans Attorneys is a leading South African corporate and commercial law firm serving multinationals, listed companies, financial institutions, entrepreneurs and government.

Werksmans operates in Gauteng and the Western Cape, and is connected to an extensive African network through Lex Africa®.

With a formidable track record in mergers and acquisitions, banking and finance, and commercial litigation and dispute resolution, the firm is distinguished by the people, clients and work that it attracts and retains.

Werksmans’ more than 190 lawyers are a powerful team of independent-minded individuals who share a common service ethos. The firm’s success is built on a solid foundation of insightful and innovative deal structuring and legal advice; a keen ability to understand business and economic imperatives; and a strong focus on achieving the best legal outcome for clients.

*In 1993, Werksmans co-founded the Lex Africa legal network, which now has member firms in 27 African countries.*