Judicial Management, Liquidation and Curatorship
key processes, challenges & experiences

R.F Saruchera (CA (Z), ACFE)
Our tagline

An instinct for growth.

(Reason) + (Instinct) = Growth

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Audit · Tax · Advisory

An instinct for growth™
At Grant Thornton, we apply both reason (which we define as knowledge, rigour and technical capability) and instinct (experience, intuition and confidence).

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Our values explained...

We are driven by these CLEARRR values

<table>
<thead>
<tr>
<th>Value</th>
<th>Description</th>
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<tbody>
<tr>
<td>Collaboration</td>
<td><strong>Unite through global collaboration:</strong>&lt;br&gt;Ask for help, give help. We work well together.</td>
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<tr>
<td>Leadership</td>
<td><strong>Demonstrate leadership in all we do:</strong>&lt;br&gt;Have courage and inspire others. We challenge each other to be the best we can.</td>
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<tr>
<td>Excellence</td>
<td><strong>Promote a consistent culture of excellence:</strong>&lt;br&gt;Find a better way every time. We never get complacent!</td>
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<tr>
<td>Agility</td>
<td><strong>Act with agility:</strong>&lt;br&gt;Think broadly, act quickly. We thrive in change!</td>
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<tr>
<td>Responsibility</td>
<td><strong>Ensure deep respect for people:</strong>&lt;br&gt;Use influence wisely. We own our actions!</td>
</tr>
<tr>
<td>Respect</td>
<td><strong>Take responsibility for our actions:</strong>&lt;br&gt;Listen and understand, be forthright. We create honest relationships!</td>
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</table>
Meet your Partners

Grant Thornton Partners

At Grant Thornton we use both reason and instinct to help dynamic organisations navigate complexity and unlock their potential for growth.
Meet our Advisory Professionals

At Grant Thornton we use both reason and instinct to help dynamic organisations navigate complexity and unlock their potential for growth.

R. F. Saruchera
Lead Partner
Estate Administrator

T. Mawere
Partner Forensics
Estate Administrator

T. Zimondi
Partner Banking Specialist

C. Muzerengi
Partner Tax

O. Mabuya
Restructuring/Reorganisation
Estate Administrator

A. Dera
Corporate Recovery
Estate Administrator

B. Mbanu
Mergers & Acquisitions
Estate Administrator

T. Mujati
IT Advisory

B. Makumire
HR. Advisory
Our services

We establish companies....

- Company formation
- Secretarial work
- Structuring

We assist them to grow...

- External Audit
- Tax and estate planning
- Advisory
- Internal Audit
Our Services

Restructure some of them…

• Advisory
• Judicial Management
• Curatorship
• Re-organisation & Restructuring
• Risk review
• Mergers and Acquisitions

Put others to rest…..

• Liquidation
• Strike-off
Economic challenges

- Hyperinflation
- Dilapidated infrastructure & obsolete machinery
- Erosion of public and private sector funding
- Lack and high cost of capital post dollarization
- Perceived country risk
- Liquidity constraints
- Lack of foreign direct investment
- Erratic power supply
- Significant skills flight
- Depressed global mineral prices
- Competition from cheap imported products
Reasons why companies are struggling

- Corporate governance failures
- Suppressed levels of business due to the prevailing economic environment
- Failure to recapitalise the companies post dollarization
- High production overheads
- Unsustainable administration overheads
- High finance costs
- Competition from imported products
Reasons why companies are struggling

- Lack of funding to recapitalise post dollarization
- Short term loans used for long term developments
- Lack of market confidence and poor branding
- Liquidity challenges
Corporate governance challenges

- Owner– managed companies
- Owner controlled companies– through appointment of loyal directors
- Shareholder performing executive functions
- Company used to finance private expenses
- Key companies supporting weak companies
Reasons why companies are struggling

Corporate governance challenges

• Significant lending to group companies
• Alliances with unrelated businesses
• Speculative trading
• Investment in non core activities
  - equities
  - property
• Diversification without adequate capital
Typical troubled company group structure

- Holding Company
- Backward integration companies
- Property owning company
- Key operating company
- Forward integration companies
- Companies set to generate forex
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Result</th>
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<tbody>
<tr>
<td>Failure to meet obligations when they fall due</td>
<td>Technical insolvency</td>
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<tr>
<td>Liabilities exceed assets</td>
<td>Factual insolvency</td>
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<tr>
<td>Fraud / misappropriation</td>
<td>Loss of public confidence and trust</td>
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<td>Negative publicity</td>
<td>Suppliers not willing to advance credit terms</td>
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Frame work for troubled companies resolution

- **Judicial Management** (Co Act 24:03, sec 299)
  - Operate/investigate/restructure/investor

- **Scheme of Arrangements** (Co Act 24:03, sec 191)
  - Restructure/Compromise settlement

- **Informal work-out arrangements**
  - Restructure/Compromise settlement
Frame work for troubled companies resolution

- Curatorship (Banking Act 24:20, sec 53)
  - Operate /investigate/restructure/investor

- Liquidation (Insolvency Act 6:04)
  - Winding-up the business
What is judicial Management?

“A legal framework whereby a company which is in financial difficulties, instead of being wound up and thus having its life brought to a summary end, can, through EXPERIENCED CARE and MANAGEMENT, be nursed back to financial health and once again be permitted to resume its course as a successful enterprise.” - W J Fairbain
Judicial Management

- Judicial Management order granted in terms of Companies Act Chapter (24:03) Sections 299 – 314
- High Court appoints a Judicial Manager
- JM assumes management of the company
- JM Empowerment to investigate the affairs of the entity
- JM identifies the reasons why the company was not successful
- JM prepares a business rescue plan
- If the process fails, the JM recommends liquidation
Judicial Management / Curatorship

Advantages

• Transparency - Court supervised process
• Temporary moratorium on all creditors
• Legal action and writs of execution are stayed
• Independent person appointed to run affairs
• JM/ Curator can compromise with creditors by way of scheme of arrangement

Disadvantages

• No definitive time frame
• Major decisions require court sanction
• Negative perception and stigma associated with the process
Focus areas in Judicial Management

• Cost cutting measures
  » Employee and directors costs
  » Rentals
  » Efficiency in production processes
  » Focus on core business

• Financing options
  » Re-scheduling of debt
  » Conversion of debt to equity
  » Sale and lease back of property
  » Trade terms (creditor and debtor days)

• Products and services
  » Evaluate product / services
  » Marketing and distribution
Curatorship

• Bank placed under Curatorship for a specified period
• RBZ appoints a Curator to run the troubled bank
• Effect of the curatorship:
  (a) Stay of execution on all writs, summons and legal processes unless High Court grants leave
  (b) Set-off is suspended
  (c) Where appropriate deposits are frozen
  (d) Deposits cannot be pledged or ceded
Liquidation

• Winding up order obtained in terms of Co Act Chap (24:03) Sections 199 – 298

• High Court appoints a Liquidator

• Liquidator secures company assets

• Liquidator to call on creditors to lodge proof of debt

• Verify proof of debts lodged

• Sell company assets

• Disburse liquidation proceeds to creditors
Stakeholders in a troubled company

- Distressed business
  - Shareholders
  - Directors
  - Financiers
  - Customers
  - Employees
  - Suppliers/Creditors
### Challenges faced by Directors/Shareholders

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Fear of loss of control of the company</td>
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<tr>
<td>Shareholders resist equity injection in order to avoid dilution</td>
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<tr>
<td>Suspension of powers</td>
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<tr>
<td>Reputational risk</td>
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<td>Loss of key staff and clients</td>
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<tr>
<td>Personal interest vs public interest</td>
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<td>Could be charged for improper conduct/reckless trading</td>
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<tr>
<td>Personal guarantees can be called upon</td>
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<tr>
<td>Valuation of troubled company normally disputed</td>
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## Challenges faced by employees

- Will salaries and benefits be paid when they fall due?
- Do they still have medical aid cover and are the medical aid payments up to date?
- Death & Disability cover?
- What happens to their pensions?
- Is there money to pay retrenchment package? Will the company survive?
## Challenges faced by suppliers/creditors

- They want access to their money
- Some of them are vulnerable groups
- Do they support the resuscitation process?
- Are they better off in a liquidation scenario?
- Do they approve the resuscitation plan?
- Will the company survive?
- Should they continue supplying the company with goods and services?
- Secured creditors may push for liquidation unlike the unsecured creditors
Challenges faced by Financiers

- Lenders are reluctant to extend additional lines of credit or loan facilities.
- Do they support the resuscitation plan?
- What is the value of their security?
- Do they approve post-resuscitation finance to keep the company alive?
- Are they better off in a liquidation situation?
Challenges faced in resuscitating distressed companies

- Financial institutions and suppliers are reluctant to extend loans and credit facilities respectively.

- Challenges faced in the implementation of cost cutting measures such as reduction of salaries and wages due to the prevailing labour laws.

- Labour contracts cannot be suspended as readily as preferred.
Challenges faced in resuscitating distressed companies

- Shareholders may resist equity injection in order to avoid dilution and maintain control.
- Need to obtain buy-in from a variety of stakeholders such as directors, employees, shareholders, creditors, lenders and regulatory authorities.
Directors’ responsibility

Directors’ may be held responsible for:

- Reckless trading
- Continuing to operate under insolvency circumstances
- Gross negligence
- Intent to defraud

(Companies Act Chapter 24:03, Sec 318)
Legal constraints

The labour act must deal with issues relating to employees of companies in financial distress

- Termination of existing contracts
- Unpaid leave
- Reduction in salaries and benefits
- Retrenchment and termination

The Indigenisation Law must be enhanced to enable potential investors to bail out companies in financial distress
Challenges – Qualifications of practitioner

- One cannot afford to appoint just anyone to the position of Judicial Manager, Curator or Liquidator.
- Seasoned professionals and business managers with a combination of the following skills should be considered.
  - An experienced accounting professional with CA/ACCA qualification or equivalent.
  - Able to demonstrate a practical knowledge of commercial law.
Challenges - Qualification of practitioner

- An Insolvency practitioner with over 5 years experience with a sound knowledge of Insolvency Law and Practice
- An experienced business manager with over 5 years at senior managerial level preferably in Commerce and Industry
- Able to demonstrate a solid experience in turn-around, reorganisation and restructuring assignments
QUESTIONS???