Share restructure adds new dimension to business growth

A SHARE restructure usually requires approval from 75 percent of its shareholders.

The focus on business rescue has tended to be on the reorganisation of the creditors.

A little-known feature of business rescue is the ability to restructure the arrangements between shareholders affecting their shareholding as part of an approved business rescue plan

When a company is "in business", the only way its shareholders can alter the rights attaching to shares is by amending the company's memorandum of incorporation.

This normally requires a special resolution adopted by holders of at least 75 percent of the company's shares.

It's possible for minority shareholders to block attempts by the majority to rearrange the shareholding or alter the rights attached to the shares.

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Legal BRIEF

If a company is placed in a business rescue, the business rescue practitioner may propose the issue of new shares, the expropriation of existing shares or the alteration of the rights attached to the shares.

For this to be implemented, the approval of only the majority of the shareholders affected is required.

Section 152(6) gives the rescuer the power to determine the consideration for and issue of any authorised securities of the company.

A business rescue plan is preliminarily adopted when it is supported by the holders of more than 75 percent of the creditors' voting interests and the votes in support of the proposed plan must include at least 50 percent of the independent creditors' voting interests.

If a business rescue plan alters the rights of any class of holders of the company's securities, a meeting of the holders of securities whose rights would be altered must be held. The plan must call for their vote to approve the adoption of the business rescue plan.

This vote is passed by way of a simple majority vote – ordinarily a much lower threshold than that required to alter the memorandum of incorporation, and its share capital, when the company is in business.

If the plan is approved by the shareholders by a majority vote, it may amend the memorandum in accordance with the plan, thus potentially implementing a redistribution or alteration of the shares in the company.

This is subject to the support of the creditors.

The act therefore gives the rescuer the power to redistribute the shareholding or otherwise alter the shares of the company while satisfying the needs of the creditors.

A creditor lending money to a company should give careful consideration to acquiring, as part of its security, the right to exercise voting rights on the shares of a company placed in business rescue.

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