Business distress and employees' role

Many businesses in South Africa have hit crises. **Paul Hoffman** and **Daan Groeneveldt** question managements' payroll cost-cutting response rather than embarking on corrective action. In this first of a series of articles they look at how employers and employees can avoid the final business crisis which results in job loss.

This introductory article seeks to guide all stakeholders on how to be aware and identify problems that may grow to threaten the survival of the enterprise, and its employees' livelihoods.

Firstly the following should be held as 'top-of-mind' realities:

- All businesses are as vulnerable to trouble as they are to the attraction of success.
- Capitalism breeds both success and failure.
- Enterprise failure seldom strikes suddenly and is usually preceded by adequate warning signs and symptoms.
- The most flexible of all enterprise resources walk out the door every night – its people.
- Managing human resources is a critical business skill and success requirement.
- The ultimate worth of any job is the capacity of the enterprise to pay for it.
- The earlier management identifies problems in the business and takes action to fix them, the greater the opportunities to explore alternatives and decide on the best business case options.
- Knowing what everyone must do and account for in an organisation creates a flexible operation that can respond to operational and customer needs and the sustainability requirements of the enterprise.

LAWS AND BUSINESS DISTRESS

In South Africa the legal framework to address business distress and rescue is found in the Labour Relations Act (LRA), 66 of 1995 and the Companies Act, 71 of 2008.

The Companies Act in the Purpose (section 7) paragraph (k) states: *'provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders'*. And Chapter 6 of the Companies Act covers *'Part A Business rescue proceedings, Part B Practitioner's functions and terms of appointment, Part C Rights of affected persons during business rescue proceedings, Part D Development and approval of business rescue plan, Part E Compromise with creditors'*. It includes sections 189 and 189A of the LRA.

Sections 189 of the LRA deals with *Dismissals based on operational requirements* and 189A with *Dismissals based on operational requirements by employers with more than 50 employees.*

In addition to this legal framework, representatives of the South African government, business and the trade unions responded to the international economic crisis in February 2009 by creating a 'Framework of Action'. This dealt in part with 'Employment Measures', and encouraged distressed organisations to utilise the facilitation capacity of the CCMA (Commission for Conciliation Mediation & Arbitration) in its role of avoiding retrenchments.

The word 'retrenchment' is often used without appreciating its negative meaning. Although the term appears nowhere in our labour legislation it creates a focus on regulating the destruction rather than the saving of jobs.

South African labour law provides a process to regulate work and as a last resort terminating employment for valid and fair reasons based on operational requirements, defined as the *economic, technological, structural or similar needs of an employer*, as covered by the Nedlac (National Economic Development and Labour Council) Code of Good Practice which appears on page 16 of this issue of *SALB*.

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Retrenched workers wait for their payout.

Although economic pressures may require job change and even redundancy, destruction of jobs is not an inevitable consequence of operational requirements. Employers need to include employment costs as part of any alignment and evaluation of all operational costs and benefits and must rely on the transparency of established accounting and human resource management practices.

In terms of the labour law framework, employees have a right for the company not to unfairly terminate their employment. If employees challenge employers on the termination, even if lawful with notice and with severance benefits, it must explain that these job losses are operationally justifiable on rational grounds and that it has considered all alternatives and consulted fully with employees or their representatives.

Unfortunately, consultation does not mean negotiation or participation in problem solving, with the result that most of the interactions between employers and employees involve the fairness of 'retrenchment' processes and actions.

Because of this culture of the legal approach to workplace relations, rather than a participative management approach, much of people's flexibility and the vibrancy of the workplace have been lost.

It is taken for granted that business evaluations that underpin the definition of operational requirements involve high levels of information processing and evaluation by senior management. However, employees even without this 'management' information, have a good feeling of the state of the enterprise. A quick informal survey of employees soon shows that most employees can say whether an enterprise is in survival, profitability or growth mode.

The challenge to management is how to share operational information with employees in a way that unlocks the flexibility of individuals and the vitality of the workplace.

Consequently, in addition to consultation around fairness and legal processes, we need consultation and facilitation to analyse operational problems, consider corrective action and to develop sustainability options and growth. The key to this approach is relevant measurement – to use the old saying, 'If you can measure it, you can manage it', and all workplace activities can be measured.

If an organisation waits until a problem becomes a crisis, operational flexibility is limited. Putting an organisation, department, a process or even an individual on a corrective course of action at the first sign of trouble will give all stakeholders enough time to avert a crisis.

But who are the stakeholders? They are everyone whose livelihood could be affected by allowing a problem to become a crisis. And this means that the 'top-of-mind' realities must be the focus of the people in the business and managers who are sufficiently interested to hear the employees' reports of the day's successes, failures and concerns.

With the above level of operational analysis, awareness and problem identification, the risk of problems becoming crises is significantly reduced.

ENGAGING EMPLOYEES

The question is who should be interested in the information around how well a business is operating.

This is the reality that *'Managing human resources is a critical business skill and success requirement.'* This does not mean the human resources department, but every manager of people in the business must be interested in their employees' needs and concerns and to encourage them to participate by listening and responding to their inputs and giving them appropriate feedback.

This is a management skill that maximises the return on pay as an element of operational cost. And this engagement with employees also embeds risk awareness in the day-to-day activities of all employees, in such a way that they learn and have the opportunity to contribute to the success of the enterprise. This is the foundation of good governance, and an indication that an organisation is sensitive to knowing and understanding its operational requirements.

All this seems quite different from what we read in the Companies and Labour Relations Acts about business distress and rescue. This is because these Acts create the top-down framework of evaluation and process when swift action is required when exceptional external circumstances occur that are beyond the control of management.

However, most business distress arises when day-to-day problems have been allowed to grow to the extent that they have a negative effect on the performance, the organisation and the employees. These are organisations that do not take immediate action to fix problems.

So the challenge of senior management is how to translate the legal definitions of operational requirements into day-to-day operational information and individual accountabilities. Knowing what everyone must do and account for in an organisation creates a flexible operation that can respond to operational and customer needs and the sustainability of the enterprise.

Organisations are dynamic social organisms created to serve 'customers' through the knowledge, skill, creativity and cooperation of individuals working together to ensure that customers support enterprises that work for them.

Yes it is customers who decide the success or failure of enterprises. But the larger the organisation, the less chance there is of customers having access to senior managers who in sluggish organisations are usually the primary decision makers. It is in these organisations that problems and incompetence can go unnoticed until someone, usually the financial manager, announces that the business is heading for a crisis because it needs money to pay the bills and the employees.

Some companies can survive in this crisis mode for a few months, while they evaluate their financial circumstances and structure cost-cutting measures. Without fail, the first cost element the company evaluates is the payroll. In most organisations, pay is an element of fixed costs, and cutting jobs and converting them into a flexible element can yield significant cost savings.


William Matala

Knowing what everyone must do and account for creates a flexible operation that can respond to operational and customer needs.

The question is – should this business practice be known to all employees? The answer is why not? The reasons for the company's reluctance to disclose financial operating information ranges from confidentiality to the difficulty of presentation. Consequently most of the reasons for not disclosing information to employees are barriers to building a vibrant workplace and the understanding that the worth of any job is the capacity of the enterprise to pay for it.

Financial analysis tools allow for the presentation of information in many different ways. The most appropriate form of information disclosure to support the worth of a job is ratio analysis. Ratio analysis enables management to inform staff that for every R1 paid to employees, how many rands of income are required to support the payroll, other operating expenses and profit expectations. (There are specific rules in labour law that must be included when creating these ratios. This will be covered in a later article.)

The presentation of financial information in this ratio analysis format allows employees to do their own sums and know what they must deliver to contribute to the sustainability of their job and their livelihood. What an opportunity!

CUSTOMER AS PAYMASTER

The customer determines the success or failure of the enterprise. So does this mean that the customer is also the ultimate paymaster? The answer is YES!

Armed with this knowledge, can any employee ignore the opportunity to make sure that the customer paymaster will be around every month? To ensure this, they must see to it that customers have their needs satisfied at the right price, right place and right time, and if the paymaster is unhappy with the service level, the employees must fix it immediately. If they cannot fix it, employees must take it to the person who can. The earlier management identifies problems and takes action to fix them, the greater the opportunities to explore alternatives and decide on best business options.

In this way, the high level legal definition of operational requirements is translated into the realities of customer paymaster engagement and consequently, the requirements for enterprise sustainability.

Business distress is not to be feared, it needs to be managed. The core reality 'top of mind' checklist is simply good workplace governance. LB

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