The insolvency law focuses on business rescue and restructuring to create a lifeline for ailing entities

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Surviving the pandemic

How SMEs can ride out cash flow downturn

In Kenya, most individuals as well as Medium and Small Enterprises (MSMEs) rarely have financial reserves to respond to emergencies. With no cash reserves, these vulnerable individuals and MSMEs are probably struggling to financially sustain themselves. This is because they cannot access credit or benefit from the measures introduced by Central Bank's Monetary Policy Committee to mitigate the impact of the pandemic due to lack of a credit guarantee programme.

Kenya's MSEs mainly comprise informal business enterprises – the Jua Kali sector – which have little hope, if any, of business continuity post-Covid-19, unless they get funding to keep them afloat. Many, therefore, may fold as the year progresses.

How, then, can they survive? The government has an insolvency law in place that focuses on business rescue and restructuring to create a lifeline and promote survival of ailing entities as an alternative to winding up and exiting the market.

The Insolvency Act, 2015 also seeks to protect the interests of all stakeholders of such businesses, including creditors and employees and the Official Receiver is tasked with achieving this end.

The pandemic has greatly reduced the cash-flow and burdened many individuals and sole proprietorships with increased credit sales, thus hampering their liquidity. This Act provides them with a number of options, such as arrangements to pay their creditors in instalments.

Under the Insolvency Act, a business may take advantage of the Movable Property Security Rights Act, 2017 (better known as MPSR), which allows them to access credit using movable assets as collateral.

The MPSR enhances the ability of these individuals and MSMEs to access credit using motor vehicles, crops, machinery, livestock, electronics, household items, electronic appliances, business inventory, unpaid invoices and account receivables, among others.

Under the MPSR, ailing entities may easily access credit by using any movable asset, tangible or intangible, that they own or have authority to use as collateral.

This is because this law allows financial institutions and other lenders to register notices of their security interests in the established electronic Security Rights Registry, thereby protecting their security interests. It also allows them a variety of enforcement options in case of default.

And in the event that there is no possibility that the business can sustain itself, it can rely on the Insolvency Act, which provides bankruptcy and liquidation options, enabling it to get a fresh start.

The operation of the Movable Property Security Rights Act (e-Security Rights Registry), like the Insolvency Registry, is under the mandate of the Business Registration Service (BRS), a semi-autonomous agency under the Office of the Attorney General.

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