

# Transnet derailed?

By [Colin Strime](#) and [Ryszard Lisinski](#)

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Transnet's CEO, Portia Derby, recently reported an R8.8 billion loss at Transnet for the year ended March 2021, a R11.1 billion swing from the previous year's profit of R2.3 billion.



Image: Archive

Management blame this negative swing on lower volumes and revenues related to the Covid-19 pandemic and ensuing lockdowns.

The press reports that the contribution to this drastic decline was escalating theft from its multi-product fuel pipeline and rail system, third party claims and environmental provisions relating to pipeline spills of some R5 billion.

Certainly if the swing is caused by lockdowns and Covid-19 it is hopefully temporary, and unless Transnet has excess cash to service these extensive debts, it will find itself illiquid and unable to pay them and can thus face the risk of creditors launching applications for its winding-up (ie. liquidation).

## Avoiding liquidation

If these losses can be reversed, then what Transnet would need to avoid liquidation is a moratorium from its creditors. This can be achieved by agreements concluded between it and its creditors or by legislation. The former is highly unlikely but possible and the latter can be achieved with certainty if Transnet is placed under supervision, i.e. business rescue in terms of Chapter 6 of the Companies Act 71 of 2008.

There are knock-on effects arising from it being placed into business rescue such as the calling up of guarantees if it holds any third party guarantees to secure its debt. This is likely given that Transnet is a parastatal and will lead to a multitude of problems arising from state intervention and the Public Finance Management Act of 1999 (a perfect example of this being the business rescue of South African Airways).

Business rescue does not prevent this taking place. It only prevents by way of the moratorium created by business rescue, any of Transnet's creditors taking any legal proceedings against it or enforcement steps pursuant to any securities Transnet itself has provided to its creditors.

Before going into business rescue, Transnet will have to ensure that it has sufficient funds to carry it through the business rescue process. The main funder would more than likely be government, which would mean that access to the funding would be administratively cumbersome and would be unlikely to be delivered expediently. If these funds were ultimately received, they would be used in part to pay certain strategic creditors such as IT suppliers, employees, the business rescue practitioners' (and their teams') costs and other strategic suppliers (those, whom Transnet needs to function and without whom it could not function).



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## Support

Firstly, Transnet will have to ensure that it has the support of the majority of its creditors, such that if it proposes a business rescue plan, 75% (of the value of its creditors measured by claims) vote in favour of the plan. This is the minimum it requires to get its plan adopted. If it appears that the majority of creditors do not support its rescue and plan, then it would serve no purpose to place it in rescue unless it follows the alternative rescue, which is the sale of its assets and/or business at a level which would ensure that its creditors receive more by way of distribution than it would if it was placed in liquidation. One would presume that this alternative rescue would not be in contemplation of its shareholder i.e. government.

Secondly, it would have to ensure that it appoints seasoned and highly qualified business rescue practitioners and those who have been exposed to the rescue of large companies. There are more than a handful of these rescue practitioners who are suitably qualified to take the appointment and ultimately rescue Transnet.

## Rescue

Rescues can take many forms, including the securing of a shareholder(s) other than government who are prepared to invest equity in Transnet and have access to sufficient financing to fund it through the business rescue process and to pay its creditors pursuant to any proposals adopted by its creditors in terms of a business rescue plan. Certainly seasoned business rescue practitioners would have to know how to steer this behemoth of a company during rescue and how to structure its ultimate rescue.

It certainly looks like the years of corruption and plundering have brought many SOEs to their knees and without a successful rescue their beheading, i.e. final execution by way of liquidation. Business rescue is ideal for a company which has suffered losses as a result of Covid-19 and has a viable business which can be turned around and become profitable once Covid-19 is no longer around.

## ABOUT THE AUTHOR

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