

## DEMYSTIFYING RESTRUCTURING (s189) and s197 TRANSFERS

Duration: ½ day

### Objective

To obtain a deepened knowledge of the legal principles underlying restructuring procedures and the transfer of a business as a going concern. Acquire knowledge and skills for dealing with the typical obstacles and the tools to facilitate these procedures.

### Design

- **Section 189 of the LRA**
  - Meaning of 'operational requirements'
  - When does the duty to consult arise?
  - Who does the employer have to consult with?
  - What is the purpose of the consultation?
  - How are the parties invited to consult?
  - Drafting the notice in terms of s189(3) of the LRA
  - Serving the notice
  - The consultation – when do you comply with this obligation?
  - Considering the representations made by the consulting party(ies)
  - Reasons for disagreeing
  - Selection criteria
  - Drafting the notice of termination of employment
  - Section 189A of the LRA
  - Appointment of a facilitator from the CCMA
  - The right to strike
- **Section 197 of the LRA - What is a transfer as a going concern?**
  - Automatic consequences of a transfer as a going concern
  - Changing terms and conditions of employment post transfer
  - Dismissing employees pre-transfer
  - New pension, provident or retirement fund
  - Arbitration awards that bind the old employer
  - Collective agreements that bind the old employer
  - Variation of the automatic consequences of a transfer as a going concern, and the drafting thereof
  - Joint and several liability of old employer with new employer

### Target group

ER/IR staff, HR specialists and Management.

