Building 5 | Waterfront Business Park | 9 Pommern Street | Humerail | Port Elizabeth | 6070 | South Africa
P O Box 28302 | Sunridge Park | 6008 | Port Elizabeth | South Africa
T (+27) 41 008 5073 **E** patp@businessrescue360.co.za **W** www.businessrescue360.co.za

CIRCULAR 40

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **SURFACE PREPARATIONS EQUIPMENT AND COATINGS** IN TERMS OF SECTION 152(8) OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

NOTICE OF CONCLUSION OF BUSINESS RESCUE PROCEEDINGS

Please be advised that the business rescue proceedings for Surface Preparations Equipment and Coatings (Pty) Ltd (SPEC) have officially come to an end. No further claims can be submitted against the business, and no further payments can be made to concurrent creditors.

Below is a summary supporting this statement:

The first auction under the adopted business rescue plan involved the sale of the movable assets belonging to SPEC. This auction took place on the 29th of August 2023 and was relatively successful, achieving a fair market value for the assets sold.

In line with the adopted business rescue plan, the funds generated from this auction were collected and payments were made to the preferent creditors. These payments were allocated to arrears in staff salaries, retrenchment packages, and certain post-business rescue obligations and statutory payments due in law. Unfortunately, there were insufficient funds remaining to distribute to concurrent creditors.

A second auction, held over a 24-hour period commencing on the 12th of September 2023 and was for the immovable properties owned by the SPEC Holding Trust that stood as security for the debt of SPEC. This auction was conducted online by a local auctioneering company. However, due to a series of unforeseen circumstances, no registrations were received, and thus, the properties were not sold at the auction.

Subsequently, an offer was presented by another auctioneering company and was approved by the secured creditor in accordance with Section 134(3)(a) of the Companies Act as the proceeds from this offer were insufficient to settle the total indebtedness owed to the secured creditor. As a result, no funds are available for distribution to concurrent creditors.

The following legal provisions are relevant to this matter:

Section 152(4) of the Companies Act stipulates that an adopted business rescue plan is binding on the company, its creditors, and shareholders, regardless of whether they were present at the meeting, voted in favour of the plan, or proved their claims against the company.

Section 154(2) of the Companies Act provides that once a business rescue plan has been approved and implemented, a creditor may not enforce any debt owed by the company prior to the commencement of the business rescue process, except as provided for in the plan.

Thus, it is clear that:

An adopted business rescue plan is binding on all creditors, whether or not they have proven their claims against the company (Section 152(4)(c)).

A creditor may not enforce any debt owed by the company before the business rescue process commenced, except as provided for in the business rescue plan (Section 154(2)).

For further clarity, please refer to the Supreme Court of Appeal judgment in Eravin Construction CC v Jacobus Nicolaas Bekker N.O. 2016 ZASCA 30.

Additionally, the adopted business rescue plan explicitly states in Point 3.2.17:

"The implication of the above is that creditors shall have no further right of recourse and shall not be entitled to enforce the debt or any balance thereof owed by the Company or its sureties prior to the commencement of the business rescue process. The business rescue plan does not allow for the institution of any further action."

In conclusion, claims not forming part of the business rescue plan are no longer recoverable by law, and no further claims under any circumstances will be entertained.

It is evident that the business rescue process was followed as intended, and the plan was implemented in accordance with its terms. Unfortunately, the proceeds from the sale of the business's assets were less than anticipated, resulting in no further distributions to concurrent creditors. Additionally, no concurrent creditor may pursue any personal sureties for their respective debts.

Lastly, please take note of Circular 39 and the fact that the practitioners have filed for substantial implementation. As such, the business rescue practitioners no longer have any standing in this matter and are officially *functus officio* as of the filing date.

In terms of Point 3.3.1.1.1 of the adopted business rescue plan, the company's directors are now back in control of the business and its operations.

"The business is not being sold in its entirety. Instead, the assets no longer required for the completion of projects will be sold, and the business will be returned to the directors for its continued trading or final winding up."

This and all other documentation relating to the business rescue process can be freely downloaded from the website of the practitioner at www.pattinson.biz

Kind Regards

Pat Pattinson
patp@businessrescue360.co.za
082 749 6462