

13 December 2023

CIRCULAR 03

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **PROXIMITAS INVESTMENTS 60 (PTY) LTD** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE 1ST MEETING OF CREDITORS

The business rescue practitioners¹ wish to advise all the affected parties the outcome of the 1st meeting of creditors of **Proximitas Investments 60 (Pty) Ltd** (Herein after referred to as “Proximitas” or “The Business”) - held on 12 December 2023.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of the affected persons to the meeting. The business rescue team consists of Mr. Pattinson – a senior business rescue practitioner with more than 50 successful substantial implementations of business rescue plans with a career in business turnarounds spanning over more than 15 years, and Mr Masterton who is an experienced business rescue practitioner with nearly a decade of turnaround experience. Mr Durandt will be assisting in an administrative capacity.

1. CONDITIONS FOR BUSINESS RESCUE

1.1. The practitioner explained the process of filing for business rescue and why a business would consider business rescue and the conditions of filing for business rescue.

1.2. **The first question - Is the Company Financially distressed? YES**

1.3. Based on information at hand, yes, the business cannot pay its debts as and when they become due and payable, therefore it is clear that the business is in financial distress in terms of the Act² and has filed for Business Rescue in terms of the Act³.

¹ Quinton Pat Pattinson, Senior Business Rescue Practitioner and David Masterton, Experienced Business Rescue Practitioner.

² Section 128(1)(f) of the Companies Act 71 of 2008.

³ Section 129 of the Companies Act.

1.4. Had the directors decided not to file for business rescue, they would be compelled in terms of the Act⁴ to deliver a formal written notice (in the form of a CoR123.5) to every affected person detailing:

1.4.1. That the business is in financial distress.

1.4.2. The reasons for the financial distress.

1.4.3. The reasons for the company's decision to not file for business rescue.

1.5. Second Question - Does a reasonable prospect of a rescue exist? YES

1.5.1. Based on the information provided to the practitioners to date, there does appear to be a reasonable prospect of a successful rehabilitation and organic turnaround of the business.

1.5.1.1. It will require the systematic restructuring of the business and may require the sale of some of the non-income generating assets that are currently draining cashflow from the business – but the practitioners are very much of the belief that a reasonable prospect exists, based on the information provided to date.

1.5.1.2. The business has also informed the practitioners that the buyers for the fruit are already lined up and the difficulty going forward will simply be getting the fruits to market.

1.6. Further, should a rehabilitation of the business not be possible, the practitioners will be required to at the very least seek a better outcome for the affected persons than that which they would receive in an immediate and traditional liquidation. As provided for in terms of the Act⁵ and the judgment of *Carrol v Michael Carrol*.⁶

1.7. The practitioners in this matter are not farming experts, and as such will not assume full operational control of the business. The day-to-day activities will continue to be run by the current management of the business under the supervision of the practitioners. The practitioners are wholly responsible for the rehabilitation and restructuring of the business.

⁴ Section 129(7) of the Act.

⁵ Section 128(1)(b)(ii) of the Act.

⁶ *Carroll v Michael Carroll* CC In Re: In the application for the Liquidation of: Michael Carroll CC (under supervision) (2018/22808) [2019] ZAGPPHC 74.

2. INFORMATION PROVIDED:

2.1. Please note once again that the information as provided during this, the first meeting of creditors, is as received from the business. It is highly likely that the information presented at a later date may vary as additional information is provided and a more detailed reporting can be given to all the affected persons.

| | |
|-----------------------------------|---------------------------------|
| Creditors | : +- R33,39 Million |
| Loan Accounts (Receivable) | : R48,49 Million (per 2023 AFS) |
| Loan Accounts (Payable) | : R78,46 Million (per 2023 AFS) |
| Debtors | : TBC |
| Assets | : TBC |

2.2. Proximitas was established in 2001 and the Blackie Swart Familie Trust is the shareholder of the Business. Proximitas owns farms on which citrus is grown (among other assets) – the citrus is in turn supplied to Blue Crane, who is responsible for the export and sale of the citrus that is produced on the various farms belonging to the interconnected entities. The citrus is all packed at the Goodhope Packhouse and is shipped and distributed from there and this responsibility is that of Blue Crane's.

2.3. Proximitas Investments is one of 5 entities that are currently experiencing financial distress. 4 of them are businesses and 1 is a trust. The businesses and the trust are all so intertwined, it would effectively be impossible and definitely impractical to attempt to save only one at the exclusion of the rest. Therefore, the entire group is currently in business rescue, except the trust, wherein a quasi-rescue approach is being taken to attempt to rescue the trust as well.

2.4. It must at this stage be confirmed that the business rescue practitioners work for the creditors, and not the directors/members of the business. The practitioners will consult with the management, but do not take instructions from them. The role of a business rescue practitioner is to at all times balance the rights of all the affected persons.⁷

⁷ Section 7(k) of the Companies Act.

2.5. The practitioners, for this first meeting, rely heavily on information supplied by the business – however, there will be a vast investigation done into the affairs of this business before the proposed business rescue plan is published.⁸

3. **REASONS FOR THE FINANCIAL DISTRESS:**

3.1. The reasons for the financial distress, as presented by the business to the practitioners is as follows:

3.1.1. Proximitas is one of the interconnected entities of a larger group – all of which are experiencing financial distress. The company responsible for the exporting of the fruits (Blue Crane) had experienced the challenges as listed below. As a result thereof, a knock on effect was created that has caused the challenges being faced by the entire group of companies.

3.1.1.1. Blue Crane is responsible for the exporting of most of the fruit that is harvested to the European Union as there is a big market there for organic fruits.

3.1.1.2. The cost of exporting the fruits had gone up significantly due to a strike that happened and caused a shortage of logistical support – meaning an increase in the price thereof.

3.1.1.2.1. There were additional costs involved with shipping when some fruits had to be re-routed due to quality issues.

3.1.1.3. The quality issues alluded to above are to do with a certain “black spot” that was present on the citrus during the transportation phase – which unfortunately meant the EU wouldn’t accept the fruit and it had to be shipped to another location for sale.

3.1.1.4. This caused the fruit to yield a significantly lower price than was originally anticipated as it had to be sold as normal fruit and not organic fruits.

3.2. Although the reasons for the financial distress are sound, the practitioners will continue with their own investigation into the affairs. A more formal feedback will be provided at the next meeting of creditors.

3.3. Further, the practitioners would like to investigate the mitigation factors that should have been in place to prevent the severity of the financial distress so that events such as this may be prevented going forward.

⁸ Section 141 of the Companies Act.

4. IMPORTANT DATES:

4.1. Below are the notable dates regarding the business rescue proceedings to date:

| | | |
|---|---|---|
| Board Resolution Submitted | : | 28 November 2023 ^(133 Protection date) |
| | | CIPC returned : 29 November 2023 |
| Practitioner Submitted | : | 29 November 2023 |
| | | CIPC returned : 1 December 2023 |
| 1 st Meeting of Creditors | : | 12 December 2023 |
| 2 nd Meeting of Creditors (Discussion of Fees) | : | To be confirmed |
| 1 st Meeting with Staff | : | Proposed 14 Dec 2023 |

5. FORMING A COMMITTEE

5.1. The Business Rescue Practitioner advised the attendees that they can form a committee of creditors in terms of the Act.⁹ The practitioner confirmed the purpose of such a committee and noted that in a rescue of this nature, it may be favourable for creditors to be able to communicate directly with the practitioners. The decision as to whether or not to form a committee remains in the hands of the creditors.

5.2. The attendees voted against this proposal.

5.2.1. The business rescue practitioner will thus interact with all the creditors of the business directly. There will be no need for the formation of a committee and the information will flow directly between the relevant parties.

6. REQUEST FOR AN EXTENSION

6.1. The plan is currently due to be published on the 5th of February 2024 – having given consideration to the *dies non* days in terms of upcoming public holidays and the festive season.

6.2. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 14th of February 2024 so that the practitioners can provide further feedback to the creditors.

⁹ Section 147.

6.2.1. The nature of the rescues and the interconnected entities make the publication date of the 5th of February 2024 a practical impossibility.

6.2.2. The practitioners require more time to adequately attain all the relevant information as required for the publication of a business rescue plan¹⁰ and this will require more time.

6.3. A unanimous vote was achieved in this regard and therefore the next meeting will be on the 14th of February 2024 where a further update will be given, and further extensions be requested should it be necessary.

6.4. Although not required in terms of the Act – an additional meeting will be held on the 20th of December 2023. This meeting will be a “general” meeting concerning all 5 entities and will be for the purposes of a general update. All the relevant affected parties will be notified of this meeting in due course.

7. PROOF OF CLAIMS

7.1. The practitioner confirmed that Jaco Durandt has sent out the proof of claim forms and these proof of claim forms must be completed and returned to Jaco Durandt on the prescribed document. Same is also available – along with all other documentation relating to the business rescue – on the website of the practitioner at <https://pattinson.biz/> under the “Business Rescue” tab at the top right of the page.

7.2. Please provide us with these proof of claims as soon as possible as we would like to compare the claims received to those values contained in the books of the company.

8. PROJECT BASED FINANCE

8.1. The practitioner took some time to explain what post commencement finance (PCF) is and how project-based finance differs from PCF. Project-based finance being similar in nature to PCF, but for a far more specific nature and the ordinary course of action would be that the Project-based finance will be provided on a relatively short-term basis until the goal or purpose for which the funding is granted, is achieved.

¹⁰ Section 150 of the Act.

9. QUESTIONS / COMMENTS

9.1. On what do the practitioner's base their belief that there is a reasonable prospect of a rescue?

9.1.1. Operationally, the business is still viable. Hence the proposed organic turnaround of the business. The basis is not solely on the potential sale of the assets.

9.1.2. However, it was confirmed that, once the information has been properly presented – it will be possible to identify the non-income generating assets (of which there are many) that are putting a drain on the business and selling these assets.

9.1.3. If the drain from the non-income generating assets is stopped, and the business is able to trade normally, the practitioners believe that the business can organically trade out of the financial distress.

9.1.3.1. Lastly, should it become necessary to sell all the assets of the business, it will result in a better outcome than in liquidation (BriL). Confirmed in the Carroll matter – that a BriL is a valid ground and confirmation of a reasonable prospect of a rescue.

9.2. Will the Section 141 investigations be used to determine if there were any reasons, other than stated, that led to the financial distress? Also, should it become clear that the directors/members are not able to fulfil their duties, will they potentially be removed?

9.2.1. The practitioners confirmed that the information received thus far has been received directly from the auditors of the business and that Mr. Masterton is currently going through the details thereof meticulously. The management have been somewhat "cut out" of this process as the last thing the practitioners would like is to have their opinions skewed by the management's explanations.

9.2.2. The practitioners again confirmed that they are in the process of the full Section 141 investigations into the affairs of the business and all reportable findings, will be reported. As mentioned, at this early stage in the process, the practitioners simply do not have enough information to make any such determinations as to the current management of the business – time must be afforded to do these investigations and all relevant legislation must be considered, including the intellectual property of the business.

9.3. The Blackie Swart Familie Trust, being so intertwined with the other businesses in the group – how do you intend to deal with the trust?

9.3.1. Originally, the thought was to appoint one of the practitioners as a trustee on the trust as well, with a veto right in order to help with a quasi-rescue turnaround process for the trust in line with the goals of business rescue. However, due to the information received thus far concerning all the entities – the practitioners will first be consulting with an attorney to see what options are available to the practitioners with regards to a process that will be beneficial to the trust as well.

9.3.2. There is of course the alternative of sequestrating the trust, this will however not be beneficial to any parties as a result of the numerous cross-sureties between the entities and the amount of usable land in the trust – being one of the larger income generators.

9.4. Some creditors have various securities over assets, moveable and immovable – will the practitioners allow access to the assets for inspection of their condition?

9.4.1. The practitioners have no objection to these inspections as long as the party who wishes to carry out such an inspection gives the practitioners notice of their intention to do so. Furthermore, this will be permitted in so far as the property rights are respected in terms of Section 134 of the Act.

Kind Regards

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