

26 April 2023

## CIRCULAR 03

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

### **OUTCOME OF THE 1<sup>ST</sup> MEETING OF CREDITORS**

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The business rescue practitioners wish to advise all the affected parties the outcome of the 1<sup>st</sup> meeting of creditors of African Capital Property Portfolio (Pty) Ltd (Herein after referred to as "The Business") - held on 21<sup>st</sup> of April 2023.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of the affected persons to the meeting.

### **CONDITIONS FOR BUSINESS RESCUE**

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

**YES**

- 1.1. 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 Section 128(1)(f) of the Companies Act and has filed for Business Rescue in terms of Section 129 of the Companies Act.
- 1.2. Had the director decided not to file for business rescue, he would be compelled in terms of Section 129(7) of the Act to deliver a formal written notice to every affected person detailing:
  - 1.2.1. That the business is in financial distress.
  - 1.2.2. The reasons for the financial distress.
  - 1.2.3. The reasons for the company's decision to not file for business rescue.

#### **2. Second Question - Does a reasonable prospect of a rescue exist? YES**

- 2.1. Based on the information provided to the practitioners to date.
  - 2.1.1. At minimum a better outcome than traditional liquidation will be sought.
- 2.2. The practitioners believe that there is a reasonable prospect of success as will be discussed.

2.2.1. Further, should a rehabilitation of the business not be possible, the practitioners will be required to at very least seek a better outcome for the affected persons than that which they would receive in an immediate and traditional liquidation. As in terms of Section 128(1)(b)(ii) of the Companies Act and the judgment of *Carroll v Michael Carroll*.

#### **REASONS FOR THE FINANCIAL DISTRESS:**

1. Tenant unable to pay rent during Covid
2. Tenant failed to honor rental agreement – expired 31 December 2021
3. Significant damage to building – repairs required
4. Currently tenanted at about 30% - covers operating costs only
  - 4.1. Excluding bond or directors' salary

## **Important Dates**

Board Resolution Submitted	: 31 March 2023, (133 Protection date)
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Practitioners Appointed	: 12 April 2023
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I <sup>st</sup> Meeting of Creditors	: 21 April 2023
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#### **FORMING A COMMITTEE**

1. The Business Rescue Practitioners advised the attendees that they can form a committee of creditors in terms of section 147 of the Act.

1.1. The attendees voted against this proposal.

1.1.1. The business rescue practitioners will thus interact with all the creditors of the business directly.

#### **REQUEST FOR AN EXTENSION**

1. The plan is currently due to be published on the 19<sup>th</sup> of May 2023 – not having given consideration to the *dies non days* in terms of upcoming public holidays.
2. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 19<sup>th</sup> of May 2023 so that we can provide further feedback to the creditors and request further extensions should it be necessary. Should this not be granted, the plan will be due on the 2<sup>nd</sup> of June 2023.

3. A unanimous vote was achieved in this regard and therefore the next meeting will be on the 19<sup>th</sup> of May 2023 where a further update will be given, and further extensions be requested should it be necessary.

### **PROOF OF CLAIMS**

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.

### **CLAIMS HAVE BEEN RECEIVED FROM THE FOLLOWING CREDITORS:**

Should your name not be on the list below, this means that a claim has not been received by the practitioners and you should please submit one soonest, on the prescribed form as mentioned above.

CCI SA (Durban)

D360 Johannesburg

KNS Electrical & Data Solutions

### **QUESTIONS / COMMENTS**

1. More a point of clarification, the purpose of the proposed meeting of the 19<sup>th</sup> of May 2023 was queried, and Mr Pattinson explained that although not a legal requirement, BR360 prefers to have regular meetings with the creditors to properly keep everyone informed of their findings and investigations at regular intervals. This allows the practitioners to adequately provide feedback to all of the affected persons.
2. As another point of clarity, it was made clear that the potential sale of the property out of the business, would have a nett effect better than what could be expected in a liquidation. This point of clarity was made as a result of a question posed as to why the business is not just liquidating in the first place.

Kind Regards

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