

## CIRCULAR 05

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

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

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The business rescue practitioner wishes to advise all the affected parties of the outcome of the repeat of the 1<sup>st</sup> meeting of creditors of Subroyal Franchise Company (Pty) Ltd held on 17<sup>th</sup> of January 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.

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

2.1. Organic turnaround no longer possible. After investigation in terms of the Section 141 requirements of the Companies Act.

2.2. Debt due more than R2mil with an operating profit of just over R5 000 a month. Thus, an unrealistic repayment schedule and thus not possible for an organic turnaround to take place.

2.3. The practitioner believes that there is a reasonable prospect of success because of the fact that in business rescue, it is possible to approach potential investors, funders and even buyers who may be interested in the business.

2.3.1. As opposed to the potential immediate and traditional liquidation. There is approximately R620 000 worth of assets (per latest AFS). Far less will be received in a liquidation auction, especially considering fees and expenses that become due in a liquidation scenario.

2.4. The practitioner is of the belief that this is currently the only viable option for the business to have a successful rescue. This will entail the sale of the business and new management being brought in.

2.4.1. There is an offer currently from the franchisor, for R500 000. The franchisor would then take management control again and will continue to operate the business until such a time as it is profitable for a re-sale or keeping it in the Simply Asia group.

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

COVID Lockdown

- No trading from premises,
  - continued being liable for rent and other expenses.
- Take aways not as profitable due to packaging and 3<sup>rd</sup> party costs
- Business is improving, but not sufficient to repay historic debt in full.
- Main debt to
  - Landlord
  - Nedbank
  - SARS
    - Submissions have not been done since around 2017.
    - These submissions are being done currently so that SARS can provide a proper balance that is due to SARS.

The practitioner again at this point reiterated the fact that he had only just recently been appointed to the matter and has not yet had adequate time to do a full Section 141 investigation of the affairs of the business. The above is information as received from the director and other relevant parties.

#### **FORMING A COMMITTEE**

The practitioner confirmed that the date (20<sup>th</sup> of December 2022) was an awkward time as many creditors may have already be on leave. However, the Companies Act makes clear provision that the meetings and votes need to be taken within a set time period. The practitioner also made mention of the *dies non days* of the courts and the consideration that should be given to that in respect of calculating the days within which votes need to be taken.

The votes taken during the meeting of December 20<sup>th</sup> were binding, until the repeat of the 1<sup>st</sup> meeting of creditors as was held on the 17<sup>th</sup> of January 2023. Thereby giving all creditors the chance to attend.

1. The Business Rescue Practitioner 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 practitioner will thus interact with all the creditors of the business directly.

### **REQUEST FOR AN EXTENSION**

The current due date for the publication of the business rescue plan, should an extension not be given, is the 10<sup>th</sup> of February 2023. The practitioner will, however, attempt to publish the business rescue plan by the 31<sup>st</sup> of January 2023.

Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 31<sup>st</sup> of January 2023 so that we can provide further feedback to assist in the drafting of a business rescue plan. This meeting will only take place if the practitioner will not publish the plan by the 31<sup>st</sup> of January 2023.

At this meeting, if required, the practitioner will ask for further extension on the publication date for the business rescue plan. Should that extension not be granted, the business rescue plan will be due for publication no later than 10 business days after the meeting.

A unanimous vote was achieved in this regard and therefore the next meeting will be on the 31<sup>st</sup> of January 2023, if the business rescue plan has not been published by the 31<sup>st</sup>, where a further update will be given.

### **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.

Kind Regards

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