

09 December 2021

## CIRCULAR 04

THIS IS A CIRCULAR TO ALL THE AFFECTED PERSONS OF **UPAHLA CONSTRUCTION** RELATING TO THE OUTCOME OF THE 1ST MEETING OF CREDITORS, HELD IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).  
**OUTCOME OF THE MEETING HELD IN TERMS OF SECTION 147 OF THE ACT**

The business rescue practitioner wishes to advise all the affected parties the outcome of the 1<sup>st</sup> meeting of creditors held on **09 December 2021**.

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. Based on the information provided to the practitioner to date, the total debt of the business is about R 15m.

2.2. Further, based on this information, the business will be in a position to cover its monthly expenses as well as service the historic debt if given the opportunity.

2.3. This is due to the fact that there is an excessive amount of money still due to the company from various debtors. These amounts include, but are not limited to:

- 2.3.1. Debtors
- 2.3.2. Retentions
- 2.3.3. Work in Progress not invoiced
- 2.3.4. Work Awarded, not started
- 2.3.5. Asset value of the business

2.4. The combination of the above provides the practitioner with sufficient motivation to conclude a “reasonable prospect” does exist. – a rough breakdown of the above figures was provided and is available on request.

2.5. As a last and ultimate consideration, it is understood that the assets of the business could be sold in a more structured manner resulting in a better outcome to all affected parties than in immediate and traditional liquidation.

2.6. The wind down of the business is not a current consideration but was purely mentioned as an option.

2.7. The practitioner confirmed that he will not sell the assets of the business without notifying and involving the creditors.

### **BUSINESS RESCUE PROCESS TO DATE**

3. The Business became financially distressed and had no option, but to file for Business Rescue on the 23<sup>rd</sup> of November 2021, the stamped confirmation was received back from the CIPC on even date.

4. The practitioner's applied to the CIPC for the confirmation of their appointment as the joint business rescue practitioners for this matter on the 24<sup>th</sup> of November 2021 and received confirmation of their appointment from the CIPC on the 26<sup>th</sup> of November 2021.
5. The practitioner confirmed that the business is in a favourable position with projects that if completed will result in the successful rehabilitation of the business.
6. The practitioner did confirm however that co-operation from suppliers will be required for timeous and successful rehabilitation of the business.
7. The practitioner is aware that some suppliers are hesitant to continue supplying the business due to the absence of payment.
- 7.1. The practitioner will however communicate with these key suppliers after this meeting to explore options available to all parties during business rescue such as:
  - 7.1.1. Post Commencement Finance
  - 7.1.2. Project Based Finance
  - 7.1.3. Additional securities and or sureties.

## **FORMING A COMMITTEE**

8. The Business Rescue Practitioner advised the attendees that they can form a committee of creditors in terms of section 147 of the Act.
  - 8.1. The attendees voted against this proposal.
    - 8.1.1. The business rescue practitioner will thus interact with all the creditors of the business directly.

8.2. The practitioner is however open to the formation of a creditors committee in the future.

### **REQUEST FOR AN EXTENSION**

9. The plan is currently due to be published on the 24<sup>th</sup> of January 2022, but the practitioner has asked for an extension until 10 days after the next meeting to be held on the 30<sup>th</sup> of January 2022. (The reason for the publication date being so far in the future is as a result of the *dies non* days commencing in December 2021 and continuing into January of 2022.)

10. The practitioner confirmed that he will only ask for an extension of the publication date if needed on a month-to-month basis, contrary to the traditional request by practitioner for extensions of up to a year at a time.

11. The practitioner will hold and preside over a creditor's meeting on a monthly basis where he will provide details of the progress made to date including but not limited to:

- 11.1. a summary of the Income and expenses
- 11.2. the costs of the business rescue to date
- 11.3. the collection of the debtor's book
- 11.4. and the stance on work in progress.

12. The practitioner will then at this meeting request an extension for a further month, should it be needed.

13. The attendees to the meeting discussed the matter and voted in favour of this proposal and agreed to have the next meeting on the 30<sup>th</sup> of January 2022.

13.1. There was a single creditor who opposed the request for extension, but this vote did not hold sufficient voting interest to oppose the extension.

## **PROOF OF CLAIMS**

14. 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.
15. No fixed deadline for these submissions was provided during the meeting, but the practitioner will provide this deadline once the publication date of the proposed plan is confirmed.
- 15.1. It was stated that all proof of claims must be provided at least 5 days prior to the publication of the proposed business rescue plan, allowing sufficient time to incorporate all the details into the plan.

## **COMMENTS AND QUESTIONS FOR THE ATTENDEES**

16. A question was raised regarding the R13m that is still outstanding from the Higher Education Department.
- 16.1. The practitioner noted this question and will confirm the details hereof. It is however the understanding of the practitioner that this forms part of the work that is ongoing and not yet invoiced, but that the delay in invoicing is purely as a result of delays in the work being signed off.
- 16.2. The practitioner has committed to provide more details on this at the next meeting.
17. Jenny Tait from SARS had a few questions regarding the statutory returns to SARS for the Business.
- 17.1. The practitioner confirmed that all statutory submissions will continue to be made as and when due throughout the business rescue process and he will follow up with the accounts department of the business regarding the delays thereof.

18. Masego asked if there are any secured creditors in the Business Rescue.

18.1. The practitioner confirmed that there are secured creditors, but the extent of these securities cannot be confirmed at this stage, the reason for this is the business rescue team has only recently started receiving proof of claim documents and as a result we are unable to determine at this time with accuracy what the extent of the securities are.

18.2. The practitioner also made it very clear to all the affected persons that a distinction must be noted between a security and a surety.

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