

09 December 2021

CIRCULAR 05

THIS IS A CIRCULAR TO ALL THE AFFECTED PERSONS OF **UPAHLA CONSTRUCTION** RELATING TO THE OUTCOME OF THE 2ND 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 143 OF THE ACT

The business rescue practitioner wishes to advise all the affected parties of the outcome of the 2nd meeting of creditors held on the 9th of December 2021. The purpose of this meeting was to vote on the fee structure of the business rescue practitioner's remuneration. This is held at a separate meeting in terms of Section 143 of the Companies Act.

BUSINESS RESCUE PRACTITIONER FEES

1. The Business Rescue Practitioner stated that the fees payable to a Business Rescue Practitioner is governed in regulation 128 and section 143 of the Companies Act, and that he is permitted to request additional contingency fees if the attendees at a meeting called for this purpose, vote in favour of such a fee structure.

1.1. The practitioner presented the following remuneration proposal to the creditors, and the creditors approved this by means of a unanimous vote in favour.

2. For reference purposes the fee structure is set out below:

2.1. An hourly rate of R1500/hour with a maximum of R 18 750 per day (inclusive of VAT) as prescribed in regulation 128 of the Companies Act when appointed to a medium size business rescue.

2.1.1. No vote was required as this is in line with the provisions of the Act.

3. Contingency Fees:

- 3.1. The practitioners will be entitled to an equivalent of 25 hours' worth of fees on the adoption of the proposed business rescue plan, totalling R37 500 ex VAT.
- 3.2. The practitioners will be entitled to an equivalent of 25 hours' worth of fees at the substantial implementation of the business rescue process, totalling R37 500 ex VAT.
- 3.3. The practitioners will be entitled to 10% commission on any moveable and/or immovable assets sold during the business rescue process,
 - 3.3.1. It was however confirmed that at this stage, the sale of any assets is highly unlikely.
- 3.4. 10% commission on the sale of the business or any portion of the business during the business rescue process,
 - 3.4.1. It was however again confirmed that at this stage, the sale of the business or any portion thereof is highly unlikely.
- 3.5. All of the above contingencies are excluding VAT, where applicable.

4. Third Party Payments:

- 4.1. The practitioner confirmed that regulation 128(3) and section 143(1) of the Companies Act provides for a company that is in business rescue to pay certain 3rd party expenses during business rescue process.
 - 4.1.1. Although not required, the practitioner committed to provide details of these costs at each monthly meeting in the spirit of transparency.
- 4.2. These 3rd party expenses will include, but not be limited to:
 - 4.2.1. Professional Indemnity Cover of the Business Rescue Practitioners
 - 4.2.2. Fees for professional assistance such as accountants, lawyers, admin staff and others.
- 4.3. It is in this same premise that Mr Jaco Durandt was introduced to all the affected persons. Jaco will be in charge of all administration of the business rescue

process and will be remunerated by means of a monthly retainer of R3500/month, which works out far less expensive than should the practitioner do the administration at R1500/hour.

5. Comments and questions for the attendees:

5.1. Mr Harmse from ABSA wanted to confirm that only the affected persons who are present at this meeting will be allowed to vote on the fee structure.

5.1.1. The practitioner confirmed this statement and provided an explanation as to how voting interest is calculated.

5.2. Mr Harmse also confirmed that the Companies Act makes provision for contingencies such as the adoption of a business rescue plan and the substantial implementation.

5.3. Concern was also raised around the 10% contingency on the sale of all assets as it is a greater amount than what a liquidator would receive.

5.3.1. It was explained by the practitioner that the chances of the sale of any assets, at this point in time, is very low. It was also confirmed that even at a 10% contingency fee, the return to creditors would still be greater than in a traditional liquidation.

5.4. Masego asked for a confirmation of the Rand values of the contingency fees.

5.4.1. This was confirmed as above as R37 500 for each of the contingency fees, but the 10% on the Rand value from the sale of assets cannot be confirmed prior to the asset being sold.

Based on the vote taken, which was unanimous, the above fee structure has been approved by the creditors.