

07 March 2022

CIRCULAR 11

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **UPAHLA CONSTRUCTION** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE 4TH MEETING OF CREDITORS AND AFFECTED PERSONS

The practitioner wishes to inform all affected persons of the outcome of the 4th meeting of creditors and affected persons for Upahla Construction. The practitioner started the meeting with a brief introduction and overview of what the meeting would entail in the form of an agenda.

BR Cost to date:

It was confirmed that a business rescue practitioner's¹ fees are as per the previous circular and confirmed in the second meeting of creditors and amended in the third meeting of creditors. The practitioners are working for retainers as apposed to the hourly rate as this was agreed to previously. Mr Pattinson's retainer is R85 000 per month and Mr Masterton's retainer is R25 000 per month.

The only other current cost is for Mr Jaco Durandt from PE Paralegal, as agreed to during the business rescue process.

The business will need to within the next few weeks pay for a detailed valuation of all the company assets, this is for the preparation of the business rescue plan and is a requirement in terms of the Companies Act². It has taken a little longer than anticipated to receive a detailed asset list from the business, this is due to the December holidays and some unforeseen break ins at sites. This valuation will be done by an independent expert.

Once the formal valuation has been done, the values of these assets will be provided to another professional who will assist with the probable liquidation and distribution account which will provide the probable dividend that will be received by the creditors in a traditional liquidation, also as required by Section 150³.

¹ Mr Quinton Pattinson, Senior Business Rescue Practitioner and Mr David Masterton, Experienced Business Rescue Practitioner
² 71 of 2008.

³ Companies Act 71 of 2008.

Creditors:

This is where the bulk of the practitioner's time has been focused, to confirm and scrutinise the claims submitted by creditors. The practitioner has scrutinised these claims received from the creditors against the company's own accounting records.

At one stage, there were as many as 98 creditors who had provided proof of claims to the practitioner. After scrutinising the claims received, it was noted that some creditors had already been paid but still submitted claims against the business. After scrutinising, the business has a sum total of 76 creditors. According to what has been provided and scrutinised thus far, the business has 8 secured creditors, 44 concurrent creditors, 1 post commencement finance agreement, 7 disputed secured creditors and 16 disputed concurrent creditors. With regards to the disputed secured creditors, most of the disputes arise out of the mistake in assuming that a surety is the same as a security in business rescue. Please note that this is not the case, each of the disputed creditors will be contacted by the practitioner to discuss any disputes (as per Circular 10). Some of the other disputes arise out the interest and legal fees that are being charged by some creditors; contact will also be made with these creditors to resolve these disputes as well.

The total amount that is therefore due to the creditors of the business is R28 841 001.98 – this includes interest and legal fees. This amount also includes approximately R3 000 000 which is due to the directors of the business which they made available to the business for working capital. These loans, as agreed to, will be subordinated at the time of calculation of repayments to creditors. These loans will therefore be excluded from calculation when creditor's dividends are being calculated and will only be repaid to the directors after payment to creditors in terms of an adopted business rescue plan.

It was mentioned that the quantum of the loans due to the business by the directors have now been agreed to and a payment plan formulated for these loans. The particulars of these will be detailed in the business rescue plan.

Ongoing projects:

Reeston Housing project (840 Units) – East London.

Original contract value R118m balance of R33.3m of work that can still be done on site. It is believed that continued work on this site will equate to approximately R2.5m in turnover of which R370 000 – R400 000 will be profit. There is also an outstanding payment of just over R1m due to Upahla and the department says this should be paid by the end of March 2022.

Ngqinisa (200 Units) – Outside East London

Total value of R26.8m, work has not yet started here. We are currently awaiting the final contract to be signed. We expect to complete around R2m worth of work per month with the profit being approximately R300 000 per month.

Sterkspruit College

Original contract value of R153m which was increased to R166m due to inflation. Challenges there due to project manager and team not providing paperwork in a timeous manner to the client. This is what lead to the inevitable dispute, various steps have thus far been implemented to evaluate what money is due to Upahla from this project, however it has taken longer to ascertain these numbers due to a variety of influences. It was mentioned by Mr Luan Schutte that there is approximately R16m due to Upahla for work already completed and a further retention due to Upahla of R7.9m.

Additional Work

The business has not stopped looking for additional work simply because of the business rescue process. Mr Luan Schutte detailed the various projects which are being negotiated at present and what projects are being considered by the business to generate additional income.

Questions:

A creditor mentioned to Luan that with regards to Sterkspruit, there was a similar issue last year with regards to the dispute the company is experiencing. Mr Schutte confirmed that the issue is similar and ongoing, due to a variety of issues the disputes have still not been resolved and therefore the need for the complete re-measure. During the said re-measure, there were discrepancies noted that would benefit the business, an example of same was given by Mr Schutte.

Next Meeting / Publication Date:

The current due date for the publication of the business rescue plan, should an extension not be given, is the 14th of March 2022.

Based on the discussions had in this meeting and other reasons including but not limited to the finalising of the creditors lists, the valuation of the assets, the preparation of the LND account and feedback regarding the quantum of the various projects, it is proposed that another meeting similar to this one is held on the Tuesday 22nd of March 2022 so that we can provide further feedback to assist in the drafting of a business rescue plan.

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 on the 5th of April 2022.

A unanimous vote was achieved in this regard and therefore the next meeting will be on the 22nd of March 2022 where a further update will be given.

Questions:

There were multiple requests from creditors regarding a list of all the creditors so that they would be able to confirm if their claims have been received or not. The long and short of this is as follows: the practitioner has compiled a detailed list of all creditors known to him, at the date of sending this circular, this list was circulated to all known affected parties for confirmation. The list was accompanied by instructions that should there be any disputes, that the creditors can contact the practitioner directly. Should there be any dispute from Upahla's side, the practitioner will contact the creditor directly to resolve these disputes.

There was a specific question regarding a vehicle finance agreement which was briefly discussed and confirmed that the payments regarding the vehicle were up to date. The practitioner confirmed that proof of payments will be sent through to the creditor shortly after the meeting (which they were).

Kind Regards

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