

29 May 2023

CIRCULAR 03

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

OUTCOME OF THE 1ST MEETING OF CREDITORS

The business rescue practitioner¹ wishes to advise all the affected parties the outcome of the 1st meeting of creditors of **Bulkwise Logistics (Pty) Ltd** (Herein after referred to as “Bulkwise” or “The Business”) - held on 29 May 2023.

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

CONDITIONS FOR BUSINESS RESCUE

At the onset, the practitioner confirmed the reason for the delay in holding the first meeting of creditors for this matter. As explained, it was a situation that was outside of his control, and even though the entity went into rescue on the 28th of February 2023, the practitioner was only formally appointed on the 16th of May 2023.

It was further confirmed by the practitioner that the non-adherence with the timelines as contained in the Companies Act do not automatically nullify the proceedings. As confirmed in the judgment of *Panamo Properties (Pty) Ltd and Another v Nel and Others*² whereby it was determined that business rescue proceedings would only be set aside by application to the court and only if such proceedings should end as that would be “just and equitable” to do so.

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 Jaco Durandt, Junior Business Rescue Practitioner.

² NNO 2015 (5) SA 63 (SCA).

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 the Act³ and has filed for Business Rescue in terms of the Act⁴.
- 1.2. Had the directors decided not to file for business rescue, they would be compelled in terms of the Act⁵ 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 practitioner to date.
- 2.2. The business has multiple contracts in place – as confirmed, these are subcontracted from main contracts awarded to far bigger logistics companies. These contracts are however, for long enough periods of time with indefinite provisions for extension by mutual agreement.
- 2.3. The director has already communicated with their insurance provider and discussed options of a “income protector” of sorts. This will assist in future should the business experience similar problems in terms of breakdowns, accidents and other unexpected downtimes whereby the trucks are not operating at full capacity.
- 2.4. The business will require only two trucks (horses and links) to run at full capacity – it is believed at this stage that the business could potentially purchase two second hand trucks as this will be far more economical and will be in the best interests of all the affected persons that the business is able to trade out of this financially distressed position.
 - 2.4.1. It is of course, not a given that a post commencement financier will be secured, and alternatives are also being considered, such as joining with another entity which is in

³ Section 128(1)(f) of the Companies Act 71 of 2008.

⁴ Section 129 of the Companies Act.

⁵ Section 129(7) of the Act.

possession of these “horses” and potentially in need of assistance with projects and work to complete.

2.4.2. At minimum a better outcome than traditional liquidation will be sought.

2.5. The practitioner believes there to be a reasonable prospect of success as was discussed in the meeting and outlined above.

2.5.1. Further, should a rehabilitation of the business not be possible, the practitioners will be required to at the very least seek a better outcome for the affected persons than that which they would receive in an immediate and traditional liquidation. As provided for in terms of the Act⁶ and the judgment of *Carrol v Michael Carrol*.⁷

REASONS FOR THE FINANCIAL DISTRESS:

1. Multiple incidents involving the vehicles including but not limited to accidents, breakdowns and other unexpected downtime for which provision was not made.
2. The unexpected downtime, coupled with the ongoing commitments to complete the contracts, caused the business to fall behind on payment schedules for the instalment sale agreements on various accounts.
3. The downtime forced the business to resort to short term rental agreements for alternative trucks in order to maintain timelines and on time completion of certain projects and milestones. These short-term rental agreements were however far more costly than originally anticipated and as a result, the business ran at a loss during this period of time and was forced to stop with these rentals.
4. Ongoing litigation matters regarding the outstanding payments due on the secured assets and the final surrender of these assets has caused the business to not be in a position to continue operating at full capacity.

INFORMATION PROVIDED:

- **Liabilities**

- A detailed list of the liabilities/creditors of the business will be provided by the next meeting of creditors. The practitioner is still waiting for some certificates of balances and will be in a better position to answer this question at the next meeting.

⁶ Section 128(1)(b)(ii) of the Act.

⁷ *Carroll v Michael Carroll* CC In Re: In the application for the Liquidation of: Michael Carroll CC (under supervision) (2018/22808) [2019] ZAGPPHC 74.

- **Debtors**
 - This information has been requested by the practitioner, and will be provided to him by the business soonest. A further update will again be provided at the follow up meeting.
- **Future work / Current work and projects**
 - The business currently has projects awarded – on a subcontract basis – which have termination dates early next year. These contracts can however be extended rather easily by mutual agreement of the parties.
 - Currently, the business has projects/work from the following entities:
 - Imperial KWS
 - Diraro Group Transport
 - Zen Holdings
- **Cashflow projections**
 - The director and general manager have provided the practitioner with a projected cash flow statement for the following 12 months – based on having 2 working trucks and being in a position to complete the projects already awarded. This projected cash flow statement is annexed to this circular.

FORMING A COMMITTEE

1. The Business Rescue Practitioner advised the attendees that they can form a committee of creditors in terms of the Act.⁸
 - 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

1. The plan is currently due to be published—having given consideration to the *dies non days* and all other relevant factors that impeded the commencement of the proceedings, it was agreed that a further extension would be granted.
2. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 28th of June 2023 so that the practitioner can provide further feedback to the

⁸ Section 147.

creditors. At this meeting, the practitioner will request a further extension if required and should this not be granted, the plan will be due on the 12th of July 2023.

3. A unanimous vote was achieved in this regard and therefore the next meeting will be on the 28th of June 2023 where a further update will be given, and further extensions be given should it be necessary.

PROOF OF CLAIMS

1. The practitioner confirmed that he has sent out the proof of claim forms and these proof of claim forms must be completed and returned to him 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.

QUESTIONS / COMMENTS

1. A question was asked regarding the total indebtedness of the business.
 - a. The practitioner has of course requested this information from the business but has also requested the creditors to submit their proof of claim forms so that an accurate determination can be made in this regard.
 - b. Further, once SARS submissions are up to date, we will be able to ascertain more accurate figures from them.
 - c. Based on what was presented in the meeting, we are looking at approximately R3mil.
2. A further question was asked regarding whether ABSA // Man financial services and SARS were the only creditors.
 - a. At the time of the meeting, the practitioner stated that to his knowledge this was correct. However an apology is due, as the practitioner omitted Standard bank from the equation. Again, once proof of claims and certificates of balances are received, a more accurate picture will be drawn regarding this. Standard Bank is therefore in terms of this process, a creditor as well.
3. A question was asked about the contracts that the business currently has and whether they were directly awarded to the business or if the business is doing subcontracting for other entities.
 - a. This was explained and confirmed by the practitioner, that the business does subcontracting work. Also confirmed above under “future work / current work and projects”.

4. A question was posed regarding whether the business had any unencumbered assets.
 - a. The practitioner again confirmed that he is still awaiting asset lists and other information from the business. The practitioner has only recently commenced with his investigations in terms of the Act⁹ and will be in a far better position to provide a full update on these matters at the follow up meeting as provided for above.

Kind Regards

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⁹ Section 141.