

22 March 2022

CIRCULAR 13

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 5TH MEETING OF CREDITORS AND AFFECTED PERSONS

The practitioner wishes to inform all affected persons of the outcome of the 5th 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 the business rescue practitioner's¹ fees are as per the previous circulars 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 agreed to previously.

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

The business has also recently contracted the assistance of Van Zyl and Associates for the collection of the outstanding debt due to the business in a timely manner to assist with the business rescue process.

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.

Recently, the practitioner sent out a final request for proof of claims document to all known affected persons. Subsequent to that having gone out to creditors, 7 additional claims have since been submitted. The amount for these 7 claims totals R3 926 885, which the practitioner disputes heavily and these creditors will be scrutinised and will need to prove their claim and it will need to match up with the accounting records of the business. There are various reasons

¹ Mr Quinton Pattinson, Senior Business Rescue Practitioner and Mr David Masterton, Experienced Business Rescue Practitioner

why these claims are disputed, such as invoices being raised for work not completed amongst other things. It is however believed that these amounts will be vastly reduced once they have been accurately scrutinised.

The directors have subordinated their loans of about R3 415 702.35 and will not receive these monies until such a time as the creditors have been settled in terms of the business rescue plan.

The total creditors of the business currently total R29 352 185, up from the R24 888 229.08 but this is including the 7 new claims received, of which the practitioner is confident, much will be reduced. This is also higher than what was originally anticipated for the business.

The practitioners are still hard at work busy scrutinising claims to ensure that amounts claimed for are not excessive and are in line with what was originally agreed upon. There are currently 84 creditors, after scrutiny, who have provided claims, - this includes the 7 additional claims received - originally there were 96.

Questions:

A question was raised surrounding the valuation of the assets and the delay in the process. It was explained that there is no actual delay in the process of the valuation as such, the process is a lengthy one due to the fact that the assets are spread out at various sites and not all contained in a single area. Therefore, the process of valuating the assets accurately is a long one, however, it is expected to hopefully be concluded by the next meeting where feedback will be given.

A question was also raised as to the additional expenses that will be incurred by the business for Van Zyl and Associates, the creditor was seeking an explanation of same. Van Zyl and Associates have been brought on board to help in the collection of monies outstanding to the business. This will be dealt with more in depth later in the meeting.

A question was raised regarding the post business rescue expenses incurred. The business is currently not in a position to pay all of the post commencement debt as and when it becomes due, however, as the money is coming into the business, it is being used to pay these ongoing expenses as and when they become due. This is part of the reason why Van Zyl and Associates have been brought on board, to assist with the timeous payments of the company's debtors so that the business is able to make payments to its creditors.

A request from a creditor was that more details being included in these monthly meetings, such as the valuation of assets being concluded and more detail on future projects and the current status of ongoing projects. The practitioner confirmed that this is not an unreasonable request and more detail will be included in future meetings and should the valuation be completed by the next meeting, details thereof will be discussed in that meeting.

Ongoing projects/Update from Luan:

Sterkspruit College

The biggest debtor of the business is the department of higher education, the amount is substantial and the main cause for the need to file for business rescue. An independent PQS was appointed to value the work that has already been completed on site. There is also some outstanding retention monies due, but the valuation from the PQS was very much the same as what Upahla has originally claimed that the department owes them.

Van Zyl and associates were appointed to assist in ensuring that the correct procedures are followed. They are assisting with the adjudication and arbitration as well, they initially helped with the claim against the department.

The housing projects:

There have been various reasons for the delays here, such as the need for variation orders for changes amongst other things. R1.07m was however invoiced for on Friday last week, which will come into the business within the next 10 days. Allowing for the continuation of the day-to-day activities and the proper kick-off for the East London Housing project. Suppliers have continued to supply on certain conditions, and since then 30 roofs have been delivered and installed already.

The rest of the housing projects are ready to get going, however, the business does not want to take on projects until it is in a financial position to conclude these projects.

Van Zyl and Associates:

A note from the practitioner here was that the reason for bringing them on board was to add a bit of credibility to the efforts being made with regards not only to the collection of outstanding debts but to the business rescue process as a whole. As alluded to earlier, Van Zyl and Associates are experts in the construction field and would definitely add a major benefit to the process.

A question was raised before the introduction about the R15m that was discussed at the previous meeting that will have been paid into the business. It was noted and clarified that the R15m that was discussed is exactly the reason for Van Zyl and Associates coming on board, this is part of the money due by the department and Van Zyl will assist in the collection, arbitration and adjudication process involved in the collection of these monies.

Theunis Van Zyl gave a description of the processes that will be followed from here on going forward. In this specific case, adjudication is the preferred method as it is the method with the shortest turnaround time, 2 months is an approximate timeline expected for the conclusion of the process, but this is subject to any manner of things.

Mr. Van Zyl explained that the preferred method of adjudication is being used because the decision reached in an adjudication (as per the contract) is a binding one on all parties. Even if one of the parties is unhappy and takes the matter to arbitration afterwards, the award in terms of the adjudication must still be paid in the interim. It was said that the PQS that Upahla had contracted to evaluate work completed came to a value of R14.398m and R10m for extension of times and Covid claims. These are the values that Van Zyl will be taking to the adjudication for decisions to be made on these matters.

Next Meeting / Publication Date:

The current due date for the publication of the business rescue plan, should an extension not be given, is the 5th of April 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 and pending the outcome of the adjudication process, it is proposed that another meeting similar to this one is held on the Tuesday 25th of April 2022 so that we can provide further feedback to assist in the drafting of a business rescue plan.

Although the practitioner has requested that the plan be postponed pending the outcome of the adjudication process, it was clarified that this is not a request for an indefinite extension. At the meeting of the 25th of April 2022, the practitioner will give an update on the business rescue process to date and will at that meeting request a further extension. Should the creditors not grant that extension, the business rescue plan will be published within a reasonable time period after the conclusion of that meeting.

A unanimous vote was achieved in this regard and therefore the next meeting will be on the 25th of April 2022 where a further update will be given.

Kind Regards

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