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19 September 2022

CIRCULAR 03

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **KOMANI CONTRACTORS (PTY) LTD** WITH REGISTRATION NUMBER **2017 / 406991 / 07** IN TERMS OF SECTION 129 OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE 1ST MEETING OF CREDITORS

The business rescue practitioner wishes to advise all the affected parties the outcome of the 1st meeting of creditors held on **12th of September 2022**.

Mr Durandt gave a brief introduction of the Business Rescue team and welcomed all 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, the total indebtedness of the business is approximately R1million.
- 2.2. Mr Kaschula is well known in town and will easily be considered for new projects going forward.
- 2.3. There are several projects that are expected to realise in the ensuing months.
 - 2.3.1. One of which being a big RDP housing project which will boost the revenue of the business dramatically.
- 2.4. The combination of the above provides the practitioner with sufficient motivation to conclude that a “reasonable prospect” does exist to rehabilitate the business.
- 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 as required by the Companies Act and confirmed in the Carrol vs Michael Carrol judgement.
- 2.6. The wind down of the business is not a current consideration but was purely mentioned as an option.

3. Reason for Financial Distress

- 3.1. Late payments from Clients causing a real cashflow problem.
- 3.2. Various disputes or troubles with subcontractors who don't complete jobs or standards are not sufficient etc. which results in much work needing to be re-done which adds to the cost of a job and also the time taken to complete projects.
- 3.3. One major project where due to various issues, ended up making a big loss on the project. This loss experienced on this project has caused major cashflow problems for the business and has caused the business to not be able to pay all its creditors as and when the accounts are payable.
- 3.4. The continued strain that Covid-19 has placed on business all around the world simply cannot be ignored



BUSINESS RESCUE PROCESS TO DATE

4. The Business became financially distressed and had no option, but to file for Business Rescue on the 26th of August 2022, the stamped confirmation was received back from the CIPC on the 29th of August 2022, but the effective date is the 26th. This is when the Section 133 protection takes effect.
5. The practitioner applied to the CIPC for the confirmation of his appointment as the business rescue practitioner for this matter on the 29th of August 2022 and received confirmation of his appointment from the CIPC on even date.
6. The first meeting of creditors was all held on the 12th of September 2022.

PRACTITIONER'S FEES

7. An hourly rate of R1250/hour with a maximum of R 15 625 per day (inclusive of VAT) as prescribed in regulation 128 of the Companies Act when appointed to a small size business rescue.
 - 7.1. The practitioner has however agreed to limit this to a retainer of R20 000/month in the interest of saving the business some money on the cost of the business rescue process.
8. Contingency Fees:
 - 8.1. The practitioner will be entitled to an additional 10 hours' worth of fees on the successful adoption of the business rescue plan.
 - 8.2. The practitioner will further be entitled to an additional 10 hours' worth of fees on the successful substantial implementation of the business rescue plan.
9. The attendees to the meeting discussed the matter and voted in favour of this proposal.

FORMING A COMMITTEE

10. The Business Rescue Practitioner advised the attendees that they can form a committee of creditors in terms of section 147 of the Act.
 - 10.1. The attendees voted against this proposal.
 - 10.1.1. The business rescue practitioner will thus interact with all the creditors of the business directly.
 - 10.2. The practitioner is however open to the formation of a creditors committee in the future.



REQUEST FOR AN EXTENSION

11. The plan is currently due to be published on the 26th of September 2022, but the practitioner has asked for an extension until 10 days after the next meeting to be held on the 17th of October 2022.
12. The practitioner confirmed that he will ask for an extension of the publication date, if needed, on a month-to-month basis, contrary to the traditional request by practitioners for extensions of up to a year at a time.
13. The practitioner will hold and preside over a creditor's meeting on a monthly basis where he will provide details of the progress made including but not limited to:
 - 13.1. a basic summary of the Income and expenses
 - 13.2. the costs of the business rescue to date
 - 13.3. and the stance on work in progress.
14. The practitioner will then at this meeting request an extension for a further month, should it be needed.
15. The attendees to the meeting discussed the matter and voted in favour of this proposal and agreed to have the next meeting on the 17th of October 2022.
 - 15.1. There were no objections to this extension being granted, but FNB was unable to vote on this during the meeting as they required committee approval for voting on the extension of the publication date, which, at the meeting, they did not have and therefore requested if they could take the request back to committee and revert with an answer.
 - 15.2. To the date of the publication of this notice to the affected persons, no formal response has been received from FNB and therefore their vote will be counted as an abstain and will therefore have no bearing on the extension and the extension has therefore been approved as above.

PROOF OF CLAIMS

16. 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.
17. 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.
 - 17.1. 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.



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All forms and circulars relating to the Business Rescue process for Komani Contractors (Pty) Ltd can be accessed at <https://pattinson.biz/document-library>

Kind Regards

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