

13 December 2023

## CIRCULAR 03

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **TRACTO TRADING 100 CC** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

### OUTCOME OF THE 1<sup>ST</sup> MEETING OF CREDITORS

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The business rescue practitioners<sup>1</sup> wish to advise all the affected parties the outcome of the 1<sup>st</sup> meeting of creditors of **Tracto Trading 100 CC** (Herein after referred to as “Tracto Trading” or “The Business”) - held on 12 December 2023.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of the affected persons to the meeting. The business rescue team consists of Mr. Pattinson – a senior business rescue practitioner with more than 50 successful substantial implementations of business rescue plans with a career in business turnarounds spanning over more than 15 years, and Mr Jaco Durandt who is a Junior business rescue practitioner 4 years of turnaround experience.

#### 1. CONDITIONS FOR BUSINESS RESCUE

1.1. 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.

1.2. **The first question - Is the Company Financially distressed? YES**

1.3. 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 Act<sup>2</sup> and has filed for Business Rescue in terms of the Act<sup>3</sup>.

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<sup>1</sup> Quinton Pat Pattinson, Senior Business Rescue Practitioner and Jaco Durandt, Junior Business Rescue Practitioner.

<sup>2</sup> Section 128(1)(f) of the Companies Act 71 of 2008.

<sup>3</sup> Section 129 of the Companies Act.

1.4. Had the directors decided not to file for business rescue, they would be compelled in terms of the Act<sup>4</sup> to deliver a formal written notice (in the form of a CoR123.5) to every affected person detailing:

1.4.1. That the business is in financial distress.

1.4.2. The reasons for the financial distress.

1.4.3. The reasons for the company's decision to not file for business rescue.

**1.5. Second Question - Does a reasonable prospect of a rescue exist? YES**

1.5.1. Based on the information provided to the practitioners to date, there does appear to be a reasonable prospect of a successful rehabilitation and organic turnaround of the business.

1.5.1.1. It will require the systematic restructuring of the business and may require the sale of some of the non-income generating assets that are currently draining cashflow from the business – but the practitioners are very much of the belief that a reasonable prospect exists, based on the information provided to date.

1.6. 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 Act<sup>5</sup> and the judgment of *Carrol v Michael Carrol*.<sup>6</sup>

1.7. The practitioners in this matter are not farming experts, and as such will not assume full operational control of the business. The day-to-day activities will continue to be run by the current management of the business under the supervision of the practitioners. The practitioners are wholly responsible for the rehabilitation and restructuring of the business.

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<sup>4</sup> Section 129(7) of the Act.

<sup>5</sup> Section 128(1)(b)(ii) of the Act.

<sup>6</sup> *Carroll v Michael Carroll* CC In Re: In the application for the Liquidation of: Michael Carroll CC (under supervision) (2018/22808) [2019] ZAGPPHC 74.

## 2. INFORMATION PROVIDED:

2.1. Please note once again that the information as provided during this, the first meeting of creditors, is as received from the business. It is highly likely that the information presented at a later date may vary as additional information is provided and a more detailed reporting can be given to all the affected persons.

2.1.1. The information in the table below is from the 2022 AFS as the 2023 AFS are not yet due/available due to the fact that the year end for this company differs from the others in the group.

<b>Creditors</b>	: R 10 498 722
<b>Loan Accounts (Receivable)</b>	: R 762 204
<b>Loan Accounts (Payable)</b>	: R 48 510 883
<b>Debtors</b>	: R 417 000
<b>Assets</b>	: R 61 284 986

2.2. Tracto Trading was established in 2011 and Marika Swart is the sole member of the CC. Tracto Trading, similar to Steenbokvlakte and Proximitas (the interconnected entities), owns farms on which citrus is grown (among other assets) – the citrus is in turn supplied to Blue Crane, who is responsible for the export and sale of the citrus that is produced on the various farms belonging to the interconnected entities. The citrus is all packed at the Goodhope Packhouse and is shipped and distributed from there and this responsibility is that of Blue Crane's.

2.3. Tracto Trading is one of 5 entities that are currently experiencing financial distress. 4 of them are businesses and 1 is a trust. The businesses and the trust are all so intertwined, it would effectively be impossible and definitely impractical to attempt to save only one at the exclusion of the rest. Therefore, the entire group is currently in business rescue, except the trust, wherein a quasi-rescue approach is being taken to attempt to rescue the trust as well.

2.4. It must at this stage be confirmed that the business rescue practitioners work for the creditors, and not the directors/members of the business. The practitioners will consult with

the management, but do not take instructions from them. The role of a business rescue practitioner is to at all times balance the rights of all the affected persons.<sup>7</sup>

2.5. The practitioners, for this first meeting, rely heavily on information supplied by the business – however, there will be a vast investigation done into the affairs of this business before the proposed business rescue plan is published.<sup>8</sup>

### 3. **REASONS FOR THE FINANCIAL DISTRESS:**

3.1. The reasons for the financial distress, as presented by the business to the practitioners is as follows:

3.1.1. Tracto Trading is one of the interconnected entities of a larger group – all of which are experiencing financial distress. The company responsible for the exporting of the fruits (Blue Crane) had experienced the challenges as listed below. As a result thereof, a knock on effect was created that has caused the challenges being faced by the entire group of companies.

3.1.1.1. Blue Crane is responsible for the exporting of most of the fruit that is harvested to the European Union as there is a big market there for organic fruits.

3.1.1.2. The cost of exporting the fruits had gone up significantly due to a strike that happened and caused a shortage of logistical support – meaning an increase in the price thereof.

3.1.1.2.1. There were additional costs involved with shipping when some fruits had to be re-routed due to quality issues.

3.1.1.3. The quality issues alluded to above are to do with a certain “black spot” that was present on the citrus during the transportation phase – which unfortunately meant the EU wouldn’t accept the fruit and it had to be shipped to another location for sale.

3.1.1.4. This caused the fruit to yield a significantly lower price than was originally anticipated as it had to be sold as normal fruit and not organic fruits.

3.2. Although the reasons for the financial distress are sound, the practitioners will continue with their own investigation into the affairs. A more formal feedback will be provided at the next meeting of creditors.

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<sup>7</sup> Section 7(k) of the Companies Act.

<sup>8</sup> Section 141 of the Companies Act.

3.3. Further, the practitioners would like to investigate the mitigation factors that should have been in place to prevent the severity of the financial distress so that events such as this may be prevented going forward.

#### 4. **IMPORTANT DATES:**

4.1. Below are the notable dates regarding the business rescue proceedings to date:

Board Resolution Submitted	:	28 November 2023 <sup>(133 Protection date)</sup>
		CIPC returned : 29 November 2023
Practitioner Submitted	:	29 November 2023
		CIPC returned : 1 December 2023
1 <sup>st</sup> Meeting of Creditors	:	12 December 2023
2 <sup>nd</sup> Meeting of Creditors (Discussion of Fees)	:	To be confirmed
1 <sup>st</sup> Meeting with Staff	:	Proposed 14 Dec 2023

#### 5. **FORMING A COMMITTEE**

5.1. The Business Rescue Practitioner advised the attendees that they can form a committee of creditors in terms of the Act.<sup>9</sup> The practitioner confirmed the purpose of such a committee and noted that in a rescue of this nature, it may be favourable for creditors to be able to communicate directly with the practitioners. The decision as to whether or not to form a committee remains in the hands of the creditors.

5.2. The attendees voted against this proposal.

5.2.1. The business rescue practitioner will thus interact with all the creditors of the business directly. There will be no need for the formation of a committee and the information will flow directly between the relevant parties.

#### 6. **REQUEST FOR AN EXTENSION**

6.1. The plan is currently due to be published on the 5<sup>th</sup> of February 2024 – having given consideration to the *dies non* days in terms of upcoming public holidays and the festive season.

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<sup>9</sup> Section 147.

6.2. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 14<sup>th</sup> of February 2024 so that the practitioners can provide further feedback to the creditors.

6.2.1. The nature of the rescues and the interconnected entities make the publication date of the 5<sup>th</sup> of February 2024 a practical impossibility.

6.2.2. The practitioners require more time to adequately attain all the relevant information as required for the publication of a business rescue plan<sup>10</sup> and this will require more time.

6.3. A unanimous vote was achieved in this regard and therefore the next meeting will be on the 14<sup>th</sup> of February 2024 where a further update will be given, and further extensions be requested should it be necessary.

6.4. Although not required in terms of the Act – an additional meeting will be held on the 20<sup>th</sup> of December 2023. This meeting will be a “general” meeting concerning all 5 entities and will be for the purposes of a general update. All the relevant affected parties will be notified of this meeting in due course.

## **7. PROOF OF CLAIMS**

7.1. The practitioner confirmed that Jaco Durandt has sent out the proof of claim forms and these proof of claim forms must be completed and returned to Jaco Durandt 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.

7.2. Please provide us with these proof of claims as soon as possible as we would like to compare the claims received to those values contained in the books of the company.

## **8. PROJECT BASED FINANCE**

8.1. The practitioner took some time to explain what post commencement finance (PCF) is and how project-based finance differs from PCF. Project-based finance being similar in nature to

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<sup>10</sup> Section 150 of the Act.

PCF, but for a far more specific nature and the ordinary course of action would be that the Project-based finance will be provided on a relatively short-term basis until the goal or purpose for which the funding is granted, is achieved.

## 9. **QUESTIONS / COMMENTS**

9.1. Some creditors have various securities over assets, moveable and immovable – will the practitioners allow access to the assets for inspection of their condition?

9.1.1. The practitioners have no objection to these inspections as long as the party who wishes to carry out such an inspection gives the practitioners notice of their intention to do so. Furthermore, this will be permitted in so far as the property rights are respected in terms of Section 134 of the Act.

Kind Regards

Quinton Pattinson

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