

**CHAPTER 6 BUSINESS RESCUE PLAN**

**PUBLISHED TO THE AFFECTED PERSONS OF**

***UPAHLA CONSTRUCTION (Pty)  
Ltd***

**Registration nr: 2008 / 016488 / 07**

***BY QUINTON (PAT) PATTINSON***

**&**

***DAVID MASTERTON***

***ON***

**22<sup>nd</sup> OF AUGUST 2022**



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## 1. DEFINITIONS

- 1.1. **“Acquittance”** means a document executed by a creditor in terms of which that creditor advises the Business Rescue Practitioners that such creditor will not look to the Business or the Business Rescue Practitioners for any payment of benefit under the Business Rescue Plan, to the extent of the amount stated in the acquittance;
- 1.2. **“Act”** means the Companies Act 71 of 2008 as amended;
- 1.3. **“Affected Persons”** means affected persons as defined in Section 128 (1) of the Act and in relation to the Company means a shareholder, a creditor and the employees of the Company;
- 1.4. **“Assets”** means all assets of the Business as reflected in the books of account of the Business as at the commencement date;
- 1.5. **“Auction Value”** means an estimate of the realisable value of the Business assets on a public auction where a sale is concluded on a forced sale, upon the fall of the hammer, to the highest cash bidder during an auction which was reasonably well advertised and attended by members of the public;
- 1.6. **“BR360 C”** means Business Rescue 360 Cape (Pty) Ltd which contracts Quinton Pattinson and David Masterton as the Business Rescue Practitioners of the business;
- 1.7. **“BRPs”** means Quinton Pattinson as a Senior Business Rescue Practitioner and David Masterton as an Experienced Business Rescue Practitioner as defined in Regulation 126 to the Act;
- 1.8. **“Business Rescue”** means the proceedings in terms of Chapter 6 of the Act and as defined in Section 128 (1)(b);
- 1.9. **“Business Rescue Plan”** means this document which is a business rescue plan prepared in terms of Section 150 of the Act and published by the Business Rescue Practitioners on the 22<sup>nd</sup> of August 2022;
- 1.10. **“Claims”** means secured, preferent or concurrent claims as envisaged in the Insolvency Act, against the Business, the cause of action in respect of which arose, prior to or on the commencement date, of whatsoever nature and from whatsoever cause, including claims, arising from contract or delict, actual and contingent, prospective, conditional and unconditional, liquidated and unliquidated, assessed and unassessed and whether or not due for payment of performance, specific or otherwise, and including all claims arising out of any agreements entered into by the Business on or prior to the commencement date, all such claims to be determined, calculated and admitted as secured, preferent or concurrent in accordance with the same ranking, as envisaged in the

Insolvency Act, that attached to them upon the issue of a winding up order in respect of the Business, whether or not such claims are proved;

- 1.11. **“Creditor/s”** means all legal entities, including natural persons, having secured, preferent and/or concurrent claims against the Business as at the commencement date as envisaged in the Insolvency Act;
- 1.12. **“Concurrent Creditors”** means creditors having concurrent claims as envisaged in the Insolvency Act;
- 1.13. **“The Business”** Upahla Construction (Pty) Ltd (in business rescue), a business duly incorporated in terms of the Laws of South Africa under registration number 2008 / 016488 / 07;
- 1.14. **“Commencement Date”** means 23<sup>rd</sup> of November 2021 being the date upon which the resolution to voluntarily begin with business rescue proceedings was filed with the Commission;
- 1.15. **“Commission”** means the Companies and Intellectual Property Commission of South Africa which is a division of the Department of Trade and Industry and is responsible for the register of companies in South Africa;
- 1.16. **“Disputed Claim”** means a claim that was submitted, but not approved by the practitioners. These claims will be confirmed or amended prior to distribution.
- 1.17. **“Factoring”** means that a creditor consents to accept a full and final settlement of its outstanding historic debts to an amount less than offered in the plan, but paid immediately upon acceptance between the Business and the Creditor;
- 1.18. **“Historic Debt”** means the debt owed by the Business as at the date of filing;
- 1.19. **“Independent Creditors”** means all Creditors having Claims against the Business other than creditors related to the Business and its subsidiaries and/or directors;
- 1.20. **“Insolvency Act”** means the Insolvency Act 24 of 1936 as amended;
- 1.21. **“Legal Moratorium”** means the moratorium granted by section 133 of the Act in terms of which no legal **action** against the Business can be commenced;
- 1.22. **“Masterton”** means David Masterton of BR360 C having been licensed by the Commission on act as an Experienced Business Rescue Practitioner;
- 1.23. **“Moratorium period”** means the period after the publication of the business rescue plan during which the Business proposes to make no payments towards the historic debts;

- 1.24. “**Pattinson**” means Quinton Pattinson of BR360 C having been licensed by the Commission to act as a Senior Business Rescue Practitioner;
- 1.25. “**PCF**” means Post Commencement Financing provided by a financier to the **Company** as envisaged in terms of section 135 of the Act;
- 1.26. “**Power of Attorney**” means the legal document that is received by a person to obtain the authority to act for another person in legal or financial matters, in the specified format provided by the BRPs;
- 1.27. “**Preferent Creditors**” means creditors having preferent claims as envisaged in terms of the Insolvency Act;
- 1.28. “**Proceedings**” means business rescue proceedings as provided for in Chapter 6 of the Act;
- 1.29. “**Proof of Claim**” means the full and total claim of a Creditor against the **Business**, in the specified format provided by the BRPs subject to the final approval by the BRPs;
- 1.30. “**Related Parties**” means, as provided in Section 2 of the Act, all persons and/or companies and/or legal entities related either directly or indirectly to the **Business** as at the Commencement Date;
- 1.31. “**Secured Creditors**” means creditors having secured claims as envisaged in the Insolvency Act;
- 1.32. “**Substantial Implementation**” means in terms of section 132(2)(c)(ii) of the Act, the notice that is to be filed by the BRPs confirming that a Business Rescue Plan has been implemented;
- 1.33. “**The Final date**” means the date upon the last payment in respect of the adopted Business Rescue Plan at a meeting envisaged in terms of section 152 of the Act is made;
- 1.34. “**The Meeting**” means the meeting convened in terms of section 151 (1) of the Act;

## 2. EXECUTIVE SUMMARY

- 2.1. The Business, known as Upahla Construction is a Building and Construction company and was started in 2008 by Mr. LC Schutte and Mr. NC Faku.
- 2.2. Upahla Construction subsequently secured funding from the below institutions in order to fund the business operations:
  - 2.2.1. ABSA Bank
  - 2.2.2. VW Finance
- 2.3. The Business became financially distressed and had no other option but to file for business rescue in terms of section 129 of the Act on the 23<sup>rd</sup> of November 2021.
- 2.4. The Business then timeously notified all of the affected persons known to the practitioners of the business rescue proceedings as per Section 129 (3)(a) of the Act
- 2.5. Quinton Pattinson and David Masterton received their notice of appointment on the 24<sup>th</sup> of November 2021 with the stamped date having been the 24<sup>th</sup> of November 2021 as per Section 129 (3)(b) of the Act.
- 2.6. Based on the information received from the Business, Pattinson and Masterton concluded that the business is in fact financially distressed and that a reasonable prospect of a successful Business Rescue does exist.
- 2.7. Pattinson and Masterton convened and presided over a first meeting of creditors and staff respectively on the 1<sup>st</sup> of December 2021.
- 2.8. After careful analysis of the business, its financial state, information provided both pre and post the business rescue, several visits to the business and communication with all key stakeholders the practitioners have prepared this Business Rescue Plan, published to all the affected persons of the Business known to them.
- 2.9. The affected persons will now have the opportunity to peruse the Proposed Business Rescue Plan before voting on it by no later than the 5<sup>th</sup> of September 2022 (Monday) at 10:00am.
- 2.10. The details pertaining to this vote will be sent out in a Circular shortly.
- 2.11. Please use the time provided to address any questions, queries and suggested amendments to the Business Rescue Practitioners, via email, before the meeting to vote on this plan.

- 2.11.1. This will allow the Business Rescue Practitioners the time needed to consider any suggestions.
- 2.12. **Please ensure that your debt is contained in this Proposed Business Rescue Plan and that the amounts are correct. If it is not in the plan, please notify the Business Rescue Practitioners prior to the vote taking place.**
- 2.13. Further please note that unfortunately no further proof of claims can be accepted by the Business Rescue Practitioners as ample time and opportunity was provided and these claims form the basis of determining the voting rights of the affected persons.
- 2.14. As this plan provides for dividends to be paid from proceeds realised from the funds realised from the Department of Education as a result of the outcome of the adjudication, there will be no form of recourse, from any creditor that is not included in this proposed Business Rescue Plan.
- 2.15. It is important to note that the person representing the creditor during the meeting to vote, needs to be the appointed public officer or the appointed proxy of the creditor.
- 2.15.1. If a creditor appoints a proxy, then the proxy needs to be in possession of a Power of Attorney document and mandated to ensure they can vote on the proposed business rescue plan, and be in a position to apply their own minds during the meeting, considering discussions and amendments that might take place during the meeting.
- 2.16. If you have not received a Power of Attorney document to complete, please contact the Business Rescue Practitioner's assistant Jaco Durandt at [jaco@pe-paralegal.co.za](mailto:jaco@pe-paralegal.co.za)
- 2.17. Calculations and projections provided are based on information provided by the owners, management, independent valuers, accounting statements and the affected persons.
- 2.17.1. Due to the limitations in law, the practitioners did not have the time nor the funds or the locus standi to perform a full investigation, due diligence or confirmation audit on the information received nor to employ third parties to verify and scrutinise same.
- 2.18. Proceeds from the adjudication will be utilised to firstly complete the project and then to provide a full and final settlement to creditors as follows:
- 2.18.1. Secured creditors paid in full to the extent of their respective securities.
- 2.18.2. The remaining concurrent creditors will receive a dividend of no less than 50 cents in the Rand of the capital amounts only within a 24-month period.

2.18.3. All ongoing costs and expenses of the business will be paid as and when due in the ordinary course of business.

2.19. The practitioners will file for substantial implementation as soon as the proposed business rescue plan has been adopted.

2.19.1. This is done to reduce any unnecessary costs to the Business Rescue process in order to maximise the funds made available to creditors.



### 3. SALIENT FEATURES

The salient features of this Proposed Business Rescue Plan are set out as follows:

#### 3.1. SECTION 150 (2) – PART A – BACKGROUND OF THE COMPANY

3.1.1. The Business, known as Upahla Construction is a Building and Construction company and was started in 2008 by Mr. LC Schutte and Mr. NC Faku.

3.1.2. Section 150(1)(a)(i) - The assets of the Business are valued at an approximate value of R 3 773 705 as per the latest management accounts supplied to the practitioner by the business. This is in comparison with the desktop valuation as per the attached Annexure F containing a List of Material Assets valued at approximately R 3 547 600 market value and approximately R 2 481 665 forced sale Value, before any costs and fees.

3.1.2.1. This list includes details as to which assets were held as security by creditors when the business rescue proceedings started.

3.1.3. Section 150(1)(a)(ii) - The liability of the business is based on the proof of claims received from about 84 creditors and totals about R 32 788 647,31. A list of creditors with their respective claims are attached as Annexure B.

3.1.3.1. These claims are then broken down into the following Classes:

Secured	:	9 Claims	for about R 6 353 699
Staff Remuneration	:	1 Claim	for about R 556 276
Concurrent Claims	:	63 Claims	for about R 21 259 178
Disputed Claims	:	12 Claims	for about R 5 175 769

3.1.3.2. It must be noted that the proof of claims submitted to the Business Rescue Practitioners does not automatically assure the Creditor that they will receive this amount as discrepancies might be found when comparing the amount in the books of the Business to the proof of claim received.

3.1.3.3. Please further note that this plan refers to the fact that no legal fees, interest, collection fees or any cost other than the capital amounts can be provided for on the historic debts due to creditors. Only the capital amounts due will be considered in the dividend calculation if such debt is not specifically provided for in this proposed Business Rescue Plan.

3.1.4. Section 150(1)(a)(iii) - Based on the attached Estimated Liquidation Calculation in Annexure G, as prepared by PE Paralegal, it is evident that should the business be placed into traditional liquidation, the costs and resulting loss of income from the inability to complete projects, will result in a situation where the income from liquidation process would result in a situation where there will be no funds to distribute to any parties.

- 3.1.4.1. It is thus likely that any creditor that provides a proof of claim into the liquidation proceedings could be liable for a cost contribution to fund the liquidation process.
- 3.1.4.2. These liquidation costs are estimated to be in excess of R 803 161,36.
- 3.1.4.3. The Business Rescue Practitioners thus remain of the opinion that this proposed business rescue plan provides for a much better return to all the affected parties than what could materialise in a traditional liquidation.
- 3.1.4.4. The probable dividend in Liquidation compared to the Business Rescue dividend is as stated below:

<b>Creditor Class</b>	<b>Liquidation</b>	<b>Business Rescue</b>
Secured	: R 952 327	: R 6 353 699
Staff Remuneration	: R 558 696	: R 558 696
Concurrent Claims	: R 157 907	: R 10 629 589

- 3.1.4.5. Secured Creditors will receive approximately 55 cents in the Rand in a liquidation scenario, versus the 100 cents in the Rand dividend as in this proposed Business Rescue Plan.
- 3.1.4.5.1. In the liquidation scenario; The calculation would exclude the overdraft with ABSA, as its security relates to the book debt of the business and as the business will no longer be invoicing, ABSA will receive 0 Cents in the Rand for this claim as it's security will have zero value.
- 3.1.4.6. Staff will receive their full claims in both a liquidation scenario and in terms of this business rescue plan.
- 3.1.4.7. Concurrent Creditors will receive less that 1 Cent in the rand in a liquidation scenario and will thus almost certainly be faced with a cost contribution versus the 50 Cents in the Rand that will realise in terms of this proposed business rescue plan.
- 3.1.5. Section 150(1)(a)(iv) – Below is a complete list of the holders of the Company's issued securities.

Name	Issued Securities
LC Schutte	24%
Wayne John James	25%
Raymond Mlungawna Vokwana	51%

- 3.1.6. Section 150(1)(a)(v) – Attached as Annexure H is a copy of the written fee agreement of the practitioners as approved by the board of the business and the creditors of the business.

3.2. Section 150(1)(a)(vi) – No creditor has made any representations to the Business Rescue Practitioners and this business rescue plan includes no proposal made informally by a creditor of the business.

3.3. **SECTION 150 (2) – PART B – PROPOSAL BY THE PRACTITIONER**

3.3.1. Section 150(1)(b)(i) – This Proposed Business Rescue Plan does not provide for a specific moratorium period to be granted, but payments will be made as soon as:

3.3.1.1. All funds from the adjudication have been received by the business. These payments will be made over a period of time.

3.3.1.2. Creditors amounts confirmed

3.3.2. Section 150(1)(b)(ii) – The Practitioners did attempt to secure investments and/or a buyer for the Business but were unable to secure a buyer or investor for the business. As such the proceeds from the adjudication process forms the basis of this proposed business rescue plan with additional funds being secured from ongoing projects to secure the minimum dividend of 50 Cents in the Rand to all concurrent creditors.

3.3.2.1. This Proposed Business Rescue Plan does, however, put in place an exclusion of all legal fees relating to the collection of debt and any interest charges on these legal fees, taxed or due to any of the creditors.

3.3.2.2. This means that only the original capital amounts due to a creditor will be considered and paid in terms of this Proposed Business Rescue Plan.

3.3.2.3. This Proposed Business Rescue Plan further puts in place an exclusion of all interest charges on the outstanding debt of all creditors.

3.3.2.4. The offer in terms of this plan and the payment that is to be made to all creditors shall be in full and final settlement of such debt and the creditors shall by acceptance of the Proposed Business Rescue Plan accede to the discharge of the whole of the debt in terms of Section 154 of the Act.

3.3.2.5. The implication of the abovementioned is that the creditors shall have no further right of recourse and shall not be entitled to enforce the debt or any balance thereof owed by the business or its sureties immediately before the beginning of the Business Rescue Process as the Business Rescue Plan does not provide for the institution of any further action. An extract from the Act is given below for ease of reference:

***Section 154: Discharge of debts and claims***

*A Business Rescue Plan may provide that, if it is implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part*

*of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.*

*If a Business Rescue Plan has been approved and implemented in accordance with this Chapter, a creditor is not entitled to enforce any debt owed by the Company immediately before the beginning of the Business Rescue Process, except to the extent provided for in the Business Rescue Plan.*

- 3.3.3. Section 150(1)(b)(v) – The order of payment of claims and costs for this business rescue will follow the parameters as set out in Section 135 of the Act and is summarised as follows:
- 3.3.4. Before the payment flow can be fully discussed it is important to note the flow of income into the business that will be utilized for the disbursement to creditors.
- 3.3.5. As per Annexure K and as discussed by the practitioner during the last creditors meeting, an amount of no less than R 9m is expected from Department Of Higher Education And Training to be paid within 30 days of the adoption of this proposed business rescue plan.
  - 3.3.5.1. Annexure K does present an amount of R 11 270 721 (plus VAT) to be paid to Upahla Construction subject to the re-measuring of certain parts of the project, but it is believed that this amount will not reduce to below R 9m.
- 3.3.6. R 2,6m will be used to facilitate the completion of the project “Construction of the new Sterkspruit TVET Campus”. The remaining funds from this R 6,4m will then firstly be utilized to settle any debt due to the practitioners, followed by any debt due to staff for remuneration after the commencement of business rescue, followed by the secured creditors in proportion to their outstanding or arrear debt.
- 3.3.7. Once this has been settled, all remaining funds will be distributed, proportionally based on their claims, to the concurrent creditors.
- 3.3.8. All future income from the adjudication settlement will be distributed to creditors as per the above structure and any shortfall with regards to the 50 Cents in the Rand compromise will be settled by the business, from any other form of income including but not limited to the sale of assets, future projects or income provided by the shareholders, within a 24-month period.
  - 3.3.8.1. First - Secured creditors will be settled any outstanding amounts equal to their respective securities and in the order that these securities were provided, should full payment not be made, the secure creditors regain their rights to pursue any valid sureties they may hold for the current debt.
    - 3.3.8.1.1. The first secured creditor is ABSA that have provided the business with finance for 5 (five) instalment sale agreements, an overdraft facility and a term loan.

- 3.3.8.1.2. ABSA has security over the assets financed as well as a cession of book debt that relates to the business, as well as several sureties as provided by several parties.
- 3.3.8.1.3. The practitioner recognises all these securities and this plan makes provision for the full settlement of all indebtedness to ABSA and does not remove or amend ABSA's legal right to pursue any sureties it may hold as a secured creditor.
  - 3.3.8.1.3.1. The repayments on these accounts and including but not limited to any interest and fees that have been applicable will continue in the ordinary course of business as these accounts will be settled in the ordinary course of business.
  - 3.3.8.1.3.2. The second secured creditor is VW Finance that have provided the business with finance for a single instalment sale agreement.
  - 3.3.8.1.3.3. VW Finance has security over the asset financed as well as sureties provided by the shareholders and directors.
  - 3.3.8.1.3.4. The practitioner recognises the security and this plan makes provision for the full settlement of this finance agreement, and this plan does not remove or amend the legal right of VW Finance to pursue any sureties it may hold as a secured creditor.
    - 3.3.8.1.3.4.1. The repayments on these accounts and including but not limited to any interest and fees that have been applicable will continue in the ordinary course of business as these accounts will be settled in the ordinary course of business.
  - 3.3.8.1.3.5. Should any secured creditor's security not be sufficient to settle their total indebtedness, the remaining debt will be transferred to the concurrent creditors' claims.
- 3.3.8.2. Second - The fees and expenses still due to the practitioner in terms of Section 143 of the Act will then be paid in terms of Section 135(3).
  - 3.3.8.2.1. These expenses will include all costs to facilitate the business rescue process including but not limited to the accounting costs, broker fees, short term insurance, banking fees and statutory obligations to SARS and staff related matters.
- 3.3.8.3. Third - All creditors, including but not limited to staff, sub-contractors and or suppliers who have assisted the business with the completion of the remaining project will be settled in full for any of the work done or goods

supplied to complete these projects, including any retentions that would become due for this work completed post business rescue.

- 3.3.8.4. Fourth – any party that provided post commencement finance will be repaid their respective loans, but no interest or fees will be paid.
  - 3.3.8.5. Fifth – the remaining concurrent creditors will be paid no less than 50 Cents in the rand over a period not longer than 24 months from the adoption of this proposed business rescue plan.
  - 3.3.8.6. Sixth – no connected party loans will be repaid as part of this proposed business rescue plan and all of these loans will be considered subordinated to all other creditors debt.
- 3.3.9. Section 150(1)(b)(vi) – the main benefits of adopting this business rescue plan are:
- 3.3.9.1. This proposed business rescue plan provides for the completion of the current project that is required to provide any form of dividends to creditors.
    - 3.3.9.1.1. Should the business not be allowed to complete this project it will not receive any funds from the adjudication and this will result in the liquidation of the business.
    - 3.3.9.1.2. The penalties being charge as a result of the business' inability to complete this project will prevent any dividend being paid to any creditors, secured or concurrent.
  - 3.3.9.2. There is no risk of a cost contribution in business rescue and creditors cannot be held liable to fund any part of the business rescue process should they lodge their claims.
  - 3.3.9.3. Even when considering the time that it will take to complete the project and to make the final payment towards the 50 cents in the Rand, it is still a given that the business rescue process will allow for disbursement to creditors much faster than what would be possible in a traditional liquidation.
  - 3.3.9.4. The process is not subject to the cumbersome supervision of the Master of the High Court and provisions of the Companies Act and Insolvency Act relating to meetings of creditors, submissions and approvals of accounts and advertising thereof.
  - 3.3.9.5. This proposed business rescue plan removes the legal fees associated with a liquidation and removes the cost of a liquidator.

- 3.3.9.6. This Proposed Business Rescue Plan does, however, put in place an exclusion of all legal fees relating to the collection of debt and any interest charges on these legal fees, taxed or due to any of the creditors.
- 3.3.9.7. This means that only the original capital amounts due to a creditor will be considered and paid in terms of this Proposed Business Rescue Plan.
- 3.3.9.8. Section 7 (K) of the Companies Act requires that the business rescue process balances the rights of all the affected parties, this includes the Staff of the business.
- 3.3.10. Section 150(1)(b)(ii) – This Proposed Business Rescue Plan does not provide for the dilution or strengthening of shareholding percentages in the Business.
- 3.3.10.1. In terms of section 152 (3) of the Act, a shareholder’s rights will not be affected with the adoption of this Proposed Business Rescue Plan and as such no vote will be required from the holders of securities.

#### 3.4. **SECTION 150 (2) – PART C – ASSUMPTIONS AND CONDITIONS USED**

- 3.4.1. Section 150(1)(c)(i) Assumption – This Business Rescue Plan is based on the following assumptions.
  - 3.4.1.1. Firstly, based on the assumption that all the creditors have submitted their claims or are satisfied that the amounts contained in Annexure B are correct subject to those in dispute.
    - 3.4.1.1.1. The amounts in dispute will not have any significant impact on the voting interest but will be addressed prior to actual payments to specific creditors.
    - 3.4.1.2. The Business Rescue Practitioners have contacted all the affected persons, known to them, that might have a claim against the Business via email and/or telephone.
    - 3.4.1.3. The Business Rescue Practitioners have provided the creditors with ample time and opportunity to supply their proof of claims.
    - 3.4.1.4. This Proposed Business Rescue Plan is based on the assumption that no liquidation proceedings have commenced against the business prior to the filing for Business Rescue.
    - 3.4.1.5. It is further assumed that the business is in fact a legally registered Business and is registered with the Commission as “in business” alternatively “in business rescue”.

- 3.4.2. While the Business Rescue Practitioners have taken every effort to secure the most reliable and accurate information, this plan is based on the information received from the relevant parties and although the Business Rescue Practitioners have endeavoured to confirm its accuracy, the funds and time allotted to them during Business Rescue Proceedings in addition to the limitations in law did not allow for a full due diligence or confirmation audit to be performed.
- 3.4.3. This proposed business rescue plan is thus prepared based on the assumption that the information provided is accurate. BR360 C, the Business Rescue Practitioners and their associates make no representation as to its accuracy and cannot be held liable for any eventualities arising from the use of the information provided.
- 3.4.4. Irrespective of these assumptions, this proposed business rescue plan will be binding on all creditors should a successful vote on the plan be achieved in terms of Section 152 of the Companies Act.
- 3.4.5. Section 150(1)(c)(i) Conditions – This Business Rescue Plan is based on the following conditions that need to be satisfied for it to be fully operational.
- 3.4.5.1. The First condition is that a successful vote in favour of the Proposed Business Rescue Plan needs to take place in terms of section 151 and 152 of the Act in order for the plan to come into operation.
- 3.4.5.2. The second Condition is that no contracts, agreements or commitments have been entered into during the business rescue proceedings without the Business Rescue Practitioner's express consent and signature to any documentation during the business rescue proceedings.
- 3.4.5.2.1. This has the result that any such agreements are void and cannot be entertained or honoured by the business in terms of Section 137(4) of The Companies Act.
- 3.4.5.3. The third condition is that a full freeze on all directors loan accounts with the Business is put into place. Repayments of the members debit loan accounts (monies owed by the members to the business) will be actively pursued by the practitioner for the benefit of the creditors.
- 3.4.5.3.1. All credit loan accounts will be frozen, and no director/shareholder will receive any repayment on these loans until such time as all creditors have been paid in terms of this proposed business rescue plan.
- 3.4.5.3.2. In consideration of the rights of creditors to receive the amounts and rights proposed as receivable by them in terms of this Plan, the claims of all creditors against the Company at the date of adoption of this Proposed Plan, as reduced by an amount paid to the creditor in respect of each claim ('the



ceded claims"), shall be deemed to have been purchased by and ceded to the shareholders of the business who currently holds valid credit loan accounts with the business.

- 3.4.5.3.3. The ceded claims will be deemed to have been subordinated in favour of all other creditors of the Company until such time as the payments are made to the creditors in terms of the adopted business rescue plan.
- 3.4.5.3.4. The fourth condition is that the practitioner cannot guarantee the income from the adjudication matter between Upahla Construction and the Department Of Higher Education and Training with regards to The Construction of the new Sterkspruit TVET Campus contract, and that should this income be delayed and or not materialise, that the creditors may request that the practitioner prepare a new plan to make provision for such an instance.
- 3.4.5.4. The fifth condition relates to SARS obligations by the business - The business rescue practitioner undertakes that the company shall ensure that all future tax obligations (including the filing of returns and payment of outstanding taxes) will be met until proceedings have been terminated on any ground listed in terms of section 132 of the Companies Act of 2008.
  - 3.4.5.4.1. Any deviation from this undertaking shall constitute a material breach of the provisions of this business rescue plan and proceedings will in such instance be deemed to have terminated. The full original claim outstanding to creditors or remainder of such claim shall be payable.
  - 3.4.5.4.2. VAT liability arising as a result of a compromise of debts in terms of this plan is not subject to compromise and is payable in full. The practitioner warrants that provision for any VAT liability triggered in terms of section 22 of the VAT Act 89 of 1991 has been made in the plan.
  - 3.4.5.4.3. Any assessed loss will be subject to and dealt with in accordance with the provisions of the tax laws of South Africa and will be forfeited in proportion to the debt compromise effected by the business rescue plan. Such reduction shall be without prejudice to any rights that the taxpayer may have in terms of the Tax Administration Act.
- 3.4.5.5. After the date of adoption of this Plan, the rights of all creditors against the Company and its sureties shall be confined to the right to claim payment in terms of this Plan.
- 3.4.5.6. Any compromise contemplated in this business rescue plan is conditional upon the company fully meeting its obligations to creditors as set out in this business rescue plan. In the event of any breach by the company of its obligations to creditors in terms of the business rescue plan, or in the event the company is placed in liquidation, the full balance due to creditors in terms of their original claims against the company shall immediately become due,

owing and payable by the company to the creditors. Business rescue proceedings will, in such instance be deemed to have terminated.

3.4.5.7. These conditions will allow the BRP sufficient leverage while he implements the proposed business rescue plan to ensure a successful rescue of the business.

3.4.6. Section 150(1)(c)(i) Fully Implemented – once the following has been completed the plan will be considered as having been fully implemented:

3.4.6.1. A successful vote on this proposed plan has been achieved and that disbursement to creditors is limited to the extent as allowed for in this proposed business rescue plan and no creditor will be permitted to pursue any remaining debt due by the business other than as provided for in this business rescue plan, including the fact that only secured creditors will be permitted to pursue any sureties they may hold.

3.4.6.2. These conditions will allow the Business Rescue Practitioners to implement the Proposed Business Rescue Plan to ensure a successful conclusion of the Business Rescue process.

3.4.6.3. The BRPs will, at this point and at their sole discretion, file a Notice of Substantial Implementation of the Business Rescue Plan in accordance with section 132(2)(c)(ii) of the Act.

3.4.7. Section 150(1)(c)(ii) – the business had 20 staff members at the start of the business rescue proceedings, but 4 staff members have resigned and were not replaced, the business thus currently has only 16 staff members and no retrenchments are envisaged as part of this proposed business rescue plan..

3.4.8. Section 150(1)(c)(iii) – The Business Rescue Practitioners will start to implement the proposals as soon as possible after the successful voting for this Proposed Business Rescue Plan to ensure the successful implementation of the plan and the timely execution thereof.

3.4.8.1. This Business Rescue Plan will be deemed to have been fully implemented when all the creditors have received their final disbursements in terms of this proposed business rescue plan.

3.4.9. Section 150(1)(c)(iii) – It is proposed that the Company will continue trading in its current format after the implementation of this BR Plan and therefore the projected income statement is attached as Annexure I.

3.4.9.1. Find attached as Annexure J the signed and duly completed Annual Financial Statements for the year ending June 2021.

3.5. **SECTION 151 – MEETING TO DETERMINE THE FUTURE OF THE COMPANY**

3.5.1. This Proposed Business Rescue Plan was published to the affected persons on the 22<sup>nd</sup> of August 2022 and a meeting to vote has been scheduled to take place on the 5<sup>th</sup> of September 2022 a circular will follow with details of the meeting to vote.

3.5.1.1. Should you not be in a position to attend the meeting you may appoint a proxy to vote on your behalf and the practitioners will accept such nominations.

### 3.6. **SECTION 152 – CONSIDERATION OF THE BUSINESS RESCUE PLAN**

3.6.1. Two votes will take place during this meeting as per section 152 (1) of the Act;

3.6.2. The first vote will be to determine if the affected persons wish to adjourn the meeting and have the Business Rescue Practitioners make amendments to the Proposed Business Rescue Plan,

3.6.3. The second vote will be to determine if the Proposed Business Rescue Plan will be approved and implemented subject to the rest of the conditions set out in section 152 of the act.

3.6.4. This plan does not make provision to alter the rights of any class of holders of securities, thus a third vote by the holders of securities is not required.

## 4. **QUALIFICATION OF BUSINESS RESCUE**

4.1. Business Rescue is a process introduced by Chapter 6 of the Companies Act of 2008 and the aim of it is clearly stated in Section 128 (1)(b) of the Act.

4.2. The first part of the definition of Business Rescue states that it is a process designed at rehabilitating financially distressed Businesses.

4.3. The second part of the definition is that if a turnaround of the Business is not possible that the Business Rescue Process must provide a better return to creditors and shareholders than what would be realised through the immediate and traditional liquidation of the Business.

4.4. This is done via a temporary supervision of the Business by a Business Rescue Practitioner or practitioners, where these practitioners must determine the exact financial position of the Business and prepare a Business Rescue Plan which the creditors will vote on.

4.5. In order for a Business to qualify for Business Rescue some conditions must exist as per Section 129 (1) of the Act.

4.6. The first condition is that the Business must be financially distressed as defined in Section 129 (1)(a) of the Act.

- 4.7. The second condition is that the Business Rescue Practitioners must believe that a reasonable prospect of a rescue exists as defined in Section 129 (1)(b) of the Act.
- 4.8. Based on the initial investigation of the Business, by the Business Rescue Practitioners, from the information provided to them, determined that the Business qualifies for both conditions as required by the act.
- 4.9. The Business was indeed financially distressed as it could not pay all its expenses as and when they became due.
- 4.10. The Practitioners were at the time of the first creditors meeting of the view, based on the information provided to them at that time, that a reasonable prospect of a successful rehabilitation of the business did exist.

## **5. OVERVIEW OF THE BUSINESS RESCUE PROCESS**

- 5.1. The Business commenced Business Rescue Proceedings in terms of section 129 of the Act by virtue of passing a resolution stating that it is in financial distress and therefore needed to file for Business Rescue.
- 5.2. The process of business rescue as contained in Chapter 6 of the Companies Act was duly followed with the following milestones achieved.

<b>Action</b>	<b>Date</b>
Business Rescue Resolution passed	23 November 2021
Resolution adopted by CIPC	23 November 2021
Business Rescue Practitioners Appointed	24 November 2021
Business Rescue notice submitted to affected persons	29 November 2021
First meeting of Creditors and Staff	1 December 2021
Second meeting of Creditors	1 December 2021
Third Creditors Meeting	1 February 2022
Fourth Creditors Meeting	28 February 2022
Reminder for proof of claims sent to creditors	1 March 2022
Fifth Creditors Meeting	22 March 2022
Sixth Creditors Meeting	25 April 2022
Seventh Creditors Meeting	6 June 2022
Eighth Creditors Meeting	8 July 2022
Ninth Creditors Meeting	22 July 2022
Final Reminder for Proof of claims sent to creditors	16 August 2022
Business Rescue Plan published	22 August 2022
Vote on the proposed business rescue plan	5 September 2022

## **6. INVESTIGATION OF THE AFFAIRS OF THE COMPANY**

- 6.1. The business rescue practitioners did investigate the affairs of the business in terms of Section 141 of the Act.
- 6.2. Subsequent to this investigation the business rescue practitioners concluded that:
  - 6.2.1. The practitioners still believe there to be a reasonable prospect to successfully rehabilitate the business.
  - 6.2.2. The company remains in financial distress and that the business rescue process must continue.
  - 6.2.3. Due to the limitations in law, the practitioners did not have the time nor the funds to investigate all potential aspects of non-compliance.
  - 6.2.4. The practitioners further found no evidence of any acts that could be considered as fraudulent or even where any malice was intended.
  - 6.2.5. This proposed Business Rescue Plan is published to the creditors of the Company without prejudice by BR360 C, the Business Rescue Practitioners and their associates.

## **7. VOTING ON THE PLAN**

- 7.1. Two separate pages containing the voting details on behalf of your Business, or the Business you are representing, to this proposed Business Rescue Plan will be handed out as you arrive for this meeting. Please would you fill in the blank sections and return this form to be counted at the end of each vote. The full process will be explained during the meeting but before the actual voting is due to take place.
- 7.2. It is important to note that the voting process has to be attended in person by a representative from your organisation and that no votes by email can be accepted prior to the meeting.
- 7.3. It is also important to note that those persons voting on behalf of a Business must be in possession of a valid power of attorney for every meeting on which a vote is to take place.
- 7.4. Creditors are advised to familiarise themselves with the value of the voting interest as set out in Section 145(4) of the Companies Act.
  - 7.4.1. **The first vote**
    - 7.4.1.1. Attached as Annexure D is an example of what the first voting form will look like.

7.4.1.2. This vote will be to determine whether the creditors wish for the Business Rescue Practitioners to end the meeting, amend this Business Rescue Plan and then present an amended plan at a follow-up meeting.

7.4.1.3. The Business Rescue Practitioners request that these amendments are received before the meeting so as to include these in the discussions of the voting meeting with the creditors.

#### 7.4.2. **The second vote**

7.4.2.1. Also attached as Annexure D is an example of what the second voting form will look like.

7.4.2.2. This vote will be to determine whether the creditors accept or reject the Proposed Business Rescue Plan.

### **8. ANNEXURES TO THE BUSINESS RESCUE PLAN**

8.1. The following annexures are attached to this Proposed Business Rescue Plan:

Annexure A :	Circular 04 Outcome of 1st Creditors Meeting
Annexure B :	List of Creditors of the Business
Annexure C :	Company Registration Documents
Annexure D :	Sample of Voting Forms
Annexure E :	Certificate of the Business Rescue Practitioner
Annexure F :	Assets of the Business
Annexure G :	Proposed Liquidation Dividend
Annexure H :	Written Fee Agreement
Annexure I :	Projected Financials
Annexure J :	2021 AFS
Annexure K :	Adjudicator's Report

We thank you for your time offered to determine the future of this Business Rescue process for Upahla Construction (Pty) Ltd.