

25 January 2023

CIRCULAR 37

BUSINESS RESCUE STATUS REPORT

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **UPAHLA CONSTRUCTION** WITH REGISTRATION NUMBER **2008 / 016488 / 07** IN TERMS OF SECTION 129 OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

BUSINESS RESCUE STATUS REPORT FOR THE MONTH OF DECEMBER 2022 IN TERMS OF SECTION 132 OF THE COMPANIES ACT, 71 OF 2008

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1. INTRODUCTION

The appointed **business rescue practitioner** of the **business** hereby, as required by the **Companies Act**, provides the creditors, and affected persons with the monthly report on the business rescue proceedings of the business.

The practitioner will provide an update to the status reports on a monthly basis together with the prescribed form to all affected persons in the prescribed manner.

Please read and consider this status report together with all previous status reports and other circulars pertaining to the business prior to the monthly meeting where these reports will be discussed.

2. DEFINITIONS

“**Act**” means the Companies Act 71 of 2008 as amended;

“**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;

“**Assets**” means all assets of the Business as reflected in the books of account of the Business as at the commencement date;

“**BRP**” means Mr Quinton Pattinson as a Senior Business Rescue Practitioner and Mr David Masterton as an Experienced Business Rescue Practitioner as defined in Regulation 126 to the Act;

“**Business Rescue**” means the proceedings in terms of Chapter 6 of the Act and as defined in Section 128 (1)(b);

“**Business Rescue Plan**” means a document which is a business rescue plan prepared in terms of Section 150 of the Act;

“**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;

“**BR 360**” means Business Rescue 360 Cape (Pty) Ltd which contracts Quinton Pattinson and David Masterton as the Business Rescue Practitioners to the Company;

“**Creditor/s**” means all legal entities, including natural persons, having secured, preferment and/or concurrent claims against the Business as at the commencement date as envisaged in the Insolvency Act;

“**Concurrent Creditors**” means creditors having concurrent claims as envisaged in the Insolvency Act;

“Corporation” means Upahla Construction (Pty) Ltd (in business rescue), a Corporation duly incorporated company in terms of the Laws of South Africa under registration number 2008/016488/07;

“Commencement Date” means **23 November 2021** being the date upon which the resolution to voluntarily begin with business rescue proceedings was filed with the Commission;

“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;

“Director” means

| | | |
|-------------------------|---------------------------|---------------------|
| Lucas Cornelius Schutte | (ID no – 750728 5025 083) | (Managing Director) |
| Wayne John James | (ID no – 700909 5178 087) | (Director) |
| Raymond Mlungwana | (ID no – 670529 5607 087) | (Director) |

“Disputed Claim” means a claim that was submitted, but not approved by the practitioner. These claims will be confirmed or amended prior to distribution.

“Insolvency Act” means the Insolvency Act 24 of 1936 as amended;

“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;

“Proceedings” means business rescue proceedings as provided for in Chapter 6 of the Act;

“Secured Creditors” means creditors having secured claims as envisaged in the Insolvency Act;

“Substantial Implementation” means in terms of section 132(2)(c)(ii) of the Act, the notice that is to be filed by the BRP confirming that a Business Rescue Plan has been implemented;

3. SALIENT FACTS

| | | | |
|-----|-----------------|---|-----------------------------------------------------------------------------------------------------------------------------------------|
| 2.1 | BRP’s | : | Mr Quinton (Pat) Pattinson as Senior Business Rescue Practitioner and Mr David Masterton as an Experienced Business Rescue Practitioner |
| 2.2 | The Business | : | Upahla Construction (Pty) Ltd |
| 2.3 | Registration No | : | 2008 / 016488 / 07 |
| 2.4 | Published to | : | https://pattinson.biz/document-library |
| 2.5 | Displayed at | : | The registered offices of the Business being 36 Benfleur Avenue Beverley Grove, Port Elizabeth |

| | | | |
|-----|----------------|---|----------------------------------------------|
| 2.6 | Distributed to | : | The affected persons and the CIPC via Email. |
|-----|----------------|---|----------------------------------------------|

4. OVERVIEW OF THE BUSINESS RESCUE PROCESS

| | | | |
|------|------------------|---|------------------------------------------------------|
| 3.1 | 23 November 2021 | : | Business Rescue Resolution passed |
| 3.2 | 23 November 2021 | : | Resolution adopted by CIPC |
| 3.3 | 24 November 2021 | : | Business Rescue Practitioners Appointed |
| 3.4 | 29 November 2021 | : | Business Rescue notice submitted to affected persons |
| 3.5 | 1 December 2021 | : | First meeting of Creditors and Staff |
| 3.6 | 1 December 2021 | : | Second meeting of Creditors |
| 3.7 | 1 February 2022 | : | Third Creditors Meeting |
| 3.8 | 28 February 2022 | : | Fourth Creditors Meeting |
| 3.9 | 1 March 2022 | : | Reminder for Proof of claims sent to creditors |
| 3.10 | 22 March 2022 | : | Fifth Creditors Meeting |
| 3.11 | 25 April 2022 | : | Sixth Creditors Meeting |
| 3.12 | 6 June 2022 | : | Seventh Creditors Meeting |
| 3.13 | 8 July 2022 | : | Eighth Creditors Meeting |
| 3.14 | 22 July 2022 | : | Ninth Creditors Meeting |
| 3.15 | 22 August 2022 | : | Business Rescue Plan Published |
| 3.15 | 23 August 2022 | : | Notice of Meeting to vote on BR Plan circular |
| 3.16 | 7 September 2022 | : | Meeting to vote on the BR Plan |

5. UPDATE

Van Zyl and associates have been contracted to assist with debt collection on the business and will also assist with the mediation process as discussed in the 5th meeting of creditors.

The ongoing projects at Sterkspruit College and other Housing projects were discussed in the meeting at length.

The 7th Meeting of Creditors has been scheduled for the 6th of June 2022. The meeting will be held in accordance with the commitment made by the practitioners at the commencement of the business rescue.

A full update regarding the ongoing dispute resolution will be discussed and ongoing projects will be addressed by the director of the business.

The practitioner confirmed that although historic debt is not yet being serviced due to the delay in the adjudication process, thus holding up the publication of the business rescue plan. The practitioner is however happy to announce that the debt of the business is not increasing as monthly expenses are being paid as and when they become due.

A more detailed update regarding the dates of the adjudication and expected outcome of same were discussed in the meeting.

The practitioner confirmed that the adjudication (as at the date of composing this report – 20 July 2022) had been completed and the adjudication had gone in our favour. A full report of this adjudication will be given at the next meeting (scheduled for the 22nd of July 2022) and any further queries that are logged will be dealt with in that meeting.

Two meetings were held in July, one on the 8th of July and the other on the 22nd of July. At both meetings the practitioner provided general updates on the business rescue proceedings and confirmed that the business rescue plan would be published to the affected persons by no later than the 19th of August 2022.

The business rescue plan was, with consent from the creditors, published to the affected persons on the business on the 22nd of August 2022.

The affected persons will now have until the 5th of September to review this business rescue plan and to present to the practitioners any amendments that they would like to have included in the plan.

Should the affected persons wish to have any amendments affected to the plan, the practitioners again request that these requests be sent to the practitioner prior to the meeting to vote so that they can be added to the agenda for the meeting to discuss the possible inclusion of these amendments into the business rescue plan.

The vote took place during the meeting specifically called for such purpose. The vote was unanimous in favour of the adoption of the business rescue plan with minor amendments made during the meeting. These amendments had no material effect on the business rescue plan, they were merely for clarification purposes.

The business rescue plan was adopted and the implementation thereof is underway. The business is currently still waiting for the department of Higher Education to release payment of the funds that are due by them in terms of the business rescue plan and the adjudication award that was granted in favour of Upahla Construction.

There has been no real further progress as the department of Higher Education has still not made payment towards the debt that is due by them to Upahla Construction. Various demands have been made by Upahla Construction and the business rescue practitioners in an attempt to secure these funds so that the business rescue process may come to an end.

Per circular 33, the department has finally sent out a confirmation that the debt is due by them and that they have committed to pay this indebtedness by the end of January 2023. We hope to have the funds secured as soon as possible and as soon as these funds are available, disbursements will be made **in terms of the adopted business rescue plan.**

Should you wish to check the full details of the meetings held, all minutes and outcomes of these meetings is on the website at

<https://pattinson.biz/document-library>

6. CONTACT DETAILS

If there are any affected persons who require further information, please feel free to contact Quinton Pattinson via email at

patp@businessrescue360.co.za.

**Companies and Intellectual Property Commission
Republic of South Africa**

Form CoR 125.1

About this Form

- This form is issued in terms of section 132 and 141 of the companies Act, 2008, and Regulation 125 of the Companies Regulations, 2011.
- This Notice and the attached report must be published to every affected person, and to-
 - a) The Commission, if the business rescue proceedings were started by the company; or
 - b) The court, if the proceedings were ordered by the court.
- A report and Notice must be issued at the end of the first three months of the business rescue proceedings, and at regular monthly intervals after that

**Contacting the
Commission**

The Companies and Intellectual Property Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

Business Rescue Status Report

Date: 25 January 2023

Customer Code: 45445P

Concerning

(Name and Registration Number of Company)

Name: Upahla Construction (Pty) Ltd

Registration No: 2008 / 016488 / 07

The above named company commenced business rescue proceedings on 23 November 2021.

Because the business rescue proceedings have not concluded within three months, the appointed business rescue practitioner provides the attached report in terms of section 132 (3).

Name and Title of person signing on behalf of the Practitioner:

Quinton (Pat) Pattinson Senior Business Rescue Practitioner

Authorised Signature:

