

5 October 2023

CIRCULAR 03

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

OUTCOME OF THE 1ST MEETING OF CREDITORS

The business rescue practitioners¹ wish to advise all the affected parties the outcome of the 1st meeting of creditors of **Nottingham Farm CC** (Herein after referred to as “Nottingham” or “The Business”) - held on 4 October 2023.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of 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 the Act² and has filed for Business Rescue in terms of the Act³.
- 1.2. Had the directors decided not to file for business rescue, they would be compelled in terms of the Act⁴ to deliver a formal written notice to every affected person detailing:
 - 1.2.1. That the business is in financial distress.
 - 1.2.2. The reasons for the financial distress.
 - 1.2.3. The reasons for the company's decision to not file for business rescue.

¹ Pat Pattinson, Senior Business Rescue Practitioner and Jaco Durandt, Junior Business Rescue Practitioner.

² Section 128(1)(f) of the Companies Act 71 of 2008.

³ Section 129 of the Companies Act.

⁴ Section 129(7) of the Act.

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

2.1. Based on the information provided to the practitioner to date.

2.1.1. At minimum a better outcome than traditional liquidation will be sought.

2.2. The practitioner believes there to be a reasonable prospect of success as will be discussed later in the meeting.

2.2.1. 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 Act⁵ and the judgment of *Carroll v Michael Carroll*.⁶

ABOUT THE BUSINESS:

PAT PATTINSON & JACO DURANT

BR360

About the Business

Mr Theo Scheepers started the CC in 2001.

Member	%
Theo Scheepers	100

- Based in East London, Nottinghill Farm primarily deals in the sale of tomatoes to major retailers on a national scale.
- They do majority of their work with round table tomatoes, but they do a wide range of specialty tomatoes as well.
- Additionally, they do a very small volume of snacking cucumbers for the Eastern and Western Cape.

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⁵ Section 128(1)(b)(ii) of the Act.

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

REASONS FOR THE FINANCIAL DISTRESS:

1. The cause for the business' financial distress is primarily due to the moth plague that has been experienced and which has systematically gotten worse since 2021.
 - 1.1. The plague reached its peak in 2022 and in actual fact wiped out the entire crop in December 2022 and also the entire crop of April 2023.
 - 1.2. The loss of these crops led to the inability of the business to repay certain production loans which were sourced to fund the Dec 2022 and April 2023 crops. With the crops being destroyed, it became impossible to repay those production loans on the original terms as agreed and thus the more urgent financial distress.
2. In addition to the production loans, there are various long-term loans that are for the funding of the farms themselves and the monthly servicing of this debt has also been somewhat impossible due to the loss of these crops. Albeit that this is not the more pressing issue, as the debt is secured, the inability to pay the monthly instalments due to the loss of crops has exacerbated the financially distressed situation in which the business finds itself.

IMPORTANT DATES:

Board Resolution Submitted	:	14 September 2023 (133 Protection date)
CIPC returned	:	15 September 2023
Practitioner Appointment Submitted	:	15 September 2023
CIPC returned	:	15 September 2023
1 st Meeting of Creditors	:	04 October 2023

FORMING A COMMITTEE

1. The Business Rescue Practitioners advised the attendees that they can form a committee of creditors in terms of the Act.⁷
 - 1.1. The attendees voted against this proposal.
 - 1.1.1. The business rescue practitioners will thus interact with all the creditors of the business directly.

REQUEST FOR AN EXTENSION

1. The plan is currently due to be published on the 19th of October 2023.
2. Based on the discussions had in this meeting, the practitioners confirmed that they will be seeking an extension of the time to publish the business rescue plan until at the latest, the 31st of October 2023.

⁷ Section 147.

3. The reasons for asking for an extension are as follows:
 - 3.1. The practitioners require some time to determine the exact financial position of the business and to correctly allocate claims in their respective classes.
 - 3.2. The practitioners have already had discussions with the member of the business, and it has been agreed that the course of action to be taken will be to sell the larger farm (the one which does not contain the pack house) in order to settle as much of the debt as possible – the full details of this will of course be contained in the business rescue plan.
 - 3.2.1. The business can then continue to trade from the smaller farm under more manageable conditions, with far less debt to service.
 - 3.3. The practitioners also require some time to get the full details of the farm to inform the decision of the best way to go about the sale of the farm in a timeline that will suit the creditors.
4. The proposed extensions was voted on during the meeting and the creditors unanimously accepted the proposed publication date for the proposed business rescue plan. Thus the plan will be published by no later than the 31st of October 2023.

PROOF OF CLAIMS

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.

CLAIMS HAVE BEEN RECEIVED FROM THE FOLLOWING CREDITORS:

1. Should your name not be on the list below, this means that a claim has not been received by the practitioners and you should please submit one soonest, on the prescribed form as mentioned above.

- ABSA Bank – various accounts including Vehicle Asset Finance
 - Intelligro

Kind Regards

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