

June 2022

CIRCULAR 04

THIS IS A CIRCULAR TO ALL THE AFFECTED PERSONS OF **WINDMEUL INGENIEURSWERKE PTY LTD** RELATING TO THE OUTCOME OF THE 1ST MEETING OF CREDITORS, HELD IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE MEETING HELD IN TERMS OF SECTION 147 OF THE ACT

The business rescue practitioner wishes to advise all the affected parties the outcome of the 1st meeting of creditors held on **10th of June 2022**.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of the affected persons to the meeting.

1. 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. This business is in a unique situation since Mr. Pattinson is not the practitioner that originally put the business into rescue. The original practitioner passed away in 2019. However, one must assume that the conditions were fulfilled for the successful filing for business rescue.

1.1. The first question - Is the Company Financially distressed?

YES

1.2. 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 to the practitioner to date, the practitioner feels it prudent to explain the difference between a traditional business rescue which entails the continuance of the business in a profitable manner. Whereas a structured winding down of the business provides for the structured and systematic winding down of a company's affairs, by selling assets, cancelling contracts among others – if there is a benefit to the affected persons. The Carrol v Carrol judgement provides for this structured winding down of a company in business rescue given the result of a better return to affected persons than what would realise in a traditional and immediate liquidation.

2.2. The benefit of a structured winding down in business rescue is not only of a monetary nature, the structured wind down in business rescue can also provide a benefit in the way of time. Traditional liquidations can take in excess of two years to complete, whereas a structured wind down can be completed in as soon as 60 days based on the fact that the practitioner is able to negotiate terms with auctioneers, service providers, creditors and others whereas in a liquidation, you are bound by legislated timelines and the cumbersome dealings with the Masters office, which we all know to be in a state of disarray.

3. Background of the Business Rescue Process to date

3.1. The business commenced voluntary business rescue proceedings in October of 2015

3.2. Mr Bernard Schneider was subsequently appointed as the business rescue practitioner in October 2015

3.3. No business rescue plan was published

3.4. Mr Schneider passed away in September 2019

3.5. The business remained in business rescue

3.6. There are a limited number of ways a business can exit business rescue, namely:

- 3.6.1. Substantial implementation of a business rescue plan
 - 3.6.2. The removal of the business from rescue after a business rescue plan has been published, voted against, and not adopted then the filing of the notice of termination with the CIPC.
 - 3.6.3. When a business rescue practitioner files for liquidation of the company.
- 3.7. The business then approached Mr Pattinson in April 2022 to assist with the business rescue and bringing the process to a conclusion.
- 3.8. After a lengthy administrative process with the CIPC, Mr Pattinson received confirmation of his appointment as the business rescue practitioner on the 11th of May 2022.
- 3.9. It was explained that due to the extraordinary nature of this particular business rescue, some of the prescribed timelines in Chapter 6 of the Companies Act were not adhered to.
- 3.9.1. As provided for in *Panamo Properties (Pty) Ltd v Nel and Another NNO (35/2014) 2015 ZASCA 76 (27 May 2015)* this does not mean that the process is an automatic nullity, only if a court action is brought against the business can the process be set aside – with the burden of proof being on the applicant to show just cause for the setting aside of the business rescue process.
 - 3.9.2. The intention of the practitioner is however, not to delay the process any further and to bring the business rescue to a swift conclusion.
- 3.10. Proof of claims are to be submitted to the practitioner's assistant Jaco Durandt at his email address jaco@pe-paralegal.co.za
- 3.10.1. These proof of claim documents must indicate whether the debt is for pre business rescue or post business rescue.
 - 3.10.2. If you had debts that the business was required to pay, and they were subsequently paid, please also provide this information to the practitioner's assistant

4. Information provided to Mr Pattinson at current

Trade Creditors	:	R 1 700 319
Loan Accounts	:	R 4 061 229
	Subordinated	all loans from connected persons
Debtors	:	R 5 670 654
Assets	:	R 598 415 (AFS no valuation Yet)

5. Questions

5.1. The practitioner opened the floor for some questions at this stage.

5.2. A representative of one of the affected persons queried if the business had ever changed its name.

5.2.1. The practitioner confirmed that to the best of his knowledge, the business had not changed its name in the past. This can be tracked on the CIPC disclosure document. One may also confirm the company's identity by use of the registration number.

5.3. Mr. Booley, a representative of SARS asked if the value of the assets given on the slide above is accurate?

5.3.1. The practitioner confirmed that the information on the above excerpt was as per the company's 2020 Annual Financial Statements, and it is of common cause that some assets may be depreciated in the books of the company but may still hold actual value.

5.3.2. The practitioner further confirmed that an independent valuation of the assets will be done to ascertain the actual value of the assets of the business.

5.3.3. Mr. Booley also confirmed that to his knowledge, the business owned immovable property which was the reason for the confusion regarding the asset value.

5.3.4. The practitioner is not aware of any immovable property but has committed to follow up with the management of the business.

5.4. Mr. Booley further enquired as to when Mr Pattinson was approached to assist in this matter. The reason for the question was due to a letter sent out by the management of the business pertaining to a new entity being formed and providing new banking details.

5.4.1. The practitioner confirmed that he was approached in April, the date of which could not be confirmed off hand in the meeting but would be provided to the affected person.

5.4.2. The practitioner was not aware of this letter that was sent and will make contact with the management of the business immediately as this is in direct contravention of the aims of business rescue. This will also be addressed more in depth at the following creditors meeting once the practitioner has more information at hand.

5.4.3. The practitioner has had limited time for any formal investigations into the affairs of the business, but as soon as these investigations have been conducted, their outcomes will be provided to the creditors at the next meeting.

5.4.4. The practitioner also confirmed that the current business bank account is frozen, as is common practice in business rescue proceedings. Mr Pattinson is in the process of gaining access to the bank account and he will be the only party who may action payments.

5.4.5. The practitioner will not allow for the assets and resources of the business to be “springboarded” into the new entity as per the suggestion in the letter that was circulated to debtors and this will be dealt with accordingly.

6. Reason for Financial Distress

6.1. The practitioner is not certain as to the original reasons that caused the financial distress of the business and forced them to file for business rescue as this was in 2015 and under the purview of another practitioner.

6.2. What is of importance to the practitioner is that the business exits from business rescue in the most fair and efficient manner.

7. FORMING A COMMITTEE

7.1. The Business Rescue Practitioner advised the attendees that they can form a committee of creditors in terms of section 147 of the Act.

7.2. The attendees voted against this proposal.

7.2.1. The business rescue practitioner will thus interact with all the creditors of the business directly.

7.3. The practitioner is however open to the formation of a creditors committee in the future.

8. REQUEST FOR AN EXTENSION

8.1. The practitioner has requested a delay in the publication date, the request is that another meeting similar to this one is held on the 15th of July 2022 and that the plan be postponed again at that meeting, failing which, the practitioner will publish a plan within 10 days after that meeting.

8.2. The reason for the publication date is as a result of the complexity of the business and the lack of information that the practitioner has available, the practitioner will require ample time to consider all options before publishing a business rescue plan.

8.3. 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.

8.4. 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:

8.5. a basic summary of the Income and expenses

8.6. the costs of the business rescue to date

8.7. the collection of the debtor's book

8.8. and the stance on work in progress.

8.9. The practitioner will then at this meeting request an extension for a further month, should it be needed.

8.10. The attendees to the meeting discussed the matter and voted in favour of this proposal and agreed to have **the next meeting on the 29th of July 2022** – due to a request from certain creditors that the meeting be held later than the 15th of July.

9. PROOF OF CLAIMS

9.1. 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.

9.2. 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.

9.3. 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.

10. **COMMENTS AND QUESTIONS FROM THE ATTENDEES**

10.1. Mr Booley, a representative of SARS confirmed that SARS voting interest in this matter is in excess of R40 million.

10.1.1. This value will be confirmed by means of a proof of claim document.

10.2. Annelise Koekemoer, a representative of SARS enquired whether the company had traded since being placed into BR in 2015?

10.2.1. The practitioner confirmed in the affirmative

10.3. Have the directors changed since the BR process began?

10.3.1. The practitioner confirmed that they did NOT change.

10.4. What date is being used as the “commencement date” for the BR proceedings?

10.4.1. The practitioner confirmed that the original date must be used as the commencement date (October 2015).

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

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