

31 July 2024

## CIRCULAR 19

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

### **OUTCOME OF THE MEETING TO VOTE ON THE AMENDED PROPOSED BUSINESS RESCUE PLAN**

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The business rescue practitioners<sup>1</sup> wish to advise all the affected persons of the outcome of the meeting to vote on the amended proposed business rescue plan, as held on the 30<sup>th</sup> of July 2024. The purpose of this meeting was solely to discuss the published business rescue plan (with the amendments as proposed) and to vote on the adoption of same.

The practitioner took time at the commencement of the meeting to explain the procedures that would be followed during this meeting and the manner in which the relevant votes would be conducted.

#### **Presenting of the Business Rescue Plan:**

The practitioner presented the proposed business rescue plan to the affected persons who were present at the meeting to vote. There were amendments that were discussed and addressed. The amendments were proposed prior to the meeting and allowed for the practitioner to present these amendments for consideration by all creditors and for voting at this meeting.

These amendments are briefly presented below under the “Amendments” heading:

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

**Confirmation of a Reasonable Prospect:**

The practitioner continued to confirm his belief of a reasonable prospect of a successful rescue – in that the plan proposed provides a substantially better return to the affected persons than that which would be received if the business were immediately and traditionally liquidated.

**If the Business Rescue Plan is Adopted:**

The practitioner confirmed that should the plan be adopted, that in terms of Section 154 of the Companies Act, any creditor may oppose the process by means of an application to court within 5 business days of the adoption of the plan. Failing which, the practitioners would continue with the implementation of the adopted rescue plan and to subsequently file for implementation of the plan once the milestones are achieved per the plan.

**If the Business Rescue Plan is Not Adopted:**

However, should the plan not be adopted, Section 153 of the Companies Act would apply. In terms of this section, creditors would be given the opportunity to ask for an amended proposed business rescue plan. If there is no request for an amended rescue plan, then the practitioner would need to file a notice of termination with the CIPC and return the business to the shareholders.

**Amendments:**

- 1) Point 3.2.3 of the plan: proposed commencement of payments (30 days suggested as opposed to 90 days)
- 2) Inclusion of creditor's ability to pursue 3rd Party Sureties – in the event that the business rescue process is not successful
- 3) Security over the immovable assets – “more” detail pertaining to the nature of security over these assets by the various creditors (order of preference)
  - a. The nature of this being the first bond/security over the immovable assets by ABSA, then Mr. Claude Randall as stated in point 3.2.14.5 of the plan:

*“3.2.14.5. Claude Randall holds a 2nd Mortgage bond as security - which was given for the balance of the purchase price of the property as described in the mortgage bond.*

*3.2.14.5.1. Per paragraph 5 (a) of the abovementioned mortgage bond – there is a “Non-prejudice” clause given in favour of ABSA Bank for their various bonds and securities over the property. Simply stated, ABSA will stand first in line in respect to any funds received from the sale of any immovable assets.”*

4) Inclusion of default clause per ABSA request:

a. *“Should the business default on any of the proposals in the plan, the aggrieved party will need to notify the company in writing as to the nature of the grievance/default and the business will be given 7 (seven) business days to remedy the default. Failing which, the aggrieved party may commence with action against the company to remedy the default. In ABSA’s case specifically, Absa will issue a default notice to the company that the remedy be rectified within 7 (seven) calendar days to rectify the breach, failing which Absa Bank Limited will then exercise legal rights accordingly (The CAF assets to be returned to the Bank)”*

5) Annexure D – list of assets to be amended to include moveable assets currently under finance at ABSA – being the vehicles under finance.

## **VOTING:**

**The first vote in terms of adopting the plan** was taken, and creditors voted with 100% in favour to proceed to the second vote and to thus accept the plan with the amendments as presented to them prior to the vote.

**The second vote in terms of adopting the plan** was to determine whether the attendees wished to accept or reject the amended (as per above) business rescue plan.

A 100% vote from affected persons at the meeting and those who had given proxy was achieved in favour of the adoption of the business rescue plan.

The result of the above votes thus entail that the business rescue plan is in force as at the time of voting.

The practitioners will file for substantial implementation of the business rescue plan once the milestones have been achieved as per the now adopted business rescue plan.

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