

**PROPOSED BUSINESS RESCUE PLAN**

**PUBLISHED TO THE AFFECTED PERSONS OF**

# ***Ncedisa Assignments (Pty) Ltd***

**Registration nr: 2016 / 524933 / 07**

***BY Quinton (Pat) Pattinson***

**ON**

**23<sup>rd</sup> of November 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. “**BRP/s**” means Pat Pattinson as defined in Regulation 126 to the Act;
- 1.7. “**Business Rescue**” means the proceedings in terms of Chapter 6 of the Act and as defined in Section 128 (1)(b);
- 1.8. “**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 Practitioner on the 23<sup>rd</sup> of November 2022.
- 1.9. “**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;

- 1.10. **“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;
- 1.11. **“Concurrent Creditors”** means creditors having concurrent claims as envisaged in the Insolvency Act;
- 1.12. **“The Business”** means Ncedisa Assignments (Pty) Ltd (in business rescue), a business duly incorporated in terms of the Laws of South Africa under registration number 2016 / 524933 / 07;
- 1.13. **“Commencement Date”** means 20<sup>th</sup> of October 2022 being the date upon which the resolution to voluntarily begin with business rescue proceedings was filed with the Commission;
- 1.14. **“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;
- 1.15. **“Disputed Claim”** means a claim that was submitted, but not approved by the practitioners. These claims will be confirmed or amended prior to distribution.
- 1.16. **“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;
- 1.17. **“Historic Debt”** means the debt owed by the Business as at the date of filing;
- 1.18. **“Independent Creditors”** means all Creditors having Claims against the Business other than creditors related to the Business and its subsidiaries and/or directors;
- 1.19. **“Insolvency Act”** means the Insolvency Act 24 of 1936 as amended;
- 1.20. **“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;
- 1.21. **“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;
- 1.22. **“PCF”** means Post Commencement Financing provided by a financier to the Company as envisaged in terms of section 135 of the Act;

- 1.23. **“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;
- 1.24. **“Preferent Creditors”** means creditors having preferent claims as envisaged in terms of the Insolvency Act;
- 1.25. **“Proceedings”** means business rescue proceedings as provided for in Chapter 6 of the Act;
- 1.26. **“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;
- 1.27. **“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;
- 1.28. **“Secured Creditors”** means creditors having secured claims as envisaged in the Insolvency Act;
- 1.29. **“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;
- 1.30. **“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;
- 1.31. **“The Meeting”** means the meeting convened in terms of section 151 (1) of the Act;

## 2. EXECUTIVE SUMMARY

- 2.1. The Business, known as Ncedisa Assignments (Hereinafter referred to as “Ncedisa” or “The Business”) is a company that provides temporary employment services in the agricultural sector. The business was started in 2016 by Mr. Mntwini.
- 2.2. The Business became financially distressed and had no other option but to file for business rescue in terms of the Act<sup>1</sup> on the 20<sup>th</sup> of October 2022.
- 2.3. The Business then timeously notified all the affected persons known to the practitioners of the business rescue proceedings as per the Act.<sup>2</sup>
- 2.4. The BRP received his notice of appointment on the 27<sup>th</sup> of October 2022.
- 2.5. Based on the information received from the Business, the BRP’s concluded that the business is in fact financially distressed and that a reasonable prospect of a successful Business Rescue does exist.
- 2.6. The BRP’s convened and presided over a first meeting of creditors on the 7<sup>th</sup> of November 2022.
- 2.7. After careful analysis of the business, its financial state, information provided both pre and post the business rescue, 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.
- 2.8. 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 December 2022.
- 2.9. The details pertaining to this vote will be sent out in a Circular shortly.
- 2.10. 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.
- 2.10.1. This will allow the Business Rescue Practitioners the time needed to consider any suggestions.
- 2.11. 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.**

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<sup>1</sup> Section 129 of the Companies Act 71 of 2008.

<sup>2</sup> Section 129 (3)(a).

- 2.12. 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.
- 2.13. This plan makes provision for full and final settlement to creditors from proceeds provided from a third and independent party, and as such there will be no further funds available for late claims.
- 2.14. 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.
  - 2.14.1. 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.
- 2.15. If you have not received a Power of Attorney document to complete, please contact the Business Rescue Practitioner.
- 2.16. Calculations and projections provided are based on information provided by the owners, management, independent valuers, accounting statements and the affected persons.
  - 2.16.1. Due to the limitations in law, the practitioner 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.
  - 2.16.2. Proceeds will be used to provide a full and final settlement to creditors as follows:
    - 2.16.3. Secured creditors – Wesbank, being the only secured creditor, will continue to be serviced in the ordinary course of business as per the original agreements including provisions for securities and sureties.
      - 2.16.3.1. It is confirmed that at the time of publication of this business rescue plan, all payments in respect of vehicle finance agreements are up to date.
    - 2.16.4. The remaining concurrent creditors will receive a dividend of even proportion immediately upon the completion of the SARS audit on the tax returns.
      - 2.16.4.1. There will only be R1 million available for distribution to concurrent creditors and the business will be in a position to make disbursements as a lump sum payment within a matter of days after the successful adoption of this business rescue plan and the conclusion of the audit by SARS.

- 2.16.5. All ongoing costs and expenses of the business will be paid as and when due in the ordinary course of business.
- 2.17. The practitioners will file for substantial implementation as soon as is practicable after the proposed business rescue plan has been adopted.

### 3. SALIENT FEATURES

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

#### 3.1. **PART A – BACKGROUND OF THE COMPANY**<sup>3</sup>

3.1.1. Ncedisa Assignments is a company that provides temporary employment services predominantly in the Eastern Cape and predominantly in the agricultural sector. The business was started in 2016 by Mr. Mntwini.

3.1.2. Per the Act<sup>4</sup>; The assets of the Business are valued at an approximate value of R1 328 911 as per the 2022 AFS (Annexure D) supplied to the practitioners by the business. This is in comparison with the desktop valuation as per the attached Annexure E containing a List of Material Assets valued at approximately R 2 667 060 market value and approximately R 1 723 644 forced sale value before any costs and fees.

3.1.3. Per the Act<sup>5</sup>; The liability of the business is based on the proof of claims received from 4 creditors (totaling 7 claims) and totals about R 2 433 773. A list of creditors with their respective claims is attached as Annexure B.

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

Secured Claims	:	2 Claims	for about R 874 528
Concurrent Claims	:	2 Claims	for about R 430 540
Disputed Concurrent Claims	:	3 Claims	for about R 1 128 704

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. Based on the attached Estimated Liquidation Calculation<sup>6</sup> in Annexure I, it is evident that should the business be placed into traditional liquidation, the costs thereof will result in a situation where the income from liquidation proceedings would be substantially less than what is being offered to all creditors in this plan.

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<sup>3</sup> Section 150 (2) of the Companies Act.

<sup>4</sup> Section 150(1)(a)(i).

<sup>5</sup> Section 150(1)(a)(ii).

<sup>6</sup> Section 150(1)(a)(iii).



3.1.3.4. The Business Rescue Practitioner thus remains 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.

3.1.3.5. 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	: 51 and 47 cents in the rand respectively	: 100 cents in the rand
Concurrent Claims	: 46 cents in the rand	: 100 cents in the rand

3.1.4. Below is a complete list of the holders of the Company's issued securities.<sup>7</sup>

<b>Name</b>	<b>Issued Securities</b>
Mr. Mntwini	: 100%

3.1.5. Attached as Annexure G<sup>8</sup> is a copy of the written fee agreement of the practitioners as approved by the business and the creditors of the business.

3.1.6. 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.<sup>9</sup>

## **3.2. PART B – PROPOSAL BY THE PRACTITIONERS<sup>10</sup>**

3.2.1. This Proposed Business Rescue Plan does not make provision for a specific moratorium period<sup>11</sup> to be granted, first payments will be made to the concurrent creditors of the business as soon as the funds are made available and the SARS audit process has reached finality.

3.2.1.1. The offer in terms of this plan and the payment that is to be made to all concurrent 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 the Act<sup>12</sup>.

3.2.1.2. 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:

<sup>7</sup> Section 150(1)(a)(iv).

<sup>8</sup> Section 150(1)(a)(v).

<sup>9</sup> Section 150(1)(a)(vi).

<sup>10</sup> Section 150 (2).

<sup>11</sup> Section 150(1)(b)(i).

<sup>12</sup> Section 154.

## **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.*

3.2.2. 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<sup>13</sup> and is summarised as follows:

3.2.2.1. First - 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). 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.

3.2.2.1.1. No outstanding fees at the time of publication.

3.2.2.2. Second - All creditors, including but not limited to staff, sub-contractors and or suppliers who have assisted the business with the completion of the ongoing trading of the business will be settled in full for any of the work done or goods supplied to complete this work completed post business rescue.

3.2.2.2.1. No outstanding fees at the time of publication.

3.2.2.3. Third – any party that provided post commencement finance will be repaid their respective loans, but no interest or fees will be paid.

3.2.2.3.1. No outstanding fees at the time of publication.

3.2.2.4. Fourth – Pre-rescue secured creditors will continue to be serviced in terms of their original agreements.

3.2.2.4.1. This has the result that Wesbank will continue to be paid in terms of their current agreements with no compromise in terms of the amounts or payment periods. Wesbank will further retain all rights in terms of Securities and or sureties previously provided.

3.2.2.5. Fifth – the remaining concurrent creditors will be paid after the adoption of this proposed business rescue plan proportionally from the funds made available once the SARS audit is completed.

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<sup>13</sup> Section 150(1)(b)(v).

- 3.2.2.5.1. This has the result that the R 1 000 000 will be divided, proportionally, between all concurrent creditors. Total Concurrent claims received is R 1 559 244 with the only dispute being for the amount due to SARS, as a result of an outstanding audit from SARS.
- 3.2.2.5.2. The current proof of claim from SARS indicates an amount of R1 128 704.75, but the business has submitted outstanding returns that could reduce this amount to R202 183.44.
- 3.2.2.5.3. SARS have indicated that this reduction must be audited first and as such it is impossible to formally provide the precise dividend that concurrent creditors would receive.
- 3.2.2.5.4. Worst case scenario, the full amount of R1 128 704 remains due to SARS combined with the amount of R 430 540 to other concurrent creditors would result in a dividend of 64 cents to the Rand.
- 3.2.2.5.5. Should SARS accept the submission as provided, their debt should be about R 202 183.44 and this together with the rest of the concurrent creditors could then be settled in full; from the funds made available.
- 3.2.2.6. Sixth – The connected party loans of R 430 540 will be limited to a repayment amount of R 50 000 each with the remaining indebtedness being subordinated for the purposes of this plan in relation to the R 1 000 000 being made available for disbursement to creditors.
  - 3.2.2.6.1. SARS would thus have no less than R 900 000 available for its debt.
- 3.2.3. The main benefits of adopting this business rescue plan are:<sup>14</sup>
  - 3.2.3.1. 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.
  - 3.2.3.2. The business rescue process will allow for disbursement to creditors much faster than would be possible in a traditional liquidation.
  - 3.2.3.3. 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.
  - 3.2.3.4. This proposed business rescue plan removes the legal fees associated with a liquidation and removes the cost of a liquidator.

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<sup>14</sup> Section 150(1)(b)(vi).

3.2.4. This Proposed Business Rescue Plan does not provide for the dilution or strengthening of shareholding percentages in the Business.<sup>15</sup>

3.2.4.1. In terms of the Act<sup>16</sup>, 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. PART C – ASSUMPTIONS AND CONDITIONS USED<sup>17</sup>**

3.4.1. This Business Rescue Plan is based on the following assumptions.<sup>18</sup>

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.

3.4.1.2. The Business Rescue Practitioners have contacted all the affected persons, known to him, 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” or alternatively “in business rescue”.

3.4.2. While the Business Rescue Practitioner has 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 Practitioner has endeavored to confirm its accuracy, the funds and time allotted to him 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. 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.

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<sup>15</sup> Section 150(1)(b)(ii).

<sup>16</sup> Section 152 (3).

<sup>17</sup> Section 150 (2).

<sup>18</sup> Section 150(1)(c)(i).

- 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 the Companies Act<sup>19</sup>.
- 3.4.5. This Business Rescue Plan is based on the following conditions that need to be satisfied for it to be fully operational.<sup>20</sup>
- 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 the Act<sup>21</sup> 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 The Companies Act.<sup>22</sup>
- 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.
- 3.4.5.4. The fourth 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 the Companies Act of 2008.<sup>23</sup>
- 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 an instance be deemed to have terminated. The full original claim outstanding to creditors or remainder of such claim shall be payable.

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<sup>19</sup> Section 152.

<sup>20</sup> Section 150(1)(c)(i).

<sup>21</sup> Section 151 and 152.

<sup>22</sup> Section 137(4).

<sup>23</sup> Section 132.

- 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 the VAT Act 89 of 1991<sup>24</sup> 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 a reduction shall be without prejudice to any rights that the taxpayer may have in terms of the Tax Administration Act.
- 3.4.5.4.4. The claw back provision is only applicable to debt not older than 12 months, should any debt be older than 12 months, those compromised amounts will remain subject to the VAT claw back provisions.
- 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 an instance, be deemed to have terminated.
- 3.4.5.7. These conditions will allow the BRPs sufficient leverage while they implement the proposed business rescue plan to ensure a successful rescue of the business.
- 3.4.6. Once the following has been completed the plan will be considered as having been fully implemented:<sup>25</sup>
- 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.
- 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.

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<sup>24</sup> Section 22.

<sup>25</sup> Section 150(1)(c)(i).

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 the Act.<sup>26</sup>

3.4.7. No retrenchments are envisaged as part of this proposed business rescue plan.<sup>27</sup>

3.4.8. 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.<sup>28</sup>

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. It is proposed that the Company will continue trading in its current format after the implementation of this BR Plan<sup>29</sup> and therefore the projected income statement is attached as Annexure J.

3.4.9.1. Find attached as Annexure D the signed and duly completed Annual Financial Statements for the year ending February 2022.

### **3.5. MEETING TO DETERMINE THE FUTURE OF THE COMPANY<sup>30</sup>**

3.5.1. This Proposed Business Rescue Plan was published to the affected persons on the 23<sup>rd</sup> of November 2022 and a meeting to vote has been scheduled to take place on the 5<sup>th</sup> of December 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. CONSIDERATION OF THE BUSINESS RESCUE PLAN<sup>31</sup>**

3.6.1. Two votes will take place during this meeting as per the Act;<sup>32</sup>

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,

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<sup>26</sup> Section 132(2)(c)(ii).

<sup>27</sup> Section 150(1)(c)(ii).

<sup>28</sup> Section 150(1)(c)(iii).

<sup>29</sup> Section 150(1)(c)(iii).

<sup>30</sup> Section 151.

<sup>31</sup> Section 152.

<sup>32</sup> Section 152 (1).

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 the Act.<sup>33</sup>

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 the Act.<sup>34</sup>

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 the Act.<sup>35</sup>

4.6. The first condition is that the Business must be financially distressed as defined in the Act.<sup>36</sup>

4.7. The second condition is that the Business Rescue Practitioners must believe that a reasonable prospect of a rescue exists as defined in the Act.<sup>37</sup>

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.

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<sup>33</sup> Section 152.

<sup>34</sup> Section 128 (1)(b).

<sup>35</sup> Section 129 (1).

<sup>36</sup> Section 129 (1)(a).

<sup>37</sup> Section 129 (1)(b).



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 the Act<sup>38</sup> 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	20 October 2022
Resolution adopted by CIPC	20 October 2022
Business Rescue Practitioners Appointed	27 October 2022
Business Rescue notice submitted to affected persons	27 October 2022
First meeting of Creditors and Staff	7 November 2022
Business Rescue Plan published	23 November 2022
Vote on the proposed business rescue plan	5 December 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 the Act.<sup>39</sup>

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 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

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<sup>38</sup> Section 129.

<sup>39</sup> Section 141.

Company without prejudice by the Business Rescue Practitioners and their associates.

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

### **7.1.1. The first vote**

- 7.1.1.1. Attached as Annexure H is an example of what the first voting form will look like.
- 7.1.1.2. 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.
- 7.1.1.3. 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.

### **7.1.2. The second vote**

- 7.1.2.1. Also attached as Annexure H is an example of what the second voting form will look like.
- 7.1.2.2. 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 03 Outcome of 1st Creditors Meeting
Annexure B:	List of Creditors of the Business
Annexure C:	Company Registration Documents
Annexure D:	2022 AFS
Annexure E:	Assets of the Business
Annexure F:	Certificate of the Business Rescue Practitioner
Annexure G:	Written Fee Agreement
Annexure H:	Sample Voting Forms
Annexure I:	Sample LND
Annexure J:	Projected Financials

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