

8 May 2023

## CIRCULAR 35

THIS IS A CIRCULAR TO ALL THE AFFECTED PERSONS OF **SERVELEC (PTY) LTD** RELATING TO THE OUTCOME OF THE MEETING TO VOTE ON THE PROPOSED BUSINESS RESCUE PLAN, HELD IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

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

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The business rescue practitioners<sup>1</sup> wish to advise all the affected parties of the outcome of the meeting to vote on the proposed business rescue plan, held on the 5<sup>th</sup> of May 2023. The purpose of this meeting was solely to discuss the published business rescue plan and to vote on the adoption of same.

#### **If the plan is adopted:<sup>2</sup>**

- The purchaser and seller will have 7 days in which to conclude the offer and to transfer the funds (subject to the various other suspensive conditions)
- Thereafter, as soon as is practical, the practitioners will file for substantial implementation.

#### **If the plan is not adopted:<sup>3</sup>**

- Potential for an amended business rescue to be published – the meeting will be adjourned for a minimum of five working days for the amendments to be made.
  - o The plan will then be re-published to the affected persons with a vote to take place no longer than ten business days thereafter.
- One creditor may make a binding offer for the purchase of the voting interests of other creditors (should they so be inclined) – the value of which would only need to be equal to the value as would be received in a liquidation scenario.
- If no request for an amended plan to be published:

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<sup>1</sup>Quinton Pat Pattinson, Senior Business Rescue Practitioner and David Masterton, Experienced Business Rescue Practitioner.

<sup>2</sup> Section 154 of the Companies Act.

<sup>3</sup> Section 153 of the Companies Act.

- The business rescue practitioners will file a notice of termination of the business rescue proceedings and the business will be returned to the control of the directors/shareholders.
  - Contrary to popular belief, the practitioner is not obliged to file for the liquidation of the entity failing the adoption of a business rescue plan. The only instance in which a practitioner is obliged to file for liquidation is when during the Section 141<sup>4</sup> investigations, the practitioner becomes of the belief that a reasonable prospect of a rescue no longer exists. This is not the case however, as the practitioner has already stated his belief of a reasonable prospect existing in terms of the proposed rescue plan.

**The first vote** cast was to determine whether the attendees wished to adjourn the meeting and receive an amended business rescue plan in the future, or if they wish to continue to vote number two on this proposed business rescue plan.

A 100% vote from affected persons at the meeting and those who had given proxy was achieved, they did not wish to delay the process and were happy to vote on the plan.

**The second vote** cast was to determine whether the attendees wished to accept or reject the 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 third vote** cast was by the shareholders of the business (this vote is required as the plan makes provision for the change in shareholding percentages of the business).

The practitioners had proxy forms (as confirmed by a shareholder who was present) for this vote and all shareholders voted 100% in favour of the adoption of the plan.

The result of the above votes thus entail that the business rescue plan is adopted.

The practitioners will file for substantial implementation of the business rescue plan as detailed above to avoid any unnecessary delays in the process. It was however confirmed that all the disputes would be addressed and confirmed before any disbursements to the affected persons.

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<sup>4</sup> Companies Act 71 of 2008.

## Questions and Comments:

- A question was raised regarding the amendment of disputed concurrent creditors claims.
  - o The practitioners confirmed that the plan makes provision for this exact matter and that after the adoption of the plan – there is a dispute resolution mechanism that will be applied to such circumstances.
  - o Further, should it be necessary, amounts due will be reconsidered and amended as this will not materially affect the rest of the creditors as values to be repaid are set per the business rescue plan.
  
- It was asked if it would be possible to accelerate the 24-month repayment period?
  - o The practitioners addressed this matter and mentioned that it would be impractical to try and bring the payment schedule forward. However, should it become possible to repay these debts in a shorter period, this will be done; the 24-month period provided is a maximum period.
  
- The only “amendment” to the plan that was proposed and accepted, will be the inclusion of the Bargaining Council’s Concurrent Claim. The claim will be included in the plan and accepted, subject to the same provisions as the rest of the concurrent creditors in terms of the compromise proposed in the plan.
  - o The claim was included in the plan and will be repaid subject to the same compromise as the rest of the concurrent creditors – this will also have no effect on the rest of the concurrent creditor’s repayments.

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