

14 February 2024

## CIRCULAR 02

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE REHABILITATION PROCESS OF **THE BLACKIE SWART FAMILIE TRUST** AS PROPOSED TO FORM PART OF THE RESCUE OF THE ENTIRE GROUP OF INTERCONNECTED ENTITIES

### OUTCOME OF THE 1<sup>ST</sup> MEETING OF CREDITORS

---

The appointed representative<sup>1</sup> wishes to advise all the affected parties the outcome of the 1<sup>st</sup> meeting of creditors of **the Blackie Swart Familie Trust** (Herein after referred to as “BSFT” or “The Business”) - held on 13 February 2024.

Mr Masterton gave a brief introduction of the Rehabilitation team and welcomed all of the affected persons to the meeting. The team consists of Mr. Masterton, who has been appointed by the trustees to assist in the rehabilitation process with a general power of attorney and veto right. Thus allowing Mr. Masterton to act on behalf of the trust and to veto any decisions made by the trustees during the rehabilitation period. Mr. Pattinson – a senior business rescue practitioner with more than 50 successful substantial implementations of business rescue plans with a career in business turnarounds spanning over more than 15 years, and Mr Durandt who is a junior business rescue practitioner with 4 years of experience in the industry and is currently completing his masters degree in Business Rescue and Insolvency. Mr. Pattinson and Mr. Durandt are assisting Mr. Masterton with the proposed rehabilitation of the Trust.

#### 1. **INFORMATION PROVIDED:**

##### 1.1. Firstly, and most importantly to note:

1.1.1. The Blackie Swart Familie Trust (IT390/2004) is not capable of entering a formal business rescue process in terms of Chapter 6 of the Companies Act. However, due to the interconnected nature of this trust with the 4 other entities (which are in rescue) – a quasi-rescue approach will be taken for the proposed rehabilitation of the trust.

---

<sup>1</sup> David Masterton - duly authorized in terms of a general power of attorney to act on behalf of the trust.

1.1.2. The proposed rehabilitation process will follow a similar process of that of a traditional business rescue, as this will simplify matters. We do of course recognise that the BSFT will not enjoy the same types of protection as is provided in terms of Chapter 6 of the Act.

1.1.2.1. Throughout the process, the appointed representative has no intention of compromising anyone's rights in terms of the proposed rehabilitation.

1.1.2.2. A question was posed regarding the locus standi of the representative to call such a meeting of creditors for the trust – which was confirmed by Mr. Masterton in terms of the power of attorney received. A copy of which will be uploaded to the website of the practitioner at <https://pattinson.biz/>

<b>Trade Creditors</b>	: R79 000 000
<b>Loan Accounts (Receivable)</b>	: R55 000 000
<b>Loan Accounts (Payable)</b>	: R35 000 000
<b>Debtors</b>	: TBC
	:
<b>Assets</b>	: R166 000 000

\*\* At this stage, no reliance can be placed on the financial information.

## 2. REASONS FOR THE FINANCIAL DISTRESS:

2.1. The reasons for the financial distress, as presented by the trustees to the representative is as follows:

2.1.1. The BSFT supplies Blue Crane with fruit, who in turn exports most of the fruit that is harvested to the European Union as there is a big market there for organic fruits.

2.1.2. The cost of exporting the fruits had gone up significantly due to a strike that happened and caused a shortage of logistical support – meaning an increase in the price thereof.

2.1.2.1. There were additional costs involved with shipping when some fruits had to be re-routed due to quality issues.

2.1.3. The quality issues alluded to above are to do with a certain “black spot” that was present on the citrus during the transportation phase – which unfortunately meant the EU wouldn’t accept the fruit and it had to be shipped to another location for sale.

2.1.4. This caused the fruit to yield a significantly lower price than was originally anticipated as it had to be sold as normal fruit and not organic fruits.

2.1.5. There were also significant changes in the rainfall in the area which affected the farming activities on the farms.

2.2. Although the reasons for the financial distress are sound, and are indeed contributing factors, the representative has (during his ongoing investigation) concluded that these additional reasons are also contributory to the financially distressed situation in which the trust now finds itself:

2.2.1. There has been a large amount of overcapitalisation on some of the farms, including the costs of purchasing some of these farms. – It was noted that one farm was purchased for approximately R980 000/hectare, which is far above the acceptable market value of such farmland.

2.2.2. The businesses/group own a large amount of non-income generating assets such as guesthouses, holiday homes, hunting farms and other assets which are a cashflow drain on the business and not generating further income.

2.2.3. In general, record keeping is rather poor across the group of companies, and it has proven difficult to not only obtain correct information, but any information at all. Information that should be readily available is often times not present and this has also added to the delays in certain process.

2.2.4. Poor financial decision-making. As mentioned above, purchase of farms way above market value, investments into property that will never show a return on that investment, extending of loans that have little chance of ever being recovered.

### **3. REHABILITATION PROCESS TO DATE:**

3.1. The Representative commenced with a formal investigation into the affairs of the BSFT – the preliminary findings are as above under the reasons for the financial distress.

3.1.1. The representative has been scrutinizing all information as received from the management of the businesses and Trust and can confirm at this time that there are some irregularities that are being addressed as a matter of urgency.

3.2. To date, it has proven difficult to place any real reliance on the information received from the BSFT such as financial statements, asset registers and the likes.

3.3. The representative has on many occasions done site visits and inspections. The representative is not a farmer by trade and have therefore consulted with 3 different external parties with regards to doing various testing and yield studies to determine whether there will be a viable crop for harvesting.

3.3.1. Mr. Masterton detailed some of the ongoing testing that is being done to check the quality of the fruit as well as the potential yield that will be realised from the current harvest.

### **4. REHABILITATION OUTCOMES TO DATE:**

4.1. The representative can at this stage confirm that much of the information received is factually flawed and much of it will require redoing.

4.2. The representative has confirmed that to date, there has in fact been irregular expenditure within the Trust.

4.3. Those non-income generating assets have been identified and will be sold as part of the ongoing rehabilitation process.

4.4. The representative has had independent studies done to verify a potential crop yield.

4.4.1. The yield figures everyone agrees on, the quality of the fruit is what is still being tested and to determine if it will be of export quality.

4.5. The representative has implemented substantial cost-saving measures to reduce ongoing wasteful expenditure.

4.6. The representative is also in the process of securing additional funding for the Trust in order to assist with the rehabilitation. Currently communicating with multiple potential investors/buyers.

## **5. REHABILITATION ACTIONS TAKEN TO DATE:**

5.1. The representative has, after consulting with the relevant parties, made some management changes to the businesses and the Trust. The Chief Executive Officer, Financial Manager, Head of Exports, Workshop Manager and Maintenance Manager have all vacated their current positions.

5.1.1. Currently, from an operational standpoint, Mr. Masterton has taken control of all financial responsibilities for the group of companies and the Trust.

5.2. Further operational changes that have been implemented to date include the likes of purchasing and payment controls. No new purchasing is done without the express consent of Mr. Masterton, same goes with the payment of any amounts out of the Trust.

5.2.1. This has helped to ensure key expenses are paid on an ongoing basis, such as the short-term insurance, ongoing spraying and water and electricity. These are crucial factors for the success of the proposed rehabilitation.

5.3. As mentioned previously, independent studies have been conducted to help ascertain the potential crop yields and the information received thus far appears to be in line with the anticipated yield. The only outstanding tests still are the quality tests to determine the export quality of the fruit.

## **6. REHABILITATION PROPOSAL (PROVISIONAL):**

6.1. The representative has determined that the rehabilitation plan will consist of a hybrid approach. Meaning that the intention remains to continue farming and to affect an organic turnaround.

6.1.1. The scale of the farming will likely need to be reduced to a size where the BSFT is capable of managing all aspects effectively.

6.1.2. The type of farming will also need to be re-evaluated and diversified. Although the organic farming is very lucrative, it comes with far more risk due to the reduced shelf life of product and the time taken for exports, there is too much risk involved as we have noted previously. The trust will need to consider some conventional farming as well.

6.1.3. It has also become abundantly clear that the trust will need to sell a large amount of assets. The trust requires working capital and the last few years of expansion need to be rolled back to where the trust can operate effectively.

6.2. The representative has, on many occasions, noted and confirmed that the five entities (4 businesses and 1 trust) effectively operate as a single entity. The representative is therefore currently investigating the possibility of having all the entities collapsed into one.

6.2.1. Currently, independent legal, tax and accounting advice is being sought on the matter as the goal would be to achieve the collapse of the entities into one, without prejudicing any rights of the affected persons.

6.2.1.1. Feedback on this will be provided during the next meeting.

6.3. It is currently envisaged that the rehabilitation process will span at least for a period of 2 harvests in order to fully financially recover from the various setbacks that have been experienced. Again, more detail will be available once we have the results of the quality testing and are to give more detailed financial information.

6.4. The benefit of the rehabilitation process lies in the fact that the representative believes that 100 cents in the Rand dividend could be achieved should adequate time be given and the trust be allowed to trade for the following 2 harvests.

## **7. ALTERNATIVES TO A REHABILITATION:**

7.1. The benefit of the rehabilitation process have already been outlined above, and should the rehabilitation process not be given the opportunity to be implemented the only real

alternative to that would be the immediate sequestration of the trust. However, this does not come without its own consequences – such as:

7.2. In a sequestration there is no guarantee of recovering the full indebtedness due by the trust, especially when you consider the waterfall of payments in such a process, including but not limited to:

- 7.2.1. Legal fees to have the sequestration application filed,
- 7.2.2. The cost of the Masters Fees,
- 7.2.3. The Liquidators Fees,
- 7.2.4. Auctioneers Fees,
- 7.2.5. Additional Section 89 costs such as storage, security etc.

7.3. Secured creditors in this situation would be likely to receive a maximum of around 40% due to the manner in which the sale of assets will take place (sequestration auction – fire sale).

- 7.3.1. Not to mention that the assets will, from the point of sequestration, begin to diminish in value as the land will no longer be maintained and assets will lose further substantial value.

7.4. It is highly unlikely that SARS or Staff would receive dividends (above those portions that are secured).

7.5. Concurrent creditors will receive no dividend in a sequestration scenario.

7.6. Hence the proposed rehabilitation of the Trust, in a structured manner, by a professional party in full co-operation with the affected persons.

## **8. FUTURE MEETINGS:**

8.1. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held in the first week of March 2024 so that the representative can provide further feedback to the creditors.

- 8.1.1. The representative confirmed that this meeting, would be combined with the meetings for all the other entities as well. As it has been confirmed, the entities effectively

trade as one single entity, the representative does not wish to waste the affected person's time with 5 separate meetings wherein the same information is shared.

## **9. PROOF OF CLAIMS:**

9.1. The representative confirmed that Jaco Durandt will send 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 rehabilitation process – on the website at <https://pattinson.biz/>

9.2. Please provide us with these proof of claims as soon as possible as we would like to compare the claims received to those values contained in the books of the trust.

## **10. QUESTIONS / COMMENTS**

10.1. What is the current position with relation to SARS, it is clear that the same provisions of Business Rescue do not apply to this proposed process?

10.1.1. It was confirmed that Mr. Masterton will provide a copy of the mandated power of attorney and further communications between himself and SARS would need to be considered with regards to a way forward.

10.2. When does the harvest start and does the 2-year harvest period mean that payments will only commence in 2 years?

10.2.1. The harvest will commence in April 2024 and will last till around September 2024.

10.2.2. The 2 years envisaged for the turnaround include the 2024 harvest as year 1.

10.2.3. Payments will commence as soon as possible with funds available – over a 2-year period, not only commencing in 2 years.

10.3. Multiple questions were asked about the continued operations of the business and how the trust intends on continuing and especially paying for such continued operations.

10.3.1. Mr. Masterton confirmed that contact would be made with individual creditors/suppliers on an ongoing basis for any required supply of product or services and individual agreements could be reached with those parties.



As a final confirmation – all of the relevant documentation including claim forms, meeting outcomes and meeting invites will be published to the website <https://pattinson.biz/>

You are welcome to make contact with Mr. Masterton on any trust related matters and his details reflect as below:

Kind Regards

David Masterton

[davidm@businessrescue360.co.za](mailto:davidm@businessrescue360.co.za)

082 569 3813

BR360