

# **COMMUNICATION TO INVESTORS**

14 FEBRUARY 2014

## **IN RE: HIGHVELD SYNDICATIONS 15- 22 LIMITED (UNDER BUSINESS RESCUE) (“HS COMPANIES”) AND ORTHOTOUCH LIMITED (“ORTHOTOUCH”)**

1. It is common cause that the HS Companies were placed under business rescue during September 2011.
2. The history and background relating to the events that led to business rescue resolutions being passed in respect of the HS Companies are recorded in the Business Rescue Plan (“the Plan”) that was adopted on 14 December 2011 and which may be found at our website at [www.corprecover.co.za](http://www.corprecover.co.za)
3. On 24 March 2011, some six months before business rescue proceedings commenced, an agreement was entered into between Orthotouch (then a dormant shelf company) and all role players in the HS Companies, Bosman & Visser and Pickvest in terms of which Orthotouch was to acquire the properties and claims owned by the HS Companies. That agreement was subject to the fulfillment of certain conditions precedent which were not fulfilled by September 2011, when the HS Companies were placed under Business Rescue, with the result that the agreement lapsed and became void. During the period between March 2011 when the agreement was signed and September 2011 when the HS Companies were placed under Business Rescue, Orthotouch advanced to the HS Companies funds to pay interest to the HS investors..
4. In September 2011 when the HS Companies were placed under business rescue and upon his appointment as Business Rescue Practitioner (“BRP”) the writer was subject to the very tight timelines provided in terms of the business rescue

provisions as contained in Chapter 6 of the Companies Act 71 of 2008 (“the Act”) in that the writer/the HS Companies had:-

- 4.1. an obligation to give notice to some 18500 investors within 5 (five) days from the date of filing of the Business Rescue Resolution;
- 4.2. to convene first meetings of creditors within 10 (ten) days of his appointment; and
- 4.3. to publish a Business Rescue Plan within 25 days of his appointment.
5. At the first meetings of creditors held during September 2011, the affected persons unanimously adopted a resolution extending the date for the publication of a Business Rescue Plan to 30 November 2011.
6. When the HS Companies were placed under business rescue the Orthotouch agreement referred to in paragraph 3 above lapsed and Orthotouch was invited to commence with negotiations with the BRP afresh.
7. Pursuant to these negotiations an amended offer was submitted by Orthotouch to the BRP in or around October 2011.
8. The shareholders of Orthotouch had at that stage commenced with negotiations with a commercial bank to advance some R 200m, initially to the HS Companies as post business rescue commencement finance as is envisaged in terms of Section 135 of the Act. A term sheet was presented by the bank which led both the Orthotouch directors and the BRP to believe that the obtaining of the post commencement funding was achieved.
9. It was envisaged that, upon the adoption of the Plan (referred to in paragraph 2 above ), Orthotouch would assume this liability to the relevant bank and that this amount would enable Orthotouch to immediately commence with a cash base of R200 million, which would have served as:-
  - 9.1. working capital;
  - 9.2. funding of the initial tranches of interest payable; and
  - 9.3. generally, to cover the costs of commencing with the registration of transfer of immovable properties from the HS Companies to Orthotouch pursuant to the Plan, once adopted.
10. The BRP was introduced to the commercial bank and participated in discussions with the bank, on 17 November 2011, some 2 weeks before the date upon which the Plan was due for publication.
11. During these discussions, the bank’s officials were informed by the BRP that the requisite funding be would partially utilised to pay the interest payments for No-

vember 2011 and would thereafter be utilised for the funding of the activities mentioned in paragraph 9 above.

12. It was made abundantly clear to the aforesaid bank's officials during the discussions that it would serve no purpose to only provide funding for an initial tranche of R30 million, if the bank would thereafter not continue with the process of up to the full amount of R200 million.
13. This was discussed specifically with the bank officials during a meeting held on Thursday, 17 November 2011. The next morning (18 November 2011) the bank provided sufficient funds to enable the HS companies pay interest to the investors for November 2011.
14. During the week that followed the BRP made numerous unsuccessful attempts to communicate with the bank. No telephone calls were returned and the BRP was effectively ignored.
15. During the morning of 25 November 2011 (a week later) and 5 days before the Plan was due to be published as mentioned in 5 above, the BRP was telephoned by two officials from the bank who informed him that the balance of the promised funding mentioned in paragraph 8 above would not be forthcoming.
16. Despite this severe setback, the Orthotouch role players insisted that the Plan (which was at that stage in an advanced stage of completion) be published in its present format.
17. The rationale for this was that Orthotouch and its shareholders were still of the opinion (which, in the fullness of time, turned out to be incorrect) that other banks would, without any difficulty, come to the aid of Orthotouch early in 2012.
18. It is now common cause that this never materialised, and is the main reason why Orthotouch has remained cash-strapped and, *inter alia*, unable to take transfer of the immovable properties, as envisaged in the Plan, to date. It is to be noted in this regard that:-
  - 18.1. the directors of Orthotouch have done everything in their power to obtain cash flow into Orthotouch which could be used to procure transfers of the properties into Orthotouch, but to no avail;
  - 18.2. the solution to the difficulties of obtaining cash flow and transfers has been accepted as being a listing process of a combination of properties owned by the Georgiou Group on the one hand and due to be owned by Orthotouch on the other hand;

- 18.3. this listing process of an entity, Accelerate Property Fund Limited, had been ongoing for more than a year and was delayed due to, *inter alia*, reluctance of the SA Banking Industry to provide funding;
- 18.4. the planned listing however took place successfully on 12 December 2013.
19. The listing enabled Orthotouch to clear substantially all bank debt over the all properties earmarked for transfer to the Orthotouch portfolio and, pursuant to the listing, the value of the portfolio of unencumbered properties that Orthotouch has the right to take transfer of, is approximately R3 billion.
20. The process of registering the portfolio in the name of Orthotouch will now be embarked upon, bearing in mind that only such properties that Orthotouch wish to retain in the long term, will be transferred. Properties earmarked for sale will be realised in order to utilize the proceeds for:
  - 20.1. working capital;
  - 20.2. improvement; and
  - 20.3. development of those properties mentioned in paragraph 20 above.
21. The Plan provides for the administration of the Orthotouch portfolio of properties to be administered by a company as defined in the Plan as "JPA Admin".
22. The Plan furthermore provides for that a secretarial services agreement between the HS Companies and a company defined in the Plan as "JPA Secretarial" be entered into.
23. The Orthotouch Board of directors have, on 11 February 2014, resolved that Orthotouch acquires the shares in the companies referred to in paragraphs 21 and 22 above and as a consequence Orthotouch will from now on administer its own property portfolio.
24. Orthotouch's auditors informed the board of directors on 21 January 2014 that owing to their workload, they found it difficult to schedule the Orthotouch audit into their schedule and as consequence terminated their appointment. The Orthotouch board has already identified new auditors and discussions to finalise their appointment took place on 11 February 2014. It is anticipated that this will be finalised shortly and that the new auditors will commence with their work immediately thereafter.
25. The positive effect of the listing was that all Orthotouch's bank debt which arose by virtue of cross collateralization, where Orthotouch properties served security

for other loans, and almost the entire loan by Zephan Properties (Pty) Limited to Orthotouch has now been repaid.

26. Orthotouch will now be able to, without interference of financiers, transact with various parties with a view to unlocking cash as described in paragraphs 20.1 to 20.3 above. This ought to make Orthotouch cash positive within the next three months. Efforts to alleviate the interim plight of investors sooner are however ongoing.

27. Affected persons in the HS Companies are however reminded that interest payments have since March 2011, as described in paragraph 3 above, continued and investors should bear in mind that some R600m has been paid to investors since March 2011 which must surely demonstrate a commitment to:

27.1. the rescue process; and

27.2. find a long term solution.

28. What is described above is manifest in that there is a determination to make the process work and we once again remind investors that this is the only process of this nature in the recent South African legal history relating to property investment schemes where investors are being paid on a regular basis as opposed to liquidation scenarios where investors effectively lost their entire investments.

29. We therefore request that investors assist us by remaining positive and supporting the ongoing rescue process.

**JF KLOPPER**

**BUSINESS RESCUE PRACTITIONER**

**HS COMPANIES**

AND:

**BOARD OF DIRECTORS**

**ORTHOTOUCH LIMITED**