

HIGHVELD SYNDICATION NO 15 LIMITED: REGISTRATION NUMBER (2003/031064/06)
HIGHVELD SYNDICATION NO. 16 LIMITED REGISTRATION NUMBER: (2003/031129/06)
HIGHVELD SYNDICATION NO. 17 LIMITED, REGISTRATION NUMBER: (2003/025913/06)
HIGHVELD SYNDICATION NO. 18 LIMITED, REGISTRATION NUMBER: (2003/030778/06)
HIGHVELD SYNDICATION NO. 19 LIMITED, REGISTRATION NUMBER: (2003/030144/06)
HIGHVELD SYNDICATION NO. 20 LIMITED, REGISTRATION NUMBER: (2005/029425/06)
HIGHVELD SYNDICATION NO. 21 LIMITED, REGISTRATION NUMBER: (2005/027601/06)
HIGHVELD SYNDICATION NO. 22 LIMITED, REGISTRATION NUMBER: (2005/027390/06)

(“the companies”)

BUSINESS RESCUE STATUS REPORT IN TERMS OF SECTIONS 132 OF THE COMPANIES ACT, 71 OF 2008 (“THE ACT”) READ WITH REGULATION 125 OF COMPANIES ACT FILED BY THE BUSINESS RESCUE PRACTITIONER JF KLOPPER AND A NOTICE IN TERMS OF SECTIONS 145 AND 146 OF THE ACT.

1. The companies were placed under business rescue in September 2011 and Johannes Frederick Klopper was appointed as Business Rescue Practitioner (“BRP”) of the companies at the time.
2. A Business Rescue Plan (“the Plan”) in respect of the companies was published on 30 November 2011 and adopted by affected persons (“HS Investors”) on 14 December 2011.
3. Previous reports contain the detail of the adoption of the Plan and the subsequent proposing of a scheme of arrangement in relation to Orthotouch Limited (“the Scheme of Arrangement”). The Scheme of Arrangement was sanctioned by an order the High Court of South Africa on 26 November 2014 (“the Court Order”). The Court Order was filed with CIPC on 26 November 2014 rendering the Scheme of Arrangement fully effective and binding.
4. It is again reiterated that to date, some 6 years and 7 months later, the Court Order is still in force. In terms of the Court Order all HS Investors’ claims and which, as appear from Court papers filed contained in the link below, include the shares that the HS Investors held in the companies were, ceded to a third party, being Zephan Properties (Pty) Limited (under business rescue) (“Zephan”).
5. On 7 November 2019, Orthotouch (Pty) Limited (“Orthotouch”) and Zephan were also placed under business rescue and in respect of which two companies Jacques du Toit was appointed as the Business Rescue Practitioner.
6. HS Investors are again reminded that Mr du Toit launched an application for a declaratory order on 28 January 2021 in order to obtain clarity on the status of the HS Investors’ claims and shares.

7. This clarity is sought in view of the provisions of the sanctioned Scheme of Arrangement in terms of which all claims (including shares) of HS Investors were ceded to Zephan and in terms of which their only remaining rights were to receive payment in terms of the sanctioned scheme of arrangement. The founding affidavit and annexures in relation to this application may be found by clicking on the following Dropbox link:
https://www.dropbox.com/sh/debzb6uw8wfvlggr/AADVvdu4SgpF_D5FI03UTzEna?dl=0
8. In addition to the aforesaid application for a declaratory order Jacques du Toit also recently launched an application for leave to site lists of specific HS Investors (“the additional application”) and which was placed on Caselines, the digital/electronic case management and litigation system. A date to have the additional application heard is expected to be provided shortly.
9. In the BRP’s 31 May 2021 status report mention was made of the proceedings for the certification of a class action launched by certain applicants during October 2014, the detrimental effect thereof on HS investors and the false narrative being driven by the applicants’ legal team, their failure to make any attempt to ever constructively engage with the BRP and the assistance that they received in that regard from the media in promoting this false narrative.
10. Mention was also made in the BRP’s 31 May status report of the further false narrative persistently driven by the media in relation to Orthotouch’s failure to take transfer of the portfolio of properties without the media ever taking cognisance of the Court Order and the contents of the Scheme of Arrangement which explains in detail how it came about that the properties could not be transferred.
11. In the March and April 2021 status reports the BRP referred to an application to set the Court Order set aside which was launched in March 2015 (“the setting aside application”). It is reiterated that the Court Order is still in existence almost 7 years after having been granted in November 2014 and that the applicants’ attorneys have done nothing to advance this matter for all those years.

12. The applicants' attorneys have also since at least September 2019 not appraised HS Investors that the opposing affidavit filed in relation to the setting aside application includes a conditional counter application which will, if successful, have devastating consequences for HS Investors as it will then result in the Court ordering for restitution and for all payments received by HS Investors pursuant to the sanctioned scheme of arrangement since November 2014 to be returned to Orthotouch. A copy of the opposing affidavit may be found by clicking on the following link:

https://restructuring.bdo.co.za/sites/default/files/filefield_paths/20190902%20answering%20affidavit%20Nic%20Georgiou-signed.pdf

13. The BRP again implores HS Investors to take note of the background in relation to the history of this matter that emerge from the various answering affidavits filed in relation to the Smith application referred to below.

14. In the status reports of the past few months HS Investors were informed of a further significant development in relation to litigation in that an investor and financial advisor, one Henry Arden Smith ("Smith"), and 11 others, on 13 December 2019, launched an "urgent application" for leave in terms of section 164 of the Act to enable them to institute action on behalf of the companies against various parties. ("The Smith application"). The founding affidavit by Smith and all the answering affidavits by all the respondents upon whom the application was served (except Orthotouch and Zephan represented by Jacques du Toit) may be found and accessed in the dropbox by clicking on the following link:

<https://www.dropbox.com/sh/jymhjz585wxyqcb/AADTQHbYuDXfn27WoQorBNxwa?dl=0>

15. It will be observed that Smith's founding affidavit is replete with ad hominem attacks on inter alia the BRP, the Ortotouch directors and the Receiver for Creditors, Mr D. Cohen. Smith's founding affidavit also contain false statements under oath in relation to a so-called "judgement" against the BRP in an unrelated matter under circumstances where this so-called "judgement" was in fact nothing more than a report which is the subject matter of litigation in the aforesaid unrelated matter.

16. In the BRP's answering affidavit it is made clear that the BRP will at the hearing of the Smith application request that the report be struck out on the basis that it is vexatious, irrelevant and amounts to an abuse. The BRP intends to rely on the report's inclusion when seeking punitive costs and when arguing that the legal representatives of the applicants are not suited to represent a class in a class action
17. Certain parties in the media who have at all times aided the legal representatives of the applicants, who are responsible for the drafting of Smith's founding affidavit containing the false statements under oath in relation to the report, by illegally publishing the contents of the report in the media under circumstances where the report was confidential and factually incorrect in many material respects.
18. It was also reported in the March and April 2021 status reports that is inexplicable as to why Smith never served his purported "urgent application" in December 2019 on either the sixth or the seventh respondents (being Connie Myburgh and Panos Kleovoulou) or on Derek Cohen as the fourteenth respondent under circumstances where the nature of the relief sought against them was serious.
19. In the answering affidavit that the BRP filed in the Smith application it is stated that the claims that Smith and the other applicants intend to assert against, inter alia, the BRP had, as contemplated in section 12(3) of the Prescription Act, 69 of 1969, already become prescribed long before service of the Smith application upon the BRP on 13 December 2019. The reason for this being that Smith and the other applicants already had knowledge of the material facts by 30 October 2014, alternatively by the latest on 26 February 2015.
20. However, as a result of Smith's failure to serve his purported "urgent application" on some of the respondents it is now indisputably so that the claims that Smith and the other applicants could have asserted against these parties have now become prescribed.



JF KLOPPER

BUSINESS RESCUE PRACTITIONER

Date: 30 June 2021