

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 THE ACT FILED BY THE BUSINESS RESCUE PRACTITIONER JF KLOPPER AND A NOTICE IN TERMS OF SECTIONS 145 AND 146 OF THE ACT.

1. This monthly status report provides an update for former investors (“HS Investors” or “you”) who invested in the companies prior to 2011.
2. Previous status reports contain details of the business rescue proceedings of the companies that began in September 2011 and the appointment of Johannes Frederick (Hans) Klopper as Business Rescue Practitioner (“BRP” or “we”, “our” or “the author”) of the companies at that time. These reports can be found on the following link:

<https://restructuring.bdo.co.za/index.php/rescue/1440>

3. HS Investors need to be reminded that during October 2014 that a group of HS Investors that formed the Highveld Syndication Action Group (“HSAG”), represented by as firm of attorneys, Theron and Partners, initiated an application for leave to register a class action.
4. It was reported last month that, on 19 September 2023 the High Court of South Africa, Gauteng Division, Pretoria handed down a judgement to the effect that certain HS Investors, being the so-called 21B investors, will not be permitted to join an already certified class of litigants. They sought to be included as a new class of litigants on additional grounds other than those upon which a class action based on so-called buy back agreements was certified. Their filing of this application, to be included as such, was set aside by the High Court as an irregular step in terms of the Uniform Rules of Court. It is noteworthy a certain journalist who has over the years been keen to report on the various proceedings having been launched by the HSAG in the media is somehow completely silent about this development.

5. In March 2015 certain applicants also launched an application for the setting aside of the Orthotouch scheme of arrangement (“the setting aside application”) which we need to remind HS Investors has to date not progressed any much further and which has not been finalised after almost a decade. Those applicants recently launched an application out of the Pretoria High Court for leave to transfer the setting aside application from the Johannesburg Court to Pretoria. Despite demand to do so they have failed to tender the costs in relation to this abortive application. Upon realising that they were in the wrong court they re-launched another transfer application out of the Johannesburg court. This matter is to be heard on 22 January 2024.
6. HS Investors are also reminded that on December 2019 one HA Smith and others, also members of the HSAG and represented by the same attorneys, launched an application (“the Smith application”), also referred to as “the DECA Case” by the applicants’ legal team in their various communications. This is an acronym for what they refer to as a “Derivative Class Action”, but which is an application for leave to institute legal proceedings against inter alia the BRP and others in terms of section 164 of the Act.
7. After many attempts by the applicants to delay the hearing of the Smith application/the DECA Case, it was confirmed during October 2023 that the case has now been set down for 13 -17 May 2024.
8. The BRP’s 30 April 2023 report recorded that the business rescue plan in relation to Orthotouch and Zephan was adopted on 31 March 2023. This business rescue plan was published by Jacques du Toit (“JDT”) who is the BRP of Orthotouch and Zephan.
9. It was also reported on 31 May 2023 that, during May 2023, a group of parties launched an application out of the High Court of South Africa, Gauteng Division, Pretoria to set the adoption of the business rescue plan aside and to convert Zephan’s business rescue proceedings to liquidation proceedings.
10. It was reported in July that during July 2023, under case numbers 3201/2023 and 3202/2023 applications were issued out of the High Court of South Africa, Free State Division, Bloemfontein, by two different applicants (other than the applicants mentioned in paragraph 4 above) for the liquidation of both Zephan and Orthotouch. (“the Bloemfontein application”)

11. The second applicant in the Bloemfontein application is H.A Smith, the same person as the first applicant in the Smith Application referred to above.
12. The BRP abides by Court's ruling in relation to this matter and a notice to this effect was given to the applicants' attorneys.
13. Two of the respondents in the Bloemfontein application filed their answering affidavits during October 2023 and have relied on what they refer to as technical defects which they allege are "irremediable". One such technical defect being that the applicants launched this application without them being creditors of Orthotouch or Zephan and that they therefore lack the requisite legal standing.
14. Reference is also made in one of the answering affidavits about the fact that Smith and Strauss (the first applicant) have extracted and reiterated allegations from Smith's affidavit in the Smith application referred to above without pointing out to the court that these allegations had already been fully responded to in the Smith application. Reference has also been made in one of the answering affidavits that the same firm of attorneys that act in the Smith application also acts in this matter and that the particular attorney "knows full well" what the particular respondent's version is in relation to Smith's allegations.
15. Both these respondents therefore seek punitive cost orders against the applicants. This litigation is ongoing.



JF KLOPPER

BUSINESS RESCUE PRACTITIONER

DATE: 31 October 2023