

ESOR CONSTRUCTION (PTY) LTD (UNDER RECEIVERSHIP)

STATUS REPORT OF THE RECEIVER FOR CREDITORS IN TERMS OF THE BUSINESS RESCUE PLAN ADOPTED ON 5 MARCH 2019.

BACKGROUND AND INFORMATION (AS CONTAINED IN PREVIOUS REPORTS)

1. Esor Construction (Pty) Ltd (“the company”) was placed under Business Rescue in terms of Section 129(1) of the Companies Act 2008 (“the Act”) on 13 August 2018.
2. Johannes Frederick Klopper and Liebenberg Dawid Ryk van der Merwe were licensed by the Commission in respect of the company and appointed as Business Rescue Practitioners (BRPs) to this company on 14 August 2018 in terms of Section 138 of the Act. The BRPs published the Business Rescue Plan on 11 February 2019 and which was amended on 25 February 2019.
3. At the meeting in terms of section 151 of the Act to vote upon the Business Rescue Plan (“the BR Plan”) on 5 March 2019 the statutory majority of creditors adopted the BR Plan and the BRP’s filed a Notice of Substantial Implementation in terms of which BR proceedings ended on 8 March 2019. The BRPs role therefore ceased on 8 March 2019 and changed to that of Receiver for Creditors (“Receiver”) pursuant to the adopted BR Plan.

4. THE EFFECT OF THE ADOPTED BR PLAN

- 4.1. Upon the adoption of the BR Plan it became final and binding in law as is provided for in terms of the provisions of section 152 (4) of the Act.
- 4.2. Previous reports made reference to Paragraph 4.8 of the adopted BR Plan and which it was pointed out that this paragraph provides that whatever was forecasted and estimated in the BR Plan may change as assets are realised and claims proved.
- 4.3. The BRP Plan also makes it clear that forecasts are by their very nature uncertain and the ultimate outcome may differ.
- 4.4. As all the terms of the BR Plan are binding in law in terms of the abovementioned section 152 (4) of the Act the aforesaid paragraph 4.8 is likewise binding on all affected persons.
- 4.5. We also reported previously on the progress with the collection of the Group Company Loans (“GCL claims”) as set out in paragraph 7.4 of the adopted BR Plan.

5. We hereby report as follows on progress made with the collection of the GCL claims:

5.1. ESOR AFRICA-UPDATED

- 5.1.1. As was previously reported, registration of transfer of the Germiston property, as defined in previous reports, took place in early January 2021 and the proceeds of the sale were distributed to its creditors in the first week of February.
- 5.1.2. The Receiver furthermore reported that the KZN Property, as defined in previous reports, was sold for R2,8m by public auction in February 2021 and that the process of registration of transfer was under way.
- 5.1.3. The Receiver also reported on 20 August 2021 that the purchaser in terms of the KZN transaction had settled the balance of the purchase consideration but that the occupational rental for August 2021 was still outstanding.
- 5.1.4. An new rates clearance report from the Ethekwini Municipality was obtained since the Receiver's previous report and payment was made.
- 5.1.5. The conveyancer reported on 8 September 2021 that they had lodged the deeds with the Deeds Office in Pietermaritzburg on 8 September and that payment of the occupational interest for August and September was received, They are not sure how long it would take for transfer to be registered.
- 5.1.6. Upon receipt of the proceeds the KZN Property the Receiver will make a further distribution to Esor Africa's creditors. This however dependent upon the ruling in the Competition Tribunal referred to in paragraph 5.4 below having been received as it is not certain as to whether the Tribunal will impose a penalty upon Esor Africa or not. In the event that a penalty is imposed on Esor Africa the proceeds of the KZN Property will, firstly, be appropriated to make payment in terms of an equalising award to the Competition Commission. In the event that the proceeds of the KZN Property is insufficient to pay such equalising award the creditors who received awards in terms of the first distribution will be required to make a proportionate refund in terms of the legal principle of *condictio indebiti*.
- 5.1.7. The Receiver at all times reported that, by virtue of the extent of the claims filed against Esor Africa (which may be exacerbated by any penalty that the Competition Tribunal may impose) and the low realisation of the Germiston property the estimated outcome as expected did not materialise. The entire proceeds accruing to the company will accrue to PCF Creditors as provided for in terms of the adopted BR Plan as the payment to the company will more than likely be less than R5m.

5.2. ESOR UITVLUGT (PTY) LIMTED (UNDER BUSINESS RESCUE)

- 5.2.1. Paragraph 19 of the BR Plan provided that the Receiver for Creditors would procure that the company's interest in Esor Uitvlugt be realised.
- 5.2.2. The Receiver and management continue to engage with Esor Uitvlugts' major creditor, Investec, and continue to seek solutions.

- 5.2.3. The position is unfortunate still the same in that nothing material has happened. The Receiver, in his capacity as BRP of this entity, however continues to engage with two parties who have expressed an interest in submitting proposals in relation to Esor Uitvlugt.
- 5.2.4. The Receiver was informed that proof of the ability of these parties to perform financially will follow towards the end of September.
- 5.2.5. It was however provisionally agreed between the Receiver and Investec that the Esor Uitvlugt may have to be liquidated in 2022 if nothing is realised by 31 December 2021.

5.3. SAFDEV TANGANANI

- 5.3.1. The Receiver reported in the previous status reports the proceeds of the sale of shares transaction was received on Friday 13 August 2021.
- 5.3.2. The net amount of R5m, **after deduction of costs**, as provided for in terms of paragraph 19.1 of the adopted business rescue plan, will therefore now become available for distribution to creditors.
- 5.3.3. Creditors are therefore urged, as was requested in a separate communication, to provide or confirm their banking details to enable the company to make this distribution, subject however to the outcome of the Competition Commission matter referred to below.

5.4. COMPETITION COMMISSION APPLICATION

- 5.4.1. As was mentioned in our previous report, the hearing of the matter between Competition Commission and the company and seven others took place on 27 May 2021. Judgement is still awaited and upon parties following up during the last week of August 2021 they were informed that the ruling by the Tribunal is still awaited.

5.5. ESTIMATED DISTRIBUTION DATE

- 5.5.1. Until such time as the ruling by the Tribunal is received the intended distribution to creditors **cannot be made**.
- 5.5.2. The reason being that a penalty might be imposed upon the company and which claim will then form part of the company's increased aggregate liabilities and which will then have an effect and impact on the extent of the pro-rata payment that creditors will receive.
- 5.5.3. Furthermore, we have to date only received the banking details of only some 50% of the creditors.



J F KLOPPER - RECEIVER FOR CREDITORS

Date: 9 September 2021