

## 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 referred 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. 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. Registration of transfer of the KZN Property, as defined in previous reports, which was sold for R2,8m by public auction in February 2021, was registered in the Deeds Office in Pietermaritzburg on 15 September 2021.
- 5.1.3. The proceeds have been received and the Receiver mentioned in the previous stated report that a further distribution to Esor Africa's creditors will depend upon whether the ruling in the Competition Tribunal referred to in paragraph 5.4 below has been received or not.
- 5.1.4. As at the date of this report no ruling has yet been received from the Competition Tribunal and it remains uncertain as to whether the Tribunal will impose a penalty upon Esor Africa or not.
- 5.1.5. 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 be 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*.
- 5.1.6. 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) LIMITED (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. As mentioned in previous reports the Receiver, in his capacity as BRP of this entity, also continues to engage with two parties who have expressed an interest in submitting proposals in relation to Esor Uitvlugt.
- 5.2.4. Despite previous undertakings that the parties will provide proof of the ability of these parties to perform financially nothing has to date materialised.

5.2.5. It is reiterated that it was 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 the parties have to date not heard anything further from the Competition Tribunal.

### 5.5. ESTIMATED DISTRIBUTION DATE

5.5.1. As was reported previously, 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. We are still waiting for many creditors to provide their banking details.

  
J F KLOPPER - RECEIVER FOR CREDITORS

Date: 30 September 2021