

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. The proceeds from the sale of the Germiston property, as defined in previous reports, was distributed to Esor Africa's creditors in the first week of February.

5.1.2. The proceeds of the KZN Property, as defined in previous reports, which was sold for R2,8m by public auction in February 2021, are being held by the BRP as 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.

5.1.3. In the event that a penalty is imposed by the Competition Tribunal 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.

5.1.4. The entire proceeds accruing to the company from the sale of Esor Africa's properties will therefore 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. Unsecured concurrent creditors of the company will therefore not participate in the proceeds of the ultimate dividend that the company will receive from Esor Africa.

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 but despite previous interest shown nothing has to date materialised.

5.2.2. Affected persons are reminded 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 and which appears to be the likely scenario.

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.

5.4. COMPETITION COMMISSION APPLICATION

5.4.1. As was mentioned in our previous reports, 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.

5.4.2. It should be noted that whatever fine may be imposed upon the company by the Competition Tribunal will, in terms of the definition of “Claims” as contained in the adopted BR plan, be a pre-commencement claim against the company. The fact that any fine imposed by the Tribunal will be a concurrent/unsecured pre-commencement claim against the company was also accepted by the Competition Commission at the hearing of the matter on 27 May 2021.

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 the quantum of any penalty or fine that might be imposed upon the company will then form part of the company’s increased aggregate pre-commencement liabilities. It follows that this will then have a direct effect 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: 31 October 2021