

## 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. In terms of the adopted BR Plan unsecured/concurrent creditors with admitted claims against the company will only participate in the proceeds of the collection of the Group Company Loans (“GCL claims”) as set out in paragraph 7.4 of the BR Plan.

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

**5.1. ESOR AFRICA**

- 5.1.1. As was mentioned in the previous status report of 30 November 2021 the proceeds from the sale of the immovable property situated in KZN are being held by the BRP.
- 5.1.2. The KZN property was sold for R2,8m by public auction and the extent of any further distribution to Esor Africa's creditors depend upon the awaited ruling in the Competition Tribunal matter referred to in paragraph 5.4 below.
- 5.1.3. We have reported previously, and it is reiterated, that the extent of any fine that may be imposed upon this company in the Competition Tribunal matter will have a bearing on the distribution to Esor Africa's creditors and no further contribution can be made until such time as the ruling has been received.
- 5.1.4. It was previously reported that, if 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.
- 5.1.5. 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.
- 5.1.6. Creditors are again reminded that the entire proceeds accruing to the company from the sale of Esor Africa's properties 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. **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) ("ESOR UITVLUGT")**

- 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. Various parties have during December 2021 continued to express interest in submitting proposals in order to restructure the affairs of Esor Uitvlugt but nothing firm 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. During the course of March and April the Receiver continued to engage with Investec as the parties decided to further explore possible solutions.

**5.3. SAFDEV TANGANANI**

- 5.3.1. The Receiver reported in the previous status reports the proceeds of the sale of shares transaction were received in 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. A further written enquiry was submitted to the Competition Tribunal on 7 March 2022 to which a reply was received the following day and in which it was confirmed that the Panel was still considering the matter.
- 5.4.3. 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.
- 5.4.4. No further communication has to date been received from the Competition Tribunal.

**5.5. ESTIMATED DISTRIBUTION DATE**

- 5.5.1. Therefore, as was reported previously, **until such time as the ruling by the Tribunal is received, the intended distribution to creditors cannot be made** as the aggregate extent of the company will not be known until then.



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**J F KLOPPER - RECEIVER FOR CREDITORS**

**Date: 30 April 2022**