



**MIKES MECHANICAL AND TRACTORS CC (UNDER
BUSINESS RESCUE (“THE CC”))**

MINUTES OF THE FIRST MEETING OF CREDITORS IN TERMS OF SECTION 147 OF THE COMPANIES ACT 71 OF 2008 (“THE ACT”) HELD AT BDO PORT ELIZABETH, 106 PARK DRIVE, PORT ELIZABETH ON 6 MAY 2019 AT 14h30.

1. Present:

- 1.1. J F (Hans) Klopper - Business Rescue Practitioner Chairman (“BRP”) - HK.
- 1.2. Creditors and affected persons as per the attendance register.

2. Apologies for non- attendance:

- 2.1. None.

3. Introduction of BRP

- 3.1. All parties present were requested to sign the attendance register;
- 3.2. HK requested that all questions relating to the business rescue process and issues discussed at the meeting be dealt with under the “general” agenda item.

4. Welcome

- 4.1. HK welcomed all present

5. Background

- 5.1. HK informed the meeting that Business Rescue (“BR”) proceedings commenced on 17 April 2019 when the CC’s Members resolved to place the CC under BR and filed the resolution with CIPC.
- 5.2. HK further informed the meeting that the CC appointed the BRPs on 17 APRIL 2019 by completing and filing the necessary notice with CIPC as is required in terms of section 129(3)(b) of the Companies Act 71 of 2008 (“the Act”).
- 5.3. HK reported that the BRP gave notice in terms of the provisions of the section 129(3)(a) of the Act to all affected persons on 26 April 2019 and convened the first meeting of creditors to be held in compliance with section 147 of the Act. A meeting of employees in terms of section 148 of the Act will not be held as the CC has no employees.
- 5.4. HK reported that the same notice also served as compliance with section 129(4)(b) of the Act which requires that the CC must give notice of the appointment of the BRP.

6. THE BUSINESS RESCUE PROCESS

- 6.1. HK informed the meeting that the BR process was introduced by way of legislation that came into law during 2011.

- 6.2. HK mentioned that this emanated from other jurisdictions in the world such as the USA/ CANADA/Australia/UK.
- 6.3. He stated that the term “rescue” means a re-organisation of a company’s affairs in order to restore it to a profitable entity and thereby avoid liquidation.
- 6.4. HK reported that the first object of Business Rescue is to keep the distressed entity going by resuscitating it instead of shutting it down or putting it under liquidation with the consequent loss of jobs and with creditors and suppliers being left unpaid.
- 6.5. HK reported that the Act sets out that objectives of the Business Rescue Process in the following terms: **[section 128(1)(b)]**
“the development and implementation, if approved, of a Plan to Rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company “.
- 6.6. HK reported that it is submitted by the BRP’s that the circumstances necessary for the implementation of a proper restructuring in a BR process are in place and that there is, as a consequence, the reasonable prospects of rescuing the CC’s business as defined in the Act.
- 6.7. He furthermore stated that companies are by implication in terms of the Act duty bound to file a resolution for BR when there are reasonable grounds to believe that the business is financially distressed and referred the meeting to section 129(7) of the Act. Directors/Members who fail to act in terms of section 129(7) of the Act might become personally liable for the CC’s debt.
- 6.8. HK reported that the Act provides for tight timelines but with the proviso that the timelines may be extended by creditors holding a majority voting interest.
- 6.9. HK further stated the member of the CC is not removed from office as a result of the BR Proceedings and that they continue to exercise their functions but that they are now subject to the authority of the BRP. They must act in accordance with his instructions.
- 6.10. HK reported that in terms of section 140 of the Act the BRP has *inter alia* the following duties and powers:

- 6.10.1. has full management control of the companies in substitution for its board and pre-existing management;
- 6.10.2. may delegate any power or function to a person who was part of the board or pre-existing management of the company;
- 6.11. HK also stated that The BRP may also:
 - 6.11.1. remove from office any person who forms part of the pre-existing management of the company; or
 - 6.11.2. appoint a person as part of the management of a company, whether to fill a vacancy or not, subject to section 140(2).
- 6.12. HK informed the meeting that the BRP are responsible to:
 - 6.12.1. develop a business rescue plan to be considered by affected persons, in accordance with section 150 of the Act; and
 - 6.12.2. implement a business rescue plan that has been adopted in accordance with the Act.
 - 6.12.3. For this purpose, the Practitioner must engage with the creditors of the company, shareholders, the management of the CC and other affected persons.
- 6.13. HK stated that in terms of section 141 of the Act the BRP must investigate the company's affairs, business, property and financial situation to assess whether there is any reasonable prospect of the companies being rescued as contemplated in the Act. He did however express his reservations about the practical implementation of this provision in the Act as BRP do not have the powers to interrogate witnesses as provided for in terms of the Laws of Insolvency.
- 6.14. HK however reported that the BRP have an obligation to report any contravention of any law, reckless trading, fraud, misappropriation of assets or any criminal activity and are further obliged to rectify any contravention including recovering misappropriated assets.
- 6.15. HK reiterated that the BRP are given wide powers to manage the CC 's business and to deal with its assets in order to Rescue the CC and that their prime function is to develop and implement a Business Rescue Plan.
- 6.16. Following upon that HK reported that the BRP have the right to suspend, either partially or wholly, any provision of an agreement to which the CC is a party at the commencement of BR Proceedings. HK stated that the wide scope of this provision entitles the BRP to cancel only

those terms of contracts that are unfavourable to the CC by way of an Order of Court or, of course, by mutual consent.

- 6.17. Returning to the issue of the Business Rescue Plan HK stated that the BRP must publish their business rescue plan within 25 days of their appointment or such longer period as may be allowed by the holders of the majority of the creditors' voting interests.
- 6.18. HK reported that the business rescue plan must comply with the provisions of section 150 of the Act and must contain information such as:
 - 6.18.1. a list of the CC's assets;
 - 6.18.2. a list of the creditors of the CC;
 - 6.18.3. the probable dividend that would be received by creditors in a liquidation;
 - 6.18.4. a list of the CC's members;
 - 6.18.5. a copy of the written agreement, concerning the practitioner's remuneration;
 - 6.18.6. a statement whether the business rescue plan includes proposals informally made by creditors;
 - 6.18.7. the Business Rescue Plan must furthermore contain details of the proposals, assumptions made, and conditions contained in the plan.
- 6.19. HK mentioned that what may be contained in business rescue plan, save for the compliance with certain basic information, may contain a wide variety of "techniques" available to restructuring professionals worldwide, such as, inter alia:
 - 6.19.1. the sale of the business;
 - 6.19.2. the conversion of debt to equity;
 - 6.19.3. repayment of debt over a fixed term;
 - 6.19.4. a compromise between the CC and its creditors;
 - 6.19.5. an informal winding down of the CC 's affairs which entails the sale of assets and the *pro rata* distribution of the proceeds to creditors.
- 6.20. HK stated that the effect of the adoption of a Business Rescue Plan is that once it has been adopted, the Business Rescue Plan becomes binding on the CC, its creditors and the members. Even dissenting creditors will become bound by the Plan. When the Plan is substantially

implemented, the Practitioner must file a notice of the substantial implementation thereof which then brings the proceedings to an end.

6.21. HK reported one of the most important consequences of the commencement of BR Proceedings is that there is an automatic moratorium on legal proceedings against the CC. The rights of creditors may likewise not be exercised against the CC. No legal proceedings, subject to a few limited exceptions, may be instituted or continued unless the Practitioner has consented in writing or the Court has given leave to do so.

6.22. HK confirmed that afore going will obviously have significant implications for the CC in regard to its relationships with its creditors and in particular its suppliers and banks and that the entire process will therefore have to be very carefully stage-managed in order to ensure that the CC's reputation is not irretrievably damaged by the process which has been initiated.

7. PRESENT FINANCIAL POSITION AND PROSPECTS OF RESCUING THE CC.

7.1. HK reported informed the meeting that the reasons for the adoption of the business rescue resolution are contained in the sworn statement that accompanied the Notice.

7.2. HK informed the meeting that the estimated aggregate liabilities of the CC are between R3,5m and R4m. This may however change depending on the extent of actual claims lodged and which we are in process of receiving.

7.3. HK then further informed the meeting that a process to value the CC's assets will be commenced with.

7.4. HK reported that, per the director of the CC financial position deteriorated because of a decline in turnover pursuant to general farming conditions that prevailed in the Eastern Cape. The end result was that the business became financially distressed and could not pay its creditors as and when payment became due.

8. PROOF OF CLAIMS

8.1. HK stated that the Act states that the BRP may receive proof of claims by creditors.

8.2. HK however stated the BRP will require that the claims by creditors be submitted in the format that is ordinarily required for the proof of a claim under liquidation circumstances in terms of the Laws of Insolvency in order to ensure that a complete "audit" of all claims against the CC could simultaneously be achieved.

9. DETERMINATION AS TO WHETHER A CREDITORS COMMITTEE SHOULD BE APPOINTED

- 9.1. HK informed the meeting about the role of a creditors' committee and it was resolved that such a committee would not be formed.

10. GENERAL

- 10.1. A few questions were addressed to HK about the whereabouts of assets which were on rental and subject to reservation of ownership to which HK responded to the effect that all assets that belong to third parties in terms of legitimate reservation of ownership agreements.
- 10.2. Ms Cassandra Wiggell, representing Standard Bank, and the member interacted in relation to the availability of bank statements in order to monitor the payments to be received from the CC's debtors and which are subject to a cession of book debts in favour of the bank. A further discussion also further ensued about the sale of certain vehicles subject to instalment sale agreements in favour of the bank and the re-financing of certain of the vehicles by the members of related parties. The value of the CC's immovable property formed the subject of some discussion and the member mentioned that a possible offer of some R3.5m was being pursued.
- 10.3. A discussion ensued about the date by which the business rescue plan is to be published by the BRP. After some debate **18 JUNE 2018** was proposed. Ms Wiggell enquired as to whether that provides adequate time and after some further discussion it was accepted as the date by which the business rescue plan must be published and if then necessary a further extension will be sought then.

J F KLOPPER
BUSINESS RESCUE PRACTITIONER