



## SOUTHERN AFRICAN TYRE DISTRIBUTORS (PTY) LTD

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MINUTES OF THE FIRST MEETING OF CREDITORS IN TERMS OF SECTION 147 OF THE COMPANIES ACT 71 OF 2008 (“THE ACT”) HELD AT THE OFFICES OF BDO, 123 HERTZOG BOULEVARD, FORESHORE, CAPE TOWN AT 12H00 ON THURSDAY 3 OCTOBER 2019

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**1. Present:**

- 1.1. J F (Hans) Klopper - Business Rescue Practitioner Chairman) (“BRP”) - HK;
- 1.2. FJ (Ricky) Klopper - Hans Klopper Inc;
- 1.3. J Krynauw - BDO Business Restructuring;
- 1.4. Carl Liebenberg - Enhanced Trade Services - CL;
- 1.5. Creditors and affected persons as per the attendance register.

**2. Apologies for non- attendance:**

- 2.1. FNB - per Carien Bezuidenhout

**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 26 September 2019 after the Company’s Board of Directors resolved to place the company under BR and filed the resolution with CIPC
- 5.2. HK further informed the meeting that the company appointed the BRP on 26 September 2019 by completing and filing the necessary notice to with CIPC as is required in terms of Section 129 (3) (b) of 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 27 September and 30 September 2019 and convened the first meeting of creditors in compliance with Section 147 of the Act to be held.
- 5.4. HK reported that the same notice also served as compliance with Section 129(4)(b) of the Act which requires that the company 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 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 company’s business as defined in the Act.
- 6.7. He furthermore stated that companies are in terms of the Act duty bound to file a resolution for BR when there are reasonable grounds to believe that the company is financially distressed

and referred the meeting to Section 129 (7) of the Act. Directors who fail to act in terms of section 129 (7) of the Act might become personally liable for the company'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 directors of the company are 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 is 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 company 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 the BRP does 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 has an obligation to report any contravention of any law, reckless trading, fraud, misappropriation of assets or any criminal activity and is further obliged to rectify any contravention including recovering misappropriated assets.
- 6.15. HK reiterated that the BRP has wide powers in terms of the Act to manage the company's business and to deal with its assets in order to rescue the company and that his prime function is to develop and implement a Business Rescue Plan.
- 6.16. Following upon that HK reported that the BRP has the right to suspend, either partially or wholly, any provision of an agreement to which the company 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 company 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 his Business Rescue Plan within 25 days of his 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 company's assets;
  - 6.18.2. a list of the creditors of the company;
  - 6.18.3. the probable dividend that would be received by creditors in a liquidation;
  - 6.18.4. a list of the company's shareholders;
  - 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 company and its creditors;
- 6.19.5. an informal winding down of the company'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 company, 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 that one of the most important consequences of the commencement of BR Proceedings is that there is an automatic moratorium on legal proceedings against the company. The rights of creditors may likewise not be exercised against the company. 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 the foregoing will obviously have significant implications for the company 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 company's reputation is not irretrievably damaged by the process which has been initiated.

## **7. PRESENT FINANCIAL POSITION AND PROSPECTS OF RESCUING THE COMPANY.**

- 7.1. HK introduced Carl Liebenberg of ETS (CL) who has been engaging with the company with their balance sheet solutions and their "just in time" delivery of inventory from their balance sheet.
- 7.2. The main aim of their proposal is predicated on approval by the company's major financier, Grindrod Bank.
- 7.3. Carl presented the financial position as set out in the management accounts of 31 August 2019 and the outline of a proposed plan on how to restructure the company's affairs. The essence of the proposed plan is for another entity to buy the company's stock of some R76m with a facility from Grindrod. The company's debtors will be discounted and the proceeds will be utilised to settle DG Capital and submit a proposed settlement to all other creditors.
- 7.4. The PowerPoint presentation is attached.

## 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 company could simultaneously be achieved.

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

- 9.1. HK informed the meeting that it is not recommended that a creditors’ committee be formed as the major financier and two other creditors being the clearing and forwarding agents are in any event already engaging with the BRP.
- 9.2. Mr Wolhuter, representing Tower Trade Group Ltd, mentioned that his client has a pledge and general assignment of the stock that they have financed to which HK responded that he was not aware of that but which will be investigated as will be done about claims by various suppliers who contend to have reserved ownership of the tyres supplied by them.

## 10. GENERAL

- 10.1. Juanita Maree of Savino asked about the time that it will take to present a Rescue Plan and expressed a concern that it will take more time. HK explained that the process of developing a BR Plan will start immediately. HK mentioned that the major problem is that the company has no funds to pay for its operational expenses and that this needs to be addressed immediately. The company will not be able to continue trading if the proceeds of post BR trading is also subject to ongoing security.
- 10.2. A question about equipment for technological infrastructure having been installed and not being paid for was raised. HK mentioned that the urgency of finding funding for necessary services is something that the BRP is mindful of.
- 10.3. The BRP was asked by the Thapelo Seanego of Lombard Insurance as to whether there was an alternative plan to which the BRP responded that it was early days and that there were no alternative plans as yet.
- 10.4. Mr Wolhuter, for Tower Trade Group Limited, asked whether there are any existing alternative buyers of the bulk stock. HK responded that the company deals only with its existing customers

at this time. CL stated that the intended purchaser of stock is ETS who will then sell back to the company.

- 10.5. Juanita Maree of Savino raised the issue of the stock held in their bond stores and that need to be dealt with. The issue of ongoing trading was also raised.
- 10.6. Malcolm Rutherford asked why the Cape Town warehouse is closed. Juanita Maree responded that the Sheriff arrived to perfect the notarial bonds and the instruction of DG Capital was not to move stock from any of the warehouses in Cape Town.
- 10.7. HK proposed that we work out a mechanism on how to trade from the Cape Town warehouse going forward on a one on one basis.
- 10.8. Malcolm Rutherford raised the issue of the landlords' liens upon which HK responded that the landlords only fell in arrears on 1 October when their rentals were not paid.
- 10.9. The issue of the Savino warehouse was raised a few times and they emphasised that their position is getting worse daily. The need to enter into an arrangement in relation to the proceeds of trading was debated again.
- 10.10. HK made it very clear that the liquidation of the company will be disastrous for all parties as it will delay the process and that the realisation of assets under insolvency circumstances will be make the position worse. Neil Daitz of DG Capital agreed that they will engage in order to understand the process.
- 10.11. Nivashen Naicker of Grindrod Bank said the decision on supporting the Plan does not mean that they do not support reaching an interim arrangement.
- 10.12. Malcolm Rutherford asked whether a decision could be reached at this meeting in relation to the Cape Town warehouse being opened could be reached at the meeting upon which the parties from Savino and DG Capital stated that they would not incur further costs and Grindrod's committee needs to approve decisions.
- 10.13. Nivashen Naicker enquired as to what the debt collection rate under business rescue was upon which HK responded that the company's performance insofar as the collection of debts of its own book debts determine the success of its debt collection process.
- 10.14. David Evans responded that the company's bad debt percentage is zero.
- 10.15. Malcom Rutherford, in relation to Cape Town asked why one creditor was dictating to another creditor in the process and proposed that Savino be included in that agreement upon which DG



Capital stated that the intention was for them to be included last Friday. DG Capital stated that they wanted Savino to be part of this agreement.

- 10.16. Mr Booley requested that the meeting be closed insofar as the formal part of it was concerned and that the parties who needed to be part of the agreement going forward i.e Grindrod, DG Capital, Savino and GMA remain behind.
- 10.17. The issue of stock subject reservation of ownership was raised by Michelin and the email from Coface was referred to.
- 10.18. The Continental representative also raised the issue about reservation of ownership and so did Pirelli. HK made it clear to Grindrod and DG that there may be reservation of ownership claims which may affect the validity of their perfection over such stock.
- 10.19. Johan of Pirelli raised a question as to what the total amount of outstanding creditors as at of business rescue was. CL re-opened his presentation and a debate ensued about the true amount of liabilities
- 10.20. The directors made it clear that if the company continues trading, they will be solvent and if not, the company might be insolvent
- 10.21. The issue of reservation of ownership was again debated and the question was also raised as to whether the proposed plan was also discussed with them upon which HK responded that it was very much “early days”.
- 10.22. The meeting was closed on the understanding that DG Capital, Grindrod, Savino and GMA would have a further meeting with the BRP and his team immediately thereafter.

A handwritten signature in black ink, appearing to be 'J F KLOPPER', written over the printed name.

**J F KLOPPER**

**BUSINESS RESCUE PRACTITIONER**