

PAV GROUP

PA VENTER SHOPFITTERS (PTY) LTD (UNDER BUSINESS RESCUE)

REGISTRATION NUMBER: 2004/023426/07

PAV MOVABLE ASSETS (PTY) LTD (UNDER BUSINESS RESCUE)

REGISTRATION NUMBER: 2004/022688/07

PAV HOLDINGS (PTY) LTD (UNDER BUSINESS RESCUE)

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MINUTES OF THE FIRST MEETING OF CREDITORS AND EMPLOYEES IN TERMS OF SECTIONS 147 AND 148 OF THE COMPANIES ACT 71 OF 2008 (“THE ACT”) HELD BY WAY OF A SKYPE AND DIAL IN CALL AT 11H00 ON THURSDAY THE 19TH DAY OF MARCH 2020

1. Present:

- 1.1. J F (Hans) Klopper - Business Rescue Practitioner Chairman) (“BRP”) - HK;
- 1.2. Piet Louw - BDO Business Restructuring (Pty) Ltd;
- 1.3. David Coupar - Max on Top;
- 1.4. Andre Matthysen - Qedo;
- 1.5. Megon Jansen - SARS;
- 1.6. Colin Young - Davidsons;
- 1.7. Lindy Bosch - Ukhuni;
- 1.8. Brent Geddes - Geddes Capital;
- 1.9. Francois Hougaard - BITS
- 1.10. Leandri van der Merwe - PAV
- 1.11. Fanie Roux - PAV
- 1.12. Philip Le Roux - PAV
- 1.13. 2 representatives of unions - Freek Damon of NUM and Meagan Davids of Solidarity
- 1.14. Willem Heyns -Raiel Group
- 1.15. Japie Louw - Attorney Luzelmo Trust
- 1.16. Max Dietstein - Calculus
- 1.17. Warren Deats - Geddes Capital
- 1.18. Geoff Jones - Nashua
- 1.19. Matt Kemp - Attorney for Belotti
- 1.20. Izak Ferreira - Cape PC Services
- 1.21. Louis Groenewald - Hermitage
- 1.22. Chris Kellerman - Nedbank
- 1.23. Adriaan Smuts - Geddes - Business Rescue Exchange
- 1.24. Nedbank’s attorney-Mr Yaseen Cariem
- 1.25. Tania Suter

1.26. Marianne du Toit - SPVC & Bollore

2. Apologies for non- attendance:

2.1. None

3. Introduction of BRP

3.1. HK introduced himself and requested that all parties present should send an email confirming they were on the call and that their claim has been submitted or, if a claim had not been submitted, they should send an email with their claim attached.

3.2. HK mentioned that because of the meeting being conducted by way of a conference call that he would highlight certain items that he believed was important but that the minutes will contain a bit more detail.

3.3. 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 6 March 2020 after the Company’s Board of Directors resolved to place the company under BR and filed the resolution with CIPC except for TP Hentique where the resolution was filed with CIPC on 9 March 2020.

5.2. HK further informed the meeting that the company appointed the BRP on 6 March 2020 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 13 March 2020 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 by implication 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 their 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. have 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 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 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 company's business and to deal with its assets in order to Rescue the company 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 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 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 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 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 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.
- 6.20. HK confirmed that abovementioned 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 stated that the BRP are in the process of obtaining details of the claims and verifying the value of the Companies' assets with a view to determining the financial position of each company.
- 7.2. HK mentioned that the BRP are required the terms of the Act to calculate the probable liquidation scenario for each class of creditors.
- 7.3. HK informed the meeting that an auctioneer was instructed to attend to a forced sale value of all the assets belonging to the company to enable the BRP to calculate the liquidation scenario.

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. Warren Deats of Geddes Capital enquired as to whether we intend the forming a creditors' Committee and to which HK responded that he would have no objection.
- 9.2. After a short discussion it was decided that a creditors' Committee would be formed and that all the creditors may engage with the BRP.
- 9.3. HK proposed that Nedbank should also form part of the creditors' Committee and that Chris Kellerman from Nedbank and Megon Jansen from SARS who represent major creditors should also serve on the Committee to which they agreed.
- 9.4. HK requested whether any other trade creditor would volunteer to serve on the creditors' Committee and Mr Colin Young from Davidsons indicated that he would also like to serve on the creditors' Committee.
- 9.5. The creditors' Committee was duly elected to consist of the aforesaid parties.

- 9.6. HK informed the meeting that the creditors' Committee has no standing in law other than to engage with the BRP and may not direct BRP.
- 9.7. HK requested the Committee to confirm, understand and acknowledge the aforesaid. All parties acknowledged. HK also made it clear that he is not the chairman of the Committee. The Committee acts independently and can give feedback to the BRP and that their activities are not a process driven by the BRP.
- 9.8. HK requested all to confirm that they were satisfied that the summary was in order and that they were clear on the legal position. He confirmed that the silence constituted an acceptance.

10. GENERAL

- 10.1. HK requested questions under general and Warren Deats of Geddes asked what the BRP's assessment of a prospect for rescue was?
- 10.2. HK responded that a restructuring and a complete restoration to solvency is always the first aim but that to place creditors in a better position than a liquidation, having regard to the excessive cost of liquidation, is always possible hence the prospect that no matter how one looks at this a business rescue puts creditors in a better position and to achieve this will be in line with a successful rescue and will be possible.
- 10.3. HK also pointed out that the Act does not provide for "company rescue" but for "business rescue". It there does not necessarily mean that business rescue entails the rescue of the company. It could entail a transfer or sale of a business to a new entity based on an arm's length sale of the assets in order to save employment. Section 7 of the Act makes it clear that jobs must be saved and this may entail saving half of the jobs and shedding the rest as per the SAA example where there will only be a partial saving of employment
- 10.4. Warren Deats enquired about a voluntary winding up possible and asked HK as to what his plan was.
- 10.5. HK responded to Warren that we are sitting here today on 19th March 2020 and that his plan is to engage with all affected persons and that he will "develop" a business rescue plan. HK referred to the statutory requirements in terms of section 150 of the Act in terms of which a BR Plan must consist at least of a list of assets with values, creditors' details, a liquidation dividend calculation and Submit proposals as the Act provides. 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:

- 10.5.1. the sale of the business;
 - 10.5.2. the conversion of debt to equity;
 - 10.5.3. repayment of debt over a fixed term;
 - 10.5.4. a compromise between the company and its creditors;
 - 10.5.5. 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.
- 10.6. 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.
- 10.7. HK stated that there were a number of options, that it was early days and impossible to elaborate. Warren responded that he appreciated the answer.
- 10.8. Adriaan Smuts on behalf of Geddes asked on what HK based his reasonable prospect response and upon which he had comfort that there is a possibility rescuing the business?
- 10.9. HK responded that there is a business, employees and a business model that can work. External factors played a role in the financial demise of the company and that this will be unpacked as we go further into the process and that that on the 2nd leg in sec 128 of the Act construction alone there is a reasonable prospect. Adriaan Smuts indicated that he was satisfied with the response.
- 10.10. Mr Carriem obo Nedbank wanted clarity on timelines
- 10.11. HK stated that there are going to be the April public holidays and that we should “put a peg in the sand for the end of May 2020.
- 10.12. Adriaan Smuts indicated that he personally had no problem for the reasons that HK mentioned but stated that it was not on the agenda for resolutions to vote upon.
- 10.13. HK then enquired from parties on call as to whether they had any objections and Chris Kellerman indicated that Friday 29 May 2020 was the end of May and that Nedbank was fine with that.

- 10.14. HK indicated that as he did not hear any objections to the date he would state that the creditors present with their voting interest carried the vote for the 29 May date
- 10.15. HK stated that he would prepare comprehensive minutes and that the most important issues have been addressed.
- 10.16. Louis Groenewald doen toe navraag oor die kort termyn versekering en die probleem dat nie-betaling van premies 'n risiko op die maatskappy plaas. HK versoek dat ons via Fanie Roux kommunikeer en die risiko op die besigheid bepaal.
- 10.17. HK antwoord verder dat die bates uit die aard van die saak verseker moet word.
- 10.18. HK mentioned to Geddes that they have a special notarial bond and Nedbank general special and a special and a mortgage bond and that he would liaise with them all in relation to this but that it would be reckless to let the insurance lapse.
- 10.19. Louis confirmed that one premium did not go through and HK proposed that we communicate offline on this and that Piet Louw, Leandri van der Merwe, Fanie Roux, Warren Deats and Chris Kellerman should take this offline
- 10.20. Matt Kemp requested clarity on the amount of the liability figures contained in the sworn statement and requested that the amount be included in the minutes and which amount is R37 093 406,74 (PA Venter Shopfitters (Pty) Ltd)
- 10.21. Meagan Davids on behalf of the workers enquired about the payment of salaries upon which HK responded that it was a distressed scenario which may lead to the process of laying off some staff in terms of section 189A of the Labour Relations act. HK stated that it would be taken up with them by management.
- 10.22. Warren Deats enquired about whether it was appropriate to discuss the business rescue fees upon which HK responded that his fee structure in terms of statute is R2000 per hour as per the engagement letter. HK stated that he would be responsible in that regard but that it is an hourly rate. HK invited Warren to communicate with him directly in that regard.
- 10.23. Max from Calculus enquired as to whether questions may be emailed upon HK mentioned that emails could be sent to him Piet Louw (plouw@bdo.co.za) and Elaine Arendse (earendse@bdo.co.za).
- 10.24. HK requested all again to send an email to confirm they were on the call and to state whether they had already submitted their claim and if not to attach their claim.

10.25. Piet Louw requested that the Company name be added to the subject line.

10.26. HK thanked all and stated that all went well as we were in uncharted waters in view of the Corona virus issue and our inability to meet in person.

A handwritten signature in black ink, appearing to read 'J F Klopper'. The signature is fluid and cursive, with a prominent loop at the end.

J F KLOPPER

BUSINESS RESCUE PRACTITIONER