



**RAPITRADE 141 (PTY) LTD T/A CODE (PTY) LTD**

REGISTRATION NUMBER: 2003/003358/07

**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 MICROSOFT TEAMS MEETING ON THURSDAY 2 JULY 2020 AT 11H00am**

**1. Present:**

- 1.1. J F (Hans) Klopper - Business Rescue Practitioner Chairman) (“BRP”) - HK;
- 1.2. The creditors and affected persons on MS Teams:

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

- 2.1. None

**3. Introduction of BRP**

- 3.1. All parties present were requested to announce themselves on the call.
- 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 18 June 2020 when the Company’s Board of Directors filed the resolution dated 15 June 2020 with CIPC
- 5.2. HK further informed the meeting that the company appointed the BRP on 18 June 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. The BRP gave notice in terms of the provisions of the Section 129(3)(a) of the Act to all affected persons on 25 June 2020 and convened the first meeting of creditors in compliance with Section 147 of the Act to be held today. This meeting also serves as a meeting in terms of Section 148 of the Act as first meeting of 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 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’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 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 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 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.

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

- 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 aggregate liabilities of the company are around R69m. This may however change depending on the extent of actual claims lodged and which we are in process of receiving. We have engaged valuers to provide us with a forced sale value of the company's movable assets. This is expected to be received in the next few days.
- 7.3. HK then further informed the meeting that a process to value the company's assets will be commenced with.
- 7.4. HK reported that, per the directors of the company's financial position deteriorated because of trading conditions and not being able to trade profitably from day one and the company had to rely on shareholder funding at all times. The end result was that the business became financially distressed and could not pay its creditors because shareholder funding has now ceased.

## **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 indicated that it would not be necessary in his view to formally form a creditors committee.

**10. GENERAL**

10.1. A few questions were addressed to HK about the payment of post commencement invoices upon which HK explained that the Act provides protection in that such post commencement invoices rank ahead of pre- commencement debt.

10.2. A discussion ensued about the date by which the business rescue plan is to be published by the BRP and 31 August 2020 was proposed and accepted as the date by which the business rescue plan must be published and if then necessary a further extension will be sought then.

A handwritten signature in black ink, appearing to read 'J F Klopper', with a stylized flourish at the end.

**J F KLOPPER**  
**BUSINESS RESCUE PRACTITIONER**