



PLATINUM MILE INVESTMENTS 517 (PTY) LTD

AND

SAIL DESIGN COMPANY (PTY) LTD

MINUTES OF THE FIRST MEETING OF CREDITORS IN TERMS OF SECTION 147 AND OF THE COMPANIES ACT 71 OF 2008 (“THE ACT”) HELD BY WAY OF MICROSOFT TEAMS MEETING ON TUESDAY 1 DECEMBER 2020 IN MATTERS OF PLATINUM MILE INVESTMENTS 517 (PTY) LIMITED AND SAIL DESIGN COMPANY (PTY) LIMITED (“the Companies” or “the company”)

1. Present:

- 1.1. J F (Hans) Klopper - Business Rescue Practitioner Chairman) (“BRP”) - HK;
- 1.2. The creditors and affected persons as per the attendance register on MS Teams and Mr Riaan Nabal representing his client. Mr Booley representing SARS in the case of Sail Design Company joined meeting later.
- 1.3. HK mentioned that the meeting would be recorded on the MS Teams facility but that such recording will not be disseminated to all parties and the recording was merely for minute purposes.

2. Apologies for non- attendance:

- 2.1. None

3. Introduction of BRP

- 3.1. HK mentioned the names of all parties present.
- 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.
- 3.3. HK further mentioned that we have a situation where two associated companies which were also placed under business rescue would have consecutive meetings immediately after the meeting in relation to this matter and that, to the extent necessary, certain aspects which had been dealt with in this meeting will not be repeated in the subsequent meetings in view of common creditors in all three companies. Upon a question by a creditor HK confirmed that there is no cost associated with the submission of a claim.

4. Welcome

- 4.1. HK welcomed all present and mentioned that it was the first meeting in relation to the Companies as per the notices sent.

5. Background

- 5.1. HK informed the meeting that Business Rescue (“BR”) proceedings commenced on 19 November 2020 when the Companies’ Board of Directors filed the resolution adopted by the board of directors dated 19 November 2020 with CIPC.
- 5.2. HK further informed the meeting that the Companies appointed the BRPs on 19 November 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 BRPs gave notice in terms of the provisions of the Section 129(3)(a) of the Act to all affected persons on 24 November 2020 and convened the first meeting of creditors in compliance with Section 147 of the Act to be held today.
- 5.4. HK reported that the same notice also served as compliance with Section 129(4)(b) of the Act which requires that the Companies 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 COMPANIES.

- 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 major creditor of the company is its banker, Nedbank Ltd to which it is indebted at circa R 40 million. There are also some other creditors and the final extent of creditors will be determined based on the extent of actual claims lodged and which we are in process of receiving. We will consider to engage valuers to provide us with a forced sale value of the company’s immovable property should it become necessary.

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 in view of the company’s size and as there are not multiple creditors in various classes it would not be necessary in his view to formally form a creditors committee. The parties present raised no objection to that and it was accordingly agreed.

10. GENERAL

- 10.1. HK asked if there were any questions and mentioned that SARS indicated that an income tax return with outstanding that needs to be submitted before the business rescue plan be published.
- 10.2. Mr Nabal raised the question as to whether there was a reasonable prospect of rescuing the businesses upon HK responded that there was a reasonable prospect. Mr Nabal raised a concern as to whether the cost of business rescue would indeed be cheaper than a formal liquidation upon which HK stated that in his experience the costs associated with business rescue proceedings are indeed substantially less than formal liquidations.
- 10.3. HK stated that the for a first meeting of creditors was however not the place to debate issues of this nature when Mr Nabal raised questions in relation to the value of the properties.
- 10.4. Mr Nabal raised a further question as to what the extent of known creditors are to which HK responded that there are creditors and that the business rescue plan once published will contain details of all such creditors. HK also mentioned that the extent of creditors will be known once they have submitted their claims for proof.
- 10.5. Mucha of SARS raised the issue on the “chat” facility about outstanding returns upon which HK responded that this will be dealt with.
- 10.6. Grant Ford representing BVGP as a creditor mentioned that Mr Nabal and themselves have been in litigation for more than a year and stated that rental had not been received for more than a year. Mr Ford furthermore asked whether HK as the BRP and Mr Nabal would have a discussion

about the rental and the business rescue proceedings or whether they would continue with their dispute.

10.7. Mr Ford mentioned that there are potential purchasers and that there is no need to invite a debate on this issue at the moment but encouraged HK and Mr Nabal to engage. HK mentioned that as it is not the forum to have this type of debate he would engage with Mr Nabal directly.

10.8. HK mentioned that creditors have already agreed upon 15 February 2021 to be the date by which the business rescue plan is to be published by the BRP. SARS indicated in the previous meeting that they would not object to the date and Nedbank indicated that although it was not ideal that it would be, considering the circumstances, be in order. Nedbank confirmed that the date agreed upon in relation to the previous matter would also apply to these companies.

A handwritten signature in black ink, appearing to read 'J F Klopper', written over a horizontal line.

J F KLOPPER

BUSINESS RESCUE PRACTITIONER