



Icon Insolvency Practitioners (Pty) Ltd

Reg. No: 2007/024068/07

Tel: (012) 996 – 1043 / 1041 / 1026
Cell: 082 528 4935 // 082 526 0828
Fax: (012) 996 – 1048 / 086 513 0093
Email: admin@iconinsolvency.co.za

HEAD OFFICE
P.O Box 92333, Mooikloof, 0059
Phula Lodge 117, Swavelpoort Pretoria
Web: www.iconinsolvency.co.za

13 October 2011

CIRCULAR TO ALL KNOWN CREDITORS

Dear Sir/Madam

SPITSKOP VILLAGE PROPERTIES LIMITED (IN LIQUIDATION) (“SPITSKOP”) **(“THE COMPANY”)**

1. The purpose of this circular is to update creditors on the state of the Company as well as to consult the creditors on a proposal to implement a scheme of arrangement in terms of Section 155 of the Companies Act 71, of 2008 (“the Companies Act”) and the implications of such proposal as currently formulated.
2. **The current state of the administration of the Company**
 - 2.1. The Court Order issued by the North Gauteng High Court, Pretoria on 24 June 2011 regarding the limited reappointment of Paul Kruger as a liquidator of Spitskop was amended pursuant to an application which had been brought by myself to clarify certain uncertainties and confusion which existed in the original order which amendments were necessary for me to take over effective control of the administration of Spitskop and to carry out my duties as the liquidator of Spitskop. A copy of the amended order is attached hereto marked “A”;
 - 2.2. On 22 September 2011 the High Court of South Africa confirmed the following order which had been made on 10 December 2010.

- 2.2.1. That the syndication scheme conducted in the name of Spitskop Village Properties Limited (“Spitskop”) was declared illegal in terms of the Bank Act, 94 of 1990 and in terms of the regulations issued in terms of the Harmful Business Practice Act, 71 of 1988;
- 2.2.2. That all agreements of whatsoever nature pursuant to the syndication scheme known as Spitskop were declared null and void, *ab initio* such agreements to include:
 - 2.2.2.1. Agreements in terms of which investors made investments in the scheme;
 - 2.2.2.2. The trust deed of the Steelpoort Debenture Trust which was registered in terms of the Trust Property Control Act, 57 of 1988;
 - 2.2.2.3. The mortgage bond over the property of Spitskop in favour of the Steelpoort Debenture Trust.
- 2.3. A copy of the judgment is available upon request or can be viewed on the Spitskop website www.spitskoppropinliq.co.za. Please note that an application for leave to appeal has been submitted against the order and until such time the appeal process is finalised the effect of the order will be suspended
- 2.4. The return date of the Mareva Injunction (Anti-dissipation application) in terms of which the erstwhile liquidators of Spitskop were authorised to attach and preserve all the assets of Spitskop and the various entities relating to Spitskop has been extended until 28 November 2011.
- 2.5. The return date of the provisional order of sequestration of HC Lamprecht has been extended until 28 November 2011.
- 2.6. I am currently perusing and verifying the interim accounts lodged to the Master by the erstwhile liquidators of Spitskop. I will report to creditors once I’m finished.

3. The effect of the illegal illegality of the Scheme

3.1. In the event that the order declaring the scheme to be illegal is not set aside on appeal this will have the following effect:

3.1.1. The agreements in terms of which the investors made the investment in the scheme will be null and void, *ab initio* which means that the agreements would be invalid from inception. This however, will not prevent the investors from submitting a claim against the Company based on an enrichment claim, however, the amount of the claim of each investor will have to be adjusted to take into account any interest which may have been paid to each investor.

3.1.2. The agreements with the brokers will be invalid from inception and all amounts paid to the brokers by way of commission will have to be repaid by the brokers. This is irrespective of whether the brokers had knowledge of the illegality of the scheme.

4. In the light of the order declaring the scheme to be illegal and furthermore to ensure that the creditors of the Company are given a fair opportunity of establishing their claims against the Company, I intend to implement the following process:

4.1. I intend to consider all the claims which have been proved against the Company to enable me to advise each creditor individually as to the adjustment which is required on their respective claims in light of the illegality of the scheme and to request the Master to adjust each claim accordingly.

4.2. I intend to examine the claims of creditors which have been rejected to ascertain whether I am able to admit these claims without the necessity of these claims having to be resubmitted for proof at a meeting of creditors. I will communicate with the relevant creditors in this regard.

4.3. Once I have completed the process referred to in paragraphs 4.1 and 4.2 I intend to convene a special meeting of creditors:

4.3.1. To give every creditor who has not submitted a claim for proof an opportunity to submit their claims for proof at such meeting;

4.3.2. To allow creditors whose claims were rejected and which have not been admitted by me an opportunity to re-submit their claims for proof at such meeting.

4.4. My intention is to facilitate and assist creditors in finalising their claims against the Company and for me to establish and determine the correct claims of all the creditors.

5. **Section 155 proposal**

5.1. I have been contacted by attorneys Smith and Vosloo (“Vosloo”) who have advised me that they represent in excess of 25% of the proved creditors of the Company as well as a company called Leseding Developments (Pty) Limited (“Leseding”).

5.2. Vosloo informed me that their clients require me to obtain directions from creditors at a general meeting of creditors regarding a proposed scheme of arrangement in terms of Section 155 of the Companies Act which has been formulated by Leseding (“the proposed scheme”).

5.3. The proposal of Leseding as presented to me by Vosloo entails the following:

5.3.1. The assets of the Company which currently comprise the cash amount which is held on the bank account of the Company together with the property be dealt with as follows:

5.3.1.1. The property, which will be re-valued at R1 500 000.00, will be retained by the Company;

5.3.1.2. The funds held on the bank account of the Company will be allocated as follows:

- 5.3.1.2.1. R10 million will be retained by the Company to be used to obtain rights for the development of the property (the nature of the rights to be obtained has not been specified);
 - 5.3.1.2.2. The balance of the funds is to be used to pay the Receiver's fees (to be capped at R1 000 000.00 plus a 5% commission on debts collected on behalf of the Company), to fund any further litigation and to pay dividends to the creditors subject to the final liquidation and distribution accounts being approved by the directors of the company after sanctioning of the proposed scheme by the Court.
- 5.3.2. Ivor Van Diggelen, Paul Kruger and myself be appointed as Receivers;
- 5.3.3. A dividend of between 7 -10 cents of the rand be paid to investors of the Company by the Receivers in terms of the proposed scheme (depending on the final confirmation of the liquidation and distribution account which must be approved by the directors to be appointed to the Company subsequent to the sanctioning of the proposed scheme);

- 5.3.4. A new board of directors be appointed to the Company consisting of five directors who will include, Deon Pienaar (“Pienaar”), Willie Van Zyl (“Van Zyl”), Tiaan Erasmus (“Erasmus”) and two shareholders. These directors will act as interim directors until the annual general meeting of shareholders of the company has been held. In this regard Pienaar, Van Zyl and Erasmus also acted as brokers in regard to the scheme. According to a circular which has been sent to creditors by Leseding, Pienaar, Van Zyl and Erasmus are directors of Leseding;
- 5.3.5. Pending future litigation against Honey and Partners attorneys, LDP Auditors and the previous directors of the Company (and their related entities on trust) will be continued in the future by the Receivers jointly with the direction of the Company after sanctioning by the Court of the proposed scheme.
- 5.3.6. The Debenture Holders to receive shares in the Company as follows:
- 5.3.6.1. In the event that the syndication scheme is ultimately not declared an illegal scheme then the Debenture Holders will collectively receive 65 000 ordinary shares in the Company, to be distributed equally amongst the creditors (and the Debenture Trust and Debentures will be nullified);
- 5.3.6.2. Alternatively in the event that the syndication scheme is confirmed to be an illegal scheme creditors will receive 65 000 ordinary shares in the Company after sanctioning, to be distributed equally amongst the creditors;

- 5.3.7. Any litigation may not proceed without the directions of the directors of the Company and that such direction should include (but not be limited to) costs of suite (sic);
 - 5.3.8. The claims against brokers will be compromised to a repayment of 5% of commission received subject to terms and conditions to be negotiated;
 - 5.3.9. Leseding will have the right to appoint attorneys and consultants to draft and launch the proposed scheme and to apply to Court for the sanctioning thereof;
 - 5.3.10. The directors appointed to the Company will have the right to appoint attorneys for any future litigation after sanctioning of the proposed scheme by Court.
- 5.4. Prior to expressing my views in respect of the proposed scheme as set out above and the process which should be followed to ensure that the interests of creditors and the Company are protected, it is necessary to set out the requirements of Section 155 of the Companies Act:
- 5.4.1. Section 155 is a section which is contained in our new Companies Act, 61 of 2008 (hereinafter referred to as “the Companies Act”);
 - 5.4.2. The board of a company or the liquidator of such company may propose an arrangement or a compromise of its financial obligations to, *inter alia*, all of its creditors or any class of its creditors by delivering a copy of the proposal and notice of meeting to consider the proposal to:
 - 5.4.2.1. every creditors of the company or every member of the company;
 - 5.4.2.2. the Commission;
 - 5.4.3. The proposal which is to be put to creditors must (my emphasis) contain all information reasonably required to facilitate creditors in deciding whether or not to accept or

reject the proposal and must (my emphasis) be divided into three parts as follows:

5.4.3.1. **Background**: which must include at least:

- 5.4.3.1.1. a complete list of all the material assets of the company and any security held by creditors in respect of such assets;
- 5.4.3.1.2. a complete list of the creditors of the company as at the date of the proposal as well as an indication which creditors will qualify as secured, statutory, preferent and concurrent in terms of the laws of insolvency and an indication of which of the creditors have proved their claims;
- 5.4.3.1.3. the dividend that would be received by creditors, in their respective classes if the company were to be placed in liquidation;
- 5.4.3.1.4. a complete list of the shareholders of the company and the effect that the proposal would have on them;
- 5.4.3.1.5. the proposal includes the proposal made informally by a creditor of the company.

5.4.3.2. **Proposal**: which must include at least:

- 5.4.3.2.1. nature and duration of any proposed debt *moratorium*;
- 5.4.3.2.2. the extent to which the Company is to be released from the payments of its debts and the extent to which any debt is proposed to be converted to equity in the company or another company;
- 5.4.3.2.3. the treatment of contracts and ongoing role of the company;
- 5.4.3.2.4. the property of the company that is proposed to be available to pay creditors' claims;
- 5.4.3.2.5. the order of preference in which proceeds of the property will be applied to pay creditors if the proposal is adopted;
- 5.4.3.2.6. The benefits of adopting the proposal as opposed to the benefits that will be received by creditors if the Company were to remain in liquidation;

5.4.3.3. **Assumptions and conditions**: which must include at least:

- 5.4.3.3.1. A statement of the conditions that must be satisfied, if any, for the proposal to:
 - 5.4.3.3.1.1. come into operation;
 - 5.4.3.3.1.2. be fully implemented;

5.4.3.3.2. The effect, if any, if the plan contemplates on the number of employees and their terms and conditions of employment and;

5.4.3.3.3. A projected:

5.4.3.3.3.1. balance sheet for the company and statement of income and expenses for the ensuing three years prepared on the assumption that the proposal is accepted;

5.4.3.4. The projected balance sheet as required above must:

5.4.3.4.1. include a notice of any significant assumption on which the projections are based and may include alternative projections based on varying assumptions and conditions;

5.4.4. A proposal must include a certificate by an authorised director or prescribed officer of the company stating that any factual information provided appears to be accurate, complete and up to date and projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statements;

- 5.4.5. A proposal contemplated in Section 155 must be adopted by the creditors of the Company and must be supported by a majority number of creditors representing at least 75% in value of the creditors present and voting in person or by proxy at a meeting called for the purpose of considering the proposal;
 - 5.4.6. If the proposal is adopted the Liquidator may apply to Court for an order approving the proposal and the Court may sanction the proposal if it considers it just and equitable to do so having regard to the number of creditors voting in favour of the proposal and in the case of a compromise in respect of a company in liquidation after having regard to a report by the Master;
 - 5.4.7. A copy of an order sanctioning a compromise must be filed with the Commission and is final and binding on all of the Company's creditors as of the date on which it is filed.
- 5.5. It is clear from Section 155 that detailed information must be contained in any proposal which is put to creditors including a projected balance sheet and statement of income and expenditure for the ensuing three years. The reason for this is to assist creditors in making an informed decision regarding the proposal and whether to vote in favour of the proposal.
- 5.6. The proposal of Leseding as currently formulated essentially contemplates the following:
- 5.6.1. The Company be taken out of liquidation and retain the property to be developed by Leseding. R10 million of the funds currently held by the liquidators will be used by the Company to acquire rights to develop the property (as mentioned above the nature of the rights to be acquired is not specified);
 - 5.6.2. The directors of the Company will be appointed by Leseding who will be the majority of the directors on the board and two shareholders will be appointed as

directors. (This would be an interim measure until the annual general meeting is held);

5.6.3. The Debenture Holders will receive 65 000 shares between them in the Company;

5.6.4. The Receivers will receive the balance of the funds and will continue with certain litigation subject to the approval of the directors of the Company. The directors will participate in decisions regarding the continuation of the litigation;

5.6.5. The dividends to the Debenture Holders will be paid upon confirmation of the liquidation and distribution accounts which must be approved by the directors appointed to the Company.

5.6.6. Significantly the proposal provides that the claims against brokers be comprised to a repayment of 5% of commission received subject to terms and conditions to be negotiated.

5.7. The proposal as currently formulated fails to deal adequately with the following issues:

5.7.1. the manner and extent to which the property is going to be developed and what such development will entail;

5.7.2. No details are provided as to how the Company intends to fund the development save for the R10 million which will be made available to acquire the rights;

5.7.3. Leseding will be developing the property and will obviously have to negotiate the acquisition of rights to develop the property with the Company. The extent of such development rights and the basis on which such development rights will be acquired will have to be determined through such negotiations. The proposal does not state how the potential conflict between the directors on the board of the Company and Leseding will

be resolved when determining the rights to be accorded to Leseding;


- 5.7.4. The proposal does not set out the amounts due to all creditors and the basis on which the dividend between 7-10 cents has been determined. Section 155 requires full details to be provided as to how the 7 – 10 cents is calculated to enable creditors to decide whether such calculation is attainable, and if so, whether it is fair and equitable;
 - 5.7.5. The proposal does not state what the rights and obligations of the shareholders will be and whether Leseding will be allocated any shares. The proposal simply states that 65 000 shares will be allocated to Debenture Holders but it does not indicate what percentage of the total issued share capital such shares will constitute.
 - 5.7.6. The proposal does not state on what basis the claims against the brokers should be reduced to 5% of commission received. **In this regard in the event that the scheme is declared illegal I have been advised that the brokers would be required to repay the full commission received irrespective of their knowledge of the illegality of the scheme.**
 - 5.7.7. The proposal does not contain any forecasts regarding the income to be received from the development and how the Company is to be re-capitalised and whether Leseding will be investing any of his own funds in the development.
- 5.8. In view of the fact that the current proposal is vague and is lacking in detail it is not possible for me to assess whether the proposal would be in the interests of the creditors of the Company. In my view the proposal as currently formulated cannot be properly considered by creditors.

- 5.9. Vosloo acting on behalf of his clients referred to in paragraph 5.1 above has requested me to convene a general meeting of creditors for purposes of proposing the following resolutions to be considered by creditors:
- 5.9.1. Creditors would be requested to adopt a resolution which directs me to make a proposal in terms of Section 155 of the Companies Act to compromise the company in a scheme of arrangement;
 - 5.9.2. The proposed scheme of arrangement to contain the minimum provisions as set out in paragraphs 5.3.1 to 5.3.10 above.
- 5.10. I initially agreed and undertook to convene the general meeting of creditors as requested. I have however reconsidered the matter and have taken legal advice so as to ensure that I act within the law and in the interests of all the creditors of the Company. In this regard I must be satisfied that the proposed resolutions are *bona fide* and are proposed for the benefit of all the creditors as a whole and not with a view to securing some ulterior motive or some collateral object.
- 5.11. Furthermore I also need to ensure that the proposed resolutions would be in the furtherance of the winding up of the company.
- 5.12. If the resolutions as proposed are passed and enforced it would result in the scheme of arrangement having to contain the minimum provisions set out in paragraphs 5.3.1 to 5.3.10 above.

- 5.13. Having regard to the concerns which I have raised, it would not be in the interests of creditors to compel the inclusion of these minimum provisions in a scheme of arrangement in the absence of a proposal that fully complies with section 155 of the Companies Act.
- 5.14. A further concern which I have is that in the event that the illegality order is not overturned on appeal, the creditors would not be able to vote on their claims as these claims would first have to be adjusted to take into account the effect of the illegality of the scheme.
- 5.15. Accordingly, until the claims of creditors have been properly established it would not be possible for me to convene a general meeting of creditors.
- 5.16. I am however committed to ensure that I act in the interests of all creditors and therefore believe that Leseding should be given an opportunity of formulating a proposal which fully complies with Section 155 and to submit such proposal to creditors for their consideration which may very well be in the interest of creditors.
- 5.17. In order to ensure that the interests of all creditors are properly served as well as to ensure that I fulfil my duties as the Liquidator of the Company I propose the following process:
- 5.17.1. All the claims of creditors be determined as proposed above;
 - 5.17.2. In the interim Leseding be invited to draft and prepare at their cost a proposal which complies with section 155 of the Companies Act which can be presented to me for consideration;
 - 5.17.3. I will consider such proposal upon receipt thereof and if necessary meet with Leseding to clarify any issues which I may have in regard thereto. In the event that I am satisfied that such proposal is in the interest of creditors, I would convene the meetings as contemplated in section 155 of the Companies Act for creditors to consider and adopt or reject the proposal;

- 5.17.4. In the event that I am of the view that the proposal is not in the interests of creditors I will inform creditors accordingly and I will provide creditors with a copy of the proposal and the reasons why it would not be in the interests of creditors and the Company for creditors to consider.
- 5.18. Please be advised that my essential interest and concern is to ensure that all the creditors of the Company are properly served and that I am fulfilling my duties as a liquidator of the Company.
- 5.19. To enable me to update the investor contact database, please visit the Spitskop website www.spitskoppropinliq.co.za to ensure that future circulars to creditors reach you.
- 5.20. I am currently busy updating the Spitskop website and will endeavour to post all relevant applications, correspondence and documentation to enable you to familiarise yourself with the current status of the administration.
- 5.21. Should you have any queries regarding what is contained in this circular please do not hesitate to either email me or to contact me on the above numbers and I will endeavour to respond to each query as soon as possible.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Johan Engelbrecht', written over a horizontal line.

Johan Engelbrecht
Liquidator

*Final court
order*

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
REPUBLIC OF SOUTH AFRICA

CASE NO: 31884/2011

In the matter between:

JOHAN FRANCOIS ENGELBRECHT NO

Applicant

and

MASTER OF THE HIGH COURT, PRETORIA

First Respondent

PAUL DANEEL KRUGER

Second Respondent

THEODOR WILHELM VAN DEN HEEVER

Third Respondent

PHILLIP DAVID BERMAN

Fourth Respondent

MATTHYS ISAK CRONJE NO

Fifth Respondent

in re:

PAUL DANEEL KRUGER

Applicant

and

MASTER OF THE HIGH COURT, PRETORIA

First Respondent

THEODOR WILHELM VAN DEN HEEVER

Second Respondent

PHILLIP DAVID BERMAN

Third Respondent

MATTHYS ISAK CRONJE NO

Intervening Party

ORDER OF COURT

Tuchten J:

- 1 The application of Mr JF Engelbrecht NO ("Mr Engelbrecht") to intervene is granted. Mr MI Cronje NO will henceforth be described as the fourth respondent and Mr Engelbrecht will be described as the fifth respondent.

- 2 The order made in this case on 24 June 2011 will be replaced by the following:
 - 1 Pending the determination of an application for the review of the decision of the first respondent ("the Master") to remove the applicant as one of the joint liquidators of Spitskop Village Limited (in liquidation) ("Spitskop"), the applicant ("Mr Kruger") is reinstated as one of the joint liquidators of Spitskop for the limited purposes of:
 - 1.1 authorising and conducting (including but not limited to the selection of attorneys and counsel) the litigation as set out in annexure "A hereto ("the litigation"); and
 - 1.2 preparing his interim liquidation account ("the account") in such form as near as is practicable to that of a final liquidation and distribution account in respect of his administration of Spitskop until 3 June 2011, being the date of Mr Kruger's removal ("his removal") by the Master, which account Mr Kruger must submit to the Master within fifteen court days of 8 September 2011.

- 2 This order will in no manner confer any authority on Mr Kruger to administer any aspect of the administration of Spitskop except as set out in 1.1 above.
- 3 Notwithstanding anything contained in this order, Mr Kruger must, in authorising or conducting any aspect of the litigation, act jointly with all provisional liquidators or liquidators who, on or after 14 June 2011, have been or may be appointed in relation to Spitskop. For avoidance of doubt it is declared that Mr Kruger:
 - 3.1 recognises that the Master has validly appointed Mr Engelbrecht as a provisional liquidator in relation to Spitskop;
 - 3.2 must, in exercising any power conferred or performing any duty imposed upon him in this order, act jointly with all other such provisional liquidators or liquidators as if he had been appointed as such under the provisions of the law applicable to the appointment of such officers;
 - 3.3 must comply with the law applicable to provisional liquidators and liquidators except as may by necessary implication be rendered impossible by the provisions of this order; and
 - 3.4 shall, for the purposes of this order, enjoy the same status as all other such provisional liquidators or liquidators.
- 4 Mr Kruger must immediately transfer to Mr Engelbrecht the control of all the bank accounts of Spitskop, including any investment accounts, and Mr Kruger must immediately take

all steps, including the signing of any documentation, which is required to give effect to such transfer.

5 Mr Kruger must within three court days of 8 September 2011 provide Mr Engelbrecht with the following ("the documentation"):

5.1 all cash books, bank statements and cheques in respect of all the bank accounts held by Spitskop (including any investment accounts) from inception of the liquidation of Spitskop;

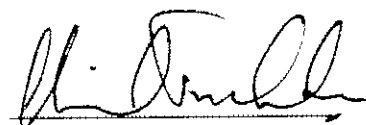
5.2 all documents which are in the possession or under the control of Mr Kruger relating to or arising from the administration of the estate of Spitskop;

5.3 copies of all vouchers, accounts and other documents relating to any expenses incurred in respect of Spitskop, including any amounts paid by Mr Kruger after his removal and any litigation in regard thereto;

5.4 all electronic media relating to Spitskop, including but not limited to complete transfer of the website, passwords and investor databases.

6 Mr Engelbrecht must make available to Mr Kruger, on demand, at all reasonable times, copies of any of the documentation which Mr Kruger reasonably believes he may require for purposes of compiling and completing the account and of conducting the litigation.

- 7 The applicant must within, 20 court days of the date upon which this order is made (ie 24 June 2011), bring and serve on the Master his proposed application to review the Master's decision to remove the applicant as one of the co-liquidators in Spitskop. If the applicant does not bring and serve his proposed review application within the period as so provided or within any extended period directed by the court on application brought and served on the Master within the period as so provided, this order will *ipso facto* lapse.
- 8 Mr Kruger, Mr Engelbrecht, the Master and the fourth respondent ("Mr Cronje) may, on notice to all the other parties, approach this court in chambers (per Tuchten J or, if he is unavailable, any other judge of this division) to vary this order or for further directions in relation to any matter arising from this order.
- 9 The costs of the application for leave to intervene and of this application are reserved for decision by the court which hears the applicant's proposed review application.
- 3 The costs of this application, including the costs of Mr Kruger and the Master and the application of Mr Engelbrecht for leave to intervene will be paid out of the assets of Spitskop. Such costs are to include the costs of two counsel where used by the parties and the costs of senior counsel.



NB Tuchten
Judge of the High Court
8 September 2011