



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

18 January 2012

CIRCULAR TO ALL KNOWN CREDITORS

Dear Sir/Madam

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

1. The purpose of this circular is for me, in my capacity as the Liquidator of Spitskop (“the Liquidator”) to update the creditors of Spitskop regarding the winding-up process.
2. **Order to Declare Syndication Scheme an Illegal Scheme**
 - 2.1. I previously communicated to creditors that the North Gauteng High Court, Pretoria declared the syndication scheme conducted in the name of Spitskop an illegal scheme.
 - 2.2. The effect of the order was explained by me in a previous communiqué to creditors as follows:
 - 2.2.1. *In the event that the order declaring the scheme to be illegal is not set aside on appeal this will have the following effect:*
 - 2.2.1.1. *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.

2.2.1.2. 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.

2.2.2. 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:

2.2.2.1. 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.

2.2.2.2. 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.

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

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

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

2.2.4. 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.

2.3. One of the Respondents to the application to declare the syndication an illegal scheme has lodged an application for leave to appeal the decision of the Court. This has had the effect of suspending the Court Order pending the finalisation of the appeal process.

2.4. The appeal process entails the following:

2.4.1. The Judge who granted the order must hear the application for leave to appeal.

2.4.2. The Judge is required to decide whether another Judge would come to a different conclusion, and if so, he will grant the Respondent leave to appeal the order;

2.4.3. In the event that the Judge refuses leave to appeal then the Respondent is entitled to petition the Supreme Court of Appeal for leave to appeal. In the event that the Supreme Court of Appeal refuses leave to appeal then the appeal process comes to an end. (The Respondent could lodge an appeal with the Constitutional Court, however, this would be an abuse of process and a dilatory tactic as there is no constitutional issues which need to be determined).

2.4.4. The Supreme Court of Appeal can uphold the application for leave to appeal and then either hear the appeal itself or refer the appeal to the full bench of the provisional division of the High Court.

- 2.5. Various dates were supplied by Judge Ismail to us regarding the dates for hearing of the application for leave to appeal. None of these dates were suitable for the Respondents' legal team, especially advocate Pretorius were not available to attend to the matter.
- 2.6. We are in the process of communicating with the judge to obtain a new date for the application to be heard.
- 2.7. I will revert to all creditors once the application for leave to appeal has been heard and decided upon by the Judge.

Payment of Interim Dividends and Creditors

3. I appreciate and understand the desire of creditors to receive payment of an interim dividend. I am, however, bound by the laws of South Africa and I may not operate outside these laws.
4. The distribution of dividends is regulated by the Insolvency Act 24 of 1936, ("the Insolvency Act") which dictates the order and manner in which such distribution is to be implemented. Claims were proved in the alternative. It is the liquidators' duty to investigate claims in terms of Section 45 of the Insolvency Act. The legality or not of the scheme will have an impact on the investigation of the claims in the sense that the claims that were proved on delict and in the alternative on contracts.
5. The order of legality of the scheme will also have an effect on the legality of the trust of the Steelpoort Debenture Trust. It might be argued, that if the scheme was not illegal that the Steelpoort Debenture Trust will have a claim against the estate and that all the creditors are thus secured in terms of the covering bond registered by the trust over the property. This is an aspect that still needs to be investigated further. In this regard:
 - 5.1. All available funds (after payment of administration costs) must be distributed in accordance in the following order of preference:
 - 5.1.1. all preferent claims of employees (limited to amounts as determined in terms of the Insolvency Act) is paid in priority to all other preferent and concurrent claims.

- 5.1.2. after payment of the employees' claims (if any) then statutory claims such as claims by SARS in respect of VAT, PAYE and income tax must be paid prior to any distribution being effected to concurrent creditors.
 - 5.1.3. all remaining funds after payment of any claims referred to in 5.1.1 and 5.1.2 would then be distributed to concurrent creditors.
 - 5.2. Dividends may only be distributed to creditors in terms of a liquidation and distribution account which has been confirmed by the Master of the High Court ("the Master"):
 - 5.2.1. the Liquidator is required to prepare a liquidation and distribution account and is required to lodge the account with the Master;
 - 5.2.2. the Master may prepare a query sheet regarding the account which the Liquidator must attend to;
 - 5.2.3. once the Master's queries (if any) have been dealt with then the Liquidator will advertise the account to lie for inspection (which is a 14 day period);
 - 5.2.4. in the event that no objections to the account are lodged with the Master then the Master will confirm the account.
 - 5.3. The Liquidator is prohibited by law to formally award and pay any dividends to creditors unless such dividends have been awarded in terms of a confirmed liquidation and distribution account. If a Liquidator elects to pay dividends prior to the confirmation of an account then he runs the risk of being held personally liable in the event that any such dividends should not have been paid.
6. I am currently unable to lodge a liquidation and distribution account in Spitskop for the following reasons:
- 6.1. The erstwhile Liquidator, Paul Kruger ("Kruger") has lodged an interim account with the Master in terms of which he has accounted to the Master for his administration of Spitskop;

- 6.2. The Master has raised queries to his interim account and Kruger has until the middle of January 2012 to deal with these queries.
 - 6.3. I am unable to finalise the liquidation and distribution account until Kruger's interim account has been finalised. The reason for this is that I will have to reflect the results of his account in the liquidation and distribution account.
 - 6.4. Furthermore, I am unable to finalise the claims of concurrent creditors until the illegality order has been finally determined. As mentioned above, this order will affect the quantum of the claims of concurrent creditors.
7. In summary, until Kruger's interim account has been finalised, the illegality order has been finally determined and the claims of concurrent creditors have been determined (depending on the outcome of the appeal to the illegality order) I am unable to lodge a liquidation and distribution account.

8. **Honey and Partners**

- 8.1. On 29 November 2011 in the Ex Parte matter of PD Kruger N.O. and two others under case number 22983/2011, it was declared that Honey Attorneys pay over an amount of R 1 738 553,83 to the estate of Spitskop Village Properties (Pty) Ltd.
- 8.2. In the matter of PD Kruger N.O. and two Others versus Honey Attorneys Inc, case number 22986/2011, a settlement was reached between the parties wherein Honey Attorneys agreed to pay an amount of one million rand with interest from 15 July 2009. The total amount owed by Honey Attorneys is R 1 429 764,12.

9. **Proceedings Against the Brokers**

- 9.1. I am in the process of formulating legal proceedings to be instituted against the brokers for the recovery of the commission received by them.
- 9.2. These proceedings will be instituted early in 2012 subject to final advice which I receive from my legal advisers.

9.3. I will keep creditors updated on further developments regarding these proceedings.

10. Mareva Application and Sequestration Application Against Lamprecht

10.1. These two applications are enrolled for hearing on the 12th of February 2012. The various postponements are due to the voluminous nature of the applications. A special Judge has, however now, been assigned for the adjudication.

11. Proposed Section 155 Scheme

11.1. I have not received a proposal from Leseding which complies with Section 155 of the Companies Act in terms of my invitation to them to submit such a proposal.

11.2. Upon receipt of such a proposal or a proposal from any other person I will immediately communicate the proposal to the creditors of Spitskop.

12. I appreciate and fully empathise with the situation which the investors find themselves in. I am committed to attending to the winding-up of Spitskop and to acting in the best interests of all creditors of Spitskop and within the boundaries of the laws of South Africa.

13. Should any creditor have any questions regarding Spitskop or regarding any issue raised in this circular they are welcome to communicate with me and I will respond to each query as soon as is possible.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Johan Engelbrecht', with a horizontal line underneath it.

Johan Engelbrecht
Liquidator