



RS Advisors

**PHUMELELA GAMING AND LEISURE LIMITED
(IN BUSINESS RESCUE)**

FIRST MEETING OF CREDITORS

22 May 2020

Important notice

- This report is confidential to Phumelela Gaming & Leisure Limited (“Phumelela”) and is prepared solely for the purpose of providing creditors with information pertaining to business rescue and the business rescue of Phumelela. You should not refer to or use our name or this report for any other purpose, disclose it or refer to it in any prospectus or other document, or make it available or communicate it to any other party. No other party is entitled to rely on our report for any purpose whatsoever and we accept no duty of care or liability to any other party who is shown or gains access to this report.
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AGENDA

- Welcome
- The Business Rescue Process
- Obligations of Business Rescue Practitioners to Consult and Investigate Affairs
- Reasons for Financial Distress
- Business Rescue Timeline
- Background
- Actions Taken to Date
- Business Rescue Strategy
- Liquidation vs Business Rescue
- Opinion of Business Rescue Practitioners
- Submission of Claims
- Creditors' Committee
- Extension of time
- Q & A session

Business Rescue Process - Commencement and Appointment

Commencement of Business Rescue

The Directors signed and filed a Resolution placing the Company into Business Rescue on 8 May 2020, which resolution CIPC have confirmed was filed on 8 May 2020.

Appointment of the Business Rescue Practitioner

I, John Evans, was appointed as the Business Rescue Practitioner (BRP) on 8 May 2020 and the required notice of appointment was filed with CIPC.

The notification to affected persons has been done within the stipulated timelines.

Business Rescue Process – Chapter 6 of the Companies Act

About Business Rescue:

- Chapter 6 - Business rescue: became effective 1 May 2011
- Business Rescue involves proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for –
 - the temporary supervision of the company, and of the management of its affairs, business and property;
 - a temporary moratorium on the rights of claimants against the company or in respect of property in its possession.

Business Rescue Process – Chapter 6 of the Companies Act

The Primary objective of Business Rescue

The development and implementation of a plan that either:

- a) Rescues the company by restructuring its debt and equity in a manner that maximizes the likelihood of the company continuing its existence on a solvent basis, or
- b) If that is not possible, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company.

Business Rescue Process – Chapter 6 of the Companies Act

Moratorium

- The moratorium under Business Rescue allows a “breathing space” to formulate, propose and implement a Business Rescue Plan (“Plan”).
- During Business Rescue Proceedings, no legal proceeding, including enforcement action against the company, may be commenced or proceeded with in any forum, without the written consent of the BRP or with the leave of court.

Suspension or cancellation of contracts

- The BRP can entirely, partially or conditionally suspend any obligation of the Company that arises under an agreement, this for the duration of business rescue.
- Contracts can also be cancelled on normal contractual terms or with leave of the Court.

Business Rescue Process – Adoption of the business rescue plan

Adoption of the plan

The Business Rescue Plan will be approved by creditors if:

- a) it is supported by the holders of more than 75% of the creditors' voting interests that are voted, **and**
- b) the votes in support of the proposed plan include at least 50% of the independent creditors' voting interests if any, that are voted.

Voting Interest

- Voting interest = value owed to the creditor as at commencement of business rescue regardless of whether the claim is secured or unsecured.
- I must determine whether a creditor is independent and I am required to appoint an independent expert to assess the voting rights of any subordinated creditors.

Business Rescue Process – Obligation to consult and investigate affairs

Consultations during business rescue

- The act provides that various consultations take place during business rescue including with:
 - employees,
 - creditors, and
 - shareholders.
- Creditors and employees are further entitled to form a committee that will consult with me during development of the Plan.
- Committees cannot direct or instruct the Business Rescue Practitioner.

Business Rescue Process – Obligation to consult and investigate affairs

Obligation to investigate affairs (Sec 141 of the Act)

- I must investigate the affairs of the company, business, property and financial situation and conclude as to whether there is a prospect of the company being rescued.
- If I uncover evidence of voidable transactions or the failure of a director to effect material obligations I must take steps to rectify the matter
- If I uncover evidence of reckless trading, fraud or other contraventions of the law, I must:
 - forward evidence to the relevant authority for further investigation and possible prosecution, and
 - direct the management to take any necessary steps to rectify the matter, including recovering misappropriated assets of the company.

Business Rescue Process – Obligation to consult and investigate affairs

Obligation to investigate affairs (Sec 141 of the Act)

Invitation to creditors

- I have not yet had an opportunity to fully investigate the books and records of the company, but to date I have not uncovered any matters which seem untoward or requiring further investigation.
- I invite all creditors who suspect any wrongdoing on the part of Phumelela or its directors and employees to kindly present all facts and evidence in support of these allegations to me on an urgent basis so that I can carry out an investigation.

Business Rescue Process – Payment waterfall

In terms of the Companies Act, the following order of priority is provided for:

1. The Business Rescue Costs, including but not limited to legal costs, operating costs and other costs associated with the Business Rescue.
2. Pre-Commencement Secured Creditors, in respect of such encumbered assets.
3. Employees for their Employment during Business Rescue (Post-Commencement Employees).
4. Secured Post-Commencement Creditors.
5. Unsecured Post-Commencement Creditors.
6. Remuneration, reimbursement or expenses relating to Employment prior to Business Rescue.
7. Pre-Commencement Concurrent Creditors.

Business Rescue Timeline – Key dates – Statutory Timeline

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|---|--------------|
| 1. Board Resolution filed with CIPC | 8 May 2020 |
| 2. Commencement of Business Rescue Proceedings | 8 May 2020 |
| 3. Appointment of Business Rescue Practitioner | 8 May 2020 |
| 4. First Meeting with Employees (a Process) commencing: | 21 May 2020 |
| 5. First Meeting of Creditors (This meeting) | 22 May 2020 |
| 6. Consult affected parties | Ongoing |
| 7. Statutory date to Publish the Business Rescue Plan | 15 June 2020 |
| 8. Meeting to consider and approve the Plan | 30 June 2020 |

Reasons for financial distress

- The affidavit supporting the commencement of business rescue, includes the following grounds on which the business rescue resolution was founded:
 - The company is financially distressed in that it is unlikely to be able to pay its debts as they become due and payable, within the ensuing six months.
 - The board had prepared a turnaround strategy during Q1 2020 and believed that the implementation of that plan would return the company to profitability.
 - The Board had secured an offer of post commencement funding from a third party and from its existing lenders.
 - The board believed that the available funding and implementation of its turnaround strategy presented a reasonable prospect that the company could be rescued.
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Actions taken to date

- Business Rescue Process
 - Statutory notifications; and
 - First Meeting of Employees convened.
- Financial Management
 - Take control of cash and bank accounts;
 - Trading and cash flow analysis; and
 - Critical payments.
- Agree post commencement funding.
- Review financial statements and management accounts.
- Initial engagement with suppliers and customers regarding continued trading.
- Engagement with Banks regarding continuation of banking facilities.
- Appointment of a Chief Restructuring Officer.

Business Rescue Strategy

- The BRP intends trading the business, to the extent possible, with the assistance and guidance of management.
- Assessing and implementing the turnaround strategies with a view to ensuring that the business operates profitably when racing resumes.
- Considering restructuring options and engaging with employees, creditors, shareholders, business and industry partners to develop a business rescue plan.
- Consider the sale of non core assets.

Business Rescue Strategy

- In the event that the restructuring of the business within its current structure is not achievable we will identify interested parties and run a “Fast Track Sale of Business” process.
- This sale process will:
 - Invite interested parties to assess the company's information and submit offers to buy the business and assets (or part thereof) of the company, and
 - Is expected to take up to two months to complete.
- We believe that an organised and considered process to restructure the business and operations of the company or to realise assets will yield a better outcome than a rushed process or sale by auction.

Liquidation vs Business rescue

- Both a liquidator and a business rescue practitioner can/will:
 - trade the business to maximise recovery from the assets of the company; and
 - seek buyers for the business.

- Liquidation specific risks and challenges:
 - liquidator must elect to abide or cancel contracts;
 - harder to secure supply of services in liquidation which will impact trading outcome;
 - unless a buyer for the business is found quickly, its is likely that business will cease to operate and be wound down;
 - liquidation processes are time consuming and delay payments to creditors; and
 - all employees probably retrenched.

Liquidation vs Business rescue

- Treatment of claims differs in that:
 - Unperfected GNB creditors are preferent in liquidation;
 - Employees enjoy a greater preference in business rescue than in liquidation; and
 - SARS is not preferent in business rescue.

- Fee and cost structures differ:
 - Liquidation - 10% of assets realised, 6% of turnover during trading; and
 - Liquidation – additional costs for auctioneers, up to 12.5% plus storage costs; whereas
 - Business rescue – Hourly rate plus negotiated additional fees.

- Business rescue plan
 - Flexible in nature and must be agreed to by creditors.

Opinion of the BRPs

- Based on the information presented herein and our investigations to date the Business Rescue Practitioner believes that **there is a reasonable prospect that the Company can be rescued.**
- A BRP is required to continually assess this position and if there is no longer a reasonable prospect of success to apply for the liquidation of the company.
- Key factors in the assessment are:
 - Availability of post commencement funding; and
 - Ongoing support of suppliers and business partners.

Proof of claims

- The act does not contain a formal process for proving claims.
- The BRP will include a **Claim Proving Process** in the business rescue plan.
- To assist the BRP in performing his duties efficiently and effectively we ask that all creditors complete and submit a claim form in the prescribed format along with all supporting documentation.

Creditors Committee

- The act provides that creditors may form a committee through which they are entitled to be consulted by the BRP during the development of the business rescue plan.

Call for nominations

- Creditors wishing to form a committee need to nominate representatives to sit on that committee.

Poll on formation of a creditors committee

- Attendees are able to vote as to whether to form a creditors committee.
- We will assess the voting and after the meeting and advise creditors whether a committee is to be formed, this as voting in business rescue is based on claim value.

Extension of time to publish the business rescue plan

- The BRP's reasons for requesting this extension include:
 - The uncertainty about the easing of the lockdown and return to normal trading impacts on our ability to:
 - reliably forecast trading for the coming years;
 - sell all or part of the business as a going concern;
 - An extension of time will allow flexibility to maximise returns in an orderly process that examines all options; and
 - The presentation of a Plan with uncertain outcomes is undesirable as in our experience creditors are often reluctant to support a plan with uncertain outcomes. An extension will allow the BRP to present with more accuracy the distributions payable to creditors.
 - An extension will allow the BRP to present with more accuracy the distributions payable to creditors.

Business Rescue Timeline – Key dates – Proposed Timeline

- | | |
|---|-------------------|
| 1. Board Resolution filed with CIPC | 8 May 2020 |
| 2. Commencement of Business Rescue Proceedings | 8 May 2020 |
| 3. Appointment of Business Rescue Practitioner | 8 May 2020 |
| 4. First Meeting with Employees (a Process) commencing: | 21 May 2020 |
| 5. First Meeting of Creditors (This meeting) | 22 May 2020 |
| 6. Consult affected parties | Ongoing |
| 7. Statutory date to Publish the Business Rescue Plan | 15 June 2020 |
| 8. Extended date to Publish the Business Rescue Plan | 31 August 2020 |
| 9. Meeting to consider and approve the Plan | 14 September 2020 |

Extension of time to publish the business rescue plan

- The act provides that the date for presentation of a business rescue plan can be extended, if supported by creditors holding greater than 50% of the voting interests.

Vote to extend the date by which a business rescue plan must be published

- The BRP will email this presentation to creditors along with a formal request for an extension of time to publish a business rescue plan.
- Creditors will be requested to indicate their support or not by return email.

