

# SOUTH AFRICAN EXPRESS AIRWAYS SOC LTD

Standing Committee on Appropriations

27 May 2020



# INTRODUCTION

- On 6 February 2020, the South Gauteng High Court granted an order placing the SA Express under business rescue in terms of section 131 of the Companies Act 71 of 2008 ("the Companies Act").
- This was after one of SA Express' creditors (Ziegler), launched an urgent application in January 2020 to place SA Express under business rescue.
- SA Express, the Ministers of Public Enterprises and Finance were cited as first, second and third respondents respectively. SA Express opposed the application by Ziegler. The 2 (two) Ministers, for reasons unknown, did not oppose the application.
- Messrs Phahlani Mkhombo and Daniel Terblanche were subsequently appointed as interim joint business rescue practitioners ("BRPs) by the South Gauteng High Court on 6 February 2020.
- The appointment of the BRPs was ratified by all the independent creditors at the first meeting of creditors on 20 February 2020.
- After the BRPs appointment, it became clear that prior to SA Express being placed under business rescue, it has been for a very long-time facing liquidity challenges. There were about 4 pending liquidation applications that were launched by other creditors to place SA Express under liquidation.
- In 2018, SA Express applied to government for recapitalisation in the amount of R2.336 billion. Of the R2.336 billion applied for, only R1.249 billion was approved in February 2019 which was to be specifically allocated to government guaranteed debt. This left the Company with no funding for capex and working capital.
- In May 2019, SA Express made another application to government for R800m to fund its operation in order to be sustainable. After almost 4 months - SA Express only received about R300m in September 2019.
- The R300m was utilised to settle overdue creditors, to return aircrafts to service and for working capital.

# SUMMARY OF THE BUSINESS RESCUE PROCESS

(including the time periods involved therein)

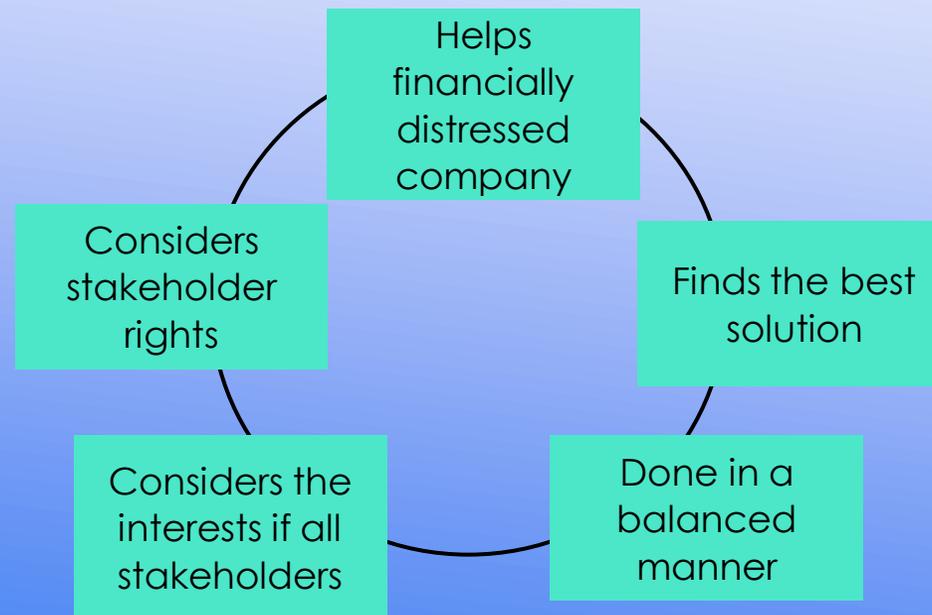


# BUSINESS RESCUE

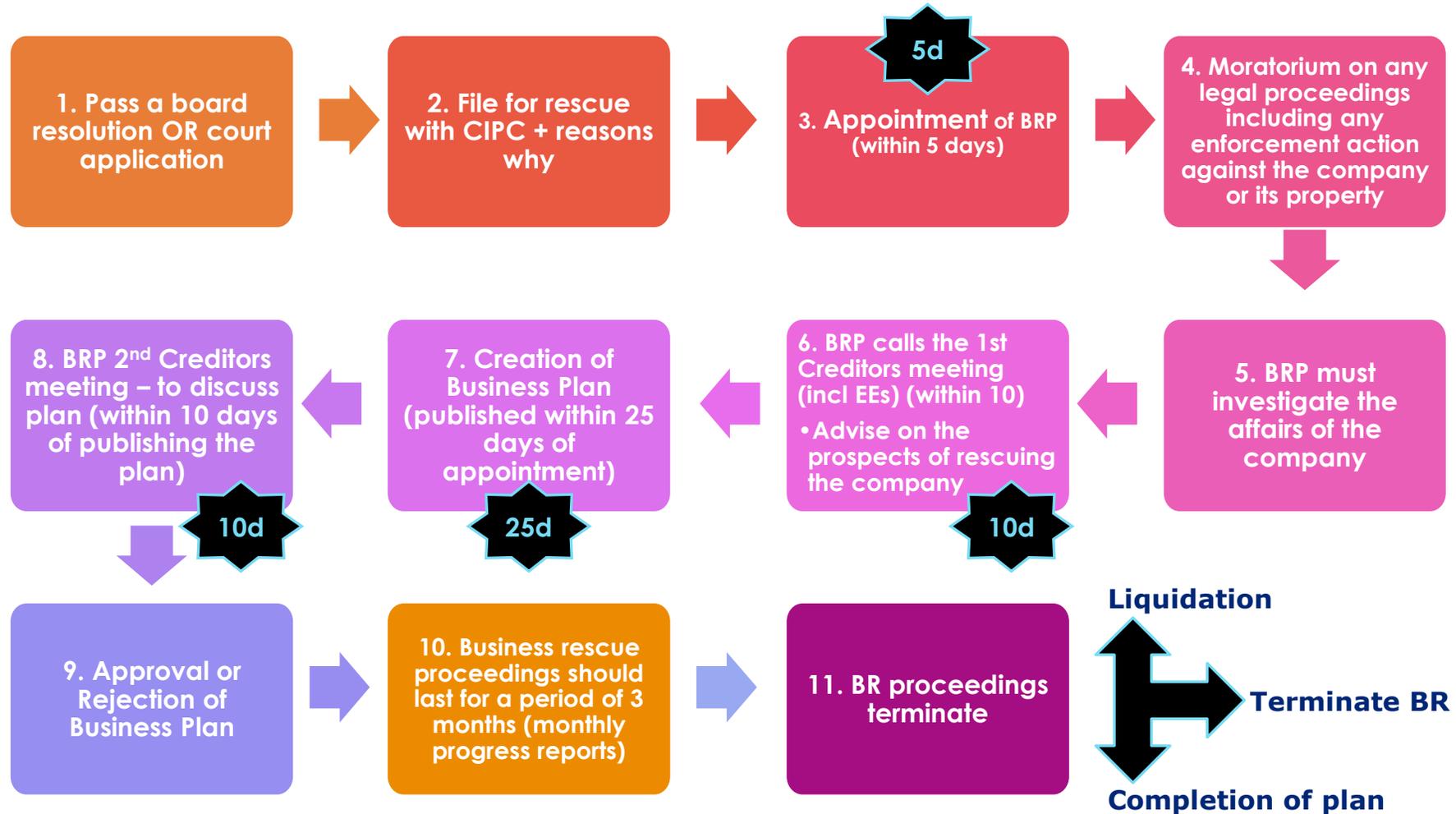
Business Rescue involves a process to facilitate the rehabilitation of a company that is financially distressed by providing for:

- The temporary supervision of the company, and of the management of its affairs, business and property.
  - A temporary moratorium on the rights of claimant against the company or in respect of property in its possession.
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The main objective of business rescue in a general sense is the development and implementation, if approved, of a Business Rescue Plan which rescues a company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis; or results in a better return for the company's creditors and/or shareholders than would result from the immediate liquidation of the company.



## The business rescue process\*



\*To be read together with the full text detailed in Chapter 6 of the Company Act 71 of 2008

# BUSINESS RESCUE OVERVIEW

## Timelines

Company commenced Business Rescue via Court Order

06/02/2020

Appointment of interim BRPs by Court Order

06/02/2020

First Meeting of Employees in terms of Section 148 of the Companies Act

19/02/2020

First Meeting of Creditors in terms of Section 147 of the Companies Act

Ratification of the BRPs

20/02/2020

Provisional Liquidation Order granted

Business Rescue Proceedings ended

28/04/2020

Return date of the Final Liquidation Order

09/06/2020

# STEPS TAKEN AFTER COMMENCEMENT OF BUSINESS RESCUE



# STEPS TAKEN AFTER APPOINTMENT

- The BRPs took management control as required by section 140 of the Companies Act and delegated the day to day management of the company to existing management.
- Engagement with the shareholder, the Department, board and management.
- Engagement with critical creditors or service providers including lessors/owners of aircraft to ensure business continuity.
- Engagement with employee representatives and organised labour.
- The first meetings of employees and creditors were held on 19 Feb and 20 Feb respectively.
- Engagement with commercial banks and DFIs in order to raise or secure post-commencement finance.
- Investigation of the affairs of the Company as required by section 141 of the Companies Act.

# BUSINESS RESCUE PROCESS

Action	Progress
Inform affected parties of appointment	●
Convene first meeting of creditors	●
Convene first meeting of employees	●
Prepare business rescue plan	●
Attend various creditors committee meetings	●

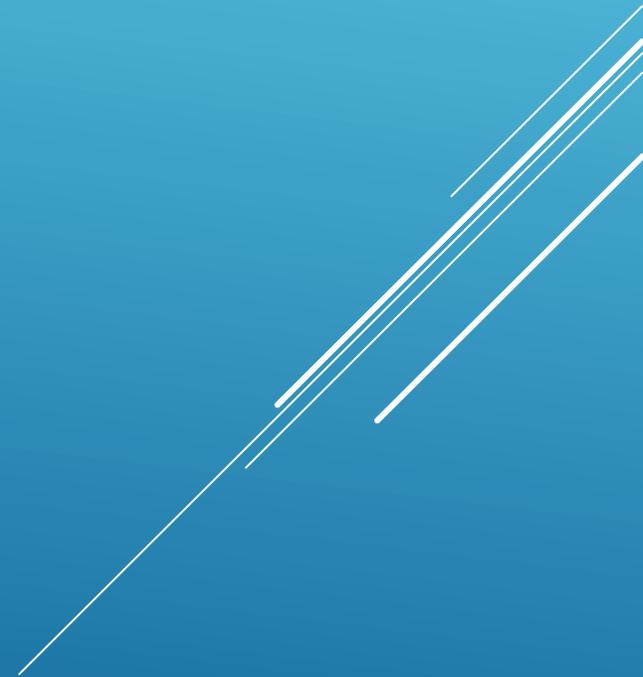
● Actioned

# BUSINESS RESCUE PROCESS

Further Actions by the BRPs	Progress
Engagements with board and management	●
Engagements with the Minister of Public Enterprises	●
Engagement with SAA BRPs	●
Received various expressions of interest	●
Engagements with some of the critical stakeholders	●
Engagements with organised labour/unions	●

● Actioned by BRP

# FINANCIAL POSITION AND TRADING ACTIVITIES



# STATEMENT OF ACCOUNTS

Indicative financial position as at 6 February 2020

	Asset / claim
<b>Claims against the company</b>	<b>2,729,854,336</b>
<b>Assets</b>	<b>1,982,236,575</b>
<b>Net liability position</b>	<b>(747,617,760)</b>

# TRADING ACTIVITIES

- As at 6 February 2020, the Company had R6 128 354,86 cash available in its bank accounts. The funds were used to cover critical operating expenses.
- The Company received funds from SAA on a daily basis for flights operated on the previous day, whilst it was still trading. This position changed after the aircraft were grounded due to the lack of funding.
- Any/All revenue received subsequent to the commencement of business rescue were used to pay critical operating expenses including February 2020 salaries.
- The Company initially continued trading with severe cash flow constraints but ceased flying from 18 March 2020 due to non-payment of the insurance premiums in respect of the aviation assets. This was after the Company was granted numerous extensions by the insurers to settle the outstanding insurance premium.
- Trade and other Creditors were largely supportive of the on-going business operations, but transactions were done as far as possible on a cash-with-order or cash-on-delivery basis (COD) or in the form of upfront payment.
- In order to preserve the already constrained cashflow of the Company during Business Rescue, the BRPs continuously monitored cash flow and financial projections, performed regular bank reconciliations, controlled payments, and enforced general financial and operational controls. The approval process for all expenditure has been rigorously policed.
- Employees were paid salaries for February 2020 on 25 February 2020. March and April salaries were not paid. Company through the assistance of DPE received R5.7m from the UIF COVID19 TERS which was used to pay employees.
- All third-party payments (PAYE/UIF/Pension or Provident Funds etc) were not paid in February, March & April.

# INVESTIGATION INTO COMPANY'S AFFAIRS



# INVESTIGATION INTO COMPANY'S AFFAIRS – 1/2

- Following on our appointment as BRPs, we commenced with the investigation into the affairs of the Company as required in terms of section 141 of the Companies Act and established the following:
  - Company has been facing liquidity challenges for many years.
  - In 2018, the Company applied to government for recapitalization in the amount of R2,336 bn.
  - Government only approved R1.249bn in Feb 2019 meant to settle only government guaranteed debt.
  - In May 2019, the Company made another application to government for R800m. Only R300m was approved in September 2019.
  - In 2018, management and the board developed a turnaround strategy, the G-POCH based on principles of Governance, Profitability, Operational Efficiency, Customer Value and Human Capital.
  - The G-POCH strategy was not fully implemented or rolled out due to cashflow constraints.
  - Approximately 124 employees were retrenched as part of the implementation of the G-POCH strategy.
  - Some of the retrenchment costs were not paid and remain outstanding.

# INVESTIGATION INTO COMPANY'S AFFAIRS – 2/2

- Prior to the Company being placed under business rescue in Feb 2020, there were about 4 pending liquidation applications which the Company was defending.
- The cR6m premium for the aviation insurance had not been paid. This was due in December 2019 and had not been paid due to cashflow constraints.
- The insurers had already given notice of cancellation of the insurance cover. Several extensions were granted by the insurers to settle the outstanding premium.
- The last extension was 17 March 2020 and still this was not paid. Consequently, the Company was forced to ground its operation due to the insurance lapsing.
- Company owed cR150m to SARS for unpaid taxes (PAYE, UIF, SDL).
- As at commencement of business rescue, the Company had deducted employee related taxes (PAYE,SDL,UIF) from employees and not pay it across to SARS consistently for almost 18 months.

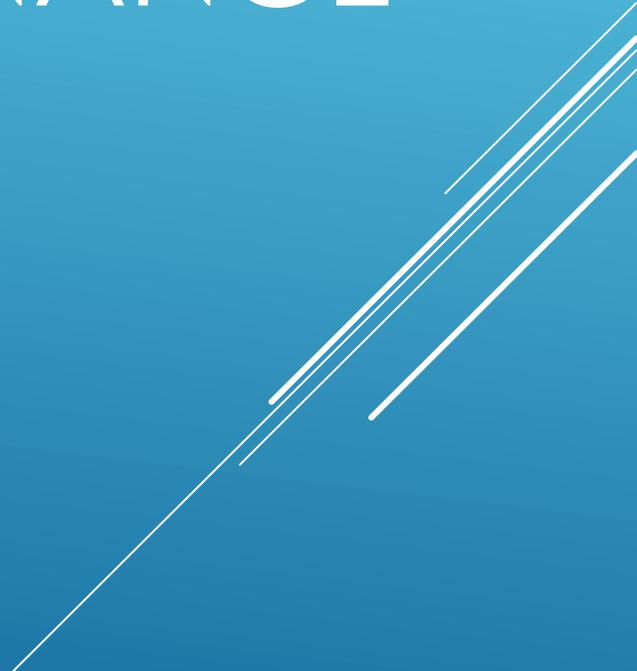
# OPTIONS CONSIDERED



# OPTIONS EXPLORED/CONSIDERED

- The BRPs explored the following options as part of the business rescue initiative:
  - - Operational Turnaround
  - - Introduction of Strategic Equity Partner
  - - Consolidation of SAA/SAX or SAX/Mango
  - - Sale of business or shares in the Company
  - - Structured wind down/ orderly wind down
  - - Liquidation
- All these options required funding/PCF except liquidation.
- BRPs received various expressions of interest from interested parties to acquire the entire issued share capital or acquire the business as going concern.
- Non-Disclosure Agreements (NDAs) were concluded with interested parties.
- 2 offers were received but no proof of funding or could not demonstrate the availability of funding.

# POST-COMMENCEMENT FINANCE



# POST-COMMENCEMENT FINANCE (“PCF”) – 1/2

- Various options were explored to secure PCF in order to keep business operations ongoing and avoid disruptions.
- PCF, as envisaged in section 135 of the Companies Act, is one of the most imperative building blocks to a successful restructure of a distressed company.
- The BRPs engaged with commercial banks and other DFIs in an effort to secure PCF.
- However, the banks indicated their reluctance to provide any form of funding even with the support of government in the form of a government guarantee.
- After a lot of persuasion, one of the commercial banks indicated that it might consider advancing PCF but only on receipt of a government guarantee.
- BRPs approached government for PCF but were not successful in securing PCF or a government guarantee.
- On 25 March 2020, the BRPs received a letter from DPE – stating that SA Express has been allocated R164m in 2020/21 for purchase of equity over the MTEF subject to the following conditions:

# POST-COMMENCEMENT FINANCE (“PCF”) – 2/2

- - DPE & SA Express to send a report to Minister of Finance, AG and parliament on the utilization of the R1.2bn allocated to SA Express in 2018/19.
- - Allocated funds to be utilized only for purposes of eliminating government's contingent liability exposure of R1 64m to SA Express.
- - No incentive bonus to executives in the year equity support was provided.
- - SA Express must be tax compliant by ensuring that where taxes have been deducted from employees that these deductions are paid across to SARS within the required timeframes and not withheld for other purposes
- - Funds must not be used for purpose of any Business Rescue Process.
- - SA Express to identify and implement sustainable costs cutting initiatives as no further recapitalization requests will be considered.
- - The Shareholder Compact to be finalized in consultation with Minister of Finance before it is approved.

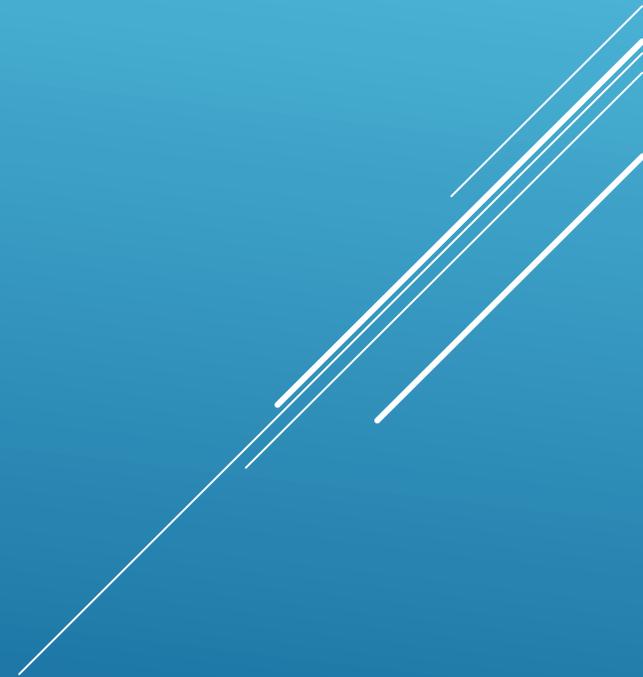
# BUSINESS RESCUE COSTS



# BUSINESS RESCUE COSTS

- The BRPs charge out rates are linked to the Public Interest Score of the Company
- The Company was classified as a large Company and the statutory rate was therefor R2,000.00 per hour (VAT inclusive)
- The BRPs did not receive any payments from the Company during the Business Rescue proceedings, but incurred substantial costs (Transcription, Recording, Venue rental etc)
- The BRPs could have drawn fees when funds were available during the BR process, but they elected to allocate these funds to the employees in lieu of salaries.

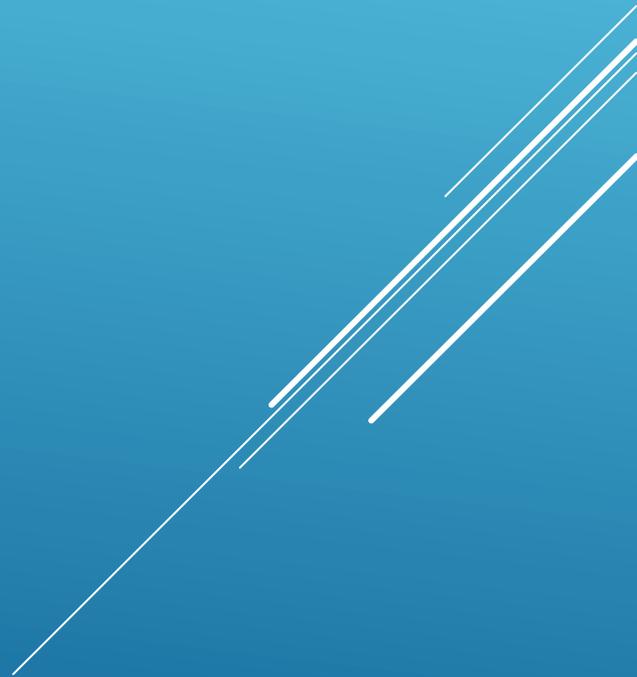
# CONVERSION OF BUSINESS RESCUE TO LIQUIDATION



# CONVERSION OF BUSINESS RESCUE TO LIQUIDATION

- The application to discontinue the business rescue proceedings and convert the proceedings into liquidation was launched by the BRPs on 25 March 2020.
- The application was unopposed and was set down for hearing on the 28<sup>th</sup> of April 2020.
- The South Gauteng High Court, granted a provisional order to discontinue the business rescue process and place the Company under provisional liquidation effective from date of filing of the application (25 March 2020) – calling upon all affected persons to show cause by the 9<sup>th</sup> of June why the Company should not be placed under final liquidation.
- Subsequent to this, the Master of the High Court appointed provisional liquidators who are now in charge of the liquidation process.

THANK YOU



## Phahlani Mkhombo

B PROC LLB, LLM  
SENIOR BUSINESS RESCUE PRACTITIONER

Contact details:

Mobile: +27 83 206 0809  
E-mail: [phahlani@gcs-sa.co.za](mailto:phahlani@gcs-sa.co.za)



## Daniël Terblanche

B PROC  
SENIOR BUSINESS RESCUE PRACTITIONER

Contact details:

Mobile: +27 82 561 3196  
E-mail: [daniel@dtconsultrsa.co.za](mailto:daniel@dtconsultrsa.co.za)

