

Portfolio Committee on Public Enterprises

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Confidential



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INTRODUCTION

- On 6 February 2020, the Company was placed under Business Rescue Proceedings by virtue of an order of the South Gauteng High Court.
- On 28 April 2020, the Company was then placed under Provisional Liquidation by virtue of an order of the South Gauteng High Court.
- On 13 May 2020, the Office of the Master of the High Court issued a Certificate of Appointment, appointing the following provisional liquidators:
 - Aviwe Ntandazo Ndyamara
 - Kgashane Christopher Monyela
 - Clifford Thabang Maredi
 - Soria Marias
 - Samantha Fay Margolis – Pantellias



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WHAT IS THE AIM OF LIQUIDATION



When a company is unable to trade owing to it being insolvent, the company's assets are liquidated.



The assets will generally be sold by way of private treaty or by way of public auction and in some cases the company will be sold as a going concern.



The proceeds from the sale will be utilized to pay costs, charges and expenses incurred in the company's winding-up process, as well as dividends to the creditors of the Company.



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THE PROCESS REQUIRED TO COMMENCE LIQUIDATION

- In South African law, as it currently stands, a distinction must be drawn between an insolvent company and a solvent company.
- Insolvent companies are regulated by the old Companies Act 61 of 1973, together with provisions of the Insolvency Act 1936. The regulation and administration of an insolvent company is regulated by the Old Companies Act.
- Insolvent Companies may be liquidated in the following ways:
 - Voluntarily by the board of directors passing a resolution.
 - Pursuant to a formal application having been made to court by (among others) a creditor, business rescue practitioner or one or more of the shareholders.



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THE DURATION OF A LIQUIDATION PROCESS

- The office of the Master of the High Court appoints and exercises supervision over Liquidators.
- Once a company is in liquidation, whether final or provisional liquidation, Liquidators are appointed to administer the liquidation proceedings from start to finish.
- Liquidation proceedings can take anything from 6 months to 3 years, the duration all depends on the nature and size of the estate as well as the complexity of the transactions with which the company or corporation was involved.



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MANAGEMENT OF A COMPANY WHILE IN LIQUIDATION

- When a company is placed in liquidation, the company remains a corporate body and retains all its powers but will, from the date of the commencement of liquidation proceedings, cease to carry on its business except insofar as may be required for the winding up of the company.
- From the date of a winding-up, all the powers of the Directors of a company cease, except for the actions sanctioned by the Liquidators.



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THE GENERAL DUTIES OF A LIQUIDATOR

- The duties of Liquidators are found in sections 391 to 410 of the Companies Act 61 of 1973. The relevant sections are mandatory, thus in each case the Liquidator “shall” perform the duties stipulated. The act first stipulates general duties and then lists specific duties.
- The general duties are as follows:
 - To proceed without delay to recover and take possession of all the assets and property of the company.
 - To apply such assets and property in satisfaction of costs of the liquidation administration, the claims of creditors and distribute the balance if indeed there is a balance, to those who are entitled thereto.



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THE SPECIFIC DUTIES OF A LIQUIDATOR

- To give information to the Master of the High Court.
- To facilitate the Masters inspection of the books and records of the Company.
- To examine the affairs and transactions of the company before its liquidation in order to ascertain if any of the Directors and Officers or past Directors and Officers of the company have contravened any provision of the Act or committed any offence. Where appropriate, Liquidators must report any grounds to disqualify a Director.
- A Liquidator has a duty to present a report to the creditors and contributories, no later than three months after the final appointment.
- The report will set out, *inter-alia*, the shares issued by the company, its estimated assets and liabilities, the causes of the failure of the company and progress in the winding up.
- Of significance is the fact that the Liquidators will have to note whether further examinations in their opinion is desirable regarding any matter relating to the promotion, formation or failure of the company or the conduct of the business.



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CREDITORS

- Creditors' claims are filed on affidavits and supported with the necessary evidence to indicate that the company is in fact indebted to the creditor.
- A creditor must file his or her claim with the liquidator, alternatively, at the court where the first meeting of creditors will be held.
- Thereafter, if the creditor wishes to file a claim, he or she (or the company) may request to convene a meeting at which the creditor will file his or her claim.
- The costs of convening such a meeting will be for the creditors account. The said meeting is referred to as a special meeting of creditors. Only creditors who have proven their claims will benefit from a distribution, which is usually only a portion of what the creditor is owed unless the creditor is able to rely on their security.



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THE RANKING OF CREDITORS CLAIMS

- Creditors claims are ranked and paid out in accordance with an order of preference determined by the Insolvency Act. Once all the costs of winding - up have been paid, creditors will be entitled to their proportionate share of residue of the company's estate.
- Preferent creditors are entitled to be paid before concurrent creditors. Secured creditors are those who hold security for their claims, and they are paid from the proceeds of a sale of the security that they hold.
- Concurrent creditors (including preferent and secured creditors whose claims are not satisfied in full) are paid out of the residue of the estate and are the last of the creditors to be paid.



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HOW THE LIQUIDATION PROCESS IS TERMINATED

- Once the affairs of the company have been wound up and if the Liquidators have complied with all the requirements of the Master of the High Court, the Liquidator may apply in writing to the Master of the High Court for a certificate to that effect.
- The Master of the High Court shall, when he or she issues the certificate, state that he or she consents to the reduction of the security by the Liquidator to a stated amount or its cancellation. Then the liquidation and winding-up proceedings would be terminated at this point.



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THE STATUS OF THE PROVISIONAL LIQUIDATION



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Actions to date

Action	Progress
Inform Affected Parties of the Provisional Liquidators Appointment	Complete
Introductory meeting with former Board and shareholder, DPE.	Complete
Introductory meeting with Unions and SA Express Pilots Association	Complete
Introductory meeting with SA Express Employees Committee	Complete
Introductory meeting with Creditors and lease holders	Complete

Action	Progress
The status of the final liquidation order.	Postponed to the 22 April 2021
The Extension of the Provisional Liquidators Powers	Granted 15 June 2020
The finalization of an interim valuation	Complete
The reduction of the R1.8 billion bond of security issued	We have successfully reduced to the bond of security to R113 million

Actions to date - continued



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THE BOND OF SECURITY

- A security bond protects the assets of the estate from any negligent acts, it protects the creditors and other beneficiaries from the estate.
- On the appointment of the provisional liquidators, the Master of the High Court issued a bond of security in the amount of R1.8 billion. The premium payable is R9 million per annum.
- The immediate priority was to complete an interim independent evaluation of the company's assets, in order give a proper indication to the Master for a market value of the assets and reduce the bond of security



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EMPLOYEES

- As of the 28 April 2020, the granting of the provisional order, the employee's salaries were outstanding for March and April 2020. The outstanding remuneration will be dealt with as claims against the Company.
- The implication of the provisional order granted is that employee's employment contracts were by law immediately suspended.
- TERS UIF for the month of April and May 2020 were processed and received by the employees.
- To date, the following has been completed for the employees
 - (i) UI19' forms
 - (ii) Salary Schedules
 - (iii) Section 38 letters
 - (iv) Claim forms



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HOW EMPLOYEES WILL BE PAID

company, and payable from the free-residue of a liquidation and distribution account, after the payment of secured creditors.

- The employees enjoy a special preference in terms of the Insolvency law, but are only paid after the secured creditors claims have been settled.
- At this stage it is unclear if there will be residue for payment of employee claims.
- A sales process has been engaged and concluded.
- The preferred bidder is Fly Sax (Pty) Ltd with a purchase price of R50 000 000.00 (fifty million rand)
- The purchase price received to date is in the amount of R24 748 700.00 (twenty four million seven hundred and forty eight thousand seven hundred rand)
- The outstanding balance still payable is in the amount of no less than R26 000 000.00



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End

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