

HIGHVELD SYNDICATION NO 15 LIMITED: REGISTRATION NUMBER (2003/031064/06)  
HIGHVELD SYNDICATION NO. 16 LIMITED REGISTRATION NUMBER: (2003/031129/06)  
HIGHVELD SYNDICATION NO. 17 LIMITED, REGISTRATION NUMBER: (2003/025913/06)  
HIGHVELD SYNDICATION NO. 18 LIMITED, REGISTRATION NUMBER: (2003/030778/06)  
HIGHVELD SYNDICATION NO. 19 LIMITED, REGISTRATION NUMBER: (2003/030144/06)  
HIGHVELD SYNDICATION NO. 20 LIMITED, REGISTRATION NUMBER: (2005/029425/06)  
HIGHVELD SYNDICATION NO. 21 LIMITED, REGISTRATION NUMBER: (2005/027601/06)  
HIGHVELD SYNDICATION NO. 22 LIMITED, REGISTRATION NUMBER: (2005/027390/06)

(“the companies”)

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**BUSINESS RESCUE STATUS REPORT IN TERMS OF SECTIONS 132 OF THE COMPANIES ACT, 71 OF 2008 (“THE ACT”) READ WITH REGULATION 125 OF COMPANIES ACT FILED BY THE BUSINESS RESCUE PRACTITIONER JF KLOPPER AND A NOTICE IN TERMS OF SECTIONS 145 AND 146 OF THE ACT.**

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1. The companies were placed under Business Rescue in terms of Section 129(1) of the Act on 7 September 2011 save for Highveld Syndications 19 (Pty) Limited that was placed in Business Rescue on 14 September 2011.
2. Johannes Frederick Klopper was licensed by the Commission in respect of the companies and appointed as Business Rescue Practitioner (“BRP”) of the companies and a Business Rescue Plan (“the Plan”) in respect of the companies was published on 30 November 2011.
3. A meeting to adopt the Plan in terms of sections 151 and 152 of the Act was held 14 December 2011 (“the meeting”).
4. At the meeting more than 99% of the affected persons present or represented voted in favour of the adoption of the Plan which entailed that an entity known as Orthotouch Limited acquired all the properties identified in the Plan on the basis that the payment as envisaged in the Plan would be made on the fifth anniversary of the adoption of the Plan.
5. Orthotouch Limited, for reasons stated in a Notice in terms of Section 155 of the Act, proposed a scheme of arrangement to all Highveld Syndication investors (“HS Investors”) and a statutory meeting was held on 12 November 2014 (“the statutory meeting”).
6. At the statutory meeting the Chairman of the statutory meeting announced that the statutory majorities of voting as required in the Act had been achieved. The Scheme of Arrangement was duly approved and sanctioned by the High Court of South Africa on 26 November 2014. The Order of Court was filed with CIPC on 26 November 2014 rendering the Scheme of Arrangement fully effective and binding.

7. The BRP at all relevant times expressed the view that the companies had, with effect from 26 November 2014, no more affected persons as all HS Investors' claims were, in terms of the approved and sanctioned Scheme of Arrangement, ceded to a third party, being Zephan. This view is now shared by four senior counsel acting for the various respondents in the Smith application referred to below and also by a fifth senior counsel acting for Jacques du Toit in the application for a declaratory order issued on 28 January 2021 referred to below.
8. The BRP also formed the view that HS Investors' rights are limited to payment in terms of the sanctioned Scheme of Arrangement which view is now also shared by the abovementioned senior counsel.
9. The BRP has also since November 2014 persistently informed HS Investors that, in terms of the approved and sanctioned Scheme of Arrangement, the Plan has since 26 November 2014 been substantially implemented in terms of the provisions of Section 132 (3) of the Act and that business rescue proceedings in respect of the Companies will end when a Notice of Substantial is filed with the Commission/CIPC in the discretion of the BRP.
10. Since October 2014 the entire process became embroiled in an avalanche of litigation which, in the opinion of the BRP, was to the severe detriment of the HS Investors as none of the litigation has benefited the HS Investors to date and as a consequence many millions that could have been available for HS Investors were squandered on legal fees.
11. An application to set aside the sanctioning of the Scheme of Arrangement was launched in March 2015 ("the setting aside application"). During June 2017 one Francois Strauss filed a supplementary affidavit in these proceedings.
12. The opposing affidavit in the setting aside application deposed to by Mr Nic Georgiou in his capacity as the managing director of Orthotouch was filed in September 2019. It should be noted that the opposing affidavit includes a conditional counter application to the effect that this particular affidavit also serves as a founding affidavit for the conditional counter application for repayment and restitution of all payments received by HS Investors pursuant to the sanctioned scheme of arrangement should the Court set the Scheme of Arrangement sanctioned as long ago as 26 November 2014 aside. A copy of the opposing affidavit may be found by clicking on the following link:

[https://restructuring.bdo.co.za/sites/default/files/filefield\\_paths/20190902%20answering%20affidavit%20Nic%20Georgiou-signed.pdf](https://restructuring.bdo.co.za/sites/default/files/filefield_paths/20190902%20answering%20affidavit%20Nic%20Georgiou-signed.pdf)

13. The conditional counter application represents a serious risk for all HS Investors in that the applicants in the setting aside application have exposed all HS Investors to a possible court order for restitution and repayment of all monies received since November 2014. The setting aside application is however still pending as the applicants in the setting aside application have, to the best of my knowledge and belief, neither filed their replying affidavit or answering affidavit in opposition to the conditional counter application some 16 months after Mr Nic Georgiou had filed his answering affidavit and the setting aside application has therefore to date not as yet been heard in the High Court of South Africa almost 7 years since the launching thereof.
14. It was and still is the BRP's view that the Class Action application launched in October 2014 cannot be dealt with until such time as clarity has been obtained in relation to the status of the Scheme of Arrangement. The reason for this being that the Scheme of Arrangement permanently restructured the rights and claims of HS Investors and as such their claims have been ceded to Zephan.
15. On 7 November 2019, Orthotouch (Pty) Limited ("Orthotouch") and Zephan were also placed under business rescue and in respect of which two companies Jacques du Toit was appointed as the Business Rescue Practitioner. Mr du Toit has recently, on 28 January 2021, launched an application for a declaratory order to obtain clarity on the status of the HS Investors' claims in view of the provisions of the sanctioned scheme of arrangement in terms of which all claims of HS Investors were ceded to Zephan and in terms of which their only remaining rights were to receive payment in terms of the sanctioned scheme of arrangement.
16. A further significant development in relation to litigation is that an investor and financial advisor, one Henry Arden Smith, and 11 others, on 13 December 2019, launched an application for leave in terms of section 164 of the Act to enable them to institute action on behalf of the companies against various parties. ("The Smith application"). The parties against whom action sought to be instituted are, inter alia, Messrs Nic, Michael and George Georgiou (as the first to third respondents), the BRP in his personal capacity (the fourth

respondent), the directors of Orthotouch in their personal capacities (as the fifth to the seventh respondents) and Derek Cohen in his personal capacity (the former Receiver for Creditors in relation to the Orthotouch scheme of arrangement) as fourteenth respondent. It is however inexplicable as to why the application was never served on either the sixth or the seventh respondents (being Connie Myburgh and Panos Kleovoulou) or on Derek Cohen as the fourteenth respondent.

17. In relation to the Smith application Nic Georgiou filed and served his answering affidavit on 11 December 2020. The BRP's answering affidavit as fourth and fifth respondent in relation to the Smith application was filed and served on 9 March 2021 and the answering affidavits by Michael and Georgiou were filed and served on 16 March 2021.

18. The founding affidavit by Smith and all the answering affidavits may be found and accessed in the dropbox by clicking on the following link

<https://www.dropbox.com/sh/jymhjz585wxyqcb/AADTQHbYuDXfn27WoQorBNxwa?dl=0>

which is provided in the attached letter from Mr Jacques du Toit dated 10 March 2021 and which also serves as his notice to all affected persons in terms of sections 145 and 146 of the Act in the business rescue proceedings of Orthotouch and Zephan.



JF KLOPPER

BUSINESS RESCUE PRACTITIONER

Date: 31 March 2021