



Du Toit Business  
**RESCUE PRACTICE**

70 CARMINE DRIVE  
BURGUNDY ESTATE  
TEL: 021 948 2224  
info@dtbbusinessrescue.co.za  
www.dtbbusinessrescue.co.za

**Our Reference:** J. Du Toit/2018/Ortho\_Zephan  
**Direct Line:** 082 882 4941  
**E-mail:** Jacques@dtbbusinessrescue.co.za

**Your Reference:** All

**Date:** 31 August 2020

To Investors / Creditors

**ORTHOTOUCH AND ZEPHAN PROPERTIES (PTY) LTD (IN BUSINESS RESCUE)  
JULY & AUGUST /2020 REPORT**

Dear Sirs

**BUSINESS RESCUE PROCEEDINGS**

1. Commencement of Business Rescue: 7 November 2019
2. Appointment of Business Rescue Practitioner (BRP) – J du Toit: 14 November 2019
3. First Meeting of Employees: 27 November 2019
4. First Meeting of Creditors: 28 November 2019
5. Business Rescue Plan filing date: 31 March 2020
6. 2<sup>ND</sup> Creditors meeting: In the process of finalising a way forward in Lockdown under Level 2

**Business Progress**

1. The Business Rescue Practitioner has undertaken further investigations into the affairs of Orthotouch (Pty) Ltd (“Orthotouch”) and Zephan Properties (Pty) Ltd (“Zephan”) giving specific regard to sales prices *from* Zephan and third parties *to* Bosman Visser and thereafter to the HS Companies. This in turn was compared to values recorded in the various prospectus’s . Certain information was omitted from the published Business Rescue Plan due to time constraints.

The management of Orthotouch and Zephan, in conjunction with Bosman Visser, presented me, as Business Rescue Practitioner, with the details regarding the properties of HS15 to HS22. This information was also verified by the independent external accountant of Orthotouch and Zephan.

See summary of properties of HS15 to HS22 as referred to below.

Summary Properties HS15-HS22

<b>Detail</b>	<b>Cost Prices BV</b>	<b>Selling price HS</b>	<b>Prospectus value</b>
HS15	214 500 000	260 555 292	253 000 000
HS16	256 549 998	309 343 995	309 000 000
HS17	164 650 000	233 220 000	232 220 000
HS18	245 599 000	345 800 000	345 800 000
HS19	569 560 000	602 000 000	602 000 000

HS20	607 000 000	678 900 000	678 900 000
HS21	2 000 000	1 332 000 000	1 332 000 000
HS22	000	888 000 000	888 000 000
	3 946 748 998	4 649 819 287	4 640 920 000

I was more recently placed in possession of the documentation which, as stated, was verified the companies independent external accountant.

The revised information shows that the purchase prices were increased, on average, by 17.29% and not 30-40 % as presented in the Business Rescue Plan.

The Business Rescue Plan will be revised accordingly so as to reflect the correct position.

2. Upon further investigations regard the repayment of investment funds to investors, it emerged that the Business Rescue Plan did not include payments made to investors prior to the Business Rescue of the HS Companies in 2011.

This further investigation revealed that t investors received an additional amount of R1 392 212 332.00 prior to the HS Companies Business Rescue and the amount of R 1 214 522 709.00 in Business Rescue and during the Scheme of Arrangement ("SoA"), resulting in the investors having received on average approximately 58% return on Capital to date.

Total amount paid to date to investors / creditors as referred to above is R 2 606 735 041.00 together with an additional amount of R 832 858 168.00 being investor settlement payments prior to the Orthotouch and Zephan Business Rescue commencement dates.

In totality and amount of R3 439 593 209.00 was paid to the investors prior to the commencement of the Orthotouch and Zephan Business Rescue's.

The Business Rescue Plan in this regard will be revised to comprehensively reflect the correct position. It should be noted that this supplementary information was presented to me by the Orthotouch and Zephan management and is available for inspection at the Orthotouch and Zephan offices. The information was also verified by the Companies independent external accountant.

3. I am currently in the process of further investigation of the cash flow and flow of transactions relating to all properties where Zephan and Orthotouch were involved in relation to the HS Companies, the Business Rescue of the HS Companies properties and the SoA properties; including the Delta Property transactions. The foregoing was not available and investigated prior to publication of the Business Rescue Plan.
4. Some of this information was purposely omitted from the Business Rescue Plan as I, as Business Rescue Practitioner, was of the opinion that such information was required.
5. For the purposes of giving the investors a full picture and based on certain queries from investors, I have decided to include this information for full disclosure to the investors and affected parties. The information was obtained from the Orthotouch and Zephan management and is currently being verified by the independent external accountant.

The additional information shall also be disclosed in the revised Business Rescue Plan as soon as the verification process is completed which is expected during September 2020.

6. I have agreed on a fee with the independent external accountant to commence with the financial statements of Orthotouch from 2015 to date and Zephan from 2009 to date. I am currently in the process of obtaining funds for the process to commence.
7. I have engaged with the Company who will be able to assist me regarding a voting mechanism in lockdown and thereafter to facilitate voting through a tried and tested internet-based system in terms of the Companies Act, utilised for listed Companies and their voting requirements. All affected parties shall be informed in advance of the process and procedures to be followed together with a publication of the revised Business Rescue Plan as stated above. In the event of the lockdown levels making an alternative option available, again, all affected parties shall likewise be properly informed in this regard.
8. The third party proposer, in terms of the Business Rescue Plan who is willing to introduce R 200 million to purchase the claims of all the affected parties, identity is still unknown for purposes as disclosed in the Business Rescue Plan; to prevent the proposer and the introduction of the R 200 million to be derailed as was the case during the SoA funding period by certain detractors.

I have, however, obtained a notarial certificate from an independent attorney and notary certifying the independence of the third-party proposer which is required for purposes of complying to the Companies Act.

9. The following properties as recorded in the BRP are currently being disposed and the subject of sale agreements:
  - a. Home Affairs and student accommodation in PE
  - b. Ashley Panel Shop in Harvey Road in Bloemfontein
  - c. Penny Lane in Johannesburg

## **Litigation**

1. There are certain attorneys who endeavored upon litigation during Business Rescue with the Companies disregarding and contravening the applicability of Chapter 6 of the Companies Act, regulating the Business Rescue Process and the moratorium against legal action as regulated by Section 133 of the Companies Act.
2. The attorney acting on behalf of the Companies, is in the process of vigorously taking the necessary legal steps to intervene accordingly.

## **Complaint against myself, as the Business Rescue Practitioner, regarding the calling up of invested funds**

1. Prior to the Business Rescue of Orthotouch and Zephan, an amount of R1.2 million was invested by Orthotouch and Zephan with an attorney for the benefit of certain investors who have engaged in litigation against Zephan, Orthotouch and others.
2. Upon commencement of Business Rescue, no further litigation, judgements or legal action is allowed in terms of section 133 of the Companies Act and furthermore, no affected person may be given an advantage other than equality to all affected parties in relation to the value of their claims.
3. As a result of Business Rescue, the fact that the investments was in the name of Orthotouch and Zephan, no judgements or litigation to be obtained in Business Rescue and the fact that no unequal benefit as stated above may be attached to specific creditors, I, as Business Rescue Practitioner, called up the investment and such investment was paid into the account of Orthotouch.

4. However, without my knowledge certain affected parties / investors via their attorneys, irregularly obtained judgement against Zephan without the knowledge and the consent of myself, as Business Rescue Practitioner, and are now claiming the unfair distribution to a specific group of creditors which, according to me, is not in terms of the Companies Act and they are not entitled thereto. It is trite to record that this cannot be tolerated and is to the detriment of other investors.
5. The specific group of investors and attorneys laid a criminal charge against me in an attempt to gain advantage over the remaining investors as explained above. , , and further filed a formal complaint at the governing body of Business Rescue Practitioners and is requiring me to distribute funds to their benefit only.
6. As Business Rescue Practitioner, I am currently refusing to pay such funds and have instructed my attorneys to defend the matter and protect investors.
7. The affected parties / investors will be advised of the progress in this regard.
8. I wish to confirm, at this moment in time, that I have, in any event, made arrangements for the R1.2 million rand to be placed in Trust at my Attorneys whilst the dispute is on-going.

### COVID-19

1. During Level 2, meetings and gatherings remain prohibited, in the light of 13 000 investors being involved and affected, until further notice for purposes of convening the 2<sup>nd</sup> creditors voting meeting in terms of the Companies Act.
2. I will advise of the way forward in due course.

Yours faithfully



Du Toit Business Rescue Practice  
Per: Jacques Du Toit (Senior Business Rescue Practitioner)