



ANDALUSITE RESOURCES

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NOTICE TO AFFECTED PERSONS

3 March 2020

NOTICE IN TERMS OF SECTION 144(3)(a), SECTION 145(1)(a) AND SECTION 146(a) OF THE COMPANIES ACT 71 OF 2008

- 1 Notice is given in terms of section 144(3)(a), section 145(1)(a) and section 146(a) of the Companies Act 71 of 2008 ("**Companies Act**") about the legal proceedings instituted by Investec Bank Limited ("**Investec**") against Andalusite Resources Proprietary Limited (in business rescue) ("**Company**") and myself, the business rescue practitioner, Gavin Gainsford ("**BRP**") under case number case number 43960/19 ("**Investec Legal Proceedings**").
- 2 Further to the notice circulated to affected persons of the Company on 29 January 2020, I provide you with an update on the status of the Investec Legal Proceedings as well as certain incidental matters pertaining to the business rescue proceedings with respect to the Company.
- 3 Since 29 January 2020 -
 - 3.1 I have received various correspondence from Mr Brian Kahn, of Brian Kahn Inc (an affected person of the Company) and have thoroughly considered the import of such correspondence. It is my understanding that some of the correspondence emanating from Mr Brian Kahn of Brian Kahn Inc, which sets out his views, has been circulated more widely and made available to affected persons; and
 - 3.2 I have also received indulgences from Investec for myself and the Company to deliver a notice to defend the Investec Legal Proceedings. At present no notice of intention to defend has been delivered and Investec has not taken default judgment against the Company.
- 4 Having considered the correspondence referred to in paragraph 3.1 and having sought both legal and valuation advice, it falls to me to embark on the course of action which I believe will most likely yield the best result for all stakeholders/affected persons.

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- 5 At present, as business rescue practitioner of the Company, I can only reasonably foresee two outcomes -
- 5.1 a sale of the business of the Company in business rescue on the basis and subject to the terms and conditions of the current offers that have been tabled; and
- 5.2 a forced sale (fire sale) of the assets of the Company on a liquidation.
- 6 Based on, among other things, these two reasonably foreseeable outcomes, I obtained an independent valuation on the likely scenarios for creditors.
- 7 The tables in 8 and 9 below illustrate the likely scenarios for creditors with various assumptions, as set out in the tables, with respect to the validity of Investec's claim under the Investec Legal Proceedings as well as the validity of Investec's security. Please note that all amounts in this notice and in the tables are anticipated amounts based on currently available information and may vary upwards or downwards depending on the final reconciliation by the business rescue practitioner of creditors' claims and may also vary if any additional claims, of which the business rescue practitioner is not currently aware, are submitted. However, the principles set out in this notice will in all likelihood remain applicable.
- 8 Scenario 1: Sale in Business Rescue based on the current offers tabled

| Investec's Claim | Investec likely dividend in the Rand | Other Secured Creditors (other than Investec) likely dividend in the Rand | Concurrent creditors likely dividend in the Rand |
|---|---|--|---|
| Investec treated as a secured creditor for the full amount of its claim | 57c | 100c | 28c |

Note: No consideration has been given in a business rescue outcome to the scenario where Investec's claim is not successful, only partially successful, or where such claim is not secured or only partially secured. Such a consideration would be moot in view of the fact that no creditor has made available funds to contest the Investec Legal Proceedings, either on the basis suggested in my notice referred to in paragraph 2 above or on any alternative basis. It follows that the only rational assumption must be that Investec will likely succeed in the Investec Legal Proceedings on an uncontested basis. Further note that subordinated creditors, such as shareholders, would not receive any dividend in business rescue.

9 Scenario 2: Liquidation with a forced sale (fire sale on auction) of assets

| Investec's Claim | Investec likely dividend in the Rand | Other Secured Creditors (other than Investec) likely dividend in the Rand | Concurrent creditors likely dividend in the Rand |
|--|---|--|---|
| Investec treated as a secured creditor for the full amount of its claim | 19c | 100c | 0c |
| Investec treated as a concurrent creditor with no security for its claim | 13c | 100c | 13c |
| Investec having no claim whatsoever against the Company | 0c | 100c | 28c |

Note: There are clearly a number of scenarios absent from the above table (for instance, if Investec's claim is partially successful and/or partially secured). Be that as it may, the above table does succinctly (and in my view as accurately as possible) illustrate the current potential positions. Further note that subordinated creditors, such as shareholders, would not receive any dividend in liquidation in any of these scenarios.

- 10 As is evident from the tables above, in all scenarios, concurrent creditors would be better off in a business rescue (with the current offers available to the Company) than they would be in a liquidation (without the current offers available to a liquidator). As noted above, the scenario in which there is a business rescue and Investec's claim is zero has been ignored. Without funding it is unrealistic to believe Investec's claim will not succeed in the Investec Legal Proceedings. In passing, I mention a liquidation scenario under which Investec's claim is unsuccessful and concurrent creditors therefore receive a dividend of 100c in the Rand. Based on advice received and on my experience as a business rescue practitioner, I regard this scenario as extremely unlikely for, among other things, the following reasons –
- 10.1 this scenario assumes that the same sale price would be obtained in a liquidation as would be obtained in a business rescue. In my experience, this assumption is false. In a liquidation where sellers know there is a forced sale, the price is inevitably less and this is even more likely to be the case where a liquidation would imperil that which is, from a buyer's perspective, the crown jewel: that is a liquidation puts at risk the Company's mining licence which is essential for the continued operation of the mining business;



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- 10.2 a liquidation would move the claim of the South African Revenue Services into a preferent category ahead of concurrent creditors;
- 10.3 there is an assumption that a liquidation application would be successful. I have been advised that Investec would seek to resist any liquidation application and it is not clear who would fund any resistance in such proceedings. As such, a liquidation application is likely to be unsuccessful and could potentially even saddle the Company with further costs; and/or
- 10.4 this scenario assumes that Investec would not, in the liquidation, succeed in proving its claim at all or to any significant extent and that Investec's security would be set aside. There is no certainty in this regard and, based on advice received, I regard this as unlikely.
- 11 While I readily acknowledge that what is set out above is not certain, my obligation is to consider the Company's prospects of being rescued within the meaning of section 128(1)(b)(iii) of the Companies Act and to achieve the best possible outcome for all stakeholders. An obligation set out in section 7(k) of the Companies Act. The decision appears to be fairly binary – (i) proceed to liquidation in an attempt to secure a dividend of 100c in a Rand for concurrent creditors despite, among other things, the matters referred to in paragraphs 10.1 to 10.4, all of which are uncertain, or (ii) proceed with the far more certain scenario of a business rescue which would yield an anticipated dividend of **28 cents** in the Rand for concurrent creditors.
- 12 Consequently, and after spending a considerable amount of time analysing the various scenarios and implications of such scenarios, I am inclined to proceed with the business rescue which I believe holds better prospects for all stakeholders (including concurrent creditors) than to pursue a liquidation, chasing a most unlikely and uncertain outcome. I am also mindful of the fact that my obligations are not only to consider the interests of creditors but also the interests of all other stakeholders (including employees). In this regard, I believe other stakeholders are much better served through a business rescue with a sale than a liquidation.
- 13 Bearing in mind the above, my legal team have had extensive discussions with the legal representatives of Investec in order to determine whether there is a basis upon which the Investec Legal Proceedings can be settled and, in doing so, the position of concurrent creditors further enhanced in a business rescue process.
- 14 Over and above the anticipated dividend of **28 cents** in the Rand which appears to be currently available to concurrent creditors in a business rescue, Investec have agreed (subject to the signature of a formal settlement agreement with the Company and myself) to release a certain portion of their security which will make an additional dividend of approximately **5 cents** in the Rand available to concurrent creditors (excluding Investec). I intend to agree to such settlement with the result that the anticipated dividend that the business rescue would yield for concurrent creditors (excluding Investec) would be increased from **28 cents** in the Rand to **33 cents** in the Rand.

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- 15 Once the settlement agreement has been concluded and my engagements with the bidders finalised, and the ultimate finalist has been accepted, I intend to work towards publishing the business rescue plan.
- 16 If anyone has any requests or queries, they can be directed to me gavin.gainsford@gcwadmin.co.za or Sean Christensen on sean.christensen@gcwadmin.co.za

Gavin Gainsford

Andalusite Resources Proprietary Limited (In Business Rescue)