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Comair Limited



Attention:

Affected Persons of Comair Limited (In Business Rescue)

Delivered by Email to All Affected Persons

Displayed –

- 1 Registered Office and Principal Place Business of the Company and anywhere where Employees are employed
- 2 Published on the Website Maintained by the Company and Accessible to Affected Persons

7 May 2020

NOTICE TO THE AFFECTED PERSONS OF COMAIR LIMITED (IN BUSINESS RESCUE) ("the Company")

A: NOTICE OF THE COMMENCEMENT OF BUSINESS RESCUE PROCEEDINGS AND OF THE APPOINTMENT OF THE JOINT BUSINESS RESCUE PRACTITIONERS IN TERMS OF SECTIONS 129(3)(a) AND 129(4)(b) OF THE COMPANIES ACT 71 OF 2008

- 3 You are hereby notified that the board of the Company adopted a resolution on Monday, 4 May 2020, in accordance with Section 129(1) of the Companies Act 71 of 2008 (as amended) ("**the Companies Act**") in terms of which the Company would voluntarily commence business rescue proceedings.
- 4 A form CoR 123.1, being a Notice of Beginning of Business Rescue, as contemplated in section 129(2)(b) of the Companies Act, as read with Regulation 123 of the Companies Regulations of 2011, together with accompanying documents, was filed with the Companies and Intellectual Property Commission ("**the Commission**") on Tuesday, 5 May 2020.
- 5 The effective date of the Company's business rescue proceedings is accordingly 5 May 2020.
- 6 In accordance with the requirements of Section 129(3)(a) of the Companies Act, please find herewith:
 - 6.1 the notice to commence business rescue proceedings (form CoR 123.1), filed with the Commission;



- 6.2 the resolution passed by the board of directors of the Company; and
- 6.3 a sworn statement of the facts relevant to the grounds on which the board resolution was founded.
- 7 When the board of the Company adopted the resolution in accordance with Section 129(1) of the Companies Act for the Company to voluntarily commence business rescue proceedings, it also resolved to appoint Messrs. Shaun Collyer and Richard Ferguson as the Company's joint business rescue practitioners; both of whom have accepted this appointment.
- 8 Accordingly, a form CoR 123.2, being a Notice of Appointment of Business Rescue Practitioner, as contemplated in section 129(4)(a) of the Companies Act, as read with Regulation 123 of the Companies Regulations of 2011, was also filed with the Commission on 5 May 2020.
- 9 In accordance with the requirements of Section 129(4)(b) of the Companies Act, the form CoR 123.2 and Messrs Collyer and Ferguson's notices of acceptance of the nomination to act as joint business rescue practitioner are also attached herewith.
- 10 Please note that the aforesaid documents, as well as all other notices relevant to the business rescue proceedings of the Company, are also available at <https://www.comair.co.za/business-rescue>.

B: EMPLOYEES' AND TRADE UNION'S RIGHTS IN THIS BUSINESS RESCUE

- 11 In terms of section 148(1) of the Companies Act, the business rescue practitioners must convene the first meeting of employees' representatives within 10 business days of his appointment. Further details about this meeting will be provided in due course.
- 12 Further, in terms of section 136(1)(a) of the Companies Act, employees remain employed by the Company on the same terms and conditions on which they were employed before the commencement of business rescue proceedings, unless new terms and/or conditions are negotiated or unless changes occur in the ordinary course of attrition. Any retrenchment of the Company's employees will remain subject to section 189 and 189A of the Labour Relations Act 66 of 1995, and other applicable employment related legislation.
- 13 In addition, to the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment becomes due and payable by the Company to its employees during business rescue proceedings, and is not paid to the employees, will, in terms of section 135(1) and (3) of the Companies Act, constitute PCF and will be paid once the fees of the joint business rescue practitioner and the costs arising out of the business rescue proceedings have been paid, but before the claims of all other unsecured creditors including other unsecured PCF providers.
- 14 Monies that became due and payable to employees prior to the commencement of the Company's business rescue will rank as preferent claims (i.e. ranking ahead of concurrent claims only) in terms of section 144(2) of the Companies Act, and will be treated as such in the business rescue plan.
- 15 Lastly, during a Company's business rescue process, every registered trade union representing any employees of the Company, and any employee who is not so represented is, *inter alia*, also entitled to notice of each court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings; participate in any court

proceedings arising during the business rescue proceedings; form a committee of employees' representatives; be consulted by the practitioner during the development of the business rescue plan, and afforded sufficient opportunity to review any such plan and prepare a submission contemplated in section 152 (1) (c); be present and make a submission to the meeting of the holders of voting interests before a vote is taken on any proposed business rescue plan; vote with creditors on a motion to approve a proposed business plan, to the extent that the employee is a creditor; and if the proposed business rescue plan is rejected, to propose the development of an alternative plan, or present an offer to acquire the interests of one or more affected persons.

- 16 All queries in this regard by employees can be directed to businessrescuestaff@comair.co.za.

C: SHAREHOLDERS' RIGHTS IN THIS BUSINESS RESCUE

- 17 During a company's business rescue proceedings, each holder of any issued security of the company is entitled, *inter alia*, to notice of each court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings; participate in any court proceedings arising during the business rescue proceedings; formally participate in a company's business rescue proceedings to the extent provided for in this Chapter; vote to approve or reject a proposed business rescue plan in the manner contemplated in section 152, if the plan would alter the rights associated with the class of securities held by that person; and if the business rescue plan is rejected, to propose the development of an alternative plan or present an offer to acquire the interests of any or all of the creditors or other holders of the Company's securities.
- 18 The business rescue practitioners will continue to communicate with shareholders through the Johannesburg Stock Exchange News Service ("SENS"), and shareholders are therefore encouraged to keep abreast of further SENS announcements.

D: CREDITORS' RIGHTS IN THIS BUSINESS RESCUE

- 19 In terms of section 147(1) and 148(1) of the Companies Act, the joint business rescue practitioner must convene the first meeting of creditors within 10 business days of their appointment. Further details about these meetings will be provided in due course.
- 20 From 5 May 2020, being the date on which the business rescue proceedings for the Company commenced, any legal proceedings or enforcement actions against the Company or in relation to any property belonging to the Companies or lawfully in its possession are stayed in terms of section 133 of the Companies Act, except, *inter alia*, with the written consent of the business rescue practitioner or with the leave of the court.
- 21 This moratorium affords the joint business rescue practitioners an opportunity to assess the state of the Company's business and all its activities, with the view of understanding whether or not there is a reasonable prospect of rescuing the Company within the meaning of section 128(1)(b)(iii) of the Companies Act and, if they are of the view that such a prospect exists, to formulate and implement a duly approved business rescue plan for the benefit of all affected persons.
- 22 Therefore, during these business rescue proceedings no property belonging to the Company or lawfully in its possession may be removed and, insofar as the Company may have any obligation to facilitate such a removal, we are instructed by the joint business rescue practitioners to advise you, as we hereby do, that any such obligation is suspended in terms of section 136(2)(a) of the Companies Act.

- 23 Accordingly, on the basis that the Company is now in business rescue, if a you believe that you have a claim against the Company, the appropriate procedure would be for you to submit your claim, via the appropriate email address as indicated on the website (<https://www.comair.co.za/business-rescue>), to the joint business rescue practitioners or at the first meeting of creditors in terms of section 147(1)(a)(ii) of the Companies Act. Insofar as you may wish for property belonging to you or that is not in the lawful possession of the Company to be removed, please include it as part of the claim documents, together with proof of ownership thereof.
- 24 In this regard, insofar as your claims are concerned, it is important to note that the judgement by the High Court of the Gauteng Division, Pretoria in the case of *The South African Property Owners Association v Minister of Trade and Industry and Others* 2018 (2) SA 523 (GP) (29 November 2016) (SAPOA judgment) has settled the ranking of creditors who provide goods or services post the commencement of business rescue proceedings under an agreement that was concluded prior to the commencement of these proceedings. Van der Westhuizen AJ held in the SAPOA judgment that:
- "In my opinion, and applying the principles of interpretation, the financing intended in subsection (2) of section 135 of the Act relates **to the obtaining of financing in order to assist in managing the company out of its financial distress**, hence the provision that any asset of the company may be utilised to secure that financing to the extent that the asset is not otherwise encumbered. **It does not lean to an interpretation that encompasses existing obligations, other than to company employees, of the company that are utilised to assist in managing the company during the business rescue proceedings.** Further in this regard, sections 133 and 136(2) of the Act militate against such interpretation."* (own emphasis added)
- 25 Accordingly, any costs or liability that arise out of an agreement that was concluded prior to the Company's business rescue proceedings, and which were incurred during business rescue proceedings, will not constitute post-commencement financing ("PCF") or costs arising out of the business rescue proceedings. Such costs and/or liabilities, unless already secured, will merely form the subject of an unsecured (concurrent) claim against the company in business rescue and will not enjoy any preference above other creditors.
- 26 Lastly, in terms of section 145 of the Companies Act, each creditor is, *inter alia*, also entitled to notice of each court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings; participate in any court proceedings arising during the business rescue proceedings; formally participate in a company's business rescue proceedings to the extent provided for in this Chapter; and informally participate in those proceedings by making proposals for a business rescue plan to the practitioner. In addition to these rights each creditor also has the right to vote to amend, approve or reject a proposed business rescue plan, in the manner contemplated in section 152; and if the proposed business rescue plan is rejected, a further right to propose the development of an alternative plan or present an offer to acquire the interests of any or all of the other creditors in the manner contemplated in section 153. The creditors of the Company are further entitled to form a creditors' committee, and through that committee are entitled to be consulted by the practitioner during the development of the business rescue plan.

E: TICKET HOLDERS

- 27 Persons who have purchased tickets for flights on the airlines operated by the Company are creditors of the Company and enjoy the same rights as set out in section D above.
- 28 However, the Company's joint business rescue practitioners will in due course also be addressing separate correspondence to such persons with proposals on the way forward.

29 In the interim all queries in this regard can be directed unflownticketholders@comair.co.za and the business rescue practitioner will address same in due course.

We trust that with your assistance and co-operation the Company can be rescued, within the meaning of section 128(1)(h) of the Companies Act, in a manner that will balance the rights and interests of all affected persons.

Please be advised that this notice does not constitute legal advice. You should consult your professional adviser for legal or other advice.

Yours faithfully



Shaun Collyer
Business Rescue Practitioner



Richard Ferguson
Business Rescue Practitioner