

16 April 2020

To All Investors

**RE: ORTHOTOUCH (PTY) LTD (IN BUSINESS RESCUE) (“Orthotouch”); and ZEPHAN PROPERTIES (PTY) LTD (“Zephan”)
 (“the Companies”)**

The published Business Rescue Plan in relation to Orthotouch refers and, given the frustration of investors over a number of years, I will try to explain, in short, on a factual and calculated basis, the outcome of my investigation into the affairs of the Companies and on the events that transpired and which led to present the situation that investors find themselves in.

Please note that I have no affiliation with the Georgiou's, Hans Klopper or any previous Directors of Bosman Visser (“BV”), the Companies or the Highveld Syndication Companies (“HS Companies”).

The following findings are based on my own research.

I still see Nic Georgiou, as Director of Zephan and Orthotouch, as a very important link in the Business Rescue processes of the Companies, especially insofar as his ability to facilitate funds from a third-party proposer in order to offer shares and / or payments to investors is concerned. Without the involvement of the third-party proposer, I would not have been able to propose any other solution other than liquidation.

If the Companies were to be placed into liquidation, the investors will, according to an independent expert, only receive approximately 1.7 cents in the rand and will also run the risk of being legally pursued by the liquidators of the Companies and having to repay all the funds received by them as a consequence of the sanctioned scheme of arrangement in relation to Orthotouch between, at least late 2014 to date.

The investors should further note as a consequence of the adoption of the “Klopper BR Plan” in relation to the HS Companies (as defined in the Business Rescue Plan) and the involvement of Orthotouch and Zephan in the process they received payments in the amount of **R 2,047 billion**.

The value of the remaining properties is negligible and such that investors will not receive any significant return on their claims.

Failing the adoption of the Business Rescue Plan by investors the other option is to endeavour to embark upon litigation against parties who might be seen as wrongdoers and who are potentially liable for damages. However, litigation could then only be embarked upon during the liquidation proceedings of the Companies and after sufficient evidence had been gathered in an expensive formal insolvency enquiry and then proved in subsequent court proceedings over a period of many years. A successful financial recovery from, the wrongdoers will depend on their financial ability and the time that has elapsed in the process however raises a real concern about

prescription, in addition investors should be mindful of astronomical costs of litigation and weigh this up against the possibility of success or failure with a risk of adverse cost orders against the claimants and / or applicants.

I need to remind investors of an important provision contained in paragraph 5.1.2.3 in the Klopper BR Plan that was adopted on 14 December 2011:

5.1.2.3 *“The consequence of investors adopting a confrontational approach with regard to a claim that HS 19 – HS 22 may have against B&V and the consequent legal action that will ensue should action be instituted against B&V and in turn by B&V against Zephan may, in the opinion of the BRP, have the effect of an ultimate liquidation of HS 19 – HS 22 as the only realistic forum for conducting enquiries would be in terms of the Laws of Insolvency read with the provisions of the Companies Act , 61 of 1973.”*

The legal effect of having adopted the Klopper BR Plan in December 2011 is that investors have elected way back then not to embark upon litigation against B&V. They have effectively waived those rights more than 8 years ago. It was therefore investors’ decision to waive such claims as long ago as December 2011 and not a decision by the HS Companies’ Business Rescue Practitioner as has often been alleged.

If the aforementioned statement is contested, it will have its own set of risks, resulting in long term litigation or possible liquidation.

Orthotouch and Zephan will not have sufficient funds to conduct such an insolvency enquiry and to embark upon litigation. All remaining properties will have to be sold for purposes of paying legal fees and whether the properties will yield sufficient to cover all legal fees under present market conditions is uncertain.

In most cases, Orthotouch and Zephan will not have *locus standi* (right) to litigate.

The current litigation, that has been ongoing for 10 years, has not yet yielded any return for investors and I see no realistic prospect or possibility of success. Investors have, however, made astronomical contributions to legal fees with no success in recovering any of the funds. The only parties who benefitted were the Attorneys and Advocates who drove the legal process to date. Unverified information based on hearsay speculation suggest that the attorneys, at the expense of the investors, have to date earned approximately R 46 000 000.00 from legal fees.

My investigations show that a litigation process under liquidation proceedings of Orthotouch and Zephan cannot provide investors with a better return than what is proposed by in terms of the Business Rescue Plan (“BR Plan”).

The BR Plan with specific reference to Annexure 8.1, indicates your return to date and the value of shares or cash that you will receive from a 3rd party proposer, should the BR Plan be formally approved.

The frequently asked question is: WHERE IS THE MONEY!

I have investigated the issue of the flow of funds and the clarification below gives a better insight into this.

Please note that there are 2 groups of properties and funds involved referred to in Section A and B below, to eliminate confusion.

<u>SECTION A: Period from sales to BV ,HS Companies to HS Companies being placed in Business Rescue namely before Orthotouch became involved</u>			
			Comments
Zephan and others Property Value sold to Bosman Visser at market value	R 2,598,013,768.00		<ol style="list-style-type: none"> Value as per point 6.71.3 in BR Plan and Annexure 7.1, column 5 – “Syndicate Properties” stating the Property Value of the Syndication Properties. Zephan and others sold assets to Bosman Visser ("BV")
Bosman Visser sold Properties to HS Companies at an increased price	R ?		<ol style="list-style-type: none"> Price sold by BV to the HS Companies are unknown to me, however some Prices are shown in column 9 - "B&V/Other" of Annexure 5 which prices is not substantiated by the market value but is also based on future possible prices/values in accordance with the HS projected values. A good example of this is item nr. 1 & 10-13 in Annexure 5. Note: Item nr. 2-5 shows the incorrect amounts due to an incorrect allocation of purchase prices by the deeds office due to a group sale that took place.
HS Companies Marketed Properties at Increased Prospectus Value to Investors		R 4,754,900,000.00	<ol style="list-style-type: none"> Value as per point 6.71.3 in BR Plan stating the Orthotouch Liability as at HS Companies Business Rescue. The HS company marketed the properties in terms of the prospectus at a projected value and collected money to the value of R 4,754 billion with the hope that property value will overtake the projected and increased price. Investors were under the impression that the value of the properties that they were investing in, was R 4,754 billion but unfortunately the actual value remained at R 2,598 billion. In my opinion, the R 4,754 billion raised were utilised by BV and HS companies as follows: <ol style="list-style-type: none"> Payment of purchase price to sellers of property of R 1,718 billion of the R 2.598 billion with R 880 million not paid to the Seller, R 3,036 billion must be explained by BV and HS Companies together with the monthly income of the buildings during the 2 year period in which they were in charge, Possible expenses including payments to Brokers, Directors, operating costs etc. A certain portion would have been paid to the Investors.

			4.5. As Business Rescue Practitioner (“BRP”) of Orthotouch and Zephan, I do not have access to the information and the whereabouts of the balance of the R 3,036 billion and rental income.
Properties were actually valued ito a valuation at		R -2,598,013,768.00	Value as per point 6.71.3 in BR Plan stating the Property Value
Shortfall		R 2,156,886,232.00	<ol style="list-style-type: none"> 1. Shortfall in terms of actual property value vs what was presented to and collected from Investors 2. Orthotouch and Zephan therefore received property to the value of R 2.598 billion against investors debt of R 4.754 billion, i.e. a deficit at property value of R 2.156 billion.
Additional shortfall: Short payment to Zephan on Purchase Price by Bosman Visser		R 883,000,000.00	Purchase price still payable by Bosman Visser to Zephan (Currently placed in dispute by BV But Zephan records show shortfall)
TOTAL SHORTFALL		R 3,039,886,232.00	Total Shortfall in terms of actual property value in repayment of Creditors/Investors as at Business Rescue of HS Companies which include the R 883 000 000 still owing to Zephan

SECTION B: Period From Business Rescue of the HS Companies and Orthotouch becoming involved

	DR	CR	Comment
Property Value as per 7.1	R 4,683,408,282.00		1. Value as per Annexure 7.1 in BR Plan, column 9 - "Total Opening" Including properties to be purchased in terms of The Scheme of Arrangement and property contribution by Zephan column 7 and 8.
Property from third parties		R 1,194,089,922.00	1. Orthotouch and Zephan's plan was to add more properties to the portfolio to pay off investors' investment over time 2. Value as per Annexure 7.1 in BR Plan, column 8 - "Properties Purchased" 3. Third Party sellers worth R 1,194 billion which purchase transactions were subject to financing. 4. As outlined in the plan, Orthotouch was unable to obtain financing and some of the properties were transferred to Accelerate
Loss on sale of property		R 127,579,599.00	Value as per point 6.71.3 in BR Plan stating the loss on sale of property R 127 579 000 i / s loss of property sales where properties were in poor condition or without tenants
Investors settled		R 832,858,168.00	Value as per point 6.71.3 in BR Plan stating the capital repayment to Investors in the amount of R 832 858 168.00. Together with the interest amount – R 1 214 522 709.00, a total of R 2.047 billion was paid to investors
Interest paid to investors		R 1,214,522,709.00	Value as per point 6.71.3 in BR Plan stating the interest paid since March 2011 - September 2018 seen as Capital repayment in the Orthotouch/Zephan Business Rescue Plans. Together with the capital amount - R 832 858 168.00, a total of R 2.047 billion was paid to investors.
Running expenses		R 420,000,000.00	Legal and BRP costs, office rentals, Salaries, Consulting Fees, Computer Expenses, Metrofile, Insurance, Printing and Stationery, Travelling Expenses and Telephone Costs.
Trading Loss Properties		R 567,357,884.00	The shortfall in Rental received vs direct expenses on these properties in terms of Rates, Municipal Charges Repairs, Maintenance, Insurance on properties etc – everything to do with the properties
Properties remaining		R 327,000,000.00	Property Value and Delta claims (R 165 000 000) as per point 6.71.3 in BR Plan and Annexure 7.2 relating thereto. The Delta claim may not be recoverable due to costs and Delta's financial position
BALANCE	R 4,683,408,282.00	R 4,683,408,282.00	Cashflow Total
Zephan short payment on Purchase Price remains unpaid and on Loan account		R 500,000,000.00	Zephan contributed R 500 million in unpaid purchase price, which is currently on the loan account

SECTION C: ORTHOTOUCH CONTRIBUTION

Zephan Contributions			Comments
Prior to BR of HS	R 883,000,000.00		1. Value as per point 6.70.6 in BR Plan whereby the purchase price was not paid to Zephan, the original owner, by BV. 2. Purchase price deficit during original purchase by BV R 883,000,000
After BR of HS	R 500,000,000.00		1. Value as per Annexure 7.1 in BR Plan, column 7 - "Contribution by Zephan" 2. Contribution during SOA period R 500,000,000
TOTAL	R 1,383,000,000.00		Total contribution by Zephan to the benefit of the investors amounts to R 1.383 billion

I trust that the above breakdown will provide investors with more clarity in making an informed decision to either, support the BR Plan and to vote in favour thereof or, if the majority of the investors / creditors vote against the BR Plan, this will result in the immediate liquidation of the Companies. In the event of you, as an investor / creditor, voting in favour of the BR Plan, you will have the option of:

1. Obtaining shares in a listed company (to the value as set out in Annexure 8.1) where after you will be in charge of your own asset in deciding whether and when you want to sell your share. On receipt of the share, your relationship with the HS Companies, Orthotouch and Zephan comes to an end.
2. Opt for a cash payment (to the value as set out in Annexure 8.1.) where similarly, on receipt of the cash offered, your relationship with the HS Companies, Orthotouch and Zephan will come to an end.

It is noted that irrespective of any previous agreement pertaining to your investment, you will keep the money received to date (as per Annexure 8.3. in BR Plan which shows the percentage return on the initial investment) and the amount offered, either cash or shares (as per Annexure 8.1. in the BR Plan showing your percentage return on the proposal and total percentage return on the initial investment). This will be your full and final and only payment in lieu of your investment.

I will furnish you in due course with the proxy documentation to vote on the BR Plan and the notice of the proposed creditors voting meeting providing all information pertaining to the meeting in due course. Please note that the meeting date will depend on the information surrounding the National State of Disaster surrounding COVID-19 and the upliftment of National Lockdown.

My further advices will follow.

Thank you

Regards,



Jacques du Toit
Senior Business Rescue Practitioner