COMMENTS: DR GTD HOLTZHAUZEN: 27/04/2020

**PROPOSED BUSINESS RESCUE PLANS: ORTHOTOUCH AND ZEPHAN**

I have drafted a summation of my views on the plan and it should not be seen as being comprehensive and final. I reserve my rights to elaborate further in an appropriate forum.

The Ortotouch plan, to my opinion, falls short of meeting the requirements of Section 150 of the Companies Act. Section 150 provides guidelines for the minimum requirements of the information to be incorporated into the business rescue plan. In terms of sub-section (2) the business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan. Two independent companies Othotouch and Zephan are consolidated under business rescue plan.

It is unacceptable and legally untenable to incorporate the two companies into one entity for business rescue purposes. The two companies are individual entities and should at all times be treated as such. Each company has its own assets, obligations, creditors, shareholders and management. Each company’s financial position should be stated in its audited financial statements. The same reasons to show financial distress of Orthotouch cannot be advanced by Zephan and vice versa. Orthotouch is and was at all relevant times merely an empty shell with no independent income or assets. Orthotouch had no business and thus has no business to rescue and therefore has no right to future existence and should be liquidated. Any attempt to proceed with business rescue proceedings under the circumstances would be an abuse of the process.

Zephan owns assets and has its own obligations, creditors, debtors, shareholders and management to be dealt with separately from that of Orthtouch. There are several existing outstanding court judgements against Zephan. Zephan also admits liability for claims by investors in HS21 and HS22 based on buy-back agreements, which do not relate to Orthotouch. This plan, as was the intention of the Klopper-plan and the Scheme of Arrangement is, in my opinion, a continued attempt to avoid execution in terms of the judgements and/or liquidation of Zephan and the consequences flowing from that. The two entities cannot and should therefore not be grouped for purposes of business rescue proceedings.

The investigation into the affairs of the two companies is lacking in that the practitioner randomly refers to his information sources such as the FAILED Klopper-plan and the SOA, as well as to selective court cases and publications made by an investigative journalist. The practitioner fails to address the impact of the failure of the two schemes on the rights of the affected parties.

All references made to salient information (2020), attached as annexures to the plan are information and spreadsheets used in the so-called Klopper plan (2011) and the Scheme of Arrangement (2014). The BRP uses the “previously” published information as being currently investigated and declare it as a true reflection of the state of affairs. The practitioner fails to deal with the obvious over syndication of the properties initially sold to HS19 to HS22, which overinflated prices were paid to Zephan. Orthotouch again purchased these properties from HS19 to HS22 at the over inflated prices. However, these properties were sold at market value to Accelerate and other Georgiou related institutions causing a huge loss for Orthotouch. The vast discrepancies in the property values are not adequately explained and “finger trouble” at the Deeds office is concluded by the practitioner to be the main problem. All indications show that the property syndication schemes involving HS19 to HS22 were nothing less than a fraudulent property syndication scheme as referred to in the Consumer Protection Act which needs to be investigated. The current plan, as was omitted in the preceding Klopper- plan and SOA does not investigate the actual flow of funds. In short, the logical movement of funds will be the investments made by the investors into a dedicated bank account/s, account/s from which funds will flow in the acquisition of properties, cost-related thereto and then a paper trail which should be easily reconcilable with the transactions that have taken place. Due to the absence of audited financial statements, no reliable deduction could have been made by the practitioner.

No mention is made of reportable irregularities and no reports were done as the practitioner deems these suspect action as being bona fide actions. This may be out of ignorance or a lack of understanding of the definition of a reportable irregularity.

For obvious reasons I cannot disclose what my advice to the investors will be before I have had disclosed my final report to them.