

24 July 2023

# Revised Business Rescue Plan

Autopax Passenger Services (SOC) Ltd

Reg. No. 1995 / 000861 / 30



**TransLux | City to City**



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*Revised Business Rescue Plan prepared for affected persons in terms of Chapter 6 of the Companies Act of 2008.*

## **PRELUDE**

This is the Revised Business Rescue Plan for the Company at the specific instance and request of certain creditors, which will be presented to all affected persons of the Company by the BRPs.

The affected persons will consider the proposals contained herein and will accordingly deal with their rights as set out in Section 152 of the Companies Act, 2008. The further rights of the affected persons are detailed in Part C of Chapter 6 of the Companies Act, 2008. Should you receive this document and not understand the contents thereof, you are advised to consult your attorney or your accountant, who will advise you on what action to take in terms of this document.

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## **1. DEFINITIONS USED IN THIS DOCUMENT**

<b>Definition</b>	<b>Description</b>
Act	The Companies Act No. 71 of 2008, as amended.
Adoption	The date when the Business Rescue Plan is approved in terms of Section 152(2), 152(3)(b) and 152(3)(c)(ii)(aa) of the Act.
Affected persons	Affected persons are any shareholders, creditors or employee representatives or employees (in the case of not being represented by the Company) in terms of Section 128(1)(a) of the Act.
Auction value	An estimate of what will be realized when a sale of assets occurs on an unreserved open-cry auction where a sale is concluded upon the fall of the hammer to the highest cash bidder and where the auction is reasonably well advertised and attended by members of the public.

BRP	A Business Rescue Practitioner as defined in terms of Section 138 of the Act.
Business Rescue	Business rescue proceedings as set out in Chapter 6 of the Act. The directors of the Company passed a resolution to place the Company in business rescue on the 15 <sup>th</sup> of November 2021 and filed a notice with the Commission on 17 November 2021.
CCMA	The Commission for Conciliation, Mediation and Arbitration established in terms of Section 112 of the LRA.
Commission	Companies and Intellectual Property Commission (CIPC).
Company	Autopax Passenger Services (SOC) Ltd referred to as “Autopax” which was registered on the 2 <sup>nd</sup> of February 1995 with registration number 1995/000861/30. The current directors of the Company are: Nathaniel Roesch; Thinavhuyo Ndidinwangani Mype ; Sibongile Luthuli; Monnapula Petrus Motlogelwa.
COIDA	Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993, as amended.
Department of Transport	The Department of Transport is responsible for regulation and coordination of Transportation in South Africa that is Public Transport, Rail Transportation, Civil Aviation, Maritime Transport and Road Transport.
Employee representative	Any person appointed to represent the employees of the Company, whether it is done by a recognized union representative, or a representative elected by the employees to attend the meeting of creditors, or the meeting of employees as set out in Section 144 of the Act.

First National Bank	First National Bank of Southern Africa Limited. The current banker of the Company.
Government	Shall refer to The Department of Transport and or National Treasury.
Insolvency Act	Insolvency Act No.24 of 1936, as amended.
Legal Succession Act	Legal Succession to the South African Transport Services Amendment Act, No. 38 of 2008.
LRA	Labour Relations Act, No.66 of 1995, as amended.
Management	Members of the Company's Board and/or pre-existing management as at the Commencement Date
National Treasury	Department of National Treasury of South Africa.
Practitioners	<p>Werner Cawood: LLB (PU for CHE)</p> <p>with the following contact details:</p> <p>Physical Address: 305 Melk Street, corner of Bronkhorst &amp; Melk Streets, Nieuw Muckleneuk, Pretoria, 0002.</p> <p>Postal Address: PO Box 273, Groenkloof, Pretoria, 0027.</p> <p>Telephone: +27 12 072 0109</p> <p>Facsimile: +27 86 658 6304</p> <p>Email : <a href="mailto:werner@therescuecompany.co.za">werner@therescuecompany.co.za</a></p>

Kenneth Colin Venter: BLC (UP)

with the following contact details:

Physical Address: 15 Murray Crescent Salt Rock 4392

Email : [ken@circum.co.za](mailto:ken@circum.co.za)

Plan	This document is the Revised Business Rescue Plan prepared in terms of Section 150 of the Act by the BRPs on 24 July 2023.
PRASA	Passenger Rail Agency of South Africa.
PFMA	Public Finance Management Act, No. 1 of 1999, as amended.
SARS	The South African Revenue Service.
SARCC	South African Rail Commuter Corporation
SARPBAC	South African Road Passenger Bargaining Council
SATS	South African Transport Services.
Subordinated claim	On the 28 <sup>th</sup> of September 2020, PRASA approved the subordination of their claim against Autopax in favour of other creditors. This was again confirmed on the 29 <sup>th</sup> of May 2022. The value (unaudited) of the subordinated claim was R 1 628 445 485.47 as at 31 March 2022. The subordination resolution and letter of support are attached hereto as <b>Annexure “H”</b>

Substantial Implementation date	The date that the BRPs will file a notice of substantial implementation with CIPC in terms of Section 152(8) of the Act and at which point the Business Rescue Proceedings will end in terms of Section 132(2)(c)(ii) of the Act.
Trade Unions	The following registered trade unions which represent the employees of the Company:  -National Union of Metalworkers of South Africa (NUMSA)  -South African Transport and Allied Workers Union (SATAWU)
Turnaround Plan/Business Plan	Shall have the meaning of internal documents generated by the Company as endorsed by the BRP's for the turnaround of Autopax where government funding approval is obtained in line with the turn around / business plan. These plans are not plans as referred to in Section 150 of the Act.

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## **2. SUMMARY OF THE REVISED BUSINESS RESCUE**

### **PLAN:**

#### **THE FACTUAL POSITION:**

In understanding the approach followed by the BRPs the following facts need to be understood by affected persons:

- The liabilities of Autopax far exceed its asset value. Its forced sale asset value is R39 710 425.75 versus its liabilities confirmed as Pre-Rescue liabilities of independent creditors amounting to R116 338 788.70.
- Autopax is not able to cover its current liabilities as it becomes due and payable.
- Autopax is therefor factually and commercially insolvent.
- The existing fleet of Autopax currently allows for approximately 75 buses being operational and income generating.



- The existing fleet of Autopax will continue to be usable, if properly maintained, for no more than 3 years.
- If not for the continued financial support provided by PRASA, there would be no prospects of rescue for Autopax.
- Autopax will still not be able to cover its operational costs with its existing fleet if its existing staff complement is cut with another approximate 30% but will allow the company to operate productively without unnecessary financial constraint placed on its shareholder. (From 528 employees to 370 employees)

### **WHAT DOES THE SUCCESSFUL RESCUE OF AUTOPAX MEAN?**

Two outcomes in Chapter 6 of the Companies Act, Act 71 of 2008 would mean the successful rescue of Autopax namely:

- Autopax continues after the BR process as a viable concern; or if that cannot be achieved:
- A structured winding down process is entered into that must yield a better return for creditors.

### **WHAT IS REQUIRED IN BOTH SCENARIO'S?**

- The plan needs to be approved by 75% of creditors of which at least 50% of independent creditors need to approve the plan.
- Both outcomes are 100% reliant on the ability of PRASA to continue providing financial support to Autopax for, at the very least, the gross salary complement of the company.
- Both outcomes entail that approximately 30% of employees will need to be retrenched.

### **HOW CAN AUTOPAX CONTINUE AS A VIABLE GOING CONCERN?**

As a state-owned company, Autopax cannot obtain finance from private companies or institutions. Autopax relies entirely on government financial support. To continue as a viable concern, Autopax needs to replace the existing fleet with a minimum of 75 new buses and secure working capital for at least 18 months. This will allow Autopax to trade independently without assistance from its shareholder(s). The BRPs have concluded that this preferred outcome can only be achieved in two

ways: government funding approval through PRASA or the introduction of a strategic partnership with a private entity. Both options require decision-making processes within the government. It is important to note that these scenarios are beyond the control of the BRPs and Autopax.

The timeline for these scenarios is uncertain and dependent on the government's goals regarding the survival of the country's National Bus Carrier Service. However, without government intervention, Autopax will not continue as a going concern and will need to wind down within a reasonable period, considering the existing fleet's condition.

Autopax will only be able to continue as a viable concern if the fleet is recapitalized within a reasonable period, any delay in this regard will place strain on the shareholder to fund the operational expenditure shortfall and which will not be sustainable for the shareholder over the long-term and will ultimately lead to orderly winding down of the Company. The BRPs estimate that the government has a maximum of 36 months to intervene in Autopax for the ultimate goal of its viability. In the meantime, the BRPs propose a strategy that allows for continued trading for 36 months. PRASA, with its limited resources, will provide funding for gross salaries, retrenchment packages, and monthly repayments to independent creditors that offer a better return than immediate liquidation of Autopax. Without government intervention within a reasonable period, a situation could arise where PRASA, due to its own budget constraints, will be unable to sustain funding for Autopax's requirements outlined in this plan, potentially leading to the orderly winding down of Autopax. The only way for Autopax to continue as a viable entity is through government intervention or a strategic partnership.

#### **WHAT IS BETTER RETURN FOR CREDITORS THAN LIQUIDATION?**

A successful rescue, where the company cannot continue as a viable concern, means that the business rescue process provides a better financial return than liquidation. In liquidation, independent creditors would receive only about 0.5 cents in the rand on their claims, with the South African Revenue Service (SARS) receiving a dividend as a preferred creditor.

#### **WHAT ARE THE AVAILABLE OPTIONS?**

Within the scope of the business rescue process, there is one option that the BRPs and Autopax have control over, which is to apply to PRASA for funding the proposed strategy. This strategy aims to create a better return for creditors compared to liquidation and does not rely on government intervention within their existing budget and cash flow. The BRPs have successfully applied to PRASA and negotiated additional funding, along with existing funding commitments, to provide a dividend of 30 cents in the Rand to creditors over a maximum period of 36 months. Without this commitment from PRASA, the only option would be to liquidate Autopax.

**WHY IS THE PLAN ONLY BEING PUBLISHED NOW?**

Several factors contributed to the timing of the plan:

- The government's focus has shifted towards the current energy crisis in South Africa, and securing funding for a new fleet for Autopax is not currently a government priority.
- The investigation of existing claims against Autopax has taken longer than anticipated due to creditor co-operation.
- Autopax anticipated that the recent voluntary separation packages (VSPs) would eliminate the need for forced retrenchments as part of the business rescue plan.
- Negotiating the vacating of non-essential premises and renegotiating lease agreements for existing premises proved to be a time-consuming process for the BRPs. Ongoing discussions regarding post-commencement claims and their treatment also need to be confirmed in the plan.

**THE PLAN IN A NUTSHELL**

Approval is sought for the following:

- Continuation of the forced retrenchment process for approximately 148 employees, with an estimated completion within 90 days.
- PRASA to fund the entire gross employee complement, including retrenchment packages, until government intervention is secured to replace the existing fleet and fund operations until Autopax becomes profitable or until 36 months have passed since the adoption of the plan, whichever comes first.
- PRASA to provide a monthly dividend of 30 cents in the Rand to independent creditors over the 36-month period. The first payment should be made by the last day of the month



following plan approval, with subsequent monthly payments until creditors receive their full dividend. PRASA may also settle the dividend in a lump sum at any time after plan adoption, subject to their cash flow and budget restrictions.

- Independent creditors to receive 30 cents in the rand over the 36-month period Pro-Rata their claim in a circumstance where no government funding is approved.
- The BRP's are mandated, in conjunction with the management of the company and its shareholder, to pursue the Government funding approval in the 36 month period allowed for in the plan, which if successful, will result in an additional 20 cents in the rand for independent creditors, which will result in creditors receiving a total dividend in the rand of 50 cents where the company can then continue as a viable concern.
- Settlement of all accepted outstanding post-commencement business rescue liabilities by Autopax within 30 days after plan adoption.
- Entering into settlement agreements with Landlords whose leases were suspended in terms of Section 136 of the Act providing for agreed damages to a maximum of 75% of the lease amount that arose after the commencement of business rescue and settling such agreed damages within 30 days after a settlement is reached.
- Subordination of PRASA loans.

#### **END OF THE BUSINESS RESCUE PROCESS:**

If the plan is approved, the business rescue proceedings will end after the forced retrenchment process and where:

- Creditors have been paid 30 cents in the rand by PRASA and a further 20 cents through government funding approval or the introduction of a strategic partnership within the 36 month period allowed for in the plan; or
- Where no such strategic partnership or funding approval is obtained in 36 months realizing an additional 20 cents in the rands to creditors, within 30 days.

#### **CONCLUSION**

During the second meeting of creditors the following motions to amend the plan were received and have been included in the revised Business Rescue Plan for consideration:

A Motion where the BRP's are mandated to ensure an upside for creditors, in addition to the 30 cents committed by PRASA, where Government funding is approved or a strategic partnership is obtained within the 36 month period allowed for in the plan.

Certain clauses with regards to VAT Clawback have been included in paragraph 33 of the revised Business Rescue Plan.

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## **PART A – BACKGROUND**

This section deals with the background of the Company, which sets out the affairs of the Company prior to Business Rescue.

### **3. THE BUSINESS OF THE COMPANY**

- 3.1 Autopax Passenger Services (SOC) Ltd, also known as Autopax, is a wholly owned subsidiary of PRASA. It began trading as Autopax Passenger Services (SOC) Ltd from 1 April 1999, after the road passenger transport division of Transnet was incorporated (sold) into the legal entity operating Translux and City to City brands. Subsequently PRASA acquired 100 % of the issued share capital of Autopax.
- 3.2 The company operates under the mandate given to it by its shareholder, PRASA in accordance with the Legal Succession Act, to provide long-haul passenger rail and bus services within, to and from the Republic of South Africa in consultation with the Department of Transport. It also provides feeder services to Metrorail Operations and supports PRASA Rail Operations in cases of emergencies and occupations.
- 3.3 Autopax operates two brands, namely Translux and City to City, and provides long distance, charter, and rail support services. The company aims to become a leader in the long-distance road passenger transport sector, as reflected in its mission of providing a preferred, sustainable, high-quality, seamless, and affordable road passenger transport service.

- 3.4 Tickets for Autopax can be purchased in several ways, depending on preference and location. Clients can purchase tickets on the Autopax website or through various online, retail agents such as Shoprite, Blu Label etc. inclusive of certain travel agencies that offer Autopax services, via telephone or directly at the bus stations in major cities.
- 3.5 The customer base of Autopax includes anyone who needs to travel long distances within, to, and from South Africa. This includes individuals, families, and groups traveling for leisure, work, or any other purpose.
- 3.6 Autopax has faced a number of operational and leadership challenges between 2019 and 2021, resulting in instability at the management and leadership levels and affecting its ability to turn the business around at the required speed. This instability has also had a direct impact on its ability to meet the increasing passenger expectations for high-quality, affordable, and reliable services, as evidenced by the decline in customer satisfaction.
- 3.7 The company initially owned a total of 514 buses, and, over the years, the number of buses operated by Autopax has significantly reduced, with the company currently operating approximately 75 buses. All of these buses are over 12 years old, which is well beyond the industry standard lifespan for such vehicles being around 8-10 years. This reduction in the number of buses, along with their age, has had an impact on the company's ability to meet the growing demands of its passengers for high-quality, reliable, and affordable transportation services. This will be elaborated on below.

#### 4. FINANCIAL DISTRESS

- 4.1 On the 17<sup>th</sup> of August 2021 a special board of directors meeting was held, the extract minutes of this meeting read as follows:

*“After careful consideration and deliberation, the Directors resolved that the company should be placed in voluntary business rescue with immediate effect, and that its affairs thus be placed under the supervision of a business rescue practitioner. This decision was informed by: Autopax trading under difficult financial circumstances for some time and that Autopax' financial position is worsening by the advent of Covid 19 and resultant restrictions on the business.*

*The shareholder PRASA has indicated that although it has pledged support to Autopax, due to its own precarious financial position and exacerbated by the pandemic and its implications, it is not able to support the company going forward with operational funding with effect from July 2021. Awaiting the response from the shareholder (PRASA) who in turn is engaging with its shareholder NDOT to decide on the continuation of funding of the legislative Autopax mandate. The Companies act of 2008 section 22(1) prohibiting a Company to trade under insolvent circumstances and placing liability on directors' section (77) should they not curtail reckless trading.*

*The Board resolution on Business Rescue is as follows:*

*The board resolved that the company's management begins voluntary business rescue proceedings and Autopax be placed under supervision, as the board has reasonable grounds to believe that the company is financially distressed and that there appears to be a prospect of rescuing the company should funding from the shareholder be secured and the new business model revised."*

4.2 This position was then confirmed by way of round robin resolution on the 12th of November 2021.

4.3 The sworn affidavit in support of the Business Rescue deposited by Mr. Nathaniel Roesch reads as follows:

*"I am a director and the Chief Executive Officer of Autopax Passenger Services SOC Ltd (Registration number 1995/000861/30)("Company"), a company with its registered address and principal place of business at 3rd Floor, Umjantshi House, 30 Wolmarans Street, Braamfontein, 2017, South Africa.*

*Save where the contrary is stated or appears from the context, that the facts to which I depose in this affidavit are within my personal knowledge and are to the best of my knowledge and belief both true and correct.*

*On Thursday, 11 November 2021 the Board of Directors of the Company unanimously. adopted and confirm the resolution for the Company to begin*

*voluntary business rescue proceedings in terms of section 129 of the Companies Act, 2008 (" Act").*

*I make this affidavit to set out the reasons on which the business rescue resolution was founded: 4.1 The company derives its mandate from the Legal Succession to the South African Transport Services Amendment Act 38 of 2008. Autopax exists to service the primary mandate of PRASA which is, to provide in consultation with the Department of Transport. for long haul passenger rail and bus services within, to and from the Republic in terms of the principles set out in Section 23 of the Legal Succession Act. There is a known demand from rural and poorer communities for low cost regional transport links as these communities are held ransom by service providers charging exorbitant fees. The Company is unlikely to be able to pay its debts as and when they become due and payable within the following six months*

*The Company require funding from its shareholder (Passenger Rail Agency of South Africa) ("PRASA") for it to be able to pay its debts and to fund the recapitalization of its bus fleet.*

*PRASA previously provided funding support when funding shortages were experienced by the Company.*

*Due to its own precarious financial position PRASA informed the Company that it will not be able to assist the Company with funding going forward. After informing the company the PRASA Board of Control took a decision to provide funding for the salaries of Autopax for July and August 2021.*

*PRASA approached its shareholder the National Department of Transport ("DOT" to make emergency funds available and to fund the legislative mandate of Autopax as per the Legal Succession Act. The outcome of this request is awaited.*

*The funding shortfall is mainly as a result of high cost structures relating to personnel expenditure (high man to bus ratio's), inefficient and costly support services, old and non-reliable buses with high kilometers operated previously not maintained to manufacturers specifications. This resulted in high maintenance costs, buses not being operational, high fuel consumption due to*



*old technology buses and the impact of Covid-19 regulations on the business ability to generate revenue.*

*The directors of Autopax believe that there is a reasonable prospect of rescuing the company as is evidenced in the business case of the new approved operating model. The new operating model addresses the rightsizing of staff structures, fleet replacement, reduction in maintenance, energy costs, revenue protection and driver monitoring,*

*Consultations between PRASA and the DOT are in an advanced stage regarding the funding requirement of Autopax. PRASA was requested to submit the business case of the Company, funding requirement, long term sustainability and option analysis to the DOT for recommendation to National Treasury for approval. This submission was approved by the Board of Directors of the Company on 17 August 2021 for submission. The Company through its Board of Directors is of the view that although the company is financially distressed there is a reasonable prospect of rescuing the Company.”*

- 4.4 The last year that Autopax posted a profit which was approximately R7 million was during 2014/2015, since then there has been drastic decline in the Company’s profitability and its ability to pay its debts as they become due and payable. The facts which have brought upon this scenario are summarized below.
- 4.5 Fleet Management and Maintenance: Autopax is facing significant challenges in managing its aging bus fleet, which is causing a rise in maintenance costs. Over 80% of its operational buses have driven between 600,001 to 1,000,000 kilometres. Due to the lack of a proper maintenance regime, there has been very little to no preventative maintenance done. Due to the age and state of the fleet they will naturally consume more diesel due to the inferior technology and where South Africa has already seen a dramatic rise in the cost of diesel. Overall, the price of diesel in South Africa has more than doubled since 2011, with a cumulative increase of 157.4% as of February 2023. The total cost difference in the price of diesel from 2011 until 2023 February is an increase of R7.19 per liter. Assuming an average consumption consumption of 1.7 km/L and the increase in diesel price from 2011 to 2022, the cost of diesel per year for a bus traveling 500,000 kilometers would increase from approximately R2,058,823 in 2011 to

R6,528,979 in 2022, assuming the fuel efficiency remains constant. The below is a graph indicating the price increases in fuel from 2001 to 2021



4.6 There has been no replacement or upgrading policy and despite attempts to refurbish the existing fleet, the costs have been prohibitive, which has led to a decline in the quality of the fleet. Between 2015 and 2017, Autopax was approached by the Gauteng Department of Transport to assume eight commuter contracts that had been abandoned by PUTCO, including Mamelodi, Evaton, and Vosloorus. However, this undertaking had an adverse effect on Autopax's fleet and financial viability due to frequent mechanical failures. Autopax's long-distance buses were not appropriate for the stop-and-start nature of commuter service, and the revenue generated from the service was not sufficient to cover the operation's costs. This further exacerbated the maintenance issues that the fleet was already experiencing. Due to the fact that there was no upgrading or replacement policy as well as a lack of capital funding from the shareholder, the fleet drastically depleted from 514 operational buses to currently only 75 operational buses.

4.7 Governance and Leadership Instability: The stability of governance and leadership is a critical aspect of any company's success, and the instability of the governance and

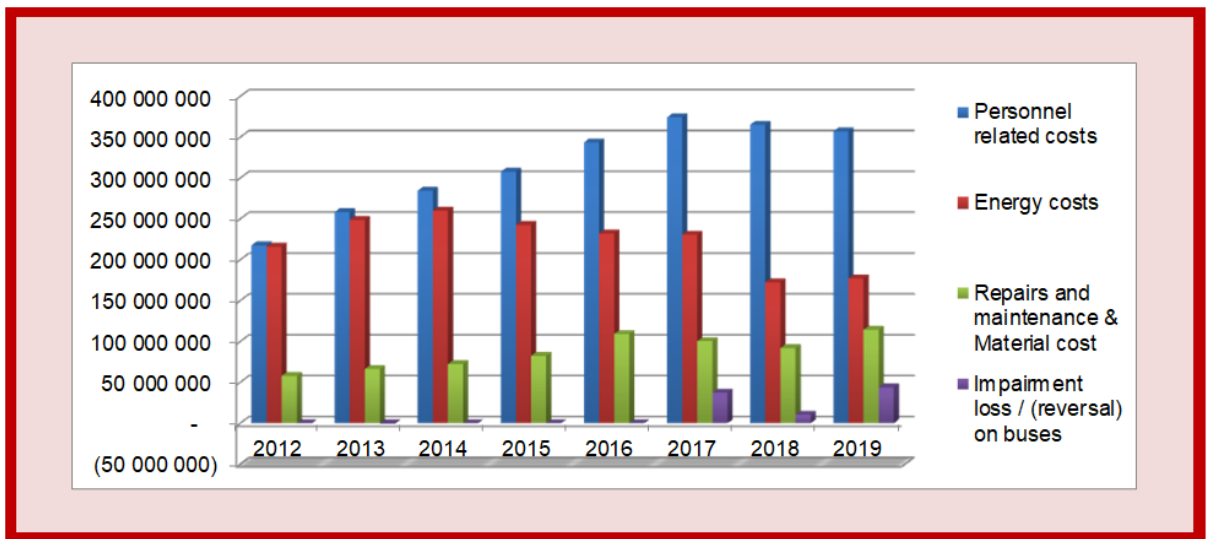
leadership at Autopax has had a significant negative impact on the company's performance. The resignation of four non-executive directors and the absence of a permanent CEO prior to business rescue created an uncertain environment that hindered the company's ability to make quick and effective decisions. This instability directly impacted the continuity and speed of the company's efforts to turn the business around, which was further compounded by the lack of clear leadership. However, the company has taken steps to address these issues. In November 2020, a permanent board was appointed, which has helped to provide stability and continuity in the company's governance structure. Furthermore, the appointment of a permanent Chief Executive Officer in September 2020 has helped to provide the company with a clear leader who can guide the company through its challenges and help to drive its performance.

- 4.8 Cashflow and Market Challenges: Autopax is struggling to generate enough revenue and cash flows to meet its monthly financial obligations, which has led to a high level of debt. According to the company records at the commencement of BR, the company was carrying an external debt of approximately R196.6 million for external suppliers and an internal debt of R1,032.0 million. Additionally, passenger numbers have declined from 2.9 million in the past 5 years to less than 2 million in 2018/2019, which has resulted in a loss of market share. A contributing factor to this is intimidation of Autopax buses by Taxi operators mainly in the Eastern Cape and the Northern Cape. Autopax does not receive a passenger subsidy as a business subsidiary of PRASA. Autopax has recorded a loss of R 404,1 million in the Financial Year ending 31 March 2021.
- 4.9 Customer Experience and Cost Structure: The company's customer satisfaction has declined significantly in recent years, due to the unreliability, age and lack of maintenance of the fleet. Customer satisfaction has gone from 77% in 2014/2015 to 58% in 2018/2019, which is a decrease of 19 percentage points. Additionally, the company's cost structure is unsustainable, with key cost drivers such as employee costs increasing from 37% in 2016/2017 to 47% in 2018/2019. The high-cost structure, coupled with the decline in customer satisfaction, is a major challenge for Autopax.
- 4.10 ICT Environment and Process Efficiencies: Autopax is facing challenges in its Information and Communication Technology (ICT) environment, which has a direct impact on all

aspects of the business. The company's processes are mostly manual, making the organization vulnerable to fraudulent activities and inefficiencies. The company lacks the necessary ICT systems to support the business and carry out basic operational requirements, which has led to an increase in dismissals due to ticket irregularities and system-related challenges.

- 4.11 Impact of Covid-19 Pandemic: The Covid-19 pandemic has had a profound impact on the transportation industry, including Autopax. The decrease in passenger numbers, revenue, and increase in operational costs have all been significant challenges for the company. Additionally, supply chain disruptions have affected the company's ability to acquire parts and components necessary for maintenance and repair of vehicles. The company had to implement new health and safety protocols, which required additional resources and investment, further impacting its financial situation. Some of these protocols include:
- 4.11.1 Reduced capacity: Autopax had to reduce the number of passengers per bus to ensure physical distancing.
  - 4.11.2 Regular sanitization: Buses had to be regularly cleaned and sanitized before and after each trip.
  - 4.11.3 Provision of personal protective equipment (PPE): Autopax provided masks and other PPE to its staff and passengers.
  - 4.11.4 Temperature checks: Passengers and employees had to undergo temperature checks before boarding the buses.
  - 4.11.5 Contact tracing: Autopax implemented contact tracing measures to help track and trace individuals who may have been exposed to COVID-19.
  - 4.11.6 Ventilation: Buses were required to have adequate ventilation to help prevent the spread of the virus.
  - 4.11.7 Social distancing: Autopax had to ensure that passengers maintained physical distancing when boarding, exiting, and during the trip. These measures also then applied to not only the buses but any operations of Autopax in the various offices, workshops and depots.
- 4.12 High Employee Cost: The high employee cost of Autopax is a major factor that has contributed to its financial difficulties. Despite starting with a section 189 process which was as part of a new operating model, the company was unable to finalize the process

and to reduce its employee cost to the industry standard. At the time of the business rescue, the company had over 800 employees despite only operating 67 buses. This resulted in an employee to bus ratio of 11.9, which is significantly higher than the industry standard of 3 employees per bus. In addition to the large number of employees, the salary bill of the company was also very high, reaching R 280.8 million annually. This has put a significant strain on the company's finances, especially given the recent fluctuations in diesel prices and exchange rates. The graphs below indicate the financial trends specifically relating to Energy costs, repair and maintenance costs and personnel cost.



4.13 Lack of Effective Employee Skills Development: Due to financial constraints, Autopax has invested less and less in employee skills development and management training over time. This has resulted in a decline in the overall skills of the company, affecting all levels of the business. As a result, the company has lost its accreditation as a fleet repairer from various Original Equipment Manufacturers. This lack of effective employee skills development is a major problem for the company and has impacted its performance in various areas. In order to improve its competitiveness and financial situation, the company must prioritize investment in employee training and development.

4.14 Performance Management: The company implemented performance management in 2018/19 but has struggled to inculcate the culture of accountability and performance management. This has led to a lack of accountability among employees and suppliers,

resulting in poor service delivery. In order to address this issue, Autopax needs to focus on implementing an effective performance management system that holds both employees and suppliers accountable for their performance. This can include regular performance reviews, setting clear performance targets, and providing feedback and coaching to help employees improve their skills and meet their performance goals.

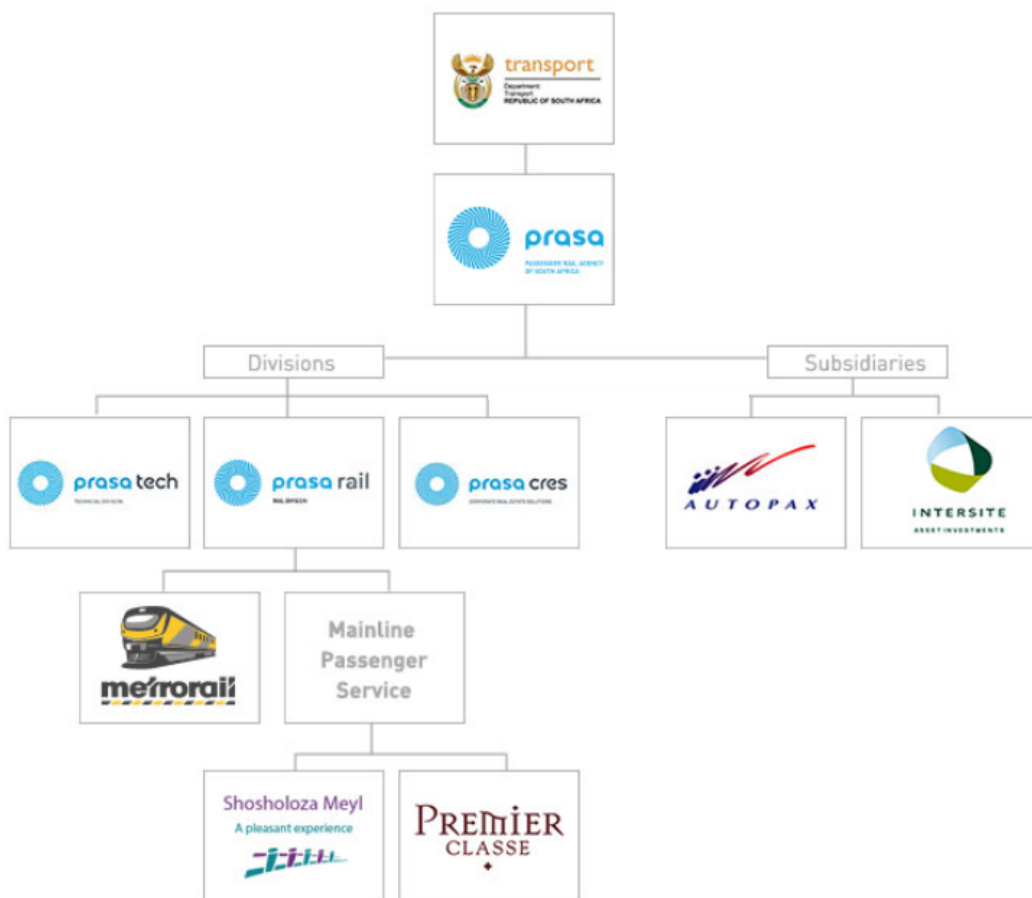
## 5. THE HISTORY OF PRASA

- 5.1 In 1910, as a consequence of the formation of the Union of South Africa, all railway services in South Africa were merged into the South African Railways and Harbours. The reclassification and renumbering of the rolling stock of the three constituent railways was implemented on 1 January 1912. The South African Railways and Harbours was later renamed the SATS.
  
- 5.2 On 1 April 1990, Transnet was created to take over most of the operations of the SATS, with the exception of commuter rail which was transferred to the newly formed SARCC. The SARCC owned commuter rail-related assets, including stations and surrounding land, infrastructure and rolling stock, while the services were operated by Metrorail. Initially, Metrorail was an operating unit of Spoornet, Transnet's rail subsidiary and in 1996 it became a separate business unit of Transnet. Long-distance passenger rail services, meanwhile, were operated by Spoornet (now Transnet Freight Rail) under the name Shosholoza Meyl.
  
- 5.3 On 1 December 2004, the South African Cabinet decided to integrate the current state-run passenger rail and bus services under one organisation which at that time was managed by the SARCC and Transnet, so as to improve the accessibility, safety and cost to the consumer. The government observed that the separation of ownership between SARCC and Transnet caused problems, in particular with disputes over the responsibility for maintenance and investment. In 2006 ownership of Metrorail was transferred to the SARCC, unifying the responsibility for commuter rail. On 23 December 2008 the SARCC was renamed the Passenger Rail Agency of South Africa, and in subsequent months other assets were transferred to PRASA. PRASA was officially launched in March 2009

and combined the assets of Metrorail, Shosholozza Meyl, Autopax and Intersite Property Management Services under this new organisation.

5.4 PRASA, as the implementing arm of the National Department of Transport, the sole shareholder, is primarily focused on the mandate contained in the Legal Succession Act.

5.5 The newly formed entities organizational structure is depicted in the below diagram:



5.6 The main objective and main business of PRASA is to:

5.6.1 Ensure that, at the request of the Department of Transport, for rail commuter services are provided within, to and from the Republic in the public interest, and

5.6.2 Provide, in accordance with the Department of Transport, for long haul passenger rail and bus services within, to and from the Republic in terms of the principles set out in section 4 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000)

5.7 The second objective and secondary business of PRASA is that:

5.7.1 PRASA shall generate income from the exploitation of assets acquired by it, which include real estate and property portfolio.

5.7.2 A further requirement is that, in carrying out its objectives and business, PRASA shall have due regard for key Government, social, economic and transport imperatives and policy objectives.

## 6. SHAREHOLDERS OF THE COMPANY

The Company shareholding is as follows:

Name of shareholder	Shareholding (%)	Shareholding (R)
PASSENGER RAIL AGENCY OF SOUTH AFRICA	100.00	800 000.00
<b>Total</b>	<b>100.00</b>	<b>800 000.00</b>

No other shares have been issued, the shareholder declares that no shareholding was promised to any third party and there is no outstanding shareholding to be issued. The subordinated loan from PRASA bears no interest, has no repayment term and is subordinated in favour of Autopax's creditors for as long as PRASA owns 100% of the issued share capital of Autopax.

## 7. NATURE OF A STATE-OWNED COMPANY

7.1 LEGAL SUCCESSION ACT

7.1.1 The Legal Succession Act is a piece of legislation that provided for the dissolution of SATS and the transfer of its assets, liabilities, rights, and



obligations to PRASA. This act was enacted as part of the broader restructuring and transformation of the transport sector in South Africa.

7.1.2 Under this act, PRASA was established as the legal successor to SATS, assuming responsibility for the provision of passenger rail services in South Africa. It outlines the transfer process, the rights and obligations transferred to PRASA, and the framework for PRASA's functioning and governance.

7.1.3 The act is intended to ensure a smooth transition from SATS to PRASA, allowing for the continuity of passenger rail services while addressing the restructuring and transformation goals of the South African government in the transport sector.

## **8. EMPLOYEE RELATED MATTERS PRE- BUSINESS RESCUE**

- 8.1. At the commencement of Business Rescue the staff compliment comprised of 893.
- 8.2. The Gross Salary of the Company was R261 029 623.40 Annually.
- 8.3. Prior to business rescue on 12 March 2021 the Autopax Board of Directors approved on the rightsizing of the personnel structure of Autopax, the consultation process and the principles to be applied. Management commenced with a S189 process in terms of the LRA, which process was facilitated by the CCMA.
- 8.4. On 17 March 2021, management issued a notice, in terms of Section 189(3) of the LRA, to commence a consultation process with trade unions and non-unionised employees.
- 8.5. Organised labour consulting structure comprised of recognised trade unions at Autopax (NUMSA and SATAWU) as well as committee structure representing employees that are non- Unionised across all employees' job levels.
- 8.6. CCMA appointed senior commissioner, Mr Grahame Matthewson who chaired the first consultation meeting on the 20th of April 2021 under CCMA case reference HO53-21 in

the matter between NUMSA-SATAWU obo Members & Non-unionised employees and Autopax SOC (Pty) Ltd. The CCMA facilitated consultation process reached the 60 days consultation period as required by the LRA on the 19th of June 2021. Overall commissioner Matheson held about 4 consultation meeting with parties and that parties met about 3 times without the commissioner. Commissioner Matthewson held the last consultation process meeting with parties on the 1st of July 2021. At this stage parties were left with confirmation of PRASA vacancies and Labour's request to extend VSP to all employees as the only outstanding matters.

- 8.7. As part of the final stages of consultation process, organised labour requested management to open and implement Voluntarily Severance Packages as part of the alternatives to minimise the effect of forced retrenchments. Management went back to the Board of Autopax on the 14th of July 2021 to seek the revised mandate to open VSP to all employees as the final proposal by parties to conclude the consultation process before implementation. The Board in principle was not opposed to approve the mandate but subject to pending funding approval by PRASA.
- 8.8. The process did not proceed prior to these business rescue proceedings mainly because of a lack of funding and the CCMA closed the consultation process.

## **9. LITIGATION PRE- BUSINESS RESCUE**

- 9.1. The following is the list of litigation matters deposed to in the affidavit to commence with Business Rescue Proceedings.
- 9.1.1. SHANSONS (PTY) LTD // AUTOPAX PASSENGER SERVICES SOC LTD (In the High Court of South Africa, Limpopo Division, Thohoyandou case number: 454/2014). This matter relates to a dispute over a certain portion of land with reference to ERF No. 186 in the Thohoyandou area regarding ownership and transfer. Plaintiff claiming ownership of land that PRASA is occupying & demanding that PRASA signs land transfer documents. PRASA has filed its reply to the notice in terms of rule A as well as PRASA discovery affidavit. Stay on legal proceedings in terms of Section 133 of the Companies Act 71 of 2008.
- 9.1.2. COMBINED TRANSPORT SERVICES// AUTOPAX PASSENGER SERVICES SOC LTD.

- 9.1.3. SAMPRA//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to music which had been played on buses without the necessary license.
- 9.1.4. VINESH NAIDOO//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to bus services rendered in the Durban area for Metrorail.
- 9.1.5. K SOMARU/LAKEHAVEN TRANSPORT//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to Lakehaven Transport who had rendered bus hire services in Durban for Metrorail from 2012.
- 9.1.6. NUMSA OBO MAKHUBELE//AUTOPAX PASSENGER SERVICES SOC LTD (RPNT6422).This matter relates to a claim of unfair dismissal of an employee.
- 9.1.7. NATIONAL TRANSPORT MOVEMENT OBO OF LEHARE// AUTOPAX PASSENGER SERVICES SOC LTD (Case No: JR43/22). This matter relates to an arbitration award which was issued in September 2021.
- 9.1.8. TITO TRANS//PRASA
- 9.1.9. METRO FILE// PRASA
- 9.1.10. GEMINI MOON TRADING AS NEXUS TRAVEL// PRASA AND 1 OTHER

## 10. CLAIMS AT DATE OF BUSINESS RESCUE

- 10.1. The company's records prior to business rescue represented a complete list of all creditor records of the company that included claims subject to litigation and disputes, claims that have been settled as well as claims by creditors against PRASA that should have been recorded as loans from PRASA. The claims therefore required extensive investigation in order to correct the current state of affairs.

## **11 THE ASSETS AND ENCUMBRANCES OVER THE ASSETS OF THE COMPANY.**

11.1 The asset register of the company was comprehensive and complete at date of business rescue. No encumbrances are registered over the movable assets. The assets had not been valued and with depreciation over the existence of the company the value in the financial records of the company did not reflect an accurate value with regards to the market value of the movable assets of the company. The company owns no immovable assets. The assets of the company, that are scattered throughout South Africa at various depots, outlets, offices and storage facilities therefore required inspection and valuation.

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# **PART B – EVENTS POST COMMENCEMENT THE BUSINESS RESCUE AND PROPOSAL**

## **12 FIRST MEETING OF CREDITORS & EMPLOYEES HELD IN TERMS OF SECTION 147 AND 148 OF THE ACT**

12.1 The first meeting of creditors was held on the 8th of December 2021. The purpose of the first meeting of creditors for Autopax was to provide feedback on the prospects of saving the company, explain the business rescue process, and address concerns and questions from creditors. The company was placed in business rescue on November 18, 2021, due to financial distress caused by factors such as staff versus bus numbers, outdated buses, and the impact of the Covid-19 pandemic. During the meeting the BRPs sought the approval of a motion to extend the publication date of the business rescue plan from the original date to June 30, 2022. The reason for this extension was due to various factors that impact the time period for the publication of the plan, including asset valuation, establishing the liquidation value of the company, verifying creditor claims. In addition, the approval and pay out of the budget submitted to National Treasury, which was crucial in more accurately predicting the income and expenses stream of the company, was only expected to come to fruition in April 2022. The BRPs also sought approval for a motion to sell approximately 100 redundant buses, which had been non-runners for quite some time, in order to cater for additional income prior

to the potential budget approval. The income received from the sale of these buses would be supplemented by PRASA and would be used to cater for salaries prior to the approval of the budget. Questions were raised regarding the state of these assets. The BRPs explained that all buses intended to be sold would be appraised to ensure that they were sold for fair value. The BRPs sought approval for a 5% fee on the sale of the redundant buses, which was proposed to creditors earlier in the meeting. This motion was also then voted on and approved by all creditors present in the meeting. The approval of the motion to extend the publication date of the plan and the motion to sell the redundant buses with a 5% fee showed the support of the creditors for the business rescue plan and the measures taken by the BRPs to generate additional income for the company.

12.2 The first meeting of employees was conducted on the 8<sup>th</sup> of December 2022 in order to provide feedback on the prospects of saving the company, explaining the business rescue process, and determining if an employee committee would be formed. The BRPs discussed the process for developing a business rescue plan, including asset valuation, cash flow forecasting, and creditor claim investigation. The immediate action to be taken involved selling redundant buses in order to cater for the monthly salary shortfall and explained that the Business Rescue Plan involved obtaining government funding to purchase a new fleet and to settle outstanding debts. The employee's committee was formed, and the BRPs confirmed their belief that there are reasonable prospects to rescue the company and provide a better return for creditors and employees compared to liquidation.

### **13 INVESTIGATION OF THE AFFAIRS OF THE COMPANY.**

Our preliminary investigation highlighted the following:

#### **13.1 BUSINESS OF THE COMPANY**

13.1.1 The BRP conducted an investigation into the company's business and found that proper systems and procedures were implemented for daily operations. However, due to cashflow constraints and lack of funding, the following challenges were identified:

- Fleet Status and Decline: The age of the fleet and inadequate fleet management regime have led to the unreliability of Autopax services.

Over 80% of operational buses have covered distances ranging from 600,001 to 1,000,000 kilometers. Consequently, maintenance costs have increased, and bus availability has decreased to below 30%, putting a strain on operations. As part of the long-term strategy, it is crucial to refurbish and acquire new buses, as well as procure new engines to remain competitive and offer a safe, reliable service.

- **Revenue Decline and Decrease in Passenger Numbers:** The company finds itself in a financially distressed state, facing significant cash flow challenges. The business is not generating sufficient revenue and cash flows to cover monthly financial obligations. Less than 60% of the monthly costs are covered by the revenue generated. Additionally, as of January 2020, the organization carries a high historic debt of approximately R 196.6 million owed to external suppliers and an internal debt of R 1,032.0 million, which is putting strain on the business. Passenger numbers have declined from 2.9 million over the past five years to less than 2 million in 2018/2019, resulting in lost market share.
- **Decline in Customer Satisfaction Index (CSI):** Autopax has experienced a decline in the Customer Satisfaction Index, which primarily measures customer experience at all touchpoints. The CSI has dropped from 77% in 2014/2015 to 58% in 2018/2019. Customer experience plays a crucial role in determining whether customers will choose to use our service again, and it directly impacts declining passenger numbers and revenue.
- **Unsustainable Cost Structure:** The company's current cost structure is unsustainable. Key cost drivers, such as employee costs as a percentage of the total cost, have increased from 37% in 2016/2017 to 47% in 2018/2019. This increase is mainly attributed to negotiated salary raises, which have been above the Consumer Price Index (CPI) at 9% for the past three years. Although the number of employees has declined, the cost has continued to rise. Additionally, diesel, representing 23% of the total cost, has substantially increased in recent years due to exchange rate

fluctuations and fuel price hikes. The same applies to repair and maintenance costs, as spare parts are also affected by exchange rate fluctuations. Unstable and Outdated Information and Communications Technology (ICT): The unstable ICT environment poses a significant challenge for the business, affecting various areas such as operations, technical aspects, sales, procurement, and human resources. Many of Autopax's processes still rely on manual operations, which exposes the organization to fraudulent activities and inefficiencies. Autopax currently lacks the necessary ICT systems to support its business operations and fulfil basic operational requirements. These challenges include inadequate fleet management and monitoring, deficient revenue collection and protection systems, and insufficient inventory and materials management.

- Legal Challenges: Autopax is currently dealing with several legal challenges that have the potential to further worsen its financial position if they materialize. These legal issues pose a risk to the stability and overall well-being of the company.
- Pilferage: There has been an increase in the number of dismissals due to ticket irregularities both during travel and at sales offices. Dealing with disciplinary and behavioural issues has revealed a number of system-related challenges that contribute to pilferage within the organization.

## 14 FINANCIAL DISTRESS

- 14.1 Our investigations confirmed that the company is commercially and factually insolvent. The company's liabilities far exceed its asset value, and the company is not able to cover its monthly operational cost without the funding assistance provided by PRASA. The financial statements for 2022 as well as 4th quarter report 2022-2023 confirm these findings. These reports are annexures hereto as **Annexure "I" and "J"** respectively.

## 15 STATEMENT REGARDING PROPOSALS MADE INFORMALLY BY CREDITORS

15.1 Proposals made formally during the second meeting of creditors have been included in the Business Rescue Plan.

## 16 LITIGATION IN BUSINESS RESCUE

16.1 The Company has been involved, and remains involved, in a number of pending matters serving before the Courts. These matters include the following:

16.1.1 SHANSONS (PTY) LTD // AUTOPAX PASSENGER SERVICES SOC LTD (In the High Court of South Africa, Limpopo Division, Thohoyandou case number: 454/2014). This matter relates to a dispute over a certain portion of land with reference to ERF No. 186 in the Thohoyandou area regarding ownership and transfer. Plaintiff claiming ownership of land that PRASA is occupying & demanding that PRASA signs land transfer documents. PRASA has filed its reply to the notice in terms of rule A as well as PRASA discovery affidavit. Stay on legal proceedings in terms of Section 133 of the Companies Act 71 of 2008.

16.1.2 K SOMARU/LAKEHAVEN TRANSPORT//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to Lakehaven Transport who had rendered bus hire services to in Durban for Metrorail from 2012.

16.1.3 GRIMMS (PTY)LTD // AUTOPAX PASSENGER SERVICES SOC LTD. This dispute relates to a bus which was towed by Grimms, and which remains in their possession for outstanding services rendered.

16.1.4 MICHEL MASHILE//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to outstanding rental for the premises in Hazyview.

16.1.5 VINESH NAIDOO//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to bus services rendered in the Durban area for Metrorail. Consent has been



provided by BRPs to continue with legal proceedings in terms of Section 133 of the Companies Act 71 of 2008.

- 16.1.6 SAMPRA//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to music which had been played on buses without the necessary license.
- 16.1.7 NETCARE // AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to a claim regarding the services of attending to a driver who had a heart attack while on duty.
- 16.1.8 TRANSNET // AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to a dispute regarding rent of a premises with an Autopax installed diesel tank in the Eastern Cape.
- 16.1.9 NATIONAL TRANSPORT MOVEMENT OBO OF LEHARE// PASSENGER SERVICES SOC LTD (Case No: JR43/22). This matter relates to an arbitration award which was issued in September 2021.
- 16.1.10 NUMSA OBO MAKHUBELE//AUTOPAX PASSENGER SERVICES SOC LTD (RPNT6422). This matter relates to a claim of unfair dismissal of an employee.
- 16.1.11 MMUTLANA & 3 OTHERS//AUTOPAX PASSENGER SERVICES SOC LTD (Case No. JS 952/21). This matter relates to wage increase disputes raised by employees.
- 16.1.12 THE COMPETITION COMMISSION OF SOUTH AFRICA // PASSENGER RAIL AGENCY OF SOUTH AFRICA SOC LTD & AUTOPAX PASSENGER SERVICES SOC LTD (Case No.CR152Feb20). The matter relates to the Competition Commission's referral of a complaint against PRASA and Autopax to the Competition Tribunal for adjudication including the final findings and recommendations against PRASA arising from the Commission's Market Inquiry into Land Based Public Passenger Transport.

## 16.2 BUSES IN POSSESSION OF 3RD PARTIES

16.2.1 The Buses which are in possession of 3rd parties are highlighted in the table below.

<b>BUSES AT 3RD PARTY SUPPLIERS - ACCUMULATING STORAGE FEES</b>					
<b>No</b>	<b>Registration</b>	<b>Supplier</b>	<b>Incident Date</b>	<b>Approximate Cost - Pre BR</b>	<b>Depot</b>
1	ZBM566GP	Border Towing	20-Feb-18	R 408,997.50	Cape Town
2	ZGF053GP	Joeys Towing CC	1-Dec-17	R 202,647.48	Salvokop
3	YSN813GP	Sans Souci Towing	22-Jun-18	R 549,067.50	Salvokop
4	YSN784GP	Sans Souci Towing	27-Nov-18	R 467,302.50	Salvokop
5	ZDM910GP	Sans Souci Towing	15-Dec-19	R 267,547.50	Salvokop
6	ZDP018GP	Noddy's Towing	2018	TBA - Legal	Salvokop
7	ZGX438GP	Grimm's	16-Mar-18	TBA - Legal	Cape Town

16.2.2 Sans Souci Towing – YSN813GP / YSN784GP / ZDM910GP

- YSN813GP (Autopax) – Engine failure a breakdown assistance supplier had no capacity at his premises and the bus was towed to Sans Souci Towing, by the said company. Stop date – 22 June 2018
- YSN784GP (PRASA) – Engine failure. Franco a breakdown assistance supplier had no capacity at his premises and the bus was towed to Sans Souci Towing, by the said company. Stop date – 27 Nov 2018
- ZDM910GP (PRASA) – Clutch failure the account with Franco was on hold, parts required were too expensive and the bus was towed to Sans Souci Towing, by the said company. Stop date – 15 Dec 2019

16.2.3 Joey's Towing – ZGF053GP

- Bus ZGF053GP (Autopax) was involved in an accident at Rouxville on the 1st of December 2017 when it was hit from the back by a car. At the time, Autopax did not have a contract for towing services. Joey's Towing was willing to assist with the towing of the bus and it was towed to their premises in Heidelberg.

16.2.4 Grimms Auto – ZGX438GP (Autopax)

- The bus in question has been at Grimm's since the 16th of March 2018 and to date it has not been fully repaired. This matter is subject to litigation and is explained in paragraph 7.3.

- 16.2.5 Noddy's Towing – ZDP018GP (Autopax)
  - Summons re World Focus t/a Noddy Breakdowns - ZDP018GP
  
- 16.2.6 Border Towing and Recovery CC – ZBM566GP (Autopax)
  - The bus was towed and in storage from 20 February 2018

## **17 CLAIMS IN BUSINESS RESCUE**

17.1 Because of the continued business operations of the Company after the commencement of business rescue, and in order to ensure such continued business operations, certain claims have arisen that stand to be settled from the revenue generated from such continued business operations in the normal course of business as the cashflow of the Company permits. These claims vary daily as the operations continue and these claims do not represent claims for which a voting interest is allocated. These claims include the following:

- 17.1.1 Any outstanding remuneration and expenses of the BRP.
- 17.1.2 Employees remuneration and/or benefits that arose after 17 November 2021 and that remain unpaid;
- 17.1.3 Service providers and/or suppliers with outstanding claims for service and/or supply arising after 17 November 2021;
- 17.1.4 Rental obligations which have not been catered for or suspended after 17 November 2021.
- 17.1.5 The claims in business rescue ensure the continued operations of the Company and are the claims, in terms of Section 135 of the Companies Act, Act 71 of 2008, payable before claims prior to the commencement of business rescue provided that the provisions of Section 134(3) of the Act are adhered to where applicable.
- 17.1.6 On approval and implementation of the Business Rescue Plan, a creditor is not entitled to enforce any debt owed by the Company immediately before the beginning of the business rescue process, except to the extent provided for in the Business Rescue Plan (Section 154(2) of the Act).
- 17.1.7 No other claims of any creditors have been received.

## **18 NATURE AND DURATION OF ANY MORATORIUM FOR WHICH THE BUSINESS RESCUE PLAN MAKES PROVISION**

18.1 Section 133 of the Act places a general moratorium on litigation and/or execution steps against the company. The relevant Section reads as follows:

*(1) During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except—*

*(a) with the written consent of the practitioner;*

*(b) with the leave of the court and in accordance with any terms the court considers suitable;*

*(c) as a set-off against any claim made by the company in any legal proceedings, irrespective whether those proceedings commenced before or after the business rescue proceedings began;*

*(d) criminal proceedings against the company or any of its directors or officers; or*

*(e) proceedings concerning any property or right over which the company exercises the powers of a trustee.*

*(2) During business rescue proceedings, a guarantee or surety by a company in favour of any other person may not be enforced by any person against the company except with leave of the court and in accordance with any terms the court considers just and equitable in the circumstances.*

*(3) If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit, the measurement of that time must be suspended during the company's business rescue proceedings.*

18.2 The following litigation were authorized and consented to by the BRPs to continue:

18.2.1 VINESH NAIDOO//AUTOPAX PASSENGER SERVICES SOC LTD. This matter relates to bus services rendered in the Durban area for Metrorail.

18.2.2 NUMSA OBO MAKHUBELE//AUTOPAX PASSENGER SERVICES SOC LTD (RPNT6422). This matter relates to a claim of unfair dismissal of an employee.

18.2.3 THE COMPETITION COMMISSION OF SOUTH AFRICA // PASSENGER RAIL AGENCY OF SOUTH AFRICA SOC LTD & AUTOPAX PASSENGER SERVICES SOC LTD (Case No.CR152Feb20). The matter relates to the Competition Commission's referral of a complaint against PRASA and Autopax to the

Competition Tribunal for adjudication including the final findings and recommendations against PRASA arising from the Commission's Market Inquiry into Land Based Public Passenger Transport.

- 18.3 The balance of the litigation matters which have not been finalized and or included in the business rescue plan remain subject to the moratorium for the remainder of the duration of the business rescue proceedings and are authorized to continue once the proceedings have come to an end through the filing of Substantial Implementation Notice with CIPC.

## 19 LANDLORDS

- 19.1 At the commencement of Business Rescue Proceedings various lease agreements were suspended in terms of Section 136(2)(a) of the Act. Specifically with regards to the company's obligations in terms of the of the lease agreements.
- 19.2 The Company accepted liability for the monthly utility accounts and confirmed expenses related to these premises during the suspension period in order to mitigate the landlord's damages.
- 19.3 The following was taken into account with regards to suspensions:
- 19.3.1 The annual increase charged (without an active lease agreement)
  - 19.3.2 Any support or rental holidays provided during the Covid-19 pandemic and different levels of lockdown.
  - 19.3.3 How the space was utilized and when it was utilized.
- 19.4 Various lease agreements were terminated during the business rescue proceedings. In cases where termination occurred, the company vacated the premises. However, in situations where termination did not take place, the company engaged in negotiations to establish new contracts. The finalization of these negotiated lease agreements would be contingent upon the adoption of the Business Rescue Plan.
- 19.5 The Landlord whose rental agreements were suspended can assert a claim for damages in terms of Section 136 (3) of the Act. The Section reads as follows:

*(3) Any party to an agreement that has been suspended or cancelled, or any provision which has been suspended or cancelled, in terms of subsection (2), may assert a claim*

*against the company only for damages.”*

19.5.1 Where the suspensions of the lease agreements have remained Autopax requires creditor consent to negotiate a maximum settlement for damages with regards to suspended rental agreements of 75% of the value of the claim that would have existed if the rental agreements had not been suspended.

19.6 At the Commencement of Business Rescue Autopax occupied 43 leased premises, this number has now been reduced to 29.

19.6.1 The following Premises were vacated during the Business Rescue Proceedings:

- 17 Samora Machel Street, Nelspruit (Talis Property Fund)
- 60 Park Road, Willows, Bloemfontein (The Michael Family Trust)
- 129 Moore Street, Quigney, East London (Windmill Property Trust)
- King Williams Town Station (Transnet)
- Mooketsi Road, Maphalle Village (Mohale Louis)
- 30 Thabo Mbeki Drive, Mokopane (Braelea CC)
- George Station (Transnet)
- Knysna Station (Transnet)
- 59 Caledon Street, Uitenhage (Urmilla Ravjee Prag)
- Polokwane Fuel Site (Transnet)
- Port Elizabeth Fuel Site (Transnet)
- 225 Chief Albert Luthuli Road, Pietermaritzburg (Timcane)
- Johannesburg Station Call Centre (PRASA Cres)
- 113 First Street, Salvokop, (Department of Public Works)

## **20 ASSETS OF THE COMPANY**

20.1 On the 15<sup>th</sup> of December 2021, instruction was provided to Park Village Auctions to conduct valuations on redundant buses which were marked for Auction (phase 1). Park Village Auctions began with the phase 1 valuation from the 14<sup>th</sup> of January 2022 and concluded same on the 4<sup>th</sup> of February 2022.

20.2 On the 8<sup>th</sup> of February 2022 a publication of the online auction went out and the auction was subsequently held on the 16<sup>th</sup> of February 2022.

20.3 On the 16<sup>th</sup> of February 2022 Park Village Auctions was then provided with instructions to commence with the valuation of (phase 2) the process of this phase entails the following:

20.3.1 Verify the assets registered in the name of the Company through a reconciliation of the asset register, insurance policies, NATIS and Company searches.

- Identify all assets and inspect same.
- Finalise the valuations of all assets.
- Ensure all assets are insured.

20.4 Between the 29<sup>th</sup> and 30<sup>th</sup> of March 2022 another online auction was held, this time for the auction of scrap engines and scrap gearboxes.

20.5 The BRPs vocalized their intention to appoint a valuator capable of providing a commercial business valuation. This appointment can only be proceeded with once all claims against the Company have been investigated and appraised where applicable.

20.6 In October of 2022 and March of 2023, a further online auction was held for the sale of further redundant buses identified.

## **21 WHAT CREDITORS MAY EXPECT IF THE COMPANY IS PLACED IN LIQUIDATION.**

21.1 The probable dividends to creditors (which includes contingent and/or prospective creditors) in the event of immediate liquidation are reflected in the pro-forma liquidation and distribution account attached hereto as Annexure "E".

21.1.1 Statutory preferent creditors: 100 cents in the rand.

21.1.2 Concurrent creditors: 0.5 cent in the rand.

## 22 SYSTEMS & PROCEDURES IMPLEMENTED BY THE BRPs

22.1 The following systems and procedures were implemented shortly after the commencement of the business rescue proceedings:

22.1.1 In order to effectively manage the cashflow of Autopax and ensure that all payment requests are properly approved, the Business Rescue Practitioners (BRPs) conducted bi-weekly meetings with the Exco of the company. These meetings also aimed to monitor the company's operational cashflow and make informed decisions on financial matters.

22.1.2 While the BRPs provided oversight and guidance, the day-to-day running of Autopax was still managed by the company's existing management team. However, they were accountable to the BRPs and were required to work within the parameters set out by Chapter 6 of the Act.

22.1.3 In an effort to secure the required funding for Autopax and expedite the company's turnaround, various meetings were held with PRASA and the Autopax Board. These meetings also provided an opportunity to provide updates on the status of the business rescue process and ensure that all stakeholders were aligned with the plan.

22.1.4 The BRPs also held meetings with the organized labour and employee committee to address any concerns and ensure that all parties were informed about the business rescue and its effects on employees.

22.1.5 The BRPs engaged with the Information and Communication Technology (ICT) team to discuss the company's operating software and identify any areas where improvements could be made to increase efficiency and reduce costs.

22.1.6 The BRPs played a key role in driving the exemption application to the 6% wage increase, which was ultimately granted in favour of Autopax on 8 September 2022. This exemption helped to alleviate some of the potential financial pressure on the company and support its ongoing operations.



22.1.7 In order to generate funds to support salaries and operations, the BRPs oversaw the sale of 233 obsolete and redundant scrap buses by way of auction. These buses were not economically repairable, and the proceeds from the auction were utilized to support the company's ongoing operations.

22.1.8 Assets: The BRP, in conjunction with Park Village Auctions went through an extensive exercise to:

- Verify the assets registered in the name of the Company through a reconciliation of the asset register, insurance policies, Tracker, NATIS and company searches;
- Identify all assets and inspect same.
- Finalise the valuations of all assets.
- Ensuring all assets are insured and ensuring proper safeguarding of the assets.
- Maintenance of buses.
- Take the appropriate steps with regards to assets in the possession of third parties.
- Realize assets not required by the Company to supplement the cashflow deficits.

22.1.9 Evaluation of the status with regards to all sales offices and depots of the company.

- The written lease agreement(s) and terms thereof.
- Where new lease agreements are required the BRPs are in the process of negotiating the new leases.
- Premises that are not required by the company. The BRPs have taken steps to ensure that the leases pertaining to these identified premises are cancelled and while certain premises have been vacated arrangements are ongoing with regards to certain other premises that need to be vacated.
- Various agreements and/or portions thereof have been suspended and/or amended in terms of Section 136 of the Companies Act, Act 71 of 2008.

- The lease agreements terminated, and their savings implication can be summarized in the below chart.

22.1.10 Ensuring adherence to the requirements of the Public Management Finance Act and the preference afforded to employees and trade creditors or suppliers in terms of Section 135 of the Companies Act.

22.1.11 The management, with the guidance of the BRPs, has secured a contract with the post office for utilizing trailers attached to buses for mail and goods deliveries. This has created an additional revenue stream for Autopax, contributing to the overall financial recovery of the company. The contract also provides an opportunity for Autopax to expand its services and collaborate with other entities, which could further enhance the company's operations and financial performance.

22.1.12 Held successful negotiations with SARS to ensure that the company meets its current statutory obligations to SARS. As of 04 February 2022, the company has obtained a valid tax compliance status from SARS. This has enabled the company to renew permits and licenses necessary for the continuation of its business.

22.1.13 The BRPs have conducted meetings with multiple landlords to discuss potential negotiation of new lease agreements for the company's premises. These meetings were held in an effort to secure more favourable lease terms and ensure the continuation of the company's operations in those locations.

22.1.14 The BRPs have also met with the Workmens Compensation Fund, which is necessary for the company to maintain compliance with regulatory requirements and to be able to submit claims with the fund. The BRPs have taken a proactive approach by submitting outstanding returns due to the Fund for 2019, 2020 and 2021, which could help to demonstrate the company's commitment to compliance and potentially lead to a positive outcome.

22.1.15 The BRPs have been successful in securing approval of funding for arrear provident and pension benefits for employees from relevant service providers. Ensuring that employees receive the benefits to which they are entitled. And addressed any potential legal or financial risks associated with the company's obligations to its employees.

## **23 SAVINGS IMPLEMENTED**

23.1 The BRP has furthermore endeavoured to limit operating costs and increase cash flow and have already created the following savings for the Company:

23.1.1 With regards to employees alone through the Voluntary Severance Package process the Company is saving approximately R6 750 000 per month.

23.1.2 The Company was also exempt from the 6% increase across the board. Seeing that at commencement the salary cost was approximately R14 000 000.00 per month this would have meant an additional R840 000 per month.

23.1.3 With the suspension of certain lease agreements, further negotiations with various landlords and vacation of certain leased premises in the 17 months since the Business Rescue process began the BRPs were able to save R7 863 320.95.

23.1.4 The vacation of the 13 leased premises realised a monthly saving for the company in an amount exceeding approximately R 300 000.00.

## **24 EXTENSIONS OF THE PUBLICATION DATE OF THE BUSINESS RESCUE PLAN**

24.1 During the first meeting of creditors on the 8<sup>th</sup> of December 2021 the business rescue practitioners (BRPs) sought the approval of a motion to extend the publication date of the business rescue plan from the original date to June 30, 2022. The extension was approved based on, inter alia, the following factors:

24.1.1 The ability of the BRPs to more accurately determine the three-year cashflow forecast for the company under circumstances where sufficient time is allowed pending the budget/funding approval on the application by PRASA to the relevant departments of Government, in conjunction with the company, which the BRPs estimated would realize by April 2022;

- 24.1.2 The voluminous number of claims required to be submitted and investigated that will form part of the business rescue plan.
- 24.1.3 The success of the business rescue proceedings for the company to continue as a viable going concern versus a winding down of the company dependant on the pending approval and pay out of the budget submitted to the relevant departments of Government, which was estimated could only come to fruition during approximately April 2022.
- 24.2 On the 24<sup>th</sup> of June 2022 the BRPs circulated a request for a further extension of the business rescue plan to the 30<sup>th</sup> of September 2022. The extension was proposed based on, inter alia, the following factors:
- 24.2.1 Delays that had been experienced with regards to the approval of the budget/funding pending before the relevant departments of Government.
- 24.2.2 The assumption that the approval would only realise during September 2022.
- 24.2.3 A large number of creditors' claims had not been submitted and still had to be investigated and verified despite constant reminders to these creditors by the BRPs.
- 24.2.4 This request was approved by the majority of creditors.
- 24.3 On the 22<sup>nd</sup> of September 2022 the BRPs circulated a request for further extension of the business rescue plan to the 31<sup>st</sup> of January 2023. The extension was proposed based on, inter alia, the following factors:
- 24.3.1 The Company was in the process of offering voluntary severance packages (VSP), which had been extended until the 30<sup>th</sup> of September 2022. The uptake by employees and the numbers reached by the end of September 2022, was a crucial element in the decisions required going forward as far as rightsizing the

Company is concerned. This had a material impact on the turnaround strategy of the BRPs.

24.3.2 The second factor is the budget approval from National Treasury and the Department of Transport for the proposed new fleet, and operational expenses, which also caters for payments towards creditors of the Company. We had not received confirmation from National Treasury regarding the budget approval, although progress is being made in this regard. There are, at this stage two important dates in this regard, the first being 23 October 2022 when BR's joined a meeting with both the Board of Autopax and PRASA. The second is the 26th of October 2022, where the National Budget speech will be delivered.

24.3.3 The motion was approved by the majority of creditors.

24.4 On the 24th of January 2023 the BRPs circulated a request for further extension of the business rescue plan to the 28<sup>th</sup> of April 2023. The extension was proposed based on, inter alia, the following factors:

24.4.1 BRPs still awaiting budget approval from National Treasury and the Department of Transport for the proposed new fleet, and operational expenses, which also caters for payments towards creditors of the Company.

24.4.2 The motion was approved by the majority of creditors.

24.5 On the 19<sup>th</sup> of April 2023 the BRPs circulated a request for further extension of the business rescue plan to the 31 July 2023. The extension was proposed based on, inter alia, the following factors:

24.5.1 BRPs were awaiting confirmation from PRASA with regards to the request for the required funding envisioned in the Business Rescue Plan since the request from National Treasury had not yet been approved.

## 25 THE PROPOSED STRATEGIES IN BUSINESS RESCUE

### THE HIGH WATERMARK: RETURNING AUTOPAX TO A VIABLE CONCERN WITH GOVERNMENT FUNDING

25.1 The management of Autopax, with the support of the BRPs, submitted its most recent Funding Request to PRASA on 19 September 2022, which funding approval for the turnaround of Autopax to a viable concern and avoid the structured winding down or immediate liquidation of the company, can be summarised as follows:

25.1.1 A memorandum to request the approval of the Autopax funding request and turnaround progress report to be consolidated with the PRASA funding request, as requested by National Treasury through the Department of Transport (DOT) was issued to the Autopax Board of Directors on 19 September 2022.

25.1.2 The Board of Directors of Autopax approved the inclusion of the Autopax funding request and turnaround progress report with the PRASA funding request.

25.1.3 The purpose of this request was to seek the recommendation of the National Department of Transport to approve the requested funding, enabling the BRPs to implement its Business Rescue Plan. This funding was crucial for Autopax to exit business rescue, achieve financial self-sustainability, and recapitalize its bus fleet.

25.1.4 Initial Funding Requirement-The funding request is summarised as follows:

- Arrear pension and provident fund contributions from May 2021 to August 2022: R42,247,357
- Severance/Voluntary Separation Packages (VSPs) for 500 employees: R80,000,000
- External Payables (Creditors): R228,547,152
- Intercompany payables (to PRASA): R285,186,386

- Operating funding requirement: R175,200,000
- Replacement of 141 obsolete coaches/buses: R705,000,000
- Electronic monitoring and fare equipment: R11,000,000
- Workshop and office equipment: R22,500,000

25.2 The total funding requirement amounted to R1,549,680,895.

25.3 The Turnaround strategy with the above stated funding approval can be summarized as follows:

25.3.1 Short-term Implementation (current to 12 months)

- Rationalization of serviced routes
- Right-sizing of staff complements through the S189 process.
- Consolidation of functions for increased service delivery efficiencies
- Replacement of obsolete buses.
- Immediate implementation of the approved business model to reduce services from 214 to 134 routes.
- Consolidate three depots into one.
- Manage routes on profitability basis.
- Reduce ticket selling offices to 20.
- Revise and optimize head office and depot management structures among other changes.

25.3.2 Medium-term Implementation (1-3 years)

- Acquisition of new buses as part of a fleet upgrade to enhance operations and reduce maintenance costs.
- Selling the remainder of redundant busses as new busses are introduced.
- Self-sustainability is envisaged to be reached after the second 12-month period post introduction of new buses.
- Execution of agreement with the South African Post Office for parcel transportation on the routes serviced from April 2022.

- Implementation of full maintenance agreements for new buses, repair of major accidents by third party service providers, and electronic monitoring and management of vehicles and drivers.
- Rightsizing of staff structures in line with operational buses and maintenance requirements. Budget for 361 employees from April 2022 to December 2022, and 550 employees from January 2023.

### 25.3.3 Long-term Implementation (3+ years)

- Long-term goal to achieve financial sustainability, creation of organic growth, and diversification into other markets.
- Continual operation adjustments to improve profitability based on past experiences and the evolving market landscape.
- Future steps include the potential divisionalisation of Autopax into PRASA and/or obtaining a strategic partner.
- Continual contribution to South Africa's economic development by providing affordable, safe long-distance bus services to outlying communities.
- Continual analysis and management of financials and costs, keeping fares affordable, while maintaining an effective and efficient bus service.

25.4 It was recommended that the funding as outlined above be approved and made available to PRASA through National Treasury and the Department of Transport. This will enable Autopax to achieve financial self-sufficiency in the short to medium term, while also allowing for organic growth to benefit underserved communities.

25.5 The approval of the funding request as outlined above, is instrumental for the implementation of the Turnaround Plan and Strategy to ensure Autopax is returned to a viable concern. Should the required funding be approved and made available to the Company's shareholder PRASA, the Turnaround Plan and Strategy as envisaged can certainly be implemented. The Business Rescue Practitioners trust that this eventuality will come to fruition in the nearby future which will have the effect that the Company can be restored to a viable concern and therefor no longer be dependent and reliant on funding from its shareholder PRASA.



- 25.6 At date of publication of the Business Rescue Plan the BRPs have not received a satisfactory commitment from National Treasury and the Department of Transport.
- 25.7 Should the funding request be received as described above within the 36-month period, independent creditors will, in addition to the 30 cents in the rand approved from PRASA's own budget, an additional payment of 20 cents in the rand in full and final settlement of their claims.

#### THE LOW WATERMARK: THE STRUCTURED WINDING DOWN OF AUTOPAX:

- 25.8 The BRP's decided to change their strategy in no longer waiting for Government Funding approval on the application on behalf of Autopax by PRASA, which process falls outside of the scope of what Autopax or the BRP's can control, but to come up with an alternative solution, not dependant on the Government funding approval, that can allow for a better return for creditors and all stakeholders, as opposed to the immediate liquidation of the company.
- 25.9 The BRP's decided to cater for an orderly winding down of Autopax over an extended period of time, which will allow Government sufficient time to consider approving the Autopax Turnaround budget, while creditors receive a dividend in the rand that PRASA could afford, staggered monthly which then would create a better return for creditors and that would satisfy the minimum requirements of a successful rescue, albeit that Autopax will cease to exist where no Government intervention of the a Turnaround strategy is forthcoming. This strategy could only work if the BRP's applied to PRASA, to make available funds from its own operational budget, to cater for a dividend to creditors that would place creditors in a better position than the immediate liquidation of Autopax.
- 25.10 The strategy is not dependant on Government funding or the introduction of a strategic partnership but simultaneously, allows for sufficient time for these approvals to still be obtained and if successful, for the company to continue in existence as a viable concern.
- 25.11 The BRP's subsequently applied to PRASA for not only funding the gross existing staff compliment cost, but also making available funds to commence with repayments towards creditors equating to pro rata 30 cents in the rand for a 36-month period. This application

was subsequently approved by the PRASA Board of Control on 20 April 2023. This approval is not dependant on any Government intervention or formation of a strategic partnership, but from the existing cashflow and budget of PRASA. This funding approval obtained from PRASA allowed the BRP's to implement a strategy where:

25.11.1 Certainty can be provided to all stakeholders in Autopax with the implementation of this strategy (where no intervention from Government takes place either through funding approval for the Turnaround strategy, or consent is provided for the introduction of a strategic partnership), where at least stakeholders can vote for a plan catering for a structured winding down of Autopax (the Low Watermark) an allowing for:

- The gross employee related remuneration and benefit packages being catered for by PRASA for the duration of the structured winding down process;
- The forced retrenchment packages with the envisaged retrenchment process being catered for by PRASA;
- The dividend equating to 30 cents in the rand towards independent creditors being catered for by PRASA.

25.11.2 Through the implementation of the structured winding down process, the main goal set for returning the company to a viable concern (either through the approval by Government of funding for the turnaround strategy or consent for the introduction of a strategic partnership to implement the turnaround strategy) is kept alive for the duration of the envisaged winding down process, which will allow for (the High Water Mark):

- Job creation where retrenched employees will be re-employed by Autopax as the roll out between the medium- and long-term goals of the Turnaround strategy with funding is reached as outlined above;
- Government complying with its constitutional mandate to provide basic public transport for certain sectors where private public transport is not available;
- Service Providers of Autopax continuing to supply Autopax will services and supplies these service providers depend upon for their livelihoods where

independent creditors still accept 30 cents in the rand dividend in full and final settlement of their claims as at date of business rescue.

25.11.3 Creditors have insisted that the BRP's remain involved in the structured winding down process until such time as an upside is achieved for creditors through Government funding approval or a strategic partnership allowing for 50 cents in the rand towards independent creditors in full and final settlement of their claims.

25.11.4 The strategy where no Government intervention is secured within the structured winding down process is therefore for the following to take place:

- Continuation of the Business of the Company for a maximum period of 36 months whereafter the business of Autopax will cease to exist, and all assets will be handed over to an Auction House.
- Comprehensive asset inventory: This will include the bus fleet, office and workshop equipment and any other asset of the Company to determine their value and marketability.
- Strategic vacation of leased premises: Strategically close and vacate various leased premises as operations are reduced and the premises become redundant.
- Auction of assets: All assets handed over to Auctioneers to be sold in 6 timed auctions monthly over a period of 6 months in order to not flood the market and to obtain the best possible prices for the buses.
- Retrenchment of all employees: In 6 months all employees remaining will be retrenched.

- Under these circumstances the realization of assets will not be sufficient to cater for the retrenchment packages of employees and will there be no funds available for any further dividend to independent creditors.
- The claim of PRASA is subordinated as on the 27th of May 2022. PRASA Board of control approved the subordination of amounts due to PRASA by Autopax to the value of R 1 628 445 485.47 as at 31 March 2022 in favour of other creditors.

## 26 IMPLEMENTATION OF THE STRATEGIES

26.1 The strategy for the Business Rescue of Autopax Passenger Services initially involved a combination of cost-saving measures, financial assistance, and the procurement of new buses to ensure the company's continued operation and future growth as described in the Company's Turnaround Plan and Strategy, appended as **Annexure "G"**.

26.2 Due to all the factors mentioned the strategy of the BRPs had to change as any strategy to return the company to a viable concern involves Government funding or a strategic partnership, both of which fall outside of the scope of what the BRPs can achieve as same involves applications, negotiations and decisions that need to take place at Government level and not between the company and Government, but between PRASA, the Department of Transport and National Treasury.

### IMPLIMENTATION OF THE STRATEGIES BY BRPS WITH THE ADOPTION OF THE BUSINESS RESCUE PLAN

#### 26.3 FINALIZATION OF THE FORCED RETRENCHMENT PROCESS

26.3.1 The BRPs will be involved and will oversee the continuation with the Section 189 process which will see the retrenchment of approximately 148 employees which stands to create a total further cost saving for the company of approximately R28.8 million annually. With a resultant calculated total saving through the VSP's already concluded and the proposed forced retrenchments of approximately R 109.8 million annually. The staff number will then have been

more than halved from approximately 828 employees to 370 employees. The revised personnel bill will be approximately R 171 million annually and will create an additional monthly cost saving of R2.4 million. This will enable the company to reduce its personnel expenditure and streamline its operations.

#### 26.4 OPERATIONS

- 26.4.1 To further reduce costs, Autopax will amalgamate its three depots into one depot. The balance of leased premises will be utilized as sleeping grounds and ticket offices. The reduction of services from 214 to 134 and the operation of only one brand will also help reduce costs. Ticket sales will be outsourced to agents at bus stops and loading points where Autopax does not have its own ticket selling offices.
- 26.4.2 The company will pursue the exemption of salary increases for the duration of the repayment period towards independent creditors.
- 26.4.3 Bi-weekly cashflow monitoring will be continued with and operations will remain delegated to the management of the company.
- 26.4.4 Negotiations will commence in order to reach settlements with Landlords with regards to damages resultant from the suspensions of rental obligations of the company in business rescue to a maximum of 75% of the rental that could have been claimed.
- 26.4.5 Negotiations will commence with Landlords in order to conclude written leases for all premises where no such leases are in place at market related rates.

#### 27 THE PAYMENT STRATEGY

- 27.1 Creditors will receive a minimum payment monthly of the pro-rata calculated dividend of 30 cents in the Rand over 36 months, with the first payment on the last day of the month in which the plan is adopted, and thereafter on or before the last day of every consecutive month until the 30 cents in the Rand dividend to all independent creditors have been settled.
- 27.2 Nothing prohibits PRASA from making available sufficient funds in order to settle the dividend towards independent creditors at any time after the adoption of the business rescue plan.

27.3 Where Government intervention is secured within the 36 month period allowed for in the plan, creditors will receive 50 cents in the rand in total towards independent creditors at any time within the 36 month period.

27.4 The repayment schedule for all independent creditors is attached as **Annexure "D"**.

## **28 THE BENEFITS OF COMMENCING WITH BUSINESS RESCUE VERSUS LIQUIDATION.**

Creditors stand to receive a substantially better return if the Company remains operational and the strategy is implemented as detailed hereinabove.

28.1 In the event that the Company is liquidated, there will be additional costs and claims that will rank above all secured and unsecured creditors. In this regard, the following needs to be considered:

28.1.1 The liquidator's costs will be payable prior to any other claims.

28.1.2 The liquidator's costs associated with the liquidation proceedings and realization of the assets of the Company will also be paid before any other claims. These costs will include a security bond, insurance, advertising costs, collection fees, storage, valuation costs, auctioneers' fees, auctioneers' expenses and possible legal costs.

28.1.3 The expected duration of the liquidation proceedings having regard to the process as provided for in the Insolvency laws and Companies Act will continuously diminish the value of the assets and render any possible sale of the Company as a going concern improbable.

28.1.4 The benefits of adopting the Business Rescue plan for all stakeholders are thus indisputably clear.

## **29 THE AGREEMENT FOR REMUNERATION OF THE PRACTITIONERS**

29.1 The agreement between the Company and the Practitioners can be summarised as follows:

29.1.1 The Company agrees to the appointments of Mr. Werner Cawood and Mr. Kenneth Colin Venter as the Business Rescue Practitioners (herein after alternatively referred to as "the business rescue practitioners").

29.1.2 The Company agreed to the appointment at the prescribed rate for a Large Company, as set out in Regulation 128 of the Companies Act.



29.1.3 The Company agrees that the business rescue practitioners are free to negotiate any increased or incentivised remuneration package with the creditors of the Company.

29.1.4 The company further indemnifies the business rescue practitioner against any claim for legal costs that the company may incur, or cost orders that may be awarded against the company or the business rescue practitioner in their official capacity as the business rescue practitioner, as a result of any legal actions that the company is involved in or may become involved in.

### **30 EFFECT ON ISSUED SECURITIES**

30.1 The BRPs envisage no change to any issued securities if this Business Rescue Plan is adopted.

### **31 EFFECT ON EMPLOYEES**

31.1 The adoption of the plan will see the finalization of the retrenchment process through, and an additional 148 employees will be retrenched. Where Autopax returns to a viable concern with government funding or a strategic partnership, the VSP's and the formal retrenchment process caters for the return of retrenched employees as and when they will be required should the Company be provided with a capital injection and working capital for the replenishment of the fleet.

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## **PART C – ASSUMPTIONS AND CONDITIONS**

### **32 CONDITIONS AND ASSUMPTIONS FOR FINALIZING THE BUSINESS RESCUE**

32.1 The business rescue proceedings will end with the substantial implementation of the Business Rescue Plan.

- 32.2 Monitoring of the implementation of the Business Rescue Plan until after the forced retrenchment process and where:
- 32.2.1 Creditors have been paid 30 cents in the rand by PRASA and a further 20 cents through government funding approval or the introduction of a strategic partnership within the 36 month period allowed for in the plan; or
- 32.2.2 Where no such strategic partnership or funding approval is obtained in 36 months realizing an additional 45 cents in the rands to creditors, within 30 days.
- 32.3 The BRP's can only be placed in a position to file a notice of substantial implementation in the above circumstances.

### **33 STATUTORY COMPLIANCE**

33.1 This Business Rescue Plan is subject to the continuous compliance of the Company with all relevant statutory obligations towards all relevant statutory bodies for the duration of the Business Rescue Plan.

#### **33.2 DEFAULT CLAUSE**

33.2.1 Any compromise contemplated in this business rescue plan is conditional upon the company fully meeting its obligations to creditors as set out in this business rescue plan. In the event of any breach by the company of its obligations to creditors in terms of the business rescue plan, or in the event the company is placed in liquidation, the full balance due to creditors in terms of their original claims against the company shall immediately become due, owing and payable by the company to the creditors. Business rescue proceedings will, in such instance be deemed to have terminated.

#### **33.3 CONTINUING TAX OBLIGATIONS**

33.3.1 The business rescue practitioner undertakes that the Company shall ensure that all future tax obligations (including the filing of returns and payment of outstanding taxes) will be met until proceedings have been terminated on any ground listed in terms of section 132 of the Companies Act of 2008. Any deviation from this undertaking shall constitute a material breach of the provisions of this Business Rescue Plan and proceedings will in such instance be deemed to have terminated. The full original claim outstanding to creditors or remainder of such claim shall be payable.

#### **33.3.2 VAT CLAWBACK CLAUSE**



- VAT liability arising as a result of a compromise of debts in terms of this plan is not subject to compromise and is payable in full. The practitioner warrants that provision for any VAT liability triggered in terms of section 22 of the VAT Act 89 of 1991 has been made in the plan.

### 33.3.3 ASSESSED LOSS FORFEITURE

- Any assessed loss will be subject to and dealt with in accordance with the provisions of the tax laws of South Africa and will be forfeited in proportion to the debt compromise effected by the Business Rescue Plan. Such reduction shall be without prejudice to any rights that the taxpayer may have in terms of the Tax Administration Act.

## **34 MATERIAL ASSUMPTIONS ON WHICH PROJECTIONS ARE BASED.**

The projections are based on, inter alia, the following:

- 34.1 The company having continued use of 75 operational busses for the duration of the 36-month cashflow projection;
- 34.2 Maintenance allowed at R4 per km per operational bus;
- 34.3 Kilometers are based on the past 12 months performance;
- 34.4 The gross salary expense will reduce in September 2023 with the retrenchment of 148 employees which calculates to a monthly saving of approximately R2 400 000;
- 34.5 No provision for is made for retrenchment packages as same is fully covered by PRASA;
- 34.6 Payment towards independent creditors will commence at the last day of the month within which the plan is approved and thereafter on or before the last day of each consecutive month.;
- 34.7 All projections exclude VAT;
- 34.8 Monthly income and expenditure is based on averages over the past 12 months and does not account for seasonal fluctuations.
- 34.9 The projection is based on creditors not being settled prior to the provided 36-month repayment period.
- 34.10 PRASA covers the cashflow shortages and independent creditor payments;
- 34.11 All outstanding post commencement liabilities of the company is settled within 30 days from the adoption of the plan and all liabilities post commencement business rescue are kept up to date.

- 34.12 Annual inflation escalation at 7% Per annum.
- 34.13 No provision has been made in the cashflow projection for the amount required to be settled on PCF outstanding claims. These amounts have been ringfenced and will be sufficient to settle these claims as provided for in the plan.
- 34.14 No provision has been made for any upside with regards to government intervention.
- 34.15 No provision has been made for any repayment towards PRASA as their claim has been subordinated.
- 34.16 Transnet (SOC) Ltd is also a dependent creditor and has no independent voting right but their voting interest will be calculated for the total vote.

### 35 ANNEXURES

- Annexure A List of creditors claims and voting interests.
- Annexure B Balance Sheet
- Annexure C Financial projections
- Annexure D Payment schedule towards independent creditors over 36 months
- Annexure E Pro forma liquidation and distribution account
- Annexure F Valuation reports
- Annexure G Service recovery plan and funding requirement to Treasury.
- Annexure H Resolution of subordination and letter of support.
- Annexure I 2022 Annual Financial Statement
- Annexure J 4<sup>TH</sup> Quarter Report 2022-2023

### **36 STATEMENT BY THE BUSINESS RESCUE PRACTITIONERS REGARDING THE REVISED BUSINESS RESCUE PLAN**

We, the Practitioners, hereby declare that the information contained in this Business Rescue plan is based on actual information supplied to us, which we have reviewed and is currently up to date. We have requested the information on the Company's affairs from the management of the Company and the Company's accounting officer.

The estimates are made in good faith and the assumptions are based on information that was gathered by us in dealing with the affairs of this Company.

### **37 DISCLAIMER.**

The Business Rescue Plan (“the Plan”) is formulated on information obtained from books and records recovered from the Company, the directors, Management as well as interviews with relevant persons and it should be noted that:

Our investigations have been limited due to the time constraints placed on us by the Companies Act. There may be certain issues that require additional investigation for an absolute determination to be formed. Where appropriate, we have highlighted these issues throughout the body of the Report and to the extent necessary have considered the possible impact of these when making our recommendations to creditors. It is normal for the Practitioner’s report to creditors to not form conclusive views in relation to all areas of investigation. Should liquidators be appointed to the Company, the liquidators will continue those investigations should there be a perceived benefit to creditors.

We have not carried out an audit of the Company’s documents, nor have we had adequate opportunity to verify any of the information given to us by the Company, except where expressly stated.

The statements and opinions in the Report are given in good faith and in the belief that such statements and opinions are not false or misleading. Except where otherwise stated, we reserve the right to alter any conclusions reached on the basis of any changes in, or additional to, information which may become available to us between the date of this Report and the date of any subsequent meetings or reports.

Neither the Practitioners nor any director or employee thereof undertakes responsibility in any way whatsoever to any person in respect of any errors in this report arising from incorrect information provided to us.

In considering the options available to shareholders and or creditors and formulating our recommendations, the Practitioner has made the necessary forecasts with respect to asset realizations and the quantum of total creditors. These forecasts and estimates may change as asset realizations progress and claims are received by creditors. Whilst the forecasts and estimates are the result of the Practitioner's best assessment in the circumstances, it should be noted that the ultimate deficiency and thus the distribution or outcome for creditors could differ from the information provided in the Report.