



## MANGO AIRLINES SOC LIMITED (in business rescue)

Registration Number 2006/018129/30

("Mango" or "the Company")

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31 January 2023

### Status Report in terms of section 132(3) of the Companies Act 71 of 2008, as amended, ("Companies Act"), read with Regulation 125

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#### 1. INTRODUCTION

In terms of section 132(3) of the Companies Act, a company whose business rescue proceedings ("BR Proceedings") have not ended within three months after the start of those proceedings, or such longer time as the court, on application by the business rescue practitioner ("BRP"), may allow, the BRP must:

- (a) prepare a report on the progress of the BR Proceedings, and update it at the end of each subsequent month until the end of those proceedings; and
- (b) deliver the report and each update in the prescribed manner to each affected person, and to the court, if the proceedings have been the subject of a court order or the Companies and Intellectual Property Commission ("CIPC"), in any other case.

The BRP accordingly submits the fifteenth status update report.

#### 2. SALIENT DATES

The following table sets out certain key events that took place during the BR Proceedings of the Company:

Events	Date
Board resolution commencing the BR Proceedings filed with the CIPC	16 April 2021
Commencement of the BR Proceedings	28 July 2021
Appointment of the BRP	3 August 2021
First meeting of the creditors of the Company	18 August 2021
Extension of time to publish the business rescue plan ("BR Plan")	29 October 2021
Meeting to consider the BR Plan	15 November 2021
Publication of the amended BR Plan	25 November 2021
Meeting to consider the amended BR Plan	2 December 2021



### 3. INVESTOR PROCESS

Having received and considered the letter dated 11 January 2023 from South African Airways SOC Limited ("SAA"), the BRP determined that the issues raised by the DPE/the Minister of Public Enterprises ("the **Minister**") and National Treasury had already been adequately addressed by the BRP and SAA in the section 54(2)(c) application and the various supplementations thereto ("the **Application**"). Accordingly, on 19 January 2023, the BRP wrote a letter to the Minister informing him that the BRP and SAA had provided him with more than sufficient information and time to enable him to make a decision on the Application, but that out of an abundance of caution the BRP would once again address the issues raised, which the BRP proceeded to do. The letter further informed the Minister that the legislature structured section 54(2) to ensure expediency and that his constant invocation of the extension provision was an abuse of process aimed at frustrating the conclusion of the transaction. Lastly, the BRP demanded that the Minister take a decision on the Application within 10 business days of receipt of the BRP's letter i.e. by 2 February 2023.

Unfortunately, no decision was taken. Instead, on 26 January 2023, the Minister addressed a curt letter to the BRP in which the Minister has adopted a position that he would not make a decision on the Application until such time as SAA provides him with the information he had asked for. The Minister also suggested that the BRP had no authority to address correspondence directly to him with respect to the Application.

This has left the BRP with three options, (i) do nothing and hope that the Minister changes his mind and makes a decision before the preferred bidder withdraws from the process, (ii) approach the courts for relief, or (iii) institute the wind down process. After taking legal advice, the BRP has resolved to institute urgent legal proceedings against the Minister to compel him to take a decision on the Application.

The recalcitrance of the Minister has had knock on effects. First, the preferred bidder had expressed a desire to withdraw from the transaction if a decision on the section 54(2) process was not made by 28 February 2023. However, after writing to the preferred bidder, the preferred bidder has confirmed that it will not withdraw until the legal proceedings brought against the Minister have been finalised. Second, on 5 February 2023, the BRP received a notice dated 3 February 2023 from the International Air Services Council ("IASC") informing the BRP that the IASC had resolved to cancel Mango's licence with immediate effect and the BRP understands that one of the reasons for the IASC having taken this decision is the fact that no decision has yet been made on the Application by the Minister. However, the BRP is also of the view that the notice does not provide sufficient grounds for the decision taken which is a requirement under the International Air Services Act, No 60 of 1993. As a result, the BRP intends on writing to the IASC to request detailed reasons for the IASC's decision to summarily terminate the license, specifically in circumstances where the IASC was made aware that the BRP would be instituting urgent legal proceedings to compel the Minister to make a decision on the Application. The BRP will also consider Mango's options to appeal the decision.



Due to the position of the preferred bidder and the decision of the IASC, the application to compel the Minister, had to be brought on an urgent basis. The BRP is hopeful that the urgent application will be heard at the end of February and that the judge hearing the application will deliver his/her judgment shortly thereafter. Barring any appeals being brought against the judgment and/or delays with receiving judgment, the BRP is hopeful that a decision will be taken by the Minister in respect of the Application in the next two months.

#### **4. WIND-DOWN PROCESS**

Although the BRP is taking every step available to him to rescue Mango, the difficulties experienced in the investor process have only served to increase the possibility that the transaction or Investor Process contemplated in section 3 above may have to be abandoned and for the BRP to implement the wind-down process that is already incorporated in the adopted BR Plan. The BRP would be remiss if he did not record that if the business rescue proceedings were to be converted to liquidation, it would predominantly be as a result of the failure by the Minister to take a decision on the Application within the statutory timeframe.

#### **5. PROOF OF CLAIMS**

The deadline for submission of claims was 3 March 2022, after which no new claims will be entertained. The BRP continues to evaluate the claims and has disputed some claims as he is entitled to do so.

#### **6. CONCLUSION**

The BRP remains of the opinion that there is a reasonable prospect of rescuing the Company, or that the BR Proceedings would result in a better outcome for creditors and the shareholder of the Company than would otherwise be achieved should the Company be placed in liquidation. Although the BRP remains of that opinion, the BRPs experience in this matter has lead him to question whether state owned entities are capable of being rescued under circumstances where the provisions of the PFMA enable the executive authority to frustrate a process that the Companies Act requires to be swift and expedient. The BRP believes that the imposition of PFMA mandated approvals in an entity in business rescue defeats the entire objective of business rescue, where quick decision making is of the essence. This scheme of arrangement effectively gives power to a shareholder that has effectively abandoned the business and may not even have any risk to protect in the future.

**Sipho Sono**  
**Business Rescue Practitioner, Mango Airlines SOC Limited**

***Transmitted Electronically***