



Date: 12 November 2019

CARMOL DISTRIBUTORS (PTY) LTD (IN LIQUIDATION)**MASTERS REF G1023/2015****SOUTH AFRICAN REVENUE SERVICE CLAIM****1. CORPORATE INCOME TAX AND PAYROL TAXES**

- 1.1. The formal objections lodged with SARS were disallowed by SARS as indicated in the notice dated 06 May 2019. In an attempt to resolve the issue, an Alternative Dispute Resolution meeting (**"the ADR"**) was held with SARS on 12 September 2019.
- 1.2. At the ADR, argument was presented to SARS by the joint Liquidators of Carmol Distributors (Pty) Ltd (in liquidation) (**"Carmol"**) (**"the Liquidators"**) who proposed to the SARS representatives that the Liquidators will support SARS in proving its claim against Carmol in the amount of R70,158,276.63, in full and final settlement of its claim against Carmol. SARS has accepted the Liquidators' proposal.
- 1.3. To assist creditors in understanding the proposal, the Liquidators record below details of the SARS tax claim prior to the proposal and the SARS claim in terms of the proposal.

2. SARS TAX CLAIM PRIOR TO PROPOSAL

<u>TAX PERIOD</u>	<u>PAYROLL TAXES</u>	<u>CORPORATE INCOME TAX</u>
2012	R0.00	R136,521.08
2013	R786,913.65	R2,502,020.72
2014	R14,187,698.66	R17,595,393.81
2015	R15,143,033.47	R48,864,226.71
SDL	R769,404.72	R0.00
UIF	R30,727.80	R0.00
	R30,917,778.30	R69,098,162.32

PENALTIES AND INTEREST	R54,220,266.29	R111,771,527.25
ORIGINAL CLAIM BY SARS	R85,138,044.59	R180,869,689.57
<u>TOTAL CLAIM</u>		R266,007,734.16

The Liquidators would treat the penalties and interest as concurrent claims and the Tax and PAYE amount of R100,015,940.62 as preferent claims. Concurrent creditors would accordingly receive an approximate dividend of 07.55 cents in the Rand if SARS does not object to the penalties and interest being treated as such. Should SARS object as aforesaid, this potentially could result in further litigation, which will consequentially delay the payment of any dividend until the resolution thereof.

3. **SARS TAX CLAIM IN TERMS OF PROPOSAL**

<u>TAX PERIOD TO DATE OF LIQUIDATION</u>	<u>PAYROLL TAXES</u>	<u>CORPORATE INCOME TAX</u>
SETTLED CLAIM	R30,917,778.30	R39,240,498.33
<u>TOTAL CLAIM</u>		R70,158,276.63

- 3.1. SARS would be paid the Tax and PAYE in the sum of R70,158,276.63 as a preferent claim in terms of Section 99 and 101 of the Insolvency Act (24 of 1936) (“**the Insolvency Act**”). The effect of the proposal is that concurrent creditors would get an approximate interim dividend of 16.80 cents in the Rand.
- 3.2. In effect what SARS have agreed to is a reduction in the amount of corporate income tax payable and that no penalties and interest will be levied. The Liquidators will settle the SARS claim as aforesaid in terms of their authority in accordance with the resolutions adopted at the second meeting of creditors.
- 3.3. Creditors should take note of the following for purposes of the proposal:
 - 3.3.1. Carmol conducted an illegal pyramid or Ponzi scheme during the 2012 to 2016 years of assessment;
 - 3.3.2. Carmol was placed under provisional winding-up on 01 October 2015 and under final winding-up on 30 November 2015. On 29 July 2016, the Liquidators were finally appointed;

- 3.3.3. On 22 November 2016, SARS issued a notice to the Liquidators in terms of the Tax Administration Act (28 of 2011) ("**TAA**"), and the Insolvency Act, in terms whereof the Liquidators were informed that SARS is an affected and interested party in Carmol and that it intended lodging a preferent claim in terms of Sections 99 and 101 of the Insolvency Act;
- 3.3.4. SARS quantified its claims in respect of the corporate income tax for the 2012 to 2016 years of assessment by means of additional estimated income tax assessments and for the payroll taxes by means of estimated assessments in respect of the 2012/03 to 2015/02 periods, which assessments were issued in December 2017;
- 3.3.5. The Liquidators, on behalf of Carmol, after receiving reasons for the assessment's in September 2018, lodged objections against the assessments and, after the disallowance thereof by SARS in April 2019, appealed to the Tax Court and simultaneously requested the dispute to be referred for ADR; and
- 3.3.6. Resulting from the ADR, the Liquidators achieved the settlement with SARS as aforesaid.

4. **BASIS OF THE SETTLEMENT OFFER**

- 4.1. SARS relies on the Supreme Court of Appeal judgment in the matter of MP Finance Group CC (in liquidation) v C: SARS 2007(5)SA 52 (SCA) ("**the MP Finance-judgment**" also referred to as the "*Krion pyramid scheme*");
- 4.2. Litigation to contest the correctness of the MP Finance-judgment and/or whether the judgment is distinguishable from the Carmol matter and/or to present other legal arguments may have to be contested in the Constitutional Court.

5. **THE LIQUIDATORS' SETTLEMENT OFFER TO SARS**

- 5.1. The total funds in Carmol's various bank accounts on or about Carmol's effective date of winding-up (i.e. 18 August 2015) was R140,144,636.90.
- 5.2. SARS' calculation of Carmol's liability for payroll taxes, excluding interest and penalties, totals R30 917 778.30 as assessed.
- 5.3. The Liquidators would support the SARS preferent claim, should it be calculated as set out hereunder.
- 5.4. Liability for employees' tax totalling R30,917,778.30, as currently assessed, to be proven as a claim in the estate (i.e. interest and penalties not to be proven as part of the claim).
- 5.5. Carmol's R140,144,636.90 (the cash left in the scheme) to be considered the alleged actual profits and not the significantly higher amount quantified by SARS's auditors. The R140,144,636.90 to be subjected

to corporate income tax at the rate of 28%, being R39,240,498.33 (i.e. interest and penalties not to be proven as part of the claim).

- 5.6. Agreed assessments in full and final settlement for income tax, to be issued for the aforementioned amount.
- 5.7. The total amount of SARS' claim to be proved is R70,158,276.63.

6. **THE WAY FORWARD**

The Liquidators will now:

- 6.1. Call on SARS to submit its claim in terms of the settlement in order to be submitted for proof at a meeting of creditors;
- 6.2. Apply to the Master of the High Court (Johannesburg) ("**the Master**") for a new cut-off date for the proving of claims. The Liquidators will recommend to the Master that this date be 17 January 2020;
- 6.3. Convene a special meeting of creditors at the office of the Master on 15 January 2020 to prove all the late unproved claims the Liquidators hold and the SARS claim;
- 6.4. Thereafter, the Liquidators will lodge a First Liquidation and Distribution Account providing for dividends for preferent (SARS) and concurrent creditors (Investors);
- 6.5. Creditors are reminded that dividend payments can only be made to creditors in terms of a Liquidation and Distribution account that has lay open for inspection free from objection and thereafter confirmed by the Master.



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