

Circular Thirty-Five: To All Known Creditors and Other Affected Persons of Arnot Opco Proprietary Limited (Registration Number: 2019/072282/07) (in Business Rescue) (the “Company”)

13 October 2026

Dear Sir/Madam

1. Introduction

1.1. Reference is made to Circular Thirty-Four, read together with the Constitutional Court judgment and order granted in *Salungano Group Ltd v Mashwayi Projects (Pty) Ltd and Others; Ndalamo Coal (Pty) Ltd v Mashwayi Projects (Pty) Ltd and Others* [2026] ZACC 38 handed down on 07 October 2026 (the “Judgment”), in which it was held that the order of the Supreme Court of Appeal (“SCA”) is set aside and replaced with the following order:

- (a) It is declared that Chapter 6 of the Companies Act 71 of 2008 (the “Act”) does not permit post-commencement creditors to vote on the adoption of the business rescue plan; and
- (b) it is declared that the amended business rescue plan presented on 28 July 2023 was not supported by holders of more than 75% of the creditors’ voting interests as required by section 152(2) of the Act. As a result, the matter is remitted to the BRP for a fresh vote. The fresh vote is therefore required to re-run the plan-adoption process; it is not a confirmation of, or reliance on, the previous vote.

2. Motion under section 153(1)(a)(i) to Prepare and Publish a Revised Business Rescue Plan

2.1. The Constitutional Court explained that the Act is silent on the remittal of a business rescue plan back to a creditors’ meeting for a new vote. It held that section 153(1)(a)(i), read with section 140(3)(a), (b) and (c)(ii) of the Act, provides a basis for remittal where irregularities undermine the credibility and legitimacy of the plan-adoption process.

2.2. Section 153(1)(a)(i) of the Act provides, in relevant part:

“If a business rescue plan has been rejected as contemplated in section 152(3)(a) or section 152(3)(c)(ii)(bb), the practitioner may-”



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“(i) seek a vote of approval from the holders of voting interests to prepare and publish a revised plan....”

- 2.3. Accordingly, the first step is a separate motion under section 153(1)(a)(i): holders of voting interests are asked to approve the BRP preparing and publishing a new or revised business rescue plan. If that motion is approved, the BRP must conclude that motion or meeting, prepare and publish the plan within the period required by section 153(3)(a)(ii), and the provisions of Part D of Chapter 6 apply afresh.
- 2.4. Only after the new or revised plan has been published will the BRP convene the later meeting required by section 151. At that meeting, the plan will be considered under section 152, and the eligible creditors will vote on preliminary approval. The section 153 motion is not the vote to adopt the plan.
- 2.5. Since the appeal was launched in the Constitutional Court, the Company’s financial, operational and commercial circumstances have materially changed. There has also been a substantial effluxion of time since the Plan was published. Creditors’ claims therefore need to be resubmitted or confirmed and vetted in light of developments since commencement of the business rescue proceedings, including changes arising from cessations, re-cessions, extinguished claims and post-commencement claims, all of which must be properly considered by the BRP before the section 151 meeting. The BRP will address the timing requirements in section 153(3), and the target timetable below remains subject to the Act and any necessary court direction.
- 2.6. The new or revised business rescue plan will accordingly take into account the Company’s current circumstances and proposed restructuring measures and, subject to the requisite approval, compliance with section 153(3) and any necessary court direction, will be published for consideration and voting by no later than 30 November 2026.
- 2.7. Holders of voting interests are therefore requested to vote on the section 153(1)(a)(i) motion by completing and signing the attached **Annexure A**. Only holders of voting interests attributable to verified pre-commencement creditor claims are eligible to vote on this motion; post-commencement creditors and post-commencement claims are non-voting. This motion concerns authority to prepare and publish a new or revised plan; it is not a vote to adopt the plan.
- 2.8. The completed and signed **Annexure A** must be returned by email to ArnotOpcobr@gcs-sa.co.za by no later than Friday, 16 October 2026 at 16h00. No late submissions will be accepted.



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- 2.9. Should the requisite majority approve the section 153(1)(a)(i) motion, the BRP will conclude that motion or meeting and publish a new or revised business rescue plan on or before 30 November 2026, subject to section 153(3) and any necessary court direction. The later section 151 meeting and section 152 vote will then be convened and conducted in accordance with Chapter 6 of the Act.

3. Claims, Voting Eligibility and Verification

- 3.1. Given the effluxion of time since the commencement of the business rescue proceedings and the need for a reliable creditor record, each creditor is requested to resubmit its claim form or confirm in writing that its previously submitted claim remains accurate, complete and enforceable. Each creditor must confirm the balance owing as at **10 October 2022 (the date of commencement of the business rescue proceedings)** in respect of pre-commencement claims and identify all post-commencement claims arising after that date and up to **07 October 2026 (the date of the Judgment)**, by completing and signing the claim form attached as **Annexure B**.
- 3.2. The resubmission or confirmation of claim forms is required for the independent verification and classification of claims before the BRP convenes the section 151 meeting. Creditors must provide supporting information addressing, where applicable, the identity of the creditor, authority to claim, the basis and amount of the claim, any cession or re-cession, any payment, set-off, compromise or extinguishment, and any post-commencement amount claimed. The BRP will use this information to determine which claims are eligible to vote and the voting interests attributable to them.
- 3.3. The completed and signed **Annexure B** must be returned by email to ArnotOpcobr@gcs-sa.co.za by no later than Friday, 30 October 2026 at 16h00. No late submissions will be accepted.
- 3.4. Post-commencement creditors and post-commencement claims will not carry voting interests on adoption of the plan. They will be recorded and dealt with for administration and plan purposes as applicable but will not be included in the section 152 voting pool.

4. Fresh Section 151 Meeting and Section 152 Vote

- 4.1. If the section 153(1)(a)(i) motion is approved and the new or revised plan is published, the BRP will convene a fresh meeting under section 151 for consideration of that plan. The plan



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will then be considered and voted on under section 152 by eligible holders of pre-commencement creditors' voting interests only.

- 4.2. At that later meeting, the BRP will introduce the plan, invite discussion and entertain any permissible motions under section 152(1), and then call for a vote for preliminary approval under section 152(1)(e).
- 4.3. Notice of the section 151 meeting will be given in accordance with section 151(2), including the date, time and place of the meeting, its agenda and a summary of affected persons' rights to participate and vote.

5. Conclusion

- 5.1. Creditors and other affected persons of the Company may direct any queries in relation to this circular to ArnotOpcobr@gcs-sa.co.za and are reminded that all relevant notices and documents (including the court applications and the Judgment) are available online at: <https://arnot-opco.com/business-rescue/>.

Yours faithfully,

Phahlani Mkhombo N.O.

Business Rescue Practitioner

Arnot Opco Proprietary Limited (in Business Rescue)



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