

**Companies and Intellectual Property Commission  
Republic of South Africa**

**Business Rescue Status Report**

**Form CoR 125.1**

**About this Form**

- This form is issued in terms of section 132 and 141 of the companies Act, 2008, and Regulation 125 of the Companies Regulations, 2011.
- This Notice and the attached report must be published to every affected person, and to-
  - a) The Commission, if the business rescue proceedings were started by the company; or
  - b) The court, if the proceedings were ordered by the court.
- A report and Notice must be issued at the end of the first three months of the business rescue proceedings, and at regular monthly intervals after that

**Contacting the Commission**

The Companies and Intellectual Property Commission of South Africa

**Postal Address**

PO Box 429  
Pretoria  
0001  
Republic of South Africa  
Tel: 086 100 2472

[www.cipc.co.za](http://www.cipc.co.za)

**Date:** 27 February 2023

**Customer Code:** WERKMP

**Concerning**

*(Name and Registration Number of Company)*

**Name:** Tongaat Hulett Developments Proprietary Limited

**Registration No:** 1981/012378/07

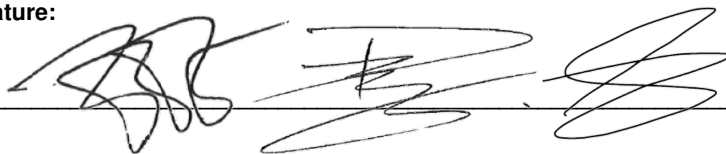
The above named company commenced business rescue proceedings on 27 October 2022.

Because the business rescue proceedings have not concluded within three months, the appointed business rescue practitioner provides the attached report in terms of section 132 (3).

**Name and Title of person signing on behalf of the Practitioner:**

TJ Murgatroyd, PF van den Steen & GC Albertyn  
Joint Business Rescue Practitioners

**Authorised Signature:**





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# TongaatHulett®

- Delivered by Email To:**
- All known Affected Persons of Tongaat Hulett Developments Proprietary Limited (in business rescue)
  - Companies and Intellectual Property Commission
- Displayed:**
- Registered office and principal place of business of the Company
  - Anywhere where employees are employed
- Published:**
- On the website maintained by Tongaat Hulett and accessible to Affected Persons
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27 February 2023

## **REPORT ON THE STATUS OF THE BUSINESS RESCUE PROCEEDINGS OF TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED (IN BUSINESS RESCUE) ("Company")**

### **1. GENERAL**

- 1.1. In accordance with section 132(3)(a) and section 132(3)(b) of the Companies Act 71 of 2008, as amended ("**Act**") when the business rescue proceedings of a company have not concluded within 3 months of the date on which they started, a business rescue practitioner is required to–
- 1.1.1. prepare a report on the progress of the business rescue, and update it at the end of each subsequent month until the end of the business rescue proceedings; and
  - 1.1.2. deliver the report and each update to each affected person and to the Companies and Intellectual Property Commission ("**CIPC**").
- 1.2. The Company voluntarily commenced business rescue on 27 October 2022. We (Trevor Murgatroyd, Peter van den Steen and Gerhard Albertyn), were appointed as the joint business rescue practitioners ("**BRPs**") on 27 October 2022 by board resolution which was filed with the CIPC.

- 1.3. Accordingly, we hereby provide you with the second report, being the February 2023 report, on the status of the Company's business rescue proceedings.
- 1.4. Affected Persons are hereby updated on the following matters which have occurred or remain relevant since the distribution and publication of the January 2023 status update report:

## **2. BUSINESS RESCUE UPDATES**

2.1. Business Rescue Plan Publication – Section 150(5) of the Companies Act requires that a business rescue plan ("**Plan**") for the Company should be published within 25 business days after the date on which the BRPs were appointed, or such longer time as may be allowed by the holders of a majority of the creditors' voting interests. Two extensions were previously approved by creditors in terms of which the required publication date is currently on or before 28 February 2023. The business rescue practitioners have requested post-commencement finance ("**PCF**") from secured creditors for the purposes of short-term liquidity requirements as well as for the implementation of a business rescue plan. The publication of the Plan is dependent upon the securing of this PCF, however the secured creditors require a further period of time to consider the request for PCF. As a result, additional time is required before the Plan is published. In this regard, the BRPs distributed a notice to creditors of the Company on 23 February 2023, requesting an extension of the date for publication of the Plan. The notice requested that creditors signify their consent to this request by 12:00 on Monday, 27 February 2023. Having considered the BRPs request, a majority of the creditors' voting interests voted, provided consent to extend the publication date to 31 March 2023. In the circumstances, the date for the publication of the Plan has been extended to 31 March 2023 by the requisite majority of the creditors' voting interests voted.

### 2.2. Perfection of notarial bonds

2.2.1. Affected Persons are reminded of the Notice in terms of, *inter alia*, sections 144,145 and 146 of the Companies Act, distributed to all known Affected Persons on 15 November 2022. Soon after the commencement of business rescue, the Company obtained PCF from the lender group, which facilitated payments of salaries and certain critical suppliers and/or creditors of the Company in the beginning stages of business rescue. A condition of the granting of this PCF, was, *inter alia*, subject to the consent by the BRPs to the perfection of the general notarial bonds that pre-existed the commencement of business rescue. The lenders to the Company and Tongaat Hulett Limited had instituted an application to Court to perfect the general notarial bonds

registered in favour of the lenders, which application was heard during the week commencing 14 November 2022. The BRPs reached agreement with the lenders that, notwithstanding the lenders perfecting their security rights in respect of the Company's operating assets, the Company retained ownership of the assets and may continue to access the applicable premises and continue to utilize the relevant assets, to enable the Company to continue operating in the ordinary course, subject to maintaining and preserving the security of the lenders.

2.2.2. A further Notice in this regard was circulated to Affected Persons on 14 February 2023, notifying Affected Persons of the High Court of South Africa, Kwa-Zulu Natal Division ("the **High Court**"), *Rule Nisi* date arising from the High Court order inviting any interested party to appear before the High Court on 20 February 2023, to show cause why an order on the terms provided for in the *Rule Nisi*, should not be made final. The High Court extended the *Rule Nisi* date to 16 May 2023.

2.3. Cost Reduction Initiatives – We continue our gathering of information intended to be used to assess where opportunities may exist to reduce operating costs, wherever possible

2.4. Asset and Business Sales – In accordance with previous reporting in this regard, we have begun investigating various potential sales processes related to assets of the Company and which are available to realise potential value for the Company's Affected Persons, including properties and/or shareholdings, projects/claims and movable assets that may be disposed of. These potential disposals will be dealt with in greater detail in the Company's business rescue plan.

2.5. Creditors' Meetings – Subsequent to the first statutory meeting of creditors of the Company, several creditor committee meetings have been held over the last four months and we will continue to engage with the creditors committee, as necessary, throughout the business rescue proceedings.

2.6. Employees – Subsequent to the first statutory meeting of employees, an employees' committee was formed by employees of the Company and representatives of the employees of the Company. Several meetings with the Employees' Committee have been held and we will continue to communicate and engage with this committee throughout the business rescue proceedings.

2.7. Claims Reconciliation – To date, we have received claim forms from multiple creditors. A verification process remain underway to reconcile the claims of creditors as reflected in the records of the Company against the claim forms received. We will use the Company's records to

determine the claims of Creditors unless we have received a claim that differs with that. Creditors who have not submitted a claim form but intend to do so are urged to do so as soon as possible before the publication of the business rescue plan. Claims may be submitted to the BRPs at the business rescue email address at: [BR@tongaat.com](mailto:BR@tongaat.com). All claims that are accepted in whole or in part will be reflected in the business rescue plan. Other than that, which is disclosed in the business rescue plan, or in the case of disputed claims, no other direct communication will be provided to creditors about whether a claim has been accepted or not. The business rescue plan will provide a process for creditors to deal with any disputes related to claims, and creditors with disputed claims will be at liberty to follow such process if they so wish.

- 2.8. Suspension of Obligations and Cancellation of Obligations –Section 136(2)(a) of the Act allows business rescue practitioners to entirely, partially or conditionally suspend, for the duration of the business rescue proceedings, any obligation of the Company that arises under an agreement to which the Company was a party at the commencement date, and which would otherwise become due during the business rescue. We will continuously consider the various obligations and determine if any should be suspended. Additionally, Section 136(2)(b) of the Act allows a business rescue practitioner during business rescue proceedings to cancel any obligation of the Company that arises under an agreement to which the Company was a party at the commencement date, and which would otherwise become due during the business rescue (whether or not he or she is entitled to do so in terms of the terms of the contract) on application to Court. We reserve the right to terminate any obligation that we deem necessary to terminate, on application to Court, in accordance with the provisions of section 136(2)(b) of the Act.
- 2.9. Settlement with Deloitte – The Company, Tongaat Hulett Limited and Deloitte & Touche South Africa (“**Deloitte**”) have, in anticipation of the commencement of a mediation process, concluded an agreement in relation to claims which the Company had asserted against Deloitte which arise from and relate to the appointment of Deloitte as auditor of the Company for the financial years ending 31 March 2012 to 31 March 2018 (both inclusive). Deloitte has paid an amount of R260m without admission of liability. The BRPs, having taken advice in this regard, are of the considered opinion that a settlement on these terms is in the best interests of the Company and relevant stakeholders.

### **3. CLOSING REMARKS**

- 3.1. We trust that with your assistance and co-operation the Company stands a reasonable chance of being rescued, within the meaning of section 128(1)(h) of the Companies Act, in a manner that will balance the rights and interests of all Affected Persons.



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- 3.2. Affected Persons are reminded that all notices and documents regarding the business rescue proceedings of the Company that have been and/or will be circulated to all known Affected Persons, are/will be published and made available to all Affected Persons, on the Company's website at: <https://www.tongaat.com>, under the 'Business Rescue' tab.
- 3.3. If you have any queries, they may be directed to the business rescue email address at: [BR@tongaat.com](mailto:BR@tongaat.com).

Yours faithfully,

**TJ Murgatroyd**

**PF van den Steen**

**GC Albertyn**

**The Joint Business Rescue Practitioners of Tongaat Hulett Developments Proprietary Limited  
(in business Rescue)**