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TongaatHulett®

- Delivered by Email To:**
- All known Affected Persons of Tongaat Hulett Limited (in business rescue)
 - Companies and Intellectual Property Commission
- Displayed:**
- Registered office and principal place of business of the Company
- Published:**
- On the website maintained by the Company and accessible to Affected Persons
 - Availability recorded in an announcement to shareholders on the Stock Exchange News Service (SENS), released after distribution.
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05 May 2023

NOTICE TO ALL KNOWN AFFECTED PERSONS OF TONGAAT HULETT LIMITED (in business rescue) ("Company") IN TERMS OF SECTION 128 OF THE COMPANIES ACT 71 OF 2008, AS AMENDED ("Companies Act") READ TOGETHER WITH SECTIONS 144, 145 AND 146 OF THE COMPANIES ACT

1. In accordance with section 128 of the Companies Act, read together with sections 144(3)(a), 145(1)(a) and 146(a) of the Companies Act, Affected Persons are hereby advised to consider the attached Notice ("the **Notice**").
2. The Notice pertains to the Notice of Motion filed at the High Court Of South Africa, Kwazulu Natal Local Division, Durban, under Case No.:D4472/2023 ("the **application**"), in the matter between: the Company, Tongaat Hulett Sugar South Africa (Proprietary) Limited and the joint business rescue practitioners of the Company ("the **Practitioners**"), and is issued to Affected Persons in accordance with the provisions set forth in sections of the Act referred to above. Affected Persons are notified that the attached Notice does not constitute service of the application, and the Practitioners are in the process of applying to Court for an order to direct the manner of service of the application on Affected Persons.
3. Affected Persons are further notified that the Notice of Motion and all relevant documentation and supporting annexures will be made available to all Affected Persons prior to formal service of the application upon them, on request and in the manner set out in the attached Notice.

Yours faithfully,

TJ Murgatroyd

PE van den Steen

GC Albertyn

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

**NOTICE IN TERMS OF SECTION 128 OF THE COMPANIES ACT 71 OF 2008 ("the Act"), READ
TOGETHER WITH SECTION 144, 145 AND 146 OF THE ACT:**

ALL AFFECTED PERSON IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")

This notice is addressed to all affected persons in the business rescue process of THL.

THL and its business rescue practitioners ("the **BRPs**") have brought an application to the High Court of South Africa, KwaZulu Natal Local Division, Durban under case number D4472/2023 ("the **application**"). The following persons are the named respondents in the application -

- South African Sugar Association;
- S.A. Sugar Export Corporation (Proprietary) Limited;
- Minister Of Trade, Industry And Competition;
- South African Sugar Millers' Association NPC;
- South African Cane Growers' Association NPC;
- South African Farmers' Development Association NPC;
- RCL Foods Sugar & Milling (Proprietary) Limited;
- Illovo Sugar (South Africa) (Proprietary) Limited;
- Umfolozi Sugar Mill (Proprietary) Limited;
- Gledhow Sugar Company (Proprietary) Limited;
- Harry Sidney Spain N.O;
- UCL Company (Proprietary) Limited;
- all Registered Growers; and
- the Affected Persons in THL's Business Rescue as defined in section 128 of the Act.

In the application, the following orders are sought -

Part A:

- 1 The applicants be granted leave to give notice of the main application (being Part B of the notice of motion) by way of substituted service on all Registered Growers and the Affected Persons in THL's Business Rescue as defined in section 128 of the Act.

Part B:

- 2 Declaring that the third to fifth applicants ("the **BRPs**") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of the first applicant ("**THL**") which arises under the Sugar Industry Agreement, 2000 ("the SI Agreement") *alternatively* any redistribution payment, and related levies and interest that become due in terms of clauses 183 and 184 of the SI Agreement, and which would otherwise become due during the business rescue proceedings;
- 3 Alternatively to paragraph 1 above and in the event that the Court finds that the obligations under the Agreement are not amenable to suspension -
 - 3.1 declaring section 136(2)(a)(i) of the Act unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and
 - 3.2 reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Act;
- 4 Declaring that respondents are precluded, in terms of section 133 of the Act, from bringing legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement;
- 5 Striking out or permanently staying the application instituted by RCL Foods (Proprietary) Limited before the Sugar Industry Appeals Tribunal on about 31 March 2023;
- 6 Ordering RCL Foods (Proprietary) Limited to pay the applicants' costs in respect of the Sugar Appeals Tribunal application; and
- 7 Directing any party that opposes this application to pay the costs jointly and severally, including the cost of three counsel where three counsel have been employed.

THL and its business rescue practitioners have cited you as respondents in the application. You are therefore entitled to (i) receive a copy of the application, (ii) take independent legal advice and (iii) participate in the application.

Please contact Werksmans Attorneys (whose details are set out below) to obtain a copy of the founding papers in the application, in electronic format, at no cost to yourself should you require a copy of the application prior to formal service.

Werksmans Attorneys

Ref: Mr Trevor Boswell / Ms Simone Gast

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