

- (j) The Council's Local Pest, Disease and Variety Control Committees shall comprise a minimum of 4 members, of whom 2 shall be nominated by the Millers' Section, 1 shall be nominated by SACGA for the Growers' Section and 1 shall be nominated by SAFDA for the Growers' Section. The Millers' Section may appoint 2 alternates to its nominees to Local Pest, Disease and Variety Control Committees and SACGA and SAFDA may each appoint 1 alternate to the Local Pest, Disease and Variety Control Committees;
- (k) The Association shall pay a total annual fixed fee to the Millers' Section, SACGA and SAFDA in respect of all the meetings associated with the business of the Association including but not limited to the Association's general, special, Council and committee meetings. The total annual fixed fee shall be for attendance at the meetings of at least sufficient representatives of each of the Millers' Section and SACGA and SAFDA respectively required to render each such meeting quorate. The total annual fixed fee is all inclusive and, without limiting the general scope of this provision, includes the costs of the Vice-Chairpersons and all costs of and associated with preparing for and attending meetings including all travel and subsistence costs. The Association shall pay half the total annual fixed fee to the Millers' Section and one quarter of the total annual fixed fee to SACGA and SAFDA respectively. The Association shall pay the total annual fixed fee in 4 equal quarterly instalments on 1 April, 1 July, 1 October and 1 January. The total annual fixed fee for the period from 1 April 2020 to 31 March 2021, both dates inclusive, shall be R12 million and that amount shall escalate on 1 April each year thereafter for the remainder of the Transitional Period starting from 1 April 2021 by the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA or its successor;

Meetings

- (l) All meetings of the Association and of its Council shall be presided over by the Chairperson of the Association and in his or her absence, by 1 of the 3 Vice-Chairpersons, failing which, by a chairperson elected by the meeting;
- (m) During 2020 a special meeting of the delegates of the Association shall be held at such time and place as may be determined by the Association's Council to elect a Chairperson and Vice-Chairpersons and to appoint Councillors and alternates;
- (n) The Council may call a special meeting of the delegates of the Association whenever it deems it necessary and the Chairperson, or in his absence, 1 of the 3 Vice-Chairpersons, shall call a special meeting of delegates of the Association whenever requested by either Section to do so. Particulars of the special business to be

attended to at a general or special meeting of the Associations shall be given in the notice calling the meeting;

- (o) Clause 7(4)(b) shall be replaced with the words, "In the case of an emergency, the Chairperson, or in his absence 1 of the 3 Vice-Chairpersons, may convene a special meeting on less than 7 days' notice";
- (p) The quorum for any general meeting of the Association shall be 20 delegates personally present, of whom at least 10 shall be delegates from the Millers' Section, at least 5 shall be delegates from SACGA and at least 5 shall be delegates from SAFDA;
- (q) The quorum for any special meeting of the Association shall be 11 delegates personally present, of whom at least 4 shall be delegates from the Millers' Section, at least 2 shall be delegates from SACGA and at least 2 shall be delegates from SAFDA;
- (r) The quorum of any meeting of the Association's Council shall be 9 Councillors or their alternates personally present provided that:
 - (i) they include at least 4 Councillors appointed by the Millers' Section and 4 Councillors appointed by the Growers' Section;
 - (ii) of the Councillors representing the Growers' Section, at least 2 Councillors are nominated by SACGA and 2 Councillors are nominated by SAFDA;
- (s) (i) Subject to the provisions of paragraph (ii), at least 7 days' notice of every meeting of the Association's Council shall be given to all Councillors and the notice of the meeting must be accompanied by an agenda for the meeting and copies of all documents to be considered at the meeting, provided that the Chairperson may permit the consideration at, and by, any meeting of the Association's Council of any additional items not on the agenda and/or documents which did not accompany the meeting notice and on less than 7 days' notice including without any notice;
 - (ii) In the case of an emergency, the Chairperson, or in his absence 1 of the 3 Vice-Chairpersons, may convene a meeting of the Association's Council on less than 7 days' notice;
 - (iii) The period of notice shall be calculated from the day of the posting or delivery of the said notice; whichever date is the earlier;
- (t) The quorum for each meeting of every Association committee shall be 40% of the members or their alternates of that committee personally present, provided that those present must include at least 2 representatives of the Millers' Section and 1 representative of each of SACGA and SAFDA, respectively;

- (u) The Department of Trade, Industry and Competition may attend as an observer at any meeting of the Association's Council;

Voting

- (v) All questions arising at general and special meetings of the Association shall be determined by a majority representing at least two-thirds of the delegates present at the meeting, provided that such majority must include at least 1 vote from the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include at least 1 vote by a delegate representing SACGA and at least 1 vote by a delegate representing SAFDA;
- (w) All questions arising at meetings of the Association's Council shall be determined by a majority representing at least two-thirds of the votes cast, provided that such majority must include at least 1 vote of Councillors nominated by the Millers' Section and the Growers' Section and that the votes from the Growers' Section must include at least 1 vote by a Councillor nominated by SACGA and at least 1 vote by a Councillor nominated by SAFDA;
- (x) At any special or general meeting of the Association's delegates or at any meeting of the Association's Council which has been adjourned for lack of a quorum, decisions shall be determined by a majority representing at least two thirds of the votes of those present irrespective of whether those votes include at least 1 vote from the Millers' Section and at least 1 vote from the Growers' Section irrespective of whether the vote from the Growers' Section includes votes from SACGA and SAFDA;
- (y) All questions arising at meetings of the Association's committees shall be determined by a majority representing at least two-thirds of the votes cast provided that such votes must include votes of members (or in their absence, alternates) representing the Millers' Section and the Growers' Section and the votes from the Growers' Section must include at least 1 vote by a member representing SACGA and at least 1 vote by a member representing SAFDA."

ANNEXURE B

SUGAR INDUSTRY AGREEMENT, 2000

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

1. The Sugar Industry Agreement, 2000, is hereby amended -

(a) by the addition in clause 1 of the following definition after paragraph (vi):

"(vi)A. "Co-operation Agreement" means a binding written agreement concluded for each season and signed by 1 April of each year by all the Local Grower Structures representing growers contracted to deliver cane to a particular mill for that season in terms of which the Local Grower Structures agree:

(a) how they will collectively perform their functions in terms of this agreement and their collective costs for that season of performing those functions;

(b) the amount per ton cane to be deducted from the cane proceeds payable by the mill to all growers contracted to deliver cane to that mill in terms of clause 132A to fund the Local Grower Structures' costs in terms of clause 1(vi)A(b);

(c) how the amounts recovered from growers in terms of clause 132A are to be shared between the Local Grower Structures;"

(b) by the substitution in clause 1 for the definition of "Growers' Association" of the following definition:

"Growers' Associations" means SACGA and SAFDA;

(c) by the substitution in clause 1 for the definition of "Local Grower Council" of the following definition:

"Local Grower Structure/s" means the structure/s established by SACGA and SAFDA and which are hereby deemed to be authorised to represent all growers contracted to deliver cane to a particular mill;"

- (d) by the substitution in clause 1 for the definition of "Millers' Association" of the following definition:

"Millers' Association" means the South African Sugar Millers' Association [Limited] NPC and its successors in title;";

- (e) by the addition in clause 1 of the following definitions after paragraph (xxii), the remaining definitions to be renumbered accordingly:

"(xxiii) "SACGA" means the South African Cane Growers' Association NPC and its successors in title;

(xxiv) "SAFDA" means the South African Farmers' Development Association and its successors in title;";

- (f) by the substitution in clause 11 for paragraph (c) of the following paragraph:

"(c) two persons appointed by the Growers' [Association] Associations, 1 appointed by SACGA and 1 appointed by SAFDA;";

- (g) by the substitution in clause 23 for paragraph (c) of the following paragraph:

"(c) [one person] two persons appointed by the Growers' [Association] Associations, 1 appointed by SACGA and 1 appointed by SAFDA;";

- (h) by the substitution for clause 38 of the following clause:

"38. All questions coming before the Appeals Tribunal shall be decided by a majority of votes of the members of the Appeals Tribunal hearing the issue. Provided that:

- (a) the person appointed by the Millers' Association shall have 2 votes;
- (b) the persons appointed by the Growers Associations shall have 2 votes, 1 vote to be exercised by the person appointed by SACGA and 1 vote to be exercised by the person appointed by SAFDA;
- (c) the non-industry members shall have 2 votes each; and
- (d) in the case of an equality of votes, the chairperson, or in his or her absence, the vice-chairperson shall have a second or casting vote.";

- (i) by the substitution in clause 55 for paragraph (c) of the following paragraph:

"(c) undertake such tasks and duties as may from time to time be assigned to it by agreement between the Local Grower [Council] Structure/s and the mill concerned;";

- (j) by the substitution in clause 58 for paragraphs (a) and (c) of the following paragraphs respectively:

"(a) the number of mill members and grower members, respectively, shall be determined by the Mill Group Board concerned on condition that the number of members representing the mill and growers, respectively, shall not be less than two each, 1 appointed by SACGA and 1 appointed by SAFDA in terms of clause 58 (c) unless agreed otherwise by SACGA and SAFDA in terms of a written agreement;

(c) the grower members shall be appointed by the Local Grower [Council] Structure/s concerned, provided that SACGA and SAFDA's Local Grower Structure/s shall be equally represented on all Mill Group Boards except if SACGA and SAFDA agree otherwise, record such agreement in writing and both sign it;";

- (k) by the substitution for clause 59 of the following clause:

"59. Mill Group Board members shall be appointed annually in the month of March and, if not replaced during March of the following year, shall hold office until replaced by the newly appointed members. [Casual vacancies on the Mill Group Board shall be filled, or alternate members appointed, by the Local Grower Council or mill concerned, as the case may be] Casual vacancies on the Mill Group Board shall be filled, or alternate members appointed, by whichever of SACGA's Local Grower Structure, SAFDA's Local Grower Structure or the mill, appointed the absent member, as the case may be;";

- (l) by the substitution in clause 61 for paragraph (a) of the following paragraph:

"(a) the mill members shall collectively have 1 vote, the grower members appointed by the Local Grower Structure/s shall collectively have 1 vote;";

- (m) by the substitution for clause 115 of the following clause:

"115. A mill shall not effect a change to its cane receiving facilities if the effect of the change is to render unsuitable the mode of delivery employed by any of the growers contracted to deliver cane to the mill, except with the approval of all affected growers or the Local Grower [Council] Structure/s concerned;";

- (n) by the insertion of the following new clause, the existing clause 130 becoming clause 130A:

"Local Grower Structure/s";

130. If there is more than 1 Local Grower Structure representing growers contracted to deliver cane to a particular mill, then an agreement in terms of clause 130A may only be concluded and deductions in terms of clause 132A may only be made from cane proceeds, if and when those Local Grower Structures conclude a Co-operation Agreement.”:

- (o) by the substitution in clause 130A for the words preceding paragraph (a) of the following words:

[A Local Grower Council] After conclusion of a Co-operation Agreement, where applicable, the Local Grower Structure/s may negotiate with a mill on behalf of all the growers contracted to deliver cane to such mill in relation to –;”;

- (p) by the substitution for clause 131 of the following clause:

“131. Any agreement resulting from such negotiation shall be binding on the mill concerned and all growers concerned. Any such agreement shall be supplementary to the provisions of any cane supply or similar agreement that may subsist between the mill concerned and a particular grower: Provided that if there is any conflict between the provisions of any such cane supply or similar agreement and any agreement concluded in terms of clause 130, the provisions of the latter agreement shall prevail, save as may otherwise be agreed in terms of clause 130(f). Any agreement concluded in terms of clause 130A, including agreements concluded by the Local Grower Councils which preceded the Local Grower Structure/s (and for clarity, the Local Grower Council was previously defined in this agreement as the Local Grower Council referred to in SACGA’s Memorandum of Incorporation “representing growers contracted to deliver cane to a particular mill”), remains binding until it is replaced by another agreement concluded in terms of clause 130A.”:

- (q) by the substitution for clause 132 of the following clause:

“132. If any dispute arises between a mill and a grower in relation to an agreement negotiated between the mill and a Local Grower [Council] Structure/s, either party may refer the dispute to the Appeals Tribunal for determination.”:

- (r) by the addition of the following clause after clause 132:

“132A. The ordinary expenses for the performance of the functions of each Local Grower Structure in terms of this agreement, as agreed in terms of a Co-operation Agreement if applicable, shall be financed by each grower contracted to deliver cane to a mill. After conclusion of a Co-operation Agreement if applicable, every grower contracted

to deliver cane to a particular mill shall be deemed to have authorised that mill to make a deduction from his cane proceeds to fund the Local Grower Structure/s' ordinary expenses, and the Local Grower Structure/s may by written notice to the mill, require the mill to:

- (a) deduct the amount stipulated in that notice from the cane proceeds payable to each grower (which amount may not exceed the amount agreed in terms of the agreement concluded in terms of clause 130); and
- (b) pay the amount deducted to the Local Grower Structure/s, in the proportions agreed in any applicable Co-operation Agreement, provided that the Local Grower Structure/s shall use the amounts so recovered to perform their functions in terms of this agreement."

- (s) by the substitution in clause 160 for paragraph (i) of the following paragraph:

"(i) "Growers' Statutory Costs" means for the first year of the Transitional Period, the amount calculated by the sum of the costs of SACGA and SAFDA respectively approved by the Association's Council for the 2019/2020 season, escalated on 1 April 2020 by a rate equal to the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA, expressed as a percentage, and for each season of the Transitional Period thereafter, the Growers' Statutory Costs for the immediately preceding season escalated on 1 April (such escalation being compounded each season) by a rate equal to the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA, expressed as a percentage and less the Meeting Costs and other industry obligations in terms of clause 175."

- (t) by the substitution for clause 162 of the following clause:

"162. (a) The South African Sugar Association shall collect the Growers' Statutory Costs in each year by way of a levy imposed in terms of Chapter 7. MCP's shall be subject to a maximum levy equal to the lesser of R4.00 per ton cane delivered (and this R4.00 amount shall be adjusted for each season starting from 1 April 2021 by the year on year change in the headline consumer price index, for all urban areas, for January as reflected in table P0141 or its successor as published by Statistics SA or its successor) and the average per ton cane levy required to recover the Growers' Statutory Costs each year.

(b) The South African Sugar Association shall pay to SACGA and SAFDA equal portions of the Growers' Statutory Costs so collected."

- (u) by the substitution for clause 169 of the following clause:

"169. In respect of each year, the South African Sugar Association shall calculate and determine the amount of the share of the net divisible proceeds determined by it in accordance with the provisions of clause 165, which is to be allocated to growing in accordance with the provisions of clauses 166 and 167, subject, if applicable, to clause 168 **[by attributing the total amount of the share of the net divisible proceeds, after the deduction of the Growers' Association costs for the year, to the total proceeds payable by mills to growers for cane deliveries in such year]** ", by deducting the Growers' Statutory Costs for the year and adding the Meeting Costs Equalisation Amount, and then attributing the total amount of the remainder of the share of the net divisible proceeds allocated to growing to the total proceeds payable by mills to growers for cane deliveries in such year."

- (v) by the substitution for clause 175 of the following clause:

"175. Subject to clause 176, all expenditure incurred by or at the instance or with the approval of the South African Sugar Association from time to time in accordance with the powers conferred upon it in terms of its Constitution or as provided for in this Agreement shall be industry obligations, and which expenditure, without limiting the generality of this provision, includes expenditure pursuant to obligations assumed in respect of loans raised by or at the instance of the South African Sugar Association and Meeting Costs."

- (w) by the substitution for clause 190 of the following clause:

"190. Industry obligations and Growers' Statutory Costs shall be met by means of financial levies imposed upon sugar from time to time by the South African Sugar Association in terms of its constitution."

- (x) by the addition of the following Transitional Provisions after clause 197:

"Transitional Provisions

198. Despite any other provision of this agreement, during the Transitional Period as contemplated in clause 198.5, words and phrases which are defined in the South African Sugar Association's Constitution shall have the same meaning in this agreement unless otherwise indicated or clearly apparent from the context and the following words and phrases have the meanings attributed to them in these Transitional Provisions and cognate expressions have similar meanings:

198.1 MCP means miller cum planter, that is, a grower which is wholly owned by a Milling Group but excluding:

198.1.1 any venture, without limitation and irrespective of its form, in which growers which are not themselves MCP have any direct interest (including a minority interest) in that venture;

198.1.2 any venture which operates on communal land, irrespective of whether or not a Milling Group owns that venture;

and MCP's shall only include those MCPs which notify the Administration Board, in writing, that they are MCPs.

198.2 **Meeting Costs** means the total annual fixed fee referred to in clause 15(9)(k) of the South African Sugar Association's Constitution.

198.3 **Meeting Costs Equalisation Amount** means the amount which comprises the difference between half the Meeting Costs and the amount calculated by applying to the Meeting Costs the percentage of the net divisible proceeds allocated to growing in terms of clause 166 as adjusted by clause 167 and/or clause 168 if either of these clauses applies.

198.4 **Milling Group** means a miller or refiner which produces saleable sugar or saleable sugar equivalent per season.

198.5 **Transitional Period** means from 1 July 2020 until 31 March 2024 or any later date determined in terms of clause 15.4 of the South African Sugar Association's Constitution.

198.6 **Transitional Provisions** means clauses 198 to 207 of this agreement and clause 15 of the South African Sugar Association's Constitution;

198.7 **2018 Transitional Provisions** means the amendments to the Constitution and the Sugar Industry Agreement, 2000 promulgated in Government Gazette 41967 on 9 October 2018.

199. In applying the Transitional Provisions, the Transitional Provisions in the Constitution must be read together with the Transitional Provisions in the Sugar Industry Agreement, 2000, both as amended and applied during the Transitional Period. In applying the Transitional Provisions of this agreement, unless otherwise indicated or clearly apparent from the context, the Transitional Provisions of this agreement shall prevail over any of the other provisions of this agreement (the Sugar Industry Agreement, 2000) which conflict with, or differ from, those Transitional Provisions.

200. The Transitional Provisions apply during the Transitional Period only.

201. After consultation with the South African Sugar Association, the Minister may amend the Transitional Provisions by publishing notice of the amendments in the Government Gazette.
202. After consultation with the South African Sugar Association, the Minister may extend the Transitional Period whenever necessary by publishing notice of each extension in the Government Gazette by the date on which the Transitional Period is due to expire.
203. This agreement shall come into effect on 1 July 2020.
204. The provisions of this clause 204 apply in relation to the 2018 Transitional Provisions:

Anything done from 1 April 2018 until 9 October 2018 comprising amendments to the agreement in terms of section 4(1)(c) of the Act, both dates included, and which is done in accordance with, or to give effect to, or in anticipation of, the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018 and the South African Sugar Association at the special meeting on 16 April 2018 and the 2018 Transitional Provisions and anything else done by the South African Sugar Association in good faith in order to effect recognition and funding of SAFDA, shall be deemed to be valid in law.

Neither the South African Sugar Association nor any of the delegates, Councillors (including the South African Sugar Association's Chairperson and Vice-Chairpersons), members, members of its committees, employees, contractors or agents nor any miller, refiner nor grower shall be liable for anything done in accordance with, or to give effect to, or in anticipation of:

- (i) the resolutions passed by the South African Sugar Association's Council on 15 March 2018 and 16 April 2018;
- (ii) the resolutions passed by the South African Sugar Association at the special meeting on 16 April 2018;
- (iii) the 2018 Transitional Provisions; and
- (iv) anything else done by the South African Sugar Association to recognise and fund SAFDA between 1 April 2018 and 9 October 2018, both dates included.

Amendment of Sugar Industry Agreement, 2000

205. The Sugar Industry Agreement, 2000, published under Government Notice No. 1208, Government Gazette 21139 of 3 May 2000 is hereby amended upon publication in the Government Gazette and with effect from 1 July 2020.

Publication of this Agreement

206. The publication of these amendments to the agreement in terms of section 4(1)(c) of the Act confirms that the Minister is satisfied that such amendments are in the interests of the sugar industry and not detrimental to the public interest."



LOCAL MARKET MODEL

1. DETERMINATION OF DOMESTIC MARKET PROCEEDS

1.1 PRODUCTION

All sugar to be accounted for as saleable production, as is currently the case:

- Local market refined
- Local market brown
- Export raws (includes the raw sugar equivalent of refined exports)

1.2 DETERMINATION OF PRICES

1.2.1 SASA has been able to set its prices without considering import parity other than where an increase of below 4% was being considered, as only price increases at or above that level triggered a commensurate increase (rand rather than %) in the import duty.

1.2.2 The substitution of the CPI by the USD/ZAR exchange rate as the pricing index could therefore be applied in the same way - SASA will decide when it wishes to change the Local Market Notional Prices, and, unless it wishes to expose the industry to the threat of imports, would apply the change in the exchange rate since the last price increase.

1.2.3 A Dollar Based Reference Price will separate local market pricing decisions from the determination of import protection levels and expose the industry to fluctuations in the ZAR/USD exchange rate.

1.2.4 No maximum price will be declared or published by SASA.

1.2.5 SASA will determine Notional Local Market Prices, which shall be used to determine the gross proceeds of local market production for the purposes of the Division of Proceeds. These prices to be determined separately for refined and brown sugar, on an ex mill basis.

1.2.6 Increases in the Notional Local Market Prices will come into effect on no less than 5 weeks prior notice; decreases will be implemented immediately. Price changes will be effected on a Wednesday. Notional Local Market Prices ruling on the date of despatch to the customer will be used in the calculation of the Recoverable Value Price (RV), as is currently the case.

1.2.7 Changes to Notional Local Market Prices will be brought to account in the RV price declared subsequent to the effective date of the change. Retention Interest values will be calculated on the basis of notional local RV prices calculated for the period since the last Notional Local Market Price change as is currently the case.

1.3 LOCAL MARKET DETERMINATIONS AND MILLERS SHARES THEREOF

1.3.1 The industry will set local market determinations to manage -

- (a) compliance with its obligations to Swaziland and in future in the proposed SADC Sugar Protocol;
 - (b) the risk associated with local market stock shortages
- and to calculate the revenue attributable to the local market used in the determination of the RV price.

1.3.2 SASA will continue to set local market determinations (sales estimate plus target carry-over stock to the subsequent year less carry-over financed in prior year) separately for refined and brown sugar, and review such throughout the year in the light of local market sales.

1.3.3 Millers will share total local market revenue valued at Notional Local Market Prices in the same proportion as each mill's total saleable sugar production bears to total saleable production of the industry, as is currently the case. Total saleable production to be determined on a raw sugar equivalent basis in respect of refined export sugar.

1.4 DISTRIBUTION OF SALES PROCEEDS BETWEEN MILLERS

1.4.1 SASA will distribute export market proceeds to millers pro rata to total saleable production as is currently the case.

1.4.2 Millers will be entitled to sell more sugar in the local market than their pro rata share and will redistribute local market revenues (and thereby the import protection) to achieve the principles in 1.3.3 above, in accordance with the principle set out in 1.4.3 below. Redistribution to be effected via SASA. Millers shall not be required to hold local market carry-over stock as at the end of the year pro rata to their respective saleable production, but shall be required to hold carry-over stock pro rata to sales - see item 1.4.4 below.

1.4.3 The redistribution will be undertaken on a provisional basis as at the end of each of the three sales months ending June, September and December (interim redistribution), and finally as at the close of the year in March (final redistribution). Cash flows will be affected within 30 days other than for the final redistribution, which will be effected together with the sale of carry-over stock by millers to SASA at the end of the year. The sales of carry-over stock to SASA (item 1.4.4 below) will be taken into account as a sale for the purposes of the redistribution between millers as at the year end. All redistributions will be undertaken on a cumulative, recalculated basis. The miller who over performs in the local market to account to other millers via SASA for the Notional Local Market Prices to the extent of the over performance less an agreed manufacturing allowance, determined separately for refined and brown sugar. The manufacturing allowance will not be taken into account in the redistribution as at the end of June.

1.4.3.1 At each provisional redistribution amongst millers (at the end of June, September and December each season with effect from 1 April 2004),

under-performing millers are to receive from the redistribution on the total sales to date basis of calculation, and over-performing millers are to contribute to the redistribution on the seasonal sales to date basis of calculation. SASA is to fund the difference between proceeds paid to under-performing millers and proceeds received from over-performing millers on a net accumulative basis from quarter to quarter. The interest cost incurred as a result of the net accumulative payments is to be paid to SASA by individual millers, quarterly in arrears, based on the net accumulative payment amounts, and calculated at the applicable overnight borrowing rates of interest borne by SASA, on the following basis:

- The interest owing to SASA will be paid in equal proportions by the under-performing millers as a group and by the over-performing millers as a group.
- The under-performing millers are each to pay a proportionate share of their fifty percent of the interest owing to SASA based on their respective shares of the total under-performing tonnages calculated on the seasonal sales to date basis.
- The over-performing millers are each to pay a proportionate share of their fifty percent of the interest owing to SASA based on their respective shares of the total over-performing tonnages calculated on the seasonal sales to date basis.

1.4.3.2 The net accumulative amount and balance of interest due in respect of each season is to be paid to SASA at the final redistribution, which is calculated on the seasonal sales basis.

1.4.4 SASA will acquire unsorted local market carry-over stocks at the end of the year as is currently the case, at the prevailing National Local Market Prices. Financing of carry-over to be paid to millers pro rata to seasonal sales (excluding the sale to SASA of carry-over stock at the end of the year concerned). Seasonal sales will be sales in the year concerned (excluding the sale to SASA of carry-over stock at the end of the year concerned) less carry-over stock financed by SASA in the preceding year. SASA will not be required to finance stock in excess of the year's local market determination less seasonal sales, calculated separately in respect of refined and brown sugar. An example of this calculation is incorporated in Figure 2.

1.4.5 Millers shall continue to liquidate carry-over financing from sales in the ensuing year as is currently the case. In the event that an under selling miller has not liquidated all of its carry-over stocks financed at the end of the preceding year as at any of the quarterly re-distributions, it will not be entitled to receive a redistribution to the extent to which it has not so liquidated its carry-over, and the over performing millers shall not be required to pay such amounts. The amount not to be redistributed to the under performing miller will not be collected by SASA from the over performing millers in proportion to their over performance as at the redistribution date. Figure 1 sets out an example of the computation in this regard.

Figure 1: Allocation of Unliquidated Carry-Over Stock at a Redistribution Date

	Millers A	Millers B	Millers C	TOTAL
1. Seasonal Determination	100	150	80	330
2. Carry-over (financed in prior season)	400	550	350	1,300
3. Determination	1,500	4,500	2,000	8,000 (1,400)
4. Sales	1,500	4,500	2,000	8,000
5. Carry-over	100	150	80	330
6. Liquidation of Carry-over	100	150	80	330
7. Spring sales 75% quarter	60	90	45	195
8. Carry-over not liquidated	40	60	35	135
9. Actual 1st quarter sales distributed pro rata to total available production	132	183	84	400
10. Redistribution required	43	(17)	89	-
11. Redistribution required by over-performing millers	119	89	0	208
12. Net redistribution	76	72	89	237

1.5 DELIVERY OF SUGAR TO SASA BY MILLERS

1.5.1

Each miller will be obliged to deliver to SASA the sugar it does not require for sale in the local market. A miller who, as at the end of a year (the current year), has not delivered its export obligation to SASA as export sugar (including deemed deliveries of raw sugar for export refined & DC raws), will not be entitled to receive payment for the shortfall from SASA until such shortfall has been delivered to SASA. The first deliveries to SASA by such a miller in the ensuing year will be deemed to be deliveries in respect of its export obligation in the current year. On delivery in the ensuing year, SASA will pay to the miller concerned the payment withheld in the current year. Such deliveries will not be considered as deliveries in fulfilment of the relevant miller's export obligation in the ensuing year. Export obligation will be calculated for each miller as total saleable production less seasonal sales (see item 1.4.4 above), less carry-over financed at the end of the year concerned.

Figure 2 sets out an example of the computations in this regard.

1.5.2

Local market sugar which is stored by SASA for any miller which is the subject of a separate agreement will not be taken into consideration for the purposes of this item 1.5.2. In the event that a miller has delivered more than its export obligation (see item 1.5.1 above) to SASA this will be attributed as local market sugar to the miller concerned. Such miller will pay storage and handling thereon, provided that where the aggregate of the over deliveries by all millers to SASA at all locations is less than or equal to 5 000 tons, or such other tonnage as may be agreed by SASA from time to time, as at the end of the year concerned, storage will not be payable. In the event that storage is payable in terms of this provision, storage will be payable by the relevant millers at the same rate per ton per period as is payable by Tongaat-Huhter Sugar Ltd in terms of its contract with SASA for the storage of local market raws by SASA. Should an agreement with Tongaat-Huhter Sugar Ltd not be in force at any year end, the storage rate will be determined by SASA. Storage will be payable from the date which is reckoned as the date on which the relevant miller finalised its deliveries of

raw sugar to SASA in the year concerned less the period necessary for the relevant miller to have delivered the quantity of local market sugar attributable to it at SASA, based upon the actual delivery rate by the relevant miller over that period, until 31 March. Should any miller withdraw raw sugar from any of SASA's storage facilities, in addition to any storage which may be payable, the relevant miller will pay to SASA a handling charge determined on the same basis as which the storage charge is determined in terms of this provision.

2. DOMESTIC MARKET INFORMATION & REBATES

2.1 REPORTING OF SALES BY MILLERS

Millers shall report monthly sales of sugar in SACU to SASA in the same manner as they currently do. They shall be required to keep SASA and SACCA informed on the state of the market, as is currently the case.

2.2 PACKING EXCHANGES

No industrially based packing exchanges will exist beyond 31 March 2000.

2.3 STRATEGIC LOCAL MARKET REBATES

SASA will continue to fund, manage and develop its strategic rebates. Millers and Growers will consider ways of improving the management of these activities in the light of the negative sentiment that has been expressed by customers in relation to the negotiation of such rebates. Each customer's rebates will be funded by SASA, which funding may be effected directly to the customer, or, with the consent of the miller concerned, via the miller concerned.

3. MANUFACTURING ALLOWANCES

Millers who have sold sugar in the local market in excess of their shares of production (the 'over-sell millers') will have incurred variable costs in connection therewith. Conversely, millers who have sold less than their pro rata share of sugar in the local market (the 'under-sell millers'), will be deemed to not have produced such sugar and not incurred marginal production costs in connection therewith. In order to address the marginal costs of production, under-sell millers will compensate over-sell millers for variable costs of production through the payment of the Manufacturing Allowance as set out herein.

The manufacturing allowances will be calculated separately for refined and brown sugar, and will comprise marginal costs of production, cost of 25kg bags, storage and handling, and refining losses.

3.1 ELEMENTS OF THE MANUFACTURING ALLOWANCES

3.1.1 Refined Sugar

- (a) Marginal refining costs of R88.27 per ton refined sugar (1998 values), to be adjusted by the year-on-year change in the average Producer Price Index for the two calendar years immediately preceding the

Revised Main Principles Document - January 2012

year in which the season for which the costs are to be determined, ends.

- (b) A 25kg bag allowance calculated as the weighted average cost of 25kg bags used for packing refined sugar for the local market in the season concerned by all refiners. This cost to be calculated by SASMAL based upon information supplied by all refiners and supported by audit certificates.
- (c) A refining loss per ton of refined sugar calculated as Net Divisible Proceeds in the season concerned less Molasses Proceeds included in that figure, divided by total saleable production (with export refined sugar brought to account at its raw sugar equivalent), multiplied by 2.04%.

3.1.2 Brown Sugar

- (a) Marginal manufacturing costs of R48.00 per ton brown sugar (1998 values), to be adjusted by the year-on-year change in the average Producer Price Index for the two calendar years immediately preceding the year in which the season for which the costs are to be determined, ends.
- (b) A 25kg bag allowance calculated as the weighted average cost of 25kg bags used for packing brown sugar for the local market in the season concerned for all millers. This cost to be calculated by SASMAL based upon information supplied by all millers and supported by audit certificates.

3.1.3

In the event that the bagging costs in 3.1.1(b) and 3.1.2(b) above have not been finally determined as at 31st March, un-audited provisional estimates provided by the refiners and millers will be used as at that date with a final adjustment when the audited information is at hand. Any difference in the manufacturing allowances occasioned by a change in the bagging costs between the provisional estimate of such costs as at 31st March and the cost as finally verified by audit certificates will be paid to or recovered from the over-sell millers, as the case may be, as soon as possible after receipt of the audit certificates, together with interest thereon, provided that whereas the aggregate interest payable is less than or equal to R1 000.00, the payment of interest shall be waived for the season concerned. Interest will be calculated from the 31st March to the date of payment at the three weighted average of the daily BA rate, including costs, on a 'month' basis.

Examples of the computations required in terms of 3.1.1 and 3.1.2 above are set out in Figure 3.

3.2 PAYMENT OF MANUFACTURING ALLOWANCES

3.2.1

On a provisional recalculated accumulative basis as at the end of September and December sales months in respect of the actual accumulative over sold tonnage as at each of those two dates, together with the redistribution of import protection to be effected by SASA in terms of the new local market model. The manufacturing allowances to be used at

Revised Main Principles Document - January 2012

such dates will be the final manufacturing allowances for the immediately preceding season adjusted by:

- (a) the estimated change in the Producer Price Index on the basis as set out in Item 3.1.1(a) above in respect in the marginal refining costs (Item 3.1.1(a) above) and marginal manufacturing costs (Item 3.1.2(a) above), and
- (b) the estimated change in the Producer Price Index for Paper, computed on the same basis as set out in Item 3.1.1(a) above, in respect of the bagging allowances in Items 3.1.1(b) and 3.1.2(b) above.

3.2.2 Finally, on a recalculated accumulative basis, on and as at 31 March, however, subject to the need for a provisional final payment as at that date as contemplated in Item 3.1.3 above.

3.2.3 The distribution of manufacturing allowances will be undertaken by SASA as an industrial function.

Figure 2: Examples of Determining Local Market Carry-Over Stock held by SASA / Export Stock held by Miller

	Ref	TOTAL	Miller A	Miller B	Miller C
Tons x 1 000					
Determination for Dec					
1. Carry-in from prior season	16.	330			
2. Determination		1,110			
3. Sales		(1,120)			
4. Carry-out		320			
Financial Entitlements Pro Rata to Saleable Exports					
5. Local market		1,110	434	454	172
6. Export Market		1,090	478	446	168
7. Total Saleable Production		2,200	960	900	340
Actual Production					
8. Delivered to SASA		1,090	480	620	10
9. Required for local market		1,110	500	280	130
10. Total Saleable Production		2,200	980	908	340
Physical Production vs. Financial Shares					
11. Local market		(20)	(24)	166	(152)
12. Export market		20	24	(166)	152
13. Total Saleable Production					
Determination as Made					
14. Carry-out financed in prior season		830	100	150	80
15. Actual make		1,090	460	620	10
16. Sales		(1,120)	(450)	(590)	(80)
17. Carry-out		300	110	180	10
Expanding of Carry-over Stock & Local Market Redistributions					
18. Sales	18.	1,120	450	590	80
19. Less carry-in	14.	330	160	180	80
20. Seasonal sales	18-19	790	360	440	80
21. Carry-out pro rata to seasonal sales		320	142	178	-
22. Cash flow from determination	20+21	1,110	482	618	-
23. Redistribution			(8)	(184)	172
24. Underdetermination pro rata to production	24.	1,110	484	454	172
Excess / Shortfall in Export Deliveries					
25. Production	10.	2,200	980	900	340
26. Cash flow from determination	22.	1,110	482	618	-
27. Export obligation	25-26	1,090	468	282	340
28. Export deliveries	9.	1,110	500	280	330
29. Excess / Shortfall	26	20	32	(2)	(10)
Physical / Financial Stock Reconciliation					
30. Actual physical carry out	17.	300	110	180	10
31. Local market stock at SASA	31.	32	32	-	-
32. Export raw held by miller	29.	(12)	-	(2)	(10)
33. Carry-out as financed	21.	320	142	178	-
Reconciliation of Local Market Cash Flows					
At Year End					
34. From carry-in	14.	(330)	(100)	(150)	(80)
35. From sales	16.	1,120	450	590	80
36. From carry-out	21.	320	142	178	-
37. From re-distributions	23.	-	(8)	(184)	172
38. Net cash flow	34	1,110	484	454	172
39. Pro rata determinations	5.	1,110	484	454	172

Figure 3: Sample Computation of the Elements of the Manufacturing Allowance

1. Marginal Refining & Brown Sugar Manufacturing Costs			
Producer Price Index	1999	1998	
Jan	116.6	113.3	
Feb	117.0	114.3	
Mar	117.3	114.1	
Apr	118.5	114.3	
May	119.5	114.4	
Jun	120.0	115.0	
Jul	120.4	115.2	
Aug	121.1	115.9	
Sep	120.7	115.9	
Oct	121.0	115.9	
Nov	121.4	115.8	
Dec	121.8	115.5	
Average	119.6	114.9	
Change	4.08%		

Marginal refining costs for 1999/1998 season			
PPi Change	Refined RTN	Brown RTN	
	88.27	48.00	
	3.80	1.98	
	91.87	49.98	

2. Bag Allowances			
	Refined	Brown	
Cost of 25 kg bags*	7,320,000	1,972,000	
Tons packed in 25 kg bags*	122,000	34,000	
Cost per ton	60.00	58.00	

* aggregate for all refiners / millers

3. Refining Loss			
	FOO		
Net divisible proceeds	3,867,673		
Revenue from final molasses	(75,738)		
Sellable production	3,791,937		
Sugar net divisible proceeds per ton	2,661,077		
Refining loss allowance at 2.04%	1,480,866		
	30,220		

CONSOLIDATED Example Allow - Example.xls

SUGAR TRANSPORT

1. GENERAL

Millers shall become responsible for sugar transport costs (including losses in transit) in respect of both the local and export markets, as from 22nd March 2000.

As a consequence of millers assuming responsibility for sugar transport as set out hereafter, the growers share of net divisible proceeds will be as follows:

Table 1: Growers Shares of Net Divisible Proceeds

SEASON	GROWERS SHARE	ADJUSTMENT
2000/2001	62.7327%	0.0745%
2001/2002	62.8593%	0.0741%
2002/2003	62.9852%	0.0734%
2003/2004 and thereafter	63.0318%	0.0734%

To the extent that adjustments may be required in terms of these arrangements to the transport costs assumed by millers, the Growers share will be changed as follows:

$$A = \left(\frac{N}{RTN \cdot k \cdot P} \right)^{x-1}$$

where

- A = Required adjustment to Growers' share
- N = Change to transport costs assumed by millers (decrease = negative number), expressed in 1999/2000 values
- P = Relevant percentage per column 3 of Table 1

2. EXPORT MARKET SUGAR TRANSPORT

2.1 RESPONSIBILITY FOR SUGAR TRANSPORT

Millers shall be responsible for the cost of transport to the nearest qualifying port as per Item 2.2.1 below. Should SASA elect to have a mill's export raw sugar exported via another port any increased costs of transport plus any standing costs of not using the nearest qualifying port will be for SASA's account. Furthermore, should SASA not be able to make a miller's nearest qualifying port available to the miller concerned (in respect of its export raw sugar obligation), any increased costs of transport to another port shall likewise be for the account of SASA.

2.2 EXPORT PORTS AND RESPONSIBILITY FOR FORWARDING COSTS

2.2.1 At inception (22nd March 2000), the only qualifying ports will be Durban and Maputo. Millers shall be responsible for the transportation of their export obligations to port.

2.2.2 SASA will continue to be responsible for costs of placing bulk, raw export sugar on board vessels, including the costs of storage and handling at the port.

2.3 NEW PORT CRITERIA

2.3.1 Any other port may become a sugar export port to which millers may deliver raw export sugar, subject to such port being shown to be able to qualify as a sugar export port according to the following criteria, unless otherwise agreed by Council:

(a) The unit cash costs to SASA of using the new port to be less than or equal to the unit cash costs of using Durban.

Unit cash costs at Durban will be assessed as fixed and variable cash costs (excluding interest) less normal assured revenue, assuming a throughput of bulk, raw export sugar, based on a standard crop (for the purposes of this clause only) of 2.45 million tons saleable sugar and an export allocation of 1.15 million tons of raw sugar. In the event that SASA rationalises its bulk export facility at Durban, the level of the standard total and export crops will be reviewed relative to the reduced facility, which will only be applicable to new port assessments subsequent to the rationalisation.

Millers may elect to subsidise the unit cash costs of the new port in order to satisfy criteria in Item 2.3.1(a) above. This subsidy will be established in the year of the evaluation of the new port and will be escalated annually at an appropriate index. Millers may elect to pay SASA the capitalised value of any operating cost subsidy that has been applied in the assessment of the new port, in which event the ongoing assessment and payment of subsidies will not be applicable.

(b) The port to be accessible for exports and capable of receiving and shipping the export raw sugar requirement of the mill concerned, at that port, as reasonably required by SASA.

(c) The port to be able to load sugar at a minimum rate of 5 000 metric tons per weather working day.

(d) The port must be able to accommodate vessels capable of loading a cargo of at least 20 000 metric tons. This minimum cargo size will be reviewed by Council from time to time as may be appropriate in the light of changed shipping arrangements and developments.

(e) The port must have facilities to store 20% of projected annual export raw sugar production from the supplying mills or one average cargo as determined in 2.3.1(d) above, whichever is the greater.

2.3.2 The miller will develop the facility for his account at the port unless otherwise agreed by SASA who will consider the options available to the

Industry at that time on a whitewash basis. Should SASA elect to use the new port at the time, the miller concerned will be required to make the new port available as envisaged in consultation with SASA who will become the contracting party in respect of the facilities at the new port, whether owned or leased.

2.4 DOP IMPACT ON NEW PORTS

The Division of Proceeds sharing ratio will be adjusted in favour of Growers to take into account the savings in transport costs that have arisen as a consequence of the new port after the completion of 5 years usage of the port as a sugar export facility. Council will determine the appropriate manner of determining the elements required to effect this change.

3. GERMISTON BULK DEPOT

3.1 The depot should be reserved for RSA sugar as it is a strategic asset in relation to customers.

3.2 The depot is to be managed by Ilvoa Sugar Limited (ISL) for the 2002/01 and 2007/02 seasons (bridging period) during which period ISL can add to the existing assets and acquire new assets.

3.3 Other refineries are entitled during the bridging period to negotiate with the depot's existing customer base in order to develop marketing arrangements with them.

3.4 The depot will be sold with effect from no later than 1st April 2002 subject to 3.6.1 below. Any miller or refiner purchasing the depot will not be entitled to sell the asset for at least three years from the effective date that ownership vests with the purchaser.

3.5 Council to determine by 1st April 2000 the basic terms on which offers envisaged in Item 3.6.1 below will be made, which terms may be altered from time to time by Council. Such terms to be consistent with a property sale of similar nature and magnitude.

3.6 SALE PROCESS FOR THE DEPOT

3.6.1 Any member of S A Sugar Millers' Association may, before 1st April 2002, make an offer to SASA to acquire the depot, inclusive of the land, buildings and movable assets. Upon receipt of this offer, provided that it complies with the basic terms as per Item 3.5 above, SASA will:

- Within 7 days invite all other refineries and millers to make an offer within 21 days to acquire the depot on the basic terms established in terms of Item 3.5 above.
- Not divulge to other millers any information concerning price and financing in the initial offer.
- Make a decision on the sale of the depot within two months of the receipt of the initial offer.

- (d) Not be obliged to accept any bid that is not at least equal to the scrap value of the silos and ancillary equipment plus the market value of the general use buildings, land and movable assets.
- (e) Subject to item 3.6.1(d) above, accept the most favourable offer.
- 3.6.2 All offers will be irrevocable for a period of at least three months with effect from the date on which SASA received the original offer.
- 3.6.3 In the event that no refiner or miller makes an offer prior to 1st April 2002 to acquire the depot, it will be disposed of on the open market, provided that it would not be sold as a bulk sugar facility to a competitor to the South African Sugar Industry.
- 3.6.4 SASA will bear all the costs incurred by the depot during the bridging period, other than:-
- Forward transport including mill to railhead costs
 - The costs of managing, maintaining and operating the bulk tankers and mechanical hoses.
 - Stock losses in excess of 0.15% per year, basis received mass at the depot.
- 3.6.5 The Depo will be adjusted in favour of millers after the depot has been sold by SASA to take into account the return on capital and depreciation on the depot transport fleet, in the amount of R1 001 500.

REFINED SUGAR EXPORTS AND DC RAWS

1. GENERAL PRINCIPLES

- 1.1 **RESPONSIBILITY FOR REFINED SUGAR AND DC RAW EXPORTS**
With effect from 1st April 2000, subject to item 1.2 below, SASA will not engage in the export of refined sugar and direct consumption raw sugar.
- 1.2 **MILLERS ACCESS TO RAW SUGAR**
Millers shall purchase their raw sugar required for the production of refined sugar and direct consumption raw sugar (DC raws) for export from the industry in the first instance at a price determined in terms of this Section C. To the extent that raw sugar is unavailable from the industry the miller will be free to purchase raw sugar from any other supplier for the miller's own risk and reward.
- 1.3 **INDUSTRIAL COMMITMENT**
Notwithstanding the provisions contained in 1.8 below, the industry will, subject to long term marketing considerations and taking into account the priority in 2 below, give preference to the requirements of the millers for raw sugar over both non-industry refiners and world market raw importers.
- 1.4 **RESPONSIBILITIES**
Millers shall have the responsibility of producing, packing, handling, stacking, transporting, labelling and marketing of the export refined and DC raws. This responsibility includes all the cost implications of these activities including the refining loss in the case of export refined.
- 1.5 **MARKETING RESTRICTIONS**
Millers shall not be entitled to export bulk raw sugar, any sugar to Japan whilst exclusivity is provided by the long term agreement, or any sugar to the USA under the Tariff Rate Quota. Millers shall be obliged to comply with the relevant provisions of a SADC protocol. DC raws will be exported in bagged form, and in a pack size not exceeding 1 ton.
- 1.8 **SASA RESPONSE TO MARKET**
The relationship between the industry and the millers will be similar in nature to the relationship existing between the industry and its 'letter of intent' arrangement customers. SASA must be prepared to commit tonnage to the millers on a negotiated basis and the millers must be prepared to firm up this commitment into contracts such that SASA can optimise revenue to the industry by operating its marketing activities for bulk raw sugar on an orderly basis.

1.7 SASA FREEDOM TO PRICE

The industry will retain its capacity to price its sugar on the terminal markets in such a way that it operates independently from pricing undertaken by the millers.

2. PRIORITY OF ALLOCATION

2.1 With effect from the 2009/10 season, the tonnage of bulk raw sugar available in the industry will be allocated in the following order of priority.

Table 2: Priority of Allocations

1. National Market
2. Feedstock Contracts (e.g. Lysiney)
3. USA Quota
4. LTRs / LOIs and Millers' Base Tonnage
5. Millers' Additional Tonnage
6. Opportunity Tonnage - in accordance with clause 1.3 above

If the balance of saleable sugar available after deducting the aggregate of the requirements for the national market, feedstock contracts (see note 1 below) and USA quota is less than 530 000 tons (see note 2 below), the percentage allocation of this balance to LTRs / LOIs on the one hand, and Millers' Base Tonnage on the other will be 35.5079% and 64.4921% respectively. If the aforesaid balance of sugar available is greater than or equal to 530 000 tons, the allocation to LTRs / LOIs on the one hand will be 230 000 tons, and Millers' Base Tonnage on the other will be 400 000 tons.

Note 1: Feedstock Contracts (e.g. Lysiney). This allocation is valid as long as SASA has a supply contract with SA Bioproducts.

Note 2: This quantity of sugar being equal to the proposed total tonnage allocated to Millers' Allocation on the one hand and LTRs / LOIs on the other.

2.2 Allocations in terms of the prioritisation table will be approved by Council subject to the allocation provisions in clause 2.1 above.

2.3 Once sugar has been contracted it becomes subject to contract conditions irrespective of the initial priority.

3. TONNAGE

"Contracted" means the written acceptance, which may be given by fax or Email, by the miller of the terms of purchase and sale between SASA and the Buyer, which acceptance is to be in the possession of SASA by no later than 16:00 on the day on which such terms are agreed by SASA and the miller (the Contract Date), failing which a contract will not have been established.



3.1 BASE TONNAGE

3.1.1 The allocation of raw sugar to the Millers' Base Tonnage by Council for the ensuing year will be concluded provisionally by no later than the end of January and the final allocation in respect of the total Base Tonnage is to be concluded by no later than the end of February and may not be less than 50% of the provisional allocation agreed at the end of January. Millers shall be entitled to contract, in terms of these provisions, 50% of their Base Tonnage agreed at the end of January.

The Base Tonnage will be allocated amongst millers on the following basis:

Table 3: Allocation of Base Tonnage

Miller	% of Base Tonnage
Ikono Sugar (South Africa) Ltd	22.0
Tongaat-Hulett Sugar (South Africa) Ltd	41.5
TSB Sugar RSA (Pty) Ltd	28.5
Gleadow Sugar Company (Pty) Ltd	2.5
Umfolozi Sugar Mill (Pty) Ltd	5.0
UGL Company (Pty) Ltd	2.5

3.1.2 To enable SASA to market the balance of its bulk raw sugar in such a manner that will not jeopardise its ability to optimise the revenue of the industry, millers shall contract their allocation on the following basis:

Table 4: Minimum Contract Schedule for the Base Tonnage

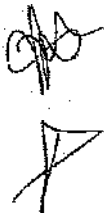
a minimum of	30% by 30 April
a minimum of	80% by 31 May
a minimum of	80% by 30 June
a minimum of	100% by 31 July

3.1.3 Miller contracting against the May position of the New York Board of Trade No. 11 Raw Sugar Contract (NYBOT No.11), or its logical successor, is to be completed by no later than 31 March, and by no later than 15 May in respect of the July position.

3.1.4 Subject to item 3.1.5 below, any uncontracted portion of the minimum tonnage at any of the deadline dates set out above will be available for SASA to market. The tonnage so forfeited would be deemed as contracted for the purposes of the percentage calculation at the next deadline date.

3.1.5 In the event that the Millers' Base Tonnage allocation is less than 400 000 metric tons, any uncontracted portion of the minimum tonnage at a deadline will be reallocated on the following basis:

(a) Reallocation will be pro rata to the allocations of those millers who had taken their full allocation as at the deadline date.



- (b) SASA will advise millers of their additional allocations in terms of 3.1.5(a) above within 5 business days of the deadline date.
 - (c) Additional allocations are to be contracted by the buyers within 10 business days of notification by SASA.
 - (d) In the event that a miller does not accept all or part of the additional allocation, the process of re-allocation shall be repeated with the remaining interested millers until the uncontracted quantity as at the relevant deadline has been contracted, or until there are no further acceptances to contract any remaining balance.
 - (e) Any tonnage not then contracted will revert to SASA.
- 3.1.6 An underlying commitment shall be given by millers to take raws throughout the crushing year so as to ensure that the supply of export raws will be available throughout the crushing year and in so doing shall agree with the Sugar Association a delivery programme in respect of raws for export.

3.2 MILLERS' ADDITIONAL TONNAGE

3.2.1 Once a miller has fully contracted its Base Tonnage allocation or alternatively after 31 July, such miller will be able to bid SASA for additional raw sugar over and above its Base Tonnage allocation.

3.2.2 A miller who, in any year, did not require an allocation of raw sugar from the Base Tonnage may bid SASA at any time for additional raw sugar over and above the Base Tonnage, provided that pricing of such sugar will be undertaken in terms of whichever of items 5.1 and 5.2 below derives the greater premium to the NYBOT No.11, as assessed at the time of contracting, however, only up to a cumulative maximum of that miller's share of the Base Tonnage in the year concerned. The relevant share will be calculated in terms of item 3.1.1 above. Any contracted sugar priced in terms of this item 3.2.2 will not serve to reduce any allocation of Base Tonnage to other millers.

3.2.3 Until millers collectively have priced at least the Base Tonnage in terms of item 5.1 below, subject to item 3.2.2 above, any Additional Tonnage contracted by millers subsequent to 31 July will be priced in terms of item 5.1 below, however, only to the extent that the cumulative contracting in terms of item 5.1 below as at 31 July was less than the Base Tonnage. The provisions of this item 3.2.3 will be applied seriatim to contracting of Additional Tonnage after 31 July.

3.2.4 In the event that more than the Base Tonnage is priced in terms of item 5.1 below by the operation of items 3.2.2 and 3.2.3 above, SASA will refund the difference between the premiums determined in terms of item 5.1 below and item 5.2 below (as applicable at the relevant contract date) to millers who have priced sugar in excess of their pro rata share of the Base Tonnage in terms of item 5.1 below. The premiums to be credited will be allocated amongst millers pro rata to the excess tonnage of sugar priced in terms of 5.1 below. The particular contracting of individual millers that will qualify for credit will be determined on the basis that later contracting will be credited first.

It is recognised that the net unit value attributable to sales of raw sugar by SASA to millers may decline as a consequence of this item 3.2.4.

3.2.5 In the event that a miller has contracted its allocation of Base Tonnage prior to 1 August and the Base Tonnage is 400 000 metric tons, nothing in this item 3 will be construed as preventing such miller from contracting Additional Tonnage for pricing in terms of item 5.2 below prior to 1 August, nor will such miller be required to pay an additional amount in respect of any Additional Tonnage contracted prior to 1 August. It is recognised that SASA may price less than the Base Tonnage in terms of item 5.1 below as a result of the operation of this item 3.2.5.

3.2.6 In the event that

- (a) sugar at least equal to the Base Tonnage has not been contracted by millers collectively, and
 - (b) millers have priced sugar in terms of item 5.2 below,
- those millers who have priced sugar in terms of item 5.2 below may not sell any such sugar to other millers, whether for export by the acquirer or by the seller on behalf of the acquirer.

3.2.7 Other than as a consequence of negotiations with SASA to change a contracted delivery date or source of raw sugar, nothing in these provisions will require a miller to pay a price greater than the initial contracted price.

4. SOURCE OF RAW SUGAR

Millers shall be responsible for securing the supply of their raw sugar, including all aspects concerning the quality of such raw sugar.

5. RAW SUGAR PRICING

The price for contracted sugar will be established in the following manner:

5.1 BASE TONNAGE

5.1.1 Base Price

(a) Prompt Sales
To be established in US cfb through AAs for the relevant number of lots applicable to the contract tonnage against the NYBOT No. 11 first quoted futures month, plus a premium of 0.40 cfb. The level at which the AAs will be posted will be as per the NYBOT No. 11, first quoted futures month settlement price prevailing on the exchange trading day prior to the contract date. The tonnage to be contracted will not exceed 4 000 metric tons per miller per exchange trading day, and will be declared to the Export Department by fax or e-mail by 16:00 Durban time on the contract date. A miller is not permitted to

purchase prompt raw sugar on the final trading day of a NYBOT No. 11 futures month.

(b) Forward Sales

To be established in US c/ds based on AAs or BECs (with SASAs nominated futures broker) for the relevant number of lots applicable to the contract tonnage of NYBOT No 11, plus a premium of 0.40 c/ds. The level at which the AAs will be posted will be as per the NYBOT No.11, respective futures month settlement price, in US c/ds prevailing on the exchange trading day prior to the contract date.

5.1.2 Polarisation Award

A polarisation award will be added according to the scale in Table 5, determined on the base price per item 5.1.1 above:

Table 5: Polarisation Scales

For every full degree above 96° up to and including 97°	add 1.50%
For every full degree above 97° up to and including 98°	add 1.25%
For every full degree above 98°	add 1.00%
Fractions of a degree shall be calculated in the same proportion.	

Note : Sugar acquired by millers will be deemed to be at 99.3° Pol. However, in respect of raw sugar delivered to a miller from an export port or a raw mill not owned or operated by such miller, the polarisation award will be determined by reference to the actual polarisation of the raw sugar on delivery to the buyer provided that in circumstances where raw sugar for local market sales ("other raws") is being delivered to the buyer concurrently with raw sugar purchased for refined exports or DC raws ("export raws") the effect of which is that individual deliveries cannot be ascribed either to other raws or export raws, the polarisation of export raws delivered concurrently as aforesaid will be determined as the weighted average polarisation of all applicable raw sugar deliveries to the miller during the period of such concurrent deliveries.

5.1.3 Super Premium

In addition to the base price established in terms of 5.1.1 above and the polarisation award in terms of 5.1.2 above, a super premium will be payable per ton of raw sugar.

5.1.3.1

In the event that hedging is undertaken after the allocation of raw tonnage in terms of 3.1.1, the following procedure will apply in the calculation of the Super Premium:

The super premium will be calculated by applying the relevant percentage per the following Table 6 to the average difference between the NYBOT No. 11 contract (converted to US Dollars per metric ton) and the London

Commodities Exchange No 5 contract (LCE No. 5), or its logical successor. Such average difference will be calculated as the simple average of the difference between the two applicable sugar futures contracts ruling at the close of the 20 exchange trading days immediately prior to the contract date.

Table 6: Refined Super Premium

Apparent Refined Premium (USD /MT)	Applicable Premium%
< 2	
0	0.00%
50	1.40%
55	5.10%
60	9.45%
65	13.05%
70	16.55%
75	19.48%
80	22.41%
85	24.67%
90	26.93%
95	28.75%
100	30.58%

The Apparent Refined Premium will be determined by reference to the difference between the relevant pricing months in the 2nd and 3rd columns in 7, basis the nominated delivery period in the 1st column:

Table 7: Relevant Months for Determining Refined Premiums

Nominated Delivery Period	NYBOT No.11 Pricing Month	LCE No.5 Pricing Month
1 May to 30 June	May	May
1 July to 30 September	July	August
1 October to 31 December	October	October
1 January to 28 February	October until expiry, thereafter March	December until expiry, thereafter March
1 March to 30 April	March	March

Note : During the period subsequent to the expiry of a LCE No.5 contract month and the 1st of the ensuing month, the Apparent Refined Premium will be determined as the Apparent Refined Premium determined in terms of this item 5.1.3 on the terminal trading day on which the relevant LCE No.5 contract month expired.

5.1.3.2

In the event that Millers hedge their exposure to the refined sugar premium in advance of the allocation of raw sugar in terms of 3.1.1, then the following procedure will apply in the calculation of the Super Premium.

- (a) The Super Premium will be calculated by applying the relevant percentage in Table 6 to the weighted average refined sugar premium achieved by Millers in respect to this hedging activity.
- (b) The details of this hedging activity will be notified to SASA by the Millers concerned no later than one month after the final allocation of the Millers' Base Tonnage.
- (c) Only sugar hedged by Millers during the season immediately preceding the season in which the hedge position will expire will qualify for this pricing basis.
- (d) The maximum raw sugar tonnage to which this will apply will be an aggregate of 100 000 tons by all millers in any one season.
- (e) The 100 000 ton limit referred to above will be allocated to individual Millers per Table 3.
- (f) This hedging activity will not bind SASA to make an allocation of raw sugar other than in terms of this document.
- 5.1.3.3 The Super premium determined in 5.1.3.1 and 5.1.3.2 will be increased or decreased, as the case may be, by the amount in US Dollars per ton resulting from the following formula:

$$(10 - N) \times 1.02$$

where

$N =$ The base price as established by the AAs, or
BEOs (given up by the Millers to SASA's nominated futures
broker).

5.1.4 Contract Price

The sum of the base price (item 5.1.1 above) and the postseason award (item 5.1.2 above), in cfb, will be multiplied by 22.0462 to which will be added the super premium (item 5.1.3 above) to establish the contract price in US Dollars per Metric Ton (USD/Ton).

In the event that the base price to be established in 5.1.1(b) above is not complete at the date of payment as specified in 8 below, a provisional price will be applied to the unpriced tonnage. Such provisional price will be the average of the settlement prices for the relevant NYBOT No. 11 pricing month for the month prior to the month of the deemed contracted delivery date. Payment in respect of any tonnage to which a provisional price has been applied will be made by the buyer to SASA for value within 15 days of the establishment of such provisional price. Settlement of the actual payment due basis the final price will be made for value within 15 days of the establishment of such final price.

Forward Rate Privileges Document - January 2014(2)

5.2 ADDITIONAL TONNAGE

5.2.1 Base Price

The base price will be established as set out in item 5.1.1 above, save that the raw premium of 0.40 cfb will be substituted by a premium or discount established in cfb which represents the value of similar sized tonnage on the open market for other raw sugar sales which would be available to SASA on the basis of open competition.

5.2.2 Polarisation Award

This sum of the base price and premium / discount in items 5.2.1 above will be adjusted on the same basis as set out in item 5.1.2 above.

5.2.3 Contract Price

The base price (item 5.2.1 above), adjusted by the polarisation award (item 5.2.2 above, will be multiplied by 22.0462 to establish the contract price in USD/Ton.

5.3 MAURITIUS PREMIUM

5.3.1 In the event that a miller sells export refined sugar or DC raws to a buyer which is delivered to Mauritius, the miller concerned will pay to SASA a further premium, in addition to the contract price payable in terms of items 5.1.4 or 5.2.3 above as the case may be.

5.3.2

The Mauritius Premium payable for each ton of export refined sugar delivered to Mauritius will be 50% of the net differential achieved above the average level of the long refined sugar futures associated with the relevant physical contract, as accumulated by the miller on the LCE No.5, or its logical successor, after buying back against a fixed price physical sale or the posting of an Against Actual (AA). Such differential is to be established by deducting from the sales price the average level of the long refined sugar futures (as above), the actual freight costs if any, and any contractual costs. Contractual costs shall mean the difference in cost to the miller in supplying FOBs in breakout (as per standard RSA terms) and delivery under the sale contract with Mauritius, converted to a FOBs breakout basis. Contractual costs may include, but not necessarily be limited to, insurance, supervision and finance. In the event that the miller does not, for whatever reason, accumulate long refined sugar futures on the LCE No.5 against any physical sale, then the average level of the long refined sugar futures will be replaced by the settlement price for the LCE No. 5 pricing month(s) that correspond to the shipment positions in accordance with Table 7.1, on the business day prior to the date of confirmation of the business.

5.3.3

The Mauritius Premium payable for each ton of export DC raws delivered to Mauritius will be 50% of the net differential achieved above the average level of the long raw sugar futures associated with the relevant physical contract, as accumulated by the miller on the NYBOT No.11

Forward Rate Privileges Document - January 2014(3)

contract, or its logical successor, after buying back against a fixed price physical sale or the posting of an Against Actual (AA). Such differential is to be established by deducting from the sales price the average level of the long raw sugar futures (as above), the actual freight costs if any, direct costs incurred in the transaction, and any contractual costs. Contractual costs shall mean the difference in cost to the miller in supplying FOBSS in breakout (as per the standard SAOL terms) and delivery under the sale contract with Mauritius, converted to a FOBSS breakout basis. Contractual costs may include, but not necessarily be limited to, insurance, supervision and finance. In the event that the miller does not, for whatever reason, accumulate long raw sugar futures on the NYBOT No.11 against any physical sale, then the average level of the long raw sugar futures shall be replaced by the settlement price for the NYBOT No.11 pricing month(s) that correspond to the shipment position in accordance with Table 7.2, on the business day prior to the date of confirmation of the business.

5.3.4 Contractual costs referred to in 5.3.2, and contractual and direct costs referred to in 5.3.3 shall be budgeted costs for the forthcoming Season as advised by the miller to SASA and agreed before 1 April each Season. For comparative purposes, the miller shall also provide SASA with the actuals of the contractual and direct costs for the preceding Season before 1 April each Season.

5.3.5 Payment of the Mauritius Premium will be made to SASA by the relevant miller by no later than 31 March immediately following the date of exportation. The miller concerned will pay interest on the amount due to SASA, calculated from two days after the date of exportation to the date of payment at the time weighted average of the daily BA rate, including costs, on a "vacat" basis.

5.3.6 The US Dollar amount due by the relevant miller, to the extent that the miller is unable to effect payment in US Dollars, will be converted to Rand at the US Dollar / South African Rand buying rate as quoted at 16:00 by Standard Bank on the business day prior to payment.

Table 7.1: Shipment month and corresponding pricing month for export refined sugar

LCE No. 5	
Shipment Month	No. 5 Pricing Month
January	December
February	March

Revised Main Principles Document - January 2014(2)

March	March
April	March
May	May
June	May
July	August
August	August
September	August
October	October
November	October
December	December

Table 7.2: Shipment month and corresponding pricing month for export DC raws

NYBOT No. 11	
Shipment Month	No. 11 Pricing month
January	October
February	March
March	March
April	March
May	May
June	May
July	July
August	July
September	July
October	October
November	October
December	October

With regards to tables 7.1 and 7.2, in the event that the relevant Pricing month has expired at time of contracting, then the next or prompt pricing month of either the No. 5 or No. 11 shall be used for the tonnage concerned.

5. DELIVERY

6.1 The date of delivery of raw sugar to the miller will be determined in accordance with Table 8:

Revised Main Principles Document - January 2014(2)

Table 8: Delivery Dates for Sale of Raws to Millers

Nominated Delivery Period	NYBOT No. 11 Pricing Month	Contract Delivery Date
1 March to 30 April	March	1 March
1 May to 30 June	May	1 May
1 July to 30 September	July	1 July
1 October to 31 December	October	1 October
1 January to 28 February	October, until 30 September, thereafter, March	1 January

6.2 Millers may agree an earlier contract delivery date with SASA on the basis of a price adjustment in respect of the differentials in market values as determined by SASA.

7. CONVERSION TO RAND PRICE

To the extent that the millers are restricted from delivering US Dollars to SASA, the price established in USDOT on will be converted to Rand per metric ton in the following manner:

7.1 RECENT SALES

At the US Dollar/South African Rand buying rate as quoted at 18:00 by Standard Bank for the business day prior to the contract date.

7.2 FORWARD SALES

At the US Dollar/South African Rand buying rate as quoted by Standard Bank to SASA on the contract date for the payment date.

Where a deemed contracted delivery date is changed as contemplated in 6.2 above or the payment date of a forward sale is changed by the operation of 8.2.3 below, the exchange rate as established on the contract date will be amended by the difference in the forward points for the original payment date and the forward points for the amended payment date quoted by Standard Bank on the date on which the change to the payment date is agreed.

8. PAYMENT DATE

Payment will be made by the miller to SASA for value, as follows:

8.1 PROMPT SALES

Within 15 days of the contract date.

8.2 FORWARD SALES

8.2.1 Within 45 days of the deemed contracted delivery date as established in 6.1 above.

8.2.2 In the event of an earlier deemed contracted delivery date as established in 6.2 above, within 15 days of the date of agreement to change the deemed contracted delivery date.

8.2.3 In respect of sugar, which is priced according to a provisional price, payment will be made in terms of 8.2.1 above.

8.2.4 Notwithstanding the payment terms in 8.2.1, 8.2.2 and 8.2.3 above, payment for all sugar to be purchased by a miller will be made by no later than 15 days after the date on which the last of the miller's mills closes for the year concerned, save that this item 8.2.4 will not apply to raws which are to be supplied from any export sugar terminal operated by SASA.

9. SALES IN ADVANCE OF PURCHASE

9.1 At no time may a miller deliver sugar to the export market in advance of the contract delivery date determined by the contract in terms of 6 above. Millers shall provide audit certificates at the end of each year supporting the monthly purchases and exports.

9.2 In the event that the miller has exported more sugar equivalent than has been "delivered" either during or at the end of a year, the miller will be obliged to purchase such excess tonnage on the following basis:

9.2.1 A penalty equal to the greater of \$100.00 on the one hand, and 50% of the difference between the average refined local market national price for the year concerned and the miller's average cost of raws for export, on the other hand, multiplied by the maximum extent to which its cumulative sales have exceeded its cumulative purchases as at each month end.

9.2.2 In addition, to the extent that a miller's cumulative sales exceed his cumulative purchases as at the end of the year, the miller will account to the Sugar Association for such tonnage at the refined local market national price for the year concerned and the Sugar Association will refund to the miller any penalty levied in respect of any month end other than the end of the year, subject to a maximum tonnage of the extent of the shortfall as at the end of the year.

10. MARKETING RESTRICTIONS

10.1 All export refined sugar and DC raws must be exported for consumption outside of the SACU region and in addition must not be sold for further beneficiation to a customer within the SACU.

10.2 Millers shall not be entitled to export their allocators other than in crystal form. Millers exporting value added products may be granted a local market export rebate by SASA where the sugar equivalent of such products has been acquired at local market prices. As currently performs, millers shall be free to import sugar for inclusion in value added products for export.

10.3 Millers shall implement procedures to verify that these export sugars have been exported from the SACU.

10.4 Where it can be established that such export sugars have not been exported from the SACU the miller concerned is to take all reasonable steps as required by the industry to avoid the recurrence thereof. The steps to be taken will be determined in consultation with the industry.

10.5 In the event that the miller has not fulfilled its obligations in respect of implementing appropriate procedures or in respect of applicable reasonable steps to prevent a recurrence or it can be established that a miller could reasonably have foreseen that the export sugars would not be exported from the SACU, the industry will be entitled to recover from the miller concerned the loss suffered by the industry caused by the leakage into the SACU. SASA's auditors shall establish this loss after consultation with the industry and the miller concerned.

11. MILLERS ACCESS TO USHUKELA WAREHOUSE **

11.1 PERIOD OF ACCESS

Access is to be provided for three years commencing 1 April 2000 for sugar produced in 25kg, 50kg or 1 Ton bags by the three millers up to their allocations of base tonnage as per item 3.1.1 above. In the event that the handling of 25kg bags entails additional costs over and above those applicable to 50kg or 1 Ton bags such additional costs will be for the account of the miller.

11.2 PROCESS FOR ACCESS

The cost to SASA of shipping sugar through Ushukela is highly dependent on the utilisation of the warehouse. It will be necessary for SASA and the millers to agree a practical basis for operating the warehouse, which will include issues such as early notification of production programmes and amendments thereto. SASA will be entitled to utilise available space for other business but will give preference to millers sugar.

11.3 SERVICES TO BE PROVIDED BY SAST AT USHUKELA

11.3.1 Containerised Shipping

- (a) Service provided by SAST – handling into Warehouse and Storage for a period of 9 weeks.
- (b) Fee to be paid by the miller for the above service is R40/Ton in 1998/99 terms. This fee and all others quoted in 1998/99 terms will be escalated by the year on year average movement of the P.P.I.
- (c) In the event that the sugar is stored for a period exceeding 9 weeks hereafter it will attract storage costs at a rate of R2,44/Ton/week in 1998/99 terms.

** As of 1 April 2003, item 11 is no longer applicable.

Revised Main Principles Document - January 2014(2)

(d) All other costs are for the miller's account. The stuffing of containers will be paid for at the rate of R12/Ton in 1998/99 values.

11.3.2 Break-Bulk Shipping

- (a) The shipping of sugar in break-bulk at the following quoted rates is conditional upon the sugar benefiting from SASA's wharfside rights.
- (b) Service provided by SAST – Handling in to the Warehouse, storage for a period of 9 weeks, silos and delivery to ship side for loading at Maydon Wharf 1 or 2
- (c) The fee to be paid by the miller for the above service is R40/Ton for handling and storage and in addition the miller will be responsible for the cost of transport to ship side. These costs are in 1998/99 terms.
- (d) Fee to be paid for storage beyond 9 weeks is the same as for containerised shipping.
- (e) All other costs are for the miller's account.

11.4 SERVICES TO BE PROVIDED BY SAST AT EXTERNAL WAREHOUSES

If the tonnage of sugar being shipped cannot be accommodated within Ushukela, SAST will accommodate such sugar in outside storage at the same rate as in item 11.3 above, subject to the following:

11.4.1 The sugar in outside storage being for containerised shipping or the miller being responsible for any additional costs incurred if the sugar is shipped in break-bulk.

11.4.2 The miller being responsible for the actual storage costs per ton per week incurred after 7 weeks.

11.5 WORKING HOURS

The working hours at SAST are from 06H00 Monday to 13H00 Saturday. Operating outside these hours will incur overtime for the account of the person requesting the overtime – SAST / miller / ship owner.

12. 1999/2000 YEAR'S CARRY-OVER STOCKS **

SASA will endeavour to have contracted all DG Raws and export refined sugars by 31 March 2000, with all shipments undertaken by 30 June 2000.

** As of 30 June 2000, item 12 is no longer applicable.

Revised Main Principles Document - January 2014

CANE QUALITY

1. OVERALL OBJECTIVES

It has been estimated that improvements in cane quality could materially increase industry proceeds. In attempting to achieve these gains, the industry subscribes to the following overall objectives relative to cane quality:

- To improve international competitiveness through improved productivity. It is recognised that in order to achieve the improved productivity, millers and growers should attempt to behave like a single business entity at the local level.
- To create incentives for both Growers and Millers to improve productivity in the short-term and the long-term.
- To devolve negotiations on a number of issues related to cane quality from a central industry platform to the local mill area.

2. PRINCIPLES

The process should incorporate the following components:

2.1 NEW CANE PAYMENT SYSTEM

Recoverable Value means the mass of recoverable content of cane delivered by a grower to a mill for crushing, which mass represents recoverable sugar moderated by the value of recoverable molasses of such cane taking into account adjustments in respect of the sucrose, non-sucrose and fibre content thereof, and which mass of recoverable content shall be calculated in terms of the procedures contained in the Official Methods Manual

An industrial RV cane payment system be implemented provided that agreement is reached on the linked issues.

2.1.1 The RV formula is as follows:

$$RV \% \text{ cane} = S - dN - cF$$

where

- S = sucrose % cane
- N = non-sucrose % cane
- F = fibre % cane
- d = the relative value of sucrose which each unit of non-sucrose diverts from sugar production to molasses
- c = the loss of sucrose from sugar production per unit of fibre

Further details pertaining to the RV formula are provided in Appendix 1.

2.1.2 Price per ton cane on RV basis.

$$\text{Price per Ton Cane} = \frac{RV\% \text{ Cane}}{100} \times \frac{R_{RV}}{100} \times \frac{G}{100} \times P$$

Where RV % cane = relative RV % cane

R_{RV} = Industry average percentage recovery of tons saleable sugar from the tons of RV delivered for the season.

G = Growers' percentage share of the division of proceeds.

P = Price/ton of saleable sugar i.e.

$$P = \frac{\text{Net divisible proceeds}}{\text{Industry total tons saleable sugar}}$$

2.2 LOCAL LINKED ISSUES

2.2.1 The following linked issues, amongst others, will be taken into consideration:

- Length of Milling Season (LOMS) controls.
- Control of cane deterioration through BurnHarvest-to-Crush-Delay (BHTCD).
- Reduction of ash (sand) and foreign matter in cane.
- The establishment of acceptable cane quality standards and the adoption of pragmatic/viable procedures to govern cane rejection at each mill.

2.2.2 Local negotiations need not be limited to the above topics, but should seek to address any local issues, which could lead to an improvement in cane quality.

2.2.3 The process of local negotiations should attempt to resolve entrenched positions, which impede improvements in productivity.

2.2.4 Local negotiations should be formalised into a Local Area Agreement between the mill and the Local Grower Council, which is legally binding on all growers normally delivering to that mill, subject to existing contractual arrangements.

2.2.5 Each mill will be free to enter into separate Cane Supply Agreements, which may or may not be linked to Local Area Agreements.

2.2.6 Guidelines with regard to the "linked issues" are contained in Appendix 2.

Appendix 1

RECOVERABLE VALUE (RV)

1. THE RV FORMULA

RV % cane = $S - dN - cF$

where S = sucrose % cane

N = non-sucrose % cane

F = fibre % cane

and d = the relative value of sucrose which each unit of non-sucrose diverts from sugar production to molasses

c = the loss of sucrose from sugar production per unit of fibre

1.1 CALCULATION OF THE FACTOR d

The factor d represents the quantity of sucrose lost to molasses per unit of non-sucrose, but with a credit for the value of the molasses recovered per unit of non-sucrose, and is calculated as follows:

$$d = \left\{ 1 - \frac{m \times P_m}{R_{avg} \times b \times P_b} \right\} \times b$$

Where M = Industry average molasses yield per unit of N delivered

P_m = Industry average realisation per ton of molasses as calculated by SASA

R_{avg} = Industry average unit recovery of saleable sugar (S) from the estimated sugar (ES) (ES is equivalent to ERC formula, but without the "g" factor applied to S in the formula)

b = The ERC "b" factor

P_s = Industry average realisation per ton of saleable sugar as calculated by SASA

and

the ERC b factor is determined as follows:

Revised Main Principles Document - January 2014(2)

$$b = \frac{\text{tons non-sucrose in molasses and sugar}}{\text{tons non-sucrose in cane}} \times \frac{\text{tons sucrose in molasses}}{\text{tons non-sucrose in molasses}}$$

1.2 CALCULATION OF THE c FACTOR

The factor c is determined as follows:

$$c = \frac{\text{tons sucrose in bagasse}}{\text{tons fibre in cane}}$$

2. APPLICATION OF FACTORS IN THE RV FORMULA

The factors m, d, c and R_{avg} are rolling three season weighted averages determined for the immediately preceding three seasons for the industry as a whole.

P_m and P_s will, at the start of the season, be the SASA pre-season estimates with adjustments made each month by SASA, on the basis of the latest available data with final adjustment at the end of the season to actual data for the season.



Handwritten signature and initials on page 32.

SUGGESTED GUIDELINES ON LINKED ISSUES

1. LENGTH OF MILLING SEASON (LOMS) - GUIDELINES

1.1 GENERAL PRINCIPLES

It is accepted that there is a need to control the LOMS at each mill centre. The local LOMS agreements should have incentives that encourage growers and millers towards the optimum LOMS for the specific mill area. An optimum season length or acceptable band should be negotiated by the parties at the local level taking specific regional conditions into consideration. Any party unilaterally causing a change in the season length outside the agreed LOMS shall compensate the affected party (individual or collectively) on a basis agreed in the Local Area Agreement. The use of a mathematical / economic model to determine the optimum season length may provide a useful guideline for local negotiations.

1.2 GUIDELINES

1.2.1 An increase in the LOMS necessary to crush the cane contracted and diverted to a mill can arise from the following factors:

- (a) **Horizontal expansion:** Which is defined as an increase in area from which the cane has been accepted by the miller,
 - (b) **Net Inward Diversions:** Which is defined as the net quantity of cane (inward minus outward diversion) crushed at the mill from growers who are not contracted to that mill,
 - (c) **Vertical expansion:** This type of expansion is divided into two categories:
 - (i) Windfall vertical expansion is an increase in yield arising out of factors which may not necessarily prevail into the future.
 - (ii) Permanent vertical expansion, which is defined as an increase in yield sustained for a number of consecutive seasons. The quantification of what yield constitutes vertical expansion may be negotiated locally.
 - (d) **Overall time efficiency standards (OTE):** These are the performance standards agreed to by the local growers and miller, which contribute to the mill's OTE. By agreement certain factors are attributable to growers, others to the miller whilst others are classed as neutral (attributable to neither party) and force majeure.
- 1.2.2 A mechanism for compensation needs to be agreed under the following conditions:
- (a) **Horizontal Expansion:** The miller shall compensate the growers to the extent that horizontal expansion causes the season length to exceed the agreed LOMS.

2. BURNNHARVEST TO CRUSH DELAYS (BHTCD)

2.1 GENERAL PRINCIPLE

It should be recognised that reducing the BHTCD represents a very important factor for improving cane quality and industry competitiveness. In reaching agreement, each mill area should review all the factors which contribute to BHTCD in that area. It may be necessary to apply contracts which extend beyond the measures embodied in the Industrial RV system, in order to achieve improvements in BHTCD.

2.2 ADDITIONAL GUIDELINES

- 2.2.1 It is recognised that the change from a sucrose based to a sucrose quality basis will have changed opportunities and consequences for both growers and millers and that there is need to work together to optimise and exploit these opportunities.
- 2.2.2 The miller and grower both play an integral role in BHTCD through the system adopted in a mill area and entrenched rights may need to be reviewed to achieve the best practices for the area as a whole.
- 2.2.3 The costs for any proposed changes to the delivery and handling systems should be borne in proportion to the estimated benefit.
- 2.2.4 Each mill should establish a BHTCD management system and regularly review progress and appropriate incentives to achieve the desired improvement.

3. ASH INCENTIVE SCHEME

3.1 GENERAL PRINCIPLE

It should be recognised that the fibre factor in the RV formula is insufficient incentive in many mill areas to motivate the desired reduction in ash. Hence additional controls need to be adopted at local level. It is accepted that any benefit accruing to the miller as a result of a reduction in ash should be shared on an equitable basis with growers delivering to that mill.

3.2 ADDITIONAL GUIDELINES

3.2.1 Ash levels in cane should be determined on an agreed basis by the CTS and the costs should be funded by both grower and miller.

3.2.2 The control of ash should be through a penalty/bonus scheme around an agreed local area standard.

3.2.3 There may also be a punitive penalty or a rejection provision against very high ash levels.

4. CANE QUALITY STANDARDS

4.1 GENERAL PRINCIPLE

All mill areas should develop an agreed set of quality standards governing the acceptability of cane. Cane which fails to meet these minimum quality standards should be rejected or be subject to penalty.

4.2 ADDITIONAL GUIDELINES

4.2.1 It is essential that a pragmatic and workable set of rules governing cane rejection or the imposition of penalty, which minimise the degree of subjectivity and emotion involved, should be agreed at each mill.

4.2.2 Ideally the local rules should be formula-driven so that they can be routinely applied by a nominated structure as and when any infringement occurs.

4.2.3 Notwithstanding the guidelines in 4.2.1 and 4.2.2 above, the local rules should make provision to assess cane quality before it is crushed.

MOLASSES

1. LOCAL MARKET

1.1 INCLUSION IN RV PRICES

Molasses revenue will remain within the Division of Proceeds for the purpose of determining RV prices payable by millers to growers.

1.2 NOTIONAL LOCAL MARKET MOLASSES PRICE

1.2.1 The value of local market molasses in the Division of Proceeds will be determined on a similar basis to local market sugar, with SASA determining a notional local market molasses price.

1.2.2 Local market molasses prices (ex mill) have tracked export realisations over the past 10 years. The 10 year average export parity price is approximately \$28.00 per metric ton, which approximates the current local market price (net of distribution commission of 5%) of R168.25 ex mill.

1.2.3 The notional local market molasses price will be set at US\$28.00 ex mill (net of commission). This price will preferably not be included in the Sugar Industry Agreement.

1.2.4 The notional local market molasses price will be determined from time to time by SASA, taking into account:
(a) changes in the value of the Rand compared to the US Dollar in relation to the Dollar notional local market molasses price of US\$28.00 per metric ton;
(b) fundamentals prevailing in the local market for molasses; and
(c) requirements of molasses users and the DTI concerning the promotion of the beneficiation of molasses for export markets.

1.2.5 In the absence of agreement to the contrary, the notional local market molasses price will change at the same time and to the same extent as notional local market sugar prices.

1.2.6 Provisions in the Sugar Industry Agreement dealing with molasses to be low key, and possibly included in the applicable sections dealing with sugar.

1.3 PROTECTION OF THE LOCAL MARKET

SASA will continue to provide strategic rebates to protect the local market from competitors and substitutes, as is the case currently.

2. EXPORT MARKET

2.1 EXPORT PRICING

SASA will continue to be responsible for agreeing the export pricing formula.

TABLE OF CONTENTS

2.2 PROMOTION OF BENEFICIATION FOR EXPORT
 SASA will continue to fund rebates for the promotion of beneficiation of molasses for export markets, as is currently the case.

3. REDISTRIBUTION OF MOLLASSES REVENUE
 All millers shall share equitably in the net value from the sale of molasses in the local market (basis the national local market molasses prices) and export markets as is currently the case. However, in future, national local market molasses prices will be used as the basis for the redistribution of proceeds. Redistribution of molasses value will be:

3.1.1 effected via SASA;

3.1.2 undertaken annually together with the purchase by SASA of carry-over sugar for the local market;

3.1.3 based on estimated values and tonnage to the extent necessary at that date, in which event a provisional redistribution will be effected at such date; and

3.1.4 finalised once all the necessary elements of the redistribution have been finally determined.

LOCAL MARKET MODEL 1

1. DETERMINATION OF DOMESTIC MARKET PROCEEDS 1

2. DOMESTIC MARKET INFORMATION & REBATES 5

3. MANUFACTURING ALLOWANCES 5

SUGAR TRANSPORT 10

1. GENERAL 10

2. EXPORT MARKET SUGAR TRANSPORT 10

3. GERMISTON BULK DEPOT 12

REFINED SUGAR EXPORTS AND DC RAW 14

1. GENERAL PRINCIPLES 14

2. PRIORITY OF ALLOCATION 15

3. TONNAGE 15

4. SOURCE OF RAW 18

5. RAW SUGAR PRICING 18

6. DELIVERY 24

7. CONVERSION TO RAND PRICE 25

8. PAYMENT DATE 25

9. SALES IN ADVANCE OF PURCHASE 26

10. MARKETING RESTRICTIONS 26

11. MILLERS ACCESS TO USHUKELA WAREHOUSE 27

12. 1998/2000 YEAR'S CARRY-OVER STOCKS 28

CANE QUALITY 29

1. OVERALL OBJECTIVES 29

2. PRINCIPLES 28

RECOVERABLE VALUE (RV) 31

1. THE RV FORMULA 31

2. APPLICATION OF FACTORS IN THE RV FORMULA 32

SUGGESTED GUIDELINES ON LINKED ISSUES 33

1. LENGTH OF MILLING SEASON (LOMS) - GUIDELINES 33

2. BURN/HARVEST TO CRUSH DELAYS (BHTCD) 34

3. ASH INCENTIVE SCHEME 35

4. CANE QUALITY STANDARDS 35

MOLLASSES 35

1. LOCAL MARKET 35

2. EXPORT MARKET 36

3. REDISTRIBUTION OF MOLLASSES REVENUE 37

TABLE OF CONTENTS

SCHEDULE OF TABLES

TABLE 1: GROWERS SHARES OF NET DIVISIBLE PROCEEDS 10

TABLE 2: PRIORITY OF ALLOCATIONS 16

TABLE 3: ALLOCATION OF BASE TONNAGE 16

TABLE 4: MINIMUM CONTRACT SCHEDULE FOR THE BASE TONNAGE 16

TABLE 5: POLARISATION SCALES 19

TABLE 6: REFINED SUPER PREMIUM 20

TABLE 7: RELEVANT MONTHS FOR DETERMINING REFINING PREMIUMS 20

TABLE 8: DELIVERY DATES FOR SALE OF RAWS TO MILLERS 25

SCHEDULE OF FIGURES

FIGURE 1: ALLOCATION OF UNLIQUIDATED CARRY-OVER STOCK AT A
REDISTRIBUTION DATE 4

FIGURE 2: EXAMPLES OF DETERMINING LOCAL MARKET CARRY-OVER
STOCK HELD BY SASA/EXPORT STOCK HELD BY MILLER 8

FIGURE 3: SAMPLE COMPUTATION OF THE ELEMENTS OF THE
MANUFACTURING ALLOWANCE 9

FCOMKT/99349

S A SUGAR ASSOCIATION

STRATEGIC CHANGES TO THE SOUTH AFRICAN SUGAR

INDUSTRY

MAIN PRINCIPLES DOCUMENT

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 699

6 August 2021

SOUTH AFRICAN SUGAR ASSOCIATION – EXTENSION OF CONDITIONAL EXEMPTION GRANTED

1. On 17 August 2020, the South African Sugar Association ("SASA") and its members, hereinafter jointly referred to as ("the Applicants") filed an application for an exemption in terms of Section 10 of the Competition Act No 89 of 1998, as amended ("the Competition Act"). The exemption was requested for a period of one year, from the date of the application up to and including 30 June 2021.
2. SASA is a statutory body established in terms of Section 2(1) of the Sugar Act No. 9 of 1978 ("the Sugar Act"). SASA provides a variety of services to its members in order to support the functioning of the regulatory framework within which the industry operates, and acts as a representative of the industry in relation to engagements with external stakeholders. SASA's members comprise of two levels of the value chain, namely Growers and Millers and are made up of the associations which represent the interests of those levels. These are (1) the South African Sugar Miller's Association ("SASMA"); (2) the South African Cane Growers Association ("SACGA"); and (3) the South African Farmer's Development Association ("SAFDA").
3. The exemption application was brought in terms of Section 10(1) of the Competition Act which allows a firm to apply to the Commission to exempt an agreement, a practice and/or a category of agreements from the provisions of Chapter 2 of the Competition the Act. SASA relied on the objective set out in Section 10(3)(b)(iv) of the Competition Act, which allows an exemption of agreements and/or practices that contribute to the economic stability of any industry designated by the Minister of Trade, Industry and Competition ("Minister").
4. The exemption application covered the following practices by SASA and its members:
 - 4.1. restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;
 - 4.2. share competitively sensitive information and in light of that information, engage regarding various options for interventions that could be implemented to support small-scale growers and ensure that they become a sustainable part of the sugar supply chain, in line with the objectives of the Sugar Master Plan;
 - 4.3. share competitively sensitive information of the various sugar industry participants, including growers, millers and refiners and in light of that information engage on the various means by which the industry could implement a restructuring of the nature contemplated in the Sugar Master Plan; and

- 4.4. share competitively sensitive information with the Eswatini Sugar Association (including in relation to production volumes, local and export sales volumes, notional pricing, and identification of diversification opportunities) and in light of this information engage with the Eswatini Sugar Association to achieve policy harmonisation to the mutual benefit of each country's sugar producers.
5. The Commission's investigation resulted in the following findings:
 - 5.1. the conduct of SASA's members would result in a contravention of Section 4 of the Competition Act as the application relates to coordination and information exchange between parties in a horizontal relationship;
 - 5.2. the exemption may contribute to the economic stability of the sugar industry; and
 - 5.3. the exemption can be used as an instrument for transformation and the opening up of the sugar industry to previously disadvantaged individuals, particularly small-scale sugarcane growers, in line with the objectives of the Competition Act.
6. Based on these findings, the Commission granted the Applicants a conditional exemption up to and including 30 June 2021. The exemption was subject to monitoring mechanisms which the Commission put in place to ensure that the objectives set out in the application are met within the scope of the exemption. The decision of the Commission was published in Government Gazette No. 43872 on 06 November 2020.
7. Subsequently, on 07 June 2021, the Applicants submitted an application requesting the Commission to extend their conditional exemption by 24 months (i.e. up to 30 June 2023) in light of the Minister's extension of the designation of the sugar industry to 30 June 2023 as published in Government Gazette No. 44653 on 3 June 2021. The scope of the application remains unchanged as set out above and the basis for the request is to accommodate additional time required to achieve the economic stability of the sugar industry.
8. After due consideration of the above, the Commission has decided to grant SASA and its' members an extension of the conditional exemption, up to and including 30 June 2023. The conditions and monitoring mechanisms will remain the same as those gazetted on 06 November 2020.



"FA15"

211

SOUTH AFRICAN SUGAR ASSOCIATION
Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe
P.O. Box 700, Mount Edgecombe, KwaZulu-Natal, 4300
Telephone: +27 31 508 7000
Website: www.sasa.org.za

EX/099//22
MR/MKT
8 November 2022

Messrs Murgatroyd, Van den Steen, and Albertyn
The Business Rescue Practitioners
Tongaat Hulett Ltd
Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal

By email: br@tongaat.com
CC : peter@metis.co.za
trevor@metis.co.za
gerhard@metis.co.za
dave.howells@tongaat.com

Dear Trevor, Peter and Gerhard

RE: SOUTH AFRICAN SUGAR ASSOCIATION (SASA)

1. Thank you for meeting with SASA Management on Wednesday, 2 November 2022.
2. As outlined at the meeting, SASA who represents the country's sugar industry as its regulator, is extremely concerned about the recent development of Tongaat Hulett Limited (THS) being placed under business rescue.
3. THS is one of six milling companies in the industry. All the milling companies are extremely important for the well-functioning of the industry and in support of the socio-economic impact of the industry on growers, millers, communities and multiple businesses that support the value chain. The sugar industry is finely balanced and a collapse of THS would, in addition to the catastrophic social and economic consequences, have further far-reaching implications and a domino effect on other industry players and reverberate throughout the whole value chain.
4. As SASA, we understand the need for a sustainable business rescue plan to be developed through a consultative and collaborative process involving all THS stakeholders and thought it may assist you in your duties as the business rescue practitioners of THS, if we provide some key information about the sugar industry and SASA.
5. The legislative framework which governs the sugar industry is as follows:
 - 5.1. The Sugar Act, No. 9 of 1978 ("Sugar Act") is the overarching legislation which governs the sugar industry in South Africa.

- 5.2. Section 2(1) of the Sugar Act provides for the incorporation of SASA as a juristic person with a constitution published by the Minister of Trade and Industry in the Government Gazette;
- 5.3. The current Constitution of SASA was published in the Government Gazette by the Minister on 15 June 2000 ("the Constitution") and amended by the Minister in 2018 and 2020;
- 5.4. Section 4(1)(a) of the Sugar Act states that the Minister shall determine the terms of an agreement to be known as the Sugar Industry Agreement (SIA) which shall provide for matters relating to the sugar industry that the Minister believes are in the interests of the industry and not detrimental to the public interest, and section 4(1)(c) stipulates that the sugar industry agreement shall be binding on every grower, miller and refiner;
- 5.5. The Minister published the current Sugar Industry Agreement in the Government Gazette on 3 May 2000 and amended the Sugar Industry Agreement in 2018 and in 2020 ("SIA");
- 5.6. The Constitution and the SIA are accordingly subordinate legislation with the same status as Regulations published in terms of other Acts of Parliament.
6. The sugar industry in South Africa covers activities from the agricultural growing of sugar cane, the milling of cane and the manufacture of raw and refined sugar, syrups, specialised sugars and a range of by-products.
7. The role-players in the industry are interdependent. Millers are dependent on the growers and vice versa. However, the interests of millers and growers are not always aligned.
8. SASA as the sugar industry regulator, plays a pivotal role in ensuring that the various role players work together within the confines of the legislation to ensure their mutual benefit and advancement.
9. SASA's members are:
 - 9.1. South African Cane Growers' Association ("SACGA");
 - 9.2. South African Farmers' Development Association ("SAFDA"); and
 - 9.3. South African Sugar Millers' Association NPC ("SASMA").
10. Both SACGA and SAFDA represent growers and SASMA represents millers and refiners. Growers and millers are equally represented on SASA Council through these bodies. THS is a member of SASMA and is represented on SASA via SASMA.
11. The Sugar Act and the SIA provide for the following monetary transactions between SASA and THS:
 - 11.1. SASA must impose levies on millers and refiners (includes a grower portion) for the purpose of enabling SASA to fulfil any obligations incurred by it in accordance with its constitution (Clauses 175-176 and 190-192 of the SIA);

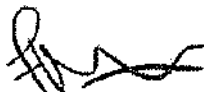


- 11.2. SASA must purchase the sugar and high-test molasses not sold by millers at the end of the sugar year, 31 March each year (called carry-over stocks), and then the millers must sell that sugar in the following months, and as the sugar is sold the millers must pay the notional local market price to SASA (Clause 186 of the SIA);
- 11.3. If a miller sells a greater quantity of sugar on the local market (over-performing miller) than the quantity allocated to it as its local market quota, the miller must pay an amount to SASA for the purposes of redistribution to under-performing millers and these calculations and payments take place on a quarterly basis (June, September, December and March) (Clause 183 of the SIA);
- 11.4. SASA is required to acquire from the millers all sugar to be exported at a price determined by SASA (Average EE Price) and to ensure that it is exported. Export proceeds are paid to millers when the proceeds are received from the export customers or within 90 days of delivery to SASA (Clause 191 of the SIA).
12. Following THS being placed under business rescue and from an industry perspective, an Industry Leadership Task Team (Task Team) has been constituted by SASA Council to closely monitor events as they develop and to inform SASA's participation in developing solutions for sustainable outcomes.
13. The Task Team has been mandated to collaborate closely with you, the business rescue practitioners, and offer industry support whenever it is required. The business rescue and sustainable future for the THS South African sugar operations forms part of the apex priorities of the Task Team.
14. SASA would be highly appreciative of your co-operation with the Task Team as we all navigate through challenging times with a common goal of trying to resuscitate the THS business. SASA would be grateful if you would keep open lines of communication with us and to let us know of significant developments as soon as you are able to.

SASA invites you, the business rescue practitioners, to please attend each Task Team meeting to allow for an opportunity for collaboration and information sharing. We hope this letter helps to explain some of the sugar industry's complexities and that we can build a relationship based on constructive engagement.

Should you have any queries or require information, please do not hesitate to contact us.

Yours sincerely



F MUKADDAM
SASA CHAIRPERSON





"FA16" 214

SOUTH AFRICAN SUGAR ASSOCIATION
KwaShakela, 170 Flanders Drive, Mount Edgecombe
PO Box 700, Mount Edgecombe, KwaZulu-Natal, 4300
Telephone +27 31 506 7000
Website: www.sasa.org.za

EX/006/23
MKT/MR
23 January 2023
(Amended)

Messrs Murgatroyd, Van den Steen, and Albertyn
The Business Rescue Practitioners
Tongaat Hulett Ltd
Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal

By email: br@tongaat.com

CC : peter@metis.co.za
trevor@metis.co.za
gerhard@metis.co.za
dave.howells@tongaat.com

Dear Sirs

RE: OBLIGATIONS OF TONGAAT HULETT GROUP TO THE SOUTH AFRICAN SUGAR ASSOCIATION ("SASA")

1. As you are aware, there was a discussion convened on 13 January 2023 which was attended by representatives of SASA, Trevor Murgatroyd (the business rescue practitioner) and Dave Howells representing the Tongaat Hulett Group.
2. In this letter, we treat the business rescue practitioner and Mr Howells as representatives of the Tongaat Hulett Group as a whole because of certain correspondence that has recently been addressed to us relating to the alleged agency relationship between various of the companies in the Tongaat Hulett Group. We intend to address separate correspondence in that regard.
3. It was most concerning to us that at that discussion, it was conveyed that the Tongaat Hulett Group does not intend to make payment of its obligations to SASA as and when they become due. In particular, this concern relates to the impending obligation to make payment of an amount of R1 727 116 777 (*One billion, seven hundred and twenty seven million, one hundred and sixteen thousand, seven hundred and seventy seven rand*) estimated for liabilities up to **31 March 2023** which is made up of:

3.1	Local Market Redistribution payments	-	R1 479 783 016
3.2	Local Market Statutory Levies	-	R 228 576 329
3.3	Interest @prime	-	R 18 757 432

R
A

4. When the Tongaat Hulett Group settles its Local Market Redistribution payments to SASA it shall be entitled to receive exports proceeds estimated as at 31 March 2023 to be **R777 473 235**, and thereafter a further **R225 643 688** when the remaining export carry-over tonnage estimated at 23 825 tons is delivered to SASA in the new season.
5. It is not entirely clear to us the basis upon which that non-payment will take place but it appears to us to stem from a misunderstanding of the nature of the obligations due by the Tongaat Hulett Group to SASA. We accordingly take the liberty of setting out in broad terms the contentions of SASA. Naturally this is not an exhaustive explanation.

THE SUGAR INDUSTRY AGREEMENT

6. As you are aware, the entire sugar industry is subject to regulation under the Sugar Act, No. 9 of 1978 which *inter alia* provides for:
 - 6.1 the incorporation of SASA; and
 - 6.2 the Sugar Industry Agreement.
7. Section 4 of the Sugar Act provides, in respect of the Sugar Industry Agreement ("SIA"), that both the agreement and any amendments thereto shall be published by the Minister in the Gazette:

"...whereupon the agreement or such amendment shall become binding upon every grower, miller and refiner." Section 4(1)(c)
8. Consequently, the reference to an "agreement" is a misnomer because the Sugar Industry Agreement constitutes subordinate legislation rather than a traditional contractual arrangement *inter partes*.
9. Importantly, the levies to which reference is made above are specifically provided for in the SIA as debts due to SASA by the miller and are raised based on output on sales. In the circumstances these are debts that are accruing by reason of trade during business rescue.
10. Additionally, SASA falls within the definition of "regulatory authority" in Section 1 of the Companies Act, 2008. For ease of reference, that definition provides:

"Regulatory authority means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry".

EFFECT OF THE SUGAR ACT AND SUGAR INDUSTRY AGREEMENT

11. The effect of what is set out above is twofold and relates to:
 - 11.1 the moratorium on enforcement proceedings; and

RS

SA
A

- 11.2 the powers of a business rescue practitioner to suspend their obligations of a company in business rescue.
12. Turning first to the moratorium, you will be aware that Section 133(1) provides:
- "During business proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except –**
- (f) proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner".**
13. Consequently, it follows that there is no moratorium on enforcement action by SASA should there be a failure to make payment of the obligations of the Tongaat Huilett Group.
14. Additionally, and although we are unaware of any attempt to invoke this provision, the business rescue practitioners do not have the power to suspend the obligations under Section 136 of the Companies Act, 2008 because, the agreements which may be suspended (as contemplated in Section 136(2)(a)), do not properly include the obligations under the SIA.
15. Accordingly, SASA disputes that there is any entitlement on the part of the business rescue practitioners to decline or refuse to make payment to SASA of the obligations set out above.
16. We additionally note that there appears to be an effort to enforce such rights as the Tongaat Huilett Group may have under the SIA and we consequently have some difficulty in understanding how reciprocal obligations could possibly be avoided.

EFFECT OF NON-PAYMENT

17. It seems to us, regrettably, that if there is to be a default of the obligations of the Tongaat Huilett Group arising under the SIA and the Sugar Act, then it follows axiomatically that the business is incapable of rescue.
18. If that is the case, then the business rescue practitioners have statutory obligations to terminate the business rescue. Alternatively, it would be open to SASA, to seek a termination of the business rescue in favour of the liquidation.
19. That position seems undesirable to all parties.

REQUEST TO URGENTLY MEET

20. In an effort to promote the business rescue proceedings, but without allowing a substantial prejudice to be imposed upon SASA (and the other members of the industry), SASA proposes that an urgent meeting be convened with yourselves, the business rescue practitioners, to consider alternatives which may include discussions with the Industrial Development Corporation (IDC).

Handwritten initials and signatures are present at the bottom right of the page, including a large signature and the initials "RS".

21. This proposed approach appears to protect the interests of all relevant parties and preserve the prospects of rescue.

CONCLUSION

22. SASA is of the firm view that the business rescue practitioners do not have the power to suspend the obligations under Section 136 of the Companies Act, 2008 because, the agreements which may be suspended (as contemplated in Section 136(2)(a)), do not properly include the obligations under the SIA. Accordingly, SASA disputes that there is any entitlement on the part of the business rescue practitioners to decline or refuse to make payment to SASA of the obligations set out above
23. In view of what we have set out above, we urgently require a response from yourselves by not later than **31 January 2023** confirming:
- 23.1 whether in fact, it is the intention of the Tongaat Hulett Limited Group to default on its obligations to SASA;
- 23.2 whether the business rescue practitioners are amenable to further discussions with SASA.

Yours faithfully



ADV. F. MUKADDAM
SASA Chairperson

Email: fay@mukaddam.net





"FA17"

218

SOUTH AFRICAN SUGAR ASSOCIATION
Kwa-Shulele, 170 Flanders Drive, Mount Edgecombe
P.O. Box 700, Mount Edgecombe, KwaZulu-Natal, 4300
Telephone: +27 31 508 7000
Website: www.sasa.org.za

FI/099/23
AT/MR
23 February 2023

Tongaat Hulett Ltd
Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal

Attention: Dave Howells

By Email: Dave.howells@tongaat.com

Dear Sirs

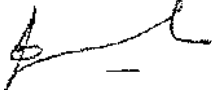
LETTER OF DEMAND

1. Clause 4.6 of the Policy for the Treatment of Milling Company Defaults in Payment due to SASA adopted by SASA Council on 8 December 2022 ("the Policy") directs that for all defaults SASA shall issue a letter of demand.
2. This letter is sent to Tongaat Hulett Ltd ("THL") by South African Sugar Association ("SASA") in compliance with clause 4.6 of the Policy. We confirm that discussions are taking place separately in regard to the money owing by THL to SASA.
3. The following amounts were due for payment by THL to SASA on 23 February 2023:

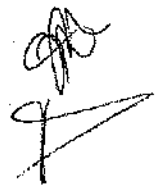
INDUSTRY LEVIES		Total	Growers Portion	
		R	%	R
		176,237,638.89		120,007,977.14
Clauses 193/194 of the SIA	SASA Core/Delegated/Rebates	139,559,377.60	64.3127%	89,754,403.84
Clause 158 of the SIA	Regional CTS Levy	17,676,908.44	64.3127%	11,368,497.09
Clause 162(a)/(b) of the SIA	Growers' Statutory Cost	18,675,532.05	100%	18,675,532.05
Clause 162(a) of the SIA	MCP Adjustment	325,820.80	64.3127%	209,544.15

4. The total amount due by THL to SASA on 23 February 2023 is R176 237 638.89. Some of this debt has been outstanding for some time and THL has failed to make payment. THL is accordingly in breach of its obligations.
5. We draw to the attention of THL that of the total amount due R120 007 977.14 represents the Growers portion of the levies that is being withheld.
6. SASA hereby demands that THL make immediate payment to SASA in the amount of R176 237 638.89 plus interest thereon at the rate of prime plus 2% from the dates these amounts became due to the date of payment.
7. SASA reserves the right to take further action to recover the amount due.

Yours faithfully



Mary Ramkelawon
Finance Director





"FA18"

220

SOUTH AFRICAN SUGAR ASSOCIATION
Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe
P.O. Box 700, Mount Edgecombe, KwaZulu-Natal, 4300
Telephone: +27 31 508 7000
Website: www.sasa.org.za

FI/143/23
MR
28 March 2023

Messrs Murgatroyd, van den Steen, and Albertyn
The Business Rescue Practitioners
Tongaat Hulett Ltd
Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal

By Email: br@tongaat.com
trevor@metis.co.za
peter@metis.co.za
gerhard@metis.co.za

CC: Mr Howells
dave.howells@tongaat.com

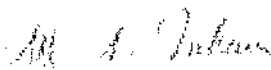
Dear Trevor, Peter and Gerhard

BUSINESS RESCUE OF TONGAAT HULETT LTD

1. Thank you for the constructive meeting on 20 March 2023.
2. As you are aware the current sugar season draws to a close on 31 March 2023 and the new season commences on 1 April 2023. It is important that the South African Sugar Association ("SASA") knows where it stands in terms of levy, redistribution and other obligations of Tongaat Hulett Ltd ("THL") to SASA. As previously advised by yourselves you believe you are entitled to suspend payments due by THL to SASA in terms of the Sugar Industry Agreement ("SIA"). We understand that you intend for this suspension to continue until such time as the business rescue is complete but if our understanding is incorrect, and you intend to have THL settle its obligations in the new season effective 1 April 2023, then please advise accordingly.
3. Please note that SASA intends to impose a levy on THL, or a new company which may at that stage own THL's mills, in terms of clause 176 read together with clause 191 of the SIA. The levy will be an amount equivalent to the unpaid industry obligations which accumulate during business rescue (currently an amount of R1.18 billion will outstanding at 31 March 2023). Please ensure that this future obligation is taken into consideration in the business rescue plan to be published and that if the business rescue plan envisages THL selling its sugar mills that the purchaser is aware that it will be liable to pay the levy.

4. The business rescue plan is to be published by 31 March 2023, should the plan not include the payment of THL obligations in terms of the SIA for the new season commencing 1 April 2023, SASA reserves its rights to take immediate action to interdict any vote on the business plan.
5. The contents of this letter should not be construed as an admission that you are entitled to suspend the obligations of THL to SASA in terms of the SIA nor an undertaking to hold off taking steps to recover the debt due by THL to SASA. SASA's rights in this regard are reserved.

Yours sincerely



MK TRIKAM
Executive Director



"FA19"**WEBBER WENTZEL**

in alliance with > Linklaters

Attention: Tongaat Hulett Limited (in business rescue)

Amanzimnyama Hill Road
Tongaat
KwaZulu-Natal
4400

C/O Joint business rescue practitioners:

Trevor John Murgatroyd N.O.
Petrus Francois Van Den Steen N.O.
Gerhard Conrad Albertyn N.O.

Per email: br@tongaat.com; trevor@metis.co.za;
peter@metis.co.za; gerhard@metis.co.za

CC: Dave Howells, Managing Director, Tongaat Hulett Limited

Per email: Dave.Howells@tongaat.com

AND CC: Advocate Fay Mukaddam, Chairperson of the South African Sugar Association (SASA)

Per email: fay@mukaddam.net; mary.ramkelawon@sasa.org.za;
sharitha.singh@sasa.org.za

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000

F +27 (0) 11 530 5111

www.webberwentzel.com

Your reference

THL // RCL

Our reference

P Singh / L Kahn / L Kamukwamba

Date

27 March 2023

Dear Sirs,

RE: BUSINESS RESCUE PLAN IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED AND COMPLIANCE WITH STATUTORY PAYMENT OBLIGATIONS

1. We act for RCL Foods Sugar & Milling (Pty) Limited ("RCL" or "our client"). Our client is a miller as defined in the Sugar Act, 1978 ("the Sugar Act") and described in the Sugar Industry Agreement, 2000 ("Industry Agreement"), and a member of the South African Sugar Millers' Association NPC.
2. We have been instructed that the business rescue practitioners ("BRPs") of Tongaat Hulett Limited ("THL") have failed to pay THL's levy and redistribution obligations, among other payment obligations under the Sugar Act and Industry Agreement. This, in the mistaken belief that the obligation to make such payments is capable of suspension by the BRPs in terms of section 136(2) of the Companies Act, 2008.

Senior Partners: JCEls Managing Partner: SJ Hutton Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appeltaubm YB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RJ Carrim T Cassim S3 Chong ME Claassens C Collett KJ Collier KM Colman KE Coster K Cozzyo DB Cron PA Croxland R Cruywagen JH Davies KM Davis PM Daya ST Dias L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Druce GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Elser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L Franca M Garden KI Gawith Oh Geldenhuys MM Gibson C Gopal CI Gouvis PD Grealy L Green S Haroun JM Harvey JS Henning KR Hillis J Hicpie CM Hoffeld PM Holloway KT Inglis MF Jarvis IC Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Lduw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela P Mchanafall N Moodley L Moolman LE Mostert VM Movshovich C Murphy P Naidoo DC Nchabeleng A Ngubo C Nthling ZN Ntshona M Nxumalo AN Nyatsumba MB Nzimande A October I Odendaal GJP Olivier N Paige AS Parry S Patel R Pather GR Penfold SE Phajane H Philippides BA Phillips MA Phillips CH Pienaar DJ Rafferty D Ramjetton GI Rapson K Reiw G Richards-Smith SA Ritchie J Roberts Y Robertson S Rule G Sader H Samsonien JW Scholtz KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding HW Straeuli LJ Swaine Z Swaneport WV Tembada A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Thavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Venrali JE Veran HM Venter B Versfeld MG Versfeld TA Versfeld DM Viaggie EME Warrington J Watson AWS Westwood RH Wilson KD Wolmarans

Chief Operating Officers: SA Boyd

WEBBER WENTZEL

in alliance with Linklaters

Page 2

3. The Industry Agreement is statutorily binding on THL, on our client, and on all other millers and growers. Our client is of the view that the levy and redistribution obligations owed by millers to SASA under the Industry Agreement constitute legally binding and enforceable statutory obligations that may not lawfully be suspended by the BRPs during business rescue proceedings.
4. Please urgently confirm that the BRPs have purported to exercise their powers under section 136(2) and have suspended the payment of THL's industry obligations during the business rescue proceedings. Should we not hear anything to the contrary from you, the BRPs, by close of business tomorrow, we shall assume that this is indeed the BRPs' position, and a dispute will have arisen between our client and the BRPs relating to obligations arising out of the Industry Agreement and/or the interpretation of the Industry Agreement. We are instructed to refer such a dispute, on a priority basis, to the Sugar Industry Appeals Tribunal ("the Tribunal") for determination.
5. We are furthermore instructed that the BRPs intend to publish their business rescue plan in respect of THL by 31 March 2023. Should the proposed business rescue plan provide for the suspension of obligations owed to SASA under the Industry Agreement and/or the release of THL from the payment of any of such obligations which fell due after the commencement of the business rescue proceedings, we hold instructions to seek the appropriate urgent relief (without further notice) interdicting any vote on the business rescue plan until such time as the dispute has been determined by the Tribunal.
6. All of our client's rights are reserved.

Yours faithfully

*Lubumba Kamukwamba***WEBBER WENTZEL**

Prelisha Singh / Lara Kahn / Lubumba Kamukwamba

Partner/ Senior Associate

Direct tel: +27 11 530 5419 / 5256

Direct fax: +27 11 530 6419

Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com



DELIVERED BY EMAIL

L Kamukwamba
Webber Wentzel
lubumba.kamukwamba@webberwentzel.com

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba
OUR REFERENCE: Mr D Andropoulos/is/TONG7430.8/#8019310v1
DIRECT PHONE: +27 11 535 8248
DIRECT FAX: +27 11 535 8676
EMAIL ADDRESS: dandropoulos@werksmans.com

28 March 2023

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

- 1 We act for the joint business rescue practitioners ("**BRPs**") of Tongaat Hulett Limited (In Business Rescue) ("**THL**"), who have provided us with a copy of your letter to them dated 27 March 2023 (the "**Subject Letter**") for attention and reply.
- 2 For the sake of convenience, terms defined in the Subject Letter shall bear the same meanings when used in this response.
- 3 We have been instructed by our clients to respond to the averments contained in the Subject Letter as set out hereunder -
 - 3.1 Ad paragraph 1 - Noted.
 - 3.2 Ad paragraph 2 - The BRPs arrived at the decision to suspend THL's levy and redistribution obligations after extensive investigations, deliberation and consideration. The BRPs remain firmly of the view that such payment obligations are capable of suspension in terms of section 136(2) of the Companies Act 71 of 2008 and that they were required to suspend such obligations in the discharge of their duties and in the best interests of the general body of creditors.

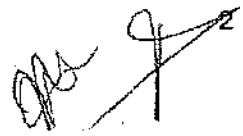
Werksmans Inc. Reg. No. 1990/007215/24 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors: D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKDF Antonies RL Armstrong DA Anéko K Badal T Bata JD Beir AR Bermani NMN Bhengu AL Bilaty
RE Bonnet HGB Boshoff TJ Bnswell MC Brönn W Brown PF Burger HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer
JA Gobetz R Gootkin GF Griessel N Hardulh J Hollesen MGH Hontball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer
A Kenny R Kiloran N Kirby HA Koze S Krige CJ Laila H Laskov K Rajah P Le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabeza PK Mabaso DD Magidson
MPC Manaka JE Mardon NT Matshabela JE Meiring H Michael SM Moarana R Moitse C Moraitis PM Mossbo NPA Motsiri L Naidoo K Neluheni JJ Niemand BW Ntuli BPF Olivier
WE Oosthuizen Z Oosthuizen S Padayachy M Pensegrouw S Pessmoor D Pisaniti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdini MDF Rodrigues BR Roothman
W Rosenberg NL Scott TA Sibidie FT Sikheshakhavha LK Silbermann S Sinden DE Singo JA Smit BM Sono C Stevens PO Steyn J Stockwell DH Swart FW Tindle SA Tom JJ Truler
KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins
M Wiehahn DC Williams DG Williams E Wood BW Workman-Davies Consultant DH Rabin

- 3.3 Ad paragraph 3 - Please see the response in relation to the averments contained in paragraph 2 of the Subject Letter, which applies *mutatis mutandis* to the averments contained in paragraph 3 of the Subject Letter.
- 3.4 Ad paragraph 4 - The BRPs have exercised their powers to suspend the payment of THL's levy and redistribution obligations under the Industry Agreement.
- 3.5 Ad paragraph 5 - Noted.
- 3.6 Ad paragraph 6 - Noted.
- 4 Our clients have requested us to bring to your attention that as a reality and regardless of competing views THL does not currently and as a fact have the financial means to effect payment of both levy and redistribution amounts owing. Such absence of financial means is one of the reasons for the commencement of the business rescue of THL. Your client has not suggested the source of funding required to pay the amounts demanded by it.
- 5 Our clients' failure to further deal specifically with any other aspect or element of the contents of the Subject Letter is not to be construed as an admission of the correctness thereof and our clients' rights to respond thereto at a later juncture, should they deem so necessary, are reserved.

Yours faithfully

Danny Andropoulos
Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.



WEBBER WENTZEL

in alliance with > Linklaters

Attention: South African Sugar Association

Kwa-Shukela
170 Flanders Drive, Mount Edgecombe
4300

Per email: fay@mukaddam.net; marv.ramkelawon@sasa.org.za;
sharitha.singh@sasa.org.za; Trix.trikam@sasa.org.za

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 (0) 11 530 5000
F +27 (0) 11 530 5111
www.webberwentzel.com

Attention: Werksmans Attorneys
**Attorneys for the joint business rescue practitioners of
Tongaat Hulett Limited (in business rescue)**

The Central, 96 Rivonia Road
Sandton, Johannesburg
2196

Per email: dandropoulos@werksmans.com;
ismith@werksmans.com

COPY TO: trevor@metis.co.za; peter@metis.co.za;
gerhard@metis.co.za

Your reference	Our reference	Date
THL // RCL	P Singh / L Kahn / L Kamukwamba 3058873	29 March 2023

Dear Sirs/Mesdames,

RE: BUSINESS RESCUE PLAN IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED AND COMPLIANCE WITH INDUSTRY OBLIGATIONS

1. As you are aware, we act for RCL Foods Sugar & Milling (Pty) Limited ("RCL" or "our client") and refer to our letter to the business rescue practitioners ("BRPs") of Tongaat Hulett Limited ("THL"), dated 27 March 2023, to which the South African Sugar Association ("SASA") was copied ("our letter").
2. We received the attached response from the BRPs, marked Annexure "A", and note that SASA was not copied to it ("the response").
3. In light of the response, which confirms, unequivocally, that the BRPs have purported to suspend THL's levy and redistribution obligations during the business rescue proceedings

Senior Partners: JC Els Managing Partner: SJ Hulton Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TE Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos R1 Carrin T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crossland R Cruywagen JH Davies KM Davis FM Daya ST Dias L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Elzer AE Esterhuizen K Fazal G Fitzmaurice JB Forman L Franca M Garden KL Gewith OH Geldenhuys HM Gibson C Gopal CJ Gouws PD Grealy I Green S Haroun JM Harvey JS Henning KR Hills Z Hlophle CM Hoffeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn H Kennedy KE Kilner A Keyser MD Kots JC Kraamwinkel J Lamb E Louw M Mafisangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela P Mohlali N Moodley L Moolman LE Mostert VM Movshovich C Murphy P Naidoo DC Nchabeleng A Nguba C Ntshing ZN Ntshona M Nkumalo AN Nyatumba MB Nzimande A October L Odendaal GJP Olivier N Paige AS Penny S Patel N Pather GA Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar DJ Rafferty D Ramjetlan GJ Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Semsodien JW Scholtz KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smil MP Spalding MW Strauß LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen P Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS Van der Walt CS Vermaak JE Verreen HH Venter B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

Chief Operating Officers: SA Boyd

WEBBER WENTZEL

in alliance with Linklaters

Page 2

in terms of section 136(2) of the Companies Act, 2008, it is our instruction to proceed, without delay, to refer a dispute, on a priority basis, to the Sugar Industry Appeals Tribunal ("the Tribunal") for determination on or before 31 March 2023. We are instructed that the BRPs intend to publish their business rescue plan in respect of THL by 31 March 2023.

4. We intend citing the BRPs as well as SASA in the dispute owing to their direct and material interest in the relief sought. The relief sought includes a declaration from the Tribunal to the effect that the levy and redistribution obligations of millers under Sugar Industry Agreement, 2000 ("Industry Agreement") constitute legally binding and enforceable statutory obligations, and that no miller is entitled to suspend its payment obligations unilaterally. Furthermore, should the proposed business rescue plan indeed provide for the suspension of obligations owed to SASA under the Industry Agreement and/or the release of THL from the payment of any of such obligations which fell due after the commencement of the business rescue proceedings, we are instructed to seek the appropriate urgent relief from the High Court interdicting any vote on the business rescue plan until such time as the dispute has been determined by the Tribunal.
5. We are instructed that SASA had similarly considered referring a dispute to the Tribunal, in circumstances where it has – in its correspondence with the BRPs over the past few months – confirmed that "SASA disputes that there is any entitlement on the part of the business rescue practitioners to decline or refuse to make payment to SASA of [these] obligations".¹ SASA has not, so far as we are aware, yet done so.
6. Our client requests SASA, as regulator of the sugar industry, to support RCL's impending legal proceedings before the Tribunal and before the High Court by advancing arguments in support of SASA's position reflected in paragraph 4 above, and agreeing to an expedited hearing in consultation with RCL, THL and any other interested parties who may be affected by the position adopted by the BRPs. Similarly, we request the BRPs to agree to the referral to the Tribunal and the proposed expedited hearing. In making this request to the BRPs our client does not concede that the BRPs consent is required as envisaged by section 133 (1)(b) of the Companies Act.
7. If SASA is inclined to join or participate in the impending legal proceedings it may be worthwhile as a precursor to such proceedings (and to avoid the incurring of costs for a distressed industry and distracting urgent court litigation), for SASA, as industry regulator, to request that the BRPs seek approval from THL's creditors or a court (by agreement) to postpone the publication of the business rescue plan until the dispute has been determined by the Tribunal.
8. Our client is hopeful that SASA will be minded to support the impending legal proceedings to be instituted by RCL, and that it will make the request to THL described in paragraph 7 above.
9. All of our client's rights are reserved.

¹ For example: letter from SASA to BRPs, dated 23 January 2023, paragraph 15.



WEBBER WENTZEL

in alliance with > Linklaters

Yours faithfully

WEBBER WENTZEL

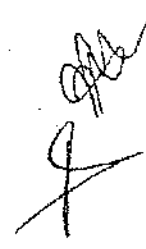
Prelisha Singh / Lara Kahn

Partner

Direct tel: +27 11 530 5419 / 5256

Direct fax: +27 11 530 6419

Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com
lubumba.kamukwamba@webberwentzel.com





DELIVERED BY EMAIL

P Singh, L Kahn, and L Kamukwamba
Webber Wentzel
Johannesburg

Via email

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE: Mr D Andropoulos/ tjb/TONG7430.8/#8026449v6
DIRECT PHONE: +27 11 535 8248
EMAIL ADDRESS: dandropoulos@werksmans.com

30 March 2023

Dear Mesdames/Sirs

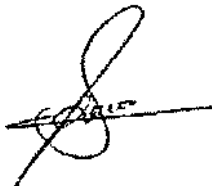
BUSINESS RESCUE PLAN IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED AND COMPLIANCE WITH INDUSTRY OBLIGATIONS

- 1 We refer to -
 - 1.1 your letter dated 27 March 2023 ("your 27 March letter") addressed to the joint business rescue practitioners of Tongaat Hulett Limited (in business rescue) ("our clients");
 - 1.2 our clients' response to your 27 March letter dated 28 March 2023; and
 - 1.3 your letter addressed to the South African Sugar Association dated 29 March 2023 ("your 29 March letter").
- 2 On 29 March 2023, our clients published a notice to creditors ("the notice") in terms of section 150(5) of the Companies Act 71 of 2008 seeking approval from creditors of a further extension of the publication of the business rescue plan of Tongaat Hulett Limited (in business rescue). A copy of the notice is attached for your ease of reference.
- 3 Our clients reasonably anticipate that the requisite majority approval will be obtained for the extension sought because, *inter alia*, our clients hold affirmative voting proxies from creditors holding a majority of voting rights. We are instructed that for at least this reason, the High Court proceedings contemplated by you cannot be regarded as urgent and would be premature. Please confirm that in the circumstances, your client will not proceed (at least at this stage) with an urgent application to High Court. Please also confirm that if your client elects to institute urgent proceedings that you will provide our clients with notice of your client's intention to do so.

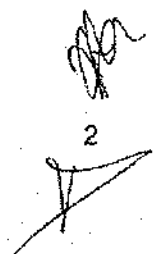
Werksmans Inc. Reg. No. 1990/607215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Artelro K Badal Y Beta JD Behr AR Berman NMN Bhengu AL Ellalyi
RE Bonnel HGB Boshoff TJ Boswell MC Bröhn W Brown PF Burger HLE Chang PG Cleland JG Cloete PRJ Coetser C Cole-Morgan J Darling R Dinnan KJ Fyle S Gast D Gawer
JA Gobetz R Goolkin GF Grassef N Harduth J Hollasen MGH Horibaill BB Holz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmayer
A Kenny R Killoran N Kirby HA Koze S Krige CJ Laltha H Laskov K Rajah P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabasa DD Magdeon
MPC Manake JE Mardon NT Metshebele JE Melring H Michael SM Moerane R Moitse C Moreilla PM Mosapo NPA Molsari L Naidoo K Neluhani JJ Niemand BW Ntuli BPF Olivier
WE Oosthuizen Z Oosthuizen S Padayatchy M Pansegrouw S Passwoor D Plaanti T Power AA Pyzkowski RJ Raath K Rajah A Ramdihl MDF Rodrigues BR Roodman
W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PD Steyn J Stockwell DH Swan PW Tinde SA Tom JJ Truter
KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vetalidis RN Wakefield L Watson D Wegierski G Wickins
M Wiehahn DC Willans DG Williams E Wood BV Workman-Davies Consultant DH Rabin

- 4 It is not clear from your letter whether your client intends to approach the Sugar Industry Appeals Tribunal for the determination envisaged in paragraph 4 of your 27 March letter during the course of today or tomorrow. In this regard, please confirm -
- 4.1 whether in fact your client intends to approach the Sugar Industry Appeals Tribunal for an urgent determination before close of business tomorrow so that our clients are in a position to urgently retain counsel to appear;
- 4.2 that in the event that your client's response to paragraph 4.1 above is in the *negative*, that -
- 4.2.1 your client will provide our client with adequate notice of your approach to the Sugar Industry Appeals Tribunal, and that our clients will be given a fair opportunity to respond; and
- 4.2.2 insofar as is possible, you will afford our clients an opportunity to attempt to agree mutually acceptable timelines for the exchange of submissions and the date of hearing. In this regard, please will you impress upon your client to take the upcoming Religious Easter and Passover days into account.
- 5 The content of this letter is not exhaustive and should not be construed as having dealt with all matters affecting the issues. Our clients' right to deal with any such matters in greater detail in due course and in the appropriate forum are reserved.

Yours faithfully



Werksmans Attorneys



2

BEFORE THE SUGAR INDUSTRY APPEALS TRIBUNAL
(KWAZULU-NATAL PROVINCE)

CASE NO

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED Claimant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) First Respondent

TREVOR JOHN MURGATROYD N.O. Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O. Third Respondent

GERHARD CONRAD ALBERTYN N.O. Fourth Respondent

SOUTH AFRICAN SUGAR ASSOCIATION Fifth Respondent

NOTICE OF PRIORITY

PLEASE TAKE NOTICE THAT:

1. The complainant intends to apply to the Sugar Industry Appeals Tribunal ("the Tribunal"), in terms of rule 55 of the Rules for the conduct of hearings before the Tribunal,¹ ("Tribunal Rules") for the:

1.1 matter as set out in the Statement of Claim accompanying this Notice of Priority to be heard on a priority basis; and

¹ Rules for the conduct of hearings before the Sugar Appeals Tribunal, effective from 1 February 2010.



- 1.2 Tribunal to exercise its discretion to shorten any time period or dispense with any formalities in the Tribunal Rules in order to accommodate the expeditious resolution of the matter, which is urgent, including the convening of an urgent directions hearing should that be appropriate.

TAKE NOTICE FURTHER THAT the accompanying affidavit of Michela Chiara Cutts shall be used in support of this request for priority.

DATED AT JOHANNESBURG ON THIS the 30th DAY OF MARCH 2023.

Lubumba Kamukwamba

WEBBER WENTZEL

90 Rivonia Road, Sandton

Johannesburg, 2196

PO Box 61771, Marshalltown

Johannesburg, 2107, South Africa

Tel: 011 530 5419

Fax: 011 530 6419

Email: prelisha.singh@webberwentzel.com /

lara.kahn@webberwentzel.com /

lubumba.kamukwamba@webberwentzel.com

Ref: P Singh / L Kahn / L Kamukwamba/ 3058873

**TO: SUGAR INDUSTRY APPEALS TRIBUNAL
KWAZULU-NATAL PROVINCE**

AND TO:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

First respondent

Amanzimnyama Hill Road

Tongaat

KwaZulu-Natal

4400

Tel: 011 530 5419

Fax: 011 530 6419

Email: Dave.Howells@tongaat.com / trevor@metis.co.za; peter@metis.co.za;
gerhard@metis.co.za

gls


AND TO:
WERKSMANS ATTORNEYS
Attorneys for the second to fourth respondents
The Central
96 Rivonia Road
Sandton
2196
Tel: +27 11 535 8248
Fax: +27 11 535 8676
Email: dandropoulos@werksmans.com /
jsmith@werksmans.com

AND TO:
SOUTH AFRICAN SUGAR ASSOCIATION
Fifth respondent
170 Flanders Drive
Mount Edgecombe
KwaZulu-Natal
4300
Ref: Sharitha Singh
Tel: +27 31 508 7090
Mobile: +27 79 247 7014
E-mail: sharitha.singh@sasa.org.za



BEFORE THE SUGAR INDUSTRY APPEALS TRIBUNAL
(KWAZULU-NATAL PROVINCE)

CASE NO

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED Claimant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) First Respondent

TREVOR JOHN MURGATROYD N.O. Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O. Third Respondent

GERHARD CONRAD ALBERTYN N.O. Fourth Respondent

SOUTH AFRICAN SUGAR ASSOCIATION Fifth Respondent

AFFIDAVIT SUPPORTING PRIORITY

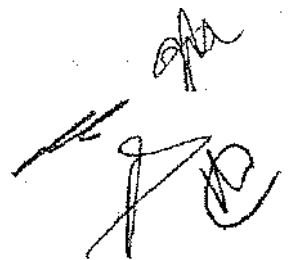
I, the undersigned,

MICHELA CHIARA CUTTS

do hereby make oath and say as follows:

INTRODUCTION

1. I am an adult female and Managing Director of RCL Foods Sugar and Milling Proprietary Limited ("RCL"), the complainant in this matter.



2. I am duly authorised to institute these proceedings on behalf of RCL and to depose to this affidavit, as appears from the resolution attached hereto marked "MC1".
3. The facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, both true and correct. Where I make legal submissions, I rely on the advice of the applicant's legal representatives.

REQUEST FOR PRIORITY CONSIDERATION

4. I hereby submit this request that the Sugar Industry Appeals Tribunal ("the Tribunal") adjudicate the matter referred to it by RCL, as more fully set out in the Statement of Claim ("the Statement of Claim" or "the Referral"), on a priority basis as contemplated in rule 55 of the Rules for the conduct of hearings before the Tribunal¹ ("the Tribunal Rules").
5. The Referral brought by RCL concerns two crisp legal issues relating to the obligations arising out of and / or the interpretation of the Sugar Industry Agreement, 2000² ("the Industry Agreement") which must be considered on a priority basis:
 - 5.1 are the payment obligations by millers to the fifth respondent, the South African Sugar Association ("SASA"); and the associated redistribution obligations of SASA in respect of millers in terms of the Industry Agreement, statutory obligations as opposed to contractual obligations; and

¹ Rules for the conduct of hearings before the Sugar Appeals Tribunal, effective from 1 February 2010.
² The agreement presently in force is the Sugar Industry Agreement published under General Notice 1208 in Government Gazette 21139 of 3 May 2000.

[Handwritten signatures and initials]

- 5.2 can such obligations be unilaterally suspended?
6. The first to fourth respondents have adopted the position that the Industry Obligations are merely contractual in nature and thus can be suspended in the context of business rescue proceedings in terms of section 136(2)(a) of the Companies Act, 2008 ("the Companies Act").³
7. RCL submits that on a proper interpretation of the legislative scheme, and the Industry Agreement in particular, millers' payment obligations and SASA's associated redistribution obligations (i) arise from legislation, are thus legally binding in terms of statute; and (ii) cannot be unilaterally suspended.
8. The basis of RCL's submission is fully set out in the Referral, which does not contain or anticipate any disputes of fact.

REASONS FOR PRIORITY

9. Paragraphs 18 to 18.8 of the Statement of Claim set out the sobering reality of a sugar industry in crisis.
10. The industry makes significant contributions to South Africa's economy in the form of investments, foreign exchange earnings, and jobs, but is under severe threat. As of November 2020, annual sugar production in South Africa had declined by nearly 25%, from 2.75 million to 2.1 million tons per annum, over

³ Section 136(2)(a) of the Companies Act provides as follows:

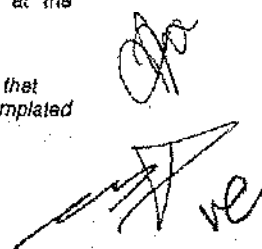
"(2) Subject to subsection (2A), and despite any provision of an agreement to the contrary, during business rescue proceedings, the practitioner may –

(a) entirely, partially or conditionally suspend, for the duration of the business rescue proceedings, any obligation of the company that –

(i) arises under an agreement to which the company was a party at the commencement of the business rescue proceedings; and

(ii) would otherwise become due during those proceedings; or

(b) apply urgently to a court to entirely, partially or conditionally cancel, on any terms that are just and reasonable in the circumstances, any obligation of the company contemplated in paragraph (a)."



Handwritten signature and initials, possibly 've'.

the past 20 years. The number of sugar cane farmers had declined by 60% during this period, and sugar industry related jobs were estimated to have reduced by 45%.⁴ Needless to state that millers and growers are under tremendous financial strain and this threatens to result in significant job losses in some of the most vulnerable sectors of our society.

11. On 27 October 2022, the first respondent, Tongaat Hulett Limited ("Tongaat") filed for voluntary business rescue (as evident from Tongaat's notice to affected persons, dated 1 November 2022, which is attached as Annexure "A" to the Statement of Claim). Further, it is RCL's understanding that, since that date, Tongaat has not complied with various obligations arising from the Industry Agreement. Most significantly, Tongaat has not complied with its levy and redistribution obligations. This is having a detrimental impact on the industry's redistribution model, and placing undue financial strain on other millers and growers.

12. The financial sustainability of the industry has never been more pressing and it is in this context that this matter arises.

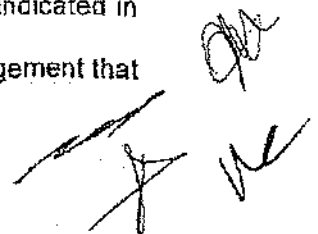
13. RCL submits that if a total collapse of the industry is to be averted, regulatory mechanisms aimed at ensuring the survival of the industry, more particularly the levy and redistribution obligations statutorily prescribed by the Industry Agreement must be enforced, as a matter of urgency. Failing this, the legislated equitable sharing of local market proceeds of sugar sales would be contravened, resulting in the unequal exposure of millers and cane growers – which is the very outcome that the legislative provisions exist to prevent.

⁴ 'South African Sugarcane Value Chain Master Plan to 2030' published by the Department of Trade, Industry and Competition, dated 16 November 2020 at 5.

14. If the Referral is not heard on a priority basis, this would have potentially devastating financial impacts on the sugar industry and all its stakeholders, including millers like RCL, which are already operating under extremely difficult market conditions. Profits would continue to decline and thousands of jobs would be lost in an industry of great strategic importance to the South African economy.
15. The statutory requirements which exist to protect the financial security of the industry are at risk of not being complied with. As such, swift action is required to properly interpret and ensure the consistent enforcement of the payment obligations imposed by the Industry Agreement in the interests of averting a complete collapse of the industry.

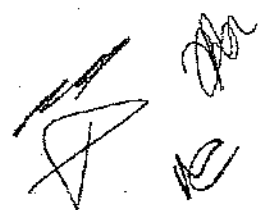
SASA's role

16. It is primarily SASA's role, as regulator of the sugar industry, to enforce payment obligations owed to it under the Industry Agreement. However, as a result of SASA's failure to enforce the payment obligations or to resolve the dispute with Tongaat regarding the nature of its payment obligations to SASA as well as whether the obligations may be suspended, RCL has been forced at this point to step in.
17. It has recently become clear that it is necessary for RCL to approach this Tribunal for a resolution of this dispute, since SASA's engagements with Tongaat's business rescue practitioners have now reached a stalemate.
18. Shortly after Tongaat's Board filed for voluntary business rescue on 27 October 2022, SASA held a special council meeting held on 2 November 2022 to discuss Tongaat's business rescue proceedings. It was indicated in the minutes of the meeting that Tongaat had advised SASA Management that

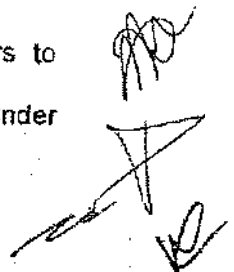


payment of Tongaat's redistributive obligation as an over-performing miller would not be made. It is recorded in the minutes of the meeting that SASA Management considers *"the non-payment to be a breach by [Tongaat] in terms of their obligations as contained in the [Industry Agreement]"*, and that legal advice would be sought to confirm this view. A copy of the minutes of the special council meeting are attached to the Statement of Claim as Annexure "B".

19. The Industry Leadership Task Team ("Task Team") – established to closely monitor Tongaat's business rescue process – in its report to Council dated 28 November 2022 addressed the concerns regarding potential defaults by Tongaat. The Task Team acknowledged that any default must be addressed *"within the context of SASA's fiduciary duties to the industry and all its members, which is in turn informed by the legislative and regulatory framework within which SASA operates"*. A copy of the Task Team's report to Council dated 28 November 2022 is attached as Annexure "C" to the Statement of Claim.
20. On 23 January 2023, the Chairperson of SASA, Adv F Mukaddam, wrote to the business rescue practitioners of Tongaat. The Chairperson expressed concern that Tongaat does not intend to fulfil its payment obligations to SASA as and when they become due. The Chairperson further advised that SASA *"is of the firm view"* that the business rescue practitioners do not have the power to suspend the obligations under section 136 of the Companies Act. The obligations imposed under the Industry Agreement are statutory obligations and thus do not fall under section 136. A copy of the letter is attached as Annexure "F" to the Statement of Claim.

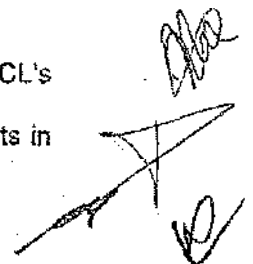
Handwritten signatures and initials in the bottom right corner of the page. There are three distinct marks: a large signature that appears to be 'F Mukaddam', and two smaller initials, possibly 'AM' and 'RS'.

21. On 22 February 2023, the Chairperson of SASA again wrote to the business rescue practitioners of Tongaat. She reiterated that SASA rejects the proposition that the business rescue practitioners are entitled to suspend Tongaat's obligations to pay SASA. She further enquired whether the business rescue practitioners would be amenable to arbitrating the question of Tongaat's rights and obligations taking into account section 136 of the Companies Act. A copy of the letter is attached as Annexure "H" to the Statement of Claim.
22. A couple of days later, on 24 February 2023, the business rescue practitioners responded to the SASA Chairperson. The business rescue practitioners, while affirming that they have a different interpretation of their legal entitlement to suspend payments to SASA, expressed that they are "*available to meet with SASA to find an amicable solution*". A copy of the letter is attached as Annexure "I" to the Statement of Claim.
23. RCL considered that it could rely on these statements by the SASA Chairperson and the Task Team to expect SASA to act in the best interests of the industry and to enforce Tongaat's payment obligations or to obtain clarity as to whether the payment obligations could be suspended through approaching this Tribunal. However, this has not occurred.
24. In light of SASA's hitherto failure to enforce Tongaat's payment obligations or to approach the Tribunal for clarity, the claimant's attorneys, Webber Wentzel, wrote to Tongaat and its business rescue practitioners, copying in the Chairperson of SASA, on 27 March 2023.
25. The claimant's attorneys requested the business rescue practitioners to urgently confirm whether they have purported to exercise their powers under

Handwritten signature and initials in the bottom right corner of the page.

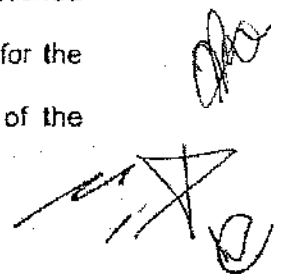
section 136 of the Companies Act to suspend payments due to SASA. The business rescue practitioners were advised that, in the event that they had purported to exercise this power, a dispute would have arisen between themselves and the claimant concerning the obligations arising out of and / or the interpretation of the Industry Agreement, which dispute would be referred to the Tribunal for determination. A copy of the letter is attached as **Annexure "J"** to the Statement of Claim.

26. The attorneys representing the business rescue practitioners, Werksmans, responded the next day, 28 March 2023. In the response, it is confirmed that the business rescue practitioners purported to exercise the power under section 136 of the Companies Act to suspend Tongaat's payment obligations to SASA under the Industry Agreement. The business rescue practitioners reiterated that it is their view that the levy and redistribution obligations fall within the obligations that may be suspended under section 136. A copy attached of the letter is attached as **Annexure "K"** to the Statement of Claim.
27. On 29 March 2023, the claimant's attorneys wrote to the Chairperson of SASA conveying that the business rescue practitioners had now unequivocally confirmed that they have purported to suspend Tongaat's payment obligations under the Industry Agreement during the business rescue proceedings. The letter gave SASA notice that the claimant would be urgently approaching this Tribunal for declaratory relief in order to obtain clarity on the nature of miller's payment obligations under the Industry Agreement and whether the obligations may be unilaterally suspended. SASA was advised that it would be cited in the referral given its direct and material interest in the relief sought.
28. SASA, as regulator of the sugar industry, was requested to support RCL's impending legal proceedings before the Tribunal by advancing arguments in

Handwritten signature and initials in the bottom right corner of the page.

support of SASA's frequently advanced position that the payment obligations are statutorily binding and may not be suspended, and by agreeing to an expedited hearing in consultation with RCL, Tongaat and any other interested parties who may be affected by the position adopted by the business rescue practitioners. A copy of the letter is attached as **Annexure "L"** to the Statement of Claim. At the time that these papers were being finalised, no response from SASA had been received.

29. In these circumstances, a priority hearing is required to expeditiously resolve the dispute in the interests of all the parties and the sugar industry as a whole.
30. The deadline for the publication of the business rescue plan is 31 March. The business rescue practitioners have stated expressly this past week that they will not honour Tongaat's redistribution and levy payment obligations under the Industry Agreement.
31. The claimant has proposed to SASA, as industry regulator, to request that Tongaat's business rescue practitioners seek approval from Tongaat's creditors or a court (by agreement) to postpone the publication of the business rescue plan until the dispute has been determined by the Tribunal (see the letter of 29 March 2023 discussed at paragraph 27 above). That proposal has been made not only because of the very serious and wider impacts upon the industry arising from the business rescue practitioner's decision, but also to avoid the costs and distraction if at all possible of urgent interdictory proceedings.
32. On 29 March 2023, a notice to the creditors of Tongaat was published requesting the consent of creditors for the extension of the deadline for the publication of the business rescue plan in term of section 150(5) of the

Handwritten signature and initials in the bottom right corner of the page.

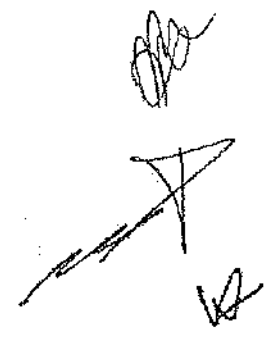
Companies Act. It was requested that the deadline be extended to 31 May 2023. In terms of the notice, creditors are required to signify their consent or objection by no later than noon on 31 March 2023 – the date on which the business rescue plan is required to be published. RCL has no way of knowing whether the business rescue practitioners will obtain the required consent. It is important to point out that the creditors have already once – a little over a month ago - refused a request for an extension until 30 June 2023.

33. If the publication of the business rescue plan is extended as requested, this will enable the parties to adopt a responsible and reasonable approach by agreeing: (i) to allow the dispute to be determined by this Tribunal in the interests of all parties and the wider industry and the thousands of employees affected; and (ii) to an expedited timetable for the hearing of the dispute as one of priority.

34. To the extent that SASA and the business rescue practitioners have not yet agreed to such an approach between themselves, the respondents are invited to agree to such an approach in response to the filing of this statement of claim, and for a joint approach to be made to the Tribunal and its registrar for a directions hearing to ensure that outcome.

PRAYER

35. On the basis of what is set out above, I submit that RCL has made out a case for the Referral to be dealt with expeditiously and heard as a matter of priority.

Handwritten signature and initials in the bottom right corner of the page.

WHEREFORE, I pray for an order as set out in the notice of priority to which this affidavit is attached.

Michela Cutts

MICHELA CHIARA CUTTS

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at Malene on this the 5th day of MARCH 2023, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

[Signature]

COMMISSIONER OF OATHS
KOMMISSARIS VAN EDE / COMMISSIOENER OF OATHS
Johan Wilhelm Albertus Janse van Rensburg
Business address
Designated
VAN RENSBURG PROKUREURS / ATTORNEYS
48 Rissdal, Malene Postbus 815, Malene, 1320

[Signature]
[Signature]

RCL FOODS SUGAR AND MILLING PROPRIETARY LIMITED
(Registration Number: 1947/026583/07)
(the "Company")

**WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED IN
TERMS OF SECTION 74 OF THE COMPANIES ACT, 71 OF 2008**

1. BACKGROUND

- 1.1 Tongaat Hulett Limited and its joint business rescue practitioners have suspended levy and redistribution obligations arising from the Sugar Industry Agreement, 2000 (as amended) on the basis that such payment obligations are merely contractual in nature and thus can be suspended in the context of business rescue proceedings in terms of section 136(2) of the Companies Act, 2008.
- 1.2 The directors now wish to authorise the Company to bring proceedings before the Sugar Industry Appeals Tribunal for appropriate legal relief, including, but not limited to, an order declaring that millers' payment obligations and SASA's associated redistribution obligations arise from legislation and cannot be unilaterally suspended.
- 1.3 To the extent necessary, the Company is further authorised to bring legal proceedings before the High Court for appropriate relief, including, but not limited to, urgent interdictory relief and declaratory relief.

2. RESOLUTIONS

IT IS THEREFORE RESOLVED:

- 2.1 **THAT** the Company institutes proceedings before the Sugar Industry Appeals Tribunal for appropriate legal relief, including, but not limited to, an order (i) to confirm that the Sugar Industry Agreement, in particular, millers' payment obligations and the fifth respondent's associated redistribution obligations, arise from legislation cannot be unilaterally suspended; and (ii) that SASA is statutorily obligated as regulator of the sugar industry to enforce the Sugar Industry Agreement.
- 2.2 **THAT** the Company is authorised to institute and pursue further legal proceedings before the High Court for appropriate relief, including, but not limited to, urgent interdictory relief and declaratory relief.
- 2.3 **THAT** Michela Chiara Cutts, in her capacity as Managing Director of the Company (the "Authorised Signatory") be and is hereby authorised and empowered, on behalf of the Company, to do or cause all such things to be done, to sign and file all documents as may

DS
R

DS
P

be reasonable and necessary, to give effect to and implement the resolutions set out herein.

2.4 **THAT** Any actions which have thus far been taken in this regard by the Authorised Signatory be and are hereby confirmed and ratified in their entirety, to the fullest extent permitted by law.

SIGNED by each director of the Company who, by their respective signatures, hereto vote in favour of each of the resolutions set out above:

DocuSigned by:
Paul
5261FB00A3A34FF

PAUL CRUICKSHANK

DIRECTOR

Date: 28 March 2023 | 13:36 SAST

DocuSigned by:
Robert Field
0A978B950P0DF425

ROBERT HILTON FIELD

DIRECTOR

Date: 28 March 2023 | 05:27 PDT



BEFORE THE SUGAR INDUSTRY APPEALS TRIBUNAL
(KWAZULU-NATAL PROVINCE)

CASE NO

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED

Claimant

and

**TONGAAT HULETT LIMITED (IN BUSINESS
RESCUE)**

First Respondent

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

SOUTH AFRICAN SUGAR ASSOCIATION

Fifth Respondent

STATEMENT OF CLAIM

INTRODUCTION AND ISSUE FOR REFERRAL

1. Tongaat Hulett Ltd ("Tongaat") – one of three major sugar millers in the South African sugar industry – has been placed into business rescue. Its business rescue practitioners have failed to fulfil Tongaat's payment obligations to the South African Sugar Association ("SASA") imposed under



the Sugar Industry Agreement, 2000¹ ("the Industry Agreement"). The ostensible basis for this failure is that Tongaat's payment obligations to SASA may be suspended while it is in business rescue. It is not an exaggeration to say that the viability and sustainability of SASA, other millers, growers (especially small-scale growers), refiners and the entire sugar industry is placed at risk by this failure.

2. The Sugar Industry Appeals Tribunal ("the Tribunal") is requested to determine the following crisp legal issues arising from dispute concerning the obligations arising from and/ or the interpretation of the Industry Agreement:

- 2.1 What is the nature of the payment obligations to SASA imposed on millers under the Industry Agreement? In particular, are the payment obligations by millers to the SASA; and the associated redistribution obligations of the SASA in respect of millers in terms of the Industry Agreement statutory obligations as opposed to contractual obligations?

- 2.2 can such obligations be unilaterally suspended?

3. The first to fourth respondents have adopted the position that the Industry Obligations are merely contractual in nature and thus can be suspended in

¹ The agreement presently in force is the Sugar Industry Agreement published under General Notice 1208 in *Government Gazette* 21139 of 3 May 2000.



the context of business rescue proceedings in terms of section 136(2)(a) of the Companies Act, 2008 ("the Companies Act").²

4. The complainant submits that on a proper interpretation of the legislative scheme, and the Industry Agreement in particular, millers' payment obligations (i) arise from legislation, are thus legally binding statutory obligations; and (ii) cannot be unilaterally suspended.
5. The remainder of this statement of claim sets out the following:
 - 5.1 jurisdiction and standing;
 - 5.2 the reasons for a priority hearing;
 - 5.3 the parties;
 - 5.4 relevant background to this matter;
 - 5.5 legal framework;
 - 5.6 application of the legal framework to the crisp questions of law;
 - 5.7 conclusion; and
 - 5.8 relief sought by RCL
6. It is further recorded, in terms of rule 18 of the Tribunal Rules, that the claimant wishes to tender oral arguments on the matter before the Tribunal.

² *Timasani (Pty) Ltd (in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd* [2021] ZASCA 43; [2021] 3 All SA 843 (SCA) at para 26.



JURISDICTION OF THE TRIBUNAL AND STANDING OF RCL

7. The complainant is a sugar miller as defined in the Sugar Act, 1978 ("the Sugar Act") and the Industry Agreement, and a member the South African Sugar Millers' Association NPC ("Millers' Association").
8. The complainant refers the crisp questions of law summarised in paragraph 2 for adjudication by the Tribunal, which has jurisdiction to hear matters between growers, millers and refiners in the sugar industry as described in the Sugar Act.
9. It is submitted by the complainant that the Tribunal has jurisdiction to adjudicate this matter in terms of clauses 34(e) and/or 35 of the Industry Agreement:
- 9.1 clause 34(e) provides that the Tribunal shall hear and decide any matter which, in terms of the Industry Agreement, is to be determined by it; and
- 9.2 clause 35 provides that:
- "[s]ubject to the provisions of this agreement relating to the determination of particular disputes, if any dispute arises between any persons upon whom this agreement is binding, insofar as the dispute relates to the subject matter, application, any right or obligation arising out of, or the interpretation of this agreement . . . , the Appeals Tribunal shall have jurisdiction, exclusive of any court of law, to determine such dispute".*
(Our emphasis)
10. The dispute relates to the nature of the payment obligations of millers to SASA imposed under the Industry Agreement. It thus relates to obligations



arising out of the Industry Agreement and / or the interpretation of the Industry Agreement.

11. Moreover, RCL has standing to refer this dispute to the Tribunal. The standing provision in clause 35 of the Industry Agreement is wide – providing that *"any party to such dispute may submit such dispute for determination to the Appeals Tribunal."* The Industry Agreement, as a statutory instrument, must moreover be read consistently with the Constitution and the broad provisions on standing contained in section 38 thereof, particularly in circumstances where the risk to the industry is manifest and the livelihood of thousands of employees is at stake.
12. There are no disputes of fact for the Tribunal to adjudicate in this matter; only a dispute arising from differing understandings of the nature of the obligations imposed by the Industry Agreement.
13. And notably that dispute is clearly defined and the positions of the parties clear: while the second to fourth respondents have unilaterally adopted the view that Tongaat is relieved of its payment obligations, as will be shown below, SASA has explained to the business rescue practitioners that it rejects their view that there is any entitlement on the part of the business rescue practitioners to decline or refuse to make payment to SASA of these obligations. RCL adopts the same view as SASA, elaborated upon below.
14. This referral to the Tribunal is not affected by the moratorium against legal proceedings against a company during business rescue proceedings, contained in section 133 of the Companies Act, for the following reasons:



- 14.1 First, the moratorium does not preclude an approach to this specialised tailor-made Tribunal in order to achieve finality in the context of this dispute in the interests of the entire industry and the public.
- 14.2 Second, the moratorium plainly does not apply to disputes of this nature. RCL does not seek to enforce Tongaat's payment obligations and, in fact, does not seek any relief against Tongaat. RCL seeks only declaratory relief on the nature of miller's payment obligations under the Industry Agreement and whether such obligations may be unilaterally suspended within the legislative scheme that applies as between millers and SASA. The first to fourth respondents are joined because of their apparent interest in the matter. To the extent that there is a debate about the moratorium's application, then RCL requests that the Tribunal consider the matter as being against the fifth respondent alone, since no relief is sought against the first to fourth respondents, and the relief is declarative of the rights and obligations applicable to SASA and its member millers. By such an approach the Tribunal will be enabled to discharge its specialised adjudicative obligations in relation to a question that squarely goes to the heart of the sugar industry's viability, and in respect of which all parties – including Tongaat's business rescue practitioners – require clarity.
- 14.3 Third, RCL has requested the regulatory authority, SASA, whose primary duty it is to ensure compliance with obligations imposed under the Industry Agreement – and who is exempted from the moratorium



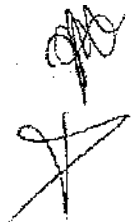
in terms of section 133(1)(f) of the Companies Act – to support this referral and advance arguments in support of the position that it has frequently advanced. Its position, as will be shown below, is that the obligations imposed by the Industry Agreement are statutory obligations that may not be unilaterally suspended. At the time that these papers were being finalised, no response from SASA had been received.

14.4 Fourth, the payment obligations are ongoing and do not only relate to obligations which arose pre-business rescue but also relate to obligations which have arisen during business rescue. In this regard, it is common cause that Tongaat is continuing to carry on business as a miller and is bound to honour its ongoing statutory obligations. The moratorium does not sensibly apply to obligations incurred after the commencement of business rescue proceedings.³

14.5 Fifth, section 133(1) draws a distinction between proceedings against the company and those in relation to property belonging to the company.⁴ The first category comprises actions intended to enforce personal rights against the company and the second category comprises actions intended to enforce legal rights. Neither are applicable in this case. As explained above, no relief is sought against Tongaat.

³ *Timasani (Pty) Ltd (in business rescue) and Another v Afrimat Iron Ore (Pty) Ltd* [2021] ZASCA 43; [2021] 3 All SA 843 (SCA) at para 26.

⁴ *Southern Value Consortium v Tresso Trading 102 (Pty) Ltd And Others* 2016 (6) SA 501 (WCC).



15. Additionally, while maintaining that the business rescue practitioners' consent is not required for this referral to be made to the Tribunal, RCL has nonetheless requested the second to fourth respondents to agree to the referral in order to remove any possible doubt (see the letter of 29 March 2023, which is discussed and attached below).
16. Accordingly, there is no impediment to this Tribunal exercising jurisdiction over this referral.

PRIORITY

17. This matter is referred to the Tribunal on a priority basis as contemplated in rule 55 of the Rules for the conduct of hearings before the Tribunal⁵ ("the Tribunal Rules") and accompanying this statement is the required Notice of Priority and reasons in affidavit form. In sum, the reasons are as follows:

- 17.1 The sugar industry is in crisis owing to various global and local market factors which have reached a critical point. Millers and growers face declining revenues which have placed them under tremendous financial strain, and threaten their survival. Livelihoods in the most vulnerable sectors of our society are at stake, with further job losses on the horizon than those already experienced.
- 17.2 Now, more than ever before, the legally-mandated pooling and division of proceeds from sugar sales between growers and millers in the

⁵ Rules for the conduct of hearings before the Sugar Appeals Tribunal, effective from 1 February 2010.



Industry Agreement must be enforced. This statutory mechanism is crucial for the preservation of the industry.

17.3 If Tongaat's payment obligations under the Industry Agreement are not enforced, the industry is at risk of a complete collapse. Accordingly, this matter is urgent and must be heard on a priority basis to prevent the unequal financial exposure of millers and growers, preserve the productive assets and businesses of all industry participants, and maintain jobs and rural livelihoods as far as possible.

17.4 The publication of the business rescue plan is required to take place on 31 March 2023. The business rescue practitioners have stated expressly this past week that they will not honour Tongaat's redistribution and levy payment obligations under the Industry Agreement.

17.5 RCL has proposed to SASA, as industry regulator, to request that Tongaat's business rescue practitioners seek approval from Tongaat's creditors or a court (by agreement) to postpone the publication of the business rescue plan until the dispute has been determined by the Tribunal (see the letter of 29 March 2023 discussed further below). That proposal has been made not only because of the very serious and wider impacts upon the industry arising from the business rescue practitioner's decision, but also to avoid the costs and distraction if at all possible of urgent interdictory proceedings.

17.6 On 29 March 2023, a notice to the creditors of Tongaat was published requesting the consent of creditors for the extension of the deadline



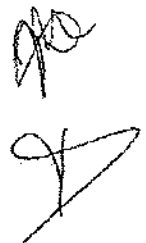
for the publication of the business rescue plan in term of section 150(5) of the Companies Act. It was requested that the deadline be extended to 31 May 2023. In terms of the notice, creditors are required to signify their consent or objection by no later than noon on 31 March 2023 – the date on which the business rescue plan is required to be published. However, it is important to point out that the creditors have already once – a little over a month ago - refused a request for an extension until 30 June 2023.

17.7 If the publication of the business rescue plan is extended as requested by the business rescue practitioners, this will enable the parties to adopt a responsible and reasonable approach by agreeing: (i) to allow the dispute to be determined by this Tribunal in the interests of all parties and the wider industry and the thousands of employees affected, and (ii) to an expedited timetable for the hearing of the dispute as one of priority.

17.8 To the extent that SASA and the business rescue practitioners have not yet agreed to such an approach between themselves, the respondents are invited to agree to such an approach in response to the filing of this statement of claim, and for a joint approach to be made to the Tribunal and its registrar for a directions hearing to ensure that outcome.



THE PARTIES

18. The claimant is RCL FOODS SUGAR & MILLING (PTY) LIMITED, ("RCL"), a sugar milling company registered in terms of the company laws of the



Republic of South Africa, with its registered address at Ten The Boulevard,
Westway Office Park, Westville, KwaZulu-Natal.

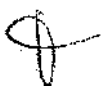

19. The first respondent is **TONGAAT HULETT LIMITED ("Tongaat")**, a sugar milling company registered in terms of the company laws of the Republic of South Africa, with its registered address at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal. Tongaat is currently undergoing business rescue proceedings and its Board of Directors has appointed the second to fourth respondents of **Metis Strategic Advisors (Pty) Limited** as the joint business rescue practitioners of the company in terms of section 129(3)(b) of the Companies Act. No relief is sought against Tongaat, and it is joined for any interest it may have in the declarative findings sought by RCL.
20. The second respondent is **TREVOR JOHN MURGATROYD N.O.**, a licensed and accredited Senior Business Rescue Practitioner cited in his official capacity as joint business rescue practitioner of Tongaat.
21. The third respondent is **PETRUS FRANCOIS VAN DEN STEEN N.O.**, a licensed and accredited Senior Business Rescue Practitioner cited in his official capacity as joint business rescue practitioner of Tongaat.
22. The fourth respondent is **GERHARD CONRAD ALBERTYN N.O.**, a licensed and accredited Experienced Business Rescue Practitioner cited in his official capacity as joint business rescue practitioner of Tongaat.
23. The fifth respondent is the **SOUTH AFRICAN SUGAR ASSOCIATION ("SASA")**, an industry representative and regulator established by the Sugar Act and governed by the Industry Agreement and the constitution of SASA

("the SASA Constitution").⁶ SASA has its principal place of business at KwaShukela, 170 Flanders Drive, Mount Edgecombe, 4300.

- 23.1 The members of SASA comprise sugar millers, cane growers and farmers, namely the Millers' Association, South African Cane Growers' Association NPC and South African Farmers' Development Association ("Growers Associations").
- 23.2 SASA, amongst other statutory functions, determines the notional price of sugar and molasses used in calculating the equitable sharing of industry proceeds, as well as the quantities of sugar required for the local market and the export market. The equitable proceeds arrangement is a foundational regulatory aspect of the sugar industry, and the means through which the sugar industry is statutorily sustained. The equitable proceeds sharing arrangement will be discussed in further detail below.
- 23.3 SASA was incorporated as a juristic person in terms of section 2(1) of the Sugar Act. It is a creature of statute responsible for enforcing the Sugar Act and Industry Agreement. It derives delegated powers to do only what it is empowered to do by the Minister of Trade, Industry and Competition ("the Minister") in terms of the Industry Agreement, which sets out SASA's powers and functions.
- 23.4 In terms of clause 3(1) of the SASA Constitution, SASA administers the Sugar Act through its council ("the Council"). The Council is

⁶ Constitution of the South African Sugar Association published under Government Notice R34 in *Government Gazette* 16190 of 30 December 1994.



empowered to carry out all functions assigned to it or SASA "in terms of the [Sugar Act] and [Industry Agreement] published thereunder" in terms of clause 5(a) of the SASA Constitution.

24. The first to fourth respondents are cited for any interest they have in this matter, considering their suspension of payment obligations due to SASA in the context of business rescue proceedings. The fifth respondent is cited because it is the industry body to which such payment obligations are owed and it has a direct and substantial interest – alongside its millers – to the declarative relief sought in this application.
25. RCL has not cited each and every individual member of SASA to this referral. RCL has delivered copies of the application to the Millers' Association, the South African Cane Growers' Association and South African Farmers' Development Association so that their individual members may assess whether they or the respective Associations wish to participate in the matter.

RELEVANT BACKGROUND

26. The South African sugar industry makes an important contribution to the national economy, given its agricultural and industrial investments in deep rural areas, foreign exchange earnings, its high employment, and its linkages with major suppliers, support industries and customers. Direct employment within the sugar industry is approximately 65 000 jobs.
27. Notwithstanding its important contribution to the economy, the sugar industry is in crisis and has been for several years due to several market



and other dynamics which are well-known to the industry and unnecessary to set out in detail in this statement of claim. Save to state that, millers and growers are under tremendous financial strain. As of November 2020, annual sugar production in South Africa had declined by nearly 25%, from 2.75 million to 2.1 million tons per annum, over the past 20 years. The number of sugar cane farmers had declined by 60% during this period, and sugar industry related jobs were estimated to have reduced by 45%.⁷ The electricity crisis will worsen an already dire situation. The South African Cane Growers' Association estimates that the sugar industry may lose over R723 million in 2023 as a result of rolling blackouts.⁸

28. The financial sustainability of the industry has never been a more pressing issue and it is in this context that this matter arises.
29. On 27 October 2022, Tongaat's Board filed for voluntary business rescue under section 129 of the Companies Act. The Board appointed Messrs. Trevor Murgatroyd, Petrus van den Steen and Gerhard Albertyn of Metis Strategic Advisors as the Company's joint business rescue practitioners.
30. Tongaat gave notice to affected persons of the commencement of business rescue proceedings on 1 November 2022. A copy of Tongaat's notice to affected persons is attached as Annexure "A" to this Statement of Claim.

⁷ 'South African Sugarcane Value Chain Master Plan to 2030' published by the Department of Trade, Industry and Competition, dated 16 November 2020 at 5.

⁸ Colleen Dardagan for SA Canegrowers, 'Loadshedding expected to cost sugar industry more than R723 million in 2023', dated 26 January 2023, available at <https://sacanegrowers.co.za/loadshedding-expected-to-cost-sugar-industry-more-than-r723-million-in-2023/>.



31. On 2 November 2022, the Council held a special meeting to discuss the commencement of Tongaat's business rescue proceedings. There it was indicated that Tongaat would not be making payments to SASA to fulfil its redistributive obligations as an over-performing miller (as determined in September) due to its being placed under business rescue. A copy of the minutes of the special council meeting are attached hereto as **Annexure "B"**.
32. At the special council meeting, it was decided to establish an Industry Leadership Task Team ("**Task Team**") to closely monitor Tongaat's business rescue process. A copy of the first report of the Task Team to Council dated 28 November 2022 (without addendums) is attached marked **Annexure "C"**.
33. In or about November 2022, Mr Dave Howells, the Managing Director of Tongaat, wrote to SASA Management requesting that the payment of outstanding levies and those that fall due in the period between the commencement of the business rescue proceedings and March 2023 be suspended. A copy of the email is attached marked **Annexure "D"**.
34. Shortly thereafter, on 30 November 2022, Mr Dave Howells wrote to SASA requesting the Council to consider the suspension of the payments of Tongaat's redistributive obligations that may become due under clause 183(c) of the Industry Agreement for December 2022 and March 2023. A copy of the letter is attached as **Annexure "E"**.
35. As far as RCL is aware, neither of these requests were approved by the Council.



36. On 23 January 2023, the SASA Chairperson, Adv Fay Mukaddam, wrote to the business rescue practitioners expressing concern that Tongaat does not intend to make payment of its obligations to SASA as and when they become due. The Chairperson highlighted Tongaat's impending obligation to make payment of an amount of R1 727 116 777.00 estimated for liabilities up to 31 March 2023. This amount is comprised of redistribution payment obligations (R 1 479 783 016), statutory levies (R 228 576 329) and interest (R 18 757 432). A copy of the letter is attached marked **Annexure "F"**.
37. On 15 February 2023, a meeting was held between SASA representatives and Tongaat's business rescue practitioners. At the meeting, the business rescue practitioners made it clear that Tongaat would not pay the current outstanding debt due to SASA, and that the suspension of Tongaat's obligations during business rescue means that there is no legal obligation on Tongaat to pay SASA. A copy of the minutes of the meeting is attached marked **Annexure "G"**.
38. On 22 February 2023, the Chairperson of SASA again wrote to the business rescue practitioners of Tongaat. The Chairperson noted that Tongaat is a *"net debtor of SASA and the position becomes exponentially worse each quarter"*. She highlighted that the failure by Tongaat to settle its redistribution payment obligations and statutory levies *"has made it impossible for SASA to settle its own obligations to other industry members."* It was further indicated that SASA has struggled to secure





funding to enable it to cover the shortfall resulting from Tongaat's default. A copy of the letter is attached marked Annexure "H".

39. A couple of days later, on 24 February 2023, the business rescue practitioners responded to the SASA Chairperson. The business rescue practitioners reaffirmed that they have a different interpretation to SASA on their legal entitlement to suspend payments to SASA. A copy of the letter is attached marked Annexure "I".
40. Hopeful that there would be some resolution of the dispute by SASA, and having become increasingly concerned by the apparently unfruitful attempts by SASA and the business practitioners to resolve the dispute concerning the nature of Tongaat's payment obligations under the Industry Agreement, RCL's attorneys, Webber Wentzel, wrote to Tongaat and its business rescue practitioners, copying in the Chairperson of SASA, on 27 March 2023.
41. RCL's attorneys requested the business rescue practitioners to urgently confirm whether they have purported to exercise their powers under section 136 of the Companies Act to suspend payments due to SASA. The business rescue practitioners were advised that, in the event that they had purported to exercise this power, a dispute would have arisen between themselves and RCL concerning the obligations arising out of and / or the interpretation of the Industry Agreement, which dispute would be referred to the Tribunal for determination. A copy of the letter is attached marked Annexure "J".



42. The attorneys representing the business rescue practitioners, Werksmans, responded the next day, 28 March 2023. In the response, it is confirmed that the business rescue practitioners purported to exercise the power under section 136 of the Companies Act to suspended Tongaat's payment obligations to SASA under the Industry Agreement. The business rescue practitioners reiterated that it is their view that the levy and redistribution obligations fall within the obligations that may be suspended under section 136. A copy of the letter is attached marked **Annexure "K"**.
43. On 29 March 2023, RCL's attorneys wrote to the Chairperson of SASA conveying that the business rescue practitioners had now unequivocally confirmed that they have purported to suspend Tongaat's payment obligations under the Industry Agreement during the business rescue proceedings. The letter gave SASA notice that RCL would be urgently approaching this Tribunal for declaratory relief in order to obtain clarity on the nature of miller's payment obligations under the Industry Agreement and whether the obligations may be unilaterally suspended. SASA was advised that it would be cited in the referral given its direct and material interest in the relief sought.
44. Additionally, SASA, as regulator of the sugar industry, was requested to support RCL's impending legal proceedings before the Tribunal by advancing arguments in support of SASA's frequently advanced position that the payment obligations are statutorily binding and may not be suspended, and by agreeing to an expedited hearing in consultation with RCL, Tongaat and any other interested parties who may be affected by the

position adopted by the business rescue practitioners. A copy of the letter is attached as Annexure "L".

45. From the above discussion, it is clear that Tongaat's business rescue practitioners have failed to pay amounts due to SASA in terms of:

45.1 Tongaat's redistributive obligations as an over-performing miller imposed under clause 183 of the Industry Agreement; and

45.2 Statutory levies.

46. Tongaat's conduct has up-ended the careful statutory scheme for the equitable arrangements that have been a staple of the industry for years. The result is that the non-payment of its pre-commencement redistributive payment obligations and statutory levies may now be borne by the remaining millers and growers in the industry as an industry obligation.

47. Moreover, Tongaat continues to trade while under business rescue but without meeting its re-distribution or levy obligations. These post-commencement debts may similarly ultimately be borne as an industry obligation. Tongaat's continued trade on this basis thus has direct adverse effects on the sustainability of other millers and growers.

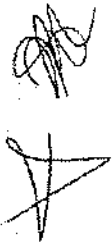
48. The non-payment by Tongaat also increases the constraints on SASA's working capital. Tongaat's default threatens the viability and sustainability of SASA as well as SASA's ability to fulfil its statutory obligations to millers and growers in the industry.



49. This, at a time when a number of millers are in precarious financial positions. The raising of levies to cover industry obligations resulting from Tongaat's defaults could drive some millers into business rescue or liquidation. In addition, risk mitigation measures adopted by SASA in response to Tongaat's non-payment of its obligations may also adversely affect other millers.
50. Gledhow Sugar Company ("Gledhow"), a miller, recently filed for voluntary business rescue, and commenced business rescue proceedings on 13 March 2023. A sworn statement by Mr Riddle, a director of Gledhow, accompanies Gledhow's notice to affected parties. In it, Mr Riddle sets out the circumstances leading to Gledhow's financial distress, including the Covid-19 pandemic, the social unrest in KwaZulu-Natal July 2021 and the floods in April 2022. In addition, Mr Riddle alleges at paragraph 8.6 that:

"More recently, a further substantial negative impact arises as a result of the risk mitigation measures adopted by SASA following the initiation of [business rescue proceedings] by [Tongaaf], by not purchasing the unsold local market and export sugar from the South African sugar millers...at the end of March 2023, as it usually does on an annual basis, thus providing the Company and other millers with annual short term finance. This places yet another unforeseen burden on the Company by necessitating the need for borrowings from elsewhere."

51. A copy of Mr Riddle's affidavit is annexed hereto marked **Annexure "M"**. Other millers will be similarly impacted by Tongaat's non-payment of its



obligations to SASA and the resultant risk mitigation measures adopted by SASA. It is entirely conceivable that they too may become financially distressed.



52. Tongaat's default has also resulted in a drop in RV price with catastrophic effects for growers, particularly small-scale growers. The impact on the RV price⁹ has been significant. The RV price for the 2022/2023 milling season has been reduced by R424.31 per ton of RV from R5 859.38 to R5 435.07 and was caused by a need to levy the industry because of the non-payment of levies and redistribution by Tongaat and Gledhow. For the small-scale grower delivering 1 800 tons of cane, this amounts to a decrease of approximately R91 000 in their cane income for the 2022/2023 season (assuming a 12% RV per ton of cane). This is palpably unsustainable.
53. Small scale growers now face the real risk of becoming financially distressed and being forced to exit the industry. This would undermine the transformation initiatives of the industry, as set out in the South African Sugarcane Value Chain Master Plan to 2030 published by the Department of Trade, Industry and Competition.¹⁰
54. This factual background is set out to provide the context within which RCL has referred this dispute to the Tribunal and to explain the urgent need for a determination. It does not ask the Tribunal to adjudicate any issues of

⁹ RV Price = growers' share of total proceeds divided by Tons of RV.

The RV formula estimates the quantity of sugar and molasses that can be made from a particular delivery of cane:

RV = Sucrose in Cane - Non Sucrose in Cane x 'd' factor - Fibre in Cane x 'c' factor, where 'd' factor is the relative value of sucrose which each unit of non-sucrose diverts from sugar production to molasses and the 'c' factor is the loss of sucrose from sugar production per unit of fibre.

¹⁰ Master Plan above note 7



fact – it merely asks this Tribunal to resolve the crisp legal question concerning the nature of the payment obligations – in particular, levy and redistributive obligations – imposed on millers by the Industry Agreement and whether these obligations may be unilaterally suspended.

LEGAL FRAMEWORK

55. The sugar industry is highly regulated by the Sugar Act and the Industry Agreement.
56. SASA is an autonomous organisation which operates in terms of the Sugar Act and Industry Agreement. SASA is the regulatory authority for the sugar industry. It administers the Sugar Act and Industry Agreement through the Council.
57. The Industry Agreement and the SASA Constitution constitute subordinate¹¹ or delegated legislation to the Sugar Act, passed by the Minister exercising his powers in terms of the Sugar Act. The status of the Industry Agreement and SASA Constitution as subordinate legislation has been recognised by the courts in various judgments.¹² These authorities will be canvassed more fully in oral submissions before the Tribunal.

¹¹ Section 239 of the Constitution defines "national legislation" to include "subordinate legislation made in terms of an Act of Parliament".

¹² In the *Tongaat* case at para 26, the Court held that:

"[t]he Sugar Act, provides for the establishment of [an Industry Agreement] that constitutes subordinate legislation and enables the industry to regulate itself and to take decisions on key marketing questions."

In para 11 of *Even Grand Trading 51 CC v Tongaat Hulett Limited and South African Sugar Association* (AR517/11) [2012] KZP (2 November 2012) the court held that:

"the [Industry] [A]greement is therefore subordinate legislation, by the Minister, exercising his powers in terms of a National Statute – The Sugar Act."

Also see *Sugar Industry Central Board v Hermannsburg Mission* 1983 (3) SA 669 (A) at 672, and *Lebombo Estates (Pty) Ltd v Umfolozi Co-operative Sugar Planters Ltd* 1963 (3) SA at 625 – 626.

58. The obligations arising from the Industry Agreement and SASA Constitution thus statutorily bind members of the sugar industry, irrespective of whether they agreed to be bound.
59. The provisions of the Sugar Act, Industry Agreement and SASA Constitution which are of relevance to the present matter are set out in more detail below.

The Industry Agreement

60. The Sugar Act provides for the establishment of the Industry Agreement. Section 4 of the Sugar Act governs the Industry Agreement. In terms of section 4(1)(a):

"The Minister shall after consultation with the Association determine the terms of an agreement to be known as the [Industry Agreement], which shall provide for, and deal with, such matters relating to the sugar industry as are, in the opinion of the Minister, in the interests of that industry but not detrimental to the public interest." (Our emphasis)

61. The Minister of Trade, Industry and Competition thus determines the terms of the Industry Agreement on his or her own after consultations with SASA. There is no agreement or consensus required. The Minister is statutorily empowered and obliged to determine what in "the opinion of the Minister" should be the terms of the Agreement. On this basis alone, the Industry Agreement is clearly distinguishable from an agreement *inter partes*.¹³
62. In terms of section 4(1)(b) of the Sugar Act, the Minister may amend the Industry Agreement "at the instance of, or after consultation with, [SASA]".

¹³ *Even Grand Trading* ibid at para 10.

AS
/

and "if the Minister is satisfied that such amendment is in the interests of the sugar industry and not detrimental to the public interest."

63. Section 4(1)(c) provides that the Minister shall publish the Industry Agreement and any amendments to the Industry Agreement in the *Government Gazette* "whereupon it shall become binding upon every grower, miller and refiner". The Sugar Act thus provides that the Industry Agreement, once published in the gazette by the Minister, is binding on all participants in the sugar industry as the statutory arrangement by which the industry shall be governed in its and the public interest.
64. It is, moreover, a statutory arrangement or scheme with teeth, and which is not open to being unilaterally ignored or amended or suspended by the members themselves. That much is obvious from the penalties that may be prescribed for the failure by members of the sugar industry to comply with any term of the Industry Agreement or notice issued by SASA (section 4(3)). The penalties will be described in further detail in the section applying the legal framework to the crisp questions of law further below.
65. The Industry Agreement was published in the *Government Gazette* on 3 May 2000 and amended in 2018 and 2020. The transitional provisions provide that the current period of the Industry Agreement is from 1 July 2020 until 31 March 2024.
66. Under the Industry Agreement the Minister has imposed a number of payment obligations on participants in the sugar industry. These are statutory obligations through and through: there is nothing contractually agreeable or unilaterally variable about them.




Redistribution obligations

67. In terms of the Industry Agreement, the sugar industry operates as a partnership where all proceeds from sugar sales (both local and export) and molasses sales are pooled and then distributed among farmers and millers according to a ratio. A division of proceeds ratio is provided for in clauses 166 to 168 of the Industry Agreement.
68. Clauses 182 to 186 of the Industry Agreement go further to regulate the equitable proceeds arrangements or distribution of local market proceeds. A key provision in this referral is clause 183, which sets out the local market redistribution obligations of millers. In terms of clause 183, a redistribution calculation is performed. To ensure an ongoingly accurate outcome for all the industry's participants, the redistribution calculation is done each quarter ending on the last day of June, September, December and March. Over-performing millers are required to pay in amounts to SASA for redistribution to under-performing millers.
69. Clause 183 sets out the duties of SASA and millers in respect of the redistribution of local market proceeds as follows:

"In each year, if a mill sells on the local market a greater quantity of refined sugar or brown sugar (including carry over stocks) than the quantity allocated to it as its local market quota in terms of clause 177, that mill will pay to the South African Sugar Association an amount for redistribution amongst those mills which, during that year, sell on the local market quantities of refined sugar or brown sugar, respectively, which are less than their allocated local market quotas, according to the following provisions:

- (a) *During April of each year, the South African Sugar Association shall provisionally estimate each mill's local market quotas for refined sugar and brown sugar, respectively, and during the year shall continuously revise*




such estimates until the quotas are finally determined at the end of the year. References in this clause to a local market quota shall be construed as such quota from time to time so estimated, until finally determined.

- (b) The quarters referred to in this clause are sugar marketing quarters as determined by the South African Sugar Association in respect of each year, the last days of which need not coincide with the last days of the calendar quarters concerned.
- (c) In respect of each quarter ending on the last day of June, September, December and March, each mill ("an over performing mill") which sells on the local market more refined sugar or brown sugar ("the excess quantity") than the pro rata share that its local market quota bears to the aggregate quantity of all such sugar sold in the quarter concerned by all mills on the local market, shall pay an amount calculated in terms of paragraph (d) to the South African Sugar Association, for redistribution as hereinafter provided.
- (d) The amount payable in respect of each quarter to the South African Sugar Association by an over-performing mill will be equal to the excess quantity sold by that mill during that quarter multiplied by the weighted average of the notional local market price (determined by the South African Sugar Association in terms of chapter 6 applicable during that quarter), less (except in the case of a sugar beet mill) the financial levy imposed by the South African Sugar Association in terms of this Chapter applicable thereto, and less a manufacturing allowance determined according to rules laid down by the South African Sugar Association
- (e) The amounts payable by over-performing mills to the South African Sugar Association in terms of the foregoing provisions shall then be redistributed by the South African Sugar Association to those mills ("under-performing mills"), respectively, which, during the quarter concerned, will have sold on the local market less refined sugar or brown sugar, respectively, than the pro rata shares that their local market quotas bear to the aggregate quantity of all such sugar sold by all mills on the local market during that quarter; which redistribution, subject to paragraph (f), shall be made pro rata in relation to the respective short falls of the mills concerned: Provided that, if, at the end of a quarter, an under-performing mill has not realised in full its previous year's carry-over stocks of sugar
- (f) If, in any quarter, a sugar beet mill is an under-performing mill, the South African Sugar Association shall adjust the pro rata shares of the amount to be redistributed in terms

- of paragraph (e) by adding back to the amount to be redistributed any financial levy that will have been deducted from the amount payable by each over-performing mill.
- (g) An amount payable by an over-performing mill for redistribution in terms of the foregoing provisions shall be paid within thirty days of the last day of the quarter concerned, except for an amount in respect of the final quarter which shall be payable upon the date on which, in terms of this agreement, the South African Sugar Association purchases carry-over stocks from mills and shall be set off, pro tanto, against the purchase price for such carryover stocks.
- (h) In respect of each quarter, the amounts to be redistributed in terms of the foregoing provisions will be payable on the next day after the amounts payable by over-performing mills are due in terms of paragraph (9) and shall be paid by the South African Sugar Association whether or not it shall have received the amounts payable by over-performing mills. If the South African Sugar Association suffers any loss in consequence of a default by an over-performing mill, that loss will be borne as an industry obligation.
- (i) All calculations necessary to give effect to the foregoing provisions shall be undertaken by the South African Sugar Association."

70. Under clause 183, the following obligations are imposed:

- 70.1 An obligation is imposed on over-performing millers to pay an amount to SASA for redistribution (clause 183(c)).
- 70.2 An obligation is imposed on SASA to redistribute the amounts to under-performing mills (clause 183(e)). SASA functions as an essential clearing house in this regard to ensure that the carefully-calibrated statutory scheme is given effect to quarterly, even where the over-performing mill has not yet paid the amount statutorily due.

71. This means that redistribution is not a cost of SASA until a miller fails to pay the amount to SASA. And where a miller fails to pay the amount to SASA,



SASA still has a statutory obligation to pay under-performing millers in terms of clause 183(h). This clause allows for any loss suffered by SASA in consequence of a default by an over-performing miller to be borne as an industry obligation.

72. An industry obligation is an expense that is to be borne by the entire industry. In order to cover the failure by an over-performing mill to pay the statutory-imposed amount, the Industry Agreement empowers SASA to raise levies on sugar to cover industry obligations so that the cost is borne by the entire industry.
73. By its default in paying the statutory amount to SASA for its over-performing (which amount SASA would redistribute to other millers) that miller gains a double advantage: it fails to pay over the amount of its over-performance, and it then gets to benefit a second time round by SASA having to bear that legal liability in the short term, and recovering any money it has spent, by the entire industry equitably shouldering that burden through levies raised on sugar which will reduce the cane price.
74. Both the payment obligations of millers to SASA and SASA's redistribution obligations to millers are accordingly statutory obligations imposed under the Industry Agreement.
75. They are aimed at ensuring, first, that an over-performing mill pays equitably towards those that under-perform in a given year through a payment to SASA who then on-pays to the other participants, and secondly, where SASA suffers any loss (because it was forced to pay the amount owed to the industry where an over-performing mill defaulted on that payment), then

SASA can recover that expense from the whole industry by raising a levy on the sugar for the industry to bear.

76. The statutory levies are discussed next.

Statutory levies

77. In terms of section 4(2)(g) of the Sugar Act, the Industry Agreement may provide for:

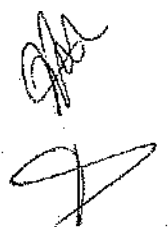
"the imposition of levies upon growers, millers and refiners for the purpose of giving effect to the terms of the Agreement and for the purpose of enabling [SASA] to fulfil any obligation incurred by it in accordance with its constitution."

78. The Industry Agreement empowers SASA to impose levies on sugar to meet industry obligations. Clause 190 provides that "*[i]ndustry obligations ... shall be met by means of financial levies imposed upon sugar from time to time by the South African Sugar Association in terms of its constitution.*"

79. Clause 175 of the Industry Agreement provides that "*all expenditure incurred by or at the instance or with the approval of the South African Sugar Association from time to time in accordance with the powers conferred upon it in terms of its Constitution or as provided for in this Agreement shall be industry obligations*".

80. Clause 191 read with clause 176 empowers SASA to impose levies on specific growers, millers or refiners or groups thereof for expenditure which does not constitute an industry obligation.

81. SASA is administered by the Council (clause 3(1) of the SASA Constitution) which is empowered to carry out all functions assigned to it or SASA "in



terms of [the Sugar Act] and [Industry Agreement] published thereunder"
(clause 5(a) of the SASA Constitution).

82. The SASA Constitution in clause 5(r) confirms the power of the Council to—

"impose levies in respect of industry obligations in accordance with [the Industry Agreement], and where in the exercise of its objects it is necessary or appropriate for the Association to raise money from a particular grower, miller or refiner or from a group of growers, millers or refiners in respect of expenditure which does not constitute an industry obligation as contemplated by [the Industry Agreement], impose levies on the appropriate group of growers, millers or refiners".

83. Levy obligations imposed by SASA exercising its statutorily conferred power are statutory obligations – not contractual obligations – and may not be unilaterally suspended.

gms
X

APPLICATION OF THE LEGAL FRAMEWORK TO THE CRISP QUESTIONS
OF LAW

Industry Obligations are statutorily binding

84. The following is manifestly clear from the legislative schema:
- 84.1 the Industry Agreement is subordinate or delegated legislation;
- 84.2 notwithstanding its subordinate status to the Sugar Act, it is law;
- 84.3 the Industry Agreement is not a private contractual instrument agreed to between industry participants; and
- 84.4 the payment obligations imposed by the Industry Agreement are statutory obligations.
85. Given the statutory, rather than merely contractual, underpinning of the Industry Obligations, neither millers nor SASA, may lawfully suspend or renege on their payment obligations otherwise this would amount to a contravention of the Sugar Act and Industry Agreement and may attract penalties.
86. Any miller that reneges on its Industry Obligations would be liable for penalties in terms of section 4(3) of the Sugar Act, which provides that the Minister may prescribe penalties in consultation with SASA for a contravention of, or failure to comply with, any term of the Industry Agreement.¹⁸ The prescribed penalties shall not exceed R100 000, in the



case of a fine, or a period of 12 months, in the case of imprisonment, or both such fine and such imprisonment (section 7 of the Sugar Act).

The business rescue practitioners have no power or right to interfere with a statutory obligation

87. The business rescue practitioners have sought to suspend the payment of the obligations owed by Tongaat under the statutory scheme, through reliance on section 136(2)(a)(i) of the Companies Act.
88. That section gives the business rescue practitioners the power to suspend (with certain exceptions) either entirely, partially or conditionally for the duration of the business rescue, "*any obligation of the company that arises under an agreement to which the company was a party at the commencement of the business rescue proceedings*".
89. It is plain on a contextual reading of the section that it confers a power on the business rescue practitioners to suspend contractual obligations. The heading of section 136 is titled "*Effect of business rescue on employees and contracts*" (emphasis added). Moreover, section 136(2)(b) entitles business rescue practitioners to apply urgently to court to "*entirely, partially or conditionally cancel ... any obligation of the company*" contemplated in section 136(1)(a). A statutory obligation – unlike a contractual obligation – cannot be cancelled.
90. The obligations in issue in this matter arise under statute and the business rescue practitioners have no power to suspend them under the Companies Act because their powers are limited to the suspension of contractual



obligations. That, in RCL's submission, is the end of the matter as far as this Tribunal is concerned.

91. For completeness, RCL submits that the suspension power in section 136(2)(a) is limited to contractual obligations precisely to ensure that statutory schemes (such as the applicable arrangement under the Industry Agreement) are not willingly or unwittingly interfered with, particularly where they are carefully calibrated and entail the interests of multiple other parties in a partnering arrangement. The business rescue practitioners' powers of suspending obligations do not extend to unilaterally varying or suspending obligations that Tongaat shares within a statutory scheme of equitable redistribution and obligatory levies, little more than it would include a power for the business rescue practitioners to vary or suspend any other statutory obligations imposed on Tongaat such as tax obligations to the fiscus, or labour or pension obligations to its employees, or emissions or effluent obligations under environmental statutes, or health and safety obligations imposed by statute.
92. Put shortly: the Companies Act does not permit Tongaat to be granted statutory exemptions by dint of a business rescue plan.

SASA must enforce Industry Obligations

93. SASA ultimately owes its existence and its powers to its enabling statute and its functions concerned are "*woven into a system of governmental control*", or "*integrated into a system of statutory regulation*", further,



government "regulates, supervises and inspects the performance of [its] function[s]".¹⁴

94. All exercises of public power are subject to the constitutional principle of legality. The principle of legality is founded on the rule of law, which is entrenched in section 1(c) of the Constitution of the Republic of South Africa, 1996 ("the Constitution").
95. The principle of legality stipulates that public power may only be exercised in accordance with law.¹⁵ In other words, public or governmental action must be authorised by law and must not go beyond the functionary's powers (or be *ultra vires*).
96. Accordingly, should SASA's conduct amount to the exercise of public power or the performance of a public function, it must be properly authorised by law. This is reinforced by the following statement of the Supreme Court of Appeal:

*"[The Constitution] is the ultimate source of all lawful authority in the country. No Parliament, however bona fide or eminent its membership, no President, however formidable be his reputation or scholarship and no official, however efficient or well meaning, can make any law or perform any act which is not sanctioned by the Constitution."*¹⁶

¹⁴ *Calibre Clinical Consultants v National Bargaining Council for the Road Freight Industry* 2010 (5) SA 457 (SCA) at para 42.

¹⁵ *Fedsure Life Assurance Limited and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC).

¹⁶ See in *Speaker of the National Assembly v De Lille* 1999 (4) SA 863 (SCA) at para 14.

97. SASA may not lawfully permit the suspension of Industry Obligations for any reason. It is legally obliged in terms of various provisions of the SASA Constitution to enforce these obligations.
98. The Act expressly provides that any proposed further regulation to the industry must be enacted in two ways:
- 98.1 the Minister may at the instance of, or after consultation with, SASA, amend the Industry Agreement if the Minister is satisfied that such amendment is in the interests of the sugar industry and not detrimental to the public interest (section 4(1)); or
- 98.2 in terms of section 4(2)(i)(aa) of the Sugar Act, the Minister must grant SASA the power to provide for and deal with by means of "rules, regulations, notices, directions, orders or similar general measures", with the approval of the Minister:
- 98.2.1 any matter referred to in section 4(1)(a) (i.e., matters relating to the sugar industry which are, in the opinion of the Minister, in the interests of that industry but not detrimental to the public interest); or
- 98.2.2 any matter referred to in section 4(2)(a) to (h) of the Sugar Act, being various other matters which the Minister may provide for and deal with, in the Industry Agreement such as the functions to



be performed by SASA in the execution of the Industry Agreement in section 4(2)(e).

99. Until such a time as the Minister amends the Sugar Act, or SASA publishes relevant "rules, regulations, notices, directions, orders or similar general measures" on prescribed matters, with the approval of the Minister, the regulatory framework as currently exists, stands as binding law and must be enforced.

CONCLUSION

100. The payment obligations on SASA and millers are statutory obligations arising from the Sugar Act and the Industry Agreement.
101. SASA has a duty, as the regulatory authority for the sugar industry, to enforce these statutory obligations, including through legal proceedings.
102. No miller is entitled to suspend its industry obligations.

RELIEF SOUGHT

103. On the basis of what is set out above, RCL has made out a case for a declaration from the Tribunal that the payment obligations of millers and SASA's redistribution obligations in terms of the Industry Agreement, are statutorily binding and incapable of being suspended unilaterally by a miller.
104. Accordingly, RCL seeks relief in the following terms:
- 104.1 a declaration from the Tribunal to the effect that the payment obligations of millers to SASA and SASA's redistribution obligations in



- respect of millers, constitute legally binding and enforceable statutory obligations;
- 104.2 a declaration that no miller is entitled to suspend its payment obligations unilaterally;
- 104.3 a declaration that SASA is statutorily obligated as regulator of the sugar industry to enforce the payment obligations of millers; and
- 104.4 such further or alternative relief as the Tribunal may deem appropriate.

WHEREFORE RCL claims an award in the terms outlined in the paragraph above:

DATED AT JOHANNESBURG ON THIS the 30th DAY OF MARCH 2023.

Lubumba Kamukwamba

WEBBER WENTZEL
90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh/L Khan/ L Kamukwamba/
3058873

**TO: SUGAR INDUSTRY APPEALS TRIBUNAL
KWAZULU-NATAL PROVINCE**



AND TO:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

First respondent

Amanzimnyama Hill Road

Tongaat

KwaZulu-Natal

4400

Tel: 011 530 5419

Fax: 011 530 6419

Email: Dave.Howells@tongaat.com / trevor@metis.co.za; peter@metis.co.za;
gerhard@metis.co.za

AND TO:

WERKSMANS ATTORNEYS

Attorneys for the second to fourth respondents

The Central

96 Rivonia Road

Sandton

2196

Tel: 011 535 8248

Fax: 011 535 8676

Email: dandropoulos@werksmans.com /
ismith@werksmans.com

AND TO:

SOUTH AFRICAN SUGAR ASSOCIATION

Fifth respondent

170 Flanders Drive

Mount Edgecombe

KwaZulu-Natal

4300

Ref: Sharitha Singh

Tel: 031 508 7090

Mobile: 079 247 7014

E-mail: sharitha.singh@sasa.org.za



COX | YEATS

attorneys

"FA24" 285

Durban: Ncondo Chambers, 45 Vuna Close,
Umhlanga Ridge, Durban 1 Dlx 50, Durban
P O Box 913, Umhlanga Rocks, 4320
Tel: 031 636 9500 | Fax: 031 573 5236
Sandton: 4 Sandown Valley Crescent,
Sandton, 2196 | Dlx 33 Sandton Square
Tel: 010 0166 800
Cape Town: Unit 16, Pepper Street Chambers,
Cape Town, 8000
Tel: 021 879 2516
Website: www.coxyeats.co.za

OUR REF: TS /jr / 050100400000003

YOUR REF:

3 April 2023

TO: **RCL FOODS SUGAR & MILLING (PTY) LTD**
c/o WEBBER WENTZEL
Per e-mail: prefisha.singh@webberwentzel.com

AND TO: **TONGAAT HULETT LIMITED**
c/o WERKSMANS ATTORNEYS
Per e-mail: dandropoulos@werksmans.com

AND TO: **SOUTH AFRICAN SUGAR ASSOCIATION**
c/o GARLICHE & BOUSFIELD INC.
Per e-mail: howard.stephenson@gb.co.za

Dear Sir/Madam

SUGAR INDUSTRY APPEALS TRIBUNAL (KWAZULU-NATAL PROVINCE): RCL FOODS SUGAR & MILLING (PTY) LIMITED V TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) & 4 OTHERS

1. We act for Illovo Sugar (South Africa) (Pty) Ltd ("ISSA").
2. We have been furnished with a Notice of Priority prefixed to a Statement of Claim ("Complaint") delivered by RCL Foods Sugar & Milling (Pty) Ltd ("RCL") to Tongaat Hulett Limited and the South African Sugar Association NP ("SASA").
3. ISSA is a sugar miller as defined in the Sugar Act, 1978 and the Sugar Industry Agreement, 2000 ("SIA"), and is a member of the South African Sugar Millers' Association NPC who in turn is a member of the South African Sugar Association.
4. The Complaint requires the Sugar Industry Appeals Tribunal ("Tribunal") to determine issues arising from a dispute concerning the interpretation of the SIA.
5. ISSA has a direct and substantial interest in the outcome of the declaratory relief sought by RCL, and accordingly intends to intervene as co-complainant in the Complaint for determination by the Tribunal. In addition, ISSA supports the application under rule 55 of the Tribunal Rules for the matter to be heard on a priority basis.
6. In the interests of expedience, please indicate whether, in principle, the parties currently cited in the Complaint intend objecting to the intervention foreshadowed above.

Partners: Michael Jackson B.Com. LL.B. LL.M. (Cambridge) Dip. Environ. Law • Richard Hosi B.Soc.Sc. LL.B. Dip. Maritime Law • Andrew Clark B.Com. LL.B. • Helen Jackson B.A. LL.B. • Robin Westley B.Soc.Sc. LL.B. • Tina Halslead B.A. LL.B. • Lazelle Padia B.Com. LL.B. • Thys Scheepers B.Proc. LL.B. • Gary Pritchard B.A. LL.B. • Emili Souris B.A. LL.B. • Randhir Naicker B.A. LL.B. LL.M. • David Vitek LL.B. • Peter Barnard LL.B. • Jason Goodison B.Soc.Sc. LL.B. • Carol McDonald LL.B. BCL (Oxford) • Garth Cremen LL.B. • Freddie Terblanche, LL.B. LL.M. • Jenna Padua LL.B. LL.M. • Thabo Vitekazi LL.B. LL.M. • Tamryn Simpson LL.B. LL.M. • Sunil Hansjee LL.B. LL.M. • Kim Edwards LL.B. • Wade Oglivie LL.B. • Laura Kelly B.A. LL.B. • Petrina Naicker B.Com. LL.B. • Tasmiya Patel LL.B. LL.M. • Chantal Mitchell B.Soc.Sc. LL.B. • Benjamin Meadows B.Com. LL.B. • Bridget Letshelo LL.B. • Claudette Pretorius LL.B. • Magreet Henning B.A. LL.B. • Aileen Ross LL.B. LL.M. • Rona Evans B.Com. LL.B. Associates: Phillip Cronje B.A. LL.B. • Megari Baker B.A. LL.B. • Jenna Rodd B.Soc.Sc. LL.B. • Sindiokuhle Ngwenya LL.B. • Mohamed Moia LL.B. LL.M. • Tammron de Wit LL.B. • Jennifer Smit B.A. LL.B. Consultants: Alastair Hay B.Com. LL.B. • Roger Green B.Com. LL.B. • Charles van Staden B.Com. LL.B. LL.M. • Callyn Wilkinson LL.B.

3 April 2023

-
7. We suggest that it would be appropriate for the parties to agree truncated timelines for the exchange of pleadings.

Yours faithfully,

T. Scheepers
COX YEATS

Direct Tel: 031 536 8583
Mobile: 082 418 9459
Email: tscheepers@coxyeats.co.za



"FA25"287

WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Webber Wentzel

Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com

Johannesburg

Attention: P Singh, L Kahn, and L Kamukwamba

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9334322v3
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
EMAIL ADDRESS: fboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

4 April 2023

Dear Sirs

THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")

- 1 We refer to your client's Statement of Claim delivered to the Sugar Industry Appeals Tribunal ("the Tribunal") late on Thursday, 30 March 2023 ("the Tribunal application").
- 2 Your client has purported to raise two issues for determination by the Tribunal, namely, -
 - 2.1 what the nature of the payment obligations imposed on millers under the Industry Agreement are; and
 - 2.2 whether those payment obligations can be unilaterally suspended, collectively "the purported disputes".
- 3 Your client avers that the Tribunal has the jurisdiction to adjudicate the purported disputes in terms of clause 34(e) and clause 35 of the Sugar Industry Agreement because the Tribunal has the jurisdiction to hear matters between growers, millers, and refiners in the sugar industry, and because the purported disputes relate to "obligations arising from and/or the interpretation of the Industry Agreement".

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Antello K Badal T Bata JD Behr AR Berman NMN Bhengu AL Bratyi RE Bornet HGP Boshoff TJ Boswell MC Brönn W Brown PF Burger HLE Chang PG Clarend JG Cloete PPJ Coates C Cole-Morgan J Darling R Driman KJ Fyfe S Gert D Gewer JA Gobetz R Goodkin GF Griesel N Harduth NA Hlatshwayo J Holleran MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Jansen van Rensburg AV Jara G Johannes S July J Kalmeyer A Kenny R Kiloran N Kirby HA Kotze S Krige CJ Latta H Laskov K Rajah P Le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane NT Masehela JE Meling H Michael SM Moerane R Moitse C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Niamand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmore D Pisanti T Pottar AA Pyzikowski RJ Raath K Rajah A Ramdhir MDF Rodrigues BR Roodman W Rosenberg NL Scott TA Sibilla FT Sikhakhakheva LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Trudgeon M Tyfield DM van den Berg AA van der Merwe A van Heerden JJ van Niskerk FJ van Tender JP van Wyk A Vatalids RN Wakefield L Watson D Weglinski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

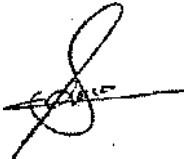
JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 4 This framing of the dispute between our respective clients in your client's Tribunal application does not accurately reflect the nature of the dispute, and it appears from the Tribunal application that your client has misunderstood the position that has been taken by our clients.
- 5 Our clients have never disputed the nature of the payment obligations imposed on millers by the Industry Agreement, nor have they suggested that those obligations can be suspended under the terms of the Industry Agreement.
- 6 The purported disputes referred to in the Tribunal application (which are, in fact, disputes between our clients and SASA) relate to (a) whether our clients have the power, in their capacity as Business Rescue Practitioners to THL and pursuant to the provisions of section 136(2) of the Companies Act 71 of 2008 ("the Companies Act"), to suspend THL's obligation to pay outstanding levies and redistribution obligations that would otherwise have become due to SASA under the Industry Agreement, and (b) whether SASA is precluded by section 133 of the Companies Act from recovering outstanding levies that have become due.
- 7 As our letter addressed to you dated 28 March 2023 ("our letter") clearly expressed, our clients' have lawfully acted in terms of the Companies Act by suspending THL's obligation to pay its levies and redistribution obligations under the Industry Agreement.
- 8 The purported disputes do not relate matters between growers, millers, and refiners in the sugar industry, or to obligations from or the interpretation of the Sugar Industry Agreement at all. Rather, such disputes -
 - 8.1 arise between our clients in their capacity as Business Rescue Practitioners, on the one hand, and SASA, on the other. They are not disputes between sugar industry participants;
 - 8.2 relate to the proper interpretation and application of *the powers of the Business Rescue Practitioners* as conferred by the Companies Act, and the effect of the moratorium imposed by section 133 of the Companies Act (in particular, section 133(1)(a) and (b)). In particular, they concern, *inter alia*, whether the provisions of section 136(2) of the Companies Act apply to statutory agreements, like the Industry Agreement.
- 9 Manifestly, these issues fall beyond the scope of the Tribunal's jurisdiction, and it is not empowered to adjudicate the points of law that they raise.
- 10 In the circumstances, your client's application is fatally defective. The parties are not *ad idem* on what the terms of reference to the Tribunal are (particularly because your client has misconstrued the position taken by our clients as set out in our letter). In any event, your client does not have standing to litigate, and the Tribunal does not have jurisdiction to adjudicate, the true disputes at issue, which can only be competently determined in the High Court.
- 11 Our clients have instructed us to approach the High Court of South Africa for appropriate declaratory relief. We will launch the foreshadowed application as expeditiously as circumstances permit. Without detracting from what is set out above, your client will be joined as a party in those proceedings.
- 12 In light of the above and in the interests of avoiding unnecessary costs and time, our clients have instructed us to invite your client to withdraw the Tribunal application. Should your client fail to withdraw its application by close of business on Thursday, 6 April 2023, our clients have instructed us to bring an urgent application to the High Court, at your client's cost, for the striking out alternatively the stay of the Tribunal application pending the determination of our clients' application in the High Court.

  2

- 13 Our failure to address this matter more fully at this stage should not be construed as a concession of the correctness of any assertion advanced by your client, or yourselves on your client's behalf, to date or as a waiver of or client's rights to deal therewith in further detail in the appropriate forum which rights are, and remain, fully reserved.

Yours faithfully



Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za



3



DELIVERED BY EMAIL

Cox Yeats Attorneys

Email: TScheepers@coxyeats.co.za

LMapiki@coxyeats.co.za

JRodd@coxyeats.co.za

Durban

Attention: T Scheepers, L Mapiki and J Rodd

Johannesburg Office

The Central

96 Rivonia Road

Sandton 2196 South Africa

Private Bag 10015

Sandton 2146

Docex 111 Sandton

Tel +27 11 535 8000

Fax +27 11 535 8600

www.werksmans.com

YOUR REFERENCE: TS/jr/050100400000003

OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9337537v1

DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131

EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

4 April 2023

Dear Sirs

SUGAR INDUSTRY APPEALS TRIBUNAL (KWAZULU-NATAL PROVINCE): THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("RCL Foods") // ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED ("your client")

- 1 We represent the Business Rescue Practitioners of Tongaat Hulett Limited (in Business Rescue) ("our clients").
- 2 Our clients have handed us a copy of your letter addressed to them dated 3 April 2023 ("your letter") and instructed us to reply thereto as set out below
- 3 We enclose a copy of our letter addressed to RCL Foods Sugar & Milling (Proprietary) Limited ("RCL Foods") dated 4 April 2023 ("our letter") which addresses matters pertaining to RCL's application ("the Tribunal application") to the Sugar Industry Appeals Tribunal ("the Tribunal"). Our letter has also been copied to the Tribunal.
- 4 As appears from paragraph 12 of our letter, we have invited RCL Foods to withdraw the Tribunal application. Should RCL Foods fail to do so our clients have instructed us to launch an application for the striking out alternately the stay of the Tribunal application pending the determination of our clients' application in the High Court.
- 5 For the reasons traversed in our letter, the content of this letter, and our clients' position *vis-à-vis* the (fatally defective) Tribunal application, our clients do not intend to agree to any timelines (whether truncated or at all) in relation to the Tribunal application.

Werksmans Inc, Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOP Antunes RL Armstrong DA Arleiro K Badal T Bala JD Behr AR Berman MNM Bhengu AL Bilaty
RE Bornet HGB Boshoff TJ Boswell MC Brinn W Brown PF Burger HLE Cheng PG Cleland JG Cloete PPJ Coetser C Cole-Morgen J Derling R Driman KJ Fyfe S Gesl D Gewer
JA Gobetz R Gootkin GF Griessel N Harduth NA Hlatshwayo J Holtsen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Jense van Rensburg AV Jara G Johannes S July
J Kalkmeyer A Kenny R Kiloran N Kirby HA Koize S Krige CJ Letlha H Laskov K Rajah P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso
DD Magidson MPC Manaka JE Marston PD Mashatane NT Matshebela JE Melring H Michael SM Moerane R Mofse C Morsika PM Mosebo NPA Motsiri L Naidoo K Neluhan
JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmore D Pisaniti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhan
NDF Rodrigues BR Roodman W Rosenberg NL Scott TA Sibilla FT Sikhavhakavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell
DH Swart PW Tindle SA Tom JJ Truter KJ Trudgson M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vetalidis
RN Wakefield L Watson D Weglarski G Wickins M Wiehahn DC Willane DG Williams E Wood BW Workman-Davies Consultant DH Rabin

- 6 For at least the reasons set out in our letter, our clients do not propose addressing paragraphs 5 and 6 of your letter. In light of your letter, our clients will cite your client in the High Court application foreshadowed in paragraph 12 of our letter (without any concession as to your client's standing to seek declaratory relief or any acceptance that your client is a necessary party in respect thereof). Should your client nevertheless seek to intervene in Tribunal application, the content of our letter will apply *mutatis mutandis* to your client.
- 7 Our failure to address this matter more fully at this stage should not be construed as a concession of the correctness of any assertion advanced by your client, or yourselves on your client's behalf, to date or as a waiver of our clients' rights to deal therewith in further detail in the appropriate forum which rights are, and remain, fully reserved.

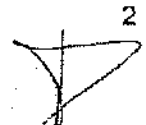
Yours faithfully



Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

CC: **Webber Wentzel**
Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com



2

"FA27"292



WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Garlicke & Bousfield Inc
Email: howard.stephenson@qb.co.za
Durban

Attention: H Stephenson

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: TS/jr/050100400000003
OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9337537v1
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

5 April 2023

Dear Sirs

SUGAR INDUSTRY APPEALS TRIBUNAL (KWAZULU-NATAL PROVINCE): THE BUSINESS RESCUE PRACTITIONERS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("RCL Foods") // ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED

- 1 As you are aware, we represent the Business Rescue Practitioners of Tongaat Hulett Limited (in Business Rescue) ("our clients").
- 2 We refer to your Mr Howard Stephenson's email addressed to Cox Yeats on 4 April 2023 ("your email") in relation to Illovo Sugar (South Africa) (Proprietary) Limited ("Illovo Sugar"). The content thereof is most surprising in the light of our letter addressed to Webber Wentzel dated 4 April 2023 ("our letter to Webber Wentzel"), on which your client was copied.
- 3 In our letter to Webber Wentzel, we explained why RCL Foods Sugar & Milling (Proprietary) Limited's ("RCL Foods") application ("the Tribunal application") to the Sugar Industry Appeals Tribunal ("the Tribunal") is fatally defective, and recorded that if RCL were to proceed with it, our client would bring urgent proceedings for the strike out, alternatively the stay of those proceedings. RCL has since indicated, in the letter attached as "A", that it is amenable to staying the Tribunal application to permit our client's anticipated High Court application to proceed. Our client has yet to respond to that letter, and we will copy you on our response when it is sent.
- 4 Without detracting from what is set out in paragraph 3 above, having regard to the content of your email, it is not clear to us whether you have been favoured with a copy of our letter addressed to Illovo Sugar care of Cox Yeats dated 4 April 2023 ("our letter to Cox Yeats") in response to its

Werksmans Inc. Reg. No. 1990/067215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors: D Hertz (Chairman) DL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Bale JD Behr AR Berman NMN Bhengu AL Bisiyi RE Bonnel HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger HLE Cheng PG Cleland JG Cloete PJP Coetzee C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gawer JA Gobetz R Goolkin GF Griessel N Harduth NA Hietshwayo J Hofmann MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Kiloran N Kirby HA Kolze S Krige CJ Lelitha H Laskov K Rajah P le Roux MM Lessing E Levanstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Merdon PD Mashalane NT Matshebela JE Meiring J Michael SM Moerans R Moitse C Moratilis PM Mosebo NPA Motsiri L Naidoo K Neluhani JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayatchy M Pensagrouw S Passmore D Pisanik T Poller AA Pyzikowski RJ Raath K Rajah A Ramdathin MDF Rodrigues BR Roodman W Rosenberg NL Scott TA Sibida FT Sikkavhakavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Tudgeon M Tyfield DN van den Berg AA van der Merwe A van Haerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wifahn DC Willens DC Willems E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

proposed intervention in the fatally defective Tribunal application. As a courtesy, a copy of our letter to Cox Yeats is attached as "B".

5 In paragraph 6 of our letter to Cox Yeats, we state as follows -

"For at least the reasons set out in our letter, our clients do not propose addressing paragraphs 5 and 6 of your letter [a reference to Cox Yeats' letter dated 4 April 2023]. In light of your letter, our clients will cite your client in the High Court application foreshadowed in paragraph 12 of our letter (without any concession as to your client's standing to seek declaratory relief or any acceptance that your client is a necessary party in respect thereof). Should your client nevertheless seek to intervene in Tribunal application, the content of our letter will apply mutatis mutandis to your client."

6 For completeness, we note that your client, SASA, will similarly be cited as a party to the foreshadowed High Court application.

7 Whilst our client has no difficulty in your client reserving its position vis-à-vis Illovo Sugar's intervention in the fatally defective Tribunal application, your client's agreement to Illovo Sugar's intervention therein is inappropriate at this stage. Should your client persist with its current attitude in this regard, our client will seek costs against it in the Tribunal application, regardless of whether or not it opposes those proceedings.

8 Our clients' rights remain reserved.

Yours faithfully

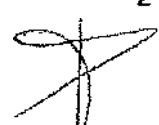


Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

CC: **Webber Wentzel**
Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com



2


DELIVERED BY EMAIL

Webber Wentzel

Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com

Johannesburg

Attention: P Singh, L Kahn, and L Kamukwamba

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9334322v3
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

4 April 2023

Dear Sirs


THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")

- 1 We refer to your client's Statement of Claim delivered to the Sugar Industry Appeals Tribunal ("the Tribunal") late on Thursday, 30 March 2023 ("the Tribunal application").
- 2 Your client has purported to raise two issues for determination by the Tribunal, namely, -
 - 2.1 what the nature of the payment obligations imposed on millers under the Industry Agreement are; and
 - 2.2 whether those payment obligations can be unilaterally suspended,collectively "the purported disputes".
- 3 Your client avers that the Tribunal has the jurisdiction to adjudicate the purported disputes in terms of clause 34(e) and clause 35 of the Sugar Industry Agreement because the Tribunal has the jurisdiction to hear matters between growers, millers, and refiners in the sugar industry, and because the purported disputes relate to "obligations arising from and/or the interpretation of the Industry Agreement".

Werksmans Inc. Reg. No. 1896/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors: D Hertz (Chairman) GL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arriola K Badai T Bate JD Behr AR Berman NM Bhengu AL Bilety RE Bonnel HGB Boshoff TJ Boswell MC Brinn W Brown FF Burger HLE Cheng PG Cieland JG Cloete PRJ Coetser C Cole-Morgan J Darling R Duman KJ Fyfe S Gast D Gewer JA Gobetz R Gookin GF Griesel N Harduin NA Hlatshwayo J Hollesen MGH Honiball BS Hotz AE Human T Inno HC Jacobs TL Jans van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Kijoran N Kirby HA Kouze S Krige CJ Letlha H Laskov K Rajah P Ja Roux MM Lessing E Levenstein JS Lochner K Louw JS Lütjens BS Mabasa PK Mabasa DD Magidson MPC Manaka JE Mardon PD Mashalane NT Melanabela JE Meiring H Michael SM Moerane R Mofse C Morabli PM Mosabo NPA Motsiri L Naidoo K Nekhetl JJ Niemend BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayatchy M Pansegrouw S Passmore D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdihl MOF Rodrigues BR Rochman W Rosenberg NI Scott TA Sibida PT Sikhavhakheva LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Trudgoad M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiseman DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

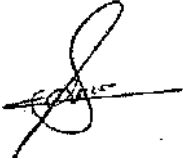
JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 4 This framing of the dispute between our respective clients in your client's Tribunal application does not accurately reflect the nature of the dispute, and it appears from the Tribunal application that your client has misunderstood the position that has been taken by our clients.
- 5 Our clients have never disputed the nature of the payment obligations imposed on millers by the Industry Agreement, nor have they suggested that those obligations can be suspended under the terms of the Industry Agreement.
- 6 The purported disputes referred to in the Tribunal application (which are, in fact, disputes between our clients and SASA) relate to (a) whether our clients have the power, in their capacity as Business Rescue Practitioners to THL and pursuant to the provisions of section 136(2) of the Companies Act 71 of 2008 ("the Companies Act"), to suspend THL's obligation to pay outstanding levies and redistribution obligations that would otherwise have become due to SASA under the Industry Agreement, and (b) whether SASA is precluded by section 133 of the Companies Act from recovering outstanding levies that have become due.
- 7 As our letter addressed to you dated 28 March 2023 ("our letter") clearly expressed, our clients' have lawfully acted in terms of the Companies Act by suspending THL's obligation to pay its levies and redistribution obligations under the Industry Agreement.
- 8 The purported disputes do not relate matters between growers, millers, and refiners in the sugar industry, or to obligations from or the interpretation of the Sugar Industry Agreement at all. Rather, such disputes -
 - 8.1 arise between our clients in their capacity as Business Rescue Practitioners, on the one hand, and SASA, on the other. They are not disputes between sugar industry participants;
 - 8.2 relate to the proper interpretation and application of *the powers of the Business Rescue Practitioners* as conferred by the Companies Act, and the effect of the moratorium imposed by section 133 of the Companies Act (in particular, section 133(1)(a) and (b)). In particular, they concern, *inter alia*, whether the provisions of section 136(2) of the Companies Act apply to statutory agreements, like the Industry Agreement.
- 9 Manifestly, these issues fall beyond the scope of the Tribunal's jurisdiction, and it is not empowered to adjudicate the points of law that they raise.
- 10 In the circumstances, your client's application is fatally defective. The parties are not *ad idem* on what the terms of reference to the Tribunal are (particularly because your client has misconstrued the position taken by our clients as set out in our letter). In any event, your client does not have standing to litigate, and the Tribunal does not have jurisdiction to adjudicate, the true disputes at issue, which can only be competently determined in the High Court.
- 11 Our clients have instructed us to approach the High Court of South Africa for appropriate declaratory relief. We will launch the foreshadowed application as expeditiously as circumstances permit. Without detracting from what is set out above, your client will be joined as a party in those proceedings.
- 12 In light of the above and in the interests of avoiding unnecessary costs and time, our clients have instructed us to invite your client to withdraw the Tribunal application. Should your client fail to withdraw its application by close of business on Thursday, 6 April 2023, our clients have instructed us to bring an urgent application to the High Court, at your client's cost, for the striking out alternatively the stay of the Tribunal application pending the determination of our clients' application in the High Court.

- 13 Our failure to address this matter more fully at this stage should not be construed as a concession of the correctness of any assertion advanced by your client, or yourselves on your client's behalf, to date or as a waiver of or client's rights to deal therewith in further detail in the appropriate forum which rights are, and remain, fully reserved.

Yours faithfully



Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za



DELIVERED BY EMAIL

Cox Yeats Attorneys

Email: TScheepers@coxyeats.co.za

LMapiki@coxyeats.co.za

JRodd@coxyeats.co.za

Durban

Attention: T Scheepers, L Mapiki and J Rodd

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: TS/jr/050100400000003
OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9337537v1
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

4 April 2023

Dear Sirs

SUGAR INDUSTRY APPEALS TRIBUNAL (KWAZULU-NATAL PROVINCE): THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("RCL Foods") // ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED ("your client")


- 1 We represent the Business Rescue Practitioners of Tongaat Hulett Limited (in Business Rescue) ("our clients").
- 2 Our clients have handed us a copy of your letter addressed to them dated 3 April 2023 ("your letter") and instructed us to reply thereto as set out below
- 3 We enclose a copy of our letter addressed to RCL Foods Sugar & Milling (Proprietary) Limited ("RCL Foods") dated 4 April 2023 ("our letter") which addresses matters pertaining to RCL's application ("the Tribunal application") to the Sugar Industry Appeals Tribunal ("the Tribunal"). Our letter has also been copied to the Tribunal.
- 4 As appears from paragraph 12 of our letter, we have invited RCL Foods to withdraw the Tribunal application. Should RCL Foods fail to do so our clients have instructed us to launch an application for the striking out alternately the stay of the Tribunal application pending the determination of our clients' application in the High Court.
- 5 For the reasons traversed in our letter, the content of this letter, and our clients' position *v/s-à-v/s* the (fatally defective) Tribunal application, our clients do not intend to agree to any timelines (whether truncated or at all) in relation to the Tribunal application.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armsstrong DA Artero K Badal T Bala JD Behr AR Berman NMN Bhangu AL Bilaty RE Bonnet HGE Boshoff TJ Boswell MC Bröhn W Brown PF Burger HLE Cheng PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Drinan KJ Fyfe S Gast D Gewer JA Gobetz R Goolbsy GF Gnessel N Harduth NA Hlatshwayo J Hollieson MGH Honibell BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kolze S Krige CJ Lalitha H Laskov K Rajah P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashatene NT Matshabela JE Melring H Michael SM Moarane R Molise C Moraitis PM Mosebo NPA Motlali L Naidoo K Nkuluheni JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmore D Pisaniti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhan MDP Rodrigues BR Rothman W Rosenberg NL Soob TA Sibida FT Sikhakhakhava LK Sibbani S Sinden DE Singo JA Smit BM Sono CI Stevens PO Sley J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Trudgion M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Weglinski G Wickins M Wiehahn DC Wilans DG Williams E Wood BW Workmen-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 6 For at least the reasons set out in our letter, our clients do not propose addressing paragraphs 5 and 6 of your letter. In light of your letter, our clients will cite your client in the High Court application foreshadowed in paragraph 12 of our letter (without any concession as to your client's standing to seek declaratory relief or any acceptance that your client is a necessary party in respect thereof). Should your client nevertheless seek to intervene in Tribunal application, the content of our letter will apply *mutatis mutandis* to your client.
- 7 Our failure to address this matter more fully at this stage should not be construed as a concession of the correctness of any assertion advanced by your client, or yourselves on your client's behalf, to date or as a waiver of our clients' rights to deal therewith in further detail in the appropriate forum which rights are, and remain, fully reserved.

Yours faithfully



Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

CC: **Webber Wentzel**
Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com



WEBBER WENTZEL

in alliance with > Linklaters

Attention: Danny Andropoulos
Werksmans Attorneys
The Central
96 Rivonia Road
Sandton
2196

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 (0) 11 530 5000
F +27 (0) 11 530 5111
www.webberwentzel.com

By email: dandropoulos@werksmans.com;
ismith@werksmans.com; tboswell@werksmans.com;
dhertz@werksmans.com; sgast@werksmans.com

COPY TO: South African Sugar Association

By email: fay@mukaddam.net; mary.ramkelawon@sasa.org.za;
sharitha.singh@sasa.org.za; Trix.trikam@sasa.org.za

COPY TO: Cox Yeats

By email: tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za;
imapiki@coxyeats.co.za; mjackson@coxyeats.co.za

Your reference	Our reference	Date
Mr T Boswell/Mr D Andropoulos/ Mr D Hertz/Ms S Gast/ tjb/TONG7430.11/#9334322v3	P Singh / L Kahn / L Kamukwamba/ 3058673	5 April 2023

Dear All

RCL Foods Sugar & Milling (Pty) Limited ("our client") // The Business Rescue Practitioners ("your clients") of Tonga Huleft Limited (in business rescue) and others

1. We refer to your letter, dated 4 April 2023 ("**your letter**"). Please note that we do not intend to address each and every averment contained in your letter and our failure to do so should be construed as a denial of those averments not specifically addressed. Our client reserves the right to address these averments at the appropriate time and in the appropriate forum. For convenience, we adopt the definitions we have used in previous correspondence for purposes of this letter.

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Bait DC Baymen AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RJ Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Cousyn DE Cron PA Crosland R Cruywagen JH Davies KM Davls PM Days ST Dias L de Bruyn PU Dele M Denenge DW de Villiers BEC Dickinson DA Dingley G Driver W Druce GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Ferman L Franca M Garden KL Gawith OH Geldenhuys HM Gibson C Gopal CI Gouws PD Graafland L Green S Haroun JM Harvey JS Henning KR Hills Z Hlophe CM Hofveld PM Holloway KT Inglis ME Jarvis JC Jones CH Jonker S Jopsta LA Kahn M Kennedy KE Kliner A Keyser MG Kota JC Kraamwinkel J Lamb E Louw N Mahlangu S Manley V Mannar L Marsis G Masina T Masngi N Mbere MC McIntosh S McKenzie CS Meyer A Mhlongo A Mlis D Mlilo M Mkhabela P Mohanlali N Moodley L Moolman LE Mostert VM Movshovich C Murphy P Naidoo DC Nchabeleng A Ngubo C Nöthling ZN Ntshona M Nxumalo AN Nyatsumba MB Nzimande A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philipides BA Phillips MA Phillips CH Pienaar DJ Rafferty D Ramjetan CJ Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien JW Scholtz KE Shepherd N Singh N Singh-Mogolara P Singh S Sithole J Smit MP Spalding MW Straeuli LJ Swalinc Z Swanepoel WV Tembedza A Thakor T Theissen TK Thekiso C Theodosiou T Theunissen R Thavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali JE Veeran HM Venter B Versfeld MG Versfeld TA Versteld DM Visagie EME Warrington J Watson AWR Westwood RH Willson KD Wolmarans

Chief Operating Officer: SA Boyd

WEBBER WENTZEL

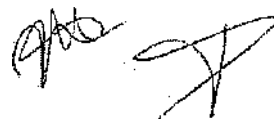
in alliance with Linklaters

Page 2

2. At the outset we note that until now, your clients' position regarding the nature of the payment obligations under the Industry Agreement has not been clear. We therefore welcome the clarity provided in your letter, more particularly the concession at paragraph 5, that:

"[your] clients have never disputed the nature of the payment obligations imposed on millers by the Industry Agreement, nor have they suggested that those obligations can be suspended under the terms of the Industry Agreement."

3. Based on the above statement, your clients now accept that 1) the payment obligations are imposed on millers in terms of the Industry Agreement (i.e. that these are statutory obligations); and 2) that these statutory payment obligations are incapable of being suspended unilaterally under the Industry Agreement. It appears that despite that concession, your clients believe that they – as business rescue practitioners – have powers under the Companies Act to suspend those statutory obligations.
4. It has also not previously been mentioned, in the exchange of correspondence leading up to our client's filing of the referral application before the Tribunal, that your clients would be seeking declaratory relief from the High Court (as set out in paragraph 11 of your letter). Whilst we remain of the view that: the issues are appropriately framed in our client's referral application; our client has standing to bring the application and the Tribunal has jurisdiction to hear the matter, now that your clients' position has for the first time been made clear, it appears obvious that our respective clients are essentially seeking the same declaratory relief or declaratory relief in respect of the same issue, albeit from different fora.
5. It is regrettable that your clients' intention to approach a High Court (or at least the communication of such an approach) was seemingly only catalysed by our client's referral application. The dispute about the unilateral termination or suspension of Tongaat's payment obligations has for months now been a contentious issue within the business rescue process, which your clients were well aware of, not least of all because it was by your clients' decision to terminate or suspend the payment obligations that the dispute arose, and because the impact of that decision goes manifestly beyond Tongaat to impact upon other millers and employees within the wider sugar industry. It was incumbent upon your clients (and/or SASA) to have sought such relief timeously, rather than reactively. Had this been done, the matter would have already progressed significantly, and our client would not have had to incur significant time and cost in bringing the referral application.



WEBBER WENTZEL

In alliance with Linklaters

Page 3

6. That said, in an attempt to expedite the resolution of this critical matter for the sugar industry, and seeing as your client is now willing to approach a High Court on an expedited basis for what we consider to be substantially similar relief to that contained in our referral application, our client will agree to a stay of the proceedings before the Tribunal on the following basis:
- 6.1 your clients launch their application for declaratory relief (as set out in paragraph 11 of your letter) on an urgent basis, and by no later than 14 April 2023, in order to obtain the clarity that the sugar industry and your clients require without further delay;
- 6.2 the parties shall jointly approach Judge President Poyo-Diwati of the KwaZulu-Natal High Court, and seek an urgent hearing before the end of April 2023 or early May 2023, subject to an agreed or imposed timetable for the exchange of pleadings and heads of argument to ensure an expedited hearing for the matter to be heard on the first available hearing day under the direction of the Judge President;
- 6.3 your clients agree that they will not publish their business rescue plan until the final determination of the matter and, to the extent necessary, will seek approval to do so from the High Court or the holders of a majority of the creditors' voting rights;
- 6.4 our client's wasted costs of the Tribunal application be paid by your clients, alternatively, reserved for later determination by the High Court with the parties agreeing that the High Court will be entitled also to rule on the wasted costs incurred by our client.
7. Should any of these conditions not be met, our client reserves the right to immediately continue with the Tribunal application which is stayed merely for the purposes of allowing your clients to bring their case.
8. Please let us know, in writing, by close of business on Thursday, 6 April 2023, whether your client agrees to the above terms. Once such confirmation is received, we will alert the Tribunal to this arrangement.
9. We have copied this letter to SASA who should obviously have been included on your letter to our clients, but was inexplicably excluded. We have also copied Illovo Sugar (South Africa) (Pty) Ltd, who has already expressed an interest in joining the Tribunal application in support of the relief sought by our client.
10. Our client's rights remain fully reserved.

WEBBER WENTZEL

in alliance with Linklaters

Page 4

Yours faithfully

pp L Kamukwamba

WEBBER WENTZEL

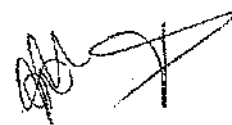
Prelisha Singh / Lara Kahn

Partner

Direct tel: +27 11 530 5419 / +27 21 431 7283

Direct fax: +27 11 530 6419

Email: prelisha.singh@webberwentzel.com / lara.kahn@webberwentzel.com



"FA29'303



WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Webber Wentzel

Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com

The Sugar Industry Appeals Tribunal

Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

Garlicke & Bousfield Inc

Email: howard.stephenson@gb.co.za

Cox Yeats

Email: tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za;
lmapiki@coxyeats.co.za; mjackson@coxyeats.co.za

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Dooex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9347379v3

DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131

EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/
sgast@werksmans.com

11 April 2023

Dear Sirs

THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")


- 1 We refer to our letter addressed to Webber Wentzel dated 6 April 2023 ("our letter"), which was copied to Cox Yeats, Garlicke & Bousfield Inc and The Sugar industry Appeals Tribunal.
- 2 Our clients have commenced preparation of the High Court application ("the application") referred to in paragraph 7 and its sub paragraphs of our letter and are proceeding with it as expeditiously as possible, given that a number of our clients' representatives and legal team have been unavailable over the Easter / Passover holidays. It nevertheless remains our clients' intention to issue and serve the application as soon as possible, and during the course of next week.
- 3 Each of the addressees of this letter are requested to confirm by return that they -
 - 3.1 are authorised to accept service of our clients' High Court application;

Werksmans Inc. Reg. No. 1890/007216/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Artelro K Badal T Bata JD Behr AR Berman MNM Bhengu AL Bilal
RE Bonnet HGB Boshoff TJ Boswell MC Brinn W Brown PF Burger HLE Chang PG Cleland JG Cloete PFJ Coetser C Cole-Morgan J Darling R Drimen KJ Fyfe S Gast D Gewer
JA Gobetz R Gootkin GP Grissell N Harduth NA Hielstwayo J Holleran MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July
J Kallmeyer A Kenny R Kiloran N Kirby HA Kotze S Krige CJ Lalitha R Leskov K Rajah P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabasa
DD Magijson MPC Manaka JE Marlon PD Mashelane NT Matshebele JE Meiring H Michael SM Moerane R Moitsa C Moraitis PM Mosebo NPA Motlari L Naidoo K Neluhani
JJ Niemend BW Null BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmore D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdin
MDF Rodrigues BR Rooiman W Rosenberg NL Scott TA Sibola FT Sikhavhakavha LK Silberman S Sindan DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell
DH Swart PW Tindie SA Tom JJ Truter KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Verallde
RN Wakefield L Watson D Weglarski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 3.2 will accept service of our clients' application by way of email; and
- 3.3 will regard service of the application by our offices as service having been validly effected in terms of the Uniform Rules of Court.
- 4 Given the importance of the legal dispute at issue, and the number of parties who have indicated an interest in the outcome of the application, we consider this matter to be appropriate for case management. Please confirm by return that following the delivery of our clients' founding papers, you and your clients will agree to a joint approach to the Judge President to request a case management meeting and to seek directions regarding a -
 - 4.1 timetable for the exchange of pleadings in this matter; and
 - 4.2 special allocation for the hearing of the application.
- 5 Case management will also enable the parties to approach the appointed case manager for further directions as and when required.
- 6 Our suggestion as regards the joint approach to the JP should in no way be construed as a concession on the part of our client that this matter is urgent or that it ought to be dealt with as an urgent application.
- 7 We await to hear from you.

Yours faithfully



Werksmans Attorneys



"FA30"305



WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

P Singh, L Kahn, and L Kamukwamba
Webber Wentzel
Johannesburg

Via email

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8000
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE: Mr D Andropoulos/ tjb/TONG7430.8/#8026449v6
DIRECT PHONE: +27 11 535 8248
EMAIL ADDRESS: dandropoulos@werksmans.com

30 March 2023

Dear Mesdames/Sirs

BUSINESS RESCUE PLAN IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED AND COMPLIANCE WITH INDUSTRY OBLIGATIONS

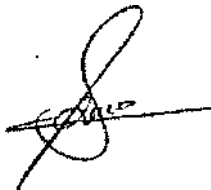
- 1 We refer to -
 - 1.1 your letter dated 27 March 2023 ("your 27 March letter") addressed to the joint business rescue practitioners of Tongaat Hulett Limited (in business rescue) ("our clients");
 - 1.2 our clients' response to your 27 March letter dated 28 March 2023; and
 - 1.3 your letter addressed to the South African Sugar Association dated 29 March 2023 ("your 29 March letter").
- 2 On 29 March 2023, our clients published a notice to creditors ("the notice") in terms of section 150(5) of the Companies Act 71 of 2008 seeking approval from creditors of a further extension of the publication of the business rescue plan of Tongaat Hulett Limited (in business rescue). A copy of the notice is attached for your ease of reference.
- 3 Our clients reasonably anticipate that the requisite majority approval will be obtained for the extension sought because, *inter alia*, our clients hold affirmative voting proxies from creditors holding a majority of voting rights. We are instructed that for at least this reason, the High Court proceedings contemplated by you cannot be regarded as urgent and would be premature. Please confirm that in the circumstances, your client will not proceed (at least at this stage) with an urgent application to High Court. Please also confirm that if your client elects to institute urgent proceedings that you will provide our clients with notice of your client's intention to do so.

Werksmans Inc. Reg. No. 1890/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) DL Abraham LK Alexander G Andropoulos JKOF Antunes RL Armstrong DA Arriero K Badel T Bata JO Behr AR Berman NMN Bhangu AL Bilalil
RE Bonnel HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger HLE Chang PG Claland JG Cloete PPJ Coetser C Cote-Morgan J Darling R Driman KJ Fyfe S Gast O Geyer
JA Gobetz R Goodkin GF Gressel N Harduth J Hollesen MGH Honibal BB Hotz AE Human T Inno HC Jacobs TL Jansa van Rensburg AV Jara G Johannes S July J Kallmeyer
A Kanny R Kiliran N Kirby HA Kotze S Krige CJ Laltha H Laskov K Rajah P Le Roux MM Lessing E Lavenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabasa DD Magidson
MPC Manake JE Maroon NY Mashabela JE Melning H Michael SM Moerane R Moitse C Moralis PM Mosabo NPA Motsisi L Naidoo K Nkubeni JJ Niemand BW Ntuli BPF Olivier
WE Oosthuizen Z Oosthuizen S Padayachy M Pansagrouw S Passmore D Pisanil T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhir MDF Rodrigues BR Roodhimen
W Rosenberg NL Scott TA Sibidi FT Sikkavakavathe LK Silberstein S Sinden DE Singo JA Smill BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter
KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wagterski G Wickins
M Wiehahn DC Wiliams DG Williams E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 4 It is not clear from your letter whether your client intends to approach the Sugar Industry Appeals Tribunal for the determination envisaged in paragraph 4 of your 27 March letter during the course of today or tomorrow. In this regard, please confirm -
- 4.1 whether in fact your client intends to approach the Sugar Industry Appeals Tribunal for an urgent determination before close of business tomorrow so that our clients are in a position to urgently retain counsel to appear;
- 4.2 that in the event that your client's response to paragraph 4.1 above is in the *negative*, that -
- 4.2.1 your client will provide our client with adequate notice of your approach to the Sugar Industry Appeals Tribunal, and that our clients will be given a fair opportunity to respond; and
- 4.2.2 insofar as is possible, you will afford our clients an opportunity to attempt to agree mutually acceptable timelines for the exchange of submissions and the date of hearing. In this regard, please will you impress upon your client to take the upcoming Religious Easter and Passover days into account.
- 5 The content of this letter is not exhaustive and should not be construed as having dealt with all matters affecting the issues. Our clients' right to deal with any such matters in greater detail in due course and in the appropriate forum are reserved.

Yours faithfully



Werksmans Attorneys

WEBBER WENTZEL

In alliance with > Linklaters

Attention: Sharitha Singh
Sugar Industry Appeals Tribunal
Kwa-Shukela
170 Flanders Drive
Mount Edgecomb
KwaZulu-Natal
4300

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 (0) 11 530 5000
F +27 (0) 11 530 5111
www.webberwentzel.com

By email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

COPY TO: Garlicke & Bousfield Inc.

By email: howard.stephenson@gb.co.za

COPY TO: Cox Yeats

By email: tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za;
imapiki@coxyeats.co.za; mjackson@coxyeats.co.za

COPY TO: Werksmans

By email: dandropoulos@werksmans.com;
tboswell@werksmans.com; dhertz@werksmans.com;
sgast@werksmans.com

Your reference	Our reference	Date
RCL/THL	P Singh / L Kahn / L Kamukwamba/ 3058873	20 April 2023

Dear All

RCL Foods Sugar & Milling (Pty) Limited // The Business Rescue Practitioners of Tongaat Hulett Limited (in business rescue) and others

1. We refer to the above matter which we referred to the Sugar Industry Appeals Tribunal ("the Tribunal") on 30 March 2023 on behalf of our client and the claimant in the matter, RCL Foods Sugar and Milling (Pty) Limited ("RCL" or "our client").

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa C Alexander AK Allic NG Alp RL Appelbaum TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claessens C Collett KL Collier KM Colman KE Coster K Couzun DB Cron PA Crusland R Cruywagen JH Davies KM Davis PM Daya ST Diaz J de Bruyn PL Dela M Denanga DW de Villiers BEC Dickinson DA Dingley G Driver W Druze GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eisner AE Esterhuizen K Fazal G Fitzmaurice JB Forman L Franke M Garden KL Gawith OH Geldenhuys MM Gibson C Gopal CI Gouws PD Grealy L Green S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hollfeld PM Holloway KT Inglis MB Jarvis JC Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mantlangu S Mantley V Manner L Marais G Masina T Masingi N Mberhe MC McIntosh SJ McKenzie CS Meyer A Mkhongo AJ Mills D Nkomo M Nkhabela P Mohanlal N Moodley L Moolman LE Mostert VM Movshovich C Murphy P Naidoo DC Nchabeleng A Ngubo C Ntshong ZN Ntshona M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phanjane M Philippides EA Phillips MA Phillips CH Pienaar DJ Raftery D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rude G Sader H Samsodien JW Scholtz KE Shepherd N Singh N Singh-Roguesira P Singh S Sitchole J Smit HP Spalding MW Straetui LJ Swaine Z Swartepoel WV Tambaiza A Thakor T Theessen TK Thakiso C Theodosiou T Theunissen R Thavani G Truter FZ Vanda SE van der Mouten JP van der Poel MS van der Walt CS Vanmali JE Vaaran HM Venter B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

Chief Operating Officers: SA Boyd

WEBBER WENTZEL

in alliance with > Linklaters

Page 2

2. We also refer to the attached correspondence exchanged between ourselves and Werksmans Attorneys, who represent the Business Rescue Practitioners of Tongaat Hulett Limited ("BRPs"), between 4 April 2023 and 12 April 2023.
3. As evident from the attached correspondence, the BRPs are of the opinion, among others, that the Tribunal does not enjoy jurisdiction to hear the matter, and have indicated that their clients have started preparing a High Court application which they intend to institute by the end of this week.
4. Whilst we remain of the view that the issues are appropriately framed in our client's referral application; our client has standing to bring the application and the Tribunal has jurisdiction to hear the matter, we have agreed to allow the BRPs to bring their High Court application, provided that this is done before the end of this week.
5. Should the BRPs fail to bring their High Court application by this Friday, 21 April 2023 (as they have agreed to do), RCL intends to continue with the referral application.
6. Accordingly, we will update the Tribunal by this Friday, 21 April 2023 as to whether or not our client will stay the referral application.
7. Our client's rights remain fully reserved.

Yours faithfully



WEBBER WENTZEL

Prelisha Singh / Lara Kahn

Partner

Direct tel: +27 11 530 5419 / +27 21 431 7283

Direct fax: +27 11 530 6419

Email: prelisha.singh@webberwentzel.com / lara.kahn@webberwentzel.com



DELIVERED BY EMAIL
Webber Wentzel

Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com

Johannesburg

Attention: P Singh, L Kahn, and L Kamukwamba

Johannesburg Office
 The Central
 96 Rivonia Road
 Sandton 2196 South Africa
 Private Bag 10015
 Sandton 2146
 Docex 111 Sandton
 Tel +27 11 535 8000
 Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
 OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9334322v3
 DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
 EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

4 April 2023

Dear Sirs

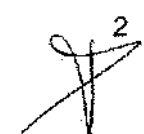
THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")

- 1 We refer to your client's Statement of Claim delivered to the Sugar Industry Appeals Tribunal ("the Tribunal") late on Thursday, 30 March 2023 ("the Tribunal application").
- 2 Your client has purported to raise two issues for determination by the Tribunal, namely, -
 - 2.1 what the nature of the payment obligations imposed on millers under the Industry Agreement are; and
 - 2.2 whether those payment obligations can be unilaterally suspended, collectively "the purported disputes".
- 3 Your client avers that the Tribunal has the jurisdiction to adjudicate the purported disputes in terms of clause 34(e) and clause 35 of the Sugar Industry Agreement because the Tribunal has the jurisdiction to hear matters between growers, millers, and refiners in the sugar industry, and because the purported disputes relate to "*obligations arising from and/or the interpretation of the Industry Agreement*".

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
 Directors: D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Artzro K Badal T Beta JD Behr AR Berman MNM Bhangu AL Blisty
 RE Bonnet HGB Boshoff TJ Boswell MC Brunn W Brown PF Burger HLE Chang PG Cleland JG Cloete PJJ Coetser C Cole-Morgan J Darling R Driman IG Fyfe S Gast D Gewer
 JA Gobetz R Goolkin GF Griesel N Hardulh NA Hlalshwayo J Hollesen MGH Horiball BB Hoiz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jana G Johannes S July
 J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige CJ Lalitha H Laskov K Rajah P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabasa
 DD Mapidson MPC Manaka JE Maroon PD Mashalane NT Matshebela JE Melting H Michael SM Moerane R Molise C Moraitis PM Mosebo NPA Motsiri L Nalidoo K Neluheni
 JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayatchy M Pansegrouw S Passmore D Pisani T Potlar AA Pyzikowski RJ Raath K Rajah A Ramdihl
 MDF Rodrigues BR Roolman W Rosenberg NL Scott TA Sibikla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell
 DH Swart PW Tindie SA Tom JJ Truter KJ Trudgson M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatelidis
 RN Wakefield L Watson D Weglarski G Wickins M Wiehahn DC Williams DG Williams E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 4 This framing of the dispute between our respective clients in your client's Tribunal application does not accurately reflect the nature of the dispute, and it appears from the Tribunal application that your client has misunderstood the position that has been taken by our clients.
- 5 Our clients have never disputed the nature of the payment obligations imposed on millers by the Industry Agreement, nor have they suggested that those obligations can be suspended under the terms of the Industry Agreement.
- 6 The purported disputes referred to in the Tribunal application (which are, in fact, disputes between our clients and SASA) relate to (a) whether our clients have the power, in their capacity as Business Rescue Practitioners to THL and pursuant to the provisions of section 136(2) of the Companies Act 71 of 2008 ("the Companies Act"), to suspend THL's obligation to pay outstanding levies and redistribution obligations that would otherwise have become due to SASA under the Industry Agreement, and (b) whether SASA is precluded by section 133 of the Companies Act from recovering outstanding levies that have become due.
- 7 As our letter addressed to you dated 28 March 2023 ("our letter") clearly expressed, our clients' have lawfully acted in terms of the Companies Act by suspending THL's obligation to pay its levies and redistribution obligations under the Industry Agreement.
- 8 The purported disputes do not relate matters between growers, millers, and refiners in the sugar industry, or to obligations from or the interpretation of the Sugar Industry Agreement at all. Rather, such disputes -
 - 8.1 arise between our clients in their capacity as Business Rescue Practitioners, on the one hand, and SASA, on the other. They are not disputes between sugar industry participants;
 - 8.2 relate to the proper interpretation and application of *the powers of the Business Rescue Practitioners* as conferred by the Companies Act, and the effect of the moratorium imposed by section 133 of the Companies Act (in particular, section 133(1)(a) and (b)). In particular, they concern, *inter alia*, whether the provisions of section 136(2) of the Companies Act apply to statutory agreements, like the Industry Agreement.
- 9 Manifestly, these issues fall beyond the scope of the Tribunal's jurisdiction, and it is not empowered to adjudicate the points of law that they raise.
- 10 In the circumstances, your client's application is fatally defective. The parties are not *ad idem* on what the terms of reference to the Tribunal are (particularly because your client has misconstrued the position taken by our clients as set out in our letter). In any event, your client does not have standing to litigate, and the Tribunal does not have jurisdiction to adjudicate, the true disputes at issue, which can only be competently determined in the High Court.
- 11 Our clients have instructed us to approach the High Court of South Africa for appropriate declaratory relief. We will launch the foreshadowed application as expeditiously as circumstances permit. Without detracting from what is set out above, your client will be joined as a party in those proceedings.
- 12 In light of the above and in the interests of avoiding unnecessary costs and time, our clients have instructed us to invite your client to withdraw the Tribunal application. Should your client fail to withdraw its application by close of business on Thursday, 6 April 2023, our clients have instructed us to bring an urgent application to the High Court, at your client's cost, for the striking out alternatively the stay of the Tribunal application pending the determination of our clients' application in the High Court.



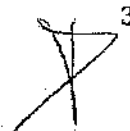
- 13 . Our failure to address this matter more fully at this stage should not be construed as a concession of the correctness of any assertion advanced by your client, or yourselves on your client's behalf, to date or as a waiver of or client's rights to deal therewith in further detail in the appropriate forum which rights are, and remain, fully reserved.

Yours faithfully

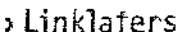


Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: shartha.singh@sasa.org.za; ezra.pillay@sasa.org.za



3

WEBBER WENTZELin alliance with  Linklaters

Attention: Danny Andropoulos
Werksmans Attorneys
The Central
96 Rivonia Road
Sandton
2196

90 Rivonia Road, Sandton
 Johannesburg, 2196
 PO Box 61771, Marshalltown
 Johannesburg, 2107, South Africa
 Docex 26 Johannesburg
 T +27 (0) 11 530 5000
 F +27 (0) 11 530 5111
 www.webberwentzel.com

By email: dandropoulos@werksmans.com;
ismith@werksmans.com; tboswell@werksmans.com;
dhertz@werksmans.com; sgast@werksmans.com

COPY TO: South African Sugar Association

By email: fay@mukaddam.net; mary.ramkelawon@sasa.org.za;
sharitha.singh@sasa.org.za; Trix.trikam@sasa.org.za

COPY TO: Cox Yeats

By email: tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za;
lmapiki@coxyeats.co.za; mjackson@coxyeats.co.za

Your reference	Our reference	Date
Mr T Boswell/Mr D Andropoulos/ Mr D Hertz/Ms S Gast/ tjb/TONG7430.11/#9334322v3	P Singh / L Kahn / L Kamukwamba/ 3058873	5 April 2023

Dear All

RCL Foods Sugar & Milling (Pty) Limited ("our client") // The Business Rescue Practitioners ("your clients") of Tongaat Hulett Limited (in business rescue) and others

1. We refer to your letter, dated 4 April 2023 ("your letter"). Please note that we do not intend to address each and every averment contained in your letter and our failure to do so should be construed as a denial of those averments not specifically addressed. Our client reserves the right to address these averments at the appropriate time and in the appropriate forum. For convenience, we adopt the definitions we have used in previous correspondence for purposes of this letter.

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Ball DC Bayman KE Bennett AP Blair K Blom AR Bowley M Bux V Campos RJ Carrim T Cassim SJ Ching ME Cleassens C Collett RL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya ST Dias L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Druce GP Duncan HD du Preez CP du Toit SK Edmundson LF Egypt KH Elser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L Franca M Garden KL Gawth DH Geldenhuys MM Gibson C Gopal CT Gouws PD Grealy L Green S Hardun JM Harvey JS Henning KR Hillis Z Hoppe CM Hofield PM Holloway KT Inglis MF Jarvis JC Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kiper A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu S Mantley V Mennar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mntlango AJ Mills D Milo M Mkhabela P Nchamalali N Moodley L Poolman LE Mostert VM Movshovich C Murphy P Naidoo DC Nchabeleng A Ngubo C Nöthling ZN Ntshona M Nxumalo AN Nyatumba NB Ntshane A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar DJ Rafferty D Ramjetan G1 Rapson K Raw G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sauer H Samsodien JW Scholtz KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Straeuli D Swaine Z Swanepoel WV Tembeka A Thakor T Theissen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel NS van der Walt CS Vannelli JE Veeran HM Venier B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

Chief Operating Officer: SA Boyd



WEBBER WENTZEL

in alliance with > Linklaters

Page 2

2. At the outset we note that until now, your clients' position regarding the nature of the payment obligations under the Industry Agreement has not been clear. We therefore welcome the clarity provided in your letter, more particularly the concession at paragraph 5, that:

"[your] clients have never disputed the nature of the payment obligations imposed on millers by the Industry Agreement, nor have they suggested that those obligations can be suspended under the terms of the Industry Agreement."

3. Based on the above statement, your clients now accept that 1) the payment obligations are imposed on millers in terms of the Industry Agreement (i.e. that these are statutory obligations); and 2) that these statutory payment obligations are incapable of being suspended unilaterally under the Industry Agreement. It appears that despite that concession, your clients believe that they – as business rescue practitioners – have powers under the Companies Act to suspend those statutory obligations.
4. It has also not previously been mentioned, in the exchange of correspondence leading up to our client's filing of the referral application before the Tribunal, that your clients would be seeking declaratory relief from the High Court (as set out in paragraph 11 of your letter). Whilst we remain of the view that the issues are appropriately framed in our client's referral application; our client has standing to bring the application and the Tribunal has jurisdiction to hear the matter, now that your clients' position has for the first time been made clear, it appears obvious that our respective clients are essentially seeking the same declaratory relief or declaratory relief in respect of the same issue, albeit from different fora.
5. It is regrettable that your clients' intention to approach a High Court (or at least the communication of such an approach) was seemingly only catalysed by our client's referral application. The dispute about the unilateral termination or suspension of Tongaat's payment obligations has for months now been a contentious issue within the business rescue process, which your clients were well aware of, not least of all because it was by your clients' decision to terminate or suspend the payment obligations that the dispute arose, and because the impact of that decision goes manifestly beyond Tongaat to impact upon other millers and employees within the wider sugar industry. It was incumbent upon your clients (and/or SASA) to have sought such relief timeously, rather than reactively. Had this been done, the matter would have already progressed significantly, and our client would not have had to incur significant time and cost in bringing the referral application.

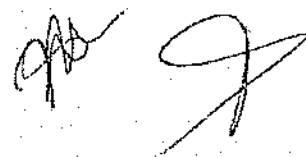


WEBBER WENTZEL

In alliance with > Linklaters

Page 3

6. That said, in an attempt to expedite the resolution of this critical matter for the sugar industry, and seeing as your client is now willing to approach a High Court on an expedited basis for what we consider to be substantially similar relief to that contained in our referral application, our client will agree to a stay of the proceedings before the Tribunal on the following basis:
- 6.1 your clients launch their application for declaratory relief (as set out in paragraph 11 of your letter) on an urgent basis, and by no later than 14 April 2023, in order to obtain the clarity that the sugar industry and your clients require without further delay;
- 6.2 the parties shall jointly approach Judge President Poyo-Dlwati of the KwaZulu-Natal High Court, and seek an urgent hearing before the end of April 2023 or early May 2023, subject to an agreed or imposed timetable for the exchange of pleadings and heads of argument to ensure an expedited hearing for the matter to be heard on the first available hearing day under the direction of the Judge President;
- 6.3 your clients agree that they will not publish their business rescue plan until the final determination of the matter and, to the extent necessary, will seek approval to do so from the High Court or the holders of a majority of the creditors' voting rights;
- 6.4 our client's wasted costs of the Tribunal application be paid by your clients, alternatively, reserved for later determination by the High Court with the parties agreeing that the High Court will be entitled also to rule on the wasted costs incurred by our client.
7. Should any of these conditions not be met, our client reserves the right to immediately continue with the Tribunal application which is stayed merely for the purposes of allowing your clients to bring their case.
8. Please let us know, in writing, by close of business on Thursday, 6 April 2023, whether your client agrees to the above terms. Once such confirmation is received, we will alert the Tribunal to this arrangement.
9. We have copied this letter to SASA who should obviously have been included on your letter to our clients, but was inexplicably excluded. We have also copied Illovo Sugar (South Africa) (Pty) Ltd, who has already expressed an interest in joining the Tribunal application in support of the relief sought by our client.
10. Our client's rights remain fully reserved.

Two handwritten signatures in black ink, one appearing to be 'AS' and the other a stylized signature.

WEBBER WENTZEL

in alliance with > Linklaters

Yours faithfully

pp L Kamukwamba

WEBBER WENTZEL

Prelisha Singh / Lara Kahn

Partner

Direct tel: +27 11 530 5419 / +27 21 431 7283

Direct fax: +27 11 530 6419

Email: prelisha.singh@webberwentzel.com / lara.kahn@webberwentzel.com

PP *L*

DELIVERED BY EMAIL**Webber Wentzel**

Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com

Johannesburg

Attention: P Singh, L Kahn, and L Kamukwamba

Johannesburg Office
 The Central
 96 Rivonia Road
 Sandton 2196 South Africa
 Private Bag 10015
 Sandton 2146
 Docex 111 Sandton
 Tel +27 11 535 8000
 Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
 OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9334322v3
 DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
 EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

6 April 2023

Dear Sirs

THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")

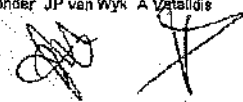
- 1 We refer to your letter dated 5 April 2023 ("your letter").
- 2 The content of paragraphs 2 and 3 of your letter are self-serving and are disputed by our client. Our clients' position has been clear and consistent, and has been communicated not only to your client, but also to the South African Sugar Association (SASA). In this regard -

2.1 on 24 February 2023, our clients addressed a letter to SASA in which it was recorded -

3. *As articulated by the BRPs to various SASA representatives during the course of the abovementioned discussions, based on comprehensive legal advice received by the BRPs from their legal advisors (including Werksmans and Advocate Arnold Subel SC), the BRPs remain of the view that the obligation to pay the amounts claimed by SASA as due for payment by THL and referred to in paragraphs 3 and 4 of the Subject Letter (the "Subject Amounts") is capable of being, and is accordingly hereby, suspended under the provisions of section 136(2) of the Companies Act, 2008...* (our emphasis);

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
 Directors: D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKDF Antunes RL Armstrong DA Arleiro K Badal T Bata JD Behr AR Berman MNM Bhengu AL Biletyl RE Bonnet HGB Boshoff TJ Boswell MC Bränn W Brown PF Burger HLE Chang PG Cleland JG Cloete PFJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin GF Griessel N Harduth NA Hlatshwayo J Hollesen MGH Hontela BB Holz AE Human T Inno HC Jacobs TL Jansa van Rensburg AV Jara G Johannes S Jufy J Kallmeyer A Kenny R Kiloran N Kirby HA Kotze S Krige CJ Lalitha H Laikov K Rajah F le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubba BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Marlon PO Mashelane NT Matshabela JE Meiring H Michael SM Moerane R Molise C Morallis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Niemand BW Ntuli BPF Olliver WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Poter AA Pyzikowski RJ Reath K Rajah A Ramdhan MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibida FT Sikhavhakavha LK Silberman S Sinden DE Singo JA Smit BM Sono CJ Stavens PO Steyn J Stockwell DH Swart PW Tindie SA Torr JJ Truter KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Haerden JJ van Niekerk FJ van Tonder JP van Wyk A Vezalidis RN Wakefield L Wepson D Wegters G Wilkins M Wipshah DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH



2.2 on 28 March 2023, we advised your client that -

"3.2 ... The BRPs arrived at the decision to suspend THL's levy and redistribution obligations after extensive investigations, deliberation, and consideration. The BRPs remain firmly of the view that such payment obligations are capable of suspension in terms of section 136(2) of the Companies Act 71 of 2008 and that they were required to suspend such obligations in the discharge of their duties and in the best interests of the general body of creditors." (our emphasis);

2.3 both of the recordals referred to in paragraphs 2.1 and 2.2 above are consistent with our letter dated 30 March 2023 addressed to you in which we record -

"5 Our clients have never disputed the nature of the payment obligations imposed on millers by the Industry Agreement, nor have they suggested that those obligations can be suspended under the terms of the Industry Agreement.

...

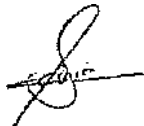
7 As our letter addressed to you dated 28 March 2023 ("our letter") clearly expressed, our clients' have lawfully acted in terms of the Companies Act by suspending THL's obligation to pay its levies and redistribution obligations under the Industry Agreement."

- 3 Our clients' have thus at all times asserted that they are entitled to suspend THL's obligations as contained in the Industry Agreement because of their powers as Business Rescue Practitioners under the Companies Act. Your client's apparent failure to appreciate that their powers arise from the Companies Act, and not the Industry Agreement, is not of our client's making.
- 4 Our clients' do **not** concede that it is impermissible for them to suspend THL's levy obligations under the Industry Agreement or that SASA can enforce payment of those levies whilst THL is in business rescue. These are, *inter alia*, the basis of the disputes that our clients' will seek to have the High Court determine – but they are disputes that arise between our clients and SASA and are not disputes in respect of which your client has standing. There was consequently no obligation on our clients' part to advise your client of its intention to seek declaratory relief. Nor are they disputes in respect of which the Tribunal has jurisdiction. The second sentence of paragraph 4 of your letter is consequently rejected in its entirety.
- 5 Our clients' similarly reject paragraph 5 of your letter. Our clients' deny that they were under any obligation to seek declaratory relief; it does so now only in the interests of bringing clarity to the business rescue process. Nor can the time and costs that your client has incurred in preparing the Tribunal application be laid at our clients' door, when that application was both defective from the outset, and liable to negatively affect the wider sugar industry and the individuals employed therein.
- 6 THL was placed into Business Rescue in an attempt to save THL's milling business so as to enable it to continue trading in the ordinary course of business and once again to participate fully in the sugar milling industry. Your clients' ongoing attempts to compel our clients' to pay THL's levy and redistribution obligations under the Industry Agreement threaten the success of THL's Business Rescue. If the business of THL cannot be rescued, the consequences for millers and employees in the sugar industry will be devastating and irreparable. The decision to suspend THL's payments obligations must be understood in that context.



- 7 Our clients do not accede to the conditions set out in paragraph 6 of your letter and reject the content of paragraph 7 of your letter. In this regard -
- 7.1 our clients appreciate the need for the application to be issued and served expeditiously and have undertaken to conduct themselves accordingly. Your client is not entitled to dictate to them a deadline by which their High Court application must be filed (as it purports to do in paragraph 6.1 of your letter);
- 7.2 our clients have no difficulty in agreeing a joint approach to the Judge President of the KwaZulu-Natal High Court for a preferential date for the hearing of our clients' application. However, our clients are not in a position to agree anything with your client, at least until our clients' foreshadowed application has been issued and served, and all parties cited therein are provided with an opportunity to participate in this process;
- 7.3 as you are well aware, our clients are not entitled to agree that they will not publish their Business Rescue Plan until the final determination of this matter, and it is wholly inappropriate for your client make the request contained in paragraph 6.3 of your letter. Our clients' obligations are to act in the best interest of THL. Should our clients determine at the relevant time that it is in THL's best interest to seek an extension for the publication of the Business Rescue Plan, they will do so; and
- 7.4 against the background of what is set out in our previous correspondence and above, the suggestion in paragraph 6.4 of your letter that our clients should tender your client's costs of the Tribunal application is outrageous. Our clients are amenable to agreeing that the costs of the Tribunal application be determined by the High Court, only if your client withdraws that application – and in that event, our clients will seek their costs consequent upon the delivery of the fatally defective Tribunal application from your client.
- 8 Should your client attempt to continue with the fatally defective Tribunal application, our clients stand by the content of paragraph 12 of our letter dated 4 April 2023 and repeat that an appropriate punitive cost award will be sought.
- 9 Our failure to address this matter more fully at this stage should not be construed as a concession of the correctness of any assertion advanced by your client, or yourselves on your client's behalf, to date, nor as a waiver of our clients' rights to deal therewith in further detail in the appropriate forum. Such rights are, and remain, fully reserved.

Yours faithfully




Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**
Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

CC: **The South African Sugar Association | Care of Garlicke & Bousfield Inc**
Email: howard.stephenson@gb.co.za

CC: **Illovo Sugar South Africa | Care of Cox Yeats**
Email: tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za; lmapike@coxyeats.co.za; mjackson@coxyeats.co.za



DELIVERED BY EMAIL**Webber Wentzel**

Email: Prelisha.Singh@webberwentzel.com
Lara.Kahn@webberwentzel.com
Lubumba.Kamukwamba@webberwentzel.com

The Sugar Industry Appeals Tribunal

Email: sharitha.singh@sasa.org.za; ezra.piliay@sasa.org.za

Garlicke & Bousfield Inc

Email: howard.stephenson@qb.co.za

Cox Yeats

Email: tscheepers@coxyeats.co.za; irodd@coxyeats.co.za;
imapiki@coxyeats.co.za; mjackson@coxyeats.co.za

Johannesburg Office
 The Central
 96 Rivonia Road
 Sandton 2196 South Africa
 Private Bag 10015
 Sandton 2146
 Docex 111 Sandton
 Tel +27 11 535 8000
 Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/tjb/TONG7430.11/#9347379v3
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

11 April 2023

Dear Sirs

THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")

- 1 We refer to our letter addressed to Webber Wentzel dated 6 April 2023 ("our letter"), which was copied to Cox Yeats, Garlicke & Bousfield Inc and The Sugar Industry Appeals Tribunal.
- 2 Our clients have commenced preparation of the High Court application ("the application") referred to in paragraph 7 and its sub paragraphs of our letter and are proceeding with it as expeditiously as possible, given that a number of our clients' representatives and legal team have been unavailable over the Easter / Passover holidays. It nevertheless remains our clients' intention to issue and serve the application as soon as possible, and during the course of next week.
- 3 Each of the addressees of this letter are requested to confirm by return that they -
 - 3.1 are authorised to accept service of our clients' High Court application;

Werksmans Inc. Reg. No. 1990/007218/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
 Directors D Hertz (Chairman) DL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arleiro K Badel T Bata JD Behr AR Berman MNM Bhengu AL Bilalyl
 RE Bonnel HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger HLE Chang PG Clatand JG Cloete PPJ Coetzee C Cole-Morgan J Darling R Driman KJ Pyle S Gest D Gewer
 JA Gebetz R Goolkin GF Griessel N Harduth NA Hlatshwayo J Holleran MGH Honibell BB Hutz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jane G Johannes S July
 J Kallmeyer A Kenny R Killoran N Kirby HA Kolbe S Krige CJ Lalitha H Laskov K Fajah P Je Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso
 DD Maglason MPC Manaka JE Mardon PD Mashatane NT Matshebela JE Malring H Michael SM Moerana R Moitse C Moralis PM Morebo NPA Mosisiri L Naidoo K Nkukheni
 JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayatchy M Pansgroouw S Passmoor D Pisanji T Pottar AA Pyzikowski RJ Raath K Rajah A Ramdin
 MDF Rodrigues BR Rootman W Rosenberg ML Scott TA Sibidi FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smil BM Sono CI Stevens PD Steyn J Stockwell
 DH Swart PW Tindle SA Tom JJ Truter KJT Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vetalidis
 RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

- 3.2 will accept service of our clients' application by way of email; and
- 3.3 will regard service of the application by our offices as service having been validly effected in terms of the Uniform Rules of Court.
- 4 Given the importance of the legal dispute at issue, and the number of parties who have indicated an interest in the outcome of the application, we consider this matter to be appropriate for case management. Please confirm by return that following the delivery of our clients' founding papers, you and your clients will agree to a joint approach to the Judge President to request a case management meeting and to seek directions regarding a -
 - 4.1 timetable for the exchange of pleadings in this matter; and
 - 4.2 special allocation for the hearing of the application.
- 5 Case management will also enable the parties to approach the appointed case manager for further directions as and when required.
- 6 Our suggestion as regards the joint approach to the JP should in no way be construed as a concession on the part of our client that this matter is urgent or that it ought to be dealt with as an urgent application.
- 7 We await to hear from you.

Yours faithfully



Werksmans Attorneys



WEBBER WENTZEL

in alliance with > Linklaters

Attention: Danny Andropoulos

Werksmans Attorneys
The Central
96 Rivonia Road
Sandton
2196

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000
F +27 (0) 11 530 5111

www.webberwentzel.com

By email: dandropoulos@werksmans.com;
jsmith@werksmans.com; tboswell@werksmans.com;
dhertz@werksmans.com; sgast@werksmans.com

COPY TO: Garlicke & Bousfield Inc.By email: howard.stephenson@gb.co.za**COPY TO: Cox Yeats**

By email: tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za;
imapiki@coxyeats.co.za; mjackson@coxyeats.co.za

Your reference	Our reference	Date
Mr T Boswell/Mr D Andropoulos/ Mr D Hertz/Ms S Gast/ tjb/TONG7430.11/#9334322v3	P Singh / L Kahn / L Kamukwamba/ 3058873	12 April 2023

Dear All

RCL Foods Sugar & Milling (Pty) Limited ("our client") // The Business Rescue Practitioners of Tongaat Hulett Limited (in business rescue) ("your clients") and others

1. We refer to your letters, dated 6 April 2023 ("your 6 April letter") and 11 April 2023 ("your latest letter"). We address this letter to you jointly, on behalf of our client and Illovo Sugar (South Africa) (Pty) Limited, represented by Cox Yeats.
2. We do not intend to address each and every averment contained in your 6 April 2023 letter and our failure to do so should be construed as a denial of those averments not specifically addressed. Our client reserves the right to address those averments at the appropriate time and in the appropriate forum. The focus of this letter is to respond to your latest letter. For convenience, we adopt the definitions we have used in previous correspondence for purposes of this letter.

Senior Partner: JC Els Managing Partner: SJ Hilton Partners: BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Bai DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim G Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Cousyn DB Cron PA Crossland R Cruywagen JH Davies KM Davis PM Daya ST Dias L de Bruyn PU Dela N Denenga DW de Villiers B&C Dickinson DA Dingley G Driver W Druce GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Elser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L Franca M Garden KL Gawith OH Goldenhuys MM Gibson C Gopal CI Gouws PD Grealy L Green S Harbun JM Harvey JS Henning KR Hillis Z Hlophe CM Holfield PM Holloway KT Inglis HE Jarvis JG Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kliner A Keyser MD Kote JC Kraswinkel J Lamb E Louw M Mhlangu S Manley V Mannaar L Marais G Masina T Masingi N Mbera MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela P Mohanlal N Moodley L Moolman LE Mosterl VM Movshovich C Murphy P Naidoo DC Nchabeleng A Ngubo C Ntshing ZN Ntshona M Nxumalo AN Nyatsumba MG Nzimande A October L Ouedaal GJR Olivier N Paige AS Pany S Patel N Patner GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar DJ Rafferty D Ramjattan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Sarnadon JW Scholtz KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smk MP Spalding HW Straculi LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theissen TK Thekiso C Theodosiou T Theunissen R Thavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali JE Verden HM Venter B Versfeld NG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

Chief Operating Officer: SA Boyd

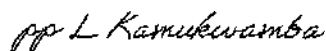
WEBBER WENTZEL

in alliance with > Linklaters

Page 2

3. We note the contents of paragraph 2 of your latest letter, specifically that your clients have started preparing their High Court application and that it will be launched next week.
4. We wish to confirm that Webber Wentzel and Cox Yeats:
 - 4.1 are duly authorised to accept service of the application on behalf of their respective clients;
 - 4.2 will accept electronic service of the application on behalf of their respective clients; and
 - 4.3 will regard service of the application by your offices as service having been validly effected in terms of the Uniform Rules of Court.
5. Our respective clients agree to jointly approaching Judge President Poyo-Diwati to request a case management meeting and to seek directions regarding a timetable for the exchange of pleadings in the matter; and a special allocation for the hearing of the application.
6. Our clients remain of the view that the application is urgent but do not intend to debate this issue with your client, at this juncture.
7. Our respective client's rights remain fully reserved.

Yours faithfully

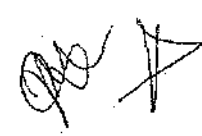
**WEBBER WENTZEL**

Prelisha Singh / Lara Kahn

Partner

Direct tel: +27 11 530 5419 / +27 21 431 7283

Direct fax: +27 11 530 6419

Email: prelisha.singh@webberwentzel.com / lara.kahn@webberwentzel.com

"FA32323



WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Webber Wentzel

Email: Prelisha.Singh@webberwentzel.com

Lara.Kahn@webberwentzel.com

Lubumba.Kamukwamba@webberwentzel.com

Johannesburg

Attention: P Singh, L Kahn, and L Kamukwamba

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 100 5
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/sg/TONG7430.11/#9374019v1
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131
EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/sgast@werksmans.com

21 April 2023

Dear Sirs

THE BUSINESS RESCUE PRACTITIONERS ("our clients") OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") // RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED ("your client")

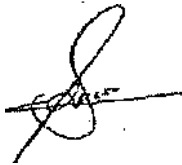
- 1 We refer to our letter dated 11 April 2023 ("our letter") and the responses thereto received from Webber Wentzel and Cox Yeats on 12 April 2023.
- 2 In our letter, we indicated that we would file our clients' foreshadowed High Court application this week. The application is far advanced, but not complete.
- 3 You will no doubt appreciate the complexity of the issues that are required to be dealt with and a number of individuals who are required to comment and approve the founding papers. It has simply not been possible to obtain comments from our full counsel team, the three appointed joint business rescue practitioners and representatives of THL itself.
- 4 We reasonably expect that we will be able to file our clients' High Court application in the first half of next week. As a courtesy, we undertake to forward an unsigned copy of the application to you once it is finalised.
- 5 Given that this matter is not urgent, there is no prejudice to your client if the application is served next week, particularly since our clients have already committed to judicial case management and requesting a preferential hearing date from the Judge President.

Werksmans Inc, Reg. No. 1990/087215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Herzig (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Artelro K Badal T Beta JD Behr AR Baman NMN Bhengu AL Bilalyl
RE Bonnet HGB Boshoff TJ Boswell MC Britin W Brown PF Burger HLE Chang PG Cleland JG Cloete PPJ Coetzee C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewar
JA Gobetz R Goodkin GF Griessel N Harduth NA Hlatshwayo J Hojlesen MGH Honiball BB Hutz AE Human T Inno MC Jacobs TL Janse van Rensburg AV Jara G Johannes S July
J Kallmeyer A Kenny R Kiloran N Kirby HA Kotze S Krige CJ Lallier H Laskov K Rajah P Le Roux MM Lessing E Levenslein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabasa
DD Maglison MPC Manaka JE Merton PO Meshalana NT Matshabela JE Meiring H Michael SM Moarane R Moutse C Moraliis PM Mosebo NPA Motsini L Naidoo K Neluhari
JJ Nienand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayatchy M Pansengrouw S Passmoor D Pisanti T Pottar AA Pyzikowski RJ Raath K Rajah A Ramdath
MDF Rodrigues BR Roodman W Rosenberg NL Scott TA Sibida FT Sikhayakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Slaym J Stockwell
DH Swart PWTindle SA Tam JJ Truter KJ Trudgen M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis
RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Wilkins DG Williams E Wood BW Workman-Davies Consultant DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

- 6 Without detracting from what is set out above, we remind you that your client has no entitlement to dictate a date by when the application must be served.
- 7 We note the content of your letter addressed to the Sugar Industry Appeals Tribunal dated 20 April 2023. Our client has instructed us to repeat the content of our letter addressed to you dated 4 April 2023.
- 8 The content of this letter is not exhaustive and should not be construed as having dealt with all matters affecting the issues. Our clients' right to deal with any such matters in greater detail in due course and in the appropriate forum are reserved.

Yours faithfully



Werksmans Attorneys

CC: **The Sugar Industry Appeals Tribunal**

Email: sharitha.singh@sasa.org.za; ezra.pillay@sasa.org.za

CC: **The South African Sugar Association | Care of Garlicke & Bousfield Inc**

Email: howard.stephenson@gb.co.za

CC: **Illovo Sugar South Africa | Care of Cox Yeats**

Email: fscheepers@coxyeats.co.za; jrodd@coxyeats.co.za; imapiki@coxyeats.co.za; mjackson@coxyeats.co.za



2