IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:
D 13763/2023

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant

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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Ninth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty-first Respondent

INDEX TO APPLICATION – VOLUME 1

8.	Annexure "**FA5**" Order of the Honourable Mr Justice Vahed in Case No. D4472/2023, dated 28 November 2023	402-404
9.	Annexure "**FA6**" Letter from Webber Wentzel to Business Rescue Practitioners of Tongaat Hullet Limited, dated 27 March 2023	405-406
10.	Annexure "**FA7**" Letter from Werksmans to Webber Wentzel, dated 8 June 2023	407-409
11.	Annexure "**FA8**" Letter from Webber Wentzel to Werksmans, dated 1 December 2023	410-417
12.	Annexure "**FA9**" Email from Werksmans to Webber Wentzel, dated 1 December 2023	418

DATED AT SANDTON ON THIS THE 5TH DAY OF DECEMBER 2023.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg,
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh / L Kahn / L Kamukwamba/ 3058873
C/O C/O STOWELL & CO

295 Pietermaritzburg Street,
Pietermaritzburg
Tel: +27 33 845 0500
Email: sarahw@stowell.co.za
Ref: Sarah Myhill

TO: **THE REGISTRAR**
High Court
DURBAN

AND TO: WERKSMANS ATTORNEYS
Attorneys for the First to Fourth Respondents
11th Floor, The Central
96 Rivonia Road
Sandton
Tel: +27 11 535 8248

Email: dandropoulos@werksmans.com / tboswell@werksmans.com / dhertz@werksmans.com / sgast@werksmans.com /
Ref: Mr T Boswell / Mr D Hertz / Mr D Andropoulos / Ms S Gast
C/O EVH INC ATTORNEYS
Unit 4, Holwood Cresent, Holwood Park
La Lucia Ridge, Umhlanga, 4319
Tel: +27 31 492 7971
Email: erik@evhinc.co.za
Ref: W2409/0005

AND TO: GARLICKE & BOUSFIELD NCORPORATED
Sixth and Seventh Respondent's attorneys
7 Torsvale Crescent
La Lucia Ridge Office Estate
Tel: +27 31 570 5408
Email: howard.stephenson@gb.co.za
Ref: H Stephenson

AND TO: THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE

NOTICE BY WAY OF ONLINE PUBLICATION AND ELECTRONIC MAIL TO THE "LENDER GROUP" AS DEFINED IN THE FIRST RESPONDENT'S BUSINESS RESCUE PLAN

AND TO: THE STATE ATTORNEY
Attorneys for the Eighth Respondent
Sixth Floor Metlife Building,
391 Anton Lembede (formerly Smith) Street,
Durban, 4001
Tel: +27 31 306 2448
Email: thmaphumulo@justice.gov.za

AND TO: SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC
Ninth Respondent
170 Flanders Drive,
Mount Edgecombe, 4300
Tel: +27 31 508 7200
Email: Olivia.Finnemore@sacanegrowers.co.za; thomas.funke@sacanegrowers.co.za

AND TO: SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC
Tenth Respondent
170 Flanders Drive,
Mount Edgecombe, 4300
Tel: +27 31 508 7283
Email: info@sa-fda.org.za; tsibiya@sa-fda.org.za

AND TO: COX YEATS ATTORNEYS
Eleventh Respondent's attorneys
Ncondo Chambers, 45 Vuna Close
Umhlanga Ridge, Durban
Tel: +27 31 536 8512
Email: mjackson@coxyeats.co.za

AND TO: SHEPSTONE & WYLIE
Twelfth and Thirteenth Respondents' attorneys
24 Richefond Circle, Ridgeside Office Park
Umhlanga Rocks, 4319
Tel: +27 31 575 7508
Email: afd@wylie.co.za / nerissa.pillay@wylie.co.za
Ref: A F Donnelly/nm/GLED19153.5

AND TO: COX YEATS ATTORNEYS
Fourteenth Respondent's attorneys
Ncondo Chambers, 45 Vuna Close
Umhlanga Ridge, Durban
Tel: +27 31 536 8583
Email: tscheepers@coxyeats.co.za / lmapiki@coxyeats.co.za / jrodd@coxyeats.co.za

AND TO: GARLICKE & BOUSFIELD INCORPORATED
Fifteenth and Sixteenth Respondent's attorneys
7 Torsvale Crescent

La Lucia Ridge Office Estate
Tel: +27 31 570 5408
email: andre.liebenberg@gb.co.za; loryn.liberty@gb.co.za

AND TO: EFG Inc
Seventeenth Respondents' attorneys
1st Floor
27 Fricker Road
Illovo
Docex 261
Randburg
Tel: 011 341 0510
Email: greg@efglaw.co.za

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:
D 13763/2023

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant

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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty first Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL HIGH COURT • DURBAN
05 DEC 2023
REPUBLIC OF SOUTH AFRICA
PRIVATE BAG X54314, DURBAN, 4000
GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA

CERTIFICATE OF URGENCY

I, the undersigned,

MAX DU PLESSIS SC

do hereby certify that I am an Advocate of the above Honourable Court and that I have perused and considered the papers in this application and that it is my respectful view that the matter is of sufficient urgency to enable this Honourable Court to dispense with the requirements of the Uniform Rules of Court in relation to forms and service and to hear this matter as one of urgency.

DATED at UMHLANGA on this 4th day of December 2023.

MAX DU PLESSIS SC

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:
D3768/2023

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant
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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty-first Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL HIGH COURT • DURBAN 05 DEC 2023 REPUBLIC OF SOUTH AFRICA PRIVATE BAG X54314, DURBAN, 4000 REGISTRATEUR VAN DIE HOË HOF VAN SUID-AFRIKA REGSHOF SUID-AFRIKA

NOTICE OF OPPOSITION TO MEDIATION IN TERMS OF RULE 41A (2)A

PLEASE TAKE NOTICE THAT the applicant opposes the referral of this matter to mediation as the applicant is of the view that the dispute is one which is not capable of being resolved through mediation.

That is not only because of the urgency of the situation, but also because the applicant took reasonable steps seeking to avoid bringing the present application at all or under such extreme urgency. On 1 December 2023, the applicant's attorneys of record asked the second to fourth respondents (practitioners) for an undertaking that the practitioners would withdraw the plans, as presently formulated, in order to amend the plans in accordance with the order of Vahed J and consequently to defer the vote. Alternatively, if an undertaking to withdraw the plans would not be provided, the applicant's attorneys sought an undertaking that the vote on the plans would be deferred until no earlier than January 2024 to allow proceedings to be brought in less urgent circumstances. The practitioners' attorneys responded on the same day and refused the undertaking; inviting any application to be served on their offices.

DATED AT JOHANNESBURG ON THIS 5 DAY OF DECEMBER 2023.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg,
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh / L Kahn / L Kamukwamba/ 3058873
C/O C/O STOWELL & CO
295 Pietermaritzburg Street,
Pietermaritzburg
Tel: +27 33 845 0500
Email: sarahw@stowell.co.za
Ref: Sarah Myhill

TO: **THE REGISTRAR**
High Court
DURBAN

AND TO: WERKSMANS ATTORNEYS
Attorneys for the First to Fourth Respondents
11th Floor, The Central
96 Rivonia Road
Sandton
Tel: +27 11 535 8248

Email: dandropoulos@werksmans.com / tboswell@werksmans.com / dhertz@werksmans.com / sgast@werksmans.com /
Ref: Mr T Boswell / Mr D Hertz / Mr D Andropoulos / Ms S Gast
C/O EVH INC ATTORNEYS
Unit 4, Holwood Cresent, Holwood Park
La Lucia Ridge, Umhlanga, 4319
Tel: +27 31 492 7971
Email: erik@evhinc.co.za
Ref: W2409/0005

AND TO: GARLICKE & BOUSFIELD NCORPORATED
Sixth and Seventh Respondent's attorneys
7 Torsvale Crescent
La Lucia Ridge Office Estate
Tel: +27 31 570 5408
Email: howard.stephenson@gb.co.za
Ref: H Stephenson

AND TO: THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE

NOTICE BY WAY OF ONLINE PUBLICATION AND ELECTRONIC MAIL TO THE "LENDER GROUP" AS DEFINED IN THE FIRST RESPONDENT'S BUSINESS RESCUE PLAN

AND TO: THE STATE ATTORNEY
Attorneys for the Eighth Respondent
Sixth Floor Metlife Building,
391 Anton Lembede (formerly Smith) Street,
Durban, 4001

Tel: +27 31 306 2448
Email: thmaphumulo@justice.gov.za

AND TO: SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC
Ninth Respondent
170 Flanders Drive,
Mount Edgecombe, 4300
Tel: +27 31 508 7200
Email: Olivia.Finnemore@sacanegrowers.co.za; thomas.funke@sacanegrowers.co.za

AND TO: SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC
Tenth Respondent
170 Flanders Drive,
Mount Edgecombe, 4300
Tel: +27 31 508 7283
Email: info@sa-fda.org.za; tsibiya@sa-fda.org.za

AND TO: COX YEATS ATTORNEYS
Eleventh Respondent's attorneys
Ncondo Chambers, 45 Vuna Close
Umhlanga Ridge, Durban
Tel: +27 31 536 8512
Email: mjackson@coxyeats.co.za

AND TO: SHEPSTONE & WYLIE
Twelfth and Thirteenth Respondents' attorneys
24 Richefond Circle, Ridgeside Office Park
Umhlanga Rocks, 4319
Tel: +27 31 575 7508
Email: afd@wylie.co.za / nerissa.pillay@wylie.co.za
Ref: A F Donnelly/nm/GLED19153.5

COX YEATS ATTORNEYS
Fourteenth Respondent's attorneys
Ncondo Chambers, 45 Vuna Close
Umhlanga Ridge, Durban
Tel: +27 31 536 8583
Email: tscheepers@coxyeats.co.za /
lmapiki@coxyeats.co.za / jrodd@coxyeats.co.za

AND TO: GARLICKE & BOUSFIELD NCORPORATED
Fifteenth and Sixteenth Respondent's attorneys
7 Torsvale Crescent
La Lucia Ridge Office Estate
Tel: +27 31 570 5408
Email: andre.liebenberg@gb.co.za; loryn.liberty@gb.co.za

AND TO: EFG Inc
Seventeenth Respondent's attorneys 1st Floor
27 Fricker Road
Illovo
Docex 261
Randburg
Tel: 011 341 0510
Email: greg@efglaw.co.za

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:
D13763/2023

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant
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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty-first Respondent

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL HIGH COURT • DURBAN
05 DEC 2023
REPUBLIC OF SOUTH AFRICA
PRIVATE BAG X54314, DURBAN, 4000
GRIFFIER VAN DIE HOOGGEREGSHOF SUID-AFRIKA

NOTICE OF MOTION

TAKE NOTICE THAT the aforesaid applicant intends making application on **THURSDAY, 7 DECEMBER 2023** at **09h30** or so soon thereafter as counsel may be heard for an order in the following terms:

PART A

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6(12).

2. That the applicant be granted leave to bring this application against the first respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008 ("*the Companies Act*").

3. That the meeting called by the second to fourth respondents ("*the practitioners*") and scheduled for Friday, 8 December 2023 at 08h00 to consider and approve the business rescue plan published by the practitioners on 29 November 2023 be interdicted pending the final determination of the relief sought in part B.

4. That any respondent who opposes this application pay the costs thereof jointly and severally, the one paying the other to be absolved, including the costs of two counsel where so employed, on a punitive basis.

5. Further and/or alternative relief.

PART B: on a date to be allocated by the registrar of the above Honourable Court, and on papers duly supplemented, the applicant seeks an order in the following terms:

1. That the business rescue plans published by the practitioners on 29 November 2023 be declared unlawful and set aside.

2. That any respondent who opposes this application pay the costs thereof jointly and severally, the one paying the other to be absolved, including the costs of two counsel where so employed.

3. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **MICHELA CHIARA CUTTS** shall be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the offices of the undersigned attorneys at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that the applicant is prepared to accept service of all subsequent documents and notices in the application by electronic mail.

TAKE NOTICE FURTHER that the respondents must, if they intend opposing this application:

(a) Notify the applicant's attorneys in writing by 16h00 on Tuesday, 5 December 2023; and

(b) Deliver their answering affidavits, if any, by no later than 16h00 on Wednesday, 6 December 2023.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY

DATED AT JOHANNESBURG ON THIS THE 5th DAY OF DECEMBER 2023.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg,
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh / L Kahn / L Kamukwamba/ 3058873
C/O C/O STOWELL & CO
295 Pietermaritzburg Street,
Pietermaritzburg
Tel: +27 33 845 0500
Email: sarahw@stowell.co.za
Ref: Sarah Myhill

TO: **THE REGISTRAR**
High Court
DURBAN

AND TO: WERKSMANS ATTORNEYS
Attorneys for the First to Fourth Respondents
11th Floor, The Central
96 Rivonia Road
Sandton
Tel: +27 11 535 8248

Email: dandropoulos@werksmans.com / tboswell@werksmans.com /
dhertz@werksmans.com / sgast@werksmans.com /
Ref: Mr T Boswell / Mr D Hertz / Mr D Andropoulos / Ms S Gast
C/O EVH INC ATTORNEYS
Unit 4, Holwood Cresent, Holwood Park
La Lucia Ridge, Umhlanga, 4319
Tel: +27 31 492 7971
Email: erik@evhinc.co.za
Ref: W2409/0005

AND TO: GARLICKE & BOUSFIELD NCORPORATED
Fifth and Sixth Respondent's attorneys

7 Torsvale Crescent
La Lucia Ridge Office Estate
Tel: +27 31 570 5408
Email: howard.stephenson@gb.co.za
Ref: H Stephenson

AND TO: THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE

NOTICE BY WAY OF ONLINE PUBLICATION AND ELECTRONIC MAIL TO THE "LENDER GROUP" AS DEFINED IN THE FIRST RESPONDENT'S BUSINESS RESCUE PLAN

AND TO: THE STATE ATTORNEY
Attorneys for the Eighth Respondent
Sixth Floor Metlife Building,
391 Anton Lembede (formerly Smith) Street,
Durban, 4001
Tel: +27 31 306 2448
Email: thmaphumulo@justice.gov.za

AND TO: SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC
Ninth Respondent
170 Flanders Drive,
Mount Edgecombe, 4300
Tel: +27 31 508 7200
Email: Olivia.Finnemore@sacanegrowers.co.za; thomas.funke@sacanegrowers.co.za

AND TO: SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC
Tenth Respondent
170 Flanders Drive,
Mount Edgecombe, 4300
Tel: +27 31 508 7283
Email: info@sa-fda.org.za; tsibiya@sa-fda.org.za

AND TO: COX YEATS ATTORNEYS
Eleventh Respondent's attorneys
Ncondo Chambers, 45 Vuna Close
Umhlanga Ridge, Durban
Tel: +27 31 536 8512
Email: mjackson@coxyeats.co.za

AND TO: SHEPSTONE & WYLIE
Twelfth and Thirteenth Respondents' attorneys
24 Richefond Circle, Ridgeside Office Park
Umhlanga Rocks, 4319

Tel: +27 31 575 7508
Email: afd@wylie.co.za / nerissa.pillay@wylie.co.za
Ref: A F Donnelly/nm/GLED19153.5

AND TO: EFG Inc
Seventeenth Respondents' attorneys
1st Floor
27 Fricker Road
Illovo
Docex 261
Randburg
Tel: 011 341 0510
Email: greg@efglaw.co.za

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant
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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LTD	Twenty first Respondent

FOUNDING AFFIDAVIT

W.

I, the undersigned,

MICHELA CHIARA CUTTS

do hereby make oath and say as follows:

1. I am an adult female and the managing director of RCL Foods Sugar and Milling Proprietary Limited, being the applicant herein ("*RCL*"). I am duly authorised to institute these proceedings on behalf of RCL and to depose to this affidavit.

2. The facts contained in this affidavit are within my personal knowledge, save where the context indicates otherwise and are, to the best of my belief, both true and correct. Where I rely on information provided to me by others, I believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the applicant's legal representatives.

Overview of application

3. This is an application brought in two parts: Part A seeks urgent relief to interdict a meeting scheduled for 08h00 on 8 December 2023 and Part B seeks to declare two business rescue plans (collectively "*the plans*") to be voted upon at the said meeting, unlawful.

4. The plans were published on 29 November 2023 by the second to fourth respondents, who are the business rescue practitioners ("*the practitioners*") of the first respondent ("*THL*"). THL is in voluntary business rescue and has been since 27 October 2022.

5. This application and my founding affidavit have been drawn in haste given that the meeting to approve the plan is to be held on this coming Friday at 08h00. As a

W.

consequence, the grounds relied upon by RCL to substantiate the unlawfulness of the plans in this application are by no means exhaustive and RCL will deliver a supplementary founding affidavit in respect of the Part B relief in due course.

6. The plans are unlawful both in substance and in form. In the first instance, the Companies Act 71 of 2008 ("*the Companies Act*") only allows publication of "*a plan*" for consideration at "*a meeting*" and not multiple plans for consideration at multiple meetings as the practitioners seek to do.

7. In the second instance, the plans are in direct violation of the provisions of the Sugar Act 9 of 1978 ("*Sugar Act*") and the Sugar Industry Agreement promulgated under section 4 of the Sugar Act ("*Industry Agreement*").

8. This legislation regulates the sugar industry, and ensures that millers, refiners and growers are insulated from the sugar dumping export market. For present purposes, it requires THL, a miller and refiner, to make payment of certain statutory levies and redistribution payments ("statutory obligations") to the South African Sugar Association, being the sixth respondent ("*SASA*"). The practitioners unilaterally suspended payment of these statutory obligations post-commencement in the amount of R1,1billion, as recorded in the business rescue plans. In doing so, they purported to act in terms of a power they contended is conferred upon them by section 136(2) of the Companies Act.

9. Their ability to suspend those payments was challenged by, *inter alia*, RCL and SASA. Whilst the Companies Act is clear that statutory obligations, unlike contractual obligations, cannot be suspended, the practitioners sought a declarator to legitimise their suspension of the statutory obligations. That application was heard in this court by the

W.

Honourable Justice Vahed, who dismissed the application with costs on 28 November 2023 ("*the order*").

10. On 4 December 2023, the Honourable Justice Vahed delivered his judgment ("*the judgment*"). A copy of the judgment is annexed, marked "**FA1**". It is a detailed exposition of the law, dealing thoroughly in a 73-page judgment with each of the arguments raised by the practitioners, and rejecting each of those arguments as having no merit. The judgment is damning. It expressly records at paragraph 108 that the statutory obligations to SASA "*are simply the costs of doing business – nothing more, and certainly nothing less. They cannot be suspended and are not subject to the moratorium*". At paragraph 164, the judgment records further "*To put it bluntly: if a company cannot comply with its statutory obligations, then it cannot be rescued and must seek liquidation.*"

11. Most pertinent is the finding, at paragraph 181, that "*The suspension of statutory obligations under the SI Agreement post-commencement therefore results in the preference of SASA in the rescue of THL. This is a consideration which the practitioners ought to take into account when determining whether the business is capable of rescue or whether a better return will result in liquidation.*" Nowhere in the plan is there provision for the preference of SASA. Worse still, IDC, the other post-commencement creditor, is given a vote at the meeting. Whilst I am advised that this is contrary to the existing legal position in regards voting rights of post-commencement creditors, and renders the meeting unlawful, the further fact is that SASA is not afforded that same right.

12. The judgment also rejected the practitioners' alternative constitutional argument, by which they sought to argue that section 136 should be read as permitting them to suspend

W.

the statutory obligations. The effect of the judgment is that THL must comply with its statutory obligations. The practitioners knew that the question of the statutory obligations was integral to their business plan – that is why they sought a declarator to confirm that they could suspend the statutory obligations. Despite the dismissal of the application, the practitioners have drafted and published two plans in which they maintain that the court was wrong to dismiss their application and that they intend to proceed on the basis that their intended appeal (in respect of which they have not yet brought or been granted leave to proceed with) may succeed. This intention was expressed without the practitioners having had sight of the judgement.

13. Quite apart from demonstrating an alarming contempt for the order, this attitude demonstrates an unwarranted degree of arrogance on the part of the practitioners or those entities who may be driving the business rescue process, be they the lender group referred to below or the competing bidders under the two plans. Simply stated, the present position is that the practitioners' decision to suspend payment of the statutory obligations has been declared unlawful. The plans deliberately seek to circumvent the declared legal position by giving notice that the practitioners intend to appeal the order. In so doing they seek the adoption of the plans on the basis that the adopted plan may be implemented despite the order to the contrary. The absurdity of the situation only needs to be stated in order to be appreciated.

14. This was made abundantly clear by the practitioners who, in the plans which were published after the order was granted, but before the judgment, say that they believe or are of "the opinion" that they are still entitled to suspend the statutory obligations. Their belief or opinion is legally irrelevant, and their willingness to conduct themselves by

W.

privileging their opinion over an order of court is wilful self-help, which our courts have repeatedly deprecated.

15. The plans also ignore the fact that the order directed THL to pay the costs of the respondents including the costs of two counsel. RCL was a respondent in the proceeding before Justice Vahed yet RCL's claim is not mentioned in the plan at all.

16. The plans are patently unlawful for these reasons and the meeting scheduled for 08h00 on 8 December 2023 to vote on the plans ought not to go ahead. This is because, once adopted, the business rescue practitioners are compelled to take all necessary steps to implement the plan, with commercial consequences that simply cannot be reversed and with immediate and lasting prejudice to RCL, SASA and the rest of the sugar industry.

17. RCL accordingly seeks interim relief to stop the meeting and, on papers duly supplemented and an expedited date to be arranged with the registrar, final relief declaring the plans unlawful. RCL was only afforded five court days to interdict the meeting. Added to this is the fact that RCL was required to wait for the judgment to be delivered, which arrived at 14h00 on 4 December. The affidavit was then finalised later that evening, taking into account the contents of the judgement, which contents, as set out above, make it patently clear that the plans are unlawful. RCL has moved as quickly as possible but asks for condonation to the extent that it has not complied with the timelines prescribed by the rules, as further dealt with and set out below.

18. I turn now to deal with the reasons why RCL is entitled to the interim relief sought in Part A of this application as a matter of urgency. To avoid prolixity, the details of the parties cited herein are recorded on a separate annexure and annexed, marked "**FA2**". I confirm its accuracy.

19. To be absolutely clear: the purpose of this application is to postpone voting on the two proposed plans pending the determination of the declaration that the plans are unlawful. The declaratory relief is also urgent and RCL will cooperate in any manner required to have that relief determined as a matter of urgency. It will require that its founding affidavit be supplemented and will agree to reasonable timelines for all parties to deliver affidavits. I will now deal with the reasons why RCL contends that it is entitled to the interim relief.

The plans are unlawful and cannot be voted upon

20. The practitioners have published two plans, both dated 29 November 2023. The first is called the RGS Transactions ("*the RGS plan*") a copy of which (excluding annexures) is annexed, marked "**FA3**". The other is called the Vision Transactions ("*the Vision plan*") a copy of which (excluding annexures) is annexed, marked "**FA4**".

21. Both plans record that affected persons will receive "*a special notice in which Creditors will be invited to vote in the Pre-Meeting Proxy Vote*". The purpose of the Pre-Meeting Proxy Vote (whatever that may mean) is recorded as the "*giving of direction*" by the creditors to the practitioners as to the sequence in which the relevant plans are to be considered at a subsequent meeting. This is to be achieved by way of a simple majority vote. Meaning that, before the section 151(1) meeting, the creditors will already be asked to consider and vote upon the plans in substance.

22. Section 150(1) read with section 151(1) of the Companies Act only makes provisions for "*a business plan*" not multiple plans. Section 151(1) only allows for "*a meeting of creditors*" to consider the plan and not multiple meetings. The process adopted by the practitioners impermissibly involves multiple plans to be considered at multiple

meetings. What it also demonstrates is that the practitioners have failed in their primary duty, *viz* to develop a plan for consideration and adoption at a meeting.

23. As an aside, I point out that the practitioners previously developed and published "a plan" which they sought to have adopted by the creditors. RCL was forced to launch an urgent application to prevent that plan from being voted on as it was also unlawful. By agreement that plan was not voted on. That plan has now gone out of the proverbial window as it turned out that the preferred bidder was unable to come up with the necessary finance. Had RCL not stopped voting on that plan it would have been adopted but not implemented and the practitioners would have had to place THL into liquidation.

24. Compounding matters, the Vision plan records that the Vision Transactions are to be concluded prior to the meeting. It is unclear how, following conclusion of that transaction, the RGS plan could possibly prevail. The practitioners do not suggest that the plans are conditional upon the other or put up as alternatives. No mention is made as to which plan is preferable or more beneficial. Rather it is left to affected parties to guess which plan should prevail, without any consequences explained. Such a process is clearly contrary to the provisions of the Companies Act.

25. Aside from their form and inconsistency with the Companies Act, the plans are also flawed in substance. The most startling aspect is that both plans make the following assertion:

> *"[W]ithout detracting from what is set out in the paragraphs above, and without prejudice to the BRPs' right to suspend THL's payment obligations under the SI Agreement, whilst THL remains in Business Rescue, THL intends to discharge its future payment obligations towards SASA in accordance with the SI Agreement. The BRPs remain of the opinion that neither SASA nor Sasexcor*

are entitled to apply set-off or withhold payment of any amounts due to THL." (Emphasis added).

26. The payment obligations referred to by the practitioners in the above extract are the statutory obligations arising under the Industry Agreement. These obligations are statutorily imposed on all millers and are a cost of doing business in the sugar industry. Or put differently, they are a cost of the business rescue proceedings.

27. To simplify, the legislative regime requires that all proceeds from sugar sales (both local and export) are pooled and then distributed among growers and millers according to a ratio. Over-performing millers must pay to SASA amounts calculated under the Industry Agreement for redistribution to under-performing millers. This is to ensure that the underperforming miller can pay the minimum cane price which is set monthly.

28. If the over-performing miller does not pay the redistribution amounts, SASA still has a statutory obligation to pay under-performing millers in terms of clause 183(h) of the Industry Agreement. SASA then recovers this payment from the other millers and farmers as an industry obligation. In other words, the other millers and farmers have to pay for the default of the overperforming miller.

29. In the present scenario, the practitioners unilaterally suspended THL's statutory obligations as an over-performing miller ostensibly under section 136(2) of the Companies Act, which allows practitioners to suspend contractual obligations. THL's post-commencement debt to SASA amounts to R1.1billion. These are the payment obligations that the plans refer to as quoted above.

30. Whether the practitioners could lawfully suspend these statutory obligations was the subject of the declarator application brought by the practitioners in this court under case

number D4472/2023. The practitioners' application was dismissed with costs by the Honourable Justice Vahed, who handed down the order on 28 November 2023 with reasons to follow by 4 December 2023. A copy of the order is annexed, marked "FA5".

31. The practitioners cannot lawfully present a plan which indicates that THL "*intends*" to comply with the statutory obligations and that it does so "*without prejudice*" to their rights to suspend. Those obligations are non-negotiable and are clearly not capable of suspension under the Companies Act. This has now been confirmed by a court of law. The practitioners cannot *intend* to comply. They *must* comply, which compliance must be with prejudice. THL's compliance and its effect on the business must then be clearly set out in the business rescue plan. The plans are unlawful by reason of this exclusion alone.

32. They are relatedly unlawful because they mislead voters as to the state of the plans as compared with the law. Voters must be clearly informed about what they are voting on and that they are not being requested to approve a plan which is unlawful – the plans intentionally misstate the law and the impact of the statutory obligations (affirmed by Vahed J) reflected in the plans.

33. Further, when THL brought the declarator, the practitioners recorded in their founding affidavit that the ability of THL to suspend these statutory obligations would have an impact on the prospect of THL being rescued and the content of its proposed business rescue plan.

34. Despite this, and the finding of this court that such suspension is not permissible, the practitioners persist with avoiding the statutory obligations by recording they "*remain of the opinion that neither SASA nor Sasexcor are entitled to apply set-off or withhold*

payment of any amounts due to THL". The practitioners' belief is irrelevant to the content of the plans. What must be addressed and clearly set out are the legal obligations of THL to pay the statutory amounts. The practitioners' belief or opinion must yield to the rulings of a court of law. The practitioners are not permitted to self-help themselves to a position at odds therewith. I am advised that the Constitutional Court has abhorred precisely such self-help by organs of state, citizens, and all entities that are obliged to comply with the law. The authorities will be drawn to this Court's attention at the hearing, and they alone justify a punitive costs order against the practitioners.

35. If it could get worse, both plans then relegate the R1.1billion post-commencement debt owed to SASA to an unsecured concurrent claim. That again is impermissible as unpaid post-commencement statutory obligations such as the statutory obligations payable under the Sugar Act are, properly construed, claims arising out of the costs of the business rescue proceedings or, if not that, post-commencement finance and rank above unsecured creditors in terms of section 135(2) and/or 135(3) of the Companies Act. SASA's ranking is accordingly incorrect and its claim cannot be considered as concurrent. That SASA's ranking is incorrect has been confirmed in the judgment, at paragraph 181, of the judgment where the court expressly confirmed that SASA holds a preference and that the issue "will have to be dealt with in the business rescue plan". The practitioners did not deal with it in the plans but rather elected to ignore the preference altogether and pre-empt the judgment by adopting the plans prior to Vahed J's ruling.

36. The plans then stipulate how the post-commencement debt of SASA is to be paid. In the RGS plan, provision is made for payment by way of four equal annual instalments, the first being payable only within 12 months of the first anniversary of the closing date of the RGS Transaction (clause 6.1.6.1). The Vision plan alarmingly makes provision of

payment in bi-annual payments but only after all "*appeals have been finally exhausted*" and set-off has occurred of amounts allegedly owing to it by SASA (clause 6.1.6). The emphasis comes straight out of the plan itself. It is not supplied by me.

37. Both suggestions are contrary to the legal position confirmed in the order. The RGS plan cannot suspend payment of the amounts until a date that may or may not arrive in the future and cannot determine that the payments will be made in instalments without interest. The amount outstanding must be immediately paid, and if THL cannot pay, then the consequences are self-evident.

38. The Vision plan is even more outrageous. It records that "*the treatment of the remaining outstanding amount ... will depend on the final outcome of the Declaratory Application (i.e. after any and all appeals have been finally exhausted)*" and proposes an upfront payment after all appeals have been exhausted and thereafter four bi-annual payments, following set off of claims allegedly owing by SASA, with interest accruing at prime. Again, the emphasis is taken verbatim from the plan.

39. As a starting premise, it is patently disrespectful to the Honourable Justice Vahed to indicate that, prior to even being presented with the reasons for the order, an appeal will be brought. Not only is it disrespectful, however, it also indicates the practitioners' approach to the issue – which is to avoid payment of the statutory obligations for as long as possible. The reason for this is obvious, because, even on their own version, THL's rescue depends largely on suspension of these payment obligations.

40. The problem with the practitioners' approach is that this court has now determined the very question that the practitioners asked the Court to resolve – whether THL can suspend its statutory obligations. The Court has told the practitioners that this cannot be done.

W.

The plans were required to deal with these statutory obligations according to that legal position. The practitioners have failed entirely to do so but rather have elected to pretend the position is as they would have it. The failure renders the plans unlawful.

41. The order also directs THL to pay each respondent's costs, including the costs of two counsel. That cost order is a significant liability, given the number of respondents, the significance of the application, the volume of the papers and the duration of argument, yet the plans do not recognise it at all. The practitioners seem to be of the belief that the appeal process will enable them to avoid this obligation altogether and that somewhere down the line, the liability may or may not eventuate. With respect such an approach is not only akin to a Stalingrad litigation tactic but also defeats the very purpose of the Companies Act, which is to provide for the efficient rescue of distressed companies in a manner that balances the rights and interests of all relevant stakeholders.

42. An obvious consequence of the costs award under the order is that RCL (and all the respondents who opposed the application) are creditors of THL and, as such, are affected persons as contemplated by s128(1)(a) of the Companies Act. RCL ought to be listed as a creditor of THL. Because they are not, the plans do not contain all the information reasonably required to facilitate affected persons in deciding whether to adopt the plan. Not only that, but as affected persons, they have not been given proper notice of the meeting or furnished with the plans. According to the plans, they are not creditors and would not be entitled to attend the meeting. I point out that unsurprisingly the practitioners' remuneration is not ignored in the plan.

43. A "*business rescue plan*" is defined in the Companies Act as meaning a "*plan contemplated in section 150*". To constitute a plan contemplated in section 150, a business rescue plan must contain all information reasonably required to facilitate

JW

affected persons in deciding whether to accept or reject the plan. The plans presented by the practitioners clearly fall short of that standard.

44. For all the above reasons, the plans are unlawful and should not be voted upon.

The meeting should be stopped

RCL's prima facie right

45. RCL accordingly seeks to interdict the meeting convened for the consideration and adoption of the plan. For the simple reason that RCL's claim is not recognised in the plans, RCL's right to be treated as a creditor in the plans has been violated. Be that as it may, RCL, as an affected person, it enjoys a clear right to be presented with a lawful plan and that any plan presented to creditors and/or shareholders complies with the law. As these plans are unlawful that clear right has been breached.

46. Further, RCL is a miller and refiner as defined in the Sugar Act. The Industry Agreement is binding on it. In terms of the Industry Agreement, it is entitled to pro-rata payment of redistribution amounts paid by THL (and any other overproducing miller) to SASA. RCL is also obliged by the Industry Agreement to pay any statutory levy raised by SASA to cover THL's default. It has paid those industry obligations when levied. As such, it is a creditor (*ad stipulatorem*) of THL.

47. RCL accordingly has a material interest in THL's compliance with its statutory obligations under the Sugar Act and Industry Agreement. RCL is thus an affected person with a legal interest in the proper and lawful performance of the obligations of the practitioners in terms of the Companies Act, including the lawful publishing and adoption of a business rescue plan that fully takes into account the statutory obligations of THL.

48. RCL also has a vested interest in the sugar industry generally and its continued success. The plans will have a significant impact on the industry at large, including the ability of SASA to continue carrying out its legislative responsibilities and statutory obligations and the existence of the regulatory regime in terms of which the industry operates.

49. The 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. So too does RCL and THL, as the major millers and refiners in South Africa.

50. For that reason, there is a significant public interest in the adoption and approval of a lawful business rescue plan. Given the urgency of this matter, RCL cannot assume that persons so affected will approach a court on their own accord. Nor are there other reasonable and effective ways in which the relief sought herein may have been sought or pursued by such persons. RCL accordingly submits that it is entitled to bring this application in the public interest on the basis of an extended standing as prescribed by section 157(1)(d) of the Companies Act, and furthermore under section 38 of the Constitution in its own right, and in the public interest to ensure against self-help and disrespect for court orders.

51. In light of all the aforegoing, RCL has a clear right, let alone a *prima facie* right to interdict the meeting.

Balance of convenience

52. Moreover, if the plan is adopted, the practitioners must take all necessary steps to implement the plan. That means that the plan, albeit unlawful, must be implemented upon

W.

adoption and the practitioners will be required to carry out its terms. The RGS plan records that the RGS transactions will be signed during December 2023. The Vision plan envisages signature of the transactions prior to the meeting. Once the plan is adopted, the commercial reality is that reversing it becomes practically impossible and carries with it significant commercial harm to affected parties.

53. RCL further apprehends that SASA's post-commencement debts will only be paid at some uncertain date in the future or maybe not at all. The failure to pay SASA undermines the regime within which the industry operates. Coupled with the uncertainty as to whether THL will in fact continue paying the statutory obligations, it reveals a real apprehension that SASA may not get paid for the duration of rescue. In such a scenario, the other millers (including RCL) will be burdened with the obligations and the entire industry will be at risk of collapse.

54. The convenience accordingly favours granting the interim relief and adjourning the meeting until an expedited date for the lawfulness of the plans to become fully subjected to judicial scrutiny.

55. The balance of convenience further favours a situation where the plans are subjected to respect for the judgment and order of Vahed J as regards the suspension of statutory industry payments, rather than disrespect therefor. It is also important for the rule of law that the practitioners are not permitted – at least for the interim period until Part B is determined – to self-help themselves to what they believe or what in their "opinion" they think they are entitled to do under the plans, in contrast with what Vahed J has **ordered** is the correct legal position.

Alternative Remedy

56. There is also no alternative remedy which could satisfy the apprehended harm of RCL. This is because a damages claim in due course will not only be extremely difficult to formulate but also unlikely to possibly recover or reverse the effects that the implementation of an unlawful business rescue plan will have in the present scenario.

57. Also, there is no alternative remedy to prevent an abuse of the court order, or to stop self-help. I am advised that such constitutional matters are in the public interest, and that the Court itself has an interest in protecting its own orders. There is no other way for this respect to be achieved but by the order sought in Part A, since with every day that passes the rule of law is undermined by such conduct, which the Constitutional Court has stressed must be arrested immediately. For these reasons, RCL seeks interim relief and submits that it has made out a proper case.

Urgency

58. The matter is urgent because the meeting, which is scheduled for 08h00 on 8 December 2023, seeks to approve unlawful business rescue plans. The plans were only published on 29 November 2023 – a mere **nine** calendar days before the meeting is scheduled to take place. If the meeting proceeds, it is likely that one of the plans will be adopted because of the voting powers of the secured lender group. The lender group has pressured the practitioners to publish the plans. RCL cannot get redress in the ordinary course because the plan will be adopted and approved at the meeting and once that happens the proverbial horse would have bolted.

59. Once the plans are voted upon and a plan is adopted, the practitioners will be obliged to implement the approved plan. The commercial transactions underpinning the plans, which the affected parties are not privy to, but which appear to be conditional upon the plans being approved, will be implemented following approval. The commercial reality is that following such approval, the ability to reverse the effects will be impossible and accordingly a hearing in due course will be futile.

60. The consequences for SASA other millers, growers (especially small-scale growers), refiners and the entire sugar industry in the event that the THL's post-commencement debts to SASA are not paid are dire. The entire industry will be placed at risk.

61. 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.

62. Now, more than ever before, the legally-mandated pooling and division of proceeds from sugar sales between growers and millers in the Industry Agreement must be enforced. This statutory mechanism is crucial for the preservation of the industry.

63. If THL's statutory 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 an urgent 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.

64. The importance of the revenue-sharing arrangement for the sugar industry, and the consequences for the whole industry when a participant fails to make payment, was expressly recognised by the practitioners, under oath, in their application for declaratory relief.

65. At para 110 of their founding papers, under the heading "*(iv) The need for industry protection*", the practitioners themselves recorded that "*South Africa is vulnerable to sugar dumping by international producers*", and that "*the risk of dumping threatens the very sustainability of the South African industry – and the economic benefits and jobs that it creates*" (my emphasis). The practitioners further noted (at para 111) that the risk of a dump market is combatted by "*the South African sugar industry ... with government's imprimatur, entered into a revenue sharing arrangement that seeks to maximise total domestic sugar production (thus securing jobs) and provides for domestic millers to share in the rewards of the domestic market with the risk of over-supply (and the consequent need to export)*" (my emphasis).

66. And then, in para 155 of their affidavit, the practitioners say this: "*The [practitioners] are keenly aware that there are knock-on consequences where THL does not make payment of obligations that arise under the SI Agreement that fall due in business rescue. That is inevitable in any inter partes arrangement of this kind*" (my emphasis). A copy of the practitioners' founding affidavit in the declarator will be made available at the hearing of this matter to the extent necessary.

67. It is also important, when considering the urgency of this application, to have regard to the history of litigation between the parties, the undertakings previously provided by THL, which have now been rendered meaningless, and the steps that RCL has taken to avoiding bringing the present application under such extreme urgency.

68. The practitioners previously published a plan in May 2023. That plan was equally unlawful and defective for a variety of reasons, and one of the reasons was because the plan assumed that the practitioners were entitled to suspend the industry payments, even while that very issue lay ahead for legal determination by the High Court. I attach the letter that RCL wrote to the practitioners on that occasion warning them that their conduct was unlawful and unconstitutional. It is annexed, marked "**FA6**".

69. RCL accordingly sought to interdict the meeting to vote on the plan. It was forced to bring an application in the Pietermaritzburg High Court under case 8478/23P. On that occasion, the practitioners agreed to suspend the meeting and revise the plan. The practitioners should do the same in response to this application that RCL has been forced to bring, pending the outcome of Part B. The fact that they appear intent on trying to rush the plan to a vote on this occasion underlines the need for this Court's intervention – particularly where they contend that they are of the "opinion" that they can self-help themselves by ignoring Vahed J's order.

70. Also importantly is that on the last occasion in May, the practitioners undertook to provide RCL with 30 days' notice of any future meeting. It was on that basis that RCL agreed to remove the interdict from the roll on the strength of that undertaking. A copy of that undertaking is annexed, marked "**FA7**".

71. The plans only came to the knowledge of RCL on 30 November 2023. Notwithstanding the undertaking, THL accordingly gave RCL five court days' notice of the impending meeting. RCL has acted as quickly as possible in the circumstances.

72. RCL took reasonable steps seeking to avoid bringing the present application at all or under such extreme urgency. On 1 December 2023, RCL's attorneys of record asked the

practitioners for an undertaking that the practitioners would withdraw the plans, as presently formulated, in order to amend the plans in accordance with the order and consequently to defer the vote. Alternatively, if an undertaking to withdraw the plans would not be provided, RCL's attorneys sought an undertaking that the vote on the plans would be deferred until no earlier than January 2024 to allow proceedings to be brought in less urgent circumstances. A copy of the letter is annexed, marked "**FA8**".

73. The practitioners' attorneys responded on the same day and refused the undertaking; inviting any application to be served on their offices. A copy of the response is annexed, marked "**FA9**". The practitioners have accordingly forced this application, given their unremitting refusal to comply with the order in respect of their plan and to press ahead regardless.

74. At present, RCL only seeks an interim interdict, pending a declarator that the plan is unlawful. RCL asks for an expeditated date for the declarator and will supplement its founding papers in due course. There is no prejudice to the respondents and any prejudice THL may allege is clearly of their own making. THL published clearly unlawful plans a day after they had lost their own application for a declarator, and then rushed to call for a meeting to be held to vote on the plans mere days after publication (despite previously undertaking to provide adequate notice of any future meeting).

75. Finally, I am advised that any conduct that seeks to frustrate a judgment and order of court is urgently to be stopped. Self-help, and disrespect for Vahed J's judgment, are matters that strike at the rule of law and respect for court orders. The practitioners' conduct must also be stopped immediately or as quickly as possible for this reason too. Our courts have repeatedly held that contumacy and self-help are constitutional matters that are inherently urgent.

Service of the application

76. Because of the time constraints, and the urgency under which this application is brought, RCL will ask that SASA publish a copy of the application on the SASA website (https://sasa.org.za/) and that the practitioners publish the application on THL's website under the business rescue tab (https://www.tongaat.com/business-rescue/).

77. The "Lender Group" as defined in the plan is "*the group of lenders to the Company, all of whom are Secured Creditors*", and which group the practitioners have a duty to update as regards any litigation around their plans, particularly since they have insight into the exact nature of such group and whether any member of such group has an interest in the litigation. The application will accordingly be served on them by way of electronic mail and a copy will be sent to any legal representatives that are already on record.

78. RCL will also ask that the practitioners provide a copy of this application to the eighteenth to twenty first respondents, who are what is defined in the plans as the "Vision Parties", being the persons who may or may not acquire the Lenders claims pursuant to an equity conversion and are participating as "bidders" in THL's business rescue process. Some of these parties are corporate entities registered overseas and we have been unable to identify and locate the contact details of their local representatives. Due to the extreme urgency under which this application has been prepared there is simply no time available to request leave to serve this application on them by edictal citation let alone serve on them overseas.

79. In the application for declaratory relief, key participants in the sugar industry, including millers and industry associations, were cited. All parties individually cited in the application for declaratory relief, who are the first to fourteenth respondents in the present

application, will be personally notified of the application by way of electronic mail and a copy will be sent to any legal representatives that may already be on record.

80. In addition, THL collectively cited "*All Registered Growers*" in the sugar industry. The registered growers in the sugar industry number in the thousands. It is submitted that all registered growers in the industry do not have an interest in the present litigation which requires them to be joined to these proceedings. In any event, there will be service on the South African Cane Growers Association NPC and the South African Farmers' Development Association NPC (the ninth and tenth respondents), which together represent all registered growers in the sugar industry.

81. RCL will also notify the trade unions who represent THL's employees.

82. To the extent that the ordinary forms of service are departed from, the applicants ask for condonation and submit that good cause has been shown in the particular circumstances of this case.

Leave to institute this application

83. To the extent necessary, the applicants ask for leave of the court to bring this application in terms of section 133(1)(b) of the Companies Act.

84. As outlined above, the application raises issues which directly impact on the applicant's rights as well as the rights of participants in the sugar industry generally and the public at large. For the above well-motivated reasons, which reasons would have been unnecessarily replicated should a separate application for leave to institute the application have been brought, it is submitted that it is in the interests of justice that the applicants be granted leave to bring the application.

Conclusion

85. In light of the foregoing, I respectfully ask for an order in terms of the notice of motion.

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 MALELANE on this the 04 day of **DECEMBER 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.

COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
CSC
04 DEC 2023
MALELANE
SOUTH AFRICAN POLICE SERVICE

"FA1"

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: D4472/2023

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant

and

SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent

GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent
HARRY SIDNEY SPAIN N.O.	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email and by publication on *SAFLII*. The date and time for hand-down is deemed to be 14h00 on 04 December 2023.

Vahed J:

Introduction

[1] The applicants seek Orders:

a. Declaring that:

i. the business rescue practitioners ("**BRPs**") of Tongaat Hulett Limited ("**THL**") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of THL which arises under the Sugar Industry Agreement, 2000 ("**the SI Agreement**");

ii. *alternatively*, the BRPs are empowered to suspend, for the duration of the business rescue proceedings, any local market redistribution payment obligations, and related levies and interest, that became due in terms of clauses 183 and 184 of the

SI Agreement, and which would otherwise become due during the business rescue proceedings.

b. *In the alternative* to the relief in paragraph a. –

i. declaring s 136(2)(a)(i) of the Companies Act, 71 of 2008, unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and

ii. reading in the words "*or regulatory regime*" after the word "*agreement*" in s 136(2)(a)(i) of the Companies Act.

c. striking the application brought by the seventh respondent ("**RCL Foods**") before the Sugar Industry Appeals Tribunal; *alternatively* permanently staying RCL Foods' application and directing RCL Foods to pay the applicants' costs in relation thereto.

[2] In the main three issues require determination:

a. The first is the proper interpretation of s 136(2)(a)(i) of the Companies Act, read together with the definition of "*agreement*" in s 1. The question that requires determination is whether, properly interpreted, the provision allows the BRPs of THL to suspend, for the duration of the business rescue proceedings, payment obligations that arise under the SI Agreement.

b. The second issue arises only if it were held that s 136(2)(a) of the Companies Act does not allow the BRPs to suspend payment obligations that arise under the SI Agreement. In that event, the question that requires determination is whether s 136(2)(a) is under-inclusive and irrational, and accordingly contravenes the rule of law in s 1 of the Constitution, and arbitrarily differentiates between creditors in breach of s 9(1) of the Constitution.

c. The third issue is whether it was permissible for RCL Foods to institute proceedings before the Sugar Industry Appeals Tribunal seeking declaratory relief to the effect that millers' payment obligations under the SI Agreement are binding, and that no miller is entitled to suspend them.

The Parties

[3] A description of the parties is required for context.

[4] The first applicant is Tongaat Hulett Limited (In Business Rescue) ("**THL**"), a public company which is currently in business rescue.

[5] The second applicant is Tongaat Hulett Sugar South Africa (Proprietary) Limited (In Business Rescue) ("**THSSA**"), a public company which is also currently in business rescue. THSSA is a wholly owned subsidiary of THL and which has been appointed as THL's agent to deal with all matters of and concerning the South African sugar industry pursuant to a written agency agreement between THSSA and THL.

[6] The third, fourth and fifth applicants are Trevor John Murgatroyd N.O., Petrus Francois van den Steen N.O. and Gerhard Conrad Albertyn N.O. respectively, all of Metis Strategic Advisors (Pty) Ltd, Johannesburg, and who are the duly appointed joint business rescue practitioners of THL.

[7] The first respondent is the South African Sugar Association ("**SASA**"), a juristic entity incorporated and constituted in terms of s 2 of the Sugar Act, 9 of 1978 ("**the Sugar Act**").

[8] The second respondent is the S.A. Sugar Export Corporation (Pty) Limited ("**SASEXCOR**").

[9] The third respondent is the Minister Of Trade, Industry And Competition ("**The Minister**"), the executive authority responsible for administering the Companies Act and the Sugar Act as well as the Minister responsible for determining the terms of the SI Agreement in terms of section 4 of the Sugar Act. The Minister is also joined in this application pursuant to Rule 10A of the Uniform Rules of Court.

[10] The fourth respondent is South African Sugar Millers' Association NPC ("**SASMA**"). All domestic sugar millers and refiners are required to be members of SASMA, which represents all domestic millers and refiners in sugar industry engagements, negotiations, agreements, and arrangements, including when it participates in SASA matters.

[11] The fifth and sixth respondents are the South African Cane Growers' Association NPC ("**SACGA**") and the South African Farmers' Development Association NPO ("**SAFDA**") respectively. All domestic sugarcane growers are obliged to be members of either SACGA or SAFDA, which represent the growers in the sugar industry engagements, negotiations, agreements, and arrangements, including when they participate in SASA. In terms SASA's Constitution, SACGA and SAFDA have equal representation on SASA. For ease of reference SACGA and SAFDA will be referred to collectively as "the Growers' Section". As the industry representatives, the Growers' Section are parties to the SI Agreement and the arrangements to which the SI Agreement gives effect.

[12] The seventh respondent is RCL Foods Sugar & Milling (Proprietary) Limited.

[13] The eighth respondent is ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED ("**Illovo Sugar**").

[14] The ninth respondent is UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED ("**Umfolozi Sugar**").

[15] The tenth respondent is GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED (IN BUSINESS RESCUE) ("**Gledhow Sugar**").

[16] The eleventh respondent is HARRY SIDNEY SPAIN N.O. ("Mr Spain") Mr Spain is the duly appointed business rescue practitioner of Gledhow Sugar.

[17] The twelfth respondent is UCL COMPANY (PROPRIETARY) LIMITED ("UCL").

[18] The thirteenth to twenty-three thousandth respondents are the members of SACGA and SAFDA who comprise all of the registered sugar cane growers. They were informed of these proceedings by way of substituted service authorised by this court on a previous occasion in the present proceedings.

[19] The twenty-three thousand and first respondent and further respondents are the affected persons in THL's business rescue. They are entitled to be joined in this application by operation of the provisions of s 128 of the Companies Act, as read together with sections 144(3)(b) and (f), 145(1)(a),(b) and (c), 145(2)(a) and 146(a),(b),(c) and (d) of the Companies Act. They too were informed of these proceedings by way of substituted service authorised by this court on a previous occasion in the present proceedings.

[20] Ultimately, the application papers spanned some 1338 pages and the opposed hearing unfolded over two days on 13 and 14 September 2023. The 9th, 10th, 11th, 13th and further respondents have not opposed the application. Although the 6th respondent, SAFDA, initially opposed the application and delivered an answering affidavit, it subsequently withdrew its notice of opposition and affidavit and indicated that it will abide the decision to be made in this case. The matter was ultimately opposed by the 1st, 2nd, 3rd, 4th, 5th, 7th, 8th and 12th respondents.

[21] All counsel delivered extremely helpful heads of argument, for which I am grateful. I borrow generously from them from time to time, particularly when sketching the background and when dealing with non-contentious matter.

Context and Factual Background

[22] I deal next with relevant aspects of the factual background.

[23] It is largely common cause that the sugar industry is important to the South African economy. An average of two million tons of sugar per season is produced placing the country regularly in the top quartile of sugar producing countries. The industry generates in excess of R18 billion annually in annual direct income and creates somewhere between 65 000 (according to 1st and 2nd respondents) and 85 000 (according to the applicants) direct jobs, and 350 000 indirect jobs, predominantly in rural areas where employment and economic opportunities are particularly hard to come by. Sugar is particularly significant for the rural economy, where sugar cane is a prolific and strategic crop, and local economies are boosted by the close proximity of sugar mills, and the infrastructural support and income-generating benefits they bring. Sugarcane farms and sugar mills, in most cases, form the backbone of the nearest rural town and are major contributors to the development of secondary economic activity, services and infrastructure that otherwise would be absent. Sustaining the sugar industry and its production levels, is a matter of national social and economic importance.

[24] The sugar industry comprises two broad segments. The first segment is growers, which currently number approximately 23 000. All growers must belong to one or other of the two growers' associations, the fifth respondent, SACGA, or the sixth respondent, SAFDA. The second segment is the milling companies, which are THL, Illovo Sugar, RCL Foods (which each owns three mills), Gledhow Sugar, Umfolozi Sugar and UCL (which own one mill each). Of these, THL, Illovo Sugar, RCL Foods and Gledhow Sugar operate as both millers and refiners. All millers belong to the fourth respondent, SASMA.

[25] The growers' and millers' associations interact with one another and with government through the council of the first respondent, SASA.

[26] SASA is an association initially established by agreement among the growers and millers, and now recognised by s 2 of the Sugar Act. It is governed by a

constitution, the terms of which are published by the Minister in the Gazette. The SASA Constitution was amended in 2018, and again in 2020.

[27] SASA is constituted as an industry forum, through which participants negotiate and agree on issues affecting the industry, in the best interests of the sugar industry

a. SASA is made up of SASMA (representing the Millers' Section) on one hand, and SACGA and SAFDA (representing the Growers' Section) on the other. In terms of clause 2 of the SASA Constitution, each section may select 18 delegates making up a total of 36 delegates who meet annually to appoint councillors to sit on the SASA Council.

b. The SASA Council comprises 20 councillors (in addition to the chairperson and vice chairpersons), ten of whom are nominated by the Millers' Section and ten of whom are nominated by the Growers' Section. The Council manages SASA's affairs.

[28] The government has no representation within SASA, does not appoint delegates or councillors and does not provide SASA with any revenue. SASA is funded by the sugar industry and the levies that accrue to it by its members.

[29] SASA's powers derive, in the main, from the SI Agreement. The SI Agreement governs, *inter alia*, the relationship between growers and millers, on the one hand, and between millers and millers on the other, which includes recording the terms of the revenue sharing arrangement reached among and between them.

[30] The global sugar industry is huge and constitutes one of the top ten commodities traded worldwide. South Africa is one of 120 sugar-producing countries worldwide.

[31] Sugar is globally oversupplied. While the vast majority of sugar is consumed domestically in the country in which it is produced, the export market is a dumping market, in the sense that sugar is almost always sold at a loss as an export.

South Africa is thus vulnerable to dumping by international producers – that is, the import of cheaper sugar at prices that undercuts the price at which the industry can viably produce.

[32] The government and the sugar industry have, as a consequence, taken two significant steps to guard against the risk of sugar dumping:

a. Firstly, the government has, since 2000, imposed anti-dumping duties on imported sugar, so as to increase the price of imports and shield domestic producers against competition for cheaper imports. The duties also have the effect of constraining the domestic price of sugar, in that, in order to ensure that local consumers do not switch to imported sugar, local producers must logically price their product below the price, including the import tariff, of the imported product.

b. Secondly, given the economic importance of the domestic sugar market, and the difficulties it has faced, the sugar industry itself has through SASA, and with the government's *imprimatur*, agreed a revenue-sharing regime in which local sugar production is protected and sustained. The revenue-sharing regime is particularly important in this matter, because it is THL's obligations under this regime that the BRPs have sought to suspend under section 136(2)(a) of the Companies Act.

[33] The revenue-sharing arrangement is based on the central and overarching principle that the growers, the millers, and the refiners should all benefit from an equitable division of the proceeds of the domestic market, and all be insulated against the risk of the export market.

[34] In broad terms the arrangement operates as follows:

a. Firstly, in terms of clause 164 of the SI Agreement, SASA calculates the gross industry proceeds. This comprises the sum of local market sugar sales (at a notional local market price); export sugar sales (at a weighted average export price) and molasses sales (at a notional local

market price). This constitutes the total gross amount to be divided between the millers and growers, before the deduction of levies.

b. Secondly, in terms of clause 165 of the SI Agreement, SASA deducts industrial levies (which comprise all the costs SASA incurs to fulfil its obligations in terms of the SASA Constitution) from the gross industry proceeds, to arrive at the "net divisible proceeds". This constitutes the notional income generated by the industry, less the costs incurred by SASA, for division between millers and growers.

c. Thirdly, the net divisible proceeds are split into two notional pools, and attributed to the millers and growers according to the ratio provided for in the SI Agreement, based on the relative costs they incur. The ratio is approximately 64% in favour of growers and 36% in favour of millers.

d. Fourthly, the recoverable value ("RV") price of cane is determined by (*i*) deducting the grower-specific levies owed to SACGA and SAFDA (which are determined to be equal); and (*ii*) dividing this amount by the number of tons of sugarcane produced by all growers. The RV price constitutes the minimum price that a miller may pay to a grower for unprocessed cane, though millers can, and, in practice, often do, pay more than the RV price in terms of supply contracts.

e. Fifthly, SASA calculates the total tonnage of raw product produced across the domestic, export and molasses markets, and allocates each miller a quota based on the proportion of the total raw product that it has produced. It is important to note that the quota is based on the volume of raw sugar produced, as opposed to the volume of refined sugar sold. It is thus the milling activity that is rewarded, rather than the refining activity – even though both are essential activities in the value chain.

f. The quota applies in each of the domestic sugar markets (i.e. for refined white sugar, refined brown sugar, and molasses), and for the export market. Where a miller outperforms its quota for a particular

product in the domestic market (i.e. refined white or brown sugar or molasses), it must pay SASA quarterly to the extent of its overperformance, based on the relevant notional price. SASA then redistributes the amount paid by over-performing mills to under-performing mills, in proportion to their quotas. Because the quota is based on the volume of raw sugar produced but performance is based on the volume of refined sugar sold, a miller that also refines is likely to be a domestic overperformer, whilst a miller that does not refine (or refines less than the quantity of raw sugar it produces), will be an underseller into the domestic market.

g. Sixthly, any raw sugar which is in excess of the local market demand is exported by SASEXCOR which in turn pays the export proceeds (calculated at the weighted average price for the year) to each mill, according to its quota allocation. Only some mills in fact deliver raw sugar to SASEXCOR for export. THL never has.

[35] The revenue sharing arrangement is recorded in the SI Agreement. The applicants assert that the essence of that arrangement is that it has historically been negotiated between and agreed among the industry participants and thus operates consensually so as to maximise domestic production, and the benefits associated therewith. Against this the respondents contend that the SI Agreement does not operate consensually but instead as subordinate legislation which binds all millers and growers, who cannot elect not to be bound thereby.

[36] THL is an overproducer of sugar in the domestic market in that it refines and sells a greater percentage of the total refined sugar on the domestic market than its allocated quota. As a result it is required to pay SASA redistribution amounts in respect thereof.

[37] As an overproducer on the domestic market, THL undersells its quota on the export market (since the volume sold on the export market is a function of how much of the raw sugar produced is not sold on the domestic market). Therefore, while THL owes redistribution payments to SASA in respect of its domestic

overperformance, it is owed export proceeds in respect of its export underperformance. Because THL sells all the sugar that it produces in the domestic market, and does not export, it asserts that it is entitled to recover its full export proceeds from SASEXCOR as and when they fall due. The respondents, and particularly SASA, hold the view that THL has elected to over-perform domestically and not supply any sugar for export and that it cannot escape the consequences of that election. In response THL counters that it is not a large domestic over supplier by choice. It has become, and is forced to remain, an overseller of refined sugar because other millers, particularly RCL Foods and Illovo, have maintained their milling capacity (and thus their quotas) but reduced their refining capacity (and thus their actual supply of refined sugar to the domestic market).

[38] THL is the oldest sugar milling company in South Africa. Today, it is said to be a mainstay of the South African sugar industry, and a major contributor to the economic and socio-economic development of KwaZulu-Natal and South Africa. It is estimated that THL's trading activities contributed approximately R11 billion to the GDP of the country in 2021 (based on direct, indirect and induced impacts). It produces between 25% and 27% of the volume of sugar produced domestically per year, and is, by far, the industry's major producer of refined sugar, producing more than 40% of the industry's requirements.

[39] THL has found itself in dire financial straits. It asserts that it has approximately 1 000 creditors, with cumulative claims amounting to a total of approximately R10,4 billion. All of its assets are encumbered, with the Industrial Development Corporation having taken cession of its bank accounts and debts, and its remaining secured creditors holding security over all its remaining assets. For the purposes of this application it is not disputed that despite its best efforts, THL has been unable to turn its financial position around.

[40] On 26 October 2022 THL's board of directors resolved to commence voluntary business rescue proceedings. It asserts that the board did so because, in its view, THL remains capable of rehabilitation under the business rescue provisions of the Companies Act. Their only alternative was to liquidate the company, with all of the immediate and deleterious consequences that would have entailed for the sugar

industry and the public. The respondents do not dispute this but hold the view that it was not made clear as to why the board held that view.

[41] When THL first entered business rescue, and the BRPs stepped into the shoes of THL's board of directors, two months of the 2022/2023 sugar season remained. The applicants assert that rather than ceasing THL's crushing and refining operations the BRPs decided to continue THL's crushing and refining operations and to suspend some of THL's payment obligations to afford THL some financial respite within which potentially to recover. This they further assert they were expressly empowered to do so by s 136(2)(a) of the Companies Act. In addition, the BRPs were able, after securing the provision of post-commencement finance from certain secured lender(s), to recommence THL's operations within two weeks of its being placed in business rescue.

[42] When THL went into business rescue, its affairs were effectively frozen whilst the BRPs familiarised themselves with the business. Consequently, from the end of September 2022, THL made no payments to SASA in respect of its obligations under the SI Agreement. It is disputed that during this process the BRPs were entitled to withhold payments to SASA.

[43] On 8 November 2022, SASA expressed concern about THL being placed in business rescue, particularly because its collapse would have "catastrophic social and economic consequences" and would also "have further far-reaching implications and a domino effect on other industry players". SASA therefore offered its support and established a task team to offer the BRPs industry support.

[44] On 13 January 2023, the BRPs cautioned SASA that THL was unlikely to be in a position to pay its redistribution payments, and the associated interest and levies, that would become due around 31 March 2023. SASA wrote to the BRPs on 23 January 2023 adopting the stance that these payment obligations could not be suspended, and that SASA was entitled, under s 133(1)(f) of the Companies Act, to bring proceedings to enforce payment. SASA also acknowledged that there were export proceeds due and payable to THL in the amounts of R777 473 235 (ie. in excess of R777 million), and R225 643 688 (ie. in excess of R225 million), but said

that these payments would be withheld until such time that THL settled its local market redistribution payments which were in excess of R1,727 billion).

[45] On 23 February 2023, SASA sent a letter of demand for R176 237 638.89 (ie. in excess of R176 million), comprising industry levies that it claimed had by then become due under the SI Agreement. In response, on 24 February 2023, the BRPs confirmed that they had suspended the payment obligations under the SI Agreement in terms of s 136(2) of the Companies Act and indicated that they would defend any action undertaken by SASA to enforce payment thereof.

[46] The applicants emphasise that what the BRPs suspended were only THL's payment obligations under the SI Agreement and assert that there is no merit in the respondents' argument that the BRPs were unable to suspend obligations that were reciprocal to obligations with which THL has allegedly not complied. They contend further that that the SI Agreement may contain reciprocal obligations has no bearing on the BRPs' entitlement to suspend THL's payment obligations, and that other than its payment obligations, THL has continued to comply with all of its other obligations in terms of the SI Agreement. They say that in any event, as a matter of law, the BRPs are entitled to suspend reciprocal obligations. For this they rely on the following passage in *BP Southern Africa (Pty) Ltd v Intertrans Oil SA (Pty) Ltd and Others* 2017 (4) SA 592 (GJ) (footnote omitted):

> "[37] Interpretation starts with a textual treatment of the words in their context. The language conferring the power of suspension is pretty clear, at least on the face of it; 'any' is notoriously a word of wide if not unlimited import, and so it would, at least prima facie and unless any absurdity is thrown up, include obligations that are contractually tied with a reciprocal obligation of the creditor."

The respondents dispute this on a number of grounds, including that the obligations are neither contractual nor reciprocal.

[47] 23 March 2023, SASA sent a further letter reiterating its view that the obligations under the SI Agreement were incapable of being suspended.

[48] The amounts due to SASA that have accrued since the commencement of business rescue proceedings up to 31 March 2023, in respect of levies, redistribution payments, and interest, and those that have become due subsequently are in some respects disputed but, in the general scheme of things, irrelevant for present purposes

[49] The BRPs have explained that subject to the availability of funding, payment of local market redistributions and levies would commence from 1 April 2023, and that the amounts accrued up to 31 March 2023 would be dealt with in the BR plan

[50] It seems that in accordance with this undertaking, THL had commenced paying its local market redistribution charges and industry levies due from April 2023 onwards. As matters stand, it appears too that only the amounts that became due before 1 April 2023 remain outstanding (other than a disputed amount for the June redistribution payment). That much too is irrelevant for present purposes.

[51] On 31 March 2023, SASA raised a special levy, in terms of section 175 of the SI Agreement, to meet its industry obligations despite the shortfall in its funding created by, *inter alia*, THL's non-payment. This levy has been paid by other industry participants. The applicants accept that this may have impacted the other millers' profits and some have raised this aspect as being to their detriment.

[52] The BRPs published a business rescue plan ("**the BR Plan**") on 31 May 2023. The BR Plan made no provision for the payment of any industry levies or redistribution payments under the SI Agreement. The BR Plan classified THL's obligations to SASA as an unsecured debt (and SASA as an unsecured creditor), recorded that such debt had been suspended and that confirmation of that suspension was pending before the High Court. The fact that the BR Plan published on 31 May 2023 made no provision for payment of THL's industry obligations but instead seemed to suggest that payment of those obligations would be suspended for the duration of business rescue caused RCL Foods, SASMA and Illovo to launch an urgent application in the KwaZulu-Natal Division, Pietermaritzburg, to interdict the adoption of the BR Plan.

[53] After having received service of the application the BRPs obtained the consent of the creditors to postpone the meeting called to consider the BR Plan. On 14 June 2023, creditors holding 85% of the total claims against THL voted unanimously to allow the BRPs to amend the BR Plan to take into account various developments. It would seem that the intended BR Plan is a moving target.

Interpretation and Approach

[54] As the introduction foreshadows, the Companies Act and the Sugar Act require analysis and interpretation. Both require the application of a unitary exercise where text, context and purpose are examined.

[55] It is now well established that interpretation is the process of attributing meaning to the words used in a document, having regard to the context provided by reading the particular provision in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document (be it a contract or statute), consideration must be given to the language used in the light of the ordinary rules of grammar and syntax, the context in which the provision appears, the apparent purpose to which it is directed, and the material known to those responsible for its production. In other words, the exercise is holistic, the considerations are applied simultaneously and without predominance. See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18; *University of Johannesburg v Auckland Park Theological Seminary and Another* 2021 (6) SA 1 (CC) para 65.

[56] With specific reference to legislation it is helpful too to keep in mind the guidance offered in *Chisuse and Others v Director-General, Department of Home Affairs and Another* 2020 (6) SA 14 (CC) (footnotes omitted):

> "[47] In interpreting statutory provisions, recourse is first had to the plain, ordinary grammatical meaning of the words in question. Poetry and philosophical discourses may point to the malleability of words and the nebulousness of meaning, but, in legal interpretation, the ordinary understanding of the words should serve as a vital constraint on the interpretative exercise, unless this

interpretation would result in an absurdity. As this court has previously noted in *Cool Ideas*, this principle has three broad riders, namely —

> '(a) that statutory provisions should always be interpreted purposively;
>
> (b) the relevant statutory provision must be properly contextualised; and
>
> (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a).'

[48] Judges must hesitate 'to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation.'

[49] Strengthening this interpretative exercise is the obligation enshrined in s 39(2) of the Constitution, which requires courts when interpreting legislation to give effect to the 'spirit, purport and objects of the Bill of Rights'. This requires that —

> 'judicial officers [must] read legislation, where possible, in ways which give effect to [the Constitution's] fundamental values. Consistently with this, when the constitutionality of legislation is in issue, they are under a duty to examine the objects and purport of an Act and to read the provisions of the legislation, so far as is possible, in conformity with the Constitution.'

[50] The command of s 39(2) has been articulated in various judgments of this court. In *Bato Star* Ngcobo J stated as follows:

> 'The Constitution is now the supreme law in our country. It is therefore the starting point in interpreting any legislation. Indeed, every court must promote the spirit, purport and objects of the Bill of Rights when interpreting any legislation. That is the command of s 39(2). Implicit in this command are two propositions: first, the interpretation that is placed upon a statute must, where possible, be one that would advance at least an identifiable value enshrined in the Bill of Rights; and, second, the statute must be reasonably capable of such interpretation. This flows from the fact that the Bill of Rights is a cornerstone of [our constitutional] democracy. It affirms the democratic values of human dignity, equality and freedom.'

[51] It is now axiomatic that the interpretation of legislation must follow a purposive approach. This purposive approach was described in *Bato Star* as follows:

> 'Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that "the context", as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and within limits, its background.'

[52] The purposive or contextual interpretation of legislation must, however, still remain faithful to the literal wording of the statute. This means that if no reasonable interpretation may be given to the statute at hand, then courts are required to

declare the statute unconstitutional and invalid. It is now settled that this approach to interpretation is a unitary exercise.

[53] In *De Beer NO* this court articulated the proper approach when deciding between competing constructions of legislation:

> 'This court has accepted the well-recognised principle of constitutional construction that where a statutory provision is capable of more than one reasonable construction, one of which would lead to constitutional invalidity and the other not, a court ought to favour the construction which avoids constitutional invalidity, provided such interpretation is not unduly strained.'

[54] However, in seeking a constitutional interpretation in accordance with their obligations under s 39(2) of the Constitution, courts must not lose sight of the fact that the construction given to legislation must still be reasonable. Strained readings of texts, no matter how well-intentioned, can lead to dissonance. As Moseneke J noted in *Abahlali BaseMjondolo Movement SA*:

> 'The rule of law is a founding value of our constitutional democracy. Its content has been expanded in a long line of cases. It requires that the law must, on its face, be clear and ascertainable. To read in one qualification to achieve constitutional conformity is very different from reading in six. Indeed, reading in so many qualifications inevitably strains the text. This is all the more so when the legislation in issue affects vulnerable people in relation to so vital an aspect of their lives as their security of tenure. It will be impossible for people in the position of the applicants, even if advised by their lawyers, to be clear on how this provision will operate. The same will indeed apply to others affected by the law, such as owners, and to the bureaucrats charged with applying it.
>
> There can be no doubt that the over-expansive interpretation of s 16 is not only strained but also offends the rule of law requirement that the law must be clear and ascertainable. In any event, separation of power considerations require that courts should not embark on an interpretative exercise which would in effect re-write the text under consideration. Such an exercise amounts to usurping the legislative function through interpretation.'

[55] The function of a court is to arrive at an 'interpretation that achieves the most appropriate balance between the parties, that fits most comfortably into the constitutional and statutory framework, and that requires the least intrusive addition to the text'. If the only interpretation that achieves the best balance between the constitutional and statutory framework would inflict violence on the text, then the court, where appropriate, should declare the relevant provisions inconsistent with the Constitution. Doing so is vital to our conception of the rule of law, as noted above, which dictates that laws be 'clear and ascertainable' to the public. As this court noted in *Hyundai*:

> 'There will be occasions when a judicial officer will find that the legislation, though open to a meaning which would be unconstitutional, is reasonably capable of being read "in conformity with the Constitution". Such an interpretation should not, however, be unduly strained.
>
> . . .
>
> It follows that where a legislative provision is reasonably capable of a meaning that places it within constitutional bounds, it should be preserved. Only if this is not possible should one resort to the remedy of reading in or notional severance.'

[56] One final point. Even before the adoption of the Constitution, our courts refused to construe statutory provisions in a manner that rendered them useless, if the language was reasonably capable of a sensible and effective meaning. In *Schlohs* De Wet CJ formulated the principle in these terms:

> '(W)hen the words of a statute are reasonably capable of an interpretation which would not render the law useless and destitute of all effect, they should be given such interpretation.'

[57] This principle was based on an earlier decision of the Appellate Division in *Jacobson and Levy* where it was observed that —

> 'if the language of the statute is not clear and would be nugatory if taken literally, but the object and intention are clear, then the statute must not be reduced to a nullity merely because the language used is somewhat obscure'.

[58] Presently, this principle is captured fully by the provisions of s 39(2) of the Constitution, which oblige every court, where reasonably possible, to interpret every statute in a manner that makes it consonant with the Constitution. A claim for invalidity must fail if the impugned statute is reasonably capable of a meaning that is constitutionally compliant.

[59] Despite our duty to interpret legislation in accordance with the injunction under s 39(2), courts must not fall into the trap of attempting to divine sense out of nonsense. If a reasonable interpretation in line with the Constitution cannot be arrived at, then a court must conclude, and declare, that the impugned provisions are unconstitutional and have recourse to the remedies that flow from this finding."

[57] It is appropriate to conclude the discussion on interpretation and approach with references to the following passages from *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) (footnotes omitted):

> "[25] Our analysis must commence with the provisions of the subscription agreement that have relevance for deciding whether Capitec Holdings' consent was indeed required. The much-cited passages from *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)* offer guidance as to how to approach the interpretation of the words used in a document. It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitute the enterprise by recourse to which a coherent and salient interpretation is determined

As *Endumeni* emphasised, citing well-known cases, '(t)he inevitable point of departure is the language of the provision itself'.

...

[47] I offer a few observations, as to the implications of what the Constitutional Court has decided in *University of Johannesburg*. First, it is inevitable that extrinsic evidence that one litigant contends as having the effect of contradicting, altering or adding to the written contract, the other litigant will characterise as extrinsic evidence relevant to the context or purpose of the written contract. Since the interpretative exercise affords the meaning yielded by text no priority and requires no ambiguity as to the meaning of the text to admit extrinsic evidence, the parol evidence rule is likely to become a residual rule that does little more than identify the written agreement, the meaning of which must be determined. That is so for an important reason. It is only possible to determine whether extrinsic evidence is contradicting, altering or adding to a written contract once the court has determined the meaning of that contract. Since meaning is ascertained by recourse to a wide-ranging engagement with the triad of text, context and purpose, extrinsic evidence may be admitted as relevant to context and purpose. It is this enquiry into relevance that will determine the admissibility of the evidence. Once this has taken place, the exclusionary force of the parol evidence rule is consigned to a rather residual role.

[48] Second, *University of Johannesburg* recognises that there are limits to the evidence that may be admitted as relevant to context and purpose. While the factual background known to the parties before the contract was concluded may be of assistance in the interpretation of the meaning of a contract, the courts' aversion to receiving evidence of the parties' prior negotiations and what they intended (outside cases of rectification) or understood the contract to mean should remain an important limitation on what may be said to be relevant to the context or purpose of the contract. *Blair Atholl* rightly warned of the laxity with which some courts have permited evidence that traverses what a witness considers a contract to mean. That is strictly a matter for the court. *Comwezi* is not to be understood as an invitation to harvest evidence, on an indiscriminate basis, of what the parties did after they concluded their agreement. The case made it plain such evidence must be relevant to an objective determination of the meaning of the words used in the contract.

[49] Third, *Endumeni* has become a ritualised incantation in many submissions before the courts. It is often used as an open-ended permission to pursue undisciplined and self-serving interpretations. Neither *Endumeni*, nor its reception in the Constitutional Court, most recently in *University of Johannesburg*, evince skepticism that the words and terms used in a contract have meaning.

[50] *Endumeni* simply gives expression to the view that the words and concepts used in a contract and their relationship to the external world are not self-defining. The case and its progeny emphasise that the meaning of a contested term of a contract (or provision in a statute) is properly understood not simply by selecting

standard definitions of particular words, often taken from dictionaries, but also by understanding the words and sentences that comprise the contested term as they fit into the larger structure of the agreement, its context and purpose. Meaning is ultimately the most compelling and coherent account the interpreter can provide making use of these sources of interpretation. It is not a partial selection of interpretational materials directed at a predetermined result.

[51] Most contracts, and particularly commercial contracts, are constructed with a design in mind, and their architects choose words and concepts to give effect to that design. For this reason, interpretation begins with the text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a licence to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text."

The Companies Act

[58] It is convenient to commence with an examination of the applicable sections of the Companies Act.

[59] The focus must be the text of section 136 of the Companies Act, which reads as follows:

"136. **Effect of business rescue on employees and contracts**

(1) Despite any provision of an agreement to the contrary—

(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).

> (3) Any party to an agreement that has been suspended or cancelled, or any provision which has been suspended or cancelled, in terms of subsection (2), may assert a claim against the company only for damages."

[60] It is common cause that subsection 2A is not relevant for present purposes.

[61] Referring to *S v Wood* 1976 (1) SA 703 (A), *Kham and Others v Electoral Commission of South Africa and Another* 2016 (2) SA 338 (CC), *R v Hugo* 1926 AD 268 and *BP Southern Africa (Pty) Ltd v Intertrans Oil SA (Pty) Ltd and Others* 2017 (4) SA 592 (GJ) the applicants argue that the word "any" as employed in the term "any obligation" in s 136(2)(a) of the Companies Act is of extremely wide import, extremely broad, *prima facie* unlimited and accordingly is a word of notoriously wide if not unlimited import. I think that is safe to say, looking at the word "any" in isolation from the remainder of the section, that that is uncontentious for present purposes.

[62] However, I regard the applicants' additional contentions that the term "any obligation" in s 136(2)(a) must be understood in the light of the wide meaning generally ascribed to the word "any" that there are no limits on the kinds of obligations to which s 136(2) applies as unsustainable. It is, as I understand the section, manifestly clear that the term "any obligation" is limited to obligations as defined in the Companies Act, which are those that are "arising under an agreement". The effect of the applicants' argument would be to strike a line through "arising under an agreement", and strip that term of any meaning. See *Minister of Finance v Afribusiness NPC* 2022 (4) SA 362 (CC) at paras 46 and 106 to 110; *Tsogo Sun Caledon (Pty) Ltd and Others v Western Cape Gambling and Racing Board and Another* 2023 (2) SA 305 (SCA) at para 18.

[63] "Agreement" is defined in s 1 of the Companies Act as one that:

> "includes a contract, or an arrangement or understanding between or among two or more parties that purports to create rights and obligations between or among those parties"

[64] The applicants suggest that three features of the definition of "agreement" support their case. Firstly, they contend that the term is defined in an entirely non-exhaustive manner. It is not defined to mean a contract, arrangement or

understanding, but instead to include such things. That, they say, suggests that the legislature contemplated that there may be "agreements" that do not fit perfectly within the meaning of a contract, arrangement or understanding, but that should nevertheless be recognised as "agreements" for purposes of the Companies Act. Secondly they argue that an agreement is not defined merely to include a contract, but instead the definition includes an arrangement or understanding; concepts that are broad, and which suggest that relationships between parties that do not meet the ordinary common law requirements of contract might nevertheless qualify as an agreement for purposes of the Companies Act. Finally they say that the definition encompasses not only contracts, arrangements, and understandings that in fact create rights and obligations between parties, but also those that merely purport to do so which further evidences a clear intention on the part of the legislature to extend the definition to encompass the widest possible range of arrangements, including those that would not meet the ordinary requirements of a contract.

[65] In its terms, therefore, the applicants submit that s 136(2)(a) is capable of being understood to mean that the BRPs are empowered to suspend the payment obligations owed by THL under the SI Agreement whatever its status or source and that it creates rights and obligations among the sugar industry participants and consequently qualifies as an agreement amenable to suspension under the section.

[66] Implicit in the applicants' argument is that "includes" within the definition of agreement is equivalent to the phrase "includes but not limited to". However, the use of the word "includes' in the interpretation of a clause in a statute is ambiguous.

[67] In *R v Hurwitz* 1944 EDL 23 the word "includes" was discussed in the following manner:

> "In *Dillworth v Commissioner of Stamps* (1899 AC 99) it was pointed out by Lord WATSON that the use of the word "includes" in the interpretation clause of a Statute is ambiguous, that it may sometimes be used to enlarge the meaning of words and phrases occurring in the body of the Statute, but that it may also sometimes be used as being equivalent to "means and includes" and as affording an exhaustive explanation of the meaning of such words and phrases. The test would appear to depend on the context, and such cases as those of *Attorney-General, Transvaal v Additional Magistrate for Johannesburg* (1924 AD 421)

> and *Johannesburg Municipality v Cochrane* (1928 TPD 224) on the one hand and that of *Rosen v Rand Townships Registrar* (1931 WLD 5) on the other show that the Courts have interpreted the word "includes" as having sometimes been used in an explanatory and exhaustive sense and on other occasions in an extensive sense."

[68] In *Estate Brownstein v Commissioner for Inland Revenue* 1957 (3) SA 512 (A) the use of the word was explained in these terms at 521A:

> "The question revolved round the meaning of the word 'includes'. As is well-known this word in definition sections is sometimes the equivalent of 'means', i.e. it operates to exclude everything else, while in other cases it merely adds unusual or less usual meanings to the one ordinarily borne by the word defined."

[69] Whatever the case here, all of the examples in the definition share the attribute of consensus. In my view however, the binding nature of the SI Agreement does not presuppose consensus. In addition, and obvious by omission, is any reference in the definition to "statute" or "subordinate legislation". Perhaps this is why the applicants seek the alternative constitutional relief.

[70] The definition may also differently be viewed as the Legislature extending the meaning of "agreement" on a limited extension basis by including within its ambit "an arrangement or understanding". The "arrangement" or "understanding" is not, however, any arrangement or understanding. From the context and the ordinary rules of grammar and syntax it is clear that these two words are also specifically and exclusively qualified by the inclusion only of an arrangement or understanding "between or among two or more parties that purports to create rights and obligations between or among those parties".

[71] Illovo Sugar argues that the use of the relative pronoun "that" in the definition makes clear that what creates (as in the case of a contract) or purports to create (as in the case of an arrangement or understanding) "rights and obligations" is precisely the "contract", "arrangement" or "understanding". It is clear that the legislative intention is to include only those contracts, arrangements or understandings, brought into being by the parties thereto, that are themselves the sources that give legal power to their terms. Illovo Sugar argues further that the definition of "agreement" in s 1 of

the Companies Act thus operates entirely on a horizontal level, and is confined to those instances where the relevant act of agreement, arrangement or understanding of the parties bound by the phenomenon is the source of their legal obligations – i.e. where there would be no obligation but for the consensus between them that creates the obligation. Rights and obligations created or arising by other means, including vertical imposition by the state by means of legislation, are not contained in the definition.

[72] I agree with that argument.

[73] I am consequently of the opinion that, having regard to the ordinary meaning of the words used and the ordinary rules of grammar and syntax, it is plain that what the Legislature regards as an "agreement" for the purposes of the Companies Act, is a set of rights and obligations that are founded or created by, and derive their legal power from, a "contract", "arrangement" or "understanding" "between or among" the persons who are party to it. Those obligations are private law obligations arising from consensus between contracting parties (i.e. obligations *ex contractu*).

[74] The text of s 136(2)(a)(i) itself suggests that the meaning of "agreement" refers to obligations arising *ex contractu*. The "agreement" must be an agreement "to which the company was a party". A person or an entity is "a party" to a contract or agreement and not to national or subordinate legislation.

[75] The meaning of the word "agreement" as used in s 136(2)(a)(i) as referring to a contract and obligations that arise *ex contractu* is reinforced when regard is had to s 136 as a whole. Firstly, the heading signifies that what the section deals with is the "Effect of business rescue on employees and contracts". Secondly, ss 136(1) and 136(2A) refers to and deals with contracts which comply with the qualification that come into being by consensus and that create rights and obligations, namely employment contracts and agreements to which ss 35A or 35B of the Insolvency Act. 1936 apply. Thirdly, in s 136(2)(b) provision is made for an application to court to "cancel ... any obligation of the company contemplated in paragraph (a)". While a court may have the power (by virtue of s 136(2)(b)) to "cancel" an obligation that arises in contract, a court has no power to "cancel" legislation. Parties themselves have the

power to bring a contract into being by consensus and thereby to create legal rights and obligations. This distinguishes an obligation arising *ex contractu* from one arising *ex lege*. They also have the power to cancel the contract, always by mutual agreement, sometimes unilaterally, and sometimes after following certain formalities. They never have the power to cancel legislation or law that binds them for reasons other than because they created it.

[76] The applicants also rely on the general moratorium on legal proceedings under s 133 of the Companies Act as support for their interpretation. The applicants submit that the general moratorium prevents enforcement action against THL whilst it is under business rescue and that that provision provides no basis for distinguishing debts owed to SASA, from debts owed to any other creditor of THL in business rescue.

[77] Section 133 of the Companies Act prescribes as follows:

> **"133 General moratorium on legal proceedings against company**
>
> (1) During business rescue 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—
>
> (a) with the written consent of the practitioner;
>
> (b) with the leave of the court and in accordance with any terms the court considers suitable;
>
> ...
>
> (f) proceedings by a regulatory authority in the execution of its duties after written notification to the business rescue practitioner "

[78] Section 133 thus establishes a general moratorium on the institution of any legal proceedings or enforcement actions, subject to certain, specified exceptions. It affords a company in business rescue a temporary reprieve from its ordinary obligations, in order that it can re-structure its affairs

[79] The most significant exception to that general moratorium, for present purposes, is that it does not apply to proceedings brought by a "regulatory authority" in the execution of its duties. SASA asserts that it qualifies as a regulatory authority, and consequently that it remains entitled to bring enforcement proceedings against THL in respect of its debts under the SI Agreement.

[80] The applicants submit that SASA is wrong and suggest that that is clear from the terms of s 1 of the Companies Act, which defines a "regulatory authority" as "an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry". They say that although it is now statutorily recognised, SASA was not established by statute. It was created long before the Sugar Act, and even before the 1936 Sugar Act, by agreement among the industry participants. They observe that SASA was formed in 1919, by agreement between millers and growers at the time, and resuscitated under the 1936 Sugar Act.

[81] The applicants argue that SASA also lacks the essential attributes of a statutory regulatory authority for the following reasons:

a. SASA acts as an association in the interests of its members and not in the interests of the State or in the public interest. That is evident from SASA's constitution, which provides at clause 4 that SASA is established to represent the views of the sugar industry to parliament, government and other public bodies and officials. The primary objective of SASA (including its Council) is to act in the best interests of the sugar industry. The structure and voting processes of SASA are designed to ensure that the views of all parties are considered, and the best interests of the industry promoted. SASA is, in other words, an independent, non-governmental association operating on behalf of and in the interests of its members;

b. SASA is composed solely of industry representatives. Government is not involved in their appointment, and government is not in any way represented within SASA. SASA does not bear reporting obligations to government. It is precisely because of the lack of government

involvement in SASA that a 1981 Committee of Inquiry into the Sugar Industry declined SASA's request that the industry be afforded more freedom and flexibility to determine changes to the industrial selling price, since "... it cannot, in the opinion of the Committee, be expected of government to invest an organisation with far-reaching regulatory powers, such as price fixation, without monitoring and having some say in decisions taken".

c. SASA does not receive any funds from the State. Its revenue is derived entirely from industry levies. These levies are collected for commercial reasons, particularly to enable SASA to perform services to its members, such as cane testing, research, and administrative functions. As such, SASA does not qualify as a state institution within the remit of the Public Finance Management Act, 1 of 2000.

d. SASA's powers and functions, in the main, are sourced not in the Sugar Act or any other legislation but derive from the SI Agreement.

[82] It seems to me that that assessment of SASA is skewed so as to lend support to the applicants' cause.

[83] Section 2 of the Sugar Act governed SASA's incorporation and provides for the promulgation of its constitution by the Minister. The corporate entity so recognised and invested with statutory incorporation (i.e. SASA) is one manifestly established by national legislation.

[84] It is indeed so that SASA is comprised of the membership described earlier, to the exclusion of government, and that it serves to oversee cooperation amongst the divers role-players in the industry, but it is also clear that SASA operates to regulate the industry itself.

[85] The quotation from the 1981 Committee of Inquiry into the sugar industry is somewhat selective. The Committee of Inquiry into the Sugar Industry was established in March 1981 by the Minister. The terms of reference were:

"To inquire into, report on and make recommendations on the following matters relating to the sugar industry—

(a) the expansion of sugar production in South and Southern Africa with due regard to its geographical distribution and economic, social and strategic factors;

(b) the effectiveness of the local marketing system with special reference to whether there is justification for the continued application of the existing price regulating measures within a free market economy;

(c) the system of marketing sugar abroad;

(d) the basis on which the division of proceeds formula should be adjusted from year to year for changing price levels; and

(e) any other related matters affecting the sugar industry, after consultation with the Minister of Industries, Commerce and Tourism."

[86] In describing the nature of sugar production and the sugar marketing scheme the Committee said this in chapter one of its report:

"3. The majority of the twenty-four agricultural marketing schemes in the Republic operate in terms of the Marketing Act which is a general enabling measure permitting the establishment of commodity marketing schemes appropriate to the needs of the individual farm products concerned. Special enactments, however, apply to two commodities, namely wine and sugar, and in the case of the latter, the statutory marketing arrangements are governed by the Sugar Act which was promulgated in 1936 and republished in consolidated form in 1978.

4. In terms of the Sugar Act the Minister of Industries, Commerce and Tourism shall, after consultation with the sugar industry, determine the terms of an agreement known as the Sugar Industry Agreement to regulate the production and marketing of sugar and associated products. The main regulatory provisions of the existing agreement may be summarised as follows:

(i) The exercise of quantitative control over production by means of quota allocations to cane growers

(ii) The regulation of the supply of sugar cane to mills which, in effect, also provides regulatory control over the establishment of sugar mills.

(iii) The control and regulation of the disposal of the total quantity of sugar manufactured yearly. This involves the determination of the quantity of sugar required locally and the pro rata share of exports apportioned to each mill

(iv) The channelling of all sugar exports through a central industry organisation known as the SA Sugar Export Corporation (Pty) Limited.

(v) The pooling of proceeds on the sale of sugar and sugar by-products and the division of these proceeds between millers and growers in accordance with the formula set out in the agreement,

(vi) The imposition of levies to cover the cost of administering the sugar control scheme.

5. In addition to the foregoing, the Sugar Act also empowers the Minister of Industries, Commerce and Tourism to prescribe, after consultation with the industry, the maximum industrial selling prices of sugar and associated products

6. The main controlling body entrusted with the administration of the Sugar Agreement is the SA Sugar Association, which is composed of an equal number of representatives of cane growers and miners. The regulatory measures are applied in close consultation with the Minister and in major matters are subject to his approval.

7. The control scheme for sugar is in the nature of the one-channel pool schemes operated in terms of the Marketing Act for commodities such as citrus and deciduous fruit, wool and oil seeds. There are, however, two respects in which the Sugar Agreement differs significantly from the Marketing Act schemes, these being the quantitative control of production and the sharing on a partnership basis between growers and millers of the proceeds of sugar and associated products"

[87] The quotation from the Committee's report and relied upon by the applicants, can now be viewed in proper context:

"243. A second recommendation made by the Sugar Association in this regard is that the industry should be allowed more freedom and flexibility in determining the extent, frequency and timing of price changes. The Association avers that there is no doubt that the sugar industry would adopt a realistic and conservative approach in this respect because of the dangers of decreasing domestic consumption and stimulating competition from alternative sweeteners, if prices were not kept at a reasonable level.

244. It cannot, in the opinion of the Committee, be expected of government to invest an organisation with far-reaching regulatory powers, such as price fixation, without monitoring and hailing some say in decisions taken. The Committee nevertheless considers that there is merit in the recommendation of the Sugar Association. Ministerial approval of price proposals inevitably involves delays which tend to inhibit speedy decisions as well as price changes at frequent intervals. In consequence prices are normally reviewed by government only once a year when, in these times of high inflation, relatively large price adjustments

> necessarily have to be made. This not only harms the market but also encourages the accummulation (sic) of stocks in anticipation of large price increases which cannot be kept secret and are fairly generally known in advance in the trade and elsewhere
>
> 245. The Committee accordingly recommends that the Sugar Association be given the responsibility of determining the industrial selling prices of sugar within parameters which would be approved by the Minister from time to time and which would grant the industry sufficient flexibility to decide on the timing and frequency of price adjustments "

[88] Thus it would appear that the Committee regarded SASA as an entity discharging regulatory functions.

[89] SASA's response to the assertion that the general moratorium provisions assists the BRP's case relies on the Sugar Act being national legislation and that SASA's incorporation was sanctioned in terms of s 2 of that piece of national legislation (see above). It argues accordingly that SASA in its current form has been established by national legislation. By extension it also argues by reason of s 1 of the Sugar Act, the SI Agreement is also legislation and that the duties of SASA set out in the SI Agreement are legislatively imposed duties.

[90] SASA's argues further that its Constitution is provided for expressly in s 2 of the Sugar Act and the terms thereof are determined by the Minister.

[91] One of SASA's objects as contained in clause 4 of SASA's Constitution is stated in subclause (1):

> "The objects for which the Association is established are:
>
> (1) To promote, foster, <u>regulate</u>, co-ordinate and assist with the production, storage, transport, handling and sale of sugar industry products." (my underlining)

The remainder of the objects referred to in clause 4 all relate to the object stated in clause 4(1).

[92] Amongst the powers conferred on SASA's council under clause 5 of SASA's Constitution subclause (1) provides:

> "Without prejudice to the general power conferred upon the Council by clause 3(2) hereof it shall have and exercise the following powers and functions, namely:
>
> (1) To control and regulate, year by year, the disposal of the total quantity of sugar manufactured by millers and refiners, and, to this end, to determine, the quantity of sugar required for the local market, the quantity of carry-over stocks, the quantity of sugar to be exported each year, and each mill's quota of those quantities, subject only to the provisions of the agreement and any regulation published under Section 10 of the Act or any section amending or replacing the same." (my underlining)

The remainder of SASA's powers stated under this clause are in the main regulatory powers.

[93] Thus SASA submits that it is established in terms of national legislation to regulate the Sugar Industry and as such falls squarely under the definition of 'regulatory authority' in the Companies Act. I agree.

[94] In the result SASA would self-evidently be acting in the execution of its duties in bringing legal proceedings against THL to enforce its compliance with the statutory scheme, including the payment of its obligations owed to SASA imposed by that statutory scheme. SASA is accordingly entitled to bring legal proceedings against THL to enforce its payment obligations owed to SASA under section 133 of the Companies Act.

[95] RCL Foods observes that in addition to the obvious difficulty of seeking a moratorium against the industry's regulatory authority, the applicants also seek a blanket moratorium against over twenty thousand other respondents from bringing any legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement and argues that such relief is so overly broad as to render it impermissible.

[96] Section 133(1) of the Companies Act imposes a general moratorium on the

commencement of legal proceedings against companies in business rescue. It is not an absolute moratorium and may be lifted with the written consent of the practitioners or with the leave of the court on such terms the court considers suitable or by regulatory authorities upon written notice to the practitioners.

[97] RCL Foods is, in my view, correct in its submission that THL is not entitled to a blanket moratorium on any enforcement action regarding payment obligations arising under the SI Agreement as such an order would (aside from ousting SASA's rights to pursue such action as the regulatory authority) impermissibly oust the court's jurisdiction in future matters that may arise as well as limit a business rescue practitioner's discretion to provide consent if the need arises. There is accordingly no basis for such far-reaching relief, which is, in any event, entirely unnecessary since the applicants have sought the very declaratory relief that will determine whether payments owing under the SI Agreement may be suspended by the BRPs. If they are not capable of suspension, then enforcement action by SASA (or anyone who makes out a case for the lifting of the moratorium) is permissible and inherently necessary.

[98] Upon a textual interpretation I have found that sections 136 and 133 of Companies Act do not entitle the BRPs to suspend THL's payment obligations under the SI Agreement and do not preclude SASA, or anyone else in certain circumstances, from seeking to enforce those obligations.

[99] It becomes necessary, however, to consider briefly the applicants' additional hypothesis that their analysis of the Companies Act is fortified by understanding the provisions firstly, within the broader context of the business rescue provisions of the Companies Act as a whole, and secondly, in light of the purpose of the business rescue provisions.

[100] Section 7(k) of the Companies Act stipulates that one of the purposes of the Act is to "... provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders...".

[101] This purpose is achieved by Chapter 6 of the Companies Act. Prior to the

commencement of the Companies Act and the introduction of the provisions of Chapter 6, the only option available for creditors and stakeholders of financially distressed companies was to apply for the liquidation or judicial management of the company concerned, in the hope that they would procure (at least) a partial recovery of debts owing by the company. The business rescue provisions in Chapter 6 of the Companies Act were introduced as a mechanism to allow a financially distressed company "breathing room" to restructure its affairs whilst continuing to trade, in the hope of enabling it to rehabilitate itself. See *Chetty t/a Nationwide Electrical v Hart and Another NNO* 2015 (6) SA 424 (SCA) paras 28, 29 and 35; *Airports Co SA Ltd v Spain NO and Others* 2021 (1) SA 97 (KZD) para 2.

[102] The applicants correctly describe these provisions as cumulatively affording business rescue practitioners the broadest possible scope to restructure and rescue the company, within the protective regime that business rescue creates. In this regard:

a. Business rescue demands that the company is placed under the temporary supervision and management of one or more registered business rescue practitioners. These business rescue practitioners oversee the company during rescue, and have full management control of the company, in terms of s 140 of the Companies Act The business rescue practitioners effectively step into the shoes of the company's board.

b. If the business rescue practitioners believe that there is a reasonable prospect that the company can be rescued, they must prepare and propose a business rescue plan for consideration and adoption by the company's creditors (and, if applicable, the company's shareholders) and any other holders of a voting interest. This plan is required to specify the basis upon which the debt of the company is to be repaid and/or the extent to which debts will become unenforceable and plot the course for rescuing the company by achieving the goals set out in s 128(1)(b) of the Companies Act.

c. Section 133 creates a general moratorium, subject to certain stipulated exceptions, on legal proceedings and enforcement action against a company in business rescue, or any property belonging to it or in its lawful possession.

d. Section 134(c) provides that no person may exercise any rights in respect of property in the lawful possession of the company, except to the extent its business rescue practitioners consent in writing thereto.

e. Section 135(1) of the Companies Act protects employees by providing for remuneration, reimbursement for expenses and any other money relating to employment that becomes due and payable during the business rescue process, to be treated as post-commencement finance and repaid only at the end of the business rescue process.

f. Section 136(2) empowers the business rescue practitioners entirely, partially or conditionally to suspend, or with the leave of the court cancel, 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, and which would otherwise become due during the course of those proceedings.

g. Section 137 stipulates that any alteration in the classification or status of any issued securities of a company (other than by way of transfer in the ordinary course of business) is invalid unless a court directs otherwise, or it is contemplated in an approved business rescue plan.

[103] It is against this backdrop that the applicants contend that ss 133 and 136 must be understood and suggest that their essential purpose is to create a payment moratorium and permit the BRPs to suspend obligations where there are little to no means to fulfil obligations. Section 136(2), in particular, provides business rescue practitioners the opportunity to disengage the company, whether temporarily or permanently, from onerous obligations that may prevent the company from being rescued.

[104] When successful, business rescue can ensure the survival of the company in question and, in turn, the survival of the commercial relationship between the company and its creditors, as well as the preservation of jobs that the company provides. Even where the company is ultimately unable to trade out of its financial distress and continue on a solvent basis, business rescue may result in a better return for its creditors and shareholders than if that company was immediately liquidated. See *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) para 31.

[105] One of the potential outcomes of business rescue, then, is the orderly winding down of the company. Where that occurs, the company's debts are ranked as provided for on liquidation. The business rescue process cannot properly be used to change the ranking of creditors, or to afford particular categories of creditors a preferent or secured status not expressly conferred upon them in business rescue. To do so would be to subvert the purpose of business rescue and to undermine the proper functioning of the Companies Act. The applicants accordingly argue that:

a. Chapter 6 only provides for two categories of preferent claims in business rescue: post-commencement finance, and the remuneration rights of employees due and payable before the commencement of business rescue,

b. The obligations imposed by the SI Agreement do not qualify as either and they thus enjoy no preference in business rescue;

c. SASA, like SARS, consequently cannot demand that its claims be settled in business rescue ahead of other creditors.

d. A contextual and purposive understanding of the Companies Act therefore illustrates that:

i. Parliament intended that a business rescue practitioner must be able to suspend any *inter partes* obligation that, if not otherwise suspended, would make it impossible to rescue the company.

ii. unless the business rescue practitioners have the power to suspend payment obligations of this nature, chapter 6 of the Companies Act will be rendered incapable of achieving the very object of business rescue, particularly in highly regulated industries like the South African sugar industry;

iii. a preclusion on suspension would force the BRPs to treat SASA as a preferent creditor, when there is no statutory basis for it to assume that status; and

iv. an interpretation of the Companies Act which allows the BRPs to suspend the payment obligations under the SI Agreement, and prohibits SASA from instituting proceedings to enforce payment, therefore accords better with the statutory context and purpose.

[106] Submitting that the principle applies equally in this case, the applicants point to the caution in *Panamo Properties (Pty) Ltd and Another v Nel and Others NNO* 2015 (5) 63 (SCA), albeit in a different context, against litigious creditors seeking to stultify the business rescue process or to gain advantages not contemplated by its broad purpose (footnotes omitted):

> "[1] Business rescue proceedings under the Companies Act 71 of 2008 (the Act) are intended to 'provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders'. They contemplate the temporary supervision of the company and its business by a business rescue practitioner. During business rescue there is a temporary moratorium on the rights of claimants against the company and its affairs are restructured through the development of a business rescue plan aimed at it continuing in operation on a solvent basis or, if that is unattainable, leading to a better result for the company's creditors and shareholders than would otherwise be the case. These commendable goals are unfortunately being hampered because the statutory provisions governing business rescue are not always clearly drafted. Consequently they have given rise to confusion as to their meaning and provided ample scope for litigious parties to exploit inconsistencies and advance technical arguments aimed at stultifying the business rescue process or securing advantages not contemplated by its broad purpose. This is such a case."

[107] In my view the instant matter is not such a case. The applicants' summary of the objects of business rescue, the principles to be applied thereto and the description of the potential outcomes are all well and good. I agree with all of those general propositions.

[108] The problem, however, is that that additional hypothesis does not obtain here. It is one thing to say that the recovery of accumulated debts existing as at the commencement of business rescue are not claims payable in business rescue. It is quite another matter to suggest that the payment of the debts that go "hand-in-hand" with the costs of doing business during business rescue are also suspended and subject to the moratorium. It can hardly be contended that the Value Added Tax payable to SARS on ordinary day to day commercial transactions (say retail sales) by a company in business rescue is suspended! What of the PAYE contributions, ongoing pension fund or provident fund contributions due by an employer company in business rescue in respect of its employees who continue working and earning salaries during business rescue?

[109] In my view, the ongoing obligations to SASA are simply the costs of doing business – nothing more, and certainly, nothing less. They cannot be suspended and are not subject to the moratorium.

[110] During argument applicants' counsel rejected the assertion that if it were found that the SI Agreement is subordinate legislation it could not be suspended as that created rule of law problems because that was not a power that could repose in the business rescue practitioners Applicants' counsel suggest that that submission is simply wrong. If the SI Agreement is subordinate legislation, they argue then that the rule of law requires that it be treated as binding, and that means that it must be complied with unless there are lawful grounds on which it can be departed from. The importance of that, they suggest, is that if there is a rule imposed by law or available in law that permits the suspension or abrogation from those rights, then that will be consistent with the rule of law and the suspension will be possible. Put differently, counsel for the applicants argue that the determination of whether or not the SI Agreement is subordinate legislation is also irrelevant to the outcome of these

proceedings as a matter of public law. The question really, so the argument goes, is whether or not the functionary had the power to suspend as a matter of law.

[111] That question, they argue further, turns on the interpretation of s 136(2) of the Companies Act. If the BRP's have that power, they exercise a power conferred on them by legislation and when they do that, that will be the exercise of a statutory power or administrative action if that power is a public function.

[112] Applicants' counsel submit that the point is illustrated very clearly by two examples. The first relates to obligations that arise under a collective bargaining agreement. It is generally well known that ss 23 and 31 of the Labour Relations Act, 1995 ("the LRA") permit bargaining councils to conclude agreements that bind not just the parties to the agreement but their members and representatives. It is also so that under s 32 of the LRA the Minister of Labour can at the behest of the Bargaining Council extend the operation of that collective agreement to a whole industry, and so to non-parties to that agreement, which takes effect on publication to the Government Gazette. It is suggested that very close parallels exist between that regime and that applicable under the SI Agreement, i.e. an agreement that binds non-parties by virtue of imposition rather than by consensus. It is argued that it is significant that s 30 of the LRA requires that the Constitution of Bargaining Councils include in their provisions a process for exemption from collective agreements. Applicants' counsel argue that in those circumstances the Bargaining Council, a different entity from the entity which renders that agreement binding on non-parties, exercises the power to exempt and therefore suspend those obligations. They accordingly submit that the power to exempt and the power to suspend are legally identical.

[113] Applicants' counsel submit that that first example is particularly apposite because the work of a collective Bargaining Council has been found to be power exercised under a statute but a private law power, not a public power. In *Calibre Clinical Consultants (Pty) Ltd and Another v National Bargaining Council for the Road Freight Industry and Another* 2010 (5) SA 457 (SCA) the position was described thus (footnotes omitted):

"[39] While curial pronouncements from other jurisdictions are not necessarily transferable to this country they can nonetheless be instructive. I do not find it surprising that courts both abroad and in this country - including the Constitutional Court in *AAA Investments* - have almost always sought out features that are governmental in kind when interrogating whether conduct is subject to public-law review. Powers or functions that are 'public' in nature, in the ordinary meaning of the word, contemplate that they pertain 'to the people as a whole' or that they are exercised or performed 'on behalf of the community as a whole' (or at least a group or class of the public as a whole), which is pre-eminently the terrain of government

[40] It has been said before that there can be no single test of universal application to determine whether a power or function is of a public nature, and I agree. But the extent to which the power or function might or might not be described as 'governmental' in nature, even if it is not definitive, seems to me nonetheless to be a useful enquiry. It directs the enquiry to whether the exercise of the power or the performance of the function might properly be said to entail public accountability, and it seems to me that accountability to the public is what judicial review has always been about. It is about accountability to those with whom the functionary or body has no special relationship other than that they are adversely affected by its conduct, and the question in each case will be whether it can properly be said to be accountable, notwithstanding the absence of any such special relationship.

[41] A bargaining council, like a trade union and an employers' association, is a voluntary association that is created by agreement to perform functions in the interests and for the benefit of its members. I have considerable difficulty seeing how a bargaining council can be said to be publicly accountable for the procurement of services for a project that is implemented for the benefit of its members - whether it be a medical-aid scheme, or a training scheme, or a pension fund, or, in this case, its wellness programme.

[42] I do not find in the implementation of such a project any of the features that have been identified in the cases as signifying that it is subject to judicial review. When implementing such a project a bargaining council is not performing a function that is 'woven into a system of governmental control' or 'integrated into a system of statutory regulation'. Government does not 'regulate, supervise and inspect the performance of the function', the task is not one for which 'the public has assumed responsibility', it is not 'linked to the functions and powers of government', it is not 'a privatisation of the business of government itself', there is not 'potentially a governmental interest in the decision-making power in question', the council is not 'taking the place of central government or local authorities', and, most important, it involves no public money. It is true that a government might itself undertake a similar project on behalf of the public at large - just as it might provide medical services generally and pensions and training schemes to the public at large - but the council is not substituting for government

when it provides such services to employees with whom it is in a special relationship.

43] Much was sought to be made by counsel for the appellants, of the fact that the council's collective agreement - which records the terms upon which the wellness fund was established and is to be administered - has been extended to the industry in general by declaration in the *Government Gazette*. The argument, as I understand it, was that the collective agreement - which has been called, in a comparable context, a 'piece of subordinate, domestic legislation' - constitutes a 'public power' that it exercises when it establishes and administers such a fund, but in my view counsel's reliance on the collective agreement is misplaced. The collective agreement is not the source of the council's powers. The powers of the council emanate from its constitution, or the equivalent powers conferred upon it by s 28 of the statute. The collective agreement is no more than the terms upon which the parties have agreed that the council will exercise those powers.

[44] That the procurement of goods and services by the council - for whatever purpose - is not a public function seems to me to find support in the Constitution itself. Government and its agencies are expected to be publicly accountable for the contracts that they conclude because they are spending public money, and there are two principal reasons why that should be so. In the first place the public is entitled to be assured that its moneys are properly spent. And secondly, the commercial public is entitled to equal opportunity to benefit from the bounty of the State to which they are themselves contributories. The accountability of government for procurement is expressly provided for in s 217 of the Constitution, which requires that government bodies must contract 'in accordance with a system which is fair, equitable, transparent, competitive and cost effective', but that prescript does not apply to a bargaining council. It is not an 'organ of State' within the narrower definition of that term in s 217, nor is it an 'institution identified in national legislation' to which that procurement policy applies. I also see no principial reason why it should be publicly accountable for the contracts that it concludes. It is not expending public money, but money that emanates from its members and, in some cases, others in the industry, and it is to them, not the public, that it is accountable for the manner in which it does so. More important, for present purposes, I can see no basis upon which the commercial public, who are not contributors to its funds, not even indirectly, might justifiably be entitled to hold the council to account for the manner in which they are spent

[45] Indeed, a singular feature of this case is that counsel for the appellants conceded, correctly, that the council would have been perfectly entitled to seek out and appoint a service provider without first inviting tenders or proposals at all. If it is not publicly accountable for choosing with whom to contract then I see no reason why it is publicly accountable for choosing with whom not to contract."

[114] The second example that counsel for the applicants raised of powers suspended, conferred or imposed by statute but suspended by the determination of a single person arises under s 24M of the National Environmental Management Act, 1998 ("NEMA") which permits the Minister or MEC for Environmental Affairs to suspend the obligation to obtain an environmental authorisation or to change the process and to impose unilaterally a different process for obtaining environmental authorisation in particular specified circumstances. So again, argues applicants' counsel, statutory regulation, this time enacted very clearly in the public interest, is capable of abrogation by the decision of the Minister in favour of the interests of a particular person. So, the submission made is said to be a simple one. It is argued that it is clear that, as matter of law, rights and obligations imposed by statute can be suspended where there is a power to do so, and here that power resides in 136 (2)(a) of the Companies Act, and there is simply no merit to the submission that that suspension cannot occur as a matter of law.

[115] The submission is, in my view, fundamentally flawed. In both examples the power to exempt or suspend is given to the very person or entity charged with the administration of, or the regulation of, the industry or activity or section to whom or which the exempted or suspended obligation is owed. Not so here – quite obviously. Here the BRPs take control of THL and owe the obligation.

The Sugar Industry Agreement and the Sugar Act – Historical Assessment

[116] Referring in some detail to David Lincoln 'An Ascendant Sugarocracy: Natal's Millers-Cum-Planters, 1905 – 1939' (1988) *Journal of Natal and Zulu History* 1, the applicants suggest that an analysis of the history of the sugar industry, the Sugar Act, and the SI Agreement reveals two important facts. The first is that SASA has never been a public regulatory authority, but simply an association representing the interests of the industry. The second is that the Sugar Act has always merely given legislative recognition to the pre-existing contractual, cooperative arrangement between millers and growers. They continue by saying that SASA, as an industry association, has always existed outside of government. It was formed in 1919 as an alliance struck between the millers and the growers but one that was, at the time, a fragile association born of compromise and pragmatism. Following a period of

miller/grower friction in the 1920s, and SACGA splitting from SASA in 1930, resulting in its collapse, SASA was resuscitated under the 1936 Sugar Act, which brought a new accord, and which compelled the industry to adopt a formula for cane pricing that made provision for both the millers' and growers' costs of production. It thereby created a less secretive and better regulated relationship between millers and growers.

[117] They then submit that SASA's mandate has thus always been, on the one hand, to engage with government on behalf of the industry and, on the other, to facilitate the cooperative, revenue sharing arrangement agreed among industry participants.

[118] It is so that the SI Agreement and the Sugar Act must be understood and interpreted in their statutory and historical context. See *Kalil NO and Others v Mangaung Metropolitan Municipality and Others* 2014 (5) SA 123 (SCA) para 22. It is appropriate to consider the provisions of the predecessor to the Sugar Act, ie. the Sugar Act, 28 of 1936 ("**the 1936 Act**").

[119] The provisions of the 1936 Act gave legislative recognition to the cooperative and contractual arrangements between millers and growers:

a. Section 1 authorised the Minister to publish in the Gazette "an agreement entered into ... between representatives of growers, millers and refiners" if such an agreement had been approved by at least 90% of the growers who together had produced not less than 90% of the cane grown in South Africa during that time, and if it was in the public interest.

b. Section 2 authorised the Minister, where no agreement under s 1 had been concluded or published, to "determine the terms of an agreement between growers, millers and refiners" if it was in the interests of the sugar industry. On publication, the agreement became binding on every grower, miller and refiner that received a quota in respect of the manufacture of sugar, "as if it had been an agreement

or amending agreement, as the case may be, signed by such grower, miller or refiner".

c. Section 6 provided that the Minister could, by notice in the Gazette, prescribe specific prices, quantities, and grades of sugar.

d. In terms of s 8, publication in the Gazette of any agreement or amending agreement served as *prima facie* proof of the terms of the agreement, and of the prerequisites to its conclusion. Publication thus served an evidentiary purpose, providing certainty as to the terms of the agreement.

[120] The applicants argue that the effect of these provisions was that the Minister could make an agreement on behalf of all industry participants who received a quota and bind them to it. Relying on *Southernport Developments (Pty) Ltd v Transnet Ltd* 2005 (2) SA 202 (SCA) para 16, quoting *Coal Cliff Collieries (Pty) Ltd v Sijehama (Pty) Ltd* (1991) 24 NSWLR 1 at 26E - 27B, and *Shepherd Real Estate Investments (Pty) Ltd v Roux Le Roux Motors CC* 2020 (2) SA 419 (SCA) para 18 they contend that contracts of this kind (ie. those that permit a third party to determine uncertain or ambiguous terms on behalf of the parties) are recognised and binding Thus, they conclude, that there was little doubt that the Minister's power to make such an agreement was contractual, and distinct from the Minister's powers under s 6, to prescribe regulations. An agreement made by the Minister remained a deemed agreement, and not subordinate legislation. It gave legislative recognition to the underlying agreement among industry participants.

[121] I am not convinced that those authorities support the proposition contended for. Ponnen JA, who penned the judgments in both *Southernport Developments* and *Shepherd Real Estate*, said clearly that the third party in this context could not give effect to arrangements that the parties themselves had not concluded. In other words, the third party, who by agreement was empowered to do so, was merely adding flesh to an already agreed skeleton. The third party was empowered to settle ambiguities and uncertainties, not to make an entirely new agreement where none existed before.

[122] It therefore seems to me that, if under the 1936 Act, the Minister acted in circumstances where no agreement existed (or had been published) at all, it was not as if he was making an agreement for the parties. The terminology is unfortunate but it would appear that the second use of the word agreement in s 2(a) was intended fit in with the scheme of the provision. It is interesting that in ss 2(b), 2(c) and 3 what the Minister does is referred to as "a determination" and not "an agreement" and is said to operate "as if it had been an agreement".

[123] Accordingly at first blush it might be arguable, in my view, that under the 1936 Act the SI Agreement was either a contract or a statute dependant on whether it was one published in terms of s 1 or a determination by the Minister in terms of s 2.

[124] Seemingly in support of the submission that the SI Agreement was an agreement proper (and not something else) the applicants refer to *Lombard v Pongola Sugar Milling Co Ltd* 1963 (4) SA 119 (D), where it was held that the contract of sale and purchase that was deemed to exist between a grower and a miller under the 1943 SI Agreement (published pursuant to the 1936 Act), was a contract for the sale of movables within the meaning of the Prescription Act, 18 of 1943. It was suggested that that case concluded that the SI Agreement there was an agreement proper. I do not agree. A close consideration of the decision in *Lombard* reveals that it was concerned with the sale of sugar cane between a grower and a miller and the related transport costs concerning the movement of the sugar cane from point of harvest to the mill. Relying on a provision in the SI Agreement to the effect that "[c]ane delivered ... shall ... be deemed to be so delivered .. in pursuance of a contract for the sale of such cane on the terms and conditions herein set out" the court held that the supply of the sugar cane in terms of the SI Agreement was supply in terms of an agreement in respect of which the Prescription Act, 18 of 1943 applied. That was the issue before the court which found that the provision was "... clear and unambiguous, and the true meaning of the clause is that the contractual relationship between the grower and the miller in relation to cane delivered and accepted is to be governed by the rules of law relating to purchase and sale". The issue had nothing to do with whether the SI Agreement itself was an agreement proper or something else.

The Sugar Industry Agreement and the Sugar Act – 1978 onwards

[125] The Sugar Act is very short, consisting of a mere eleven effective sections. Section 12 is the section defining its short title and providing for dates of commencement. To undertake an appropriate textual and contextual analysis it is best that the necessary provisions be set out in full:

> **"To consolidate and amend the laws relating to the sugar industry; and to provide for matters incidental thereto.**
>
> 1 **Definitions**
>
> In this Act, unless the context otherwise indicates-
>
> **'Agreement'** means the Sugar Industry Agreement referred to in section 4;
>
> **'Association'** means the South African Sugar Association incorporated in terms of section 2;
>
> ...
>
> **'Minister'** means the Minister of Economic Affairs;
>
> ...
>
> **'this Act'** includes the Agreement, a notice issued in terms of section 6 and any regulation made in terms of section 10;
>
> ...
>
> 2 **Incorporation of South African Sugar Association**
>
> (1) The Association known as the South African Sugar Association shall under that name, with effect from the date of commencement of this Act, be a juristic person with a constitution of which the terms shall be published by the Minister by notice in the *Gazette*.
>
> (2) The Minister shall in like manner publish any amendment of the said constitution.
>
> (3) The Registrar of Companies shall as soon as possible after the commencement of this Act enter the name of the Association in the register kept by him of bodies incorporated by Statute.
>
> ...
>
> 4 **Sugar Industry Agreement**
>
> (1) *(a)* The Minister shall after consultation with the Association determine the terms of an agreement to be known as the Sugar 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.
>
> *(b)* (i) The Minister may at the instance of, or after consultation with, the Association, amend the Agreement if the Minister is satisfied that such amendment is in the interests of the sugar industry and not detrimental to the public interest.

(ii) An amendment may be made with retrospective effect to any date determined by the Minister after consultation with

(c) The Minister shall publish the Agreement and any amendment thereof by notice in the *Gazette*, whereupon the Agreement or such amendment shall become binding upon every grower, miller and refiner.

(2) Without derogating from the generality of subsection (1) *(a)*, the matters with reference to which the Minister may provide for, and deal with, in the Agreement, shall include-

(a) the designation of any agricultural product from which it is or becomes possible to manufacture sugar as a product which is subject to the Agreement;

(b) (i) the regulation and control of the production, marketing and exportation of sugar industry products;

(ii) the prohibition of the production, marketing and exportation of sugar industry products;

(c) the confiscation or destruction, which may be with or without compensation, and the sale or other disposal, which may be for the benefit of the Association or not, of any sugar industry product in circumstances in which the production of that product, or the marketing or other disposal or the exportation thereof, has been effected or attempted in contravention of the Agreement or any notice published under section 6 or any regulation made under section 10;

(d) a formula for determining the price to be paid by millers to growers for sugar cane or any designated agricultural product, which may include any factor related to the sale or other disposal of any sugar industry product;

(e) the functions to be performed by the Association in the execution of the Agreement;

(f) the establishment and constitution of a board to carry out the terms of the Agreement, and the functions to be performed by it thereunder;

(fA) the granting of power, in specified cases or in general, to the board established under paragraph *(f)* to impose any penalty prescribed in the Agreement for the contravention of, or failure to comply with, any term of the Agreement, or any provision of a notice issued under section 6;

(g) 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 the Association to fulfil any obligation incurred by it in accordance with its constitution;

(h) the regulation and control of the transportation of sugar cane from growers to millers, the prohibition of agreements which are contrary to the terms relating to such regulation and control, whether or not the agreements exist at the commencement of those terms, and whether or not the other terms of the Agreement are applicable to the parties to those agreements,

and any compensation to parties who suffer loss as a result of such a prohibition;

(i) the granting of power-

(aa) in specified cases, to any person or body (including the Association) to provide for and deal with, with the approval of the Minister, any matter referred to in subsection (1) *(a)*, read with paragraphs *(a)* to *(h)*, inclusive, of this subsection, and, where necessary or desirable, with retrospective effect to any date determined by the said person or body with the approval of the Minister, by means of rules, regulations, notices, directions, orders or similar general measures; and

(bb) in specified cases or in general, to any such person or body to publish any such rules, regulations, notices, directions, orders or measures, after consultation, where applicable, with the Association, by notice in the *Gazette* or, with the prior approval of the Minister, where it is deemed expedient due to the restricted operation thereof or for any other reason, in such other manner as may in the opinion of the Minister be suitable in the circumstances to make them known to the persons affected thereby,

and which rules, regulations, notices, directions, orders or measures shall on any such publication become binding in accordance with the provisions thereof on any grower, miller, refiner or other person affected thereby.

(3) The Minister may, after consultation with the Association, in the Agreement or in any subsequent notice in the *Gazette*, declare any contravention of, or failure to comply with, any term of the Agreement, or a notice issued by the Association under section 6, an offence, and may in like manner prescribe penalties for any such contravention or failure.

5 Equality of treatment of growers, millers and refiners

Unless the Agreement expressly provides to the contrary in respect of any particular growers, millers or refiners, or any particular class or category of growers, millers or refiners, any right conferred, or any obligation imposed, upon growers, millers or refiners under the Agreement, shall be construed as applying equally and without distinction to all growers, millers and refiners, respectively.

6 Powers of Association with regard to prices and surcharge

(1) *(a)* The Association may by notice in the *Gazette* prescribe the maximum industrial price at which any sugar industry product, other than speciality sugar, may be sold.

(b) Such price may vary in respect of different grades, kinds, quantities and qualities of the product concerned, and in respect of different places or areas.

(2) The Association may by notice in the *Gazette* or by written notice to the person concerned-

(a) impose a surcharge upon any sugar or molasses purchased or otherwise acquired-

(i) by any person or class or category of persons described in the notice;

(ii) for any purpose described in the notice; and

(b) prescribe the manner in which such surcharge shall be collected, the persons by whom it shall be paid, the persons to whom or the fund to which it shall be paid and the purpose for which it shall be utilized.

(3) The Association may in the case of a notice referred to in subsection (1) or (2) revoke or amend the notice by notice in the *Gazette* or by written notice to the person concerned.

7 Penalties

Any penalty which may be prescribed for any contravention of, or failure to comply with, any term of the Agreement, or of any provision of a notice issued under section 6, or of any regulation made under section 10, shall not exceed R100 000, in the case of a fine, or a period of twelve months, in the case of imprisonment, or both such fine and such imprisonment.

8 Jurisdiction of magistrate's court

A magistrate's court shall have jurisdiction to impose any penalty prescribed in terms of this Act

9 Minister may effect certain amendments to Schedules

The Minister may at the request of the Association, and if he is satisfied that it would be in the interests of the sugar industry and not detrimental to the public interest, by notice in the *Gazette* amend any definition contained in Schedule 1 or 2, or substitute any other definition for any such definition

10 Regulations

The Minister may, after consultation with the Association, make regulations providing for-

(a) the regulation, control or prohibition of the production, marketing or exportation of sugar or sugar industry products;

(b) the better achievement of the objects and the better administration of the provisions of this Act and of the Agreement or any amendment thereof.

11 Repeals and savings

(1) The Sugar Act, 1936 (Act 28 of 1936), the Sugar Amendment Act, 1955 (Act 17 of 1955), and the Sugar Amendment Act, 1958 (Act 26 of 1958), are hereby repealed.

(2) The Sugar Industry Agreement of 1943 is hereby rescinded.

(3) Any determination made, or any decision or action taken, by any person, body or authority under any Act repealed in terms of

> subsection (1), and any agreement and any determination or regulation published under any such Act, shall, except in so far as it is inconsistent with any provision of this Act, continue to be of force until it is rescinded or varied under this Act."

[126] The Minister's powers and functions were transferred to the Minister of Trade and Industry by proclamation on 23 August 2019.

[127] The applicants submit that there are a number of textual features of the statutory regime that indicate that the SI Agreement is an agreement *sui generis*.

[128] They submit firstly that it is significant that s 4(1)(a) itself describes the SI Agreement as an agreement. The point they make is that it is not merely that it names the agreement the "Sugar Industry Agreement", but instead that it provides that there shall be "an agreement to be known as the Sugar Industry Agreement". In other words, what is being named the Sugar Industry Agreement is, according to the section, "an agreement". They argue that if the purpose of the provision was to make the SI Agreement something other than an agreement, the provision could have empowered the Minister, for example, to "make regulations to be known as the Sugar Industry Agreement".

[129] They contend next that s 4 must be contrasted with ss 6 and 10, which provide for the making of subordinate legislation. Section 6 empowers SASA to "by notice in the Gazette prescribe" the maximum industrial price at which a sugar industry product may be sold while s 10 empowers the Minister to "make regulations providing for" various issues. These provisions, which contemplate subordinate legislation, are said to stand in sharp contrast to s 4, which simply provides for the Minister to "determine the terms of an agreement", to amend the agreement in specified circumstances, and to publish the agreement in the Gazette for it to become binding. They conclude the submission with the suggestion that the Sugar Act maintains the distinction created under the 1936 Act between regulations prescribed by the Minister, and the SI Agreement, the terms of which are determined by the Minster.

[130] The applicants' case is thus grounded on the proposition that the SI Agreement as a whole is contractual in nature and qualifies as an agreement and

therefore capable of suspension under the Companies Act. Alternatively, the applicants submit that the payment obligations under the Industry Agreement are *inter partes* obligations and therefore capable of suspension under the Companies Act.

[131] As I have outlined earlier, the applicants rely on certain historical aspects to contend that the SI Agreement is contractual in nature and simply given legislative recognition. The respondents, although each puts it differently, suggest that the applicants fail to adequately consider the language of the instruments which are relevant to this dispute ie. the Sugar Act and the SI Agreement. The argument proceeds with the contention that the applicants also fail to give recognition to the fact that the legislature expressly elected to repeal the 1936 Act and replace it with the Sugar Act, the specific purpose of which was to, *inter alia*, "amend the laws relating to the sugar industry".

[132] To my mind there is indeed a difference. It seems to me that the 1936 Act authorised the Minister to publish "an agreement entered into by" representatives of the various participants in the sugar industry after consensus had been reached within the industry. The Minister was empowered to determine the terms of the agreement only if the industry did not conclude an agreement, and in that case the terms of the agreement would be binding on industry participants "as if it had been an agreement... signed by such grower, miller or refiner". The legislature moved away from this position with the passing of the Sugar Act,. There is no longer any reference in the legislative scheme to the industry participants reaching an agreement. Instead, the Sugar Act confers the power on the Minister to determine the terms of the SI Agreement and impose such terms on the industry. The Sugar Act can therefore be said to part company from the 1936 Act.

[133] It is clear that in s 4(1)(a) of the Sugar Act the Minister is empowered to determine the terms of the SI Agreement on his own after consultation with SASA. The Minister is thus obliged to determine what in "the opinion of the Minister" are to be the terms of the SI Agreement. No consensus is required – only consultation. The concept of "after consultation" does not require agreement, only that serious consideration is given to the view of the party that is to be consulted. In *Public Servants Association of South Africa and Others v Government Employees Pension Fund and Others* [2020]

ZASCA 126; [2020] 4 All SA 710 (SCA) Navsa JA put it crisply as follows (footnote omitted):

> "[55] I now turn to a consideration of the merits. It is clear that there is a distinction between situations in which a decision, by way of statutory prescripts or binding rules, has to be taken 'in consultation', and where a decision has to be taken 'after consultation'.
>
> The former requires agreement and the latter requires that the decision be taken in good faith, *after* consulting and giving serious consideration to the view of the party that has to be consulted."

[134] The determination of the terms of the SI Agreement is thus up to the Minister.

[135] Then too, in terms of s 4(1)(b) of the Sugar Act the Minister "may at the instance of, or after consultation with, the Association, amend the Agreement if the Minister is satisfied that such amendment is in the interests of the sugar industry and not detrimental to the public interest", and in terms of s 4(1)(c) the "Minister shall publish the Agreement and any amendment thereof by notice in the Gazette, whereupon the Agreement or such amendment shall become binding upon every grower, miller and refiner". As I see it, the SI Agreement self-evidently becomes binding on all millers, growers and refiners once gazetted, whether they like it or not. The obligations contained therein are imposed on all industry members as a matter of law, rather than agreed *inter partes* as a matter of contract or arrangement, and unlike a contractual or *inter partes* arrangement, are not open to being cancelled, amended or suspended by the members themselves. Instead, the SI Agreement operates much like a statutory regime with consequences for non-compliance.

[136] That much is obvious from the offences that may be declared and the penalties that may be prescribed in terms of s 4(3) of the Sugar Act, which provides that the Minister may declare certain conduct as constituting an offence or offences and prescribe penalties after consultation with SASA for a contravention of, or failure to comply with, any term of the SI Agreement. The additional fact that he may do so in the SI Agreement itself is a further obvious pointer to the SI Agreement being a legislative instrument as opposed to a document of consensus imposing contractual obligations. Penalties may not exceed R100 000.00 in the case of a fine, or a period

of twelve months, in the case of imprisonment, or both such fine and such imprisonment.

[137] The applicants' suggestion that it is possible to cleave the payment obligations imposed under the SI Agreement from the rest of the SI Agreement and contend that while the SI Agreement may be subordinate legislation, the payment obligations are somehow *inter partes* obligations within the scope of s 136(2)(a) of the Companies Act, is, in my view, simply wrong.

[138] It is manifestly clear that the payment obligations are not *inter partes*. This is evident from the fact that, in the event of a default, the repayment obligations become an industry obligation by way of statutory levies, levied by SASA on the remaining millers in terms of the SI Agreement. When this regime is contrasted with a contractual *lex commissoria* or the availability of the *exceptio non adimpleti contractus*, the difference again becomes self-evident.

[139] The first and second respondents submit, referencing the Shorter Oxford English Dictionary, that "binding" in the context of s 4(1)(c) means "obligatory (on), coercive". They refer also to Stroud's Judicial Dictionary, 6th edition, where it means "Required; Obligatory" as synonymous with "made binding". They submit also that in context the phrase "binding upon" is synonymous with "unavoidable by" and is distinct from the 1936 Act, which in terms of s 1(4) thereof, made the agreement under that Act binding only upon a subset of parties (growers delivering to a miller with a quota and millers that had signed the agreement). It must follow, the submission concludes, that, irrespective of the nature of the SI Agreement, a suspension of the obligations imposed by it is only permissible if it is also permissible to suspend s 4(1)(c) of the Sugar Act thus rendering the SI Agreement itself "not binding". The argument is compelling. As I canvassed earlier, it must be accepted that the Companies Act does not make provision for a BRP to suspend the operation of an Act of Parliament.

[140] The Minister himself confirms that he is responsible for administering the Sugar Act and determining the provisions of the SI Agreement. He has further confirmed that the Sugar Act reveals a deliberate election by the legislature for a statutory basis of regulation of the sugar industry. In addition the SI Agreement itself

records that the Minister has determined its terms under s 4(1)(a) of the Sugar Act and it records in clause 206 that the Minister was satisfied that the amendments were in the interests of the sugar industry and not detrimental to the public interest. No consensus was required nor recorded.

[141] Add to that the indicator that the obligations under the SI Agreement are statutorily located in the definition section of the Sugar Act which provides that "'this Act' includes the Agreement, a notice issued in terms of section 6 and any regulation made in terms of section 10". It follows, in my view, that the obligations which arise under the SI Agreement arise, by definition, directly from "this Act".

[142] In addition, and although not solely determinative of the question, it bears noting too that on a reading through of the SI Agreement as a whole one is left with the distinct sense that one is considering legislation as opposed to a document recording consensus reached amongst industry role-players.

[143] In addition to that analysis of the Sugar Act and of the SI Agreement, there is also judicial authority for the proposition that the SI Agreement is legislative in nature.

[144] In *Even Grand Trading 51 CC v Tongaat Hulett Limited (South African Sugar Association intervening)* (Unreported Judgment, KwaZulu Natal High Court, Pietermartizburg, 2 November 2012, Case No: AR517/11) the court was seized with an appeal from the Sugar Industry Tribunal. The preliminary issue to be decided was whether the High Court had jurisdiction. To make such a determination it was necessary to consider whether the SI Agreement was an agreement in the ordinary sense of the word. That question arose because private parties cannot confer jurisdiction on a High Court that does not naturally have such jurisdiction. The Court (Kruger J with Schaup AJ concurring, sitting as a full bench exercising appellate jurisdiction) held that the SI Agreement was subordinate legislation, by the Minister exercising his powers in terms of National Statute (i.e. the Sugar Act). The analysis and conclusion on this aspect is instructive:

"[7] The current Sugar Industry Agreement .("the Agreement") referred to Section 4(1)(a) ... was promulgated in 2000. The previous agreement promulgated in 1994, introduced the establishment of a special tribunal - the Sugar Industry Appeals Tribunal. This Tribunal had jurisdiction to hear matters involving the sugar industry between growers, millers and refiners as described in the Act.

[8] Of importance are the provisions of Clause 47 of the Agreement which provides *inter alia*, as follows:

> 'A party to a dispute decided by the Appeals Tribunal in terms of clause 34 may within 21 days of the date of the Appeal Tribunal's decision, appeal to any provincial or local division of the High Court of South Africa having jurisdiction against the Appeals Tribunal's finding by lodging with the registrar of the court concerned a notice of appeal setting out in full the grounds of appeal, in which event –
>
> .....
>
> (d) The appeal shall be prosecuted as if it were an appeal from a judgment of a Magistrate's Court in a civil matter and all rules applicable to an appeal from such a judgment shall *mutatis mutandis* apply to the appeal against the finding of the Appeals Tribunal; and
>
> (e) The court hearing the appeal may -
>
> (i) Confirm the finding of the Appeals Tribunal; or
>
> (ii) Set aside such finding; or
>
> (iii) Substitute its own finding for that of the Appeals Tribunal; and
>
> (iv) Make such order as to costs as it deems to (sic) meet.'

[9] As is evident from the aforementioned, this clause allows an appeal to the High Court to be prosecuted as if the appeal is from a judgment of the Magistrate's Court in a civil matter. It is trite that persons cannot, by agreement, bestow and obligate a High Court to hear and resolve disputes between them by way of an appeal. In **Goldschmidt and another v Folb and another 1974(1) SA 576 (TPD)**, Heimstra J, in deciding whether an agreement allowing for an arbitration award was valid, held at 577(a):

> 'Private individuals cannot confer jurisdiction on the courts which they do not possess in terms of the common law or of statute; nor can they impose tasks upon the court which they are not legally obliged to perform'.

[10] Is the Sugar Industry Agreement an agreement/contract in the ordinary sense of the word? Section 4(1) provides that the Minister, on his own, shall determine the terms of the agreement after consultation with the necessary role players. It is therefore not an 'agreement' or 'consensus' between the parties. After considering the necessary input from the various stakeholders, the Minister is empowered to determine the terms of the Sugar Industry Agreement, 'in the interest of the sugar industry but not detrimental to the public interest'. (Section 4(1)). It is clearly distinguishable from an agreement between the parties – e.g. an arbitration agreement – which seeks to confer appellate jurisdiction on the High Court.

[11] The agreement is therefore subordinate legislation, by the Minister, exercising his powers in terms of a National Statute – the Sugar Act, 1978.

[12] In terms of Section 171 of the constitution, 'all courts function in terms of National legislation, and their rules and procedures must be provided for in terms of National legislation'. 'National legislation' is defined in Section 239 of the Constitution as:

> ' "National Legislation" includes –
> (a) Subordinate legislation made in terms of an Act of Parliament, and
> (b) Legislation that was in force when the Constitution took effect and that is administered by the National Government'.

[13] It is accordingly apparent from the provisions of Section 171 of the Constitution that subordinate legislation made or empowered under National Legislation has the capacity to determine how our courts function, and in particular to determine its powers and jurisdiction.

[14] In terms of Section 19 of the Supreme Court Act, 59 of 1959 the High Court has jurisdiction over 'all other matters of which it may according to law take cognizance' and had the 'power to hear and determine appeals from all inferior courts within its area of jurisdiction'. In **Daljosaphat Restorations (Pty) Ltd v Kasteelhof CC 2006(6) SA 91 (CPD)** it was held, at paragraph 30 and 31:

> 'Generally the appeal jurisdiction of a High Court is circumscribed by s.19 of the Supreme Court Act 59 of 1959, which in s.19(1)(a)(i) provides for the jurisdiction of a High Court to hear and determine appeals from all inferior courts within its area of jurisdiction.
>
> In addition, appellate power may be vested in the High Court by statute. Here Mr Gamble pointed, by way of example, to s.20 of the Health Professions Council. The Arbitration Act does not accord a similar right of appeal to a High Court. There is no other general power which a High Court may exercise in relation to the hearing of an appeal to it other than from an Inferior court or in terms of a statutory provision. Certainly, a High Court does not have such power in terms of the common law or its inherent jurisdiction.'

[15] Given the conclusion that the Sugar Industry Agreement is subordinate legislation, I am of the opinion that the provisions of Clause 47 of the Sugar Industry Agreement validly confers appellate jurisdiction to the High Court."

[145] The applicants boldly assert that the court in *Even Grand Trading* was not justified by its reasoning and is wrong. They say that the mere fact that the SI Agreement is not an ordinary agreement, and that the Minister is empowered to determine its terms and to publish it in the Gazette, does not convert it into subordinate

legislation. They argue further, and in any event, that the court was tasked with the narrow question of determining whether the High Court had jurisdiction over disputes dealt with by the Sugar Industry Appeals Tribunal. It is in that context, the applicants say, that *Even Grand Trading* found the SI Agreement to be subordinate legislation They argue also that in describing the SI Agreement as subordinate legislation, the court in *Even Grand Trading* was not concerned with the payment obligations under the SI Agreement. It limited its scope of inquiry to the jurisdiction-conferring capacity of the SI Agreement, and did not consider or decide whether, even if the Minister's involvement in the SI Agreement makes it capable of conferring jurisdiction on the High Court, the SI Agreement remains, in substance, and for other purposes, an agreement.

[146] That argument is plainly wrong. Firstly, the applicants suggest that the judgment in *Even Grand Trading* is one of the High Court (not an Appeal Court) and submit that thus I am at liberty to hold that the judgment is clearly wrong. Plainly, that I cannot do. Secondly, it is suggested that the court found only part of the SI Agreement to be subordinate legislation. Not only is this directly contrary to the words of the decision itself but it is also illogical to suggest that a single document may in part be subordinate legislation and in another part not be subordinate legislation. I have already found earlier that it is impermissible to cleave the payment obligations imposed under the SI Agreement from the rest of the SI Agreement. That view applies equally here.

[147] In *Sugar Industry Central Board and Another v Hermannsburg Mission and Another* 1983 (3) SA 669 (A) the court (Miller JA writing for the majority) endorsed an earlier finding that the SI Agreements (under the 1936 Act) were subordinate legislation:

> "In *W H Hindson and Co Ltd v Natal Estates Mill Group Board and Others* 1941 NPD 41 at 48 - 49 SELKE J said this:
>
> > 'The sugar industry in Natal is governed by and organised pursuant to a Union statute known as the Sugar Act 28 of 1936, and an agreement called the Sugar Industry Agreement, which has statutory force and is binding upon substantially all sugar growers millers and refiners engaged in the industry
> >
> > The Agreement amounts virtually to a code providing for the organisation of the whole industry upon something of a co-operative basis So far as is now relevant it

> divides those engaged in the industry into two main classes: *(a)* growers, and *(b)* millers; and it then proceeds by a series of elaborate provisions to establish machinery for regulating and adjusting the respective rights and obligations as between growers and millers, and as between the members of these two classes *inter se*.' "

[148] The 1936 Act essentially provided for a quota system that rendered growers, millers and refiners bound thereby. That it was substantially binding on all sugar growers, millers and refiners engaged in the industry would have been a product of that quota system. Those not in receipt of a quota fell outside the system. I am urged to accept, which I do, the proposition that if the Appellate Division considered the SI Agreement under the 1936 Act to have statutory force, then *a fortiori* the SI Agreement under the Sugar Act is of statutory force; it being binding on all millers, growers and refiners regardless of any quota entitlement or allocation.

[149] The applicants are critical of *Sugar Industry Central Board* and contend that it is not relevant to the instant matter for, *inter alia*, the following reasons:

a. Firstly, they submit that the matter concerned the 1936 Act, and the SI Agreement concluded under that Act and did not concern the Sugar Act and the SI Agreement concluded under it.

b. Secondly, and in any event, the court there considered the entirely different question as to whether, in the event of the closure of a mill, the Sugar Industry Central Board (a body distinct from SASA) had jurisdiction to decide upon the mill to which an affected grower could send its cane, and whether the Board was obliged to afford the grower a hearing and explained that the clause was to be interpreted in the context of the Agreement as a whole, and against the background of the role of the Board in the conduct and organisation of the sugar industry. Thus it was argued that it was in that context that the court quoted the earlier decision in *Hindson*.

They conclude with the assertion that *Hindson* therefore confirms that:

i. the SI Agreement is akin to an industry "code";

ii. SASA operates in a manner akin to a co-operative;

iii. the rights and obligations under the SI Agreement are *inter partes* -- they operate as between growers and millers, and as between the members of these two classes *inter se*.

[150] In my view the criticism of *Sugar Industry Central Board* is founded on false premises. On the one hand the argument suggests that the factual questions before the court were different but this is irrelevant. The *ratio decidendi* is the relevant aspect. On the other hand the respondents suggest that the argument seeks to distil from the judgment in *Hindson* a contention that SASA operates in a manner akin to a co-operative, which misunderstands the judgment which says that the industry is organised on a co-operative basis; and from there to bootstrap the argument that because there are rights and obligations operating *inter partes* under the SI Agreement, it qualifies as an agreement for the purposes of s 136(2) of the Companies Act. The argument is a *non sequitur*.

[151] For all those reasons, in my view, the SI Agreement constitutes subordinate legislation.

The alternative constitutional argument

[152] In the alternative to their argument on the interpretation of s 136(2)(a) of the Companies Act, and only in the event that it is found that the obligations imposed under the SI Agreement are not capable of suspension under s 136(2)(a) of the Companies Act, the applicants contend that s 136(2)(a)(i) is unconstitutional.

[153] The first contention is that, so interpreted, s 136(2)(a) is irrational in that the power of suspension conferred on BRPs may in some instances be unable to achieve the purpose sought to be achieved through the enactment of the section, which is the rescue of a financially distressed company.

[154] The BRPs suggest that the payment obligations under the SI Agreement are fees owed for services rendered by SASA and, in relation to the redistribution proceeds, monies owed by THL to other millers. They contend that those are *inter partes* obligations, not taxes, fines or penalties imposed in the public interest and that the irrationality and unconstitutionality of s 136(2)(a) lies in permitting the suspension of obligations arising from contracts, agreements, or arrangements between private parties, but not permitting the suspension of the self-same kinds of obligations, merely because these obligations are (as the respondents contend, and as is assumed, for present purposes) regulatory in nature. Thus they reject the Minister's opinion that it is rational to exclude those obligations from the remit of s 136(2)(a) because they are statutory in nature contending that whilst the Minister acknowledges that s 136(2) differentiates between "obligations owed under a regulatory regime to a regulatory authority and debts due under a contract to other creditors", they hold the view that he does not identify the legitimate and rational government purpose underpinning that differentiation. Accordingly, it is submitted that differentiation encapsulated by s 136(2)(a) of the Companies Act, on the respondents' interpretation, gives rise to irrational differentiation in breach of s 9(1) of the Constitution.

[155] While the Constitution allows judicial review of legislation, it does so in a circumscribed manner. The reason for this caution was explained in the following terms in *Ronald Bobroff & Partners Inc v De La Guerre* 2014 (3) SA 134 (CC) (footnotes omitted):

> "[6] The Constitution allows judicial review of legislation, but in a circumscribed manner. Underlying the caution is the recognition that courts should not unduly interfere with the formulation and implementation of policy. Courts do not prescribe to the legislative arm of government the subject-matter on which it may make laws. But the principle of legality that underlies the Constitution requires that, in general, the laws made by the legislature must pass a legally defined test of 'rationality'.
>
> > 'The fact that rationality is an important requirement for the exercise of power in a constitutional state does not mean that a Court may take over the function of government to formulate and implement policy. If more ways than one are available to deal with a problem or achieve an objective through legislation, any preference which a Court has is immaterial. There must merely be a rationally objective basis justifying the conduct of the legislature '"

[156] Courts must show respect for legislative choices made by Parliament, especially where complex policy choices are required. That reminder was sounded in *Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others* [2017] ZACC 17; 2017 (9) BCLR 1108 (CC) (footnotes omitted):

> "[1] Ours is a constitutional democracy, not a judiciocracy. And in consonance with the principle of separation of powers, the national legislative authority of the Republic is vested in Parliament whereas the judicial and the executive authority of the Republic repose in the Judiciary and the Executive respectively. Each arm enjoys functional independence in the exercise of its powers. Alive to this arrangement, all three must always caution themselves against intruding into the constitutionally-assigned operational space of the others, save where the encroachment is unavoidable and constitutionally permissible.
>
> [2] Turning to the Executive, one of the core features of its authority is national policy development. For this reason, any legislation, principle or practice that regulates a consultative process or relates to the substance of national policy must recognise that policy-determination is the space exclusively occupied by the Executive. Meaning, the Judiciary may, as the ultimate guardian of our Constitution and in the exercise of its constitutional mandate of ensuring that other branches of government act within the bounds of the law, fulfil their constitutional obligations and account for their failure to do so, encroach on the policy-determination domain only when it is necessary and unavoidable to do so.
>
> [3] A genuine commitment to the preservation of comity among the three arms of the State insists on their vigilance against an inadvertent but effective usurpation of the powers and authority of the others. Absent that vigilance in this case, a travesty of justice and an impermissible intrusion into the policy-determination terrain would take place to the grave prejudice of the Executive or even the nation. For, that is bound to happen whenever the eyes of justice are unwittingly focused on peripherals rather than on the fundamentals.
>
> [4] Driven by this reality, we were constrained to sound the following sobering reminder:
>
> > 'The Judiciary is but one of the three branches of government. It does not have unlimited powers and must always be sensitive to the need to refrain from undue interference with the functional independence of other branches of government
> >
> > . . .
> >
> > Courts ought not to blink at the thought of asserting their authority, whenever it is constitutionally permissible to do so, irrespective of the issues or who is involved. At the same time, and mindful of the vital strictures of their powers, they must be on high alert against impermissible encroachment on the powers of the other arms of government.' "

[157] In *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) it was explained that (footnotes omitted):

> "[67] Under our constitutional scheme it is the responsibility of the executive to develop and implement policy. It is also the responsibility of the executive to initiate legislation in order to implement policy. And it is the responsibility of Parliament to make laws. When making laws Parliament will exercise its judgment as to the appropriate policy to address the situation. This judgment is political and may not always coincide with views of social scientists or other experts. As has been said, '(i)t is not for the court to disturb political judgments, much less to substitute the opinions of experts'."

[158] All that is required for rationality to be satisfied is that:

a. the legislature is seeking to achieve a legitimate government purpose; and that

b. the means chosen to achieve a particular purpose must be reasonably capable of accomplishing that purpose.

The legislature has a wide discretion in choosing the means to achieve its objective. The means selected need not be the best means or the most appropriate means available and courts may not interfere with the means selected simply because they do not like them, or because there are other more appropriate means that could have been selected. See *Albutt v Centre for the Study of Violence and Reconciliation and Others* 2010 (3) SA 293 (CC) at para 51.

[159] As explained in *Weare and Another v Ndebele NO and Others* 2009 (1) SA 600 (CC) at para 46 (footnotes omitted):

> "Section 9(1) provides that everyone is equal before the law and has the right to equal protection and benefit of the law. The test for determining whether s 9(1) is violated was set out by the court in *Prinsloo v Van der Linde* and *Harksen v Lane*. A law may differentiate between classes of persons if the differentiation is rationally linked to the achievement of a legitimate government purpose. The question is not whether the government could have achieved its purpose in a manner the court feels is better or more effective or more closely connected to that purpose. The question is whether the means the government chose are rationally connected to the purpose, as opposed to being arbitrary or capricious."

[160] It is the objector who challenges the legislative scheme that bears the onus of establishing the absence of a legitimate government purpose, or the absence of a rational relationship between the measure and that purpose. See *New National Party v Government of the Republic of South Africa* 1999 (3) SA 191 (CC) at para 19.

[161] Have the applicants come close to meeting that onus? For the reasons the follow I am of the view that they fall short in that regard.

[162] Section 128(1)(b) of the Companies Act provides that the purpose of business rescue is to "facilitate the rehabilitation of a company that is financially distressed" by providing for, among other things, the adoption of a business rescue plan that maximises the likelihood of the company surviving or "results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company". The discussion in paras 100 to 105 above is also relevant here.

[163] Conferring on business rescue practitioners the power to suspend the contractual obligations of a financially distressed company, for the duration of the business rescue proceedings, is manifestly rationally related to the purpose sought to be achieved; namely that of enabling the rescue of the company or securing a better return for its creditors or shareholders.

[164] Whilst immunising a financially distressed company from all obligations, including statutory obligations, may more effectively facilitate the rescue of the company, the legislature must strike a balance between competing objectives and competing interests. I consider the legislature to have correctly determined that this balance is most appropriately struck by permitting the suspension of contractual obligations but not legislative obligations. In my view the exclusion is perfectly rational. It recognises the policy imperative of ensuring that regulatory authorities are enabled to continue to perform their statutorily mandated functions, to the benefit of the industry and public at large. To put it bluntly: if a company cannot comply with its statutory obligations, then it cannot be rescued and must seek liquidation. There is nothing irrational about such a legislative decision, which strikes the appropriate balance between business rescue and the proper functioning of a regulatory regime.

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:
D 13763/2023

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant

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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty-first Respondent

INDEX TO APPLICATION – VOLUME 2

Item	Description	Page
1.	Certificate of Urgency – Max Du Plessis SC	1-2
	Notice of Opposition to Mediation in terms of Rule 41A (2)A, dated 5 December 2023	3-6
2.	Notice of Motion, dated 5 December 2023	7-13
3.	Founding Affidavit, deposed to by Michela Chiara Cutts on behalf of RCL Foods Sugar & Milling (Proprietary) Limited, ("**RCL**"), dated 5 December 2023	14-38
4.	Annexure "**FA1**" judgment of the Honourable Judge Vahed dated 4 December 2023 in Case No. D4472/2023	39-112
5.	Annexure "**FA2**" Details of Parties Cited in this application	113-116
6.	Annexure "**FA3**" the Business Rescue Plan of Tongaat Hulett Limited, RGS Version, dated 29 November 2023	117-259
7.	Annexure "**FA4**" the Business Rescue Plan of Tongaat Hulett Limited, Vision Version, dated 29 November 2023	260-401

8.	Annexure "**FA5**" Order of the Honourable Mr Justice Vahed in Case No. D4472/2023, dated 28 November 2023	402-404
9.	Annexure "**FA6**" Letter from Webber Wentzel to Business Rescue Practitioners of Tongaat Hullet Limited, dated 27 March 2023	405-406
10.	Annexure "**FA7**" Letter from Werksmans to Webber Wentzel, dated 8 June 2023	407-409
11.	Annexure "**FA8**" Letter from Webber Wentzel to Werksmans, dated 1 December 2023	410-417
12.	Annexure "**FA9**" Email from Werksmans to Webber Wentzel, dated 1 December 2023	418

DATED AT SANDTON ON THIS THE 5TH DAY OF DECEMBER 2023.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg,
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh / L Kahn / L Kamukwamba/ 3058873
C/O C/O STOWELL & CO

[165] If the financially distressed company, despite being aided by the ability to suspend contractual obligations, is not able to meet its statutory obligations together with the other obligations it must meet in order lawfully and successfully remain in business, then it falls to be wound up either by immediate liquidation or in business rescue. Business rescue proceedings in which a company is wound down also terminate in liquidation.

[166] Although equally relevant to the earlier discussion on the Companies Act, it serves just as well here to refer to *Diener NO v Minister of Justice and Correctional Services and Others* 2019 (4) SA 374 (CC) (footnotes omitted):

> "[54] The purpose of business rescue is to assist a financially distressed company with paying its debts, avoiding insolvency, and maximising the benefit to stakeholders upon liquidation (if inevitable). It is stated expressly in s 7*(k)* of the Companies Act that one of the purposes of the Act is to 'provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders'. It must be emphasised that this must be done while balancing the rights of all affected persons, including creditors, employees, and shareholders. The primary goal of business rescue is to avoid liquidation and its attendant negative consequences on stakeholders. In addition, a secondary purpose is to achieve a better outcome on liquidation or disinvestment, whereby '[t]he underlying principle behind restructuring or reorganisation proceedings is that a business may be worth a lot more if preserved, or even sold, as a going concern than if the parts are sold off piecemeal'. At the same time, where it is not viable to rescue a company, it should be liquidated and its business sold. Business rescue can only begin where there is a reasonable prospect of saving the company. This was highlighted in *KJ Foods*, where the Supreme Court of Appeal quoted with approval the High Court in *DH Brothers Industries*, which stated that —
>
> > 'Chapter [6] as a whole reflects "a legislative preference for proceedings aimed at the restoration of viable companies rather than their destruction" *but only of viable companies, not of all companies placed under business rescue* '
>
> This is in line with the ultimate aim of balancing the rights and interests of all relevant stakeholders."

[167] The fact that statutory obligations must continue to be discharged and are not capable of suspension, even if it were held to result in such obligations being preferred over the rights of certain creditors, cannot by that result alone result in "irrationality". The legislative choice to retain the imperative for a company in business rescue to discharge its statutory obligations in business rescue, while creating

breathing space through the suspension of contractual obligations, is a perfectly rational means to serve the purpose of the provisions of business rescue.

[168] The respondents submit that the applicants ignore the evidence of the Minister (the Minister is responsible for administering both the Companies Act and the Sugar Act). The Minister explains that the objective of s 136(2)(a) of the Companies Act is to differentiate between contractual obligations, which in a sense are private agreements between parties and which can be suspended, and statutory obligations, which have a bearing on the public and/or on industries and which cannot be suspended. He explains that this approach "enables a balance between private and public interests".

[169] The Minister also explains that the exclusion of statutory obligations from the scope of s 136(2) is based on a policy imperative of ensuring that regulatory authorities are enabled to continue to perform their statutorily mandated regulatory functions. He further explains that the Legislature is faced with the responsibility of carefully weighing trade-offs when making policy choices, such as this, and that the Legislature took a policy decision to maintain statutory obligations over the rescue of companies, and that the Legislature's policy decision is that an appropriate balance is struck between permitting the suspension of contractual obligations but not statutorily imposed obligations owing under a regulatory regime.

[170] Finally, the Minister explains that the Legislature's policy choice behind the exclusion is that the proper functioning of the regulatory body would be disrupted and such a regulator would be unable to properly operate and achieve its regulatory purpose if companies in business rescue could opt out of their statutory obligations owing to it.

[171] The respondents argue, correctly in my view, that the Minister's evidence is not properly rebutted by the applicants. The applicants say that the Minister's affidavit compromises largely legal argument, but that is not so. His affidavit contains his evidence for why Parliament chose as it did and he has – under oath and as the executive Minister in charge of the statutory scheme – explained the rational choices that Parliament made.

[172] The applicants' second contention concerning the constitutionality of section 136(2)(a) is that, so interpreted, the section arbitrarily distinguishes between organs of state and other creditors thus violating section 9(1) of the Constitution. The contention is that organs of state are entitled to demand immediate payment of obligations owed to them while obligations owed to other creditors may be suspended, and that there is no rational basis for this distinction.

[173] The test used to determine whether statutory provisions amount to unequal treatment by the law was set out *Harksen v Lane NO and Others* 1998 (1) SA 300 (CC). The Court explained, dealing there with s 8 of the Interim Constitution:

> "[43] Where s 8 is invoked to attack a legislative provision or executive conduct on the ground that it differentiates between people or categories of people in a manner that amounts to unequal treatment or unfair discrimination, the first enquiry must be directed to the question as to whether the impugned provision does differentiate between people or categories of people. If it does so differentiate, then in order not to fall foul of s 8(1) of the interim Constitution there must be a rational connection between the differentiation in question and the legitimate governmental purpose it is designed to further or achieve. If it is justified in that way, then it does not amount to a breach of s 8(1)."

[174] *Weare* recognised that s 9(1) of the Constitution presents a low threshold. In *Phaahla v Minister of Justice and Correctional Services and Another* 2019 (2) SACR 88 (CC) it was explained (footnotes omitted):

> "[48] It is important to note that when conducting a rationality enquiry, the court must focus only on whether the differentiation is arbitrary or not rationally connected to a legitimate government purpose. It is not for the court to decide if there is a better means to achieve the object of the differentiation. When considering whether there is a rational link to the achievement of a legitimate government purpose –
>
> > '(t)he question is not whether the government could have achieved its purpose in a manner the court feels is better or more effective or more closely connected to that purpose. The question is whether the means the government chose are rationally connected to the purpose, as opposed to being arbitrary or capricious.' "

[175] The argument that a statutorily imposed obligation necessarily involves performance in favour of an organ of state is not correct and in my view the applicants' argument is founded on a false premise. The facts of this matter reveal that not all statutory obligations involve organs of state.

[176] In my view, as was correctly argued by the respondents, an obligation owed to an organ of state may be suspended under s 136(2)(a) if the obligation arises under a contract or agreement. Similarly, an obligation owed to persons other than organs of state in terms of a legislative scheme may not be suspended under s 136(2) of the Companies Act. It is the nature of the obligation imposed and not the identity of the actor to whom the obligation is owed which is of importance for the purposes of s 136(2) of the Companies Act. There is thus no distinction made in s 136(2)(a) between organs of state and other creditors, let alone an arbitrary one.

[177] It is plain that in the absence of any differentiation between persons or categories of persons, there can be no violation of s 9(1) of the Constitution. There is thus no need to embark upon the second leg of the enquiry – namely, whether the differentiation bears a rational connection to a legitimate government purpose. In any event, even if I were to find that s 136(2) differentiates between private parties and regulatory bodies, such differentiation is neither arbitrary nor capricious.

[178] The legislature did not legislate for the suspension of legislative obligations by business rescue practitioners and that decision is evidently rational. As I have found, in the present case, the nature of the obligation is statutory, which arises out of subordinate legislation.

[179] In the applicants' heads of argument, a further argument is raised with regard to the ranking of regulatory authorities. The applicants argue that the inability to suspend statutory obligations will create a preference for regulatory authorities in business rescue which contradicts its concurrent ranking in liquidation. The respondents (particularly RCL Foods) complain that this is impermissible because by raising a new basis for suggesting that s 136 is irrational for the first time in its written submissions, the applicants deprived the respondents of an opportunity of responding thereto in answer.

[180] In any event, the argument misconceives the nature of post-commencement debts which cannot be compromised by BRPs. Such debts are to be considered as post-commencement finance. In *Henque 3935 CC t/a PQ Clothing*

Outlet (In Business Rescue) v Commissioner, South African Revenue Service 2023 (6) SA 260 (GJ) post-commencement finance was dealt with thus:

> "[5] One of the innovations of the Companies Act is to be found in ch 6 thereof, where the concept or practice of business rescue is introduced into our law. In terms of s 128(1)*(b)* of the Companies Act, business rescue is a 'proceeding' that is designed to 'facilitate the rehabilitation' of an entity that is financially distressed, by (i) temporarily appointing a business rescue practitioner (BRP) who supervises and manages the affairs of the entity; (ii) placing a temporary moratorium on the rights of claimants against the entity or against any 'property' in the possession of the entity — the full extent of the moratorium is further elaborated upon in s 133 of the Companies Act; and (iii) allowing for a business rescue plan (the plan) to be developed. By placing a temporary moratorium on the rights of claimants, the Companies Act ring-fences the debts of the entity that have accrued prior to the commencement of business rescue. It is these debts that the plan would focus upon to 'rehabilitate' or 'rescue' the entity. Sections 151 and 152 of the Companies Act provide for the plan to be tabled at a meeting of the creditors for adoption. In cases where the plan adopted by the creditors affects the rights of shareholders or members, as in this case, then the plan would have to be tabled at a meeting of these shareholders or members for their approval of the adoption. Should the plan be adopted and approved (in the case where approval is necessary), in terms of s 152(4) it is binding on all creditors, regardless of whether a creditor was at the meeting or not. Finally, in terms of s 154(2), no creditor, including Sars, if owed unpaid taxes which were due and payable pre- the commencement of business rescue, can enforce the debt, except in terms of the plan. Post-commencement debts — referred to as 'Post-commencement finance' in the Companies Act — are an altogether different species. They are dealt with in terms of s 135 of the Companies Act. They are not affected or compromised by the plan. Salaries earned by employees during the business rescue proceedings constitute post-commencement finance. Any taxes, such as income tax arising from post-commencement profits, skills development levies (SDL) or VAT on post-commencement sales, for example, too, would constitute post-commencement finance. All post-commencement finance has to be settled before any pre-commencement debts can be considered."

[181] The suspension of statutory obligations under the SI Agreement post-commencement therefore results in the preference of SASA in the rescue of THL. This is a consideration which the practitioners ought to take into account when determining whether the business is capable of rescue or whether a better return will result in liquidation. The ranking, however, has no bearing on the constitutionality of the Companies Act and will have to be dealt with in the business rescue plan.

[182] Insofar as the applicants seek final reading-in relief to cure the alleged constitutional defect in the Companies Act, that relief will result in business rescue practitioners being able to suspend and cancel statutory obligations as well as reduce statutory claims to general damages under ss 136(2)(b) and 136(3) respectively.

[183] In other words, practitioners will be afforded expansively broad powers in circumstances where the legislature evidently did not want to ascribe such powers. The reading-in relief thus amounts to a severe intrusion on the legislative realm and impermissibly transforms the scope and nature of s 136 of the Companies Act as a whole. In *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC) the principle was articulated as follows (footnotes omitted):

> "[65] In fashioning a declaration of invalidity, a Court has to keep in balance two important considerations One is the obligation to provide the 'appropriate relief' under s 38 of the Constitution, to which claimants are entitled when 'a right in the Bill of Rights has been infringed or threatened'. Although the remedial provision considered by this Court in *Fose* was that of the interim Constitution, the two provisions are in all material respects identical and the following observations in that case are equally applicable to s 38 of the Constitution:
>
> > 'Given the historical context in which the interim Constitution was adopted and the extensive violation of fundamental rights which had preceded it, I have no doubt that this Court has a particular duty to ensure that, within the bounds of the Constitution, effective relief be granted for the infringement of any of the rights entrenched in it. In our context an appropriate remedy must mean an effect remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced Particularly in a country where so few have the means to enforce their rights through the courts, it is essential that on those occasions when the legal process does establish that an infringement of an entrenched right has occurred, it be effectively vindicated. The courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies if needs be, to achieve this goal ' (Footnote omitted.)
>
> The Court's obligation to provide appropriate relief must be read together with s 172(1)*(b)* which requires the Court to make an order which is just and equitable.
>
> [66] The other consideration a Court must keep in mind is the principle of the separation of powers and, flowing therefrom, the deference it owes to the Legislature in devising a remedy for a breach of the Constitution in any particular case. It is not possible to formulate in general terms what such deference must embrace, for this depends on the facts and circumstances of each case. In essence, however, it involves restraint by the Courts in not trespassing onto that part of the legislative field which has been reserved by the Constitution, and for good reason, to the Legislature. Whether, and to what extent, a Court may

wd.

interfere with the language of a statute will depend ultimately on the correct construction to be placed on the Constitution as applied to the legislation and facts involved in each case."

[184] At the hearing counsel for the applicants accepted that the reading-in originally sought was over-broad and that it created the equal opposite and contended then for an amended dual reading-in in the following terms (the reading-in suggested is inserted in ***underlined bold italics***:

> (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 ***inter partes*** obligation of the company that—
>
> (i) arises under an agreement ***or regulatory regime*** to which the company was a party at the commencement of the business rescue proceedings; and
>
> (ii) would otherwise become due during those proceedings;

[185] In my view that change makes absolutely no difference to the argument.

[186] Caution is demanded regarding the granting of reading-in relief – particularly final reading-in relief, which must only be resorted to sparingly. See *Gaertner and Others v Minister of Finance and Others* 2014 (1) SA 442 (CC) at paras 82 to 85.

[187] The alternate constitutional challenge therefore fails

The permanent stay of RCL Foods's complaint

[188] RCL Foods referred a complaint to the Sugar Appeal Tribunal (**"the Tribunal"**) on a priority basis. RCL Foods requested the Tribunal to determine the nature of the payment obligations imposed on millers under the SI Agreement and whether such obligations could be unilaterally suspended thereunder.

[189] Clause 35 of the SI Agreement 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." (emphasis added.)

[190] The complaint brought by RCL Foods related to obligations arising out of the SI Agreement and/or the interpretation of the SI Agreement. RCL Foods contends that the Tribunal was thus the appropriate forum to determine the complaint and that contrary to the applicants' assertions, RCL Foods did not seek declaratory relief regarding the proper interpretation of s 136(2)(a) of the Companies Act before the Tribunal. The declaratory relief sought in the complaint was limited to the nature of the obligations under the SI Agreement.

[191] The applicants' position was that the SI Agreement was contractual and therefore capable of suspension. RCL Foods believed that the SI Agreement was not contractual, and accordingly sought relief confirming the nature of the SI Agreement. The Tribunal had jurisdiction to determine that dispute because it involved the interpretation of the SI Agreement itself.

[192] It was only clarified in correspondence between the parties after the institution of RCL Foods' complaint that the practitioners were of the view that THL's payment obligations under the SI Agreement were capable of suspension under s 136(2)(a) of the Companies Act even if they were not contractual in nature. In other words that the practitioners could suspend even statutory obligations.

[193] RCL Foods's complaint was then "stayed by agreement to allow the present application to proceed". The BRPs did not take any formal steps in RCL Food's complaint before the proceedings were stayed in the Tribunal.

[194] Notwithstanding all of that, the applicants seek an order striking out or a permanent stay of RCL Foods's complaint, and the costs incurred by them in respect of RCL Foods' complaint.

[195] Considering the mutual stay before the Tribunal, an application for the striking out or permanent staying of RCL Foods' complaint is without foundation. Instead, the applicants ought to have approached the Tribunal for such an order rather than agree to a stay of proceedings.

[196] RCL Foods' complaint to the Tribunal was also not precluded by the general moratorium on legal proceedings against a company in business rescue for the reason that it was not sought against a company in business rescue, as required in s 133(1) of the Companies Act. Rather, RCL Foods requested the Tribunal to determine the nature of the obligations under the SI Agreement and did not seek any relief against THL.

[197] In any event, an order for the permanent stay of proceedings is an extra-ordinary remedy that has far-reaching consequences. A court's power to permanently stay proceedings is exercised in a circumscribed manner and only in exceptional circumstances where the interests of justice dictate such a stay. See *Fisheries Development Corporation of SA Ltd v Jorgensen and another; Fisheries Development Corporation of SA Ltd v AWJ Investments (Pty) Ltd and Others* 1979 (3) SA 1331 (W) at 1338.

[198] In the present matter, no allegation has been raised that suggests the complaint was launched vexatiously nor that the interests of justice dictate the permanent stay of the complaint. The applicants' main contention is that the Tribunal lacked jurisdiction to entertain the dispute – a complaint best addressed before the Tribunal itself. In the circumstances, no case has been made out for a permanent stay.

[199] The applicants' request for costs in the complaint is even more difficult to comprehend, given that the applicants did not even so much as formally oppose the complaint. In any event, the Tribunal has the power to grant costs awards, and the applicants ought to approach the Tribunal to recover whatever costs it may establish have been wasted (which would evidently be none given their non-involvement in the proceedings).

[200] The relief sought concerning RCL Foods' complaint to the Tribunal is without merit.

Costs

[201] The applicants and RCL Foods employed the services of multiple counsel and each sought the costs of three counsel. The other respondents were represented by one or two counsel and sought costs accordingly. I consider it appropriate to award costs of two counsel only, where more than one counsel was employed.

The early Order

[202] On the morning of 29 November 2023 the parties represented at the hearing were notified that this judgment would be delivered at 14h00 on Monday, 4 December 2023. It was indicated that I was in a position then to issue the Order that follows, and that I was prepared to do so if there was unanimous consent thereto by all the parties represented at the hearing. That consent was forthcoming and the Order was issued at 14h00 on 29 November 2023.

The Order

[203] The application is dismissed with costs, such costs to include the costs of two counsel where so employed.

Vahed J

Case Information:

Date of Argument	13 & 14 September 2023
Date Order Made	29 November 2023
Date of Judgment	04 December 2023

Applicants' Counsel:	A Subel SC (with I Goodman & M Mbikiwa)
Instructed by:	Werksmans Attorneys Johannesburg Ref: Mr T Boswell
Locally represented by:	EVH Inc Attorneys Umhlanga Ref: W2409/0005
1st & 2nd Respondents' Counsel:	P J Wallis SC (with L K Olsen)
Instructed by	Garlicke & Bousfield Inc La Lucia Ridge Ref: Mr H Stephenson
3rd Respondent's Counsel:	L Harris SC (with M Mtshali)
Instructed by:	The State Attorney Durban Ref: 417/0021795/23/T/P9/ncm
4th & 12th Respondents' Counsel:	R M Van Rooyen
Instructed by:	Garlicke & Bousfield Inc La Lucia Ridge Ref: Mr A Liebenberg
7th Respondent's Counsel	B Manca SC (with M Du Plessis SC, D Robertson & C Kruyer)
Instructed by:	Webber Wentzel Johannesburg Ref Ms L Kahn
Locally represented by	Stowell Incorporated Pietermaritzburg Ref: Ms S Myhill
8th Respondent's Counsel:	F A S Snyckers SC (with A J D'Oliveira)
Instructed by:	Cox Yeats Umhlanga Ridge Ref: Mr T Scheepers

"FA2"

The parties

1. The applicant is **RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED**, a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 1947/026583/07 with its registered address at 10 The Boulevard, Westway Office Park, Westville, Kwa-Zulu Natal.

2. The first respondent is **TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**, a public company duly incorporated and registered in accordance with the company laws of South Africa, with registration number 1892/000610/06, currently in business rescue and with registered address at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal.

3. The second respondent is **TREVOR JOHN MURGATROYD N.O.**, an adult male director of Metis Strategic Advisors (Proprietary) Limited with his business address at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

4. The third respondent is **PETRUS FRANCOIS VAN DEN STEEN N.O.**, an adult male, and a director of Metis with his business address at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

5. The fourth respondent is **GERHARD CONRAD ALBERTYN N.O.**, an adult male contractor of Metis with his business address at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

6. The fifth respondent is **THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE**. They are joined in this application insofar as they are interested and directly involved in the meeting which is sought to be interdicted. Because there are too many persons to cite and serve individually, they are cited as a collective and as reflected in the business rescue plans.

7. The sixth respondent is **SOUTH AFRICAN SUGAR ASSOCIATION**, a juristic entity incorporated and constituted in terms of section 2 of the Sugar Act. SASA's principal place of business is located within the jurisdiction of the above Honourable Court at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal.

8. The seventh respondent is **S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED**, a company duly registered in terms of the Company Laws of the Republic of South Africa with registration number 1967/00009/07. Sasexcor's registered address is situated within the jurisdiction of the above Honourable Court at 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal South Africa.

9. The eighth respondent is the **MINISTER OF TRADE, INDUSTRY AND COMPETITION**, the executive authority responsible for administering the Sugar Act, including by determining the terms of the SI Agreement in terms of section 4, as well as the Companies Act. The Minister's address for service is 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

10. The ninth respondent is the **SOUTH AFRICAN SUGAR MILLERS ASSOCIATION NPC**, a company not for gain, duly registered and incorporated in terms of the Statutes of the Republic of South Africa, with registered address and principal place of business at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal.

11. The tenth respondent is the **SOUTH AFRICAN CANE GROWERS ASSOCIATION NPC**, a company not for gain, duly registered and incorporated in terms of the Statutes of the Republic of South Africa, with registered address and principal place of business at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal ("*SACGA*").

12. The eleventh respondent is the **SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC**, a company not for gain, duly registered and incorporated in terms of the Statutes of the Republic of South Africa, with registered address and principal place of business at Kwa-Shukela, 170 Flanders Drive, Mount Edgecombe, KwaZulu Natal ("*SAFDA*")

13. The twelfth respondent is **ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED**, a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 1915/000879/07 with registered address at 1 Nokwe Avenue, Ridgeside, Umhlanga Ridge, Kwa-Zulu Natal ("*Illovo*").

14. The thirteenth respondent is **UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED**, a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 2008/012011/07 with registered address at Corner Mill Road and Club Lane, Riverview, KwaZulu-Natal ("*Umfolozi*").

15. The fourteenth respondent is **GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)**, a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 2008/029/123/07 with registered address at 1 Gledhow Mill Road, Kwa-Dukuza, Kwa-Dukuza, Kwa-Zulu Natal ("*Gledhow*").

16. The fifteenth respondent is **HARRY SIDNEY SPAIN N.O**, an adult male business rescue practitioner with residential address at Unit 2 Hertford, 747 Musgrave Road, Durban. Spain is the business rescue practitioner of Gledhow.

17. The sixteenth respondent is **UCL COMPANY (PROPRIETARY) LIMITED**, a private company duly incorporated and registered in accordance with the laws of South Africa under registration number 2005/017711/07 with registered address at 16 Noodsberg Road, Dalton, KwaZulu-Natal.

18. The seventeenth respondent is **RGS GROUP HOLDINGS LIMITED** (registration number C134230 – C2/GBL) a company registered and incorporated in accordance with the laws of Mauritius.

19. The eighteenth respondent is **TERRIS AGRIPRO (MAURITIUS)** (registration number: 171903 GBC), a company registered and incorporated in accordance with the laws of Mauritius.

20. The nineteenth respondent is **REMOGGO (MAURITIUS) PCC** (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of Mauritius.

21. The twentieth respondent is **GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)** (registration number: C192979), a company registered and incorporated in accordance with the laws of Mauritius.

22. The twenty first respondent is **ALMOIZ NA HOLDINGS LTD** (registration number:67410836), a company registered and incorporated in accordance with the laws of the United Arab Emirates.

TongaatHulett

BUSINESS RESCUE PLAN

(RGS TRANSACTIONS)

prepared in terms of section 150 of the Companies Act 71 of 2008

in relation to

TONGAAT HULETT LIMITED

(IN BUSINESS RESCUE)

prepared by the Joint Business Rescue Practitioners

Publication Date: 29 November 2023

CORPORATE INFORMATION AND ADVISOR DETAILS

Company

Tongaat Hulett Limited

Business Rescue Practitioners

Peter van den Steen

Trevor Murgatroyd

Gerhard Albertyn

Preparation of the Independent Liquidation Dividend Estimate

BDO

Legal Advisors to the Business Rescue Practitioners

Werksmans

Legal Advisors to the Company

Shepstone Wylie Attorneys

ENS Africa

Cox Yeats Attorneys

Restructuring Advisors to the Company

Metis Strategic Advisors

Matuson and Associates

BSM

Tenurey BSM

TABLE OF CONTENTS

CHAPTER 1 – INTRODUCTION

1. Structure of the Business Rescue Plan

In accordance with section 150(2) of the Companies Act, this Business Rescue Plan is divided into several chapters.

1.1. Chapter 1 — Introduction

This chapter sets out general information about the Business Rescue Plan, the meaning of defined terms, and contains an executive summary of the Proposals put forward in terms of this Business Rescue Plan.

1.2. Chapter 2 – Proposals

This chapter contains the Proposals in terms of the Business Rescue Plan and is comprised of several sub-parts.

1.2.1. Part A – Background

This part sets out background information on the Company, the circumstances that resulted in the Company's Financial Distress and the events leading to the commencement of the Company's Business Rescue.

1.2.2. Part B – Proposals

This part describes the Proposals to Affected Persons and the benefits and risks of Adopting the Business Rescue Plan.

1.2.3. Part C — Assumptions and Conditions

This part sets out the conditions that must be fulfilled and the assumptions applied in respect of the Business Rescue Plan.

1.3. Chapter 3 – General

This chapter sets out administrative and general matters pertaining to the Business Rescue and the Business Rescue Plan and deals, amongst other

things, with potential amendments to the Business Rescue Plan and the mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

1.4. Chapter 4 – Conclusion and BRPs Certificates

This chapter contains the BRPs' recommendation and the confirmatory certificate that is required to accompany the Business Rescue Plan.

2. Executive Summary

2.1. Capitalised terms and/or expressions used in this Executive Summary shall have the meanings assigned to them below in paragraph 3.

2.2. The key feature of this Business Rescue Plan is, pursuant to the Adoption and implementation of this Business Rescue Plan, the acquisition by RGS (through a South African incorporated subsidiary "**RGS Bidco**") of the substantial Claims and security held by the Lender Group in the amount of c.R7.7bn plus the subsequent conversion by RGS Bidco of 100% of such Claims into equity in THL ("**the RGS Transactions**"). This, together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):

2.2.1. the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan;

2.2.2. the recapitalisation of the THL balance sheet through the Proposals put forward in this Business Rescue Plan, in particular the conversion of the c.R7.7bn former Lender Group Claims into equity; and

2.2.3. the continued listing of THL on the JSE, albeit with current Shareholders becoming minority shareholders and RGS Bidco

holding 95% of the then issued and listed shares in the Company immediately following the abovementioned debt to equity conversion (noting that RGS has stated its intention to subsequently sell down RGS Bidco's position such that RGS Bidco will retain a 51% - 60% shareholding within a year of concluding the RGS Transactions, thereby providing for a free float of some 40% - 49% of the then listed shares in issue).

2.3. The strategy to be adopted by the BRPs in the execution of this Business Rescue Plan is, in summary, to:

2.3.1. implement and complete the RGS Transactions comprising the acquisition by RGS Bidco of the Lender Group Claims and security and the conversion of such Claims into THL equity;

2.3.2. continue to maintain their control and oversight of the operations of the THL businesses until completion of the RGS Transactions and the completion of the parallel business rescues of THD, THSSA and Voermol;

2.3.3. secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process;

2.3.4. RGS has confirmed to the BRPs its undertaking that it will not implement any retrenchments of any employees of THL (other than potentially senior management whose employment will be subject to the restructure of the senior management structure) for a period of at least two years from the date of substantial implementation of the Business Rescue Plan. RGS will assess the performance of the THL Group and the various businesses after the expiry of the two year period. It is the intention of RGS to limit job losses and, therefore, any job losses suffered would be a last resort and all

affected employees will be entitled to their full retrenchment package;

2.3.5. oversee the parallel business rescues of THD, THSSA and Voermol;

2.3.6. oversee payments (Distributions) made by THL to the various classes of THL Creditors as follows, noting specifically in this regard that:

- the balance sheet of THL will have been recapitalised by the RGS Bidco c.R7.7bn debt conversion;
- RGS will provide or guarantee R500m of new working capital for THL; and
- RGS has undertaken to guarantee all deferred payments to Creditors.

2.3.6.1. RGS Bidco will acquire the R7.7bn of Lender Group Claims by way of a cash purchase (made in three instalments as set out in paragraph 6.1.3.1 below) of such Claims for R3.6bn;

2.3.6.2. with the support of RGS the Company will extend or convert into alternative facilities, resulting in 100% payment to the satisfaction of the PCF Creditor holders thereof (primarily IDC), all Claims for outstanding PCF advanced to the Company as at the Publication Date;

2.3.6.3. Preferent Creditors (primarily employees for post-retirement benefits) will be paid 100% of their Claims;

2.3.6.4. All Unsecured Creditors (other than Claims relating to SASA, post-retirement liabilities, employee leave pay and non-independent creditors) will receive Distributions of:

- up to the first R75k of such Creditors' Claims in full (in aggregate currently estimated to be payments of c.R47m) (the "**De Minimis Payment**"); plus

- up to 40 cents in the Rand for any balance of any Claim which is in excess of the De Minimis Payment (in aggregate currently calculated to be payments of c.R330m) (the "**Pro Rata Payment**"); subject to

- the aggregate of all De Minimis Payments and all Pro Rata Payments not exceeding R377m; and further subject to:

    - the aggregate of the De Minimis Payment and the Pro Rata Payment Distributions made by the Company to each such Unsecured Creditor being settled in four equal instalments, the first instalment being paid no later than on the first anniversary of the Closing Date and the remaining three instalments being made annually (on or about the same date) thereafter; noting that all deferred De Minimis Payments and Pro Rata Payments being guaranteed by RGS as noted above.

2.3.6.5. SASA's Claims against the Company will be settled in full by the Company as follows:

- subject to the written consent of IDC, after application of all and any export proceeds owing and payable by Sasexcor to THL as well as any other obligations that SASA owes to THL and/or has withheld from THL (i.e. c.R887m) against the

SASA Claim the then remaining balance outstanding ("**the SASA Outstanding Balance**") will be treated as a Claim of an Unsecured Creditor. The SASA Outstanding Balance will then be settled in four equal annual instalments, the first being payable within 12 months of the first anniversary of Closing Date. RGS has confirmed that it would guarantee the repayments.

2.3.6.6. Other Unsecured Creditors relating to employees (including post-retirement obligations), provisions and accruals will be retained at their total claim amount and settled in full by the Company in the normal course of business (other than in respect of the specific restrictions relating to employee leave pay (see paragraph 6.2.8 below)), subject to the LRA.

2.3.7. To facilitate and support the above commitments, RGS will provide (or guarantee, as the case may be) a new working capital facility to THL in the amount of R500m.

2.4. For the avoidance of doubt, where there are restricted, insufficient, limited or no funds available for Distribution(s) or other means of settlement in respect of any Claim against the Company, the residual Claim that remains unpaid will become Unenforceable against the Company.

2.5. If approved and successfully implemented as contemplated herein, this Business Rescue Plan will result in:

2.5.1. the rescue of the Company (or as an alternative, the business of the Company) which will continue in business – albeit under new ownership. Currently, the RGS Transactions do not contemplate material retrenchments of THL employees other than as noted

above. However, pending implementation of this Business Rescue Plan it may become necessary;

2.5.2. the avoidance of a major humanitarian and financial catastrophe in the KZN region in general, and in the sugar supply chain in particular as outlined in more detail in paragraph 9.3.5;

2.5.3. the opportunity for new jobs to be created as the business grows under new management and/or ownership;

2.5.4. the recapitalisation of the Company through the implementation of the conversion of the former c.R7.7bn Lender Group Claims into equity in THL, resulting in RGS Bidco initially owning 95% of the total issued share capital of the Company;

2.5.5. in addition to the c.R1.3bn already paid to various critical suppliers (see below), the RGS commitment to make available (and guarantee deferred payments) the material payments set out in paragraphs 2.3.6.4 to 2.3.6.6 above is significantly beneficial to the Company's Unsecured Creditors. In this regard it is noted that in a liquidation scenario Unsecured Creditors would have been anticipated to receive nil. Equally so – without the abovementioned amounts being made available by the Company and RGS – Unsecured Creditors would be anticipated to receive nil in this business rescue. This outcome is therefore materially positive for Unsecured Creditors;

2.5.6. existing Shareholders retaining an interest of 5% of the equity in THL with its positively recapitalised balance sheet. In this regard, it is noted that in liquidation Shareholders would be anticipated to receive nil, and equally so in an alternatively structured transaction (e.g. the sale of the assets of THL to RGS Bidco), shareholders would be anticipated to receive nil. Consequently, this proposal results in positive value accruing to shareholders through the

retention of their shareholdings and becoming minority shareholders in the still-listed, post-recapitalisation, RGS Bidco-controlled THL;

2.5.7. the implementation by RGS of its SA Sugar turnaround plan (see Annexure G);

2.5.8. a portion or the entire amount of the IDC PCF is to be secured in a working capital facility which is, acceptable to IDC, (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the working capital requirements of the Company for at least the duration of the Business Rescue proceedings, and thereafter it would be the goal of RGS to secure working capital facilities into the future beyond the adoption and subsequent implementation of this Business Rescue Plan; and

2.5.9. THL retaining its listing on the JSE.

2.6. Subsequent to the Adoption of this Business Rescue Plan, in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed conversion of the Lender Group Claims into THL equity to be effected, or in the alternative for a debt-to-equity issue of new THL shares to RGS Bidco to be effected, this Business Rescue Plan contemplates in substitution that the currently proposed RGS Transactions (see above) will be switched from transactions contemplating the conversion of the Lender Group Claims into THL equity to transactions contemplating the acquisition by RGS Bidco of all of THL's assets and businesses (as going concerns) (see paragraph 6.1.7 below).

2.6.1. Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by any such a change – if the latter alternative is utilised (the acquisition by RGS Bidco of all of THL's assets and businesses (as going concerns)), once it has sold its

assets and businesses (leaving THL as an empty shell), THL will be delisted from the JSE and liquidated, resulting in its shares (those held by existing Shareholders) having nil value.

2.7. Once this Business Rescue Plan has been approved, Adopted and implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions and debt to equity conversions as provided for, any residual Creditors' Claims will become Unenforceable, other than as otherwise specifically provided for in this Business Rescue Plan.

2.8. Affected Persons have been provided with two alternative business rescue plans (including this one) for their consideration. Affected Persons will receive a special notice in which Creditors will be invited to vote in the Pre-Meeting Proxy Vote. The purpose of the Pre-Meeting Proxy Vote will be the giving of direction by the Creditors to the BRPs (based on a simple majority of Independent Creditors voting on the issue) on the sequence in which the relevant business rescue plans are to be considered and voted on during the subsequent Section 151 Meeting.

2.9. The votes cast in the Pre-Meeting Proxy Vote will be counted on 7 December 2023 in order for the BRPs to have sufficient time to properly prepare for the Section 151 Meeting on 8 December 2023.

2.10. The BRPs will then propose the relevant business rescue plans for consideration and vote at the Section 151 Meeting pursuant to the directions so received in the aforementioned Pre-Meeting Proxy Vote. If the first such plan voted on is not approved by the requisite majorities, subject to section 153 of the Companies Act, the second plan will be presented to and voted on by Creditors. Conversely, if the first such plan voted on is approved and Adopted, there will be no cause or need for the second such plan to be voted on.

2.11. Should neither the first nor the second business rescue plans be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes contemplated in section 153(1).

2.12. Whilst the order in which the two alternative plans are to be voted on will be decided by Creditors subsequent to the publication of this Business Rescue Plan, this Business Rescue Plan has been drafted in a manner that makes it capable of approval and Adoption by Creditors should it become subject to a Creditor vote at the Section 151 Meeting.

2.13. Affected Persons are referred to Annexure **A** of this Business Rescue Plan which sets out the Claims that the BRPs have accepted and/or recognised, as well as the status assigned to Creditors.

2.14. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.3.7 and 16 of this Business Rescue Plan.

2.15. Creditors each have a Voting Interest equal to the value of their Claims, as accepted and/or recognised by the BRPs as set out in Annexure **A** (refer to paragraph 5.3.8)

2.16. For the Business Rescue Plan to be approved it must be supported by the holders of more than 75% of the Creditors' Voting Interests that were voted, **and** the votes in support of the Business Rescue Plan must include at least 50% of the Independent Creditors' Voting Interests, if any, that were voted.

2.17. As this Business Rescue Plan does not alter the rights of the holders of any class of the Company's securities, Shareholders are neither required nor entitled to vote on the plan in order for the plan to be Adopted.

2.18. Ad hoc meetings with certain Shareholders and their representatives have taken place since the commencement of business rescue proceedings with the aim to constructively engage with information sharing and solution

seeking (under non-disclosure). In addition, a formal shareholders engagement meeting was held on 26 September 2023, with the aim of informing Shareholders and engaging with them about the proposed business rescue plan and the impact thereof on their interests and consulting with the wider shareholder body in that regard.

2.19. Prior to the publication of this Business Rescue Plan the Lender Group held security over all material assets of the Company including, without limitation, a reversionary cession in security in respect of those assets over which IDC has prior ranking security as a PCF Lender and would, in the absence of the Proposals contemplated in this Business Rescue Plan, likely be the recipients of most, if not all, Distributions arising from liquidation or any alternative proposals.

2.19.1. RGS Bidco will, pursuant to the Adoption and implementation of this Business Rescue Plan, acquire the Claims and security of the Lender Group and, therefore, will be substituted as the Secured Creditor once the acquisition has been completed.

2.19.2. In endeavouring to balance the rights of all stakeholders following the principles set out in section 7(k) of the Companies Act, RGS will facilitate material payments to be made to Unsecured Creditors (see paragraph 2.3.6 above), which Creditors would otherwise be anticipated to realise nil. This concession is coupled with the proposed structure of the RGS Transactions which will result in the Company's existing Shareholders retaining a 5% interest in the recapitalised (and still listed) THL – again noting that without the proposed structure Shareholders would have been anticipated to receive nil.

2.20. A constant factor at play in the execution of this Business Rescue is and has been the enormous social impact that would result from a collapse of, in particular, the South African sugar businesses, and thus the need to balance this alongside the interests of the other stakeholders in this Business Rescue.

The RGS Transactions have at their heart, the intention of relieving THL of its Financial Distress, maintaining the operations of the underlying businesses of THL, and thus avoiding the otherwise catastrophic social impact that would result from a collapse of THL.

2.21. In assessing this Business Rescue Plan, cognisance should be taken of the extent of payments already made to third-party growers and other critical suppliers with pre-Commencement Date Claims. The amount of pre-Commencement Date Unsecured Creditors' Claims paid equates to c.R1.3bn as of 31 October 2023, of which c.R1.1bn related to payments made to cane growers in the interest of keeping the industry as stable as possible. In the absence of Business Rescue, these amounts would merely have been unsecured Claims with little to no prospect of recovery.

2.22. Finally in assessing this Business Rescue Plan, cognisance should be taken of the importance of the role of IDC in providing significant PCF which has been the oxygen and lifeblood of this rescue process, without which it is probable that the liquidation of THL would have ensued. The BRPs have constantly been aware that working capital for this highly seasonal business is critical to its survival – both during the business rescue proceedings and beyond – and have consequently factored this ongoing PCF/working capital requirement into the decision making and processes embarked on in reaching the point of publication of this Business Rescue Plan. Having said that, the BRPs point out that there is no obligation on the part of IDC to increase or extend its existing PCF advanced to the Company.

2.23. For the benefit of the readers of this Business Rescue Plan, the BRPs have compiled a summary (refer to Annexure L) of their views and understanding of the key challenges currently facing the sugar industry and reflect on the challenges faced by THL before and during the Business Rescue process in this regard.

3. Interpretation

3.1. In this Business Rescue Plan the following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings;

3.1.1. "**Absa Corporate Finance (M&A Advisory)**" means the corporate finance business unit within the Corporate and Investment Banking Division of Absa Bank Limited (registration number: 1986/004794/06), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.2. "**Adopted/Adoption/Adopting**" means that a Business Rescue Plan has been finally approved in accordance with section 152(2), read with section 152(3) of the Companies Act;

3.1.3. "**Advisors**" means the advisors to the BRPs and the Company, including but not limited to Metis, Matuson, Werksmans, BSM, Tenurey BSM, BDO and the advisors' respective officers, representatives, and employees;

3.1.4. "**Affected Person/s**" shall bear the meaning ascribed thereto in section 128(1)(a) of the Companies Act, being the Company's Shareholders, Creditors, employees and Trade Unions;

3.1.5. "**Agricultural Land**" means the c.11 300 hectares of agricultural land, owned by the Company, predominantly located along the north coast of KwaZulu-Natal, the majority of which is under sugarcane farming and which property is leased out to third parties with supply agreements in place to cater for the delivery of sugarcane to the Company (refer to Annexure **E**);

3.1.6. "**AFSA**" means the Arbitration Foundation of Southern Africa;

3.1.7. "**Agency Agreements**" means various written legal agreements, entered into by the Company and certain of its subsidiaries, which

entail one or more subsidiaries acting as the agent for an undisclosed principal. In all such cases, the ultimate principal is THL, whereby the agent subsidiary conducts(ed) relevant business on behalf of the ultimate principal;

3.1.8. "**Albertyn**" means Gerhard Conrad Albertyn a BRP as contemplated in section 128(1)(d) of the Companies Act;

3.1.9. "**BDO**" means BDO Business Restructuring Proprietary Limited (registration number: 2002/025164/07), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.10. "**Board**" means the board of directors of the Company as at the Publication Date as set out in paragraph 5.2;

3.1.11. "**BRPs**" means the joint business rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;

3.1.12. "**BSM**" means BSM Advisory Proprietary Limited (registration number: 2019/457342/07), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.13. "**Business Day**" means any day other than a Saturday, Sunday, or official public holiday in South Africa;

3.1.14. "**Business Rescue**" means the business rescue proceedings of the Company conducted in terms of Chapter 6 of the Companies Act;

3.1.15. "**Business Rescue Costs**" means all relevant costs incurred in the execution of this Business Rescue, including the remuneration, expenses, disbursements and fees of the BRPs and of their Advisors;

3.1.16. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time, as prepared in accordance with section 150 of the Companies Act;

3.1.17. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;

3.1.18. "**Claims**" means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages and/or administrative penalties), the cause of action in respect of which arose prior to or after the Commencement Date and/or under section 136(3) of the Companies Act;

3.1.19. "**Closing Date**" means the date of fulfilment, or waiver if capable of waiver, of the last of the conditions precedent needing to be fulfilled in relation to the definitive agreements concluded in relation to the RGS Transactions;

3.1.20. "**Commencement Date**" means 27 October 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;

3.1.21. "**Company**" or "**THL**" means Tongaat Hulett Limited (registration number: 1892/000610/06)), a public company incorporated in accordance with the laws of South Africa;

3.1.22. "**Companies Act**" means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;

3.1.23. "**Concurrent Claim**" means any Claim (other than a Disputed Claim) which is unsecured and which does not enjoy a statutory preference as envisaged in the Companies Act;

3.1.24. "**Creditor**" means any creditor, including without any limitation, PCF Lenders, Disputed Creditors and contingent Creditors, with a monetary Claim against the Company;

3.1.25. "**Disputed Claim**" – means any Claim where the existence, value, class of the Claim or security in respect of a Claim is disputed by the BRPs and/or by an Affected Person;

3.1.26. "**Disputed Creditor**" means a Creditor with a Disputed Claim;

3.1.27. "**Dispute Mechanism**" means the dispute resolution mechanism set out in paragraph 16;

3.1.28. "**Distributions**" means a transfer of money or other property of the Company, including its own shares, made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan, including any deemed Distributions as contemplated in this Business Rescue Plan;

3.1.29. "**Financially Distressed**" or "**Financial Distress**" shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;

3.1.30. "**High Court**" means the High Court of South Africa;

3.1.31. "**IDC**" means Industrial Development Corporation of South Africa Limited (registration number 1940/014201/06), a company registered and incorporated in accordance with the laws of South Africa;

3.1.32. "**IDC Security**" means the first-ranking security cession of bank accounts and trade debtors and encumbrance over all inventories (and any related insurance claims) held by IDC;

3.1.33. "**Independent Creditor**" means a Creditor, with a Claim as accepted and/or recognised by the BRPs, to whom the definition in section 128(1)(g) of the Companies Act applies;

3.1.34. "**Insolvency Law**" means the Insolvency Act 24 of 1936, as amended and Chapter 14 of the Companies Act 61 of 1973, read with item 9 of Schedule 5 of the Companies Act;

3.1.35. "**Kagera Sugar**" or "**Kagera**" means Kagera Sugar Limited (incorporation number 5036), a limited liability company registered and incorporated in accordance with the laws of Tanzania;

3.1.36. "**Lender Group**" means the group of lenders to the Company, all of whom are Secured Creditors, including The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division), Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Investment Banking Division, Corporate Solutions), Investec Bank Limited (acting through its Corporate and Institutional Banking division), The Land and Agricultural Development Bank of South Africa, Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance Markets division), Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients), Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division), Sanlam Specialised Finance Proprietary Limited, Momentum Metropolitan Life Limited, Nedbank Limited, and Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);

3.1.37. "**LRA**" means the Labour Relations Act 66 of 1995, as amended;

3.1.38. "**Management**" means the management team of the Company who have been responsible for managing the day-to-day operations

of the Company from the Commencement Date under the supervision and authority of the BRPs;

3.1.39. "**Matuson**" means Matuson and Associates Proprietary Limited (registration number 2009/008967/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;

3.1.40. "**Meeting**" means the virtual meeting to be held in terms of section 151 of the Companies Act on **Friday 8 December 2023** at **08:00am** for the purpose of voting on this Business Rescue Plan;

3.1.41. "**Metis**" means Metis Strategic Advisors Proprietary Limited (registration number 2015/220685/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;

3.1.42. "**Mills**" means the Company's three operational sugar mills in South Africa, being the mills located in Amatikulu, Felixton and Maidstone;

3.1.43. "**Murgatroyd**" means Trevor John Murgatroyd a BRP as contemplated in section 128(1)(d) of the Companies Act;

3.1.44. "**PCF**" means post commencement finance obtained by the Company from a PCF Creditor or PCF Lender as contemplated in section 135(2) of the Companies Act;

3.1.45. "**PCF Creditor**" means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during the Business Rescue;

3.1.46. "**PCF Employee**" means any employee of the Company who rendered services to the Company and is owed any remuneration, reimbursement for expenses or other amount of money relating to

employment that became due and payable during the Business Rescue as contemplated in section 135(1) of the Companies Act;

3.1.47. "**PCF Lenders**" means any/all financier(s) advancing PCF to the Company, it being recorded that as at the Publication Date, IDC and GuardRisk are the only PCF Lenders;

3.1.48. "**Pre-Meeting Proxy Vote**" means the proxy vote by Creditors, the purpose of which will be the giving of direction by the Creditors to the BRPs (based on a simple majority of Independent Creditors voting on the issue) on the sequence in which the relevant business rescue plans are to be considered and voted on during the Section 151 Meeting;

3.1.49. "**Proposals**" means the proposals set out in Chapter 2 of this Business Rescue Plan;

3.1.50. "**Publication Date**" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being **29 November 2023**;

3.1.51. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;

3.1.52. "**Refinery**" means the Company's central sugar refinery located in Durban, KwaZulu-Natal;

3.1.53. "**Rejection Date**" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;

3.1.54. "**RGS**" means RGS Group Holdings Limited (registration number C134230 – C2/GBL) a company registered and incorporated in accordance with the laws of Mauritius;

3.1.55. "**RGS Bidco**" means a South African incorporated subsidiary established by RGS to be the contracting party in respect of the RGS Transactions, the obligations of which towards THL is required to be guaranteed by RGS;

3.1.56. "**RGS Transactions**" means the acquisition by RGS Bidco of the substantial Claims and security previously held by the Lender Group and the subsequent conversion by RGS Bidco of such Claims into new equity in THL;

3.1.57. "**SARS**" means the South African Revenue Services;

3.1.58. "**SA Sugar**" means the Company's South African sugar operations comprising of the following divisions: Agricultural Land; the Mills; Darnall sugar mill; cane procurement and cane supply management; trademarks and other intellectual property, marketing, sales and distribution; the Refinery; and Voermol animal feeds division;

3.1.59. "**SASA**" means the South African Sugar Association (registration number 1915/00023/00), an association incorporated in terms of Section 2 of the Sugar Act 1978;

3.1.60. "**Secured Creditor**" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;

3.1.61. "**Securities**" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a company, as defined in the Companies Act;

3.1.62. "**Shareholder**" means a shareholder, as defined in section 1 of the Companies Act, of the Company;

3.1.63. "**South Africa**" means the Republic of South Africa;

3.1.64. **"Strategic Equity Partners" or "SEPs"** means potential strategic equity partners/investors in the Company and/or the THL Group and/or the potential acquirer of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique and/or the potential acquirer of SA Sugar only;

3.1.65. **"Substantial Implementation Date"** means the date upon which the BRPs file a notice of substantial implementation of the Business Rescue with the CIPC, which filing will be made in the BRPs' sole and absolute discretion, as envisaged in paragraph 13;

3.1.66. **"Tax"** includes any tax, imposition, levy, duty, charge, fee, deduction or withholding of any nature (including securities transfer tax and stamp, documentary, registration, or other like duty) and any interest, penalty or other amount payable in connection therewith, which is lawfully imposed, levied, collected, withheld or assessed under the laws of South Africa or any other relevant jurisdiction and **"Taxes"**, **"Taxation"** and other cognate terms shall be construed accordingly;

3.1.67. **"THA"** means Tongaat Hulett Acucareira de Mozambique, S.A. (registration number 100264501), a company duly incorporated in accordance with the laws of Mozambique;

3.1.68. **"THD"** means Tongaat Hulett Developments Proprietary Limited (registration number: 1981/012378/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.69. **"THL Botswana"** means Tongaat Hulett (Botswana) Proprietary Limited (registration number: 5032), a private company with limited liability incorporated in accordance with the laws of Botswana;

3.1.70. "**THL Group**" means THL and each of its subsidiaries, joint ventures and associated companies;

3.1.71. "**THL Mozambique**" means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Mozambique and operating in accordance with the laws of Mozambique as set out in Annexure **C**;

3.1.72. "**THL Zimbabwe**" means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Zimbabwe and operating in accordance with the laws of Zimbabwe as set out in Annexure **C**;

3.1.73. "**THSSA**" means Tongaat Hulett Sugar South Africa Limited (registration number: 1965/000565/06), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.74. "**Trade Unions**" means UASA – The Union ("**UASA**"), The Association of Mineworkers and Construction Union ("**AMCU**") and the Food and Allied Workers Union ("**FAWU**");

3.1.75. "**Unenforceable**" means the inability to enforce any and all Claims against the Company, as envisaged in section 154 and/or as read with section 152 of the Companies Act, upon the Adoption and Implementation of the Business Rescue Plan;

3.1.76. "**Unsecured Creditors**" means all Creditors with Concurrent Claims against the Company;

3.1.77. "**van den Steen**" means Petrus Francois van den Steen a BRP as contemplated in section 128(1)(d) of the Companies Act;

3.1.78. "**VAT**" means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;

3.1.79. "**Vision Parties**" means a grouping made up of the following participants: Terris AgriPro (Mauritius) (registration number: 171903 GBC), registered and incorporated in Mauritius; Remoggo (Mauritius) PCC (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of Mauritius; Guma Agri and Food Security Ltd (Mauritius) (registration number: C192979), registered and incorporated in Mauritius; and Almoiz NA Holdings Ltd (registration number:67410836) registered and incorporated in accordance with the laws of the United Arab Emirates;

3.1.80. "**Vision Transactions**" means the acquisition by the Vision Parties of the substantial Claims and security previously held by the Lender Group and the subsequent conversion by the Vision Parties of a portion of such Claims into new equity in THL;

3.1.81. "**Voermol**" means Voermol Feeds Proprietary Limited (registration number 1936/007892/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.82. "**Voting Interest**" means a voting interest as defined by section 128(1)(j) of the Companies Act, calculated on the value of a Creditor's Claim as accepted and/or recognised by the BRP per this Business Rescue Plan;

3.1.83. "**Werksmans**" means Werksmans Incorporated (registration number: 1990/007215/21), a firm of attorneys practising as such at The Central, 96 Rivonia Road, Sandton, 2196.

3.2. Paragraph headings in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify or amplify the terms of this Business Rescue Plan or any paragraph hereof, unless a contrary intention clearly appears.

3.3. Words importing:

3.3.1. any one gender includes the other gender;

3.3.2. the singular includes the plural and vice versa; and

3.3.3. a natural person includes an artificial or juristic person and vice versa ("**Person**").

3.4. Any reference to any statute, regulation or other legislation in this Business Rescue Plan shall be a reference to that statute, regulation, or other legislation as at the Publication Date, and as amended or substituted from time to time.

3.5. Any reference in the Business Rescue Plan to any other agreement or document shall be construed as a reference to such other agreement, as may from time to time be amended, varied, novated, or supplemented.

3.6. If any provision in a definition in this Business Rescue Plan is a substantive provision conferring a right or imposing an obligation on any person or entity then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Business Rescue Plan.

3.7. Where any term is defined in this Business Rescue Plan within a particular paragraph other than this paragraph 3, that term shall bear the meaning ascribed to it in that paragraph wherever it is used in this Business Rescue Plan.

3.8. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day, if the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.

3.9. Any reference to days (other than a specific reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.

3.10. Words or terms that are capitalised and not otherwise defined in the body of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of headings or tables) shall bear the meaning assigned to them in the Companies Act.

3.11. The use of the word "**including**", "**includes**" or "**include**" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and *the eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.

3.12. To the extent that any provision of this Business Rescue Plan is ambiguous, it is to be interpreted in a manner that is consistent with the purposes of the business rescue provisions in Chapter 6 of the Companies Act.

3.13. Unless otherwise stated, all references to sections are references to sections in the Companies Act.

3.14. All information provided in the Business Rescue Plan is reflected as at the Publication Date, unless otherwise indicated in the Business Rescue Plan.

4. Disclaimer

4.1. The BRPs in the preparation of this Business Rescue Plan have relied on information obtained from the books and records of the Company, meetings held with relevant persons including the Company's directors, Management, staff, suppliers, clients, Advisors and other service providers of the Company, and studies and reports commissioned from various technical and other professional advisors in connection with the affairs of the Company.

4.2. Whilst the BRPs have made efforts to ensure the accuracy of the information contained herein, it should be noted that the BRPs investigations have been limited in nature due to:

4.2.1. the time constraints placed on the BRPs by the Companies Act and Creditors;

4.2.2. pressure from Affected Persons to affect a reasonably paced rescue;

4.2.3. limited financial and human resources available to the Company; and

4.2.4. the state of affairs of the Company.

4.3. The BRPs have not carried out an audit of the Company's documents and/or records, nor have they had adequate opportunity to independently verify all information provided to them by the Company and/or relevant third parties.

4.4. This Business Rescue Plan contains forecast financial information that is not drafted in terms of the JSE Listings Requirements. This disclaimer is provided to clarify the nature and limitations of the information contained in this Business Rescue Plan.

4.5. By accessing and reviewing this Business Rescue Plan, you acknowledge and accept the above disclaimer. It is important to exercise caution and diligence when considering the contents of this Business Rescue Plan and to consult with relevant experts and advisors as necessary. The Company disclaims any

liability for any loss or damage resulting from the use or reliance on the information contained herein. It is important to note the information and forecasted data of this Business Rescue Plan have not been reviewed or audited by the Company's external auditor.

4.6. JSE Listings Requirement: The forecast financial information presented in this Business Rescue Plan has been prepared in accordance with Section 150 of the Companies Act, but has not necessarily been prepared consistent with the JSE Listings Requirements. Therefore, it may not meet the specific reporting and disclosure standards set forth by the JSE.

4.7. Nothing contained in the Business Rescue Plan shall constitute any form of legal or other advice to any Affected Person, and the BRPs do not make any representations in respect thereof.

4.8. The BRPs have not independently assessed the forecast value of THL post the implementation of this Business Rescue Plan beyond satisfying themselves that the Proposals will result in a reasonable prospect of THL being rescued and trading successfully after implementation of the Plan and the Proposals.

4.9. Neither the BRPs nor their Advisors shall be responsible for any acts taken by (or omissions arising from) any Affected Persons' reliance on this Business Rescue Plan.

4.10. Affected Persons are advised and encouraged to consult with their own independent attorney, accountant, or other professional advisor in respect of this Business Rescue Plan should they so wish or require.

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is a public company listed on the Johannesburg Stock Exchange and is the parent company (directly or indirectly) of numerous entities. An organogram of the group of entities is contained in Annexure C.

5.2. Directors of the Company:

5.2.1. As at the Publication Date, the executive directors of the Company, according to the CIPC, were Dan Marokane (acting Chief Executive Officer) and Robert Aitken (Chief Financial Officer).

5.3. Company Information:

Financial Year End	31 March
Registered Business Address	Amanzimnyama Hill Road Tongaat KwaZulu-Natal 4400
Postal Address	P O Box 3 Tongaat KwaZulu-Natal 4400
Business Telephone Number	+27 (32) 439 4000
Auditors	Ernst & Young

5.3.1. Company Background:

5.3.1.1. The Company is part of the THL Group which is an agri-processing business with a c.130-year history and a

strong socio-economic legacy in Southern Africa. The THL Group has operations in South Africa, Zimbabwe, Mozambique and Botswana which collectively make up the THL Group.

5.3.1.2. Across Southern Africa, the THL Group's operations are of significant scale geographically, economically, and socially, as set out below:

- the THL Group's production facilities have the capacity to crush 12.7 million tons of sugarcane (5.8 million tons provided by third-party growers) to produce 1.5 million tons of raw sugar, 750 000 tons of refined sugar, 400 000 tons of animal feed and 40 million litres of ethanol; and

- at the peak of the sugar season, the THL Group's operations employ more than 23 000 people, support more than 185 000 employment opportunities and provide a livelihood to more than 21 000 farmers (many of whom are small-scale growers).

5.3.1.3. In South Africa, the profile of the Company's sugar operation, property business and head office is set out below:

- the Company's operations are located in the KwaZulu-Natal province in the districts of Ethekwini, Zululand, Umkhanyakude, King Cetswayo, and iLembe;

- the Company's trading activities during the 2023 financial year generated revenue of c.R7.8 billion;

- the Company has 5 production facilities with the capacity to crush 5.45 million tons of sugarcane to produce 600 000 tons of raw sugar, 600 000 tons of refined sugar (c.50% of the total South African sugar industry's market requirements) and 400 000 tons of animal feed;

- the Company's ongoing agriculture activities span 11 300 hectares and as such it owns a substantial and valuable land portfolio, of which some 9 600 hectares are considered developable and located within the primary growth corridors of KwaZulu-Natal;

- the Company sources c.91% of its sugarcane from independent farmers, over 15 000 of which are small-scale farmers and co-operatives, and its transformational partnership with Uzinzo Sugar Farming has established the largest black grower in the South African sugar industry;

- a total of c.2 500 people are employed by the Company, with a further c.23 000 indirect employment opportunities created within South Africa. The communities in which the Company operates not only benefit from employment opportunities, but also the Company's socio-economic development initiatives and investments; and

- as identified in an independent assessment of the Company's economic footprint, it has been estimated that arising from the Company's trading

activities during the 2021 financial year, an additional c.R28.8bn of output was produced within the South African economy, contributing c.R11bn to the GDP of South Africa (based on direct, indirect and induced impacts).

5.3.1.4. The current THL Group structure comprises of c.60 subsidiaries and associated companies, however many of the South African and Zimbabwean companies are dormant or investment holding entities with limited trading activity. A detailed group structure is reflected in Annexure C. From this it will be noted that certain of the legal entities trade as divisions of the Company pursuant to Agency Agreements that were entered into in the 1980's and which are in the process of being unwound.

5.3.1.5. The most relevant of the Agency Agreements are those in relation to THSSA and Voermol. THSSA and Voermol do not carry on any activities for their own benefit that would generate revenue for themselves, and they are wholly financially dependent on the Company. The Company's SA Sugar division is operated by the Company and pursuant to relevant Agency Agreements between the Company and THSSA and Voermol. These Agency Agreements entail:

- Assets: Assets of the agents are held nominally as they are those of the principal, being beneficially owned by the Company.

- Tenure: The agreements and agency arrangements are generally active for an indefinite period of time and terminable on one month's

written notice. The Agency Agreements are in the process of being unwound, which will result in the entire SA Sugar division being conducted solely in the Company, as a division, with no further agency relationship and/or representation.

- Disclosure: The existence of the Agency Agreements was previously undisclosed to third parties. However pursuant to a letter dated 20 December 2022 from THSSA and Voermol to all known creditors of those companies, the Agency Agreement arrangements were disclosed.

- Recourse: THSSA has at all times acted as the agent of the Company, on the basis that the Company has been its undisclosed principal. Consequently, all transactions that have historically been concluded by THSSA with any person or entity, have been so concluded by THSSA in its capacity as agent for an undisclosed principal, being the Company. Now that the existence of the Agency Agreement has been disclosed, any dealings with THSSA will be on the basis that it is contracting on behalf of the Company. Furthermore, Voermol has at all times acted as the agent of THSSA (and by virtue of the aforementioned THSSA agency, as the sub agent of the Company), on the basis that THSSA has been its undisclosed principal and the Company the ultimate undisclosed principal. Consequently, all transactions that have historically been concluded by Voermol with any person or entity, have been so concluded by Voermol in its capacity as agent for an undisclosed principal, being THSSA and, by

virtue of the aforementioned THSSA agency, as the sub agent of the Company.

- In summary: The effect is that all assets, liabilities, income and expenses are those of the Company, as principal. Any claims instituted against THSSA and/or Voermol will result in those entities having a corresponding claim against THL.

5.3.1.6. The extent of the challenges faced by the Company, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial misstatements and historic mismanagement. These factors have resulted in the loss of significant value for the Company's Shareholders and other stakeholders.

5.3.2. **Events which led to the Company commencing Business Rescue:**

5.3.2.1. It is the BRPs understanding that the cause of the Company's Financial Distress is set out in the statement, attached hereto as Annexure **B**.

5.3.3. **Aims and objectives of Business Rescue:**

5.3.3.1. In terms of the Companies Act, the Company's Business Rescue will aim to facilitate its rehabilitation by (inter alia) providing for –

- the temporary supervision of the Company by the BRPs, and the management of its affairs, business, and property by the BRPs;

- a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

- the development and implementation of a Business Rescue Plan which has as its aim either or both of:

  - the rescue of the Company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; and/or

  - achieving a better return for the Company's Creditors or Shareholders than would result from the immediate liquidation of the Company.

5.3.3.2. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet both of the objectives set out in the immediate paragraphs above.

5.3.4. **Business Rescue events:**

5.3.4.1. The salient dates pertaining to the Business Rescue of the Company are set out below;

BUSINESS RESCUE EVENT	**DATE**
Board Resolution to commence the Business Rescue	26 October 2022
Commencement date of the Business Rescue	27 October 2022
Appointment of the BRPs	
Notice to Affected Persons of the commencement of Business Rescue and the appointment of the BRPs	27 October 2022

First statutory meeting of employees	3 November 2022
First statutory meeting of Creditors	8 November 2022
Requests for an extension of the date to publish the Business Rescue Plan	8 November 2022, 24 January 2023, 22 February 2023 29 March 2023, 31 August 2023, 26 October 2023 and 21 November 2023
Confirmation of the extension of the date to publish the Business Rescue Plan	15 November 2022, 27 January 2023, 27 February 2023 31 March 2023, 8 September 2023, 30 October 2023, and 23 November 2023
Meetings in terms of section 143 of the Companies Act to vote on the BRPs' remuneration agreement: Shareholders meeting Creditors meeting	 9 December 2022 9 December 2022
Publication of the initial business rescue plan	31 May 2023
Meeting to consider the initial business rescue plan: Outcome – Meeting adjourned and Business Rescue Plan to be amended and meeting to be reconvened at a date no later than 30 September 2023	14 June 2023
Notice to Affected Persons regarding application to the High Court of South Africa, KwaZulu-Natal Local Division, Durban under case number D4472/2023 ("SASA Declarator Application")	15 June 2023
Court hearing dates in relation to the SASA Declarator Application	13 and 14 September 2023
Meeting with Shareholders	26 September 2023
Vision Parties acquire Lender Group Claims	20 November 2023
Publication of the amended Business Rescue Plan	29 November 2023
Expiry and repayment of current IDC PCF facility	30 November 2023
Pre-Meeting Proxy Vote counted	7 December 2023

5.3.4.2. All notices that have been published to the Affected Persons of the Company can be obtained from the Company's website at www.tongaat.com, under the "Business Rescue" tab.

5.3.5. **Steps taken since the appointment of the BRPs:**

5.3.5.1. Statutory Obligations – the Company and the BRPs have met and complied with statutory reporting and meeting obligations as required in terms of Chapter 6 of the Companies Act.

5.3.5.2. Management Control – In terms of section 140(1)(a) of the Companies Act, the BRPs took full management control of the Company and have delegated certain functions to Management in terms of section 140(1)(b) of the Companies Act.

5.3.5.3. Investigations – The BRPs have investigated the affairs of the Company and have satisfied themselves that, inter alia, the Company is in Financial Distress and that there is a reasonable prospect of the Company being rescued.

5.3.5.4. Operations

- A key priority for the BRPs has been to bring about stability and thereafter continuity to the business and operations of the Company. Shortly after the Commencement Date, the SA Sugar operations were brought to a standstill as there was no free

cash available to fund operations or to settle Creditors or Employees.

- Shortly thereafter the BRPs secured PCF to fund short-term working capital requirements, which facilitated the restart of the SA Sugar operations. Thereafter the BRPs secured further PCF (as detailed below) to complete the 2022/23 South African sugar season and to carry out the critical off-crop capital expenditure and/or maintenance ("**off-crop programme**"). The SA Sugar business is now funded (for a limited period) and is operating under the BRPs' guidance. The existing, and only PCF facility secured by the Company, expires and is repayable on or before 30 November 2023.

- Cost Reduction Initiatives:
  - Since their appointment the BRPs have made ongoing efforts to reduce operating costs of the Company wherever possible.
  - It is envisaged that various cost reduction and efficiency improvement initiatives will continue to be implemented throughout the Business Rescue process.
  - See Annexure **D** for a detailed summary of all initiatives implemented and the associated outcomes.

5.3.5.5. Other business rescue proceedings - Included in the operations of the THL Group are wholly owned subsidiaries THSSA, THD and Voermol, each of which is in business rescue. The BRPs are also overseeing each of these inter-related business rescues, with each

of these subsidiaries having its own business rescue plan.

5.3.5.6. International operations - THL Zimbabwe, THL Botswana and THL Mozambique are not in business rescue, continue to operate as independent legal entities and are self-funding.

5.3.5.7. PCF Funding – Since their appointment, the BRPs have devoted significant time and resources towards engaging with the Lender Group thereafter IDC, in order to secure and structure the requisite PCF to support the SA Sugar operations and avoid its collapse into liquidation – initially to restart operations, and latterly to complete the 2022/23 sugar season and carry out the off-crop programme necessary to commence the 2023/24 season. This was secured as follows:

- the raising of initial PCF from the Lender Group in an amount of R900m, which brought about short-term stability in order for the Company to restart the Mills and Refinery operations - which PCF was repaid from the proceeds of the PCF raised from IDC as outlined below;

- the subsequent increase in facilities to R1.2 billion in PCF raised from IDC which enabled the Company to fund its working capital requirements to the end of June 2023, including its annual off-crop maintenance programme;

- the subsequent increasing of facilities to R1.725bn PCF from IDC which enabled the Company to fund

its working capital requirements to 6 October 2023;

- the subsequent increasing of facilities to R2.3bn PCF from IDC which enabled the Company to fund its working capital requirements to 30 November 2023 the date on which the PCF from IDC expires and is repayable;

- negotiations are ongoing with regard to a possible further extensions beyond 30 November 2023 and temporary increase of the PCF, which will be dependent (inter alia) upon the Adoption of this Business Rescue Plan and IDC approving any extension or increase in accordance with its credit criteria and requirements; and

- the initial facility raised from the IDC PCF was applied to repay the Lender Group PCF in order for the Lender Group to release their security over the bank accounts, inventory and trade receivables (and any related insurance claims), which is now the first-ranking security of the IDC for its PCF Claim.

5.3.5.8. Strategic Equity Partner –

- In February 2023, the BRPs embarked on an accelerated sales process ("**Project BSM**"), aimed at engaging with potential SEPs interested in the acquisition of or investment in either:
  1) THL itself or the whole of the THL Group;
  2) all of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique; or

3) the SA Sugar operations.

- The logic for the abovementioned three acquisition options was premised on alignment with the basis on which the critical PCF funding had been secured. This PCF funding conditionality required that the sugar enterprise of THL in all jurisdictions was maintained as a whole and not disposed of in part, or on a piecemeal basis. SA Sugar was however separately included by the BRPs as an option to enable any such offers to be considered as an alternative to the disposal of the whole – and which would necessarily need to replace the PCF facility as part of such a transaction.

- SEPs were identified through a process referencing previous interested parties and key market participants who demonstrated the following criteria:
  - interest in investing in or acquiring the THL Group as a whole, or the SA Sugar businesses of THL;
  - relevant industry and regional technical expertise and operational ability;
  - balance sheet strength and funding capacity;
  - a plausible business case being presented for the future of the acquired businesses; and
  - valuation of the relevant assets and/or offer price that demonstrated a likely ability to conclude a transaction.

- Whilst a substantial number of potential SEPs were initially considered, a final list of eight potential SEPs that met the criteria (highlighted above) were

provided access to conduct a comprehensive due diligence. Final offers were received on 15 June 2023.

- After discussions with the Lender Group the preferred SEPs were approached again and provided with an opportunity to improve their offers (both in terms of certainty of price and overall certainty of closing), which culminated in a short listing of two final bidders.

- The BRPs and their advisors, carefully considered the respective SEP bids and analysed a number of qualitative and quantitative factors relating to each SEP's offer. Such considerations included (inter alia) financial, operational, strategic fit, cultural considerations and execution ability.

- After a rigorous process, and after consultation with numerous parties including the Lender Group, on 17 July 2023, Kagera Sugar was identified and confirmed as the preferred bidder by the BRPs and confirmed as the Strategic Equity Partner to be included in the business rescue plan for consideration by Creditors.

- Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. The Vision Parties made clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote

such Claims in favour of a business rescue plan predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.

- It is noted that as at the Publication Date, the acquisition of the Claims of the Lender Group by the Vision Parties has not been completed. The RGS Proposals put forward in this Business Rescue Plan have therefore been based on numerous factors, including, but not limited to the benefits to the Company, the local community, Creditors, Shareholders and Employees – and on the ability of the proposer (in this case RGS) to make the financial commitments underpinning its proposals.

5.3.5.9. Business Rescue Plan Publication

- In terms of section 150(5) of the Companies Act, a business rescue plan was required to be published on or before 1 December 2022 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the Publication Date up to 31 May 2023.

- The BRPs in May 2023 were still reluctant to publish a business rescue plan until such time as they were able to put forward sufficiently detailed Proposals to Affected Persons. However, at that time, the Lender Group declined to agree to any further extensions and insisted that the BRPs put forward the initial business rescue plan. The BRPs

therefore published the initial business rescue plan on 31 May 2023, a document which was, due to the lack of clarity at the time, somewhat conditional.

- The meeting to vote on the published business rescue plan was convened and scheduled to take place on 14 June 2023.

- On or about 8 June 2023, an urgent application was brought by RCL Foods & Sugar Milling (Pty) Ltd ("RCL") to interdict the meeting to be held on 14 June 2023 to consider and vote on the published business rescue plan.

- At the meeting held on 14 June 2023 motions were proposed, seconded and carried to adjourn the meeting to vote on the business rescue plan to no later than 30 September 2023 and agreed that no less than 30 days' prior written notice of the intended date of the reconvening of the adjourned meeting must be provided to Creditors, as was deemed to be necessary and expedient.

- In addition to the adjournment of the meeting, the BRPs were requested to amend the business rescue plan to incorporate the details of the final transaction accepted and agreed with the selected SEP.

- At a meeting held on 8 September 2023 creditors approved a further adjournment of the meeting to vote on the business rescue plan to no later than 30 November 2023 and that no less than 30 days'

prior written notice of the intended date of the adjourned meeting must be provided to Creditors.

- Creditors have also approved the consequently required extension of the publication date of the Company's amended business rescue plan to no later than 24 November 2023.

- A notice was issued on 6 October 2023 convening the meeting to vote on the business rescue plan to be held on 7 November 2023. In light of the request to extend the publication date of the Company's amended business rescue plan to no later than 24 November 2023 the notice convening the meeting on 7 November 2023 was withdrawn. The meeting will be held no later than 30 November 2023, in accordance with the agreement of Creditors at the meeting held on 8 September 2023.

- Subsequent to the above, the requisite majority of creditors agreed to an extension of the date for publication of the amended business rescue plan to no later than 24 November 2023 and to the application of the notice periods as detailed in section 151(1) and (2) of the Companies Act.

- Additional information came to the attention of the BRPs that required further updating of the drafted amended Business Rescue Plan. It was therefore necessary and expedient to extend the publication date for a very short period and therefore also to adjourn the Meeting to a slightly later date, in order to allow creditors sufficient time to consider

the contents of the amended Plan. The requisite majority of creditors agreed to an extension of the date for publication of the business rescue plan to no later than 29 November 2023 and to the adjournment of the meeting to vote on the business rescue plan to no later than 8 December 2023.

- As at the Publication Date the Vision Parties have a valid agreement in effect with the Lender Group for the acquisition of the Lender Group Claims. However, this agreement is subject to payment being made for such acquisition. Clearly the completion (or not) of the acquisition will impact who votes the Lender Group Claims, and therefore will materially impact the Creditor vote at any Section 151 meeting.

- Given the last dates agreed with Creditors (29 November 2023/8 December 2023 – see above), and the numerous delays (as set out above) in publishing a revised business rescue plan, the BRPs do not wish incur further delays.

- The business rescue of THL has been bedevilled by numerous challenges, not least of which has been the ongoing threat and/or institution of legal proceedings aimed at *inter alia* interdicting the business rescue process, made and/or brought at the instance of various groups and/or entities with frequently divergent interests, which if not adequately anticipated and/or fully dealt with will frustrate and possibly altogether halt the business

rescue process, with the almost inevitable consequence of liquidation.

- In order to militate against further challenges to the business rescue process, and given the credibility of the two proposals to be presented to Affected persons, the BRPs have therefore elected to implement the following methodology to ensure that Creditors have both the opportunity to review the alternative business rescue proposals currently available, and the right to vote on the proposal of their choosing:

  - two alternative business rescue plans (this being one of them) will be published on the Publication Date;
  - Creditors will be invited to vote in the Pre-Meeting Proxy Vote by way of a simple majority (with results counted on 7 December 2023), for the order in which the two potential business rescue plans will be presented to them and be voted on by them at the subsequent Section 151 Meeting held on 8 December 2023;
  - subject to the outcome of the Pre-Meeting Proxy Vote, Creditors will be asked at the subsequent Section 151 Meeting to first vote on the business rescue plan of their choosing (potentially this one);
  - if the first such plan voted on is not approved by the requisite Creditor majorities, subject to section 153 of the Companies Act the second plan will be presented to and voted on by Creditors;

- conversely, if the first such plan voted on is approved and Adopted, there will be no cause or need for the second such plan to be voted on; and
- should neither the two plans be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes contemplated in section 153(1) of the Companies Act.

5.3.5.10. SASA

- As at the Commencement Date, THL owed SASA an amount of c.R479m. This amount is clearly a Concurrent Claim that exists as at the Commencement Date and will be treated as such in this Business Rescue Plan on the same basis as other Unsecured Creditors unless stated otherwise. However, it is noted that SASA has taken the liberty of withholding export proceeds that THL would otherwise be entitled to and unilaterally reduced the amount that SASA alleges is owed by THL to SASA to c.R59m. This treatment is not accepted by the BRPs and the BRPs and THL reserves the right to take the necessary steps to recover the unpaid amounts, unless there is a settlement concluded with SASA.

- IDC has a priority-ranking security interest over the export proceeds payable by Sasexcor and/or SASA to THL for the obligations of THL in relation to the PCF provided by IDC to THL during the Business Rescue. As a result, any application or utilisation of such export proceeds towards a

settlement of the disputes between SASA/Sasexcor and THL, and/or otherwise, will require IDC written consent thereto.

- The BRPs subsequently exercised their rights to suspend the THL obligations to SASA for the duration of Business Rescue. The unpaid amount that has accrued since the Commencement Date amounts to c.R1.1bn. With effect from 1 April 2023, subject to availability of funding, THL recommenced its payment obligations to SASA.

- Various industry participants were of the view that the BRPs did not have the right to suspend the THL obligations to SASA and the matter was referred to the Sugar Industry Appeals Tribunal ("**SI Tribunal**"). The BRPs are of the view that the SI Tribunal does not have jurisdiction to make a ruling on matters related to the Companies Act (i.e. section 136 thereof). As a result, THL and its BRPs brought an application ("**the application**") in the High Court of South Africa, KwaZulu-Natal Local Division, Durban ("**the High Court**") under case number D4472/2023, seeking the following orders:

  - declaring that the BRPs are empowered to suspend, for the duration of the business rescue proceedings, any obligation of THL which arises under the Sugar Industry Agreement, 2000 ("**the SI Agreement**"); alternatively, declaring that the BRPs are empowered to suspend, for the duration of the business rescue proceedings any redistribution

payment, and related levies and interest that become due by THL, and which would otherwise become due during the business rescue proceedings. The BRPs seek this declaration in respect of their powers of suspension of a company's obligations under section 136(2)(a)(i) of the Companies Act; or

- alternatively to the preceding paragraphs, and in the event that the Court finds that the obligations under the SI Agreement are not amenable to suspension:
  - declaring section 136(2)(a)(i) of the Companies Act unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and
  - reading in the words "or regulatory regime" after the word "agreement" in section 136(2)(a)(i) of the Companies Act.

- These provisions allow for the implementation of a statutory business rescue plan to restructure a financially distressed company's affairs in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if that is not possible, results in a better return to its creditors or shareholders than would otherwise result from the immediate liquidation of the company.

- Among the key mechanisms available to the BRPs to create a protective environment within which to

develop and implement such a plan is the power to suspend the company's obligations in terms of section 136(2)(a) of the Companies Act.

- THL's payment obligations in terms of the SI Agreement referred to above include substantial and onerous levy and redistribution payments to SASA charged since the Commencement Date in excess of R1.1bn ("**the SASA Amounts**"). The provisions of the SI Agreement entail, inter alia, that THL as an over-performing miller is obliged to pay a substantial proportion of its refined white sugar proceeds over to SASA for redistribution to other competitor millers who have sold less than their production share (i.e. under-performing sugar millers), despite such payments not being related to the commercial realities of the cost of such production.

- In order to temporarily insulate THL from these onerous obligations that would prevent it from being rescued, during February 2023 the BRPs suspended all of THL's payments obligations to SASA arising under the SI Agreement for the duration of the business rescue proceedings in terms of section 136(2) of the Companies Act. The BRPs did so having taken legal advice, including the advice of senior counsel.

- The various respondents who have opposed the application (including SASA and the other sugar millers in the industry) and delivered answering affidavits, have alleged that the SI Agreement is subordinate legislation under the Sugar Act 9 of

1978 ("**the Sugar Act**") and therefore not capable of suspension by the BRPs under section 136(2)(a)(i) of the Companies Act.

- In other words, the respondents contend that the SI Agreement is not an "agreement" within the meaning of section 136(2)(a), and that THL's obligations under the SI Agreement are statutorily imposed and are therefore incapable of suspension under section 136(2)(a) of the Companies Act. That is the live legal dispute that warrants determination and declaratory relief from the High Court ("**SASA Declarator Application**").

- The BRPs' legal position remains that:
  - the SI Agreement is an agreement between all members of the sugar industry, and that THL's obligations thereunder is therefore capable of suspension; and
  - SASA ranks as an Unsecured Creditor in the Business Rescue Plan of THL. Immediate payment of the SASA Amounts would have the effect of elevating SASA's status to that of preferred creditor. This would unduly prejudice the remaining body of creditors and would be legally impermissible, and place the rescue of THL at risk.

- With the assistance of the post-commencement financiers, mainly the IDC (with the BRPs gratitude), THL has, since April 2023 recommenced payment of SASA obligations and an amount of c.R771m (as at 31 October) has been paid in settlement of amounts owing to SASA in

respect of local market redistribution charges and levies that have arisen since 1 April 2023. The SASA Amounts charged between 28 October 2022 and 31 March 2023 have not been discharged and will be treated the same as the other Unsecured Creditors of THL. The amounts owed to SASA as at the commencement of business rescue on 27 October 2022 amounting to approximately c.R420m, increased by levies in an amount of c.R59m, leaving a total amount of c.R479m, which has similarly not been discharged.

- The BRPs have agreed with SASA that, without detracting from THL's and/or the BRPs' assertions in the SASA Declarator Application and subject to the continued availability of funding acceptable to THL, THL will make payment of all redistribution ("**LMR**") levies due to SASA with effect from 1 April 2023.

- SASA and THL have agreed that the payments will be made on condition that:

  - the payments made by THL will only be applied towards the LMR and Levies obligations that have arisen or will arise after 1 April 2023 and will not be applied to any of the amounts which SASA asserts are due, owing and payable in respect of the period prior to 1 April 2023; and

  - SASA will comply with its obligations with effect from 1 April 2023 and will not withhold any proceeds including future export and export carry-over payments (2023/2024 season and

onwards) that THL may become entitled to from 1 April 2023. Those proceeds will be paid to THL by SASA as and when they fall due for payment.

- The above agreement is without prejudice to and in no way detracts from the rights of either SASA or THL relating to the SASA Declarator Application.

5.3.5.11. Settlement of Litigation Matters:

- In anticipation of the commencement of a mediation process, the Company and Deloitte & Touche South Africa ("**Deloitte**") concluded a settlement agreement in February 2023. The settlement related to claims which the Company had asserted against Deloitte which arose from and relate to the appointment of Deloitte as auditor of the Company for the financial years ended 31 March 2012 to 31 March 2018 (both inclusive). Deloitte paid an amount of R260m to the Company without admission of liability. The BRPs, having taken legal advice in this regard, were of the considered opinion that an expeditious settlement on these terms was in the best interests of the Company.

5.3.5.12. Growers

- Growers and grower representative boards have been engaged on a regular basis at the various sugar mills with the aim of fielding questions, dealing with uncertainties and to keep them updated. All cane payments pre- and post-

commencement of business rescue proceedings have been honoured to date in an effort to shield the growers from economic hardship. Payments made to the growers since the commencement of business rescue proceedings total R4.7bn (at 31 October 2023). Grower support and engagements have been robust and productive from both the view of the BRPs and that of the growers. Both the SACGA and SAFDA have also been engaged formally and informally in an effort to keep lines of communication open.

5.3.5.13. Employees

- Employees have continued to be employed by the Company on the same terms and conditions as before the Commencement Date.

- The first statutory meeting of employees, in terms of section 148 of the Companies Act, was convened in person and virtually on 8 November 2022. Thereafter, an employees' committee was formed by employee representatives who volunteered or who were nominated by their colleagues to represent them on the committee. To date, the BRPs have held numerous virtual meetings with the employees' committee to discuss the Business Rescue of the Company, the most recent of which was held on 12 October 2023.

- The remaining executive directors and members of the THL Group executive committee of the Company have continued in the employ of the Company and have worked with and will continue

to work with the BRPs while they remain in the employ of the Company. Mr Gavin Hudson and Mr Simon Harvey resigned with effect 28 February 2023.

5.3.5.14. Creditors

- The first meeting of Creditors, as contemplated in section 147 of the Companies Act, was convened virtually on 8 November 2022.

- At the first statutory meeting of Creditors, the BRPs advised Creditors of the right to form a Creditors' committee. A Creditors' committee has since been formed with Mr Hans Klopper having been appointed by the Creditors as the chairman of the committee. The BRPs have agreed that the Company is prepared to remunerate the chairperson on the basis of time spent solely in such role. The chairperson is also an advisor to one of the Creditors, which Creditor is liable for the costs related to time spent by Mr Klopper in the fulfilment of his services to that Creditor.

- The first Creditors' committee meeting was convened virtually on 24 November 2022 and numerous subsequent Creditors' committee meetings have been held, the most recent of which was held on 12 October 2023.

5.3.5.15. Consultations – The BRPs have consulted with various Affected Persons relating to the developments within the Business Rescue and the development of the Business Rescue Plan, in addition to the publishing of

regular notices and/or status reports to Affected Persons. The BRPs have consulted and engaged with a number of key Shareholders (representing in excess of 30% of the shareholding in THL) during the Company's Business Rescue. In addition to this, after an appropriate SENS announcement a general update shareholders meeting was held virtually on 26th September 2023.

5.3.5.16. Claims Reconciliation - The BRPs have received Claims from numerous Affected Persons. A verification process has been undertaken to reconcile the Claims received with the amounts reflected in the records of the Company. For the avoidance of doubt, the BRPs will rely on the records of the Company unless proven otherwise, per paragraph 5.3.7 and 1616. Further details relating to Claims are also set out in paragraph 5.3.7, read with Annexure **A**.

5.3.5.17. Contracts – None of the Company's obligations have so far been cancelled during Business Rescue, however the BRPs reserve the right to do so. The BRPs have exercised the right to suspend certain obligations and also reserve the rights to suspend other such obligations at the appropriate time in accordance with section 136 of the Companies Act.

5.3.5.18. Cash Management – The BRPs continue to manage and monitor the liquidity, cash flow and financial position of the Company, control payments and enforce general controls.

5.3.5.19. In-country engagements – Focussed stakeholder engagements were held in both Zimbabwe and

Mozambique to ensure a common understanding of the reasons why the business in South Africa was placed under business rescue, the implications of business rescue and the envisaged path to be travelled towards finding a rescue solution. The engagements were targeted at senior managers in the business, in-country independent board members, industry regulators, industry association bodies, minority shareholders in Mozambique and relevant government ministries in both countries. In Zimbabwe, the head of state has been kept updated through in-person briefings on the progress of the business rescue by the local Chaiman and interim THL CEO. Further engagements by the BRPs will be arranged when required. The engagements are continuous where key milestones in the business rescue process trigger a focussed stakeholder management follow up with either written or in person communication as may be deemed appropriate.

5.3.6. **Material assets and security (Section 150(2)(a)(i)):**

5.3.6.1. The below summary of the material assets of the Company is the pre-Commencement Date **book values** of the Company's assets (not Group consolidated) as at 31 October 2022, the nearest practicable date to the Commencement Date, as extracted from the accounting records of the Company.

MATERIAL ASSET LISTING	R'm
ASSETS	5 897
NON CURRENT ASSETS	**2 638**
LAND AND BUILDINGS	331
PLANT AND MACHINERY	552
VEHICLES	23
FURNITURE AND OFFICE EQUIPMENT	9
COMPUTERS	2
OTHER	164
RIGHT-OF-USE ASSETS	7
BIOLOGICAL ASSETS	145
INTANGIBLE ASSETS	82
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 164
AMOUNTS OWING FROM GROUP COMPANIES	44
OTHER NON-CURRENT ASSETS	115
CURRENT ASSETS	**3 259**
INVENTORIES	1 876
BIOLOGICAL ASSETS	127
AMOUNTS OWING FROM GROUP COMPANIES	273
TRADE AND OTHER RECEIVABLES	639
CASH AND CASH EQUIVALENTS	344

NOTES

1) INTANGIBLE ASSETS:
   (i) Software = R50,9m
   (ii) Cane Supply Agreements = R63,3m
   (iii) Capital WIP (Software) = R8,5m
2) OTHER NON-CURRENT ASSETS:
   (i) Pension Fund ESA asset = R50,4m
   (ii) NCR Lease Incentive = R26,6m
   (iii) Unzinzo Lease Incentive = R38,1m

5.3.6.2. The gross (i.e. before costs) realisable value of the assets as determined by BDO in the Liquidation Estimated Outcome Statement amount to c.R5.1bn.

5.3.6.3. Moveable assets, bank account monies, insurances, intellectual property rights, shares in subsidiaries, investments, claims, trade receivables, group claims, property disposal proceeds, debt reduction proceeds and properties were all encumbered and secured in

favour of the Lender Group (to be assumed by RGS Bidco), save for IDC Security.

5.3.6.4. The Lender Group (to be RGS Bidco) have a reversionary cession in favour of the Lender Group/RGS Bidco of all IDC Security.

5.3.6.5. By way of summary, the Lender Group now hold the following security:

- Cession in security of:

  - all shares in and claims against THL Zimbabwe, THL Botswana, THL Mozambique and/or all other investments (including, without limitation, all shares and claims against all subsidiaries of the Company);

  - all claims of whatsoever nature (excluding trade receivables and any related insurance claims, which are the subject of IDC Security, but subject to the Lender Group's reversionary security cession) and/or recoveries related thereto and/or proceeds from sale transactions;

  - all bank accounts and all monies standing to the credit thereof from time to time (excluding those bank accounts which are subject to IDC Security, but subject to the Lender Group's reversionary security cession);

  - all intellectual property rights;

- all insurances and claims payable in connection therewith (excluding those insurances which are subject to IDC Security, but subject to the Lender Group's reversionary security cession);

- rights under all property disposal and other debt reduction transactions;

- general notarial bonds over all moveable assets (which was perfected during November 2022 via an application to Court and with the BRPs consent, which was subsequently made an order of Court on or about 17 May 2023);

- mortgage bonds over immovable properties (including the Agricultural Land) registered in the relevant Deeds Office/s set out in Annexure **E** for ease of reference; and

- cross guarantees and indemnities provided to THL are summarised below:

No.	Name of Original Guarantor	Jurisdiction of Incorporation	Registration Number
1	Tongaat Hulett Developments (Pty) Ltd	South Africa	1981/012378/07
2	Voermol Feeds (Pty) Ltd	South Africa	1936/007892/07
3	Tongaat Hulett Sugar South Africa Ltd	South Africa	1965/000565/06
4	Tongaat Hulett Estates (Pty) Ltd	South Africa	1967/006009/07
5	The Natal Estates Limited	South Africa	1902/000899/06
6	Ohlanga Development Company (Pty) Ltd	South Africa	1968/009161/07

5.3.6.6. Cash balances, inventories and trade and other receivables are/were encumbered, with the consent of

the Lender Group, in favour of the IDC, as security for the PCF provided by the IDC to the Company.

5.3.6.7. For completeness the table below shows the full summary balance sheet of the **Company (not consolidated)** as at 31 October 2022, the nearest practicable date to the Commencement Date.

THL BALANCE SHEET AT 31 OCTOBER 2022	R'm
ASSETS	**5 897**
NON CURRENT ASSETS	**2 638**
PROPERTY PLANT AND EQUIPMENT	1 227
RIGHT-OF-USE ASSETS	7
INTANGIBLE ASSETS	82
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 164
AMOUNTS OWING FROM GROUP COMPANIES	44
OTHER NON-CURRENT ASSETS	115
CURRENT ASSETS	**3 259**
INVENTORIES	1 876
BIOLOGICAL ASSETS	127
AMOUNTS OWING FROM GROUP COMPANIES	273
TRADE AND OTHER RECEIVABLES	639
CASH AND CASH EQUIVALENTS	344
EQUITY & LIABILITIES	**5 897**
CAPITAL & RESERVES	**4 184**
SHARE CAPITAL AND PREMIUM	1 679
ACCUMULATED LOSSES	5 866
OTHER RESERVES	3
LIABILITIES	**10 080**
NON CURRENT LIABILITIES	**601**
AMOUNTS OWING TO GROUP COMPANIES	220
POST-RETIREMENT BENEFIT OBLIGATIONS	357
GOVERNMENT GRANTS	19
LEASE LIABILITIES	4
CURRENT LIABILITIES	**9 479**
BORROWINGS	6 969
TRADE AND OTHER PAYABLES	2 488
GOVERNMENT GRANTS	20
LEASE LIABILITIES	3

5.3.7. **Creditors of the Company (Section 150(2)(a)(ii)):**

5.3.7.1. The BRPs will continue to accept the Company's records in respect of any Creditor as being correct, unless and until the relevant Creditor proves otherwise to the satisfaction of the BRPs, or through the Dispute Mechanism process as set out in paragraph 16 below.

5.3.7.2. Alleged Claims that are not reflected in Annexure **A** of this Business Rescue Plan will be regarded as Disputed Claims, and Disputed Creditors may be allowed a Voting Interest at the Meeting if so determined by the BRPs in their sole discretion. Any such allowance by the BRPs shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim and will be further dealt with in accordance with the Dispute Mechanism contemplated in paragraph 16.

5.3.7.3. The Claims that the BRPs have accepted, in whole or in part, are set out Annexure **A**. A summary of the various classes of Creditors of the Company as at the Commencement Date, updated for subsequent movements/repayments and PCF advanced, is reflected in the table hereunder:

Table 2: Summary of the Various Classes of Creditors of the Company (updated as at 31 October 2023)

CREDITOR TYPE / DESCRIPTION	ACCEPTED/PROVEN CLAIM AMOUNT
SECURED CREDITORS	**8 045 562 161**
Lender Group Facilities*	7 708 147 777
Lender Group Bilateral Arrangements	284 946 678
Other	52 467 707
PCF CREDITORS	**2 152 647 811**
IDC Facilities - Secured PCF facility	2 118 858 799
Guardrisk Insurance PCF facility	33 789 012
PREFERENT CREDITORS	**22 470 000**
Preferent creditors *(N/A in business rescue)*	-
Preferent employees: Post-retirement medical aid liability for current employees	12 596 000
Preferent employees: Post-retirement gratuity for current employees	9 874 000
UNSECURED CREDITORS	**2 590 634 142**
Trade Creditors *	520 385 641
SASA pre-BR	479 936 395
SASA post-BR	1 121 428 850
Post-retirement medical aid liability for past/retired employees	326 449 000
Employee ex-gratia payments (past employees)	1 706 587
Other Provisions	8 073 891
Accrual for Leave pay	56 057 051
Accrual for Trade Payables	12 258 528
Other Accruals	14 122 387
SARS (potential VAT pre-BR clawback in terms of s22(3) of the VAT Act)	50 215 813
NON-INDEPENDENT UNSECURED CREDITORS	**248 077 086**
Inter-Company Loans	247 329 051
Intercompany BR claims (Agency Agreement)	
Voermol:	748 036
THSSA:	-
TOTAL	**13 059 391 201**

**The above table is shown as at Publication Date, however if the Vision Parties complete the acquisition of the Lender Group Facilities/Claims prior to the Section 151 Meeting, these Claims (R7.7bn) will be voted by the members of the Vision Parties.*

5.3.7.4. All Creditors who believe that they have a Claim against the Company are referred to Annexure **A** and should treat Annexure **A** as the BRPs' notification of the Claims (including the quantum thereof) that have been accepted by the BRPs for purpose of the Business Rescue and voting on the Business Rescue Plan. If any Creditor is in disagreement with the information provided in Annexure **A** (being a Disputed Creditor), such Disputed Creditor should utilise the Dispute Mechanism set out in paragraph 16.

5.3.7.5. Following the Adoption and implementation of this Business Rescue Plan, any remaining Claims of Creditors of the Company will become Unenforceable, other than as provided for in this Business Rescue Plan.

5.3.8. **Voting interests and voting by proxy:**

5.3.8.1. Voting Interests

- In accordance with section 145(4) of the Companies Act, a Creditor is entitled to vote on the Adoption of the Business Rescue Plan, as follows –

  - a Secured Creditor and/or Unsecured Creditor has a Voting Interest equal to the value of the amount owed to that Creditor by the Company; and

  - an Unsecured Creditor who would be subordinated in a liquidation has a Voting Interest, as independently and expertly appraised and valued at the request of the BRPs, equal to the amount, if any, that the Unsecured Creditor could reasonably expect to receive on a liquidation of the Company as set out in section 145(4)(b) of the Companies Act.

- Creditors are advised that a recent judgement handed down by Wilson J in the High Court, Johannesburg in the matter of Wescoal Mining stated that PCF creditors did not have a vote in business rescue proceedings. The BRPs are advised that this judgement is in the process of being appealed and, as such the effect of the judgement

has been suspended pending the outcome of the appeal. For the time being, the BRPs will afford IDC the right to vote its PCF claim at the proposed Section 151 Meeting until such time as there is a binding judgement to the contrary.

- Whilst the BRPs will allow IDC to vote on this Business Rescue Plan, the BRPs will for record purposes nevertheless determine two alternative outcomes of the voting on this Business Rescue Plan, being:

  - a determination based on the total voting interests voted (i.e. including PCF voting interests); and

  - a determination based on the total Commencement Date voting interests (adjusted to take account of interim repayments) voted (i.e. excluding PCF voting interests).

- It is recorded that there are subordinated non-independent Creditors in the total amount of R89m and that the value ascribed to those subordinated non-independent Creditors in line with the independent appraisal is nil. A notice concerning subordinated non-independent Creditors' Voting Interests was circulated on 3 March 2023.

5.3.8.2. <u>Voting</u>

- All Creditors will have a Voting Interest as set out in Annexure **A** in respect of any vote conducted at

the Meeting, subject to the BRPs' discretion contemplated in paragraph 5.3.7.2 and directly below.

- Disputed Creditors may be allowed a Voting Interest at the Meeting as may be determined by the BRPs in their sole discretion and any such determination shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim.

- Disputed Creditors are invited to seek an amendment to their Voting Interest (relative to Annexure A) up to 24 hours before the Meeting. Any BRP agreement to amend a Disputed Creditor's Voting Interest shall not be construed as an acceptance of the existence or quantum of such Claim, as such determination will be made solely for the purposes of determining that Disputed Creditor's Voting Interest at the Meeting. Unless the BRPs specifically advise a Disputed Creditor otherwise, Disputed Creditors will still be required to follow the Dispute Mechanism set out in paragraph 16 below.

5.3.8.3. Independent Creditors

- In accordance with sections 145(5)(a) and 145(5)(c) of the Companies Act, the BRPs are required to determine whether or not a Creditor is an Independent Creditor for purposes of the Business Rescue.

- For purposes of this Business Rescue Plan, the BRPs have determined that all Creditors with accepted and/or recognised Claims are Independent Creditors and will be counted as such for purposes of any votes cast at the Meeting to approve this Business Rescue Plan.

5.3.8.4. Shareholders

- In accordance with section 146(d) of the Companies Act, a Shareholder is entitled to vote on the Business Rescue Plan if it alters the rights associated with the class of Securities held by that Shareholder.

- This Business Rescue Plan contemplates (inter alia) the conversion of Lender Group Claims into THL Equity. Such conversion will not, however, alter the rights associated with the class of Securities held by Shareholders. Accordingly, Shareholders are not required nor entitled to vote on the Business Rescue Plan in terms of section 152(3)(c) of the Companies Act.

  - If so required, due to the alternative implementation of a debt to equity swap rather than the anticipated conversion of the Lender Group Claims into THL equity, Shareholders may, during the implementation of this Business Rescue Plan, be invited to vote (*inter alia*) on the issue of shares in relation to such debt to equity swap in terms of section 41(3) of the Companies Act.

5.3.8.5. Vote by Proxy

- Voting by proxy for the Meeting is permitted. A proxy form for Creditors voting on this Business Rescue Plan at the Meeting is enclosed as Annexure F.

- Creditors should carefully note the different proxies to be used for:

  - (i) voting for the Pre-Meeting Proxy Vote to direct the order of voting at the Meeting (which proxy will be attached to the special notice to be distributed to Affected Persons by the BRPs);

  - (ii) voting on this Business Rescue Plan at the Meeting (which proxy is enclosed as Annexure F to this Business Rescue Plan); and

  - (iii) voting for the alternative business rescue plan at the Meeting (which proxy will be enclosed as an annexure in that business rescue plan).

- Notwithstanding these forms, the BRPs have the discretion to accept any proxy submitted, acceptable to the BRPs, no matter its form.

- Proxy forms must include an appropriate resolution (for a juristic entity or trust) or power of attorney (for an individual) giving such representative the

authority to attend and vote at the meeting on behalf of the juristic person, trust or individual.

- Affected Persons who are voting by proxy are reasonably required to lodge each or any of their proxy forms:

  - for the Pre-Meeting Proxy Vote by no later than **12h00 on Thursday, 7 December 2023**; and

  - for the vote on the business rescue plan at the Section 151 Meeting, by no later than **17h00 on Wednesday, 6 December 2023** if delivered by hand or if by email, by no later than **17h00 on Thursday, 7 December 2023**.

5.3.9. **Probable Liquidation Dividend Estimate (Section 150(2)(a)(iii)):**

5.3.9.1. The BRPs engaged BDO as an independent expert to determine the probable dividend that Creditors and Shareholders would likely receive if, instead of being placed into Business Rescue, the Company was placed in liquidation as at the Commencement Date.

5.3.9.2. From the Table 3 below the following is noted:

- The cash, inventories and debtors, previously security assets held in favour of the Lender Group, are instead now security held by IDC as the PCF Lender. The Lender Group's successors in title, RGS Bidco, will have security over other moveable

assets, immoveable assets and investments which in aggregate (based on the BDO estimates below) equate to a gross amount of c.R3.095bn.

5.3.9.3. A summary of the BDO estimated liquidation realisations, costs and probable Distribution to Creditors per Creditor class, is reflected in Table 3 below:

Table 3: Probable Liquidation Dividend per Class of Creditor/Shareholder (in the event that the Company were to have been placed in liquidation as at the Commencement Date)

	c/R	*R'm*
Gross proceeds from the realisation of assets by a liquidator		**5,080**
Movable Assets		473
Inventory		1,387
Immovable Assets		433
Investments		2,189
Cash		437
Debtors		163
Less expenses incurred by liquidator during liquidation process		**1,100**
Net proceeds after expenses available for distribution to creditors		**3,980**
Order of preference – Application of the net proceeds of the realisation of assets		
1st payment by law – Secured Creditors	55,02	3,980
2nd payment by law – Statutory preferent creditors	0,00	0
Available for distribution to Unsecured Creditors	0,00	0

Note: As the net proceeds available for distribution to Creditors in liquidation would be insufficient to enable a full recovery for Creditors, **Shareholders would not be entitled to a surplus distribution on liquidation.**

5.3.9.4. If an Affected Person requires details relating to the Probable Liquidation Dividend Estimate calculation, such Affected Person is invited to contact the BRPs using the details set out in paragraph 17.1.2.

5.3.9.5. BDO requires that any Creditor requesting a copy of the Probable Liquidation Dividend Estimate report sign a hold-harmless letter in favour of BDO.

5.3.9.6. The following disclaimers are attached to the BDO Probable Liquidation Dividend Estimate:

- *"Any person who is not an addressee of this report or who has not signed and returned to BDO either a "no-reliance" or an "assumption of duty" release letter is not authorised to have access to this report. We do not accept or assume responsibility to any unauthorised person to whom this report is shown or any other person who may otherwise gain access to it.*

- *"If any unauthorised person chooses to rely on the contents of this report, they do so entirely at their own risk. Should any unauthorised person obtain access to and read this report, such person accepts and agrees that:*

  - *This report was prepared in accordance with instructions provided by the BRPs exclusively for the sole benefit and use of the BRPs and inclusion in their BR Plan;*

- *BDO, its partners, employees and agents neither owe, nor accept any duty or responsibility to the reader, whether in contract or otherwise (including without limitation, negligence and breach of statutory duty), or howsoever otherwise arising. We make no representations regarding this report or the accuracy of the contents including that the information has not changed since the date of this report;*

- *We shall not be liable in respect of any loss, damage or expense of whatsoever nature which results from any use the reader may choose to make of this report, or any reliance the reader may seek to place on it, or which is otherwise consequent upon access to this report by the reader;*

- *The report is not to be referred to or quoted, in whole or in part, in any other document, other than the BR Plan or made available to any third party, without BDO's express written consent."*

5.3.10. **List of the holders of the Company's issued Securities (Section 150(2)(a)(iv)):**

5.3.10.1. Please refer to Annexure **H** for the full securities listing as at 3 November 2023.

5.3.11. **BRPs' remuneration (Section 150(2)(a)(v)):**

5.3.11.1. The regulations to the Companies Act prescribe an hourly tariff (inclusive of VAT) for the payment of the fees of a BRP.

5.3.11.2. The Company is classified, in terms of regulation 26(2) read with regulation 127(2)(b)(i) of the Companies Act, as a large company in that it has a public interest score greater than 500 points.

5.3.11.3. The Company's public interest score at the Commencement Date was 33,752 points.

5.3.11.4. Accordingly, in terms of regulation 127(5), the Company required the appointment of at least one senior BRP.

5.3.11.5. The BRPs' remuneration agreement was approved in terms of section 143 of the Companies Act and is final and binding on the Company. It was supported by:

- 100% of the Shareholders present and voting at the meeting convened in terms of section 143(3)(b) on 9 December 2022; and

- 99% of the holders of Creditors' Voting Interests present and voting at a meeting that was called in accordance with section 143(3)(a) on 9 December 2022.

5.3.11.6. A copy of the remuneration agreement is enclosed with Annexure **I** .

5.3.12. **Other Advisors**

5.3.12.1. Metis has an advisory mandate with the Company paid on hourly rates for services rendered, and in addition has an agreed success fee arrangement with the Lender Group linked to the repayment of PCF. These latter fees were recovered from proceeds received and attributable to the Lender Group from the realisation of their security (thus did not impact on other classes of Creditors).

5.3.12.2. Matuson has an advisory mandate with the Company linked to the sale of THL Zimbabwe and THL Mozambique, with such fees being recovered, with the Lender Group's approval, from proceeds received from the sale of assets over which the Lender Group holds security (thus not impacting other classes of Creditors). P Marsden of Matuson was a non-executive director of the Company and previously held the position of chief restructuring officer. P Marsden resigned as director on 8 September 2023.

5.3.12.3. Absa Corporate Finance (M&A Advisory) has an advisory mandate with the Company relating to the sale of THL Zimbabwe, THL Mozambique and THL Botswana. Should Absa Corporate Finance (M&A Advisory) not be required to run a sale process, they are entitled to a break fee, which has been approved by the Lender Group and which will be paid from the proceeds of the realisation of the Lender Group security (thus not impacting other classes of Creditors).

5.3.12.4. BSM has an advisory mandate with the Company paid on hourly rates for services rendered. In addition BSM has an agreed success fee arrangement linked to the

outcome of Project BSM. Such costs are treated as Business Rescue Costs and will be deducted from the proceeds of relevant sales received by THL and/or from other facilities.

5.3.12.5. All other Advisors have advisory mandates with the Company paid on hourly rates for services rendered. Such costs are treated as Business Rescue Costs.

5.3.13. **Proposals made informally by Creditors (Section 150(2)(a)(vi)) and other parties:**

5.3.13.1. In terms of Section 150(2)(a)(vi) of the Companies Act, the BRPs are required to disclose proposals made by a Creditor or Creditors of the Company with regard to this Business Rescue Plan.

5.3.13.2. Vision Parties' Proposals:

- Vision Parties entered into a sales agreement to purchase the substantial Claims and security held by the Lender Group in the amount of c.R7.7bn.

- The key elements of the Vision Parties' Proposals are provided for the benefit of readers in a separate business rescue plan.

5.3.13.3. RGS Proposals:

- Subsequent to acquiring a claim in order to be a Creditor, RGS provided the "**RGS Proposals**" to the BRPs.

- This Business Rescue Plan is constructed around the RGS Proposals. Please refer to paragraph 6.1.1 for details of the RGS Transactions.

5.3.13.4. Kagera Proposal:

- Subsequent to being selected in the SEP process, Kagera provided the "**Kagera Proposals**" to the BRPs.

- The Proposals put forward by Kagera have (*inter alia*) conditionality attached (relating to required exclusivity as a bidder) which cannot be accommodated by the BRPs at this time and, consequently, the Kagera Proposals will not be under consideration at the Meeting.

5.3.13.5. SARS Proposal:

- Affected Persons are referred to Annexure **A** which includes certain clauses which SARS has proposed for insertion into business rescue plans. The effect of the proposed clauses would be that SARS is granted a preference above all other Unsecured Creditors in respect of certain pre-business rescue Claims.

- In business rescue, however, SARS is treated as an Unsecured Creditor, in line with relevant previous judgements. The BRPs have frequently engaged with SARS to understand their views on these additional clauses which they have submitted to THL in business rescue. The liability that may arise from a potential SARS "VAT clawback" claim would

result in a lower distribution to Unsecured Creditors.

- The BRPs have sought legal advice on this matter which confirmed that any VAT clawback claim which arises in Business Rescue, in respect of a vatable transaction which was concluded before the Commencement Date, should be treated as a pre-Business Rescue Unsecured Creditor claim because the provisions of the VAT Act/Tax Administration Act relating to the VAT clawback are inconsistent with and cannot be applied concurrently with Chapter 6 of the Companies Act without infringing upon provisions of Chapter 6 of the Companies Act. That is, the VAT clawback provisions would grant SARS a benefit over other Affected Persons that is not contemplated in Chapter 6 of the Companies Act. Accordingly, and upon a proper construction of the Companies Act, the advice concludes that the provisions of Chapter 6 of the Companies Act should prevail.

6. PART B – The Proposals

6.1. Terms of the Proposals

6.1.1. Relevant Factors:

6.1.1.1. THL has an extensive social and economic impact on the region within which it operates. It is beyond question that a successful rescue of THL's SA Sugar operations in South Africa will save tens of thousands, possibly hundreds of thousands, of direct and indirect jobs, and avoid a possibly widespread (upstream and downstream) economic and human catastrophe.

6.1.1.2. As indicated in paragraph 5.3.5.8 above, Kagera Sugar was originally selected as the SEP. On 3 November 2023 the Lender Group notified the BRPs that they had entered into an agreement with the Vision Parties to sell their Claims against the Company to the Vision Parties (effectively blocking the Kagera Transaction). The original transaction contemplated between the Lender Group and the Vision Parties was, however, never fully consummated. Vision Parties and the Lender Group then entered into a new agreement on 20 November 2023 to acquire/sell the Lender Group Claims against the Company to the Vision Parties which new agreement, as at the Publication Date, is still awaiting payment and final conclusion.

6.1.1.3. RGS has proposed that, pursuant to the Adoption and implementation of this Business Rescue Plan, it (through RGS Bidco) will acquire the Lender Groups Claims and security on the terms as put forward in this Business Rescue Plan. In essence it will:

- enter into all agreements as may be necessary with (inter alia) THL, the BRPs and the Lender Group to facilitate the acquisition by RGS Bidco of the Lender Group Claims and the subsequent conversion of such Claims into equity in THL;
- pay to the Lender Group R3.6bn in cash (as per paragraph 6.1.3.1) upon completion or waiver of the penultimate condition precedent (including regulatory conditions) in the abovementioned agreements (i.e. payment being the final and concluding condition precedent); and
- thereafter THL and RGS Bidco will effect the conversion of the acquired claims into equity in THL.

6.1.1.4. The Lender Group has security over all material assets of THL (other than certain bank accounts, inventory and trade receivables (and any related insurance claims), which are the security of IDC in respect of IDC's Claim as a PCF Lender). These security rights will be acquired by RGS Bidco. In this part of the Business Rescue Plan the words "**Lender Group**" and "**RGS Bidco**" will be used thus interchangeably (and/or the rights held by such parties shall be referred to as "**RGS Bidco Lender Rights**") as they relate to the exercising of the rights being acquired by RGS.

6.1.1.5. In view of the magnitude of the Claims and voting interests being acquired, assuming the transaction is successfully completed, RGS Bidco will become the majority Creditor of THL.

6.1.1.6. The BRPs have consulted with the RGS in relation to the development of the RGS Proposals and the

preparation of this Business Rescue Plan. This Business Rescue Plan encompasses RGS Proposals.

6.1.1.7. The BDO report concludes that Unsecured Creditors would be unlikely to receive any recovery relating to their Claims in the event of a liquidation of THL. Given the status quo with regards to the Company, the same outcome would result from the business rescue of the Company were the Claims to be settled strictly in accordance with the business rescue provisions of the Companies Act.

6.1.2. **Distributions:**

6.1.2.1. Notwithstanding the provisions of the Companies Act, RGS have undertaken that they will support/guarantee the payment by THL to Creditors of material Distributions in settlement of their Claims.

6.1.2.2. The RGS Proposals provide for Distributions to be made by THL to the various classes of THL Creditors as set out in the following paragraphs, noting specifically in this regard that:

- the balance sheet of THL will have been recapitalised by the RGS Bidco c.R7.7bn debt to equity conversion;
- RGS will provide or guarantee R500m of new working capital for THL; and
- RGS has undertaken to guarantee all deferred payments to Creditors.

6.1.2.3. RGS Bidco will acquire (through its nominee) the c.R7.7bn of Lender Group Claims by way of a cash

purchase (in three instalments as set out in paragraph 6.1.3.16.1.3 below) of such Claims for R3.6bn.

6.1.2.4. With the support of RGS the Company will extend or convert into alternative facilities, resulting in 100% payment to the satisfaction of the PCF Creditor holders thereof (primarily IDC), all Claims for outstanding PCF advanced to the Company as at the Publication Date.

6.1.2.5. Preferent Creditors (primarily employees for post-retirement benefits) will be paid 100% of their Claims.

6.1.2.6. All Unsecured Creditors (other than SASA, post-retirement liabilities, employee leave pay and non-independent creditors) will receive Distributions of:

- up to the first R75k of such Creditors' Claims in full (in aggregate currently calculated to be payments of c.R47m) (the "**De Minimis Payment**"); plus

- up to 40 cents in the Rand for any balance of any Claim which is in excess of the De Minimis Payment (in aggregate currently calculated to be payments of c.R330m) (the "**Pro Rata Payment**"); subject to

- the aggregate of all De Minimis Payments and all Pro Rata Payments not exceeding R377m; and further subject to:

    - the aggregate of the De Minimis Payment and the Pro Rata Payment Distributions made by the Company to each such Unsecured Creditor being settled in four equal instalments, the first

instalment being paid no later than on the first anniversary of Closing Date and the remaining three instalments being made annually (on or about the same date) thereafter; noting that

- all deferred De Minimis Payments and Pro Rata Payments will be guaranteed by RGS as noted above.

6.1.2.7. SASA's post-Commencement Claims against the Company will be settled in full by the Company as follows:

- subject to the written consent of IDC, after application of all and any export proceeds owing and payable by Sasexcor to THL as well as against any other obligations that SASA owes to THL and/or has withheld from THL (i.e. c.R887m) against the SASA Claim the then remaining balance outstanding ("**the SASA Outstanding Balance**") will be treated as a Claim of an Unsecured Creditor. The SASA Outstanding Balance will then be settled in four equal annual instalments, the first being payable within 12 months of the first anniversary of Closing Date.

6.1.2.8. Other Unsecured Creditors relating to employees (including post-retirement obligations), provisions and accruals will be retained at their total claim amount and settled in full by the Company in the normal course of business (other than in respect of the specific restrictions relating to employee leave pay (see paragraph 6.2.8 below)), subject to the LRA.

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant
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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty-first Respondent

INDEX TO APPLICATION — VOLUME 3

Item	Description	Page
1.	Certificate of Urgency – Max Du Plessis SC	1-2
	Notice of Opposition to Mediation in terms of Rule 41A (2)A, dated 5 December 2023	3-6
2.	Notice of Motion, dated 5 December 2023	7-13
3.	Founding Affidavit, deposed to by Michela Chiara Cutts on behalf of RCL Foods Sugar & Milling (Proprietary) Limited, ("**RCL**"), dated 5 December 2023	14-38
4.	Annexure "**FA1**" judgment of the Honourable Judge Vahed dated 4 December 2023 in Case No. D4472/2023	39-112
5.	Annexure "**FA2**" Details of Parties Cited in this application	113-116
6.	Annexure "**FA3**" the Business Rescue Plan of Tongaat Hulett Limited, RGS Version, dated 29 November 2023	117-259
7.	Annexure "**FA4**" the Business Rescue Plan of Tongaat Hulett Limited, Vision Version, dated 29 November 2023	260-401

8.	Annexure "**FA5**" Order of the Honourable Mr Justice Vahed in Case No. D4472/2023, dated 28 November 2023	402-404
9.	Annexure "**FA6**" Letter from Webber Wentzel to Business Rescue Practitioners of Tongaat Hullet Limited, dated 27 March 2023	405-406
10.	Annexure "**FA7**" Letter from Werksmans to Webber Wentzel, dated 8 June 2023	407-409
11.	Annexure "**FA8**" Letter from Webber Wentzel to Werksmans, dated 1 December 2023	410-417
12.	Annexure "**FA9**" Email from Werksmans to Webber Wentzel, dated 1 December 2023	418

DATED AT SANDTON ON THIS THE 5TH DAY OF DECEMBER 2023.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg,
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh / L Kahn / L Kamukwamba/ 3058873
C/O C/O STOWELL & CO

6.1.2.9. To facilitate and support the above commitments, RGS will provide (or guarantee, as the case may be) a new working capital facility to RGS in the amount of R500m.

6.1.2.10. The above will provide a material benefit uplift to Unsecured Creditors in the Business Rescue Plan Proposals relative to the anticipated liquidation dividend of nil that would likely be received by Unsecured Creditors if the Company were to be placed in liquidation.

6.1.2.11. In order not to dilute this deemed Distribution to Unsecured Creditors, the relevant secured claims shortfall, if any, which the Lender Group/RGS Bidco and IDC retain as Unsecured Creditor Claims (i.e. any remaining Lender Group/RGS Bidco and IDC Claims which may remain following repayment from their respective security realisation proceeds) would not participate in the aforementioned R377.1m Distribution.

6.1.2.12. It should also be noted that, in addition to the above, to date Claims of Unsecured Creditors of c.R1.3bn have, in the course of the Business Rescue, already been paid, the majority of which related to payments to cane growers, many of which are small-scale farmers.

6.1.3. **Lender Group Claims Acquisition and Equity Conversion:**

6.1.3.1. As noted above, RGS Bidco will, pursuant to the Adoption and implementation of this Business Rescue Plan, acquire the Lender Groups Claims and security

and facilitate the conversion of such Claims into THL equity. In essence it will:

- enter into all agreements as may be necessary with (inter alia) THL, the BRPs and the Lender Group to facilitate the acquisition by RGS Bidco of the Lender Group Claims and the subsequent conversion of such Claims into equity in THL;

- pay R3.6bn to the Lender Group (the "**Senior Secured Lender Payment**"), in full settlement of the acquisition by RGS Bidco of the Lender Groups' Claims and security, in three instalments as follows:

  - R500m as a non-refundable deposit, to be paid within 10 business days of this Business Rescue Plan having been Adopted;

  - R1.5bn to be paid on the earlier of: (a) the filing of the merger filing with the South African Competition Commission and the required JSE dispensations having being obtained to the satisfaction of RGS; and (b) 90 days after the Adoption of this Business Rescue Plan; and

  - R1.6bn to be paid on fulfilment or waiver of all conditions precedent to the RGS Transactions (the "**Closing Date**").

6.1.3.2. Thereafter THL and RGS Bidco will put into effect the conversion of the acquired Claims into equity in THL.

6.1.3.3. In return for the right to receive the Senior Secured Lender Payment and with effect from the Closing Date (and save as otherwise agreed in writing between RGS Bidco and the Lender Group and/or (as the case may be) the individual members of the Lender Group):

- each member of the Lender Group will be deemed to cede and assign all of its rights, title and interest in the Lender Group Claims (including its rights under the Security SPV Guarantee) to RGS Bidco on and with effect from the Closing Date but subject to payment of the Senior Secured Lender Payment and shall by such cession and assignment lose any rights against the Company or any of the Company's subsidiaries to enforce the Lender Group Claims (which rights shall vest in RGS Bidco) and shall be relieved of any of its obligations in connection with the Lender Group Claims (and the provisions of section 154(1) of the Companies Act will accordingly apply in relation to the Lender Group and its individual members); and

- aside from the rights to claim payment of the Senior Secured Lender Payment from RGS Bidco, no member of the Lender Group shall have any Secured Claim against the Company or any of the Company's Subsidiaries.

6.1.3.4. The above transactions will result in RGS Bidco initially owning 95% of the total issued share capital of the Company, and existing Shareholders in the Company holding the balance of 5%. RGS have undertaken to

sell down the RGS Bidco position to 51% to 60% within a year, thus creating a free float of 40 to 49%.

6.1.3.5. It is noted that in liquidation Shareholders would be anticipated to receive nil, and equally so in an alternatively structured transaction (the sale of the assets of THL to RGS Bidco), Shareholders would be anticipated to receive nil. Consequently, this proposal results in positive value accruing to Shareholders through the retention of their shareholdings and becoming minority shareholders in the still-listed, post-recapitalisation, RGS Bidco-controlled THL.

6.1.4. **Proposal Outcomes:**

6.1.4.1. Resulting from the above:

- the balance sheet of THL will be strengthened by R7.7bn through debt to equity swap;
- R500m of new cash will have been introduced;
- Existing Shareholders will retain value as 5% (in aggregate) shareholders in the still-JSE-listed, newly recapitalised THL (compared to nil in the event of an asset sale); and
- Creditors will receive returns on their Claims well in excess of those contemplated in a liquidation;
- THL will continue to trade, with the strategic support of RGS;
- RGS will implement its turnaround plan for SA Sugar;
- The vast majority of THL employees will retain their employed status; and
- Following the final Distributions being made, any remaining unpaid portions of Claims will become

Unenforceable and no Creditor will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.

6.1.4.2. Readers are referred to Annexure G which, inter alia, contains details about who RGS is and the SA Sugar Turnaround Plan.

6.1.5. **Strategy Underlying the Proposed THL Business Rescue Plan**

6.1.5.1. The Business Rescue will seek to:

- continue the process to optimise the operations and cost base of THL's businesses and its head office;
- complete the RGS Transactions detailed above and below;
- make Distributions to Creditors as set out in the above sections;
- make payment in full, or otherwise secure payment in full to the satisfaction of IDC, of PCF advanced by IDC to the Company; and
- manage and optimise the legally separate but interlinked business rescue proceedings of THD, Voermol and THSSA in parallel with the THL Business Rescue.

6.1.6. **Applicable to the RGS Transactions:**

6.1.6.1. Key Stakeholders:

- SASA: All the liabilities of THL towards SASA, whether occurring prior to or after the Commencement Date, will be treated in accordance with this Business Rescue Plan, as follows:

  - all amounts owing to SASA as at Commencement Date (i.e. c. R479m) ("**Pre-Commencement SASA Claim**") shall be treated, and ranked in this Business Rescue, as an Unsecured Creditor;

  - all amounts accruing and payable to SASA from Commencement Date until 31 March 2023, where THL's payment obligations in terms of the SI Agreement were suspended by the BRPs pursuant to section 136(2)(a) of the Companies Act ("**Suspended SASA Claim**"), shall be treated, and ranked in this Business Rescue, as an Unsecured Creditor. According to the BRPs' calculations, the Suspended SASA Claim aggregates to c.R1,1bn;

    - subject to the consent of the IDC, the Pre-Commencement SASA Claim and the Suspended SASA Claim will, after application of all and any export proceeds owing and payable by Sasexcor to THL as well as any other obligations that SASA owes to THL and/or has withheld from THL (i.e. c.R887m) against the SASA Claims the then SASA Outstanding Balance shall be paid by THL to SASA in full by means of

four equal annual amounts, the first being payable within 12 months of the first anniversary of Closing Date.

- without detracting from what is set out in the paragraphs above, and without prejudice to the BRPs' right to suspend THL's payment obligations under the SI Agreement, whilst THL remains in Business Rescue, THL intends to discharge its future payment obligations towards SASA in accordance with the SI Agreement. The BRPs remain of the opinion that neither SASA nor Sasexcor are entitled to apply set-off or withhold payment of any amounts due to THL.

6.1.6.2. In order for the RGS Transactions to be completed, this will require (inter alia):

- the Adoption of this Business Rescue Plan;
- agreement being reached with IDC with regard to the ongoing provision of PCF to THL until at least the completion of the Substantial Implementation Date; and
- the meeting of all conditions precedent contained in the final agreement(s), including all required regulatory approvals (in all relevant jurisdictions as applicable).

6.1.6.3. The BRPs and their advisors expect to conclude binding terms of agreement with RGS during the final quarter

of 2023. The final Closing Date for the RGS Transactions will be dependent on the timelines for the relevant regulatory approvals (in all relevant jurisdictions as applicable) being secured.

It is the agreed intention of the BRPs, Management and RGS to complete the RGS Transactions (and thereafter full implementation of the Business Rescue Plan) as time efficiently as possible. Below is a high-level forecast timetable following voting on the Business Rescue Plan, assuming plan Adoption on 8 December 2023. Note the dates below are purely estimates based on past experience and should be used as a rough guide only.

Implementation process:

- Definitive RGS Transaction agreements signed during December 2023/January 2024.
- SENS announcement detailing the transactions on the next business day after signing.
- JSE circular and dispensations submissions to JSE around end January 2024.
- Similarly so for Takeover Regulation Panel approvals to the extent required.
- JSE circular approval by JSE (noting dispensations will be required) around mid-February 2024.

- JSE circular distribution to shareholders around late February 2024.

- General meeting of shareholders to vote on the transaction (if so required) around late March 2024.

- Announcement of general meeting outcome on the same or next business day after general meeting.

Competition approval process (if required):

- Managed in parallel with the general meeting of shareholder's process.

- Large merger in SA: 90 calendar days is the maximum for Competition Commission South Africa ("**CompCom**") to consider +15 days for Competition Tribunal to consider (15 days is a rolling number and can be extended).

- However, given failing firm submission and concerns, this can be accelerated significantly.

- Competition filings potentially also required in Mozambique, Zimbabwe and Botswana, which are expected to take no more than 6 months.

Secured lender release of security:

To be managed in parallel with JSE processes.

IDC approval process in respect of PCF and any additional facilities for working capital:

To be managed in parallel with JSE processes.

Exchange control application process (if applicable):

Expected in 2 months from submission. To be managed in parallel with JSE processes.

Other:

All other regulatory approvals in all relevant jurisdictions to be managed in parallel with JSE processes.

6.1.6.4. The BRPs continue with their endeavours to secure the ongoing PCF funding required from the IDC for the balance of the 2023/2024 sugar season and the closing of the RGS Transactions – and subsequent full implementation of the Business Rescue Plan.

6.1.7. **Alternative transactions in the event of a failure to secure the necessary consents and approvals required for the conversion of the acquired Lender Group Claims into THL equity**

6.1.7.1. If so required, due to an inability to complete the anticipated conversion of the Lender Group Claims into THL equity as currently contemplated, the BRPs, THL and RGS as an integral part of the Proposals and this Business Rescue Plan will employ a straightforward THL debt to equity swap with new THL shares issued as an alternative methodology to achieve the same end result (i.e. the debt capitalised and RGS Bidco holding 95% of the then issue shares in THL).

6.1.7.2. In the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for both the proposed conversion and for the debt to equity swap (as per the above paragraph) to be effected, the BRPs and RGS have agreed that, as an integral part of the Proposals and this Business Rescue Plan, the currently proposed RGS Transactions will be switched from contemplating share related methodologies to transactions contemplating the acquisition by RGS Bidco of THL's assets and businesses (as going concerns) on the basis that:

- payment for such assets will be effected by way of a set off against the Secured Claims then held by RGS Bidco;
- suitable arrangements being made for payment of the full balance outstanding in respect of the IDC PCF;
- the sale of THL's assets and businesses will be to RGS Bidco;
- Unsecured Creditors and Secured Creditors would otherwise be treated as contemplated in the currently contemplated RGS Transactions;
- RGS will ensure that THL has sufficient funds to enable it to implement this Business Rescue Plan;
- the sale of THL's assets will be subject to the requisite regulatory consents in each jurisdiction being obtained;
- once it has sold its assets and businesses (as going concerns), THL will be delisted from the JSE and liquidated (noting that its shares would have nil value); and
- to the fullest extent possible RGS and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders,

other than Shareholders and the JSE as a result of the delisting/liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated RGS Transactions been implemented.

6.1.8. **Alternative transactions in the event of a failure to Adopt this Business Rescue Plan encompassing the RGS Transactions**

6.1.8.1. In the event of a failure of this Business Rescue Plan to be Adopted at the Section 151 Meeting, the following factors should be carefully considered in relation to any subsequent conclusion of an alternative transaction, noting in particular the required timing to achieve same.

- The SA Sugar business operates on a highly seasonal basis with materially variable working capital requirements (entailing annual additional peak funding estimated at around R1.7bn) – dependent on industry dynamics, production and sales cycles.

- A significant investment process is undertaken annually from December to March (referred to as off-crop capital expenditure and/or maintenance ("**off-crop programme**")) to enable critical pro-active maintenance work to be performed ahead of the next season. Spending commitment towards the off-crop programme is required from as early as September onwards. For the ensuing off-crop programme, THL will look to the investing parties

for guidance and assistance in securing the required funding.

- The introduction, negotiation, documentation and closing of any alternative transaction or investment by a SEP would require a significant amount of time to achieve. The time available to meet this requirement would be dependent on (i) Lender Group support by virtue of their security rights; (ii) significant working capital funding support (i.e. agreement with IDC or an alternative financier in replacement of IDC); and (iii) creditor support in respect of any delays related to the further amendment of the Business Rescue Plan or its implementation etc. Any such alternative transaction would require the support of the Lender Group.

- In the absence of continued Lender Group/SEP and working capital funding support, there would be a limitation on the ability to continue running the SA Sugar business in the ordinary course (in particular in relation to the off-crop programme).

- Any alternative transaction proposals should therefore be carefully considered in terms of the required support as outlined above, in addition to the timing and execution risks that may be relevant. Should Creditors wish for any such alternative proposal to be pursued, this Business Rescue Plan would need to be revised and a new Section 151 meeting of creditors convened to vote on such a revised Business Rescue Plan at a future date.

- Any motion (at the Meeting) to amend the Business Rescue Plan and consequently adjourn the Meeting should therefore be accompanied by clear plans for working capital funding and off-crop programme funding from such parties proposing such a motion, to the satisfaction of the BRPs.

6.1.9. **Other Features of the Proposals**

6.1.9.1. The THSSA and Voermol business rescues will operate in tandem with this Business Rescue Plan and will thus not result in any additional cash realisations to THL.

6.1.9.2. Voermol is a dormant company in business rescue with no assets and which is earmarked to eventually be wound up/deregistered. The division of THL, named Voermol, will remain in the Company. There will be no Distributions to the creditors of the Voermol legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to Voermol will result in Voermol having a commensurate claim in THSSA and THSSA in turn against THL, its principal. Any distribution received by Voermol from THSSA will be distributed by Voermol to the Creditors who chose to submit their claims with Voermol.

6.1.9.3. THSSA (as agent of THL) nominally owns THL's (the beneficial owner) 100% shareholding in THA and 100% of the shares in Sociedade de Assistencia a Agricultura e Industria S.A. (registration number 500253153), a company duly incorporated in accordance with the laws of Portugal. There will be no

Distributions to the creditors of the THSSA legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to THSSA will result in THSSA having a commensurate claim in THL, its principal. Any distribution received by THSSA from THL will be distributed by THSSA to the Creditors who chose to submit their Claims with THSSA.

6.1.10. **Employee Matters**

6.1.10.1. RGS has undertaken to procure that THL will not implement any retrenchments of any employees of THL (other than potentially senior management whose employment will be subject to the restructure of the senior management structure) for a period of at least two years from the date of implementation of this Business Rescue Plan. RGS will assess the performance of the THL Group and the various businesses after the expiry of the two year period. It is the intention of RGS to limit job losses and, therefore, any job losses suffered would be a last resort and all affected employees will be entitled to their full retrenchment package. The Business Rescue Plan thus contemplates the Company meeting its relevant retrenchment financial obligations to all employees affected by any proposed section 189 process (in terms of the LRA) and/or in accordance with the Basic Conditions of Employment Act 75 of 1997.

6.1.10.2. THL is currently contractually obliged to provide monthly post-retirement medical aid benefits for approximately 900 persons. Such persons are either (i) former employees of THL or other members of the

THL Group, or their beneficiaries, who are now retired pensioners, or (ii) current employees of THL or other members of the THL Group, who may become entitled to these benefits when they retire. It is considered by RGS that these obligations will be met in the ordinary course of business.

- These benefits were provided to employees who joined the company on or before 30 June 1996 following which this scheme was closed to new entrants.

- In terms of THL's post-retirement medical aid benefits policy, the post-retirement medical aid benefit provided is limited to 50% of the cost of contributing to the Discovery Health scheme's Classic Comprehensive Plan. This equates to a maximum monthly contribution of R6,626.00 in respect of a married recipient, and R3,405.00 for a single recipient.

- At present, the expected accrued liability for the provision of post-retirement medical aid benefits to all recipients, as at 30 September 2023, is c.R347m (determined actuarially in line with International Financial Reporting Standards). Of this amount, c.R12.6m relates to current employees and c.R325.8m relates to retired employees. The monthly cash flow impact to THL is approximately R3.6m.

- In the event of liquidation of THL the above claims would be entitled to nil value/distributions and the

beneficiaries would thus receive no benefits from this scheme at all.

- As there are no unencumbered assets of significance, there is currently no available funding to settle any of the abovementioned obligations in respect of these Business Rescue proceedings. The BRPs are exploring ways in which to mitigate this situation.

- In light of the current Business Rescue proceedings, and subject to funding availability, the BRPs intend and hereby reserve their rights to engage with the recipients of these post-retirement medical aid benefits, to offer once-off lump sum payments or a payment arrangement to buy THL out of its current liabilities to provide these post-retirement medical aid benefits on an ongoing basis.

- These buy-out offers will be negotiated and concluded on terms and conditions acceptable to the BRPs and to the extent necessary RGS, and are aimed at ensuring not only that THL is able to reduce and/or eliminate its unfunded liabilities, but also in an endeavour to secure a financial benefit to the recipients who accepts a buy-out offer, where there are currently none. In the absence of such agreement being concluded any such Claim will be regarded as a Concurrent Claim held by an Unsecured Creditor and after any Distributions will become Unenforceable as against the Company.

6.2. **Effects of the Proposal:**

6.2.1. Extent to which the Company is to be released from the payment of its debts and the extent to which any debt is proposed to be converted to equity (Section 150(2)(b)(ii)):

6.2.1.1. Distributions will be made to Creditors as outlined in paragraph 6.2.4. Following the final Distributions being made, any remaining unpaid portions of the Claims will become Unenforceable and no Creditor will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.

6.2.1.2. The ex-Lender Group Claims acquired by RGS Bidco will be fully converted into equity in THL as described in paragraph 6.1.3.

6.2.2. Ongoing role of the Company and the treatment of existing contracts (Section 150(2)(b)(iii)):

6.2.2.1. Upon the implementation of the RGS Transactions and the BRPs being satisfied that THL has or is on track to meet the Distributions to Creditors contemplated in the Business Rescue Plan, the Business Rescue proceedings will be terminated and the Company handed back to its directors. THL will remain listed on the JSE and at the appropriate time a request will be made to the JSE for the suspension of the shares to be lifted.

6.2.2.2. Where the BRPs have determined it to be in the best interests of Creditors to continue with counterparty agreements concluded with the Company, such agreements have continued.

6.2.2.3. Agreements concluded with the Company are, however, subject to ongoing evaluation and negotiations by the BRPs in an effort to mitigate risks and optimise the success of the Business Rescue.

6.2.2.4. Section 136(2)(a) of the Companies Act allows the BRPs to entirely, partially, or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under an agreement (including any form of *sui generis* agreement) to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue. All Company obligations are continuously under review and the BRPs reserve their rights in this regard.

6.2.2.5. It is recorded that, where the BRPs have elected to suspend the Company's payment obligations, the aggrieved party may assert a Claim against the Company only for damages in terms of section 136(3). Such damages claim and/or suspended obligation amounts owing and unpaid will be treated as a Concurrent Claim of an Unsecured Creditor, and any balance remaining after any Distribution in terms of this Business Rescue Plan will become Unenforceable against THL.

6.2.2.6. As a reminder to Affected Persons, it is confirmed that an application has been made to the High Court seeking the High Court's declaration that the BRPs have the right to suspend THL obligations to SASA under the SI Agreement. Separate notices have been circulated to Affected Persons in this regard The relevant Court hearing was held on 12 and 13

September 2023. On 29 November 2023, the Declaratory Application was dismissed with costs. The judgement in respect of such order will be handed down on 4 December 2023. Once the written judgement has been received, THL and the BRPs will consider applying for leave to appeal the decision.

6.2.2.7. The BRPs further have the right, in terms of section 136(2)(b) of the Companies Act, to apply to the High Court to cancel and/or terminate any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and that would otherwise become due during the Business Rescue.

6.2.2.8. Counterparties to all agreements in which the Company's obligations are suspended or cancelled should be guided by the moratorium which excludes a claim by a contractual counterparty for specific performance. Such party will have a Claim for damages in terms of section 136(3) of the Companies Act. Where that Claim is not reflected in Annexure **A**, the course of action available to that party is to submit a claim for damages as a Disputed Creditor and to follow the Dispute Mechanism set out in paragraph 16.

6.2.3. <u>Property of the Company that is to be available to pay Creditors' Claims in terms of the Business Rescue Plan (Section 150(2)(b)(iv))</u>

6.2.3.1. Other than the issue of shares by the Company, or as otherwise specifically provided for in this Business Rescue Plan, it is not contemplated that any assets of the Company will be available to pay Creditors' Claims.

6.2.3.2. To the extent that any assets were to be made available to pay Creditors' Claims, readers are referred to paragraph 5.3.6.5 which outlines all the assets of the Company that have been encumbered via security previously held by the Lender Group, and to be held by RGS Bidco.

6.2.3.3. As a result, all movable assets, bank accounts, inventory and trade debtors (and any related insurance claims) are encumbered.

6.2.3.4. In relation to fixed assets, refer to Annexure E which outlines all related properties and relevant encumbrances.

6.2.3.5. Following the BRPs review, there are a very small number of properties which are unencumbered which have either small or negligible values attributed.

6.2.3.6. Accordingly, there are no material unencumbered assets available which would result in any value of significance being distributed to Unsecured Creditors in satisfaction of their claims other than as specifically provided for in this Business Rescue Plan.

6.2.4. Effect on Creditors (Section 150(2)(b)(v))

6.2.4.1. Secured Creditors:

- RGS Bidco will acquire c.R7.7bn of the Lender Group Claims by way of a cash purchase of such claims for R3.6bn.

- It is contemplated that the IDC working capital facility will be retained by the Company, that the IDC Security will remain in place and that the IDC's Claim will remain enforceable and repayable in full (in accordance with its terms) in the normal course of business.

6.2.4.2. Unsecured Creditors:

- Notwithstanding a strict application of the provisions of the Companies Act, under which it would be anticipated that Unsecured Creditors would not be entitled to any recovery on their claims, Unsecured Creditors will receive the material Distributions as set out in paragraph 6.1.2 above (noting that in addition to this, payments made to date to Unsecured Creditors (primarily small scale farmers)) amount to R1.3bn.

- Distributions arising pursuant to the implementation of this Business Rescue Plan are therefore expected to significantly exceed those calculated by BDO in the alternative scenario of an immediate liquidation of the Company.

- Subsequent to these Distributions to Unsecured Creditors, any remaining Claims will become Unenforceable.

6.2.4.3. Other than as specifically provided for in this Business Rescue Plan, Distributions will be made in the following order of priority in accordance with the Business Rescue Plan for the duration of Business Rescue. This

ranking is in accordance with the provisions of the Companies Act.

6.2.4.4. Proceeds from Unencumbered Assets, if any, will be applied as follows:

- Business Rescue Costs will be funded out of the ongoing PCF Facility. To the extent that there is insufficient funding available to cover these costs, funds will be deducted from the net proceeds of any asset disposals or claim recoveries;
- PCF Employees to the extent that amounts due and payable, for services rendered during Business Rescue, that remain unpaid;
- Unsecured PCF Creditors, who will rank in the order in which the PCF was provided;
- Preferent employees;
- Unsecured Creditors (if there is any residual); and
- Shareholders (if there is any residual).

6.2.5. Expected Distribution to Creditors:

6.2.5.1. Distributions arising pursuant to the implementation of this Business Rescue Plan are expected to significantly exceed those calculated by BDO in the alternative scenario of an immediate liquidation of the Company.

6.2.5.2. This is already the case for Unsecured Creditors due to the pre-Commencement Date Unsecured Creditors'

Claims paid of c.R1.3bn. Furthermore, Distributions to Unsecured Creditors are expected to be enhanced by the concessions agreed to by RGS, which will result in material amounts being paid to Unsecured Creditors.

6.2.5.3. To the extent that agreements concluded between the Company and counterparties and/or obligations are cancelled, modified, suspended or restructured, any proven and accepted Claim for damages will be treated as an Unsecured Creditor.

6.2.5.4. Claims for damages, whether contractual or delictual against the Company, once determined through the Dispute Mechanism paragraph 16 or by the High Court or similar proceedings, as the BRPs may consent to, will be treated as follows–

- as an Unsecured Creditor, unless the claimant holds security for such Claim;

- shall be limited to general damages as determined through the Dispute Mechanism or by the High Court or similar proceedings as the BRPs may in their sole discretion consent to. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable at the time of entering into the relevant contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of an agreement so as to be said to flow naturally and generally and not to be too remote; and

- shall exclude all indirect, punitive, special, incidental, or consequential loss, including injury to business reputation, loss of profits and/or loss of business opportunities.

6.2.5.5. If this Business Rescue Plan is Adopted and implemented by payment of a final Distribution in accordance with this Business Rescue Plan, any remaining Claims will become Unenforceable against the Company by the relevant Creditor unless otherwise provided for in this Business Rescue Plan.

6.2.5.6. For the avoidance of doubt, any Claims which SARS may have against the Company in respect of tax debts owed prior to the Commencement Date, among other things, under section 22(3) of the Value Added Tax Act 89 of 1991, the Income Tax Act 58 of 62 or in respect of an audit under the Tax Administration Act 28 of 2011 for any date or year of assessment preceding the Commencement Date, will be Unenforceable under and in terms of this Business Rescue Plan. Any income tax debt owed to SARS prior to the Commencement Date will become unenforceable upon Adoption of the Plan.

6.2.5.7. Any VAT related claims from SARS and any other SARS Claims arising from transactions that occurred prior to the Commencement Date have been recognised as Concurrent Claims in the Business Rescue Plan and SARS will be treated in the same manner as all other Unsecured Creditors and therefore will be entitled to the same Distribution as all other Unsecured Creditors.

6.2.5.8. This means that upon payment of a final Distribution in terms of this Business Rescue Plan, any remaining

unpaid portions of the Claims will have become Unenforceable (unless otherwise provided in this Business Rescue Plan) and no Creditor, including SARS, will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.

6.2.5.9. Creditors voting in favour of the Business Rescue Plan do not thereby accede to the discharge of the whole or part of their debt in terms of section 154(1) of the Companies Act. The consequence of the Adoption and implementation of the Business Rescue Plan, Creditors' remaining Claims will become Unenforceable against the Company in terms of section 154(2) of the Companies Act.

6.2.5.10. After payment of the final Distributions and prior to a notice of substantial implementation being filed with the CIPC, the Company will be returned to its director(s).

6.2.5.11. Claims will only become Unenforceable in accordance with the Business Rescue Plan upon both the Adoption and subsequent implementation of this Business Rescue Plan. In the event of any breach by the Company of its obligations to creditors in terms of the Business Rescue Plan, or in the event the Company is placed in liquidation other than as catered for in this Business Rescue Plan under paragraph 6.2.5.96.2.5.10, the full balance due to Creditors in terms of their original claims against the Company shall immediately become due, owing and payable by the Company to the creditors, subject to the provisions of section 135 of the Companies Act.

6.2.6. Effect on Holders of the Company's issued Securities

- The authorised shares of THL amount to 5 000 000 000 shares. The issued shares of THL amounts to 135 112 506 shares. In terms of section 152(6)(a), the BRPs are authorised to determine the consideration for, and issue of, any authorised securities of the Company.

- The effect of the RGS Transactions on existing Shareholders will be to dilute the existing Shareholders to a shareholding equating to 5% of the then issued shares.

6.2.7. Conditions that must be satisfied in order for the Business Rescue plan to come into operation (Section 150(2)(c)(i)(aa)) –

6.2.7.1. For this Business Rescue Plan to come into operation it must be approved by more than 75% of the creditors' voting interests that were voted and at least 50% of independent creditors' voting interest, if any, that were voted in accordance with the provisions of section 152(2) of the Companies Act at the meeting convened for this purpose in terms of section 151 of the Companies Act.

6.2.7.2. To the extent that a Business Rescue Plan alters the rights associated with any class of Securities held by Shareholders, such Shareholders are entitled to vote on the Business Rescue Plan. This Business Rescue Plan will not alter the rights associated with the class of Securities held by Shareholders. Accordingly, Shareholders are not required nor entitled to vote on

the Business Rescue Plan in terms of section 152(3)(c) of the Companies Act.

6.2.7.3. Implementation of the Proposals implicit in this Business Rescue Plan will be conditional upon (inter alia) the following:

- agreement between the RGS, the Company and IDC with regards to the ongoing provision of working capital to THL by IDC and the treatment of the relevant underlying security; and

- the meeting of all conditions precedent contained in the final RGS Transaction agreements.

6.2.8. Effect on Employees (Section 150(2)(c)(ii)) - RGS has confirmed their original undertaking to procure that THL will not implement any retrenchments of any employees of THL (other than potentially senior management whose employment will be subject to the restructure of the senior management structure) for a period of at least two years from the date of implementation of the business rescue plan of the THL Group. RGS will assess the performance of the THL Group and the various businesses after the expiry of the two year period. It is the intention of RGS to limit job losses and, therefore, any job losses suffered would be a last resort and all affected employees will be entitled to their full retrenchment package.

To the extent permitted under the LRA RGS will institute policies within THL to provide that employees will be permitted to use their accrued leave entitlement for a period of three years after which it will be forfeited and there will be no cash leave pay entitlement, and that no leave pay will be paid if an employee leaves the employment of THL within the three year period.

6.2.9. Effect on Director(s) and Management - Directors have continued to exercise the functions of a director, subject to the authority of the BRPs. The majority of the board members that were in office as at the date of commencement of business rescue proceedings have resigned. Currently there are two remaining board members, both of whom are executives.

6.2.10. Effect on subsidiaries – The investments in and claims against subsidiaries of the Company will be treated in accordance with the Proposals section of this Business Rescue Plan. With the requisite support of PCF Lenders, the Company will provide direct or indirect financial assistance to its related and inter-related companies/equity interests, which financial assistance may include without limitation the provision of loans, the issuance of guarantees (or other like instruments and/or Securities) and/or the subordination of claims owing to the Company by related or inter-related companies.

7. Binding nature of this Business Rescue Plan

7.1. The BRPs draw the attention of Affected Persons to the provisions of section 152(4) of the Companies Act.

7.2. This section provides that once a Business Rescue Plan has been Adopted, it is binding on the Company, its Creditors (including all Claims, whether accepted by the BRPs as Creditors, whether Disputed Creditors, conditional Claims, prospective Claims, damages Claims and/or unliquidated Claims) and every holder of the Company's Securities (the latter in terms of the provisions of section 146(d) and 152(3)(c) of the Companies Act) whether or not such a Person was –

7.2.1. present at the Meeting to determine the future of the Company;

7.2.2. voted in favour of the Adoption of the Business Rescue Plan; or

7.2.3. in the case of Creditors, has proven a Claim against the Company.

8. Moratorium (Section 150(2)(b)(i))

8.1. The moratorium imposed by section 133 of the Companies Act prohibits any legal proceedings, including enforcement action, against the Company, or in relation to any property belonging to the Company or lawfully in its possession, from being commenced or proceeded with for the duration of the Business Rescue except with the written consent of the BRPs or with the leave of the High Court.

8.2. This means, among other things, that Affected Persons will not be able to proceed in any forum against the Company for, among other things, the non-payment of debts during Business Rescue, except with the written consent of the BRPs or with the leave of the High Court.

8.3. The moratorium in relation to the Company took effect on the Commencement Date and will remain in place for the duration of Business Rescue, until the termination of Business Rescue as defined in paragraph 12.

9. Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi))

9.1. Through the implementation of this Business Rescue Plan the BRPs intend to optimise the returns for Creditors by implementing the RGS Transactions.

9.2. With this, the Business Rescue of the Company is intended to rescue the Company or, in the alternative, achieve a better return compared to liquidation as outlined in paragraph 5.3.3.

9.3. The financial benefits to Affected Persons through the Adoption and implementation of the Business Rescue Plan, as compared to a liquidation of the Company, are as follows –

9.3.1. Creditors / Liquidation Dividend –

9.3.1.1. the Distributions that all Creditors would have received in the alternative scenario of a liquidation of the Company as at the Commencement Date would be materially lower than the Distributions that have already been paid, together with those that are contemplated to be received by Creditors as a result of this Business Rescue Plan. This is expected to be true for both Secured Creditors and Unsecured Creditors.

9.3.2. Timing –

9.3.2.1. It is the view of the BRPs that typically a business rescue is concluded in a far shorter time frame than a liquidation of this nature.

9.3.3. Employees –

9.3.3.1. Subject to the Business Rescue Plan being implemented the majority of employees of the various entities will remain employed. This will, however, be subject to:

- the Company possibly commencing with a Section 189 (of the LRA) process which may lead to some employees being retrenched in accordance with this process during the Business Rescue proceedings;

- any retrenched employees will be entitled to their full retrenchment packages.

9.3.3.2. By comparison, in a liquidation –

- All jobs will immediately be suspended and, subject to the liquidator(s)'s intentions, may be lost immediately unless the liquidator agrees to continue trading against an indemnity. In the current circumstances, it is considered to be highly unlikely that a liquidator would agree to continue trading or that a liquidator would be indemnified against trading losses.

- Employees would in such circumstances be entitled to receive a maximum amount of R32,000 per employee, to the extent that there are funds available, and would be treated as an Unsecured Creditor for any balance.

- Employees will only receive payment once the final liquidation and distribution account has been approved at the end of the liquidation process.

9.3.3.3. SARS –

- SARS ranks as an Unsecured Creditor under Business Rescue, whereas, under liquidation, SARS would rank as a statutory preferent creditor. In a liquidation, any dividend to Unsecured Creditors would be reduced by the Claim of SARS.

9.3.4. Shareholders –

9.3.4.1. In comparison to a liquidation scenario, in which shareholders would receive no return or nil cents in the Rand, this Business Rescue Plan envisages shareholders retaining 5% of the then issued shares of the Company, which shareholding remains listed on the JSE.

9.3.5. Socio-economic impact in South Africa –

9.3.5.1. Direct employment:

- In South Africa, THL's total employment comprises 2,563 employees as of 31 March 2023 who earned remuneration totalling c.R850 million which contributed substantially to thousands of households, including those within rural areas. **Through the Proposals, the vast majority of employment positions will be saved.**

9.3.5.2. Indirect employment:

- In South Africa, THL generated a total economy-wide impact of 25,563 employment opportunities. The economy-wide impact contributed 0.22% to employment in South Africa along with an economy-wide effect measuring c.R7.95 billion. **The rescuing of SA Sugar as contemplated in this Business Rescue Plan will result in the avoidance of any material impact of the tens of thousands of indirect employment positions noted above.**

9.3.5.3. Growers (including small-scale growers):

- THL remains committed to large and small-scale empowerment farming and during the 2023 financial year paid its growers c.R2.9 billion for

sugarcane delivered to its Mills. The Company's SA Sugar operation sources c.43% of its sugarcane from over 15,000 black farmers and cooperative members. Uzinzo Sugar Farming, THL's transformational partnership, remains the largest black grower in the South African sugar industry. **This Business Rescue Plan provides for continuity for growers.**

9.3.5.4. Land reform and restitution:

- THL recognises that land reform is primarily an issue of basic human rights. Under the land reform programme, the Company works with two categories of farmers: restitution communities and land reform growers farming for their own account. Typically, restitution communities acquire land, through a land claims process, as a group for the benefit of many beneficiaries. With land reform growers, on the other hand, the beneficiary is the applicant.
- The main objective of the restitution programme is to unlock the economic benefit of the land for the previously marginalized communities. It is also to enable communities, majority being rural communities, to drive the local economic development efforts in their local municipalities.
- THL has partnered with 13 restitution communities overseeing 6,000 hectares across South Africa in the sugarcane growing areas. Through this partnership, THL has been able to accelerate the implementation of the sugarcane development programme and rural development efforts. Communities have created employment opportunities, facilitated the transfer of agricultural

and administrative skills and supported community upliftment activities.

- **This Business Rescue Plan provides for continuity in respect of such initiatives.**

9.3.5.5. Local taxes:

- Tax revenue consists of corporate taxes, personal taxes paid by the Company on behalf of its employees (including for example any taxes on salaries and wages and unemployment insurance) as well as any indirect taxes paid.
- Despite the Company having an assessed tax loss in respect of corporate taxes, it paid c.R82 million in taxes as a result of its operational and capital expenditure. The estimated direct, indirect and induced impact of THL's tax payments elsewhere in the economy are to the value of c.R482 million, c.R448 million, and c.R930 million, respectively.

9.3.5.6. Suppliers:

- THL's contribution to output, if its initial operational and capital expenditure are included, was c.R6.47 billion in 2021. Adding all the direct, indirect and induced impacts generated an estimated economy-wide effect measuring R24.8 billion.
- Number of suppliers as of March 2023 (excluding cane growers, statutory spend, imports): 1,420.
- Number of black owned suppliers: 701 or 49,4%.
- Number of black women owned suppliers: 610 or 43%.
- Number of Exempt Micro Enterprises and Qualifying Small Enterprises Suppliers (<R50 million per annum revenue): 1,169 or 82,3%.

- The Company has placed an emphasis on its Localisation Policy (refer below) within the operations and through the procurement department, which would increase these percentages in future.
- **This Business Rescue Plan provides for continuity for such suppliers.**

9.3.5.7. Other local businesses:

- Local communities and governments look up to the Company to facilitate equitable access to economic opportunities that empower individuals and enterprises to develop through employment, skills development, enterprise development and procurement opportunities. Rural and farming communities also look to the Company to support them in addressing issues of safety, health and environment.
- The Company's Localisation Policy was developed for THL to be proactive in the communication, management and facilitation of inclusive development and local participation opportunities with its local stakeholders and facilitate the implementation of Enterprise and Supplier Development interventions to improve the competitiveness or business-readiness of local Small, Micro and Medium Enterprises ("**SMME's**").
- Aligned with the policy, THL is in the process of implementing iThuba Centre, a community-based platform which local businesses can approach to be informed of available opportunities and requirements to qualify.
- **This Business Rescue Plan provides for continuity for such businesses.**

9.3.5.8. Mill clinics:

- The Company continues to be committed to supporting the government's commitment to the Sustainable Development Goals and participating in all associated initiatives. THL values the contribution made by its employees and the Company works with them to invest in their health and well-being. Employees access primary healthcare services at on-site clinic facilities. THL funded clinics and hospitals screen, test, treat and seek to prevent diseases among employees and community members. Stakeholder engagement and corporate communication efforts regularly include matters of health and disease prevention in messages to workers and communities. An amount of c.R100 million was invested in health-related activities during 2021.

9.3.5.9. Education:

- Education is vital for the social and economic development and upliftment of any community and an essential tool to alleviate poverty and uplift future generations. The Company actively participates in the improvement of education in South Africa by partnering with government and other organisations, as well as schools to support literacy, science, technology, engineering, and mathematics ("**STEM**") programmes as well as the provision of quality school infrastructure for schools in rural KwaZulu-Natal. To date, the Company has invested c.R10 million in 13 rural schools in the iLembe and King Cetshwayo District Municipalities in KwaZulu-Natal and c.R7 million in

education initiatives, including the ongoing provision of water and electricity to several schools, transport, maintenance, schoolbooks, furniture and bursaries.

- Within KwaZulu-Natal, THL has supported PROTEC, a leading South African non-profit organisation, operating in the field of developing STEM skills for gifted under-privileged students. This year, PROTEC together with its sponsors, are celebrating the graduation of 31 former students as they qualify with tertiary degrees ranging from B Eng Technology through to BSc Chemical Engineering.
- THL continues to play an active role in nurturing and growing talent for our own business, the sugar industry and the broader KwaZulu-Natal economy. The Company has 106 learners completing a range of programmes (engineers-in-training, interns, apprenticeships, learnerships and graduates) of which 92% are African, and 42% are female. The Company's focus on nurturing talent plays a critical role in the province's broader agenda of accelerating diversity and ensuring representation of Africans and females within management roles. Outside of these programmes, the Company continues to invest in its employees and over the last three years has invested R10.5 million in training and development.

10. Risks of the Business Rescue Plan

10.1. The implementation of the Proposals contained in this Business Rescue Plan may be subject to factors potentially not known to the BRPs as at the Publication Date. The following risks should be borne in mind, as they may

adversely impact the ultimate outcome of the implementation of this Business Rescue Plan:

10.1.1. Unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever.

10.1.2. Existing litigation not progressing in the manner anticipated.

10.1.3. Any changes in legislation that impact the Business Rescue.

10.1.4. Any legal challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto.

10.1.5. Any regulatory delays and/or challenges of any nature whatsoever, howsoever arising, which includes multi-jurisdictions as well as any consequential statutory liability.

10.1.6. The ability to effect the flow of funds between international jurisdictions and legal entities.

10.1.7. Any unforeseen circumstances, outside of the control of the BRPs, of any nature whatsoever, howsoever arising, that impact the Business Rescue, which may include disruptions to trading from suppliers who are Unsecured Creditors.

10.1.8. Any damages or penalties claimed against the Company which were unforeseen.

10.1.9. Any potential retrenchment processes taking longer than expected.

10.1.10. Any labour action arising as a result of the retrenchment process or Business Rescue.

10.1.11. Unexpected liquidity events, withdrawal or restricted access to PCF provided by the PCF Lenders or delays thereto.

10.1.12. The final verification and agreement of Claims taking longer than expected.

10.1.13. Material discrepancies in the information made available to the BRPs by Management.

10.1.14. The deterioration and worsening of market conditions.

10.1.15. Any events and outcomes that may lead to the discovery of fraud, misrepresentation, corrupt practices, or other such matters relating to the Company prior to the implementation of the Business Rescue Plan.

10.1.16. The variation in exchange rates and/or commodity prices affecting the Business Rescue.

10.1.17. Ambiguous provisions in the Companies Act which are subject to varied interpretation.

10.1.18. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.

10.1.19. JSE, financial reporting and transaction approval mechanisms proving problematic.

6.2.11. The macro-economic conditions in Zimbabwe remain a concern. The poor economic outlook is exacerbated by the suspension of duties on basic commodities including sugar, which resulted in lower cost

imported sugar (which has unfair cost advantages) competing against locally produced sugar. This is slowing down sales significantly domestically, which is the preferred market, with the lost sales volumes being redirected into lower-priced export markets. Government interventions in respect of grower issues as well as the wage arbitration where minimum wages were increased to USD280 before the elections, had a significant impact on the cost base and cash flow of the business. The lack of security over land tenure due to the 99-year leases not signed creates further uncertainty.

11. PART C – Assumptions and Conditions of Proposal

11.1. PCF:

11.1.1. The successful implementation of the Business Rescue Plan and the Proposal is subject to receipt of the necessary PCF referred to in this Business Rescue Plan to the extent required and within the timing considered appropriate by the BRPs.

11.1.2. The BRPs remain in constant communication with the relevant PCF Lender(s) in this regard.

11.1.3. The BRPs shall use their reasonable endeavours to procure the fulfilment of the required PCF drawdowns as soon as practically possible.

11.1.4. If the above-mentioned PCF is withdrawn without replacement, the BRPs may be faced with little alternative but to apply to the High Court to terminate Business Rescue and commence liquidation proceedings.

12. Termination of Business Rescue (Section 150(2)(c)(iii))

12.1. The Business Rescue will end:

12.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s or the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;

12.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;

12.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or

12.1.4. if a High Court orders the conversion of the Business Rescue into a liquidation.

13. Substantial Implementation (Section 150(2)(c)(i)(bb))

13.1. Substantial Implementation will be deemed to have occurred upon the BRPs deciding, in their sole discretion, that the following has taken place:

13.1.1. the transactions contemplated this Business Rescue Plan have been concluded;

13.1.2. final Distributions have been paid to Creditors and/or an appropriate mechanism, acceptable to the BRPs in their sole discretion, such as the appointment of a Receiver, has been put in place for the payment of any remaining Distributions to Creditors; and

13.1.3. all Business Rescue Costs relating to the Business Rescue have been paid and settled in full or suitable arrangements acceptable to the BRPs have been put in place in this regard.

13.2. Notwithstanding the above, the Substantial Implementation of this Business Rescue will remain within the sole and reasonable discretion of the BRPs.

14. Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv))

14.1. The RGS Transactions constitute the acquisition by RGS Bidco of Claims and security held by the Lender Group and the subsequent conversion by RGS Bidco of such Claims into new equity in THL. The projected balance sheets and projected income statements reflected below have been prepared based on Management's assumptions and do not incorporate any business improvement plans and/or other initiatives that RGS may implement. In respect of the forecasts for the 2024 financial year, the underlying assumptions are based on the information available as at 31 October 2023. In respect of the forecasts for the 2025, 2026 and 2027 financial years, the underlying assumptions are based on the information available at 31 May 2023, with adjustments made for material changes to assumptions that have emerged since that date.

For comparability, the information in the projected balance sheets have been reflected in the same way as the balance sheet at 31 October 2022 with reference to paragraph 5.3.6.77 .

THL INCOME STATEMENT	31 March 2025	31 March 2026	31 March 2027
REVENUE	**9 973**	**10 767**	**11 597**
SUGAR INDUSTRY RELATED ADJUSTMENTS	- 251	696	- 819
COST OF SALES	- 8 472	- 8 758	- 9 355
GROSS PROFIT	**1 250**	**1 313**	**1 423**
MARKETING AND SELLING EXPENSES	221	- 235	- 250
ADMINISTRATIVE AND OTHER EXPENSES	1 008	- 1 003	1 070
EXPECTED CREDIT LOSSES	- 1	1	- 1
FAIR VALUE ADJUSTMENTS TO BIOLOGICAL ASSETS	**37**	**3**	**2**
OTHER OPERATING INCOME	**331**	366	**392**
PROFIT/(LOSS) FROM OPERATIONS BEFORE IMPAIRMENTS AND NON-TRADING ITEMS	**388**	**443**	**496**
IMPAIRMENT (LOSS)/REVERSAL	-	-	-
OTHER NON-TRADING ITEMS	-	-	-
PROFIT/(LOSS) FROM OPERATIONS	**388**	**443**	**496**
NET FINANCE (COSTS) / INCOME	- 282	- 341	- 378
DIVIDEND INCOME	**12**	**12**	**13**
PROFIT/(LOSS) BEFORE TAXATION	**118**	**114**	**131**
TAXATION	- 125	- 6	- 6
PROFIT/(LOSS) FOR THE PERIOD	- 7	**108**	**125**

14.2. Material Assumptions as per Section 150(3)

14.2.1. The Projected Income Statement assumes that the RGS Transactions are completed on 1 April 2024.

14.2.2. Inflationary rates utilised in the forecast:

14.2.2.1. FY 2025: 5.5%

14.2.2.2. FY 2026: 5.0%

14.2.2.3. FY 2027: 4.75%

14.2.3. Exchange rates utilised in the forecast:

14.2.3.1. FY 2025: R18.25 : USD1

14.2.3.2. FY 2026: R18.50 : USD1

14.2.3.3. FY 2027: R18.75 : USD1

14.2.4. World sugar prices utilised in the forecast:

14.2.4.1. FY 2025: US¢ 20 per pound

14.2.4.2. FY 2026: US¢ 19 per pound

14.2.4.3. FY 2027: US¢ 18 per pound

14.2.5. Sugar production includes the continued benefit of the reinvestment in milling efficiencies and assumes that there are no adverse weather conditions (e.g. drought) during the forecast period.

14.2.6. Local market demand for sugar is forecast to grow at c.1% per annum and assumes that there will be no further changes to the Health Promotion Levy.

14.2.7. THL will remain listed on the JSE, therefore the associated costs including non-executive director fees are included in the forecast.

14.2.8. Business Rescue and other restructuring costs:

14.2.8.1. FY 2025:

- no business rescue costs have been forecast on the assumption that the business rescue will be substantially implemented once the RGS Transactions have been implemented; and
- legal costs on progressing the various criminal and civil cases in respect of the accounting irregularities identified in 2019 have been included in the forecast.

14.2.8.2. FY 2026 and FY 2027: No such costs have been included in the forecast.

14.2.9. In respect of the Post Retirement Medical Aid ("**PRMA**") obligation, the forecast assumes that the monthly contribution in respect of pensioners continues to be met by the Company. (This is not binding on the Company, but merely for illustration purposes. The wording set out in paragraph 6.1.2 remains applicable.)

14.2.10. Operational support fees and direct cost recoveries from the non-South African sugar operations:

14.2.10.1. Botswana:

- dividends are declared and paid annually (assuming same profit profile);
- all direct costs are recovered in cash; and
- all operational support fees recovered in cash.

14.2.10.2. Mozambique:

- no dividends are assumed to be declared;
- all direct costs are recovered in cash; and
- operational support fees:
  - FY25: 50% of FY25 fee recovered in cash;
  - FY26: balance of FY25 fee and 100% of FY26 fee recovered in cash; and
  - FY27: 100% of fee recovered in cash.

14.2.10.3. Zimbabwe:

- no dividends are assumed to be declared;
- all direct costs are recovered in cash; and
- operational support fees:
  - FY25: 50% of FY25 fee recovered in cash;
  - FY26: balance of FY25 fee and 100% of FY26 fee recovered in cash; and
  - FY27: 100% recovered in cash.

14.2.11. Borrowing facilities:

14.2.11.1. As per the RGS Transactions, it is assumed that the total Lender Group debt will be converted into equity therefore no interest costs are accrued.

VC W.

14.2.11.2. The finance charge represented in the forecast assumptions is calculated on the basis that the IDC PCF facility is settled and renewed as a term loan on similar terms to the current facility. The term loan and related rate and period would be required to be negotiated between the parties at the time of origination.

THL BALANCE SHEET	31 March 2025	31 March 2026	31 March 2027
ASSETS	**5 534**	**5 907**	**6 109**
NON CURRENT ASSETS	**3 156**	**3 266**	**3 350**
PROPERTY PLANT AND EQUIPMENT	1 878	2 015	2 135
RIGHT-OF-USE ASSETS	8	2	10
INTANGIBLE ASSETS	84	69	26
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 168	1 168	1 168
OTHER NON-CURRENT ASSETS	18	12	11
CURRENT ASSETS	**2 378**	**2 641**	**2 759**
INVENTORIES	838	945	1 061
BIOLOGICAL ASSETS	233	236	239
AMOUNTS OWING FROM GROUP COMPANIES	193	233	127
TRADE AND OTHER RECEIVABLES	1 073	1 179	1 285
CASH AND CASH EQUIVALENTS	41	48	47
EQUITY & LIABILITIES	**5 534**	**5 907**	**6 109**
CAPITAL & RESERVES	**1 901**	**2 009**	**2 134**
SHARE CAPITAL AND PREMIUM	9 989	9 989	9 989
ACCUMULATED LOSSES	- 8 079	- 7 971	- 7 846
OTHER RESERVES	- 9	- 9	- 9
LIABILITIES	**3 633**	**3 898**	**3 975**
NON CURRENT LIABILITIES	**364**	**358**	**361**
AMOUNTS OWING TO GROUP COMPANIES	-	-	-
POST-RETIREMENT BENEFIT OBLIGATIONS	354	350	346
DEFERRED INCOME - NC	-	-	-
PROVISIONS - NC	8	8	8
LEASE LIABILITIES - NC	2	-	7
CURRENT LIABILITIES	**3 269**	**3 540**	**3 614**
BORROWINGS	2 123	2 625	2 927
CREDITORS - PRE BR	283	189	94
SASA - PRE BR	360	240	120
SASA - POST BR	175	116	57
TRADE AND OTHER PAYABLES	322	367	413
DEFERRED INCOME	-	-	-
LEASE LIABILITIES	6	3	3

14.3. Material Assumptions as per Section 150(3)

14.3.1. The Projected Balance Sheet assumes that the RGS Transactions are completed on 1 April 2024.

14.3.2. For the purposes of the forecast, Unsecured Creditors will be entitled to distributions as indicated in paragraph 6.1.2 above.

14.3.3. THD:

14.3.3.1. THD is being wound down in accordance with its business rescue plan

14.3.3.2. The THD intergroup debtor is Unenforceable in line with the impact of THD's approved business rescue plan which entails a zero cents in the Rand distribution to Unsecured Creditors.

14.3.4. Intergroup creditors and/or debtors are taken over by RGS Bidco (excluding the THD balance as per 14.3.3 which remains unenforceable).

14.3.5. The site restoration provision in respect of a mothballed sorbitol facility will be subject to the Unsecured Creditor Distribution should a Claim materialise.

14.3.6. SASA: RGS' assumption entails a repayment in full of all amounts owing to SASA, subject to SASA settling any relevant amounts that may be owing to THL.

14.3.7. PRMA: The forecast assumes that the PRMA obligations are met by the Company through the continued payment of the monthly medical aid contributions in respect of pensioners. (This is not binding on the Company, but merely for illustration purposes. The wording set out in paragraph 6.1.2 remains applicable.)

14.3.8. Borrowings:

14.3.8.1. As per the RGS Transactions, it is assumed that the total Lender Group debt will be converted to equity.

14.3.8.2. The IDC post-Commencement Date funding has been assumed to remain in place at the current facility terms. However take note that, not yet factored into the abovementioned forecast, is an RGS assumption of

recovering at least R500m per annum in dividends from subsidiaries which would facilitate the repayment/reduction of borrowings.

14.3.9. Trade Payables includes pre-Commencement Date claims as per Annexure A after the Unsecured Creditor Distribution has been made as per paragraph 14.3.2 above.

14.4. RGS Projected Income Statement and Balance Sheet

14.4.1. At the request of RGS, an alternative income statement and balance sheet is presented below on the additional assumption (i.e. all assumptions in 14.2 and 14.3 apply) that up to R500m of dividends per annum from international subsidiaries is receipted by the Company and which is utilised to reduce Borrowings. Neither the BRPs nor Management have interrogated and/or verified RGS's assumptions pertaining to dividends.

THL INCOME STATEMENT	31 March 2025	31 March 2026	31 March 2027
REVENUE	**9 973**	**10 767**	**11 597**
SUGAR INDUSTRY RELATED ADJUSTMENTS	251	696	819
COST OF SALES	8 472	- 8 758	9 355
GROSS PROFIT	**1 250**	**1 313**	**1 423**
MARKETING AND SELLING EXPENSES	221	235	250
ADMINISTRATIVE AND OTHER EXPENSES	1 008	1 003	1 070
EXPECTED CREDIT LOSSES	1	- 1	1
FAIR VALUE ADJUSTMENTS TO BIOLOGICAL ASSETS	**37**	**3**	**2**
OTHER OPERATING INCOME	**331**	**366**	**392**
PROFIT/(LOSS) FROM OPERATIONS BEFORE IMPAIRMENTS AND NON-TRADING ITEMS	**388**	**443**	**496**
IMPAIRMENT (LOSS)/REVERSAL	-	-	-
OTHER NON-TRADING ITEMS	-	-	-
PROFIT/(LOSS) FROM OPERATIONS	**388**	**443**	**496**
NET FINANCE (COSTS) / INCOME	283	257	257
DIVIDEND INCOME	**512**	**512**	**513**
PROFIT/(LOSS) BEFORE TAXATION	**618**	**688**	**772**
TAXATION	- 125	10	14
PROFIT/(LOSS) FOR THE PERIOD	**493**	**678**	**758**

THL BALANCE SHEET	31 March 2025	31 March 2026	31 March 2027
ASSETS	**5 534**	**5 907**	**6 109**
NON CURRENT ASSETS	**3 156**	**3 266**	**3 350**
PROPERTY PLANT AND EQUIPMENT	1 878	2 015	2 135
RIGHT-OF-USE ASSETS	8	2	10
INTANGIBLE ASSETS	84	69	26
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 168	1 168	1 168
OTHER NON-CURRENT ASSETS	18	12	11
CURRENT ASSETS	**2 378**	**2 641**	**2 759**
INVENTORIES	838	945	1 061
BIOLOGICAL ASSETS	233	236	239
AMOUNTS OWING FROM GROUP COMPANIES	193	233	127
TRADE AND OTHER RECEIVABLES	1 073	1 179	1 285
CASH AND CASH EQUIVALENTS	41	48	47
EQUITY & LIABILITIES	**5 534**	**5 907**	**6 109**
CAPITAL & RESERVES	**2 401**	**3 079**	**3 837**
SHARE CAPITAL AND PREMIUM	9 989	9 989	9 989
ACCUMULATED LOSSES	- 7 579	6 901	- 6 143
OTHER RESERVES	- 9	- 9	- 9
LIABILITIES	**3 133**	**2 828**	**2 272**
NON CURRENT LIABILITIES	**364**	**358**	**361**
AMOUNTS OWING TO GROUP COMPANIES	-	-	-
POST-RETIREMENT BENEFIT OBLIGATIONS	354	350	346
DEFERRED INCOME - NC	-	-	-
PROVISIONS - NC	8	8	8
LEASE LIABILITIES - NC	2	-	7
CURRENT LIABILITIES	**2 769**	**2 470**	**1 911**
BORROWINGS	1 623	1 555	1 224
CREDITORS - PRE BR	283	189	94
SASA - PRE BR	360	240	120
SASA - POST BR	175	116	57
TRADE AND OTHER PAYABLES	322	367	413
DEFERRED INCOME	-	-	-
LEASE LIABILITIES	6	3	3

15. Existing litigation or alternate dispute resolution proceedings

15.1. Annexure J lists the matters already subject to a dispute resolution process as at the Publication Date.

15.2. Save as is otherwise provided for in this Business Rescue Plan and/or the Companies Act, all Affected Persons who have instituted legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be required to submit a Claim for consideration by the BRPs in accordance with the provisions of this Business Rescue Plan.

15.3. The BRPs shall be entitled to institute any proceedings against any Affected Person in any forum (and will not be subject to the Dispute Mechanism in paragraph 16 below) for any purpose, including, recovering money that is due to the Company or preventing Affected Persons from delaying the implementation of the Business Rescue Plan or bringing any application to liquidate the Company.

16. Dispute Mechanism

16.1. Subject to paragraph 15 above and save as provided for in section 133 of the Companies Act, any disputes related to the interpretation or application of this Business Rescue Plan, the Business Rescue proceedings, and/or the Disputed Claims of all Disputed Creditors ("**Disputed Matters**") must be resolved in accordance with the Dispute Mechanism outlined below, other than in circumstances where the BRPs and the relevant counterparty (the "**Disputing Party**") otherwise mutually agree in writing. Even in circumstances where an agreement legally requires otherwise as to how a Disputed Matter must be resolved, Disputing Parties and the Company are encouraged, and may elect and agree in writing, to resolve such matters through the Dispute Mechanism.

16.2. The Dispute Mechanism procedure will be as follows –

16.2.1. The BRPs have incorporated into this Business Rescue Plan a Dispute Resolution Process that has been jointly established and endorsed by the Arbitration Foundation of South Africa ("**AFSA**") and the South African Restructuring and Insolvency Practitioners Association NPD ("**SARIPA**") specifically for the purpose of resolving disputes arising in connection with business rescue proceedings ("**the AFSA/SARIPA Process**"). The advantages of adopting the AFSA/SARIPA Process are (inter alia) that it:

16.2.1.1. is specifically designed for use in business rescue plans;

16.2.1.2. will be populated by arbitrators experienced in business rescue law and proceedings;

16.2.1.3. is designed to avoid the costs and time delays experienced in court proceedings, and in certain overcomplicated and extended arbitration proceedings;

16.2.1.4. has a mechanism which enables the arbitrator to adapt each arbitration to fit the specific circumstances; and

16.2.1.5. brings with it a flexibility which allows the BRPs and claimant's, by mutual agreement, to opt out of the AFSA/SARIPA Process if so elected.

16.2.2. All Disputing Parties are referred to Annexure **A** in relation to their Disputed Matters and are required to contact the BRPs at br@tongaat.com within 30 days of the Disputing Party becoming aware of the Disputed Matters in order to register their disagreement ("**Disagreement**").

16.2.3. The Disputing Party must endeavour to reach agreement with the BRPs on the Disputed Matter within the ensuing 15 days after their Disagreement has been registered, or such longer period as the BRPs may allow. If the Disputing Party does not avail itself of this opportunity within the time period allowed, then the Disputing Party shall be deemed to have abandoned its Claim and will not, in accordance with section 154 of the Companies Act, be entitled to enforce, at a later date, any Claim that that Disputing Party believes it has against the Company.

16.2.4. If the Disagreement is not so resolved, the BRPs will inform the Disputing Party accordingly and this will be known as the Rejection Date.

16.3. Any Disputed Matter of whatsoever nature relating to:

16.3.1. the acceptance or rejection of any Claim whether in whole or in part or the value or ranking of any Claim or the recognition of any security or preference, lien or hypothec attaching to such claim;

16.3.2. Claims which are not reflected in the records of the Company and are not recognised under the Business Rescue Plan; and/or

16.3.3. the proper interpretation or implementation of any provision or matter addressed in this Business Rescue Plan;

which is not resolved in terms of paragraph 16.2.3 shall be submitted for final determination in accordance with the AFSA-SARIPA RULES, attached hereto as Annexure **K** , by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

16.4. The BRPs may, however, in their sole and absolute discretion agree with the Disputed Creditor that the Disputed Claim/s be settled. To the extent that

any amount remains unpaid after such settlement, the remaining amount will become Unenforceable.

16.5. Should any monetary award be made against the Company, including a costs award, then that award will be treated as a Concurrent Claim in the Business Rescue.

16.6. Notwithstanding anything to the contrary in this paragraph 16 or elsewhere in the Business Rescue Plan, the BRPs shall not, in any circumstance, be obliged to prosecute, progress or further the Claim of any Creditor beyond the provisions of this paragraph 16. The Company may, however, in the discretion of the BRPs, continue to prosecute any one of more of its counterclaims.

17. Domicilium

17.1. The BRPs choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to the Business Rescue up until the Substantial Implementation Date, including the giving of any notice and the serving of any process, at the physical and e-mail addresses set out below:

17.1.1. Physical address: Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal, 4400

17.1.2. E-mail address: br@tongaat.com

17.1.3. Attention: Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn

17.2. The BRPs shall be entitled, up until the Substantial Implementation Date, by giving written notice to Affected Persons, to vary their physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary their e-mail Domicilium to any other e-mail address.

17.3. Any notice given or process served by any Affected Person to the BRPs, which is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the BRPs' physical Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs at the time of delivery.

17.4. Any notice given or process served by any Affected Person to the BRPs, which is transmitted by e-mail to the BRPs' e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs on the Business Day immediately succeeding the date of successful transmission thereof.

17.5. Any notice or process in terms of, or in connection with, this Business Rescue Plan shall be valid and effective only if in writing and if received or deemed to have been received by the BRPs.

17.6. For the avoidance of doubt, it is recorded that –

17.6.1. following the Substantial Implementation Date, the Business Rescue of the Company would have terminated; and

17.6.2. no notice or process served in terms of this paragraph shall been taken into consideration by the BRPs (unless they in their sole discretion choose to consider such notice or process) on or after the Substantial Implementation Date.

18. Ability to amend the Business Rescue Plan

18.1. In respect of an amendment to correct a clerical error and that will not be prejudicial to the rights of Creditors as set out herein, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.

18.2. Other than as specifically contemplated in this Business Rescue Plan to the contrary, in the event of any other material amendments to this Business Rescue Plan, the BRPs shall consult with Affected Persons in terms of section 150 and shall be entitled to propose an amendment for consideration and voting at a Meeting conducted in terms of section 151. Such amendment shall only be effective should it be Adopted in the same manner as provided for in section 152 of the Companies Act.

19. **Severability**

19.1. Each provision of this Business Rescue Plan is, notwithstanding the grammatical relationship between that provision and the other provisions of this Business Rescue Plan, severable from the other provisions of this Business Rescue Plan.

19.2. Any provision of this Business Rescue Plan, which is or becomes invalid, unenforceable, or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable, or unlawful, without invalidating or affecting the remaining provisions of this Business Rescue Plan which shall remain of full force and effect.

CHAPTER 4 – CONCLUSION AND BRPs' CERTIFICATES

20. Conclusion

20.1. For the reasons set out above it is the view of the BRPs, notwithstanding the risks and challenges inherent in this Business Rescue Plan, that:

20.1.1. there is a reasonable prospect of a successful Business Rescue, that balances the rights and interests of all relevant stakeholders and Affected Persons, in accordance with the objectives of Chapter 6 of the Companies Act;

20.1.2. the aggregate Distribution is likely to result in Creditors receiving a higher return in the Business Rescue than would be anticipated to receive on a liquidation of the Company. This is already the case due to the extent of the pre-Commencement Date Claims that have already been paid and the fact that the values of the Secured Creditor security over the investments in THL Zimbabwe, THL Botswana and THL Mozambique materially exceed the liquidation estimate of BDO.

20.1.3. a substantial majority of employees will retain their employment positions (albeit under different ownership);

20.1.4. a successful Business Rescue will have a materially positive impact on employment and the local economy and avoid a social and economic catastrophe in the KwaZulu-Natal region; and

20.1.5. should the Business Rescue Plan not be Adopted, the BRPs are of the view that the Business Rescue will probably be terminated and converted to liquidation proceedings immediately following the provisions of section 153 of the Companies Act.

21. BRPs' certificates

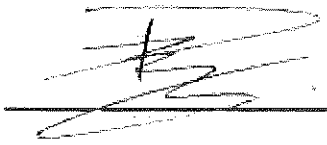
21.1. We, the undersigned, hereby certify that to the best of our knowledge and belief:

21.1.1. any information provided herein appears to be reasonably accurate, complete, and up to date;

21.1.2. we have relied on financial information including opinions and reports furnished to us by the Board and Management;

21.1.3. any projections provided are reasonable estimates made in good faith based on factual information and assumptions as set out herein;

21.1.4. in preparing the Business Rescue Plan, we have not undertaken an audit of the information provided to us, although where practical, we have endeavoured to satisfy ourselves of the accuracy of such information.



Peter van den Steen

Date: 29/11/2023

Trevor Murgatroyd

Date: 29/11/2023

Gerhard Albertyn

Date: 29/11/2023

Est 1892
TongaatHulett

BUSINESS RESCUE PLAN

(VISION TRANSACTIONS)

prepared in terms of section 150 of the Companies Act 71 of 2008

in relation to

TONGAAT HULETT LIMITED

(IN BUSINESS RESCUE)

prepared by the Joint Business Rescue Practitioners

Publication Date: 29 November 2023

CORPORATE INFORMATION AND ADVISOR DETAILS

Company

Tongaat Hulett Limited

Business Rescue Practitioners

Peter van den Steen

Trevor Murgatroyd

Gerhard Albertyn

Preparation of the Independent Liquidation Dividend Estimate

BDO

Legal Advisors to the Business Rescue Practitioners

Werksmans

Legal Advisors to the Company

Shepstone Wylie Attorneys

ENS Africa

Cox Yeats Attorneys

Restructuring Advisors to the Company

Metis Strategic Advisors

Matuson and Associates

BSM

Tenurey BSM

TABLE OF CONTENTS

CHAPTER 1 – INTRODUCTION

1. Structure of the Business Rescue Plan

In accordance with section 150(2) of the Companies Act, this Business Rescue Plan is divided into several chapters.

1.1. Chapter 1 — Introduction

This chapter sets out general information about the Business Rescue Plan, the meaning of defined terms, and contains an executive summary of the Proposals put forward in terms of this Business Rescue Plan.

1.2. Chapter 2 – Proposals

This chapter contains the Proposals in terms of the Business Rescue Plan and is comprised of several sub-parts.

1.2.1. Part A – Background

This part sets out background information on the Company, the circumstances that resulted in the Company's Financial Distress and the events leading to the commencement of the Company's Business Rescue.

1.2.2. Part B – Proposals

This part describes the Proposals to Affected Persons and the benefits and risks of Adopting the Business Rescue Plan.

1.2.3. Part C — Assumptions and Conditions

This part sets out the conditions that must be fulfilled and the assumptions applied in respect of the Business Rescue Plan.

1.3. Chapter 3 – General

This chapter sets out administrative and general matters pertaining to the Business Rescue and the Business Rescue Plan and deals, amongst other things, with potential amendments to the Business Rescue Plan and the

mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

1.4. Chapter 4 – Conclusion and BRPs Certificates

This chapter contains the BRPs' recommendation and the confirmatory certificate that is required to accompany the Business Rescue Plan.

2. Executive Summary

2.1. Capitalised terms and/or expressions used in this Executive Summary shall have the meanings assigned to them below in paragraph 3.

2.2. The key feature of this Business Rescue Plan, pursuant to the Adoption and implementation of this Business Rescue Plan, is the acquisition by the Vision Parties of the substantial Claims and security held by the Lender Group in the amount of c.R7.7bn (which acquisition is anticipated to have been completed by the date of the Meeting) and the subsequent conversion by the Vision Parties of a material portion of such Claims into new equity in THL (**"the Vision Transactions"**). This, together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):

2.2.1. the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan;

2.2.2. the recapitalisation of the THL balance sheet through the Proposals put forward in this Business Rescue Plan, in particular the conversion by the Vision Parties of a material portion of the former Lender Group Claims into equity; and

2.2.3. the continued listing of THL on the JSE, albeit with current Shareholders becoming minority shareholders and the Vision

Parties in aggregate holding the bulk of the listed shares in the Company following the abovementioned debt to equity conversion.

2.3. The strategy to be adopted by the BRPs in the execution of this Business Rescue Plan, in summary, is to:

2.3.1. implement and complete the Vision Transactions, following completion of the acquisition by the Vision Parties of the Lender Group Claims and security;

2.3.2. continue to run the operations of the THL businesses until completion of the Vision Transactions and the completion of the parallel business rescues of THD, THSSA and Voermol;

2.3.3. secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process;

2.3.4. continue the process of business improvement which, may include some degree of rationalisation of the cost base of the THL operations and head office (which process may include some employee retrenchments);

2.3.5. resolve the current dispute with SASA in relation to the payment obligations owing by THL to SASA arising after commencement of Business Rescue (i.e. from 28 October 2022);

2.3.6. oversee the parallel business rescues of THD, THSSA and Voermol;

2.3.7. engage with and renegotiate to the satisfaction of IDC or any other third-party, and service in the normal course of business, any working capital facility approved and advanced by IDC or any other third party to the Company as PCF (it being recorded that no

obligation exists on the part of the IDC to increase or extend its existing PCF advanced to the Company); and

2.3.8. to the extent possible, make payment (in full or in part) in relation to all remaining claims held by the Company's Creditors as contemplated in this Business Rescue Plan. For the avoidance of doubt, where there are insufficient or no funds available for Distribution(s) or other means in respect of any payment against any Claim against the Company, the residual Claim that remains unpaid will become Unenforceable against the Company.

2.4. If approved and successfully implemented as contemplated herein, this Business Rescue Plan will result in:

2.4.1. the rescue of the Company (or as an alternative, the business of the Company) which will continue in business – albeit under new ownership;

2.4.2. the avoidance of a major humanitarian and financial catastrophe in the KZN region in general, and in the sugar supply chain in particular as outlined in more detail in paragraph 9.3.5;

2.4.3. the opportunity for new jobs to be created as the business grows under new ownership with Vision Parties as SEPs;

2.4.4. the implementation of a partial debt-for-equity swap by the Vision Parties subscribing for new shares in the Company that would result in the Vision Parties collectively owning 97.3% of the total issued share capital of the Company. The consideration for such subscription will be c.R4.1bn based on current balances which will be discharged by a reduction in the former Lender Group Claims against THL (those purchased by the Vision Parties) to c.R3.6bn;

2.4.5. In addition to the c.R1.3bn already paid to various critical suppliers (see below), the Vision Parties have agreed to (either by making a loan to THL or otherwise ensuring THL is able to so) THL paying an amount of R75m as a Distribution to Unsecured Creditors, pro-rata to their respective Claims. Such Distribution is to be made subsequent to full implementation of the Vision Transactions.

2.4.6. a positive outcome for Unsecured Creditors. In this regard it is noted that in liquidation Unsecured Creditors would be anticipated to receive nil. Equally so – without the abovementioned amount being made available by the Vision Parties – Unsecured Creditors would be anticipated to receive nil in this business rescue;

2.4.7. existing Shareholders retaining an interest of 2.7% of the equity in THL with its positively recapitalised balance sheet. In this regard, it is noted that in liquidation shareholders would have been anticipated to receive nil. Equally so, in an alternatively structured transaction (the sale of the assets of THL to the Vision Parties), shareholders would again be anticipated to receive nil. Consequently, this proposal results in positive value accruing to shareholders through the retention of their shareholdings and becoming minority shareholders in the still-listed, post-recapitalisation, Vision Parties-controlled THL;

2.4.8. a portion or the entire amount of the IDC PCF is to be secured in a working capital facility which is sufficient to fund the working capital requirements of the Company for at least the duration of the Business Rescue proceedings, and thereafter it would be the goal of the Vision Parties to secure working capital facilities into the future beyond the Adoption and subsequent implementation of this Business Rescue Plan; and

2.4.9. THL retaining its listing on the JSE.

2.5. Subsequent to the Adoption of this Business Rescue Plan, in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of new THL shares to the Vision Parties to be effected, this Business Rescue Plan contemplates in substitution that the currently proposed Vision Transactions will be switched from transactions contemplating a new issue of THL shares to transactions contemplating the acquisition by the Vision Parties of all of THL's assets and businesses (as going concerns) (see paragraph 6.1.7 below).

2.5.1. Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by such a change, once it has sold its assets and businesses (leaving THL as an empty shell), THL will be delisted from the JSE and liquidated, resulting in its shares (those held by existing Shareholders) having nil value.

2.6. Once this Business Rescue Plan has been approved, Adopted and implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions as provided for, any residual Creditor Claims will become Unenforceable, other than as otherwise specifically provided for in this Business Rescue Plan.

2.7. Affected Persons have been provided with two alternative business rescue plans (including this one) for their consideration. Affected Persons will receive a special notice in which Creditors will be invited to vote in the Pre-Meeting Proxy Vote. The purpose of the Pre-Meeting Proxy Vote will be the giving of direction by the Creditors to the BRPs (based on a simple majority of Independent Creditors voting on the issue) on the sequence in which the relevant business rescue plans are to be considered and voted on during the subsequent Section 151 Meeting.

2.8. The votes cast in the Pre-Meeting Proxy Vote will be counted on 7 December 2023 in order for the BRPs to have sufficient time to properly prepare for the Section 151 Meeting on 8 December 2023.

2.9. The BRPs will then propose the relevant business rescue plans for consideration and vote at the Section 151 Meeting pursuant to the directions so received in the aforementioned Pre-Meeting Proxy Vote. If the first such plan voted on is not approved by the requisite majorities, subject to section 153 of the Companies Act, the second plan will be presented to and voted on by Creditors. Conversely, if the first such plan voted on is approved and Adopted, there will be no cause or need for the second such plan to be voted on.

2.10. Should neither the first nor the second business rescue plans be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes contemplated in section 153(1).

2.11. Whilst the order in which the two alternative plans are to be voted on will be decided by Creditors subsequent to the publication of this Business Rescue Plan, this Business Rescue Plan has been drafted in a manner that makes it capable of approval and Adoption by Creditors should it become subject to a Creditor vote at the Section 151 Meeting.

2.12. Affected Persons are referred to Annexure **A** of this Business Rescue Plan which sets out the Claims that the BRPs have accepted and/or recognised, as well as the status assigned to Creditors.

2.13. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.3.7 and 16 of this Business Rescue Plan.

2.14. Creditors each have a Voting Interest equal to the value of their Claims, as accepted and/or recognised by the BRPs as set out in Annexure **A** (see paragraph 5.3.8).

2.15. For the Business Rescue Plan to be Adopted it must be supported by the holders of more than 75% of the Creditors' Voting Interests that were voted,

and the votes in support of the Business Rescue Plan must include at least 50% of the Independent Creditors' Voting Interests, if any, that were voted.

2.16. As this Business Rescue Plan does not alter the rights of the holders of any class of the Company's securities, Shareholders are neither required nor entitled to vote on the plan in order for the plan to be Adopted.

2.17. Ad hoc meetings with certain Shareholders and their representatives have taken place since the commencement of business rescue proceedings with the aim of constructively engaging with information sharing and solution seeking (under non-disclosure). In addition, a formal shareholders engagement meeting was held 26th September 2023, with the aim of informing Shareholders and engaging with them about the proposed business rescue plan and the impact thereof on their interests and consulting with the wider shareholder body in that regard.

2.18. Prior to the publication of this Business Rescue Plan the Lender Group held security over all material assets of the Company including, without limitation, a reversionary cession in security in respect of those assets over which IDC has prior ranking security as a PCF Lender; and would, in the absence of the Proposals contemplated in this Business Rescue Plan, likely be the recipients of most, if not all, Distributions arising from liquidation or any alternative proposals.

2.18.1. The Vision Parties are expected to have acquired the Claims and security of the Lender Group (it is anticipated by the date of the Meeting) and therefore, would be substituted as the Secured Creditor.

2.18.2. In endeavouring to balance the rights of all stakeholders following the principles set out in section 7(k) of the Companies Act, the BRPs have reached agreement with Vision Parties in terms of which those parties will facilitate a Distribution of R75m in aggregate to the Unsecured Creditors, which Creditors would otherwise realise nil.

This concession is coupled with the proposed structure of the Vision Transactions which will result in the Company's Shareholders retaining a 2.7% interest in the recapitalised (and still listed) THL – again noting that without the proposed structure Shareholders would have received nil.

2.18.3. The Vision Parties have accordingly agreed to make available R75m to be paid by THL to Unsecured Creditors following the implementation of the Vision Transactions (as referenced above in paragraph 2.4.5).

2.19. A constant factor at play in the execution of this Business Rescue is the enormous social impact that would result from a collapse of, in particular, the South African sugar businesses, and thus the need to balance this alongside the interests of the other stakeholders in this Business Rescue. The Vision Transactions have at their heart, the intention of relieving THL of its Financial Distress, maintaining the operations of the underlying businesses of THL, building the businesses of THL into the future with the support of the Vision Parties as SEPs, and thus avoiding the otherwise catastrophic social impact that would result from a collapse of THL.

2.20. In assessing this Business Rescue Plan, cognisance should be taken of the extent of payments already made to third-party growers and other critical suppliers with pre-Commencement Date Claims. The amount of pre-Commencement Date Unsecured Creditors' Claims paid equates to c.R1.3bn as of 31 October 2023, of which c.R1.1bn related to payments made to cane growers in the interest of keeping the industry as stable as possible. In the absence of Business Rescue, these amounts would merely have been Concurrent Claims with little to no prospect of recovery.

2.21. Finally in assessing this Business Rescue Plan, cognisance should be taken of the importance of the role of IDC in providing significant PCF which has been the oxygen and lifeblood of this rescue process, without which it is probable that the liquidation of THL would have ensued. The BRPs have constantly

been aware that working capital for this highly seasonal business is critical to its survival – both during the business rescue proceedings and beyond – and have consequently factored this ongoing PCF/working capital requirement into the decision making and processes embarked on in reaching the point of publication of this Business Rescue Plan. Having said that, the BRPs point out that there is no obligation on the part of IDC to increase or extend the terms of its existing PCF advanced to the Company.

2.22. For the benefit of the readers of this Business Rescue Plan, the BRPs have compiled a summary (refer to Annexure L) of their views and understanding of the key challenges currently facing the sugar industry and reflect on the challenges faced by THL before and during the Business Rescue process in this regard.

3. Interpretation

3.1. In this Business Rescue Plan the following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings;

3.1.1. "**Absa Corporate Finance (M&A Advisory)**" means the corporate finance business unit within the Corporate and Investment Banking Division of Absa Bank Limited (registration number: 1986/004794/06), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.2. "**Adopted/Adoption/Adopting**" means that a Business Rescue Plan has been finally approved in accordance with section 152(2), read with section 152(3) of the Companies Act;

3.1.3. "**Advisors**" means the advisors to the BRPs and the Company, including but not limited to Metis, Matuson, Werksmans, BSM, Tenurey BSM, BDO and the advisors' respective officers, representatives, and employees;

3.1.4. "**Affected Person/s**" shall bear the meaning ascribed thereto in section 128(1)(a) of the Companies Act, being the Company's Shareholders, Creditors, employees and Trade Unions;

3.1.5. "**Agricultural Land**" means the c.11 300 hectares of agricultural land, owned by the Company, predominantly located along the north coast of KwaZulu-Natal, the majority of which is under sugarcane farming and which property is leased out to third parties with supply agreements in place to cater for the delivery of sugarcane to the Company (refer to Annexure E);

3.1.6. "**AFSA**" means the Arbitration Foundation of Southern Africa;

3.1.7. "**Agency Agreements**" means various written legal agreements, entered into by the Company and certain of its subsidiaries, which entail one or more subsidiaries acting as the agent for an undisclosed principal. In all such cases, the ultimate principal is THL, whereby the agent subsidiary conducts(ed) relevant business on behalf of the ultimate principal;

3.1.8. "**Albertyn**" means Gerhard Conrad Albertyn a BRP as contemplated in section 128(1)(d) of the Companies Act;

3.1.9. "**BDO**" means BDO Business Restructuring Proprietary Limited (registration number: 2002/025164/07), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.10. "**Board**" means the board of directors of the Company as at the Publication Date as set out in paragraph 5.2;

3.1.11. "**BRPs**" means the joint business rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;

3.1.12. "**BSM**" means BSM Advisory Proprietary Limited (registration number: 2019/457342/07), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.13. "**Business Day**" means any day other than a Saturday, Sunday, or official public holiday in South Africa;

3.1.14. "**Business Rescue**" means the business rescue proceedings of the Company conducted in terms of Chapter 6 of the Companies Act;

3.1.15. "**Business Rescue Costs**" means all relevant costs incurred in the execution of this Business Rescue, including the remuneration, expenses, disbursements and fees of the BRPs and of their Advisors;

3.1.16. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time, as prepared in accordance with section 150 of the Companies Act;

3.1.17. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;

3.1.18. "**Claims**" means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages), the cause of action in respect of which arose prior to or after the Commencement Date and/or under section 136(3) of the Companies Act;

3.1.19. "**Closing Date**" means the date of fulfilment of the last of the conditions precedent needing to be fulfilled in relation to the definitive agreements concluded in relation to the Vision Transactions;

3.1.20. "**Commencement Date**" means 27 October 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;

3.1.21. "**Company**" or "**THL**" means Tongaat Hulett Limited (registration number: 1892/000610/06)), a public company incorporated in accordance with the laws of South Africa;

3.1.22. "**Companies Act**" means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;

3.1.23. "**Concurrent Claim**" means any Claim (other than a Disputed Claim) which is unsecured and which does not enjoy a statutory preference as envisaged in the Companies Act;

3.1.24. "**Creditor**" means any creditor, including without any limitation, PCF Lenders, Disputed Creditors and contingent Creditors, with a monetary Claim against the Company;

3.1.25. "**Disputed Claim**" – means any Claim where the existence, value, class of the Claim or security in respect of a Claim is disputed by the BRPs and/or by an Affected Person;

3.1.26. "**Disputed Creditor**" means a Creditor with a Disputed Claim;

3.1.27. "**Dispute Mechanism**" means the dispute resolution mechanism set out in paragraph 16;

3.1.28. "**Distributions**" means a transfer of money or other property of the Company, including its own shares, made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan, including any deemed Distributions as contemplated in this Business Rescue Plan;

3.1.29. "**Financially Distressed**" or "**Financial Distress**" shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;

3.1.30. "**High Court**" means the High Court of South Africa;

3.1.31. "**IDC**" means Industrial Development Corporation of South Africa Limited (registration number 1940/014201/06), a company registered and incorporated in accordance with the laws of South Africa;

3.1.32. "**IDC Security**" means the first-ranking security cession of bank accounts and trade debtors and encumbrance over all inventories (and any related insurance claims) held by IDC;

3.1.33. "**Independent Creditor**" means a Creditor, with a Claim as accepted and/or recognised by the BRPs, to whom the definition in section 128(1)(g) of the Companies Act applies;

3.1.34. "**Insolvency Law**" means the Insolvency Act 24 of 1936, as amended and Chapter 14 of the Companies Act 61 of 1973, read with item 9 of Schedule 5 of the Companies Act;

3.1.35. "**Kagera Sugar**" or "**Kagera**" means Kagera Sugar Limited (incorporation number 5036), a limited liability company registered and incorporated in accordance with the laws of Tanzania;

3.1.36. "**Lender Group**" means the group of lenders to the Company, all of whom are Secured Creditors, including The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division), Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Investment Banking Division, Corporate

Solutions), Investec Bank Limited (acting through its Corporate and Institutional Banking division), The Land and Agricultural Development Bank of South Africa, Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance Markets division), Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients), Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division), Sanlam Specialised Finance Proprietary Limited, Momentum Metropolitan Life Limited, Nedbank Limited, and Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);

3.1.37. "**LRA**" means the Labour Relations Act 66 of 1995, as amended;

3.1.38. "**Management**" means the management team of the Company who have been responsible for managing the day-to-day operations of the Company from the Commencement Date under the supervision and authority of the BRPs;

3.1.39. "**Matuson**" means Matuson and Associates Proprietary Limited (registration number 2009/008967/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;

3.1.40. "**Meeting**" means the virtual meeting to be held in terms of section 151 of the Companies Act on **Friday 8 December 2023** at **08:00am** for the purpose of voting on this Business Rescue Plan;

3.1.41. "**Metis**" means Metis Strategic Advisors Proprietary Limited (registration number 2015/220685/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;

3.1.42. "**Mills**" means the Company's three operational sugar mills in South Africa, being the mills located in Amatikulu, Felixton and Maidstone;

3.1.43. "**Murgatroyd**" means Trevor John Murgatroyd a BRP as contemplated in section 128(1)(d) of the Companies Act;

3.1.44. "**PCF**" means post commencement finance obtained by the Company from a PCF Creditor or PCF Lender as contemplated in section 135(2) of the Companies Act;

3.1.45. "**PCF Creditor**" means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during the Business Rescue;

3.1.46. "**PCF Employee**" means any employee of the Company who rendered services to the Company and is owed any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable during the Business Rescue as contemplated in section 135(1) of the Companies Act;

3.1.47. "**PCF Lenders**" means any/all financier(s) advancing PCF to the Company, it being recorded that as at the Publication Date, IDC and GuardRisk are the only PCF Lenders;

3.1.48. "**Pre-Meeting Proxy Vote**" means the proxy vote by Creditors, the purpose of which will be the giving of direction by the Creditors to the BRPs (based on a simple majority of Independent Creditors voting on the issue) on the sequence in which the relevant business rescue plans are to be considered and voted on during the Section 151 Meeting;

3.1.49. "**Proposals**" means the proposals set out in Chapter 2 of this Business Rescue Plan;

3.1.50. "**Publication Date**" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being **29 November 2023**;

3.1.51. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;

3.1.52. "**Refinery**" means the Company's central sugar refinery located in Durban, KwaZulu-Natal;

3.1.53. "**Rejection Date**" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;

3.1.54. "**RGS**" means RGS Group Holdings Limited (registration number C134230 - C2/GBL) a company registered and incorporated in accordance with the laws of Mauritius;

3.1.55. "**SARS**" means the South African Revenue Services;

3.1.56. "**SA Sugar**" means the Company's South African sugar operations comprising of the following divisions: Agricultural Land; the Mills; Darnall sugar mill; cane procurement and cane supply management; trademarks and other intellectual property, marketing, sales and distribution; the Refinery; and Voermol animal feeds division;

3.1.57. "**SASA**" means the South African Sugar Association (registration number 1915/00023/00), an association incorporated in terms of section 2 of the Sugar Act 1978;

3.1.58. "**Secured Creditor**" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;

3.1.59. "**Securities**" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a company, as defined in the Companies Act;

3.1.60. "**Shareholder**" means a shareholder, as defined in section 1 of the Companies Act, of the Company;

3.1.61. "**South Africa**" means the Republic of South Africa;

3.1.62. "**Strategic Equity Partners**" or "**SEPs**" means potential strategic equity partners/investors in the Company and/or the THL Group and/or the potential acquirer of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique and/or the potential acquirer of SA Sugar only;

3.1.63. "**Substantial Implementation Date**" means the date upon which the BRPs file a notice of substantial implementation of the Business Rescue with the CIPC, which filing will be made in the BRPs' sole and absolute discretion, as envisaged in paragraph 13;

3.1.64. "**Tax**" includes any tax, imposition, levy, duty, charge, fee, deduction or withholding of any nature (including securities transfer tax and stamp, documentary, registration, or other like duty) and any interest, penalty or other amount payable in connection therewith, which is lawfully imposed, levied, collected, withheld or assessed under the laws of South Africa or any other relevant jurisdiction and "**Taxes**", "**Taxation**" and other cognate terms shall be construed accordingly;

3.1.65. "**THA**" means Tongaat Hulett Acucareira de Mozambique, S.A. (registration number 100264501), a company duly incorporated in accordance with the laws of Mozambique;

3.1.66. "**THD**" means Tongaat Hulett Developments Proprietary Limited (registration number: 1981/012378/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.67. "**THL Botswana**" means Tongaat Hulett (Botswana) Proprietary Limited (registration number: 5032), a private company with limited liability incorporated in accordance with the laws of Botswana;

3.1.68. "**THL Group**" means THL and each of its subsidiaries, joint ventures and associated companies;

3.1.69. "**THL Mozambique**" means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Mozambique and operating in accordance with the laws of Mozambique as set out in Annexure **C**;

3.1.70. "**THL Zimbabwe**" means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Zimbabwe and operating in accordance with the laws of Zimbabwe as set out in Annexure **C**;

3.1.71. "**THSSA**" means Tongaat Hulett Sugar South Africa Limited (registration number: 1965/000565/06), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.72. "**Trade Unions**" means UASA - The Union ("**UASA**"), The Association of Mineworkers and Construction Union ("**AMCU**") and the Food and Allied Workers Union ("**FAWU**");

3.1.73. "**Unenforceable**" means the inability to enforce any and all Claims against the Company, as envisaged in section 154 and/or as read

with section 152 of the Companies Act, upon the Adoption and implementation of the Business Rescue Plan;

3.1.74. "**Unsecured Creditors**" means all Creditors with Concurrent Claims against the Company;

3.1.75. "**van den Steen**" means Petrus Francois van den Steen a BRP as contemplated in section 128(1)(d) of the Companies Act;

3.1.76. "**VAT**" means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;

3.1.77. "**Vision Parties**" means a grouping made up of the following participants: Terris AgriPro (Mauritius) (registration number: 171903 GBC), registered and incorporated in Mauritius; Remoggo (Mauritius) PCC (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of Mauritius; Guma Agri and Food Security Ltd (Mauritius) (registration number: C192979), registered and incorporated in Mauritius; and Almoiz NA Holdings Ltd (registration number:67410836) registered and incorporated in accordance with the laws of the United Arab Emirates

3.1.78. "**Vision Transactions**" means the acquisition by the Vision Parties of the substantial Claims and security previously held by the Lender Group and the subsequent conversion by the Vision Parties of a portion of such Claims into new equity in THL;

3.1.79. "**Voermol**" means Voermol Feeds Proprietary Limited (registration number 1936/007892/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.80. "**Voting Interest**" means a voting interest as defined by section 128(1)(j) of the Companies Act, calculated on the value of a Creditor's Claim as accepted and/or recognised by the BRP per this Business Rescue Plan;

3.1.81. "**Werksmans**" means Werksmans Incorporated (registration number: 1990/007215/21), a firm of attorneys practising as such at The Central, 96 Rivonia Road, Sandton, 2196.

3.2. Paragraph headings in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify or amplify the terms of this Business Rescue Plan or any paragraph hereof, unless a contrary intention clearly appears.

3.3. Words importing:

3.3.1. any one gender includes the other gender;

3.3.2. the singular includes the plural and vice versa; and

3.3.3. a natural person includes an artificial or juristic person and vice versa ("**Person**").

3.4. Any reference to any statute, regulation or other legislation in this Business Rescue Plan shall be a reference to that statute, regulation, or other legislation as at the Publication Date, and as amended or substituted from time to time.

3.5. Any reference in the Business Rescue Plan to any other agreement or document shall be construed as a reference to such other agreement, as may from time to time be amended, varied, novated, or supplemented.

3.6. If any provision in a definition in this Business Rescue Plan is a substantive provision conferring a right or imposing an obligation on any person or entity

then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Business Rescue Plan.

3.7. Where any term is defined in this Business Rescue Plan within a particular paragraph other than this paragraph 3, that term shall bear the meaning ascribed to it in that paragraph wherever it is used in this Business Rescue Plan.

3.8. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day, if the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.

3.9. Any reference to days (other than a specific reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.

3.10. Words or terms that are capitalised and not otherwise defined in the body of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of headings or tables) shall bear the meaning assigned to them in the Companies Act.

3.11. The use of the word "**including**", "**includes**" or "**include**" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and *the eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.

3.12. To the extent that any provision of this Business Rescue Plan is ambiguous, it is to be interpreted in a manner that is consistent with the purposes of the business rescue provisions in Chapter 6 of the Companies Act.

W. W.

3.13. Unless otherwise stated, all references to sections are references to sections in the Companies Act.

3.14. All information provided in the Business Rescue Plan is reflected as at the Publication Date, unless otherwise indicated in the Business Rescue Plan.

4. Disclaimer

4.1. The BRPs in the preparation of this Business Rescue Plan have relied on information obtained from the books and records of the Company, meetings held with relevant persons including the Company's directors, Management, staff, suppliers, clients, Advisors and other service providers of the Company, and studies and reports commissioned from various technical and other professional advisors in connection with the affairs of the Company.

4.2. Whilst the BRPs have made efforts to ensure the accuracy of the information contained herein, it should be noted that the BRPs investigations have been limited in nature due to:

4.2.1. the time constraints placed on the BRPs by the Companies Act and Creditors;

4.2.2. pressure from Affected Persons to affect a reasonably paced rescue;

4.2.3. limited financial and human resources available to the Company; and

4.2.4. the state of affairs of the Company; and

4.2.5. the non-completion of annual financial statement audits as at the date of Publication.

4.3. The BRPs have not carried out an audit of the Company's documents and/or records, nor have they had adequate opportunity to independently verify all information provided to them by the Company and/or relevant third parties.

4.4. This Business Rescue Plan contains forecast financial information that is not drafted in terms of the JSE Listings Requirements. This disclaimer is provided to clarify the nature and limitations of the information contained in this Business Rescue Plan.

4.5. By accessing and reviewing this Business Rescue Plan, you acknowledge and accept the above disclaimer. It is important to exercise caution and diligence when considering the contents of this Business Rescue Plan and to consult with relevant experts and advisors as necessary. The Company disclaims any liability for any loss or damage resulting from the use or reliance on the information contained herein. It is important to note the information and forecasted data of this Business Rescue Plan have not been reviewed or audited by the Company's external auditor.

4.6. JSE Listings Requirement: The forecast financial information presented in this Business Rescue Plan has been prepared in accordance with section 150 of the Companies Act, but has not been prepared in accordance with the JSE's Listings Requirements. Therefore, it does not meet the specific reporting and disclosure standards set forth by the JSE.

4.7. Nothing contained in the Business Rescue Plan shall constitute any form of legal or other advice to any Affected Person, and the BRPs do not make any representations in respect thereof.

4.8. The BRPs have not independently assessed the forecast value of THL post the implementation of this Business Rescue Plan beyond satisfying themselves that the Proposals will result in a reasonable prospect of THL being rescued and trading successfully after implementation of the Plan and the Proposals.

We W.

4.9. Neither the BRPs nor their Advisors shall be responsible for any acts taken by (or omissions arising from) any Affected Persons' reliance on this Business Rescue Plan.

4.10. Affected Persons are advised and encouraged to consult with their own independent attorney, accountant, or other professional advisor in respect of this Business Rescue Plan should they so wish or require.

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is a public company listed on the Johannesburg Stock Exchange and is the parent company (directly or indirectly) of numerous entities. An organogram of the group of entities is contained in Annexure C.

5.2. Directors of the Company:

5.2.1. As at the Publication Date, the executive directors of the Company, according to the CIPC, were Dan Marokane (acting Chief Executive Officer) and Robert Aitken (Chief Financial Officer).

5.3. Company Information:

Financial Year End	31 March
Registered Business Address	Amanzimnyama Hill Road Tongaat KwaZulu-Natal 4400
Postal Address	P O Box 3 Tongaat KwaZulu-Natal 4400
Business Telephone Number	+27 (32) 439 4000
Auditors	

5.3.1. Company Background:

5.3.1.1. The Company is part of the THL Group which is an agri-processing business with a c.130-year history and a

strong socio-economic legacy in Southern Africa. The THL Group has operations in South Africa, Zimbabwe, Mozambique and Botswana which collectively make up the THL Group.

5.3.1.2. Across Southern Africa, the THL Group's operations are of significant scale geographically, economically, and socially, as set out below:

- the THL Group's production facilities have the capacity to crush 12.7 million tons of sugarcane (5.8 million tons provided by third-party growers) to produce 1.5 million tons of raw sugar, 750 000 tons of refined sugar, 400 000 tons of animal feed and 40 million litres of ethanol; and

- at the peak of the sugar season, the THL Group's operations employ more than 23 000 people, support more than 185 000 employment opportunities and provide a livelihood to more than 21 000 farmers (many of whom are small-scale growers).

5.3.1.3. In South Africa, the profile of the Company's sugar operation, property business and head office is set out below:

- the Company's operations are located in the KwaZulu-Natal province in the districts of Ethekwini, Zululand, Umkhanyakude, King Cetswayo, and iLembe;

- the Company's trading activities during the 2023 financial year generated revenue of c.R7.8 billion;

- the Company has 5 production facilities with the capacity to crush 5.45 million tons of sugarcane to produce 600 000 tons of raw sugar, 600 000 tons of refined sugar (c.50% of the total South African sugar industry's market requirements) and 400 000 tons of animal feed;

- the Company's ongoing agriculture activities span 11 300 hectares and as such it owns a substantial and valuable land portfolio, of which some 9 600 hectares are considered developable and located within the primary growth corridors of KwaZulu-Natal;

- the Company sources c.91% of its sugarcane from independent farmers, over 15 000 of which are small-scale farmers and co-operatives, and its transformational partnership with Uzinzo Sugar Farming has established the largest black grower in the South African sugar industry;

- a total of c.2 500 people are employed by the Company, with a further c.23 000 indirect employment opportunities created within South Africa. The communities in which the Company operates not only benefit from employment opportunities, but also the Company's socio-economic development initiatives and investments; and

- as identified in an independent assessment of the Company's economic footprint, it has been estimated that arising from the Company's trading

activities during the 2021 financial year, an additional c.R28.8bn of output was produced within the South African economy, contributing c.R11bn to the GDP of South Africa (based on direct, indirect and induced impacts).

5.3.1.4. The current THL Group structure comprises of c.60 subsidiaries and associated companies, however many of the South African and Zimbabwean companies are dormant or investment holding entities with limited trading activity. A detailed group structure is reflected in Annexure C. From this it will be noted that certain of the legal entities trade as divisions of the Company pursuant to Agency Agreements that were entered into in the 1980's and which are in the process of being unwound.

5.3.1.5. The most relevant of the Agency Agreements are those in relation to THSSA and Voermol. THSSA and Voermol do not carry on any activities for their own benefit that would generate revenue for themselves, and they are wholly financially dependent on the Company. The Company's SA Sugar division is operated by the Company and pursuant to relevant Agency Agreements between the Company and THSSA and Voermol. These Agency Agreements entail:

- Assets: Assets of the agents are held nominally as they are those of the principal, being beneficially owned by the Company.

- Tenure: The agreements and agency arrangements are generally active for an indefinite period of time and terminable on one month's

written notice. The Agency Agreements are in the process of being unwound, which will result in the entire SA Sugar division being conducted solely in the Company, as a division, with no further agency relationship and/or representation.

- Disclosure: The existence of the Agency Agreements was previously undisclosed to third parties. However pursuant to a letter dated 20 December 2022 from THSSA and Voermol to all known creditors of those companies, the Agency Agreement arrangements were disclosed.

- Recourse: THSSA has at all times acted as the agent of the Company, on the basis that the Company has been its undisclosed principal. Consequently, all transactions that have historically been concluded by THSSA with any person or entity, have been so concluded by THSSA in its capacity as agent for an undisclosed principal, being the Company. Now that the existence of the Agency Agreement has been disclosed, any dealings with THSSA will be on the basis that it is contracting on behalf of the Company. Furthermore, Voermol has at all times acted as the agent of THSSA (and by virtue of the aforementioned THSSA agency, as the sub agent of the Company), on the basis that THSSA has been its undisclosed principal and the Company the ultimate undisclosed principal. Consequently, all transactions that have historically been concluded by Voermol with any person or entity, have been so concluded by Voermol in its capacity as agent for an undisclosed principal, being THSSA and, by

virtue of the aforementioned THSSA agency, as the sub agent of the Company.

- In summary: The effect is that all assets, liabilities, income and expenses are those of the Company, as principal. Any claims instituted against THSSA and/or Voermol will result in those entities having a corresponding claim against THL.

5.3.1.6. The extent of the challenges faced by the Company, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial misstatements and historic mismanagement. These factors have resulted in the loss of significant value for the Company's Shareholders and other stakeholders.

5.3.2. **Events which led to the Company commencing Business Rescue:**

5.3.2.1. It is the BRPs understanding that the cause of the Company's Financial Distress is set out in the statement, attached hereto as Annexure **B**.

5.3.3. **Aims and objectives of Business Rescue:**

5.3.3.1. In terms of the Companies Act, the Company's Business Rescue will aim to facilitate its rehabilitation by (inter alia) providing for –

- the temporary supervision of the Company by the BRPs, and the management of its affairs, business, and property by the BRPs;

- a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

- the development and implementation of a Business Rescue Plan which has as its aim either or both of:

  - the rescue of the Company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; and/or

  - achieving a better return for the Company's Creditors or Shareholders than would result from the immediate liquidation of the Company.

5.3.3.2. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet both of the objectives set out in the immediate paragraphs above.

5.3.4. **Business Rescue events:**

5.3.4.1. The salient dates pertaining to the Business Rescue of the Company are set out below:

BUSINESS RESCUE EVENT	**DATE**
Board Resolution to commence the Business Rescue	26 October 2022
Commencement date of the Business Rescue	27 October 2022
Appointment of the BRPs	
Notice to Affected Persons of the commencement of Business Rescue and the appointment of the BRPs	27 October 2022
First statutory meeting of employees	3 November 2022

First statutory meeting of Creditors	8 November 2022
Requests for an extension of the date to publish the Business Rescue Plan	8 November 2022, 24 January 2023, 22 February 2023 29 March 2023, 31 August 2023, 26 October 2023 and 21 November 2023
Confirmation of the extension of the date to publish the Business Rescue Plan	15 November 2022, 27 January 2023, 27 February 2023 31 March 2023, 8 September 2023, 30 October 2023, and 23 November 2023
Meetings in terms of section 143 of the Companies Act to vote on the BRPs' remuneration agreement: Shareholders meeting Creditors meeting	 9 December 2022 9 December 2022
Publication of the initial business rescue plan	31 May 2023
Meeting to consider the initial business rescue plan: Outcome – Meeting adjourned and Business Rescue Plan to be amended and meeting to be reconvened at a date no later than 30 September 2023	14 June 2023
Notice to Affected Persons regarding application to the High Court of South Africa, KwaZulu-Natal Local Division, Durban under case number D4472/2023 ("SASA Declarator Application")	15 June 2023
Court hearing dates in relation to the SASA Declarator Application	13 and 14 September 2023
Meeting with Shareholders	26 September 2023
Vision Parties acquire Lender Group Claims	20 November 2023
Publication of the amended Business Rescue Plan	29 November 2023
Expiry and repayment of current IDC PCF facility	30 November 2023
Pre-Meeting Proxy Vote counted	7 December 2023
Meeting to consider the amended Business Rescue Plan	8 December 2023

5.3.4.2. All notices that have been published to the Affected Persons of the Company can be obtained from the Company's website at www.tongaat.com, under the "Business Rescue" tab.

5.3.5. **Steps taken since the appointment of the BRPs:**

5.3.5.1. Statutory Obligations – the Company and the BRPs have met and complied with statutory reporting and meeting obligations as required in terms of Chapter 6 of the Companies Act.

5.3.5.2. Management Control – In terms of section 140(1)(a) of the Companies Act, the BRPs took full management control of the Company and have delegated certain functions to Management in terms of section 140(1)(b) of the Companies Act.

5.3.5.3. Investigations – The BRPs have investigated the affairs of the Company and have satisfied themselves that, inter alia, the Company is in Financial Distress and that there is a reasonable prospect of the Company being rescued.

5.3.5.4. Operations

- A key priority for the BRPs has been to bring about stability and thereafter continuity to the business and operations of the Company. Shortly after the Commencement Date, the SA Sugar operations were brought to a standstill as there was no free cash available to fund operations or to settle Creditors or Employees.

- Shortly thereafter the BRPs secured PCF to fund short-term working capital requirements, which facilitated the restart of the SA Sugar operations. Thereafter the BRPs secured further PCF (as detailed below) to complete the 2022/23 South African sugar season and to carry out the critical off-crop capital expenditure and/or maintenance ("**off-crop programme**"). The SA Sugar business is now funded (for a limited period) and is operating under the BRPs' guidance. The existing, and only PCF facility secured by the Company, expires and is repayable on or before 30 November 2023.

- Cost Reduction Initiatives:
  - Since their appointment the BRPs have made ongoing efforts to reduce operating costs of the Company wherever possible.
  - It is envisaged that various cost reduction and efficiency improvement initiatives will continue to be implemented throughout the Business Rescue process.
  - See Annexure **D** for a detailed summary of all initiatives implemented and the associated outcomes.

5.3.5.5. Other business rescue proceedings - Included in the operations of the THL Group are wholly owned subsidiaries THSSA, THD and Voermol, each of which is in business rescue. The BRPs are also overseeing each of these inter-related business rescues, with each of these subsidiaries having its own business rescue plan.

5.3.5.6. International operations - THL Zimbabwe, THL Botswana and THL Mozambique are not in business rescue, continue to operate as independent legal entities and are self-funding.

5.3.5.7. PCF Funding - Since their appointment, the BRPs have devoted significant time and resources towards engaging with the Lender Group and thereafter IDC, in order to secure and structure the requisite PCF to support the SA Sugar operations and avoid its collapse into liquidation – initially to restart operations, and latterly to complete the 2022/23 sugar season and carry out the off-crop programme necessary to commence the 2023/24 season. This was secured as follows:

- the raising of initial PCF from the Lender Group in an amount of R900m, which brought about short-term stability in order for the Company to restart the Mills and Refinery operations – which PCF was repaid from the proceeds of the PCF raised from IDC as outlined below;

- the subsequent increase in facilities to R1.2 billion in PCF raised from IDC which enabled the Company to fund its working capital requirements to the end of June 2023, including its annual off-crop maintenance programme;

- the subsequent increasing of facilities to R1.725bn PCF from IDC which enabled the Company to fund its working capital requirements to 6 October 2023;

- the subsequent increasing of facilities to R2.3bn PCF from IDC which enabled the Company to fund its working capital requirements to 30 November 2023, the date on which the PCF from IDC expires and is repayable;

- negotiations are ongoing with regard to a possible further extensions beyond 30 November 2023 and temporary increase of the PCF, which will be dependent (inter alia) upon the Adoption of this Business Rescue Plan and IDC approving any extension or increase in accordance with its credit criteria and requirements; and

- the initial facility raised from the IDC PCF was applied to repay the Lender Group PCF in order for the Lender Group to release their security over the bank accounts, inventory and trade receivables (and any related insurance claims), which is now the first-ranking security of the IDC for its PCF Claim.

5.3.5.8. Strategic Equity Partner –

- In February 2023, the BRPs embarked on an accelerated sales process aimed at engaging with potential SEPs interested in the acquisition of or investment in either:
  1) THL itself or the whole of the THL Group;
  2) all of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique; or
  3) the SA Sugar operations.

- The logic for the abovementioned three acquisition options was premised on alignment with the basis on which the critical PCF funding had been secured. This PCF funding conditionality required that the sugar enterprise of THL in all jurisdictions was maintained as a whole and not disposed of in part, or on a piecemeal basis. SA Sugar was however separately included by the BRPs as an option to enable any such offers to be considered as an alternative to the disposal of the whole – and which would necessarily need to replace the PCF facility as part of such a transaction.

- SEPs were identified through a process referencing previous interested parties and key market participants who demonstrated the following criteria:
  - interest in investing in or acquiring the THL Group as a whole, or the SA Sugar businesses of THL;
  - relevant industry and regional technical expertise and operational ability;
  - balance sheet strength and funding capacity;
  - a plausible business case being presented for the future of the acquired businesses; and
  - valuation of the relevant assets and/or offer price that demonstrated a likely ability to conclude a transaction.

- Whilst a substantial number of potential SEPs were initially considered, a final list of eight potential SEPs that met the criteria (highlighted above) were provided access to conduct a comprehensive due

diligence. Final offers were received on 15 June 2023.

- After discussions with the Lender Group the preferred SEPs were approached again and provided with an opportunity to improve their offers (both in terms of certainty of price and overall certainty of closing), which culminated in a short listing of two final bidders.

- The BRPs and their advisors, carefully considered the respective SEP bids and analysed a number of qualitative and quantitative factors relating to each SEP's offer. Such considerations included (inter alia) financial, operational, strategic fit, cultural considerations and execution ability.

- After a rigorous process, and after consultation with numerous parties including the Lender Group, on 17 July 2023, Kagera Sugar was identified and confirmed as the preferred bidder by the BRPs and confirmed as the Strategic Equity Partner to be included in the business rescue plan for consideration by Creditors.

- Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. The Vision Parties have made clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote such Claims in favour of a business rescue plan

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, DURBAN

Case No.:

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LIMITED	Applicant

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
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Fifth Respondent
SOUTH AFRICAN SUGAR ASSOCIATION	Sixth Respondent
S.A. SUGAR EXPORT CORPORATION (PTY) LTD	Seventh Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Eighth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Nineth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Tenth Respondent
UMFOLOZI SUGAR MILL (PTY) LTD	Eleventh Respondent
GLEDHOW SUGAR COMPANY (PTY) LTD (IN BUSINESS RESCUE)	Twelfth Respondent
HARRY SIDNEY SPAIN N.O	Thirteenth Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PTY) LTD	Fourteenth Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fifteenth Respondent
UCL COMPANY (PTY) LTD	Sixteenth Respondent
RGS GROUP HOLDINGS LIMITED	Seventeenth Respondent
TERRIS AGRIPRO (MAURITIUS)	Eighteenth Respondent
REMOGGO (MAURITIUS) PCC	Nineteenth Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Twentieth Respondent
ALMOIZ NA HOLDINGS LIMITED	Twenty-first Respondent

INDEX TO APPLICATION – VOLUME 4

Item	Description	Page
1.	Certificate of Urgency – Max Du Plessis SC	1-2
	Notice of Opposition to Mediation in terms of Rule 41A (2)A, dated 5 December 2023	3-6
2.	Notice of Motion, dated 5 December 2023	7-13
3.	Founding Affidavit, deposed to by Michela Chiara Cutts on behalf of RCL Foods Sugar & Milling (Proprietary) Limited, ("**RCL**"), dated 5 December 2023	14-38
4.	Annexure "**FA1**" judgment of the Honourable Judge Vahed dated 4 December 2023 in Case No. D4472/2023	39-112
5.	Annexure "**FA2**" Details of Parties Cited in this application	113-116
6.	Annexure "**FA3**" the Business Rescue Plan of Tongaat Hulett Limited, RGS Version, dated 29 November 2023	117-259
7.	Annexure "**FA4**" the Business Rescue Plan of Tongaat Hulett Limited, Vision Version, dated 29 November 2023	260-401

8.	Annexure "**FA5**" Order of the Honourable Mr Justice Vahed in Case No. D4472/2023, dated 28 November 2023	402-404
9.	Annexure "**FA6**" Letter from Webber Wentzel to Business Rescue Practitioners of Tongaat Hullet Limited, dated 27 March 2023	405-406
10.	Annexure "**FA7**" Letter from Werksmans to Webber Wentzel, dated 8 June 2023	407-409
11.	Annexure "**FA8**" Letter from Webber Wentzel to Werksmans, dated 1 December 2023	410-417
12.	Annexure "**FA9**" Email from Werksmans to Webber Wentzel, dated 1 December 2023	418

DATED AT SANDTON ON THIS THE 5TH DAY OF DECEMBER 2023.

WEBBER WENTZEL
Applicant's attorneys
90 Rivonia Road, Sandton
Johannesburg,
Tel: 011 530 5419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com
Ref: P Singh / L Kahn / L Kamukwamba/ 3058873
C/O C/O STOWELL & CO

predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.

- It is noted that as at the Publication Date, the acquisition of the Claims of the Lender Group by the Vision Parties have not been completed.

5.3.5.9. Business Rescue Plan Publication

- In terms of section 150(5) of the Companies Act, a business rescue plan was required to be published on or before 1 December 2022 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the Publication Date up to 31 May 2023.

- The BRPs in May 2023 were still reluctant to publish a business rescue plan until such time as they were able to put forward sufficiently detailed Proposals to Affected Persons. However, at that time, the Lender Group declined to agree to any further extensions and insisted that the BRPs put forward the initial business rescue plan. The BRPs therefore published the initial business rescue plan on 31 May 2023, a document which was, due to the lack of clarity at the time, somewhat conditional.

- The meeting to vote on the published business rescue plan was convened and scheduled to take place on 14 June 2023.

- On or about 8 June 2023, an urgent application was brought by RCL Foods & Sugar Milling (Pty) Ltd ("**RCL**") to interdict the meeting to be held on 14 June 2023 to consider and vote on the published business rescue plan.

- At the meeting held on 14 June 2023 motions were proposed, seconded and carried to adjourn the meeting to vote on the business rescue plan to no later than 30 September 2023 and agreed that no less than 30 days' prior written notice of the intended date of the reconvening of the adjourned meeting must be provided to Creditors, as was deemed to be necessary and expedient.

- In addition to the adjournment of the meeting, the BRPs were requested to amend the business rescue plan to incorporate the details of the final transaction accepted and agreed with the selected SEP.

- At a meeting held on 8 September 2023 creditors approved a further adjournment of the meeting to vote on the business rescue plan to no later than 30 November 2023 and that no less than 30 days' prior written notice of the intended date of the adjourned meeting must be provided to Creditors.

- Creditors have also approved the consequently required extension of the publication date of the Company's amended business rescue plan to no later than 24 November 2023.

- A notice was issued on 6 October 2023 convening the meeting to vote on the business rescue plan to be held on 7 November 2023. In light of the request to extend the publication date of the Company's amended business rescue plan to no later than 24 November 2023 the notice convening the meeting on 7 November 2023 was withdrawn. The meeting will be held no later than 30 November 2023, in accordance with the agreement of Creditors at the meeting held on 8 September 2023.

- Subsequent to the above, the requisite majority of creditors agreed to an extension of the date for publication of the amended business rescue plan to no later than 24 November 2023 and to the application of the notice periods as detailed in Section 151(1) and (2) of the Companies Act.

- Additional information came to the attention of the BRPs that required further updating of the drafted amended Business Rescue Plan. It was therefore necessary and expedient to extend the publication date for a very short period and therefore also to adjourn the Meeting to a slightly later date, in order to allow creditors sufficient time to consider the contents of the amended Plan. The requisite majority of creditors agreed to an extension of the date for publication of the business rescue plan to no later than 29 November 2023 and to the adjournment of the meeting to vote on the business rescue plan to no later than 8 December 2023.

- As at the Publication Date the Vision Parties have a valid agreement in effect with the Lender Group for the acquisition of the Lender Group Claims. However, this agreement is subject to payment being made for such acquisition, such payment expected to be made after the Publication date (see above) but before the required Meeting date (see above). Clearly the completion (or not) of the acquisition will impact who votes the Lender Group Claims, and therefore will materially impact the Creditor vote at any Section 151 meeting.

- Given the last dates agreed with Creditors (29 November 2023/8 December 2023 – see above), and the numerous delays (as set out above) in publishing a revised business rescue plan, the BRPs do not wish to request further delays.

- The business rescue of THL has been bedevilled by numerous challenges, not least of which has been the ongoing threat and/or institution of legal proceedings aimed at *inter alia* interdicting the business rescue process, made and/or brought at the instance of various groups and/or entities with frequently divergent interests, which if not adequately anticipated and/or fully dealt with will frustrate and possibly altogether halt the business rescue process, with the almost inevitable consequence of liquidation.

- In order to militate against further challenges to the business rescue process, and given the credibility of the two proposals to be presented to Affected persons, the BRPs have therefore elected

to implement the following methodology to ensure that Creditors have both the opportunity to review the alternative business rescue proposals currently available, and the right to vote on the proposal of their choosing:

- two alternative business rescue plans (this being one of them) will be published on the Publication Date;
- Creditors will be invited to vote in the Pre-Meeting Proxy Vote by way of a simple majority (with results counted on 7 December 2023), for the order in which the two potential business rescue plans will be presented to them and be voted on by them at the subsequent Section 151 Meeting held on 8 December 2023;
- subject to the outcome of the Pre-Meeting Proxy Vote, Creditors will be asked at the subsequent Section 151 Meeting to first vote on the business rescue plan of their choosing (potentially this one);
- if the first such plan voted on is not approved by the requisite Creditor majorities, subject to section 153 of the Companies Act the second plan will be presented to and voted on by Creditors;
- conversely, if the first such plan voted on is approved and Adopted, there will be no cause or need for the second such plan to be voted on; and
- should neither the two plans be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes

contemplated in section 153(1) of the Companies Act.

5.3.5.10. SASA

- As at the Commencement Date, THL owed SASA an amount of c.R479m. This amount is clearly a Concurrent Claim that exists as at the Commencement Date and will be treated as such in this Business Rescue Plan on the same basis as other Unsecured Creditors. However, it is noted that SASA has taken the liberty of withholding export proceeds that THL would otherwise be entitled to and unilaterally reduced the amount that SASA alleges is owed by THL to SASA to c.R59m. This treatment is not accepted by the BRPs and the BRPs and THL reserves the right to take the necessary steps to recover the unpaid amounts, unless there is a settlement concluded with SASA.

- The BRPs subsequently exercised their rights to suspend the THL obligations to SASA for the duration of Business Rescue. The unpaid amount that has accrued since the Commencement Date amounts to c.R1.1bn. With effect from 1 April 2023, subject to availability of funding, THL recommenced its payment obligations to SASA.

- Various industry participants were of the view that the BRPs did not have the right to suspend the THL obligations to SASA and the matter was referred to the Sugar Industry Appeals Tribunal ("**SI Tribunal**"). The BRPs are of the view that the SI

Tribunal does not have jurisdiction to make a ruling on matters related to the Companies Act (i.e. section 136 thereof). As a result, THL and its BRPs brought an application ("**the application**") in the High Court of South Africa, KwaZulu-Natal Local Division, Durban ("**the High Court**") under case number D4472/2023, seeking the following orders:

- declaring that the BRPs are empowered to suspend, for the duration of the business rescue proceedings, any obligation of THL which arises under the Sugar Industry Agreement, 2000 ("**the SI Agreement**"); alternatively, declaring that the BRPs are empowered to suspend, for the duration of the business rescue proceedings any redistribution payment, and related levies and interest that become due by THL, and which would otherwise become due during the business rescue proceedings. The BRPs seek this declaration in respect of their powers of suspension of a company's obligations under section 136(2)(a)(i) of the Companies Act; or

- alternatively to the preceding paragraphs, and in the event that the Court finds that the obligations under the SI Agreement are not amenable to suspension:
    - declaring section 136(2)(a)(i) of the Companies Act unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that

become due during business rescue proceedings; and

- reading in the words "or regulatory regime" after the word "agreement" in section 136(2)(a)(i) of the Companies Act.

- These provisions allow for the implementation of a statutory business rescue plan to restructure a financially distressed company's affairs in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if that is not possible, results in a better return to its creditors or shareholders than would otherwise result from the immediate liquidation of the company.

- Among the key mechanisms available to the BRPs to create a protective environment within which to develop and implement such a plan is the power to suspend the company's obligations in terms of section 136(2)(a) of the Companies Act.

- THL's payment obligations in terms of the SI Agreement referred to above include substantial and onerous levy and redistribution payments to SASA charged since the Commencement Date in excess of R1.1bn ("**the SASA Amounts**"). The provisions of the SI Agreement entail, inter alia, that THL as an over-performing miller is obliged to pay a substantial proportion of its refined white sugar proceeds over to SASA for redistribution to other competitor millers who have sold less than their production share (i.e. under-performing sugar millers), despite such payments not being

related to the commercial realities of the cost of such production.

- In order to temporarily insulate THL from these onerous obligations that would prevent it from being rescued, during February 2023 the BRPs suspended all of THL's payments obligations to SASA arising under the SI Agreement for the duration of the business rescue proceedings in terms of section 136(2) of the Companies Act. The BRPs did so having taken legal advice, including the advice of senior counsel.

- The various respondents who have opposed the application (including SASA and the other sugar millers in the industry) and delivered answering affidavits, have alleged that the SI Agreement is subordinate legislation under the Sugar Act 9 of 1978 ("**the Sugar Act**") and therefore not capable of suspension by the BRPs under section 136(2)(a)(i) of the Companies Act.

- In other words, the respondents contend that the SI Agreement is not an "agreement" within the meaning of section 136(2)(a), and that THL's obligations under the SI Agreement are statutorily imposed and are therefore incapable of suspension under section 136(2)(a) of the Companies Act. That is the live legal dispute that warrants determination and declaratory relief from the High Court ("**SASA Declarator Application**").

- The BRPs' legal position remains that:

- the SI Agreement is an agreement between all members of the sugar industry, and that THL's obligations thereunder is therefore capable of suspension; and
- SASA ranks as an Unsecured Creditor in the Business Rescue of THL. Immediate payment of the SASA Amounts would have the effect of elevating SASA's status to that of preferred creditor. This would unduly prejudice the remaining body of creditors and would be legally impermissible, and place the rescue of THL at risk.

- With the assistance of the post-commencement financiers, mainly the IDC (with the BRPs gratitude), THL has, since April 2023 recommenced payment of SASA obligations and an amount of c.R771m (as at 31 October) has been paid in settlement of amounts owing to SASA in respect of local market redistribution charges and levies that have arisen since 1 April 2023. The SASA Amounts charged between 28 October 2022 and 31 March 2023 have not been discharged and will be treated the same as the other Unsecured Creditors of THL. The amounts owed to SASA as at the commencement of business rescue on 27 October 2022 amounting to approximately c.R420m, increased by levies in an amount of c.R59m, leaving a total amount of c.R479m, which has similarly not been discharged.

- The BRPs have agreed with SASA that, without detracting from THL's and/or the BRPs' assertions in the SASA Declarator Application and subject to

the continued availability of funding acceptable to THL, THL will make payment of all redistribution ("**LMR**") levies due to SASA with effect from 1 April 2023.

- SASA and THL have agreed that the payments will be made on condition that:

  - the payments made by THL will only be applied towards the LMR and Levies obligations that have arisen or will arise after 1 April 2023 and will not be applied to any of the amounts which SASA asserts are due, owing and payable in respect of the period prior to 1 April 2023; and

  - SASA will comply with its obligations with effect from 1 April 2023 and will not withhold any proceeds including future export and export carry-over payments (2023/2024 season and onwards) that THL may become entitled to from 1 April 2023. Those proceeds will be paid to THL by SASA as and when they fall due for payment.

- The above agreement is without prejudice to and in no way detracts from the rights of either SASA or THL relating to the SASA Declarator Application.

5.3.5.11. <u>Settlement of Litigation Matters:</u>

- In anticipation of the commencement of a mediation process, the Company and Deloitte & Touche South Africa ("**Deloitte**") concluded a settlement agreement in February 2023. The

settlement related to claims which the Company had asserted against Deloitte which arose from and relate to the appointment of Deloitte as auditor of the Company for the financial years ended 31 March 2012 to 31 March 2018 (both inclusive). Deloitte paid an amount of R260m to the Company without admission of liability. The BRPs, having taken legal advice in this regard, were of the considered opinion that an expeditious settlement on these terms was in the best interests of the Company.

5.3.5.12. Growers

- Growers and grower representative boards have been engaged on a regular basis at the various sugar mills with the aim of fielding questions, dealing with uncertainties and to keep them updated. All cane payments pre- and post-commencement of business rescue proceedings have been honoured to date in an effort to shield the growers from economic hardship. Payments made to the growers since the commencement of business rescue proceedings total R4.7bn (at 31 October 2023). Grower support and engagements have been robust and productive from both the view of the BRPs and that of the growers. Both the SACGA and SAFDA have also been engaged formally and informally in an effort to keep lines of communication open.

5.3.5.13. Employees

- Employees have continued to be employed by the Company on the same terms and conditions as before the Commencement Date.

- The first statutory meeting of employees, in terms of section 148 of the Companies Act, was convened in person and virtually on 8 November 2022. Thereafter, an employees' committee was formed by employee representatives who volunteered or who were nominated by their colleagues to represent them on the committee. To date, the BRPs have held numerous virtual meetings with the employees' committee to discuss the Business Rescue of the Company, the most recent of which was held on 12 October 2023.

- The remaining executive directors and members of the THL Group executive committee of the Company have continued in the employ of the Company and have worked with and will continue to work with the BRPs while they remain in the employ of the Company. Mr Gavin Hudson and Mr Simon Harvey resigned with effect 28 February 2023.

5.3.5.14. Creditors

- The first meeting of Creditors, as contemplated in section 147 of the Companies Act, was convened virtually on 8 November 2022.

- At the first statutory meeting of Creditors, the BRPs advised Creditors of the right to form a Creditors' committee. A Creditors' committee has

since been formed with Mr Hans Klopper having been appointed by the Creditors as the chairman of the committee. The BRPs have agreed that the Company is prepared to remunerate the chairperson on the basis of time spent solely in such role. The chairperson is also an advisor to one of the Creditors, which Creditor is liable for the costs related to time spent by Mr Klopper in the fulfilment of his services to that Creditor.

- The first Creditors' committee meeting was convened virtually on 24 November 2022 and numerous subsequent Creditors' committee meetings have been held, the most recent of which was held on 12 October 2023.

5.3.5.15. Consultations – The BRPs have consulted with various Affected Persons relating to the developments within the Business Rescue and the development of the Business Rescue Plan, in addition to the publishing of regular notices and/or status reports to Affected Persons. The BRPs have consulted and engaged with a number of key Shareholders (representing in excess of 30% of the shareholding in THL) during the Company's Business Rescue. In addition to this, after an appropriate SENS announcement a general update shareholders meeting was held virtually on 26th September 2023.

5.3.5.16. Claims Reconciliation – The BRPs have received Claims from numerous Affected Persons. A verification process has been undertaken to reconcile the Claims received with the amounts reflected in the records of the Company. For the avoidance of doubt, the BRPs

will rely on the records of the Company unless proven otherwise, per paragraph 5.3.7 and 1616. Further details relating to Claims are also set out in paragraph 5.3.7, read with Annexure **A**.

5.3.5.17. Contracts – None of the Company's obligations have so far been cancelled during Business Rescue, however the BRPs reserve the right to do so. The BRPs have exercised the right to suspend certain obligations and also reserve the rights to suspend other such obligations at the appropriate time in accordance with section 136 of the Companies Act.

5.3.5.18. Cash Management – The BRPs continue to manage and monitor the liquidity, cash flow and financial position of the Company, control payments and enforce general controls.

5.3.5.19. In-country engagements – Focussed stakeholder engagements were held in both Zimbabwe and Mozambique to ensure a common understanding of the reasons why the business in South Africa was placed under business rescue, the implications of business rescue and the envisaged path to be travelled towards finding a rescue solution. The engagements were targeted at senior managers in the business, in-country independent board members, industry regulators, industry association bodies, minority shareholders in Mozambique and relevant government ministries in both countries. In Zimbabwe, the head of state has been kept updated through in-person briefings on the progress of the business rescue by the local Chairman and interim THL CEO. Further engagements by the BRPs will be arranged when

required. The engagements are continuous where key milestones in the business rescue process trigger a focussed stakeholder management follow up with either written or in person communication as may be deemed appropriate.

5.3.6. **Material assets and security (Section 150(2)(a)(i)):**

5.3.6.1. The below summary of the material assets of the Company is the pre-Commencement Date **book values** of the Company's assets (not Group consolidated) as at 31 October 2022, the nearest practicable date to the Commencement Date, as extracted from the accounting records of the Company.

MATERIAL ASSET LISTING	R'm
ASSETS	5 897
NON CURRENT ASSETS	**2 638**
LAND AND BUILDINGS	331
PLANT AND MACHINERY	552
VEHICLES	23
FURNITURE AND OFFICE EQUIPMENT	9
COMPUTERS	2
OTHER	164
RIGHT-OF-USE ASSETS	7
BIOLOGICAL ASSETS	145
INTANGIBLE ASSETS	82
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 164
AMOUNTS OWING FROM GROUP COMPANIES	44
OTHER NON-CURRENT ASSETS	115
CURRENT ASSETS	**3 259**
INVENTORIES	1 876
BIOLOGICAL ASSETS	127
AMOUNTS OWING FROM GROUP COMPANIES	273
TRADE AND OTHER RECEIVABLES	639
CASH AND CASH EQUIVALENTS	344

NOTES

1) INTANGIBLE ASSETS:
   (i) Software = R50,9m
   (ii) Cane Supply Agreements = R63,3m
   (iii) Capital WIP (Software) = R8,5m
2) OTHER NON-CURRENT ASSETS:
   (i) Pension Fund ESA asset = R50,4m
   (ii) NCR Lease Incentive = R26,6m
   (iii) Unzinzo Lease Incentive = R38,1m

5.3.6.2. The gross (i.e. before costs) realisable value of the assets as determined by BDO in the Liquidation Estimated Outcome Statement amount to c.R5.1bn.

5.3.6.3. Moveable assets, bank account monies, insurances, intellectual property rights, shares in subsidiaries, investments, claims, trade receivables, group claims, property disposal proceeds, debt reduction proceeds and properties were all encumbered and secured in favour of the Lender Group (now the Vision Parties), save for IDC Security.

5.3.6.4. The Lender Group (now the Vision Parties) have a reversionary cession in favour of the Lender Group / Vision Parties of all IDC Security.

5.3.6.5. By way of summary, the Lender Group (now the Vision Parties) hold the following security:

- Cession in security of:

  - all shares in and claims against THL Zimbabwe, THL Botswana, THL Mozambique and/or all other investments (including, without limitation, all shares and claims against all subsidiaries of the Company);

  - all claims of whatsoever nature (excluding trade receivables and any related insurance claims, which are the subject of IDC Security, but subject to the Lender Group's reversionary security cession) and/or recoveries related

thereto and/or proceeds from sale transactions;

- all bank accounts and all monies standing to the credit thereof from time to time (excluding those bank accounts which are subject to IDC Security, but subject to the Lender Group's reversionary security cession);

- all intellectual property rights;

- all insurances and claims payable in connection therewith (excluding those insurances which are subject to IDC Security, but subject to the Lender Group's reversionary security cession);

- rights under all property disposal and other debt reduction transactions;

- general notarial bonds over all moveable assets (which was perfected during November 2022 via an application to Court and with the BRPs consent, which was subsequently made an order of Court on or about 17 May 2023);

- mortgage bonds over immovable properties (including the Agricultural Land) registered in the relevant Deeds Office/s set out in Annexure **E** for ease of reference; and

- cross guarantees and indemnities provided to THL are summarised below:

No.	Name of Original Guarantor	Jurisdiction of Incorporation	Registration Number
1	Tongaat Hulett Developments (Pty) Ltd	South Africa	1981/012378/07
2	Voermol Feeds (Pty) Ltd	South Africa	1936/007892/07
3	Tongaat Hulett Sugar South Africa Ltd	South Africa	1965/000565/06
4	Tongaat Hulett Estates (Pty) Ltd	South Africa	1967/006009/07
5	The Natal Estates Limited	South Africa	1902/000899/06
6	Ohlanga Development Company (Pty) Ltd	South Africa	1968/009161/07

5.3.6.6. Cash balances, inventories and trade and other receivables are/were encumbered, with the consent of the Lender Group, in favour of the IDC, as security for the PCF provided by the IDC to the Company.

5.3.6.7. For completeness the table below shows the full summary balance sheet of the **Company (not consolidated)** as at 31 October 2022, the nearest practicable date to the Commencement Date.

THL BALANCE SHEET AT 31 OCTOBER 2022	R'm
ASSETS	**5 897**
NON CURRENT ASSETS	**2 638**
PROPERTY PLANT AND EQUIPMENT	1 227
RIGHT-OF-USE ASSETS	7
INTANGIBLE ASSETS	82
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 164
AMOUNTS OWING FROM GROUP COMPANIES	44
OTHER NON-CURRENT ASSETS	115
CURRENT ASSETS	**3 259**
INVENTORIES	1 876
BIOLOGICAL ASSETS	127
AMOUNTS OWING FROM GROUP COMPANIES	273
TRADE AND OTHER RECEIVABLES	639
CASH AND CASH EQUIVALENTS	344
EQUITY & LIABILITIES	**5 897**
CAPITAL & RESERVES	**- 4 184**
SHARE CAPITAL AND PREMIUM	1 679
ACCUMULATED LOSSES	- 5 866
OTHER RESERVES	3
LIABILITIES	**10 080**
NON CURRENT LIABILITIES	**601**
AMOUNTS OWING TO GROUP COMPANIES	220
POST-RETIREMENT BENEFIT OBLIGATIONS	357
GOVERNMENT GRANTS	19
LEASE LIABILITIES	4
CURRENT LIABILITIES	**9 479**
BORROWINGS	6 969
TRADE AND OTHER PAYABLES	2 488
GOVERNMENT GRANTS	20
LEASE LIABILITIES	3

5.3.7. **Creditors of the Company (Section 150(2)(a)(ii)):**

5.3.7.1. The BRPs will continue to accept the Company's records in respect of any Creditor as being correct,

unless and until the relevant Creditor proves otherwise to the satisfaction of the BRPs, or through the Dispute Mechanism process as set out in paragraph 16 below.

5.3.7.2. Alleged Claims that are not reflected in Annexure **A** of this Business Rescue Plan will be regarded as Disputed Claims, and Disputed Creditors may be allowed a Voting Interest at the Meeting if so determined by the BRPs in their sole discretion. Any such allowance by the BRPs shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim and will be further dealt with in accordance with the Dispute Mechanism contemplated in paragraph 16.

5.3.7.3. The Claims that the BRPs have accepted, in whole or in part, are set out Annexure **A**. A summary of the various classes of Creditors of the Company as at the Commencement Date, updated for subsequent movements/repayments and PCF advanced, is reflected in the table hereunder:

Table 2: Summary of the Various Classes of Creditors of the Company (updated as at 31 October 2023)

CREDITOR TYPE / DESCRIPTION	ACCEPTED/PROVEN CLAIM AMOUNT
SECURED CREDITORS	**8 045 562 161**
Lender Group Facilities*	7 708 147 777
Lender Group Bilateral Arrangements	284 946 678
Other	52 467 707
PCF CREDITORS	**2 152 647 811**
IDC Facilities - Secured PCF facility	2 118 858 799
Guardrisk Insurance PCF facility	33 789 012
PREFERENT CREDITORS	**22 470 000**
Preferent creditors *(N/A in business rescue)*	-
Preferent employees: Post-retirement medical aid liability for current employees	12 596 000
Preferent employees: Post-retirement gratuity for current employees	9 874 000
UNSECURED CREDITORS	**2 590 634 142**
Trade Creditors *	520 385 641
SASA pre-BR	479 936 395
SASA post-BR	1 121 428 850
Post-retirement medical aid liability for past/retired employees	326 449 000
Employee ex-gratia payments (past employees)	1 706 587
Other Provisions	8 073 891
Accrual for Leave pay	56 057 051
Accrual for Trade Payables	12 258 528
Other Accruals	14 122 387
SARS (potential VAT pre-BR clawback in terms of s22(3) of the VAT Act)	50 215 813
NON-INDEPENDENT UNSECURED CREDITORS	**248 077 086**
Inter-Company Loans	247 329 051
Intercompany BR claims (Agency Agreement)	
Voermol:	748 036
THSSA:	-
TOTAL	**13 059 391 201**

**The above table is shown as at Publication Date, however if the Vision Parties complete the acquisition of the Lender Group Facilities/Claims prior to the Section 151 Meeting, these Claims (R7.7bn) will be voted by the members of the* Vision *Parties.*

5.3.7.4. All Creditors who believe that they have a Claim against the Company are referred to Annexure **A** and should treat Annexure **A** as the BRPs' notification of the Claims (including the quantum thereof) that have been accepted by the BRPs for purpose of the Business Rescue and voting on the Business Rescue Plan. If any Creditor is in disagreement with the information provided in Annexure **A** (being a Disputed Creditor), such Disputed Creditor should utilise the Dispute Mechanism set out in paragraph 16.

5.3.7.5. Following the Adoption and implementation of this Business Rescue Plan, any remaining Claims of Creditors of the Company will become Unenforceable, other than as provided for in this Business Rescue Plan.

5.3.8. **Voting interests and voting by proxy:**

5.3.8.1. Voting Interests

- In accordance with section 145(4) of the Companies Act, a Creditor is entitled to vote on the Adoption of the Business Rescue Plan, as follows –

  - a Secured Creditor and/or Unsecured Creditor has a Voting Interest equal to the value of the amount owed to that Creditor by the Company; and

  - an Unsecured Creditor who would be subordinated in a liquidation has a Voting Interest, as independently and expertly appraised and valued at the request of the BRPs, equal to the amount, if any, that the Unsecured Creditor could reasonably expect to receive on a liquidation of the Company as set out in section 145(4)(b) of the Companies Act.

- Creditors are advised that a recent judgement handed down by Wilson J in the High Court, Johannesburg in the matter of Wescoal Mining stated that PCF creditors did not have a vote in business rescue proceedings. The BRPs are advised that this judgement is in the process of being appealed and, as such the effect of the judgement

has been suspended pending the outcome of the appeal. For the time being, the BRPs will afford IDC the right to vote its PCF claim at the proposed Section 151 Meeting until such time as there is a binding judgement to the contrary.

- It is recorded that there are subordinated non-independent Creditors in the total amount of R89m and that the value ascribed to those subordinated non-independent Creditors in line with the independent appraisal is nil. A notice concerning subordinated non-independent Creditors' Voting Interests was circulated on 3 March 2023.

5.3.8.2. Voting

- All Creditors will have a Voting Interest as set out in Annexure **A** in respect of any vote conducted at the Meeting, subject to the BRPs' discretion contemplated in paragraph 5.3.7.2 and directly below.

- Disputed Creditors may be allowed a Voting Interest at the Meeting as may be determined by the BRPs in their sole discretion and any such determination shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim.

- Disputed Creditors are invited to seek an amendment to their Voting Interest (relative to Annexure **A**) up to 24 hours before the Meeting. Any BRP agreement to amend a Disputed Creditor's Voting Interest shall not be construed as

an acceptance of the existence or quantum of such Claim, as such determination will be made solely for the purposes of determining that Disputed Creditor's Voting Interest at the Meeting. Unless the BRPs specifically advise a Disputed Creditor otherwise, Disputed Creditors will still be required to follow the Dispute Mechanism set out in paragraph 16 below.

5.3.8.3. Independent Creditors

- In accordance with sections 145(5)(a) and 145(5)(c) of the Companies Act, the BRPs are required to determine whether or not a Creditor is an Independent Creditor for purposes of the Business Rescue.

- For purposes of this Business Rescue Plan, the BRPs have determined that all Creditors with accepted and/or recognised Claims are Independent Creditors and will be counted as such for purposes of any votes cast at the Meeting to approve this Business Rescue Plan.

5.3.8.4. Shareholders

- In accordance with section 146(d) of the Companies Act, a Shareholder is entitled to vote on the Business Rescue Plan if it alters the rights associated with the class of Securities held by that Shareholder.

- This Business Rescue Plan contemplates (inter alia) the issue of new shares to the Vision Parties. Such

issue will not, however, alter the rights associated with the class of Securities held by Shareholders. Accordingly, Shareholders are not required nor entitled to vote on the Business Rescue Plan in terms of section 152(3)(c) of the Companies Act.

- To the extent required, Shareholders will, during the implementation of this Business Rescue Plan, be invited to vote (*inter alia*) on the issue of shares in relation to the debt to equity conversion in terms of section 41(3) of the Companies Act.

5.3.8.5. Vote by Proxy

- Voting by proxy for the Meeting is permitted. A proxy form for Creditors voting on this Business Rescue Plan at the Meeting is enclosed as Annexure **F**.

- Creditors should carefully note the different proxies to be used for:

  - (i) voting for the Pre-Meeting Proxy Vote to direct the order of voting at the Meeting (which proxy will be attached to the special notice to be distributed to Affected Persons by the BRPs);

  - (ii) voting on this Business Rescue Plan at the Meeting (which proxy is enclosed as Annexure **F** to this Business Rescue Plan); and

- (iii) voting for the alternative business rescue plan at the Meeting (which proxy will be enclosed as an annexure in that business rescue plan).

- Notwithstanding these forms, the BRPs have the discretion to accept any proxy submitted, acceptable to the BRPs, no matter its form.

- Proxy forms must include an appropriate resolution (for a juristic entity or trust) or power of attorney (for an individual) giving such representative the authority to attend and vote at the meeting on behalf of the juristic person, trust or individual.

- Affected Persons who are voting by proxy are reasonably required to lodge each or any of their proxy forms:

  - for the Pre-Meeting Proxy Vote by no later than **12h00 on Thursday, 7 December 2023**; and

  - for the vote on the business rescue plan at the Section 151 Meeting, by no later than **17h00 on Wednesday, 6 December 2023** if delivered by hand or if by email, by no later than **17h00 on Thursday, 7 December 2023**.

5.3.9. **Probable Liquidation Dividend Estimate (Section 150(2)(a)(iii)):**

5.3.9.1. The BRPs engaged BDO as an independent expert to determine the probable dividend that Creditors and Shareholders would likely receive if, instead of being placed into Business Rescue, the Company was placed in liquidation as at the Commencement Date.

5.3.9.2. From the **Table 3** below the following is noted:

- The cash, inventories and debtors, previously security assets held in favour of the Lender Group, are instead now security held by IDC as the PCF Lender. The Lender Group's successors in title, the Vision Parties, have security over other moveable assets, immoveable assets and investments which in aggregate (based on the BDO estimates below) equate to a gross amount of c.R3.095bn.

5.3.9.3. A summary of the BDO estimated liquidation realisations, costs and probable Distribution to Creditors per Creditor class, is reflected in Table 3 below:

Table 3: Probable Liquidation Dividend per Class of Creditor/Shareholder (in the event that the Company were to have been placed in liquidation as at the Commencement Date)

	c/R	*R'm*
Gross proceeds from the realisation of assets by a liquidator		**5,080**
Movable Assets		473
Inventory		1,387
Immovable Assets		433
Investments		2,189
Cash		437

Debtors		163
Less expenses incurred by liquidator during liquidation process		**1,100**
Net proceeds after expenses available for distribution to creditors		**3,980**
Order of preference – Application of the net proceeds of the realisation of assets		
1st payment by law – Secured Creditors	55,02	3,980
2nd payment by law – Statutory preferent creditors	0,00	0
Available for distribution to Unsecured Creditors	0,00	0

Note: As the net proceeds available for distribution to Creditors in liquidation would be insufficient to enable a full recovery for Creditors, **Shareholders would not be entitled to a surplus distribution on liquidation**.

5.3.9.4. If an Affected Person requires details relating to the Probable Liquidation Dividend Estimate calculation, such Affected Person is invited to contact the BRPs using the details set out in paragraph 17.1.2.

5.3.9.5. BDO requires that any Creditor requesting a copy of the Probable Liquidation Dividend Estimate report sign a hold-harmless letter in favour of BDO.

5.3.9.6. The following disclaimers are attached to the BDO Probable Liquidation Dividend Estimate:

- *"Any person who is not an addressee of this report or who has not signed and returned to BDO either a "no-reliance" or an "assumption of duty" release letter is not authorised to have access to this report. We do not accept or assume responsibility to any unauthorised person to whom this report is*

shown or any other person who may otherwise gain access to it.

- *"If any unauthorised person chooses to rely on the contents of this report, they do so entirely at their own risk. Should any unauthorised person obtain access to and read this report, such person accepts and agrees that:*

  - *This report was prepared in accordance with instructions provided by the BRPs exclusively for the sole benefit and use of the BRPs and inclusion in their BR Plan;*

  - *BDO, its partners, employees and agents neither owe, nor accept any duty or responsibility to the reader, whether in contract or otherwise (including without limitation, negligence and breach of statutory duty), or howsoever otherwise arising. We make no representations regarding this report or the accuracy of the contents including that the information has not changed since the date of this report;*

  - *We shall not be liable in respect of any loss, damage or expense of whatsoever nature which results from any use the reader may choose to make of this report, or any reliance the reader may seek to place on it, or which is otherwise consequent upon access to this report by the reader;*

- *The report is not to be referred to or quoted, in whole or in part, in any other document, other than the BR Plan or made available to any third party, without BDO's express written consent."*

5.3.10. **List of the holders of the Company's issued Securities (Section 150(2)(a)(iv)):**

5.3.10.1. Please refer to Annexure H for the full securities listing as at 3 November 2023.

5.3.11. **BRPs' remuneration (Section 150(2)(a)(v)):**

5.3.11.1. The regulations to the Companies Act prescribe an hourly tariff (inclusive of VAT) for the payment of the fees of a BRP.

5.3.11.2. The Company is classified, in terms of regulation 26(2) read with regulation 127(2)(b)(i) of the Companies Act, as a large company in that it has a public interest score greater than 500 points.

5.3.11.3. The Company's public interest score at the Commencement Date was 33,752 points.

5.3.11.4. Accordingly, in terms of regulation 127(5), the Company required the appointment of at least one senior BRP.

5.3.11.5. The BRPs' remuneration agreement was approved in terms of section 143 of the Companies Act and is final and binding on the Company. It was supported by:

- 100% of the Shareholders present and voting at the meeting convened in terms of section 143(3)(b) on 9 December 2022; and

- 99% of the holders of Creditors' Voting Interests present and voting at a meeting that was called in accordance with section 143(3)(a) on 9 December 2022.

5.3.11.6. A copy of the remuneration agreement is enclosed with Annexure I.

5.3.12. **Other Advisors**

5.3.12.1. Metis has an advisory mandate with the Company paid on hourly rates for services rendered, and in addition has an agreed success fee arrangement with the Lender Group linked to the repayment of PCF. These latter fees were recovered from proceeds received and attributable to the Lender Group from the realisation of their security (thus did not impact on other classes of Creditors).

5.3.12.2. Matuson has an advisory mandate with the Company linked to the sale of THL Zimbabwe and THL Mozambique, with such fees being recovered, with the Lender Group's approval, from proceeds received from the sale of assets over which the Lender Group holds security (thus not impacting other classes of Creditors). P Marsden of Matuson was a non-executive director of the Company and previously held the position of chief restructuring officer. P Marsden resigned as director on 8 September 2023.

5.3.12.3. Absa Corporate Finance (M&A Advisory) has an advisory mandate with the Company relating to the sale of THL Zimbabwe, THL Mozambique and THL Botswana. Should Absa Corporate Finance (M&A Advisory) not be required to run a sale process, they are entitled to a break fee, which has been approved by the Lender Group and which will be paid from the proceeds of the realisation of the Lender Group security (thus not impacting other classes of Creditors).

5.3.12.4. BSM has an advisory mandate with the Company paid on hourly rates for services rendered. In addition BSM has an agreed success fee arrangement linked to the outcome of Project BSM. Such costs are treated as Business Rescue Costs and will be deducted from the proceeds of relevant sales received by THL and/or from other facilities.

5.3.12.5. All other Advisors have advisory mandates with the Company paid on hourly rates for services rendered. Such costs are treated as Business Rescue Costs.

5.3.13. **Proposals made informally by Creditors (Section 150(2)(a)(vi)) and other parties:**

5.3.13.1. In terms of section 150(2)(a)(vi) of the Companies Act, the BRPs are required to disclose proposals made by a Creditor or Creditors of the Company with regard to this Business Rescue Plan.

5.3.13.2. Vision Parties' Proposals:

- This Business Rescue Plan is constructed around the Vision Parties' Proposals. Please refer to paragraph 6.1.5 for details of the Vision Transactions.

5.3.13.3. RGS Proposals:

- Subsequent to acquiring a claim in order to be a Creditor, RGS provided the "**RGS Proposals**" to the BRPs.

- The key elements of the RGS Proposal are provided for the benefit of readers in a separate business rescue plan.

5.3.13.4. Kagera Proposal:

- Subsequent to being selected in the SEP process, Kagera provided the "**Kagera Proposals**" to the BRPs.

- The Proposals put forward by Kagera have (*inter alia*) conditionality attached (relating to required exclusivity as a bidder) which cannot be accommodated by the BRPs at this time and, consequently, the Kagera Proposals will not be under consideration at the Meeting.

- The Vision Parties have furthermore advised that they would vote down any plan not contemplating the Vision Transactions.

5.3.13.5. SARS Proposal:

- Affected Persons are referred to Annexure A which includes certain clauses which SARS has proposed for insertion into business rescue plans. The effect of the proposed clauses would be that SARS is granted a preference above all other Unsecured Creditors in respect of certain pre-business rescue Claims.

- In business rescue, however, SARS is treated as an Unsecured Creditor, in line with relevant previous judgements. The BRPs have frequently engaged with SARS to understand their views on these additional clauses which they have submitted to THL in business rescue. The liability that may arise from a potential SARS "VAT clawback" claim would result in a lower distribution to Unsecured Creditors.

- The BRPs have sought legal advice on this matter which confirmed that any VAT clawback claim which arises in Business Rescue, in respect of a vatable transaction which was concluded before the Commencement Date, should be treated as a pre-Business Rescue Concurrent claim because the provisions of the VAT Act/Tax Administration Act relating to the VAT clawback are inconsistent with and cannot be applied concurrently with Chapter 6 of the Companies Act without infringing upon provisions of Chapter 6 of the Companies Act. That is, the VAT clawback provisions would grant SARS a benefit over other Affected Persons that is not contemplated in Chapter 6 of the Companies Act. Accordingly, and upon a proper construction of the Companies Act, the advice concludes that the

provisions of Chapter 6 of the Companies Act should prevail.

6. PART B – The Proposals

6.1. Terms of the Proposals

6.1.1. Relevant Factors:

6.1.1.1. THL has an extensive social and economic impact on the region within which it operates. It is beyond question that a successful rescue of THL's SA Sugar operations in South Africa will save tens of thousands, possibly hundreds of thousands, of direct and indirect jobs, and avoid a possibly widespread (upstream and downstream) economic and human catastrophe.

6.1.1.2. The Lender Group had security over all material assets of THL (other than certain bank accounts, inventory and trade receivables (and any related insurance claims), which are the security of IDC in respect of IDC's Claim as a PCF Lender). These security rights are currently being acquired by the Vision Parties, a transaction that is anticipated to be completed prior to the Meeting. In this part of the Business Rescue Plan the words "**Lender Group**" and "**Vision Parties**" will be used thus interchangeably (and/or the rights held by such parties shall be referred to as "**Vision Lender Rights**") as they relate to the exercising of the rights being acquired by the Vision Parties.

6.1.1.3. In view of the magnitude of the Claims and voting interests being acquired, assuming the transaction is successfully completed the Vision Parties will collectively become the majority Creditor of THL.

6.1.1.4. Following their initial agreement with the Lender Group for the acquisition of the Lender Group Claims and security, the Vision Parties presented their proposals to the BRPs for consideration. The BRPs, have thereafter consulted with the Vision Parties in relation to the development of the Vision Parties' Proposals (**"the Vision Proposals"**) and the preparation of this Business Rescue Plan. This Business Rescue Plan encompasses the Vision Proposals.

6.1.1.5. As indicated in paragraph 5.3.5.8 above, Kagera Sugar were selected as the SEP. On 20 November 2023 the Lender Group notified the BRPs that they had entered into an agreement with the Vision Parties to sell its Claims against the Company, the agreement being unconditional but required payment in order to close the transaction. The BRPs were accordingly advised that the Vision Parties, once the beneficial owner(s) of the Lender Group Claims, would no longer support a Proposal entailing anything other than the Vision Transactions. Accordingly, and given that the Lender Group's Claims comprise some c.62% of the total Voting Interests, the BRPs formulated this Business Rescue Plan in line with the Vision Proposals.

6.1.1.6. The initial agreement between the Vision Parties and the Lender Group was not completed, however the BRPs were advised by the contracting parties that a new agreement had been entered into for the acquisition of the Lender Group Claims, with completion anticipated to take place prior to the Meeting. The Proposals put forward in this Business Rescue Plan are those agreed between the BRPs and the Vision Parties in the Vision Proposals.

6.1.1.7. The BDO report concludes that Unsecured Creditors would be unlikely to receive any recovery relating to their Claims in the event of a liquidation of THL. Given the status quo with regards to the Company, the same outcome would result from the business rescue of the Company were the Claims to be settled strictly in accordance with the business rescue provisions of the Companies Act.

6.1.2. **Distributions:**

6.1.2.1. Notwithstanding the provisions of the Companies Act, however, the Vision Parties have undertaken that they will make available to Unsecured Creditors an amount of R75m. Unsecured Creditors will (pro rata) receive Distributions of (in aggregate) R75m upon full implementation of this Business Rescue Plan.

6.1.2.2. This will provide a benefit uplift to Unsecured Creditors in the Business Rescue Plan Proposals relative to the anticipated liquidation dividend of nil that would likely be received by Unsecured Creditors if the Company were to be placed in liquidation.

6.1.2.3. In order not to dilute this deemed Distribution to Unsecured Creditors, the relevant secured claims shortfall, if any, which the Lender Group/Vision Parties and IDC retain as Unsecured Creditor Claims (i.e. any remaining Lender Group/Vision Parties and IDC Claims which may remain following repayment from their respective security realisation proceeds) would not participate in the aforementioned R75m Distribution.

6.1.2.4. It should also be noted that, in addition to the above, to date Claims of Unsecured Creditors of c.R1.3bn have, in the course of the Business Rescue, already been paid, the majority of which related to payments to cane growers, many of which are small-scale farmers.

6.1.3. **Equity Conversion:**

6.1.3.1. As noted above. following the acquisition of the c.R7.7bn of Lender Group Debt by Vision Parties, THL will implement a partial debt-for-equity swap by way of the Vision Parties individually subscribing for new shares in the Company. The aggregate consideration for such subscription will be c.R4.1bn based on current balances which will be discharged by a reduction in the former Lender Group Claims against THL (those purchased by the Vision Parties) to c.R3.6bn. Resulting from this:

- the balance sheet of THL will be strengthened by R4.1bn based on current balances through debt-equity swap;
- the previous terms of the Lender Group Debt in respect of the R3.6bn retained by the Vision Parties will be renegotiated on terms anticipated to be significantly more favourable to THL;
- current Shareholders will retain value as 2.7% (in aggregate) shareholders in the still-JSE-listed, newly recapitalised THL (compared to nil in the event of a liquidation of completion of the

Vision Proposals by way of an asset sale (rather than a share issue); and

- the balance of the issued shares (97.3% in aggregate) will be held variously by the members of the Vision Parties.

Readers are referred to Annexure G which, inter alia, contains details about who Vision Parties is and the Turnaround Plan.

6.1.4. Strategy Underlying the Proposed THL Business Rescue Plan

6.1.4.1. The Business Rescue will seek to:

- continue the process to optimise the operations and cost base of THL's businesses and its head office;
- complete the Vision Transactions detailed below;
- renegotiate to the satisfaction of IDC, and service in the normal course of business, subject to the usual credit terms and requirements of IDC, a working capital facility to be approved and advanced by IDC to the Company as PCF; and
- manage and optimise the legally separate but interlinked business rescue proceedings of THD, Voermol and THSSA in parallel with the THL Business Rescue.

6.1.5. The Vision Transactions

6.1.5.1. The Vision Parties are:

- Terris AgriPro (Mauritius), registered and incorporated in Mauritius;

- Remoggo (Mauritius) PCC, a fund registered and incorporated in accordance with the laws of Mauritius;

- Guma Agri and Food Security Ltd (Mauritius), registered and incorporated in Mauritius; and

- Almoiz NA Holdings Ltd, registered and incorporated in accordance with the laws of the United Arab Emirates.

6.1.5.2. The Vision Parties' primary objective is to ensure both the successful turnaround of THL in the short-term as well as the continuity of the business in the long-term. To achieve this objective, the Vision Parties have formulated a detailed business plan for THL, which includes a substantial capital expenditure programme to optimise the THL's South African operations. It is the parties' belief that this business plan can facilitate THL's return to sustained profitability and growth over time.

6.1.5.3. Key details of the Vision Transactions are summarised below:

- The Vision Parties have entered into agreement with the Lender Group to acquire 100% of the secured Lender Group Claim through a binding agreement signed on 20 November 2023, and anticipated to be completed after the Publication

date (see above) but before the required Meeting date (see above).

- The Vision Parties will, subsequent to acquisition of the Lender Group Debt, and subject to meeting all required regulatory conditions, implement a debt for equity swap, converting c.R4.1bn based on current balances of the former Lender Group debt by subscribing for new shares in THL.

- On a diluted basis, the above will result in existing Shareholders owning 2.7% (in aggregate) of all THL shares then in issue, and the Vision Parties collectively holding 97.3% (in aggregate) of all shares in issue.

- The authorised shares of THL amount to 5 000 000 000 shares. The issued shares of THL amounts to 135 112 506 shares. In terms of section 152(6)(a), the BRPs are authorised to determine the consideration for, and issue of, any authorised securities of the Company. The proposed issue would not require any increase in the currently authorised share capital of THL therefore not altering the rights associated with the class of Securities held be the existing Shareholders.

- There will be c.R3.6bn in remaining ex-Lender Group debt outstanding and owing by THL to the Vision Parties ("**Vision Debt**") and this will remain in place and will be restructured accordingly between THL and the Vision Parties on market related terms.

- Subject to the approval and Adoption of this Business Rescue Plan, the Vision Transactions will be subject to certain conditions, including legal, regulatory and other approvals common for transactions of this nature (in all relevant jurisdictions as applicable), which will potentially include (inter alia) Competition Commission approval (subject to legal counsel opinion on the matter) and potentially Takeover Regulation Panel ("**TRP**") approval. In order to maintain the JSE listing, THL (and the Vision Parties) will need to obtain certain dispensations and/or approvals as may be required from the JSE and/or TRP in order to implement the proposed transactions. In addition, the Company and BRPs, with the support of the Vision Parties, will need to secure confirmation from IDC that IDC will continue to provide a working capital facility to THL until at least the Closing Date.

- The aggregate of Distributions to Unsecured Creditors (over and above those already made,) will equate to R75m. The relevant Distributions will be shared among the Unsecured Creditors on a pro-rata basis. The entitlement of each Unsecured Creditor will be the percentage that their Claim bears to the total Concurrent Claims.

- Upon payment of the Distributions, any remaining Claims held by Unsecured Creditors will be Unenforceable against THL.

- For the avoidance of doubt, it is recorded that (i) IDC is under no obligation to continue providing a working capital facility to the Company and (ii) IDC will require the amount payable in respect of its Claim for PCF advanced to the Company to be paid in full or secured in full to its satisfaction before it will consider an application by the Company to advance a new working capital facility. The IDC will be under no obligation to increase or extend its existing PCF advanced to the Company.

6.1.6. **Applicable to the Vision Transactions:**

6.1.6.1. Key Stakeholders:

- SASA:

- On 29 November 2023, the Declaratory Application was dismissed with costs. The judgement in respect of such order will be handed down on 4 December 2023. Once the written judgement has been received, THL and the BRPs will consider applying for leave to appeal the decision.

- All the liabilities of THL towards SASA, whether occurring prior to or after the Commencement Date, will be treated in accordance with this Business Rescue Plan, as follows:

  - in respect of all amounts owing to SASA as at Commencement Date (i.e. c.R479m) ("**Pre-Commencement SASA**") shall be treated as an Unsecured Creditor;

- SASA shall be entitled in respect of the Pre-Commencement SASA Claim to a pro-rata share of any Distributions made to Unsecured Creditors in terms of this Business Rescue Plan, and the balance of the Pre-Commencement SASA Claim will become Unenforceable as outlined in this Business Rescue Plan;

- the BRPs suspended THL's obligation to pay all amounts accruing and payable to SASA under the SI Agreement ("**the SASA Payment Obligations**") from the Commencement Date until 31 March 2023, in terms of section 136(2)(a) of the Companies Act. According to the BRPs' calculations, the amount that would have become due and payable to SASA but for that suspension aggregates to c.R1.1bn ("**the Suspended SASA Claim**");

- it is the BRPs' opinion, that SASA is and should be treated as an Unsecured Concurrent Creditor in respect of the Suspended SASA Claim, and that the Suspended SASA Claim qualifies SASA for receipt of its pro-rata share of any Distributions made to the Unsecured Creditor body. SASA does not agree with this assessment and is of the opinion that the Suspended SASA Claim is payable in full;

- In an attempt to mitigate the impact on SASA (and potentially the wider sugar industry participants), the BRPs will endeavour to reach a settlement with SASA in respect of the treatment in respect of the Suspended SASA

Claim. Because settlement negotiations are ongoing and are being conducted on a confidential and '*without prejudice*' basis THL's proposed settlement terms have not been included in this Business Rescue Plan;

- in the event that a settlement cannot be reached between THL and SASA/Sasexcor, the Suspended SASA Claim will be treated as follows:

    - IDC has a security interest in respect of any export proceeds payable by Sasexcor/SASA to THL. As a result, any application of such export proceeds to a settlement and or otherwise will require IDC consent thereto;

    - all and any export proceeds owing and payable by Sasexcor to THL will be assigned and/or allocated to SASA, in (partial) settlement of the Suspended SASA Claim, subject to the IDC's consent;

    - all and any payment obligations that SASA owes to THL and/or has withheld from THL will be set off against the Suspended SASA Claim;

    - the treatment of the remaining outstanding amount ("**the SASA Outstanding Balance**") will depend on the <u>final</u> outcome of the Declaratory Application (i.e. after

any and all appeals have been finally exhausted);

- in the event that the Declaratory Application is finally determined in favour of THL (i.e. after any and all appeals have been finally exhausted) and it is confirmed that the BRPs *were* entitled to suspend the SASA Payment Obligations during Business Rescue, and subject to the written consent of IDC, the SASA Outstanding Balance will be treated as a Claim of an Unsecured Creditor, and SASA shall be entitled to its pro-rata share of any Distributions made to Unsecured Creditors, whereafter any balance outstanding will become Unenforceable as outlined in this Business Rescue Plan; or

- in the event that the Declaratory Application is not finally determined in favour of THL (i.e. after any and all appeals have been finally exhausted) and it is confirmed that the BRPs were not entitled to suspend the SASA Payment Obligations during Business Rescue, and subject to the written consent of IDC, the following will occur. The Suspended SASA Claim after application of any and all export proceeds due owing and payable by Sasexcor to THL as well as any other obligations that SASA owes to THL and/or has withheld from THL (c.R887m) is deducted from the Suspended SASA Claim and the then

remaining balance outstanding shall be deemed to be R256m ("**the SASA Deemed Balance**"). The SASA Deemed Balance shall be paid by THL to SASA as follows: (i) R128m will be paid within 10 business days of delivery of a final order in the Declaratory Application (i.e. after any and all appeals have been finally exhausted); and (ii) the remaining approximately R128m will bear interest at the prime rate and will be settled in four equal bi-annual payments in advance, with the first payment commencing six months after delivery of the final order in the Declaratory Application (i.e. after any and all appeals have been finally exhausted); and

- without detracting from what is set out in paragraph 1.4 above, and without prejudice to the BRPs' right to suspend THL's payment obligations under the SI Agreement, whilst THL remains in Business Rescue, THL intends to discharge its future payment obligations towards SASA in accordance with the Sugar Industry Agreement. The BRPs remain of the opinion that neither SASA nor Sasexcor are entitled to apply set-off or to withhold payment of any amounts due to THL and reserves its rights in that regard.

6.1.6.2. In order for the Vision Transactions to be completed, this will require (inter alia):

- the Adoption of this Business Rescue Plan;

- agreement being reached with IDC with regard to the ongoing provision of PCF to THL until at least the completion of the Substantial Implementation Date; and

- the meeting of all conditions precedent contained in the final Vision Transactions agreement(s), including all required regulatory approvals (in all relevant jurisdictions as applicable).

6.1.6.3. The BRPs and their advisors expect to conclude binding terms of agreement with the Vision Parties during December 2023/January 2024. The final Closing Date for the Vision Transactions will be dependent on the timelines for the relevant regulatory approvals (in all relevant jurisdictions as applicable) being secured.

It is the agreed intention of the BRPs, Management and the Vision Parties to complete the Vision Transactions (and thereafter full implementation of the Business Rescue Plan) as time efficiently as possible. Below is a high-level forecast timetable following voting on the Business Rescue Plan, assuming plan Adoption on 8 December 2023. Note the dates below are purely estimates based on past experience and should be used as a rough guide only.

Shareholder approval process (if required):

- Definitive transaction agreements signed in December 2023/January 2024:
  - Subscription agreement;
  - Shareholder loan agreements for residual debt;
  - Other (as may be required).

- SENS announcement detailing the transaction on the next business day after signing.

- JSE circular and dispensations submissions to JSE around end-January 2024.

- JSE circular approval by JSE (noting dispensations will be required) around end-February 2024.

- JSE circular distribution to shareholders around early March 2024.

- General meeting of shareholders to vote on the transaction around late March 2024.

- Announcement of general meeting outcome on the same or next business day after general meeting.

Competition approval process (if required):

- Managed in parallel with the general meeting of shareholder's process.

- Large merger in SA: 90 calendar days is the maximum for Competition Commission South Africa ("**CompCom**") to consider +15 days for Competition Tribunal to consider (15 days is a rolling number and can be extended).

- However, given failing firm submission and concerns, this can be accelerated significantly.

- Competition filings potentially also required in Mozambique, Zimbabwe and Botswana, which are expected to take no more than 6 months.

Secured lender release of security:
To be managed in parallel with shareholder approvals.

IDC approval process in respect of PCF and any additional facilities for working capital:
To be managed in parallel with shareholder approvals.

Exchange control application process (if applicable):
Expected in 2 months from submission. To be managed in parallel with shareholder approvals.

6.1.6.4. The BRPs continue with their endeavours to secure the ongoing PCF funding required from the IDC for the balance of the 2023/2024 sugar season and the closing of the Vision Transactions – and subsequent full implementation of the Business Rescue Plan.

6.1.7. **Alternative transactions in the event of a failure to secure approval for the issue of new THL shares to the Vision Parties by way of a debt/equity swap**

6.1.7.1. In the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of THL shares to the Vision Parties to be effected (resulting in such parties not holding the anticipated 97.3% of the then shares in issue), the BRPs and the Vision Parties have agreed that, as an integral part of the Proposals and this Business Rescue Plan, the currently proposed Vision Transactions will be switched from those contemplating an issue of THL shares to transactions contemplating the acquisition by the Vision Parties of THL's assets and businesses (as going concerns) on the basis that:

- payment for such assets will be effected by way of a set off against the Secured Claims then held by the Vision Parties;
- suitable arrangements being made for payment of the full balance outstanding in respect of the IDC PCF;
- the sale of THL's assets and businesses will be to an entity nominated by the Vision Parties;
- Unsecured Creditors and Secured Creditors would otherwise be treated as contemplated in the currently contemplated Vision Transactions;
- the Vision Parties will ensure that THL has sufficient funds to enable it to implement this Business Rescue Plan;
- the sale of THL's assets will be subject to the requisite regulatory and other approvals common for transactions of this nature in each jurisdiction;
- once it has sold its assets and businesses (as going concerns), THL will be delisted from the JSE and liquidated (noting that its shares would have nil value); and

- to the fullest extent possible Vision Parties and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders, other than Shareholders and the JSE as a result of the delisting/liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated Vision Transactions been implemented.

6.1.8. **Alternative transactions in the event of a failure at the Meeting to Adopt this Business Rescue Plan encompassing the Vision Transactions**

6.1.8.1. In the event of a failure of this Business Rescue Plan to be Adopted at the Section 151 Meeting, the following factors should be carefully considered in relation to any subsequent conclusion of an alternative transaction, noting in particular the required timing to achieve same.

- The SA Sugar business operates on a highly seasonal basis with materially variable working capital requirements (entailing annual additional peak funding estimated at around R1.7bn) – dependent on industry dynamics, production and sales cycles.

- A significant investment process is undertaken annually from December to March (referred to as off-crop capital expenditure and/or maintenance ("**off-crop programme**")) to enable critical pro-active maintenance work to be performed ahead of the next season. Spending commitment towards the off-crop programme is required from as early

as September onwards. For the ensuing off-crop programme, THL will look to the investing parties for guidance and assistance in securing the required funding.

- The introduction, negotiation, documentation and closing of any alternative transaction would require a significant amount of time to achieve. The time available to meet this requirement and the likelihood of success would be dependent on (i) Lender Group/Vision Parties support by virtue of both their voting power and (significantly) their security rights (the underlying Claims have been purchased by the Vision Parties); (ii) significant working capital funding support (i.e. agreement with IDC or an alternative financier in replacement of IDC); and (iii) creditor support in respect of any delays related to the further amendment of the Business Rescue Plan or its implementation etc.

- In the absence of continued Lender Group/SEP and working capital funding support, there would be a limitation on the ability to continue running the SA Sugar business in the ordinary course (in particular in relation to the off-crop programme).

- Any alternative transaction proposals should therefore be carefully considered in terms of the required support as outlined above, in addition to the timing and execution risks that may be relevant. Should Creditors wish for any such alternative proposal to be pursued, this Business Rescue Plan would need to be revised and a new Section 151 meeting of creditors convened to vote

on such a revised Business Rescue Plan at a future date.

- Any motion (at the Meeting) to amend the Business Rescue Plan and consequently adjourn the Meeting should therefore be accompanied by clear plans for working capital funding and off-crop programme funding from such parties proposing such a motion, to the satisfaction of the BRPs.

6.1.9. Other Features of the Proposals

6.1.9.1. The THSSA and Voermol business rescues will operate in tandem with this Business Rescue Plan and will thus not result in any additional cash realisations to THL.

6.1.9.2. Voermol is a dormant company in business rescue with no assets and which is earmarked to eventually be wound up/deregistered. The division of THL, named Voermol, will remain in the Company. There will be no Distributions to the creditors of the Voermol legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to Voermol will result in Voermol having a commensurate claim in THSSA and THSSA in turn against THL, its principal. Any distribution received by Voermol from THSSA will be distributed by Voermol to the Creditors who chose to submit their claims with Voermol.

6.1.9.3. THSSA (as agent of THL) nominally owns THL's (the beneficial owner) 100% shareholding in THA and 100% of the shares in Sociedade de Assistencia a Agricultura e Industria S.A. (registration number

500253153), a company duly incorporated in accordance with the laws of Portugal. There will be no Distributions to the creditors of the THSSA legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to THSSA will result in THSSA having a commensurate claim in THL, its principal. Any distribution received by THSSA from THL will be distributed by THSSA to the Creditors who chose to submit their Claims with THSSA.

6.2. Employee Matters

6.2.1. Whilst the Vision Transactions do not contemplate retrenchments, the BRPs are continuing with their process of business optimisation, together with Management, and as such have not yet entirely ruled out the possibility of employee retrenchments. As a result, this Business Rescue Plan envisages a possible section 189 retrenchment process (in terms of the LRA), if so required. The Business Rescue Plan contemplates the Company meeting its relevant retrenchment financial obligations to all employees affected by any proposed section 189 process (in terms of the LRA) and/or in accordance with the Basic Conditions of Employment Act 75 of 1997.

6.2.2. THL is currently contractually obliged to provide monthly post-retirement medical aid benefits for approximately 900 persons. Such persons are either (i) former employees of THL or other members of the THL Group, or their beneficiaries, who are now retired pensioners, or (ii) current employees of THL or other members of the THL Group, who may become entitled to these benefits when they retire. In this regard:

- These benefits were provided to employees who joined the company on or before 30 June 1996 following which this scheme was closed to new entrants.

- In terms of THL's post-retirement medical aid benefits policy, the post-retirement medical aid benefit provided is limited to 50% of the cost of contributing to the Discovery Health scheme's Classic Comprehensive Plan. Presently, this equates to a maximum monthly contribution of R6,626.00 in respect of a married recipient, and R3,405.00 for a single recipient.

- At present, the expected accrued liability for the provision of post-retirement medical aid benefits to all recipients, as at 31 October 2023, is c.R347m (determined actuarially in line with International Financial Reporting Standards). Of this amount, c.R12.6m relates to current employees and c.R325.8m relates to retired employees. The monthly cash flow impact to THL is c.R3.6m.

- In the event of liquidation of THL the above claims would be entitled to nil value/distributions and the beneficiaries would thus receive no benefits from this scheme at all.

- As there are no unencumbered assets of significance, there is currently no available funding to settle any of the abovementioned obligations in respect of these Business Rescue proceedings. The BRPs are exploring ways in which to mitigate this situation.

- In light of the current Business Rescue proceedings, and subject to funding availability, the BRPs intend and hereby reserve their rights to engage with the recipients of these post-retirement medical aid benefits, to offer once-off lump sum payments or a payment arrangement to buy THL out of

its current liabilities to provide these post-retirement medical aid benefits on an ongoing basis.

- These buy-out offers will be negotiated and concluded on terms and conditions acceptable to the BRPs and to the extent necessary the Vision Parties, and are aimed at ensuring not only that THL is able to reduce and/or eliminate its unfunded liabilities, but also in an endeavour to secure a financial benefit to the recipients who accept a buy-out offer, where there are currently none. In the absence of such agreement being concluded any such Claim will be regarded as an Unsecured Claim held by an Unsecured Creditor and after any Distributions will become Unenforceable as against the Company.

6.3. **Effects of the Proposal:**

6.3.1. Extent to which the Company is to be released from the payment of its debts and the extent to which any debt is proposed to be converted to equity (Section 150(2)(b)(ii)):

6.3.1.1. Distributions will be made to Creditors as outlined in paragraph 6.3.4. Following the final Distributions being made, any remaining unpaid portions of the Claims will become Unenforceable and no Creditor will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.

6.3.1.2. The ex-Lender Group Claims acquired by the Vision Parties will be partially converted into equity in THL as described in paragraph 6.1.5.3.

6.3.2. Ongoing role of the Company and the treatment of existing contracts (Section 150(2)(b)(iii)):

6.3.2.1. Upon the implementation of the Vision Transactions, the Business Rescue will be terminated and the Company handed back to its directors. Subject to the Vision Transactions being successfully implemented (and the alternative transactions not being employed), THL will remain listed on the JSE and at the appropriate time a request will be made to the JSE for the suspension of the shares to be lifted.

6.3.2.2. Where the BRPs have determined it to be in the best interests of Creditors to continue with counterparty agreements concluded with the Company, such agreements have continued.

6.3.2.3. Agreements concluded with the Company are, however, subject to ongoing evaluation and negotiations by the BRPs in an effort to mitigate risks and optimise the success of the Business Rescue.

6.3.2.4. Section 136(2)(a) of the Companies Act allows the BRPs to entirely, partially, or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under an agreement (including any form of *sui generis* agreement) to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue. All Company obligations are continuously under review and the BRPs reserve their rights in this regard.

6.3.2.5. It is recorded that, where the BRPs have elected to suspend the Company's payment obligations, the aggrieved party may assert a Claim against the

Company only for damages in terms of section 136(3) of the Companies Act. Such damages claim and/or suspended obligation amounts owing and unpaid will be treated as an Unsecured Claim of an Unsecured Creditor, and any balance remaining after any Distribution in terms of this Business Rescue Plan will become Unenforceable against THL.

6.3.2.6. As a reminder to Affected Persons, it is confirmed that an application has been made to the High Court seeking the High Court's declaration that the BRPs have the right to suspend THL obligations to SASA under the SI Agreement. Separate notices have been circulated to Affected Persons in this regard The relevant Court hearing was held on 12 and 13 September 2023. On 29 November 2023, the Declaratory Application was dismissed with costs. The judgement in respect of such order will be handed down on 4 December 2023. Once the written judgement has been received, THL and the BRPs will consider applying for leave to appeal the decision.

6.3.2.7. The BRPs further have the right, in terms of section 136(2)(b) of the Companies Act, to apply to the High Court to cancel and/or terminate any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and that would otherwise become due during the Business Rescue.

6.3.2.8. Counterparties to all agreements in which the Company's obligations are suspended or cancelled should be guided by the moratorium which excludes a claim by a contractual counterparty for specific

performance. Such party will have a Claim for damages in terms of section 136(3) of the Companies Act. Where that Claim is not reflected in Annexure **A**, the course of action available to that party is to submit a claim for damages as a Disputed Creditor and to follow the Dispute Mechanism set out in paragraph 16.

6.3.3. Property of the Company that is to be available to pay Creditors' Claims in terms of the Business Rescue Plan (Section 150(2)(b)(iv))

6.3.3.1. Other than the issue of shares by the Company, or as otherwise specifically provided for in this Business Rescue Plan, it is not contemplated that any assets of the Company will be available to pay Creditors' Claims.

6.3.3.2. To the extent that any assets were to be made available to pay Creditors' Claims, readers are referred to paragraph 5.3.6.5 which outlines all the assets of the Company that have been encumbered via security held by the Lender Group, and now to be acquired by the Vision Parties.

6.3.3.3. As a result, all movable assets, bank accounts, inventory and trade debtors (and any related insurance claims) are encumbered.

6.3.3.4. In relation to fixed assets, refer to Annexure **E** which outlines all related properties and relevant encumbrances.

6.3.3.5. Following the BRPs review, there are a very small number of properties which are unencumbered which have either small or negligible values attributed.

6.3.3.6. Accordingly, there are no material unencumbered assets available which would result in any value of significance being distributed to Unsecured Creditors in satisfaction of their claims other than as specifically provided for in this Business Rescue Plan.

6.3.4. Effect on Creditors (Section 150(2)(b)(v))

6.3.4.1. Secured Creditors:

- No Distributions are expected to be made in relation to the Secured Creditors' Claims;
- c.R4.1bn, based on current balances of the Lender Group's Claims which are being acquired by the Vision Parties, will be converted to equity resulting in the Vision Parties owning 97.3% of the issued shares of THL;
- The remaining Lender Group/Vision Parties indebtedness of c.R3.6bn will be restructured on terms anticipated to be more favourable to THL;
- The Company, with the support of the Vision parties, will secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process.

6.3.4.2. Unsecured Creditors:

- Notwithstanding a strict application of the provisions of the Companies Act, under which it would be anticipated that Unsecured Creditors would not be entitled to any recovery on their claims:

  - payments made to date to Unsecured Creditors (primarily small scale farmers) amount to R1.3bn; and

  - further Distributions will be made to Unsecured Creditors (on a pro-rata basis) in the amount of R75m. The entitlement of each Unsecured Creditor will be the percentage that their Claim bears to the total Concurrent Claims.

- Subsequent to these Distributions having been paid to Unsecured Creditors, any remaining Claims will become Unenforceable.

6.3.4.3. Other than as specifically provided for in this Business Rescue Plan, Distributions will be made in the following order of priority in accordance with the Business Rescue Plan for the duration of Business Rescue. This ranking is in accordance with the provisions of the Companies Act.

6.3.4.4. Proceeds from Unencumbered Assets, if any, will be applied as follows:

- Business Rescue Costs will be funded out of the ongoing PCF Facility. To the extent that there is insufficient funding available to cover these costs,

funds will be deducted from the net proceeds of any asset disposals or claim recoveries;

- PCF Employees to the extent that amounts due and payable, for services rendered during Business Rescue, that remain unpaid;
- Unsecured PCF Creditors, who will rank in the order in which the PCF was provided;
- Preferent employees;
- Unsecured Creditors (if there is any residual); and
- Shareholders (if there is any residual).

6.3.5. Expected Distributions to Creditors:

6.3.5.1. Distributions arising pursuant to the implementation of this Business Rescue Plan are expected to significantly exceed those calculated by BDO in the alternative scenario of an immediate liquidation of the Company.

6.3.5.2. This is already the case for Unsecured Creditors due to the pre-Commencement Date Unsecured Creditors' Claims which have been paid amounting to c.R1.3bn. Furthermore, Distributions to Unsecured Creditors will be enhanced by the concessions agreed to by the Vision Parties, which will result in a further R75m being paid to Unsecured Creditors.

6.3.5.3. To the extent that agreements concluded between the Company and counterparties and/or obligations are cancelled, modified, suspended or restructured, any

proven and accepted Claim for damages will be treated an Unsecured Creditor and will accordingly be entitled to participate, pro-rata, in the R75m aggregate Distribution noted above.

6.3.5.4. Claims for damages, whether contractual or delictual against the Company, once determined through the Dispute Mechanism paragraph 16 or by the High Court or similar proceedings, as the BRPs may consent to, will be treated as follows–

- as an Unsecured Creditor, unless the claimant holds security for such Claim;

- shall be limited to general damages as determined through the Dispute Mechanism or by the High Court or similar proceedings as the BRPs may in their sole discretion consent to. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable at the time of entering into the relevant contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of an agreement so as to be said to flow naturally and generally and not to be too remote; and

- shall exclude all indirect, punitive, special, incidental, or consequential loss, including injury to business reputation, loss of profits and/or loss of business opportunities.

6.3.5.5. If this Business Rescue Plan is Adopted and implemented by payment of a final Distribution in

accordance with this Business Rescue Plan, any remaining Claims will become Unenforceable against the Company by the relevant Creditor unless otherwise provided for in this Business Rescue Plan.

6.3.5.6. For the avoidance of doubt, any Claims which SARS may have against the Company in respect of tax debts owed prior to the Commencement Date, among other things, under section 22(3) of the Value Added Tax Act 89 of 1991, the Income Tax Act 58 of 62 or in respect of an audit under the Tax Administration Act 28 of 2011 for any date or year of assessment preceding the Commencement Date, will be Unenforceable under and in terms of this Business Rescue Plan. Any income tax debt owed to SARS prior to the Commencement Date will become unenforceable upon Adoption of the Plan.

6.3.5.7. Any VAT related claims from SARS and any other SARS Claims arising from transactions that occurred prior to the Commencement Date have been recognised as Concurrent Claims in the Business Rescue Plan and SARS will be treated in the same manner as all other Unsecured Creditors and therefore will be entitled to the same Distribution as all other Unsecured Creditors.

6.3.5.8. This means that upon payment of a final Distribution in terms of this Business Rescue Plan, any remaining unpaid portions of the Claims will have become Unenforceable (unless otherwise provided in this Business Rescue Plan) and no Creditor, including SARS, will be entitled to enforce the balance of its Claims, or any portion of its Claims, against the Company.

6.3.5.9. Creditors voting in favour of the Business Rescue Plan do not thereby accede to the discharge of the whole or part of their debt in terms of section 154(1) of the Companies Act. The consequence of the Adoption and implementation of the Business Rescue Plan, Creditors' remaining Claims will become Unenforceable against the Company in terms of section 154(2) of the Companies Act.

6.3.5.10. After payment of the final Distributions and prior to a notice of substantial implementation being filed with the CIPC, the Company will be returned to its director(s).

6.3.5.11. Claims will only become Unenforceable in accordance with the Business Rescue Plan upon both the Adoption and subsequent implementation of this Business Rescue Plan. In the event of any breach by the Company of its obligations to creditors in terms of the Business Rescue Plan, or in the event the Company is placed in liquidation other than as catered for in this Business Rescue Plan under paragraph 6.3.5.96.3.5.96.3.5.10, the full balance due to Creditors in terms of their original Claims against the Company shall immediately become due, owing and payable by the Company to the creditors, subject to the provisions of section 135 of the Companies Act.

6.3.6. Effect on Holders of the Company's issued Securities

- The authorised shares of THL amount to 5 000 000 000 shares. The issued shares of THL amounts to 135 112 506 shares. In terms of section 152(6)(a), the BRPs are authorised to

determine the consideration for, and issue of, any authorised securities of the Company.

- The Vision Parties will subscribe for shares in THL such that, after the issue of the new shares, the Vision Parties will in aggregate own 97.3% of the issued shares in THL.

- The Vision Parties will settle the subscription price for such shares by means of set off against its Claims against THL in an amount of c.4.1bn based on current balances, leaving a Secured Vision Lender Claim of c.R3.6bn.

- The effect of this on existing Shareholders will be to dilute the existing Shareholders to a shareholding equating to 2.7% of the then issued shares.

6.3.7. Conditions that must be satisfied in order for the Business Rescue plan to come into operation (Section 150(2)(c)(i)(aa)) -

6.3.7.1. For this Business Rescue Plan to come into operation it must be approved by more than 75% of the creditors' voting interests that were voted and at least 50% of independent creditors' voting interest, if any, that were voted in accordance with the provisions of section 152(2) of the Companies Act at the meeting convened for this purpose in terms of Section 151 of the Companies Act.

6.3.7.2. To the extent that a Business Rescue Plan alters the rights associated with any class of Securities held by Shareholders, such Shareholders are entitled to vote

on the Business Rescue Plan. This Business Rescue Plan will not alter the rights associated with the class of Securities held by Shareholders. Accordingly, Shareholders are not required nor entitled to vote on the Business Rescue Plan in terms of section 152(3)(c) of the Companies Act.

6.3.7.3. It is noted furthermore that, once this Business Rescue Plan has been Adopted, it may be necessary, pursuant to section 41(3) of the Companies Act, and pursuant to the JSE's Regulations, *inter alia* a special resolution of Shareholders will be required as a condition precedent to the implementation of the Vision Transactions.

6.3.7.4. Implementation of the Proposals implicit in this Business Rescue Plan will be conditional upon (inter alia) the following:

- agreement between the Company, Vision Parties and IDC with regards to the ongoing provision of working capital to THL by IDC and the treatment of the relevant underlying security; and

- the meeting of all conditions precedent contained in the final transaction agreements.

6.3.8. Effect on Employees (Section 150(2)(c)(ii)) - The BRPs are continuing with their process of business optimisation, together with Management, and as such have not yet entirely ruled out the possibility of employee retrenchments. This Business Rescue Plan therefore contemplates a possible section 189 retrenchment process (in terms of the LRA), should it be required.

6.3.9. Effect on Director(s) and Management - Directors have continued to exercise the functions of a director, subject to the authority of the BRPs. The majority of the board members that were in office as at the date of commencement of business rescue proceedings have resigned. Currently there are two remaining board members, both of whom are executives.

6.3.10. Effect on subsidiaries – The investments in and claims against subsidiaries of the Company will be treated in accordance with the Proposals section of this Business Rescue Plan. With the requisite support of PCF Lenders, the Company will provide direct or indirect financial assistance to its related and inter-related companies/equity interests, which financial assistance may include without limitation the provision of loans, the issuance of guarantees (or other like instruments and/or Securities) and/or the subordination of claims owing to the Company by related or inter-related companies.

7. Binding nature of this Business Rescue Plan

7.1. The BRPs draw the attention of Affected Persons to the provisions of section 152(4) of the Companies Act.

7.2. This section provides that once a Business Rescue Plan has been Adopted, it is binding on the Company, its Creditors (including all Claims, whether accepted by the BRPs as Creditors, whether Disputed Creditors, conditional Claims, prospective Claims, damages Claims and/or unliquidated Claims) and every holder of the Company's Securities (the latter in terms of the provisions of section 146(d) and 152(3)(c) of the Companies Act) whether or not such a Person was –

7.2.1. present at the Meeting to determine the future of the Company;

7.2.2. voted in favour of the Adoption of the Business Rescue Plan; or

7.2.3. in the case of Creditors, has proven a Claim against the Company.

8. Moratorium (Section 150(2)(b)(i))

8.1. The moratorium imposed by section 133 of the Companies Act prohibits any legal proceedings, including enforcement action, against the Company, or in relation to any property belonging to the Company or lawfully in its possession, from being commenced or proceeded with for the duration of the Business Rescue except with the written consent of the BRPs or with the leave of the High Court.

8.2. This means, among other things, that Affected Persons will not be able to proceed in any forum against the Company for, among other things, the non-payment of debts during Business Rescue, except with the written consent of the BRPs or with the leave of the High Court.

8.3. The moratorium in relation to the Company took effect on the Commencement Date and will remain in place for the duration of Business Rescue, until the termination of Business Rescue as defined in paragraph 12.

9. Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi))

9.1. Through the implementation of this Business Rescue Plan the BRPs intend to optimise the returns for Creditors by implementing the Vision Transactions.

9.2. With this, the Business Rescue of the Company is intended to rescue the Company or, in the alternative, achieve a better return compared to liquidation as outlined in paragraph 5.3.3.

9.3. The financial benefits to Affected Persons through the Adoption and implementation of the Business Rescue Plan, as compared to a liquidation of the Company, are as follows –

9.3.1. Creditors / Liquidation Dividend –

9.3.1.1. the Distributions that all Creditors would have received in the alternative scenario of a liquidation of the Company as at the Commencement Date would be materially lower than the Distributions that have already been paid, together with those that are contemplated to be received by Creditors as a result of this Business Rescue Plan. This is expected to be true for both Secured Creditors and Unsecured Creditors.

9.3.2. Timing –

9.3.2.1. It is the view of the BRPs that typically a business rescue is concluded in a far shorter time frame than a liquidation of this nature.

9.3.3. Employees –

9.3.3.1. Subject to the Business Rescue Plan being implemented the majority of employees of the various entities will remain employed. This will, however, be subject to:

- the Company possibly commencing with a section 189 process (in terms of the LRA);
- any retrenched employees will be entitled to their full retrenchment packages.

9.3.3.2. By comparison, in a liquidation –

- All jobs will immediately be suspended and, subject to the liquidator(s)'s intentions, may be lost immediately unless the liquidator agrees to continue trading against an indemnity. In the current circumstances, it is considered to be highly unlikely that a liquidator would agree to continue trading or that a liquidator would be indemnified against trading losses.

- Employees would in such circumstances be entitled to receive a maximum amount of R32,000 per employee, to the extent that there are funds available, and would be treated as an Unsecured Creditor for any balance.

- Employees will only receive payment once the final liquidation and distribution account has been approved at the end of the liquidation process.

9.3.3.3. SARS –

- SARS ranks as an Unsecured Creditor under Business Rescue, whereas, under liquidation, SARS would rank as a statutory preferent creditor. In a liquidation, any dividend to Unsecured Creditors would be reduced by the Claim of SARS.

9.3.4. <u>Shareholders</u> –

9.3.4.1. In comparison to a liquidation scenario, in which shareholders would receive no return or nil cents in the Rand, this Business Rescue Plan envisages shareholders retaining 2.7% of the then issued shares

of the Company, which shareholding remains listed on the JSE.

9.3.5. Socio-economic impact in South Africa –

9.3.5.1. Direct employment:

- In South Africa, THL's total employment comprises 2,563 employees as of 31 March 2023 who earned remuneration totalling c.R850 million which contributed substantially to thousands of households, including those within rural areas. **Through the Proposals, the vast majority of employment positions will be saved.**

9.3.5.2. Indirect employment:

- In South Africa, THL generated a total economy-wide impact of 25,563 employment opportunities. The economy-wide impact contributed 0.22% to employment in South Africa along with an economy-wide effect measuring c.R7.95 billion. **The rescuing of SA Sugar as contemplated in this Business Rescue Plan will result in the avoidance of any material impact of the tens of thousands of indirect employment positions noted above.**

9.3.5.3. Growers (including small-scale growers):

- THL remains committed to large and small-scale empowerment farming and during the 2023 financial year paid its growers c.R2.9 billion for sugarcane delivered to its Mills. The Company's SA Sugar operation sources c.43% of its sugarcane from over 15,000 black farmers and cooperative members. Uzinzo Sugar Farming, THL's

transformational partnership, remains the largest black grower in the South African sugar industry. **This Business Rescue Plan provides for continuity for growers.**

9.3.5.4. Land reform and restitution:

- THL recognises that land reform is primarily an issue of basic human rights. Under the land reform programme, the Company works with two categories of farmers: restitution communities and land reform growers farming for their own account. Typically, restitution communities acquire land, through a land claims process, as a group for the benefit of many beneficiaries. With land reform growers, on the other hand, the beneficiary is the applicant.
- The main objective of the restitution programme is to unlock the economic benefit of the land for the previously marginalized communities. It is also to enable communities, majority being rural communities, to drive the local economic development efforts in their local municipalities.
- THL has partnered with 13 restitution communities overseeing 6,000 hectares across South Africa in the sugarcane growing areas. Through this partnership, THL has been able to accelerate the implementation of the sugarcane development programme and rural development efforts. Communities have created employment opportunities, facilitated the transfer of agricultural and administrative skills and supported community upliftment activities.
- **This Business Rescue Plan provides for continuity in respect of such initiatives.**

9.3.5.5. Local taxes:

- Tax revenue consists of corporate taxes, personal taxes paid by the Company on behalf of its employees (including for example any taxes on salaries and wages and unemployment insurance) as well as any indirect taxes paid.
- Despite the Company having an assessed tax loss in respect of corporate taxes, it paid c.R82 million in taxes as a result of its operational and capital expenditure. The estimated direct, indirect and induced impact of THL's tax payments elsewhere in the economy are to the value of c.R482 million, c.R448 million, and c.R930 million, respectively.

9.3.5.6. Suppliers:

- THL's contribution to output, if its initial operational and capital expenditure are included, was c.R6.47 billion in 2021. Adding all the direct, indirect and induced impacts generated an estimated economy-wide effect measuring R24.8 billion.
- Number of suppliers as of March 2023 (excluding cane growers, statutory spend, imports): 1,420.
- Number of black owned suppliers: 701 or 49,4%.
- Number of black women owned suppliers: 610 or 43%.
- Number of Exempt Micro Enterprises and Qualifying Small Enterprises Suppliers (<R50 million per annum revenue): 1,169 or 82,3%.
- The Company has placed an emphasis on its Localisation Policy (refer below) within the operations and through the procurement department, which would increase these percentages in future.

- **This Business Rescue Plan provides for continuity for such suppliers.**

9.3.5.7. Other local businesses:

- Local communities and governments look up to the Company to facilitate equitable access to economic opportunities that empower individuals and enterprises to develop through employment, skills development, enterprise development and procurement opportunities. Rural and farming communities also look to the Company to support them in addressing issues of safety, health and environment.
- The Company's Localisation Policy was developed for THL to be proactive in the communication, management and facilitation of inclusive development and local participation opportunities with its local stakeholders and facilitate the implementation of Enterprise and Supplier Development interventions to improve the competitiveness or business-readiness of local Small, Micro and Medium Enterprises ("**SMME's**").
- Aligned with the policy, THL is in the process of implementing iThuba Centre, a community-based platform which local businesses can approach to be informed of available opportunities and requirements to qualify.
- **This Business Rescue Plan provides for continuity for such businesses.**

9.3.5.8. Mill clinics:

- The Company continues to be committed to supporting the government's commitment to the Sustainable Development Goals and participating

in all associated initiatives. THL values the contribution made by its employees and the Company works with them to invest in their health and well-being. Employees access primary healthcare services at on-site clinic facilities. THL funded clinics and hospitals screen, test, treat and seek to prevent diseases among employees and community members. Stakeholder engagement and corporate communication efforts regularly include matters of health and disease prevention in messages to workers and communities. An amount of c.R100 million was invested in health-related activities during 2021.

9.3.5.9. Education:

- Education is vital for the social and economic development and upliftment of any community and an essential tool to alleviate poverty and uplift future generations. The Company actively participates in the improvement of education in South Africa by partnering with government and other organisations, as well as schools to support literacy, science, technology, engineering, and mathematics ("**STEM**") programmes as well as the provision of quality school infrastructure for schools in rural KwaZulu-Natal. To date, the Company has invested c.R10 million in 13 rural schools in the iLembe and King Cetshwayo District Municipalities in KwaZulu-Natal and c.R7 million in education initiatives, including the ongoing provision of water and electricity to several schools, transport, maintenance, schoolbooks, furniture and bursaries.

- Within KwaZulu-Natal, THL has supported PROTEC, a leading South African non-profit organisation, operating in the field of developing STEM skills for gifted under-privileged students. This year, PROTEC together with its sponsors, are celebrating the graduation of 31 former students as they qualify with tertiary degrees ranging from B Eng Technology through to BSc Chemical Engineering.
- THL continues to play an active role in nurturing and growing talent for our own business, the sugar industry and the broader KwaZulu-Natal economy. The Company has 106 learners completing a range of programmes (engineers-in-training, interns, apprenticeships, learnerships and graduates) of which 92% are African, and 42% are female. The Company's focus on nurturing talent plays a critical role in the province's broader agenda of accelerating diversity and ensuring representation of Africans and females within management roles. Outside of these programmes, the Company continues to invest in its employees and over the last three years has invested R10.5 million in training and development.

10. Risks of the Business Rescue Plan

10.1. The implementation of the Proposals contained in this Business Rescue Plan may be subject to factors potentially not known to the BRPs as at the Publication Date. The following risks should be borne in mind, as they may adversely impact the ultimate outcome of the implementation of this Business Rescue Plan:

10.1.1. Unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever.

10.1.2. Existing litigation not progressing in the manner anticipated.

10.1.3. Any changes in legislation that impact the Business Rescue.

10.1.4. Any legal challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto.

10.1.5. Any regulatory delays and/or challenges of any nature whatsoever, howsoever arising, which includes multi-jurisdictions as well as any consequential statutory liability.

10.1.6. The ability to effect the flow of funds between international jurisdictions and legal entities.

10.1.7. Any unforeseen circumstances, outside of the control of the BRPs, of any nature whatsoever, howsoever arising, that impact the Business Rescue, which may include disruptions to trading from suppliers who are Unsecured Creditors.

10.1.8. Any damages or penalties claimed against the Company which were unforeseen.

10.1.9. Any potential retrenchment processes taking longer than expected.

10.1.10. Any labour action arising as a result of the retrenchment process or Business Rescue.

10.1.11. Unexpected liquidity events, withdrawal or restricted access to PCF provided by the PCF Lenders or delays thereto.

10.1.12. The final verification and agreement of Claims taking longer than expected.

10.1.13. Material discrepancies in the information made available to the BRPs by Management.

10.1.14. The deterioration and worsening of market conditions.

10.1.15. Any events and outcomes that may lead to the discovery of fraud, misrepresentation, corrupt practices, or other such matters relating to the Company prior to the implementation of the Business Rescue Plan.

10.1.16. The variation in exchange rates and/or commodity prices affecting the Business Rescue.

10.1.17. Ambiguous provisions in the Companies Act which are subject to varied interpretation.

10.1.18. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.

10.1.19. JSE, financial reporting and transaction approval mechanisms proving problematic.

10.1.20. The macro-economic conditions in Zimbabwe remain a concern. The poor economic outlook is exacerbated by the suspension of duties on basic commodities including sugar, which resulted in lower cost imported sugar (which has unfair cost advantages) competing against locally produced sugar. This is slowing down sales significantly domestically, which is the preferred market, with the lost sales volumes being redirected into lower-priced export markets. Government interventions in respect of grower issues as well as the wage arbitration where minimum wages were increased

to USD280 before the elections, had a significant impact on the cost base and cash flow of the business. The lack of security over land tenure due to the 99-year leases not signed creates further uncertainty.

11. PART C – Assumptions and Conditions of Proposal

11.1. PCF:

11.1.1. The successful implementation of the Business Rescue Plan and the Proposal is subject to receipt of the necessary PCF referred to in this Business Rescue Plan to the extent required and within the timing considered appropriate by the BRPs.

11.1.2. The BRPs remain in constant communication with the relevant PCF Lender(s) in this regard.

11.1.3. The BRPs shall use their reasonable endeavours to procure the fulfilment of the required PCF drawdowns as soon as practically possible.

11.1.4. If the above-mentioned PCF is withdrawn without replacement, the BRPs may be faced with little alternative but to apply to the High Court to terminate Business Rescue and commence liquidation proceedings.

12. Termination of Business Rescue (Section 150(2)(c)(iii))

12.1. The Business Rescue will end:

12.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s or the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;

12.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;

12.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or

12.1.4. if a High Court orders the conversion of the Business Rescue into a liquidation.

13. Substantial Implementation (Section 150(2)(c)(i)(bb))

13.1. Substantial Implementation will be deemed to have occurred upon the BRPs deciding, in their sole discretion, that the following has taken place:

13.1.1. the transactions contemplated this Business Rescue Plan have been concluded;

13.1.2. final Distributions have been paid to Creditors and/or an appropriate mechanism, acceptable to the BRPs in their sole discretion, such as the appointment of a Receiver, has been put in place for the payment of any remaining Distributions to Creditors; and

13.1.3. all Business Rescue Costs relating to the Business Rescue have been paid and settled in full or suitable arrangements acceptable to the BRPs have been put in place in this regard.

13.2. Notwithstanding the above, the Substantial Implementation of this Business Rescue will remain within the sole and reasonable discretion of the BRPs.

14. Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv))

14.1. The Vision Transactions constitute the acquisition by the Vision Parties of the Claims and security held by the Lender Group and the subsequent conversion by the Vision Parties of a portion of such Claims into new equity in THL. The projected balance sheets and projected income statements reflected below have been prepared based on Management's assumptions and do not incorporate any business improvement plans and/or other initiatives that the Vision Parties may implement. In respect of the forecasts for the 2024 financial year, the underlying assumptions are based on the information available as at 31 October 2023. In respect of the forecasts for the 2025, 2026 and 2027 financial years, the underlying assumptions are based on the information available at 31 May 2023, with adjustments made for material changes to assumptions that have emerged since that date.

For comparability, the information in the projected balance sheets have been reflected in the same way as the balance sheet at 31 October 2022 with reference to paragraph 5.3.6.77 .

THL INCOME STATEMENT	31 March 2025	31 March 2026	31 March 2027
REVENUE	**9 973**	**10 767**	**11 597**
SUGAR INDUSTRY RELATED ADJUSTMENTS	- 251	- 696	- 819
COST OF SALES	- 8 472	- 8 758	- 9 355
GROSS PROFIT	**1 250**	**1 313**	**1 423**
MARKETING AND SELLING EXPENSES	- 221	- 235	- 250
ADMINISTRATIVE AND OTHER EXPENSES	- 1 008	- 1 003	- 1 070
EXPECTED CREDIT LOSSES	- 1	- 1	- 1
FAIR VALUE ADJUSTMENTS TO BIOLOGICAL ASSETS	**37**	**3**	**2**
OTHER OPERATING INCOME	**331**	**366**	**392**
PROFIT/(LOSS) FROM OPERATIONS BEFORE IMPAIRMENTS AND NON-TRADING ITEMS	**388**	**443**	**496**
IMPAIRMENT (LOSS)/REVERSAL	-	-	-
OTHER NON-TRADING ITEMS	-	-	-
PROFIT/(LOSS) FROM OPERATIONS	**388**	**443**	**496**
NET FINANCE (COSTS) / INCOME	- 533	- 603	- 637
DIVIDEND INCOME	**12**	**12**	**13**
PROFIT/(LOSS) BEFORE TAXATION	- 133	- 148	- 128
TAXATION	- 122	-	-
PROFIT/(LOSS) FOR THE PERIOD	- 255	- 148	- 128

14.1.1. <u>Material Assumptions as per section 150(3)</u>

14.1.1.1. The Projected Income Statement assumes that the Vision Transaction is completed on 1 April 2024.

14.1.1.2. Inflationary rates utilised in the forecast:

- FY 2025: 5.5%
- FY 2026: 5.0%
- FY 2027: 4.75%

14.1.1.3. Exchange rates utilised in the forecast:

- FY 2025: R18.25 : USD1
- FY 2026: R18.50 : USD1
- FY 2027: R18.75 : USD1

14.1.1.4. World sugar prices utilised in the forecast:

- FY 2025: US¢ 20 per pound
- FY 2026: US¢ 19 per pound
- FY 2027: US¢ 18 per pound

14.1.1.5. Sugar production includes the continued benefit of the reinvestment in milling efficiencies and assumes that there are no adverse weather conditions (e.g. drought) during the forecast period.

14.1.1.6. Local market demand for sugar is forecast to grow at c.1% per annum and assumes that there will be no further changes to the Health Promotion Levy.

14.1.1.7. THL will remain listed on the JSE, therefore the associated costs including non-executive director fees are included in the forecast.

14.1.1.8. Business Rescue and other restructuring costs:

- FY 2025:
  - no business rescue costs have been forecast on the assumption that the business rescue will be substantially implemented once the Vision Transactions have been implemented; and
  - legal costs on progressing the various criminal and civil cases in respect of the accounting

irregularities identified in 2019 have been included in the forecast.

- FY 2026 and FY 2027: No such costs have been included in the forecast.

14.1.1.9. In respect of the Post Retirement Medical Aid ("**PRMA**") obligation, the forecast assumes that the monthly contribution in respect of pensioners continues to be met by the Company. (This is not binding on the Company, but merely for illustration purposes. The wording set out in paragraph 6.2 remains applicable.)

14.1.1.10. Operational support fees and direct cost recoveries from the non-South African sugar operations:

- Botswana:
  - dividends are declared and paid annually (assuming same profit profile);
  - all direct costs are recovered in cash; and
  - all operational support fees recovered in cash.
- Mozambique:
  - no dividends are assumed to be declared;
  - all direct costs are recovered in cash; and
  - operational support fees:
    - FY25: 50% of FY25 fee recovered in cash;
    - FY26: balance of FY25 fee and 100% of FY26 fee recovered in cash; and
    - FY27: 100% of fee recovered in cash.
- Zimbabwe:
  - no dividends are assumed to be declared;
  - all direct costs are recovered in cash; and
  - operational support fees:
    - FY25: 50% of FY25 fee recovered in cash;
    - FY26: balance of FY25 fee and 100% of FY26 fee recovered in cash; and
    - FY27: 100% recovered in cash.

14.1.1.11. Vision Debt

- The forecast assumes that Vision Debt of R3.6bn will remain owing as term debt, with interest incurred at a market-related interest rate and will not be serviced in cash but capitalised. (This is not binding on Vision Parties, but merely for illustration purposes).

14.1.1.12. The IDC post-Commencement Date funding has been assumed to remain in place at the current facility terms.

THL BALANCE SHEET	31 March 2025	31 March 2026	31 March 2027
ASSETS	**5 534**	**5 907**	**6 109**
NON CURRENT ASSETS	**3 156**	**3 266**	**3 350**
PROPERTY PLANT AND EQUIPMENT	1 878	2 015	2 135
RIGHT-OF-USE ASSETS	8	2	10
INTANGIBLE ASSETS	84	69	26
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 168	1 168	1 168
OTHER NON-CURRENT ASSETS	18	12	11
CURRENT ASSETS	**2 378**	**2 641**	**2 759**
INVENTORIES	838	945	1 061
BIOLOGICAL ASSETS	233	236	239
AMOUNTS OWING FROM GROUP COMPANIES	193	233	127
TRADE AND OTHER RECEIVABLES	1 073	1 179	1 285
CASH AND CASH EQUIVALENTS	41	48	47
EQUITY & LIABILITIES	**5 534**	**5 907**	**6 109**
CAPITAL & RESERVES	**- 2 247**	**- 2 395**	**- 2 523**
SHARE CAPITAL AND PREMIUM	6 389	6 389	6 389
ACCUMULATED LOSSES	- 8 627	- 8 775	- 8 903
OTHER RESERVES	- 9	- 9	- 9
LIABILITIES	**7 781**	**8 302**	**8 632**
NON CURRENT LIABILITIES	**364**	**358**	**361**
AMOUNTS OWING TO GROUP COMPANIES	-	-	-
POST-RETIREMENT BENEFIT OBLIGATIONS	354	350	346
DEFERRED INCOME - NC	-	-	-
PROVISIONS - NC	8	8	8
LEASE LIABILITIES - NC	2	-	7
CURRENT LIABILITIES	**7 417**	**7 944**	**8 271**
BORROWINGS	5 933	6 482	6 795
CREDITORS - PRE BR	612	612	612
SASA - PRE BR	448	448	448
SASA - POST BR	96	32	-
TRADE AND OTHER PAYABLES	322	367	413
DEFERRED INCOME	-	-	-
LEASE LIABILITIES	6	3	3

14.1.2. Material Assumptions as per section 150(3)

14.1.2.1. The Projected Balance Sheet assumes that the Vision Transaction is completed on 1 April 2024.

14.1.2.2. As per the Vision Parties' Proposal, Unsecured Creditors will be entitled to a distribution of R75m.

14.1.2.3. THD:

- THD is being wound down in accordance with its business rescue plan.
- The THD intergroup debtor is Unenforceable in line with the impact of THD's approved business rescue plan which entails a zero cents in the Rand distribution to Unsecured Creditors.

14.1.2.4. Intergroup creditors and/or debtors are taken over by Vision Parties (excluding the THD balance as per 14.1.2.3 which remains unenforceable).

14.1.2.5. The site restoration provision in respect of a mothballed sorbitol facility will be subject to the Unsecured Creditor Distribution should a Claim materialise.

14.1.2.6. SASA: Over the forecast period, and in line with paragraph 6.1.6.1, an amount of R256m remains payable to SASA with R128m being payable within 10 business days of the final determination and a further R128m being repaid in four equal bi-annual payments commencing within six months of the final determination. It has been assumed that the SASA Declarator Application outcome is known by September 2024.

14.1.2.7. The negative equity value reflected in Capital and Reserves continues to reduce as a result of the improved operations and expected profits in the forecast periods.

14.1.2.8. PRMA: The forecast assumes that the PRMA obligations are met by the Company through the continued payment of the monthly medical aid contributions in respect of pensioners. (This is not binding on the Company, but merely for illustration purposes. The wording set out in paragraph 6.2 remains applicable.)

14.1.2.9. Vision Debt:

- As per the Vision Transaction, it is assumed that the debt will be reduced to R3.6bn, with interest incurred at a market related interest rate and will not be serviced in cash, but capitalised. (This is not binding on Vision Parties, but merely for illustration purposes).
- The balance of the Vision Parties' claim is assumed to be converted to equity.

14.1.2.10. The forecast assumes that the IDC PCF facility is refinanced and that the replacement lender will provide sufficient facilities to support the working capital and capital reinvestment requirements of THL at market-related interest rates.

14.1.2.11. Trade Payables includes pre-Commencement Date claims as per Annexure **A** after the Unsecured Creditor Distribution has been made as per paragraph 6.3.4.2 above.

15. Existing litigation or alternate dispute resolution proceedings

15.1. Annexure J lists the matters already subject to a dispute resolution process as at the Publication Date.

15.2. Save as is otherwise provided for in this Business Rescue Plan and/or the Companies Act, all Affected Persons who have instituted legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be required to submit a Claim for consideration by the BRPs in accordance with the provisions of this Business Rescue Plan.

15.3. The BRPs shall be entitled to institute any proceedings against any Affected Person in any forum (and will not be subject to the Dispute Mechanism in paragraph 16 below) for any purpose, including, recovering money that is due to the Company or preventing Affected Persons from delaying the implementation of the Business Rescue Plan or bringing any application to liquidate the Company.

16. Dispute Mechanism

16.1. Subject to paragraph 15 above and save as provided for in section 133 of the Companies Act, any disputes related to the interpretation or application of this Business Rescue Plan, the Business Rescue proceedings, and/or the Disputed Claims of all Disputed Creditors ("**Disputed Matters**") must be resolved in accordance with the Dispute Mechanism outlined below, other than in circumstances where the BRPs and the relevant counterparty (the "**Disputing Party**") otherwise mutually agree in writing. Even in circumstances where an agreement legally requires otherwise as to how a Disputed Matter must be resolved, Disputing Parties and the Company are encouraged, and may elect and agree in writing, to resolve such matters through the Dispute Mechanism.

16.2. The Dispute Mechanism procedure will be as follows –

16.2.1. The BRPs have incorporated into this Business Rescue Plan a Dispute Resolution Process that has been jointly established and endorsed by the Arbitration Foundation of South Africa ("**AFSA**") and the South African Restructuring and Insolvency Practitioners Association NPD ("**SARIPA**") specifically for the purpose of resolving disputes arising in connection with business rescue proceedings ("**the AFSA/SARIPA Process**"). The advantages of adopting the AFSA/SARIPA Process are (inter alia) that it:

16.2.1.1. is specifically designed for use in business rescue plans;

16.2.1.2. will be populated by arbitrators experienced in business rescue law and proceedings;

16.2.1.3. is designed to avoid the costs and time delays experienced in court proceedings, and in certain overcomplicated and extended arbitration proceedings;

16.2.1.4. has a mechanism which enables the arbitrator to adapt each arbitration to fit the specific circumstances; and

16.2.1.5. brings with it a flexibility which allows the BRPs and claimant's, by mutual agreement, to opt out of the AFSA/SARIPA Process if so elected.

16.2.2. All Disputing Parties are referred to Annexure **A** in relation to their Disputed Matters and are required to contact the BRPs at br@tongaat.com within 30 days of the Disputing Party becoming aware of the Disputed Matters in order to register their disagreement ("**Disagreement**").

16.2.3. The Disputing Party must endeavour to reach agreement with the BRPs on the Disputed Matter within the ensuing 15 days after their Disagreement has been registered, or such longer period as the BRPs may allow. If the Disputing Party does not avail itself of this opportunity within the time period allowed, then the Disputing Party shall be deemed to have abandoned its Claim and will not, in accordance with section 154 of the Companies Act, be entitled to enforce, at a later date, any Claim that that Disputing Party believes it has against the Company.

16.2.4. If the Disagreement is not so resolved, the BRPs will inform the Disputing Party accordingly and this will be known as the Rejection Date.

16.3. Any Disputed Matter of whatsoever nature relating to:

16.3.1. the acceptance or rejection of any Claim whether in whole or in part or the value or ranking of any Claim or the recognition of any security or preference, lien or hypothec attaching to such claim;

16.3.2. Claims which are not reflected in the records of the Company and are not recognised under the Business Rescue Plan; and/or

16.3.3. the proper interpretation or implementation of any provision or matter addressed in this Business Rescue Plan;

which is not resolved in terms of paragraph 16.2.3 shall be submitted for final determination in accordance with the AFSA-SARIPA RULES, attached hereto as Annexure **K**, by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

16.4. The BRPs may, however, in their sole and absolute discretion agree with the Disputed Creditor that the Disputed Claim/s be settled. To the extent that

any amount remains unpaid after such settlement, the remaining amount will become Unenforceable.

16.5. Should any monetary award be made against the Company, including a costs award, then that award will be treated as a Concurrent Claim in the Business Rescue.

16.6. Notwithstanding anything to the contrary in this paragraph 16 or elsewhere in the Business Rescue Plan, the BRPs shall not, in any circumstance, be obliged to prosecute, progress or further the Claim of any Creditor beyond the provisions of this paragraph 16. The Company may, however, in the discretion of the BRPs, continue to prosecute any one of more of its counterclaims.

17. Domicilium

17.1. The BRPs choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to the Business Rescue up until the Substantial Implementation Date, including the giving of any notice and the serving of any process, at the physical and e-mail addresses set out below:

17.1.1. Physical address: Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal, 4400

17.1.2. E-mail address: br@tongaat.com

17.1.3. Attention: Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn

17.2. The BRPs shall be entitled, up until the Substantial Implementation Date, by giving written notice to Affected Persons, to vary their physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary their e-mail Domicilium to any other e-mail address.

17.3. Any notice given or process served by any Affected Person to the BRPs, which is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the BRPs' physical Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs at the time of delivery.

17.4. Any notice given or process served by any Affected Person to the BRPs, which is transmitted by e-mail to the BRPs' e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs on the Business Day immediately succeeding the date of successful transmission thereof.

17.5. Any notice or process in terms of, or in connection with, this Business Rescue Plan shall be valid and effective only if in writing and if received or deemed to have been received by the BRPs.

17.6. For the avoidance of doubt, it is recorded that –

17.6.1. following the Substantial Implementation Date, the Business Rescue of the Company would have terminated; and

17.6.2. no notice or process served in terms of this paragraph shall been taken into consideration by the BRPs (unless they in their sole discretion choose to consider such notice or process) on or after the Substantial Implementation Date.

18. Ability to amend the Business Rescue Plan

18.1. In respect of an amendment to correct a clerical error and that will not be prejudicial to the rights of Creditors as set out herein, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.

18.2. Other than as specifically contemplated in this Business Rescue Plan to the contrary, in the event of any other material amendments to this Business Rescue Plan, the BRPs shall consult with Affected Persons in terms of section 150 of the Companies Act and shall be entitled to propose an amendment for consideration and voting at a Meeting conducted in terms of Section 151 of the Companies Act. Such amendment shall only be effective should it be Adopted in the same manner as provided for in section 152 of the Companies Act.

19. **Severability**

19.1. Each provision of this Business Rescue Plan is, notwithstanding the grammatical relationship between that provision and the other provisions of this Business Rescue Plan, severable from the other provisions of this Business Rescue Plan.

19.2. Any provision of this Business Rescue Plan, which is or becomes invalid, unenforceable, or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable, or unlawful, without invalidating or affecting the remaining provisions of this Business Rescue Plan which shall remain of full force and effect.

CHAPTER 4 – CONCLUSION AND BRPs' CERTIFICATES

20. Conclusion

20.1. For the reasons set out above it is the view of the BRPs, notwithstanding the risks and challenges inherent in this Business Rescue Plan, that:

20.1.1. there is a reasonable prospect of a successful Business Rescue, that balances the rights and interests of all relevant stakeholders and Affected Persons, in accordance with the objectives of Chapter 6 of the Companies Act;

20.1.2. the aggregate Distribution is likely to result in Creditors receiving a higher return in the Business Rescue than would be anticipated to receive on a liquidation of the Company. This is already the case due to the extent of the pre-Commencement Date Claims that have already been paid and the fact that the values of the Secured Creditor security over the investments in THL Zimbabwe, THL Botswana and THL Mozambique materially exceed the liquidation estimate of BDO.

20.1.3. a substantial majority of employees will retain their employment positions (albeit under different ownership);

20.1.4. a successful Business Rescue will have a materially positive impact on employment and the local economy and avoid a social and economic catastrophe in the KwaZulu-Natal region; and

20.1.5. should the Business Rescue Plan not be Adopted, the BRPs are of the view that the Business Rescue will probably be terminated and converted to liquidation proceedings immediately following the provisions of section 153 of the Companies Act.

21. BRPs' certificates

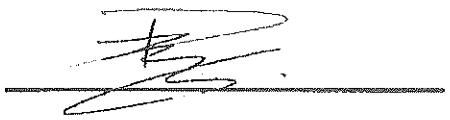
21.1. We, the undersigned, hereby certify that to the best of our knowledge and belief:

21.1.1. any information provided herein appears to be reasonably accurate, complete, and up to date;

21.1.2. we have relied on financial information including opinions and reports furnished to us by the Board and Management;

21.1.3. any projections provided are reasonable estimates made in good faith based on factual information and assumptions as set out herein;

21.1.4. in preparing the Business Rescue Plan, we have not undertaken an audit of the information provided to us, although where practical, we have endeavoured to satisfy ourselves of the accuracy of such information.



Peter van den Steen

Date: 29/11/2023

Trevor Murgatroyd

Date: 29/11/2023

Gerhard Albertyn

Date: 29/11/2023

"FA5"

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, DURBAN

CASE NO: D4472/2023

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent

W.

UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent
HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

ORDER

Delivered: This Order was issued electronically by circulation to the parties' legal representatives by email. The date and time for issue is deemed to be 13h00 on 29 November 2023

1. The application is dismissed with costs, such costs to include the costs of two counsel where so employed.

2. The full judgment concluding in the above Order will be handed down at 14h00 on Monday, 4 December 2023.

Vahed J
Judge of the High Court

"FA6"

WEBBER WENTZEL

in alliance with > Linklaters

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: 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

Your reference	Our reference	Date
THL // RCL	P Singh / L Kahn / L Kamukwamba	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.

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: +2711530 6419
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com

404 "FA7"

WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

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

and to

Cox Yeats Attorneys
Email: TScheepers@coxyeats.co.za; LMapiki@coxyeats.co.za;
JRodd@coxyeats.co.za

and to

Garlicke & Bousfield Inc
Email: andre.liebenberg@gb.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:	P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE:	Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/Ms N Harduth /tjb/TONG7430.11/#9477837v1
DIRECT PHONE:	+27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131/+27 11 535 8220
EMAIL ADDRESS:	tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/ sgast@werksmans.com/nharduth@werksmans.com

9 June 2023

Dear Sirs

RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED // THE BUSINESS RESCUE PRACTITIONERS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) AND OTHERS - REQUEST FOR ALLOCATION OF URGENT APPLICATION

1 We, as you are aware, represent the first to fourth respondents in the in the application ("the interdict application") which was emailed to us late on the evening of 7 June 2023, and which it is intended be set down for hearing at 9:30 on Tuesday, 13 June 2023.

2 It is recorded in paragraph 142 of the founding affidavit in the interdict application -

> "*The applicants seek to interdict the meeting convened for the consideration and adoption of the plan pending the final determination of the declaratory*",

("the relevant extract").

TONG7430.11/#9477837v1
09062023

3 As already agreed, our client will proceed with Part A of its declaratory application next week. Your client (and the other respondents) should proceed to file their answering affidavits in the declaratory application without delay.

4 Without conceding the applicants' entitlement to the relief sought in the interdict application, a majority of the creditors of the first respondent have agreed to adjourn the meeting. Our clients have obtained an oral undertaking from THL's lenders that they will vote in favour of an adjournment of the meeting on the basis that -

4.1 the meeting will be reconvened to a date no later than end of September, but not earlier than the end of August 2023; and

4.2 the applicants in the urgent application receive no less than 30 days prior written notice of the intended date of the reconvened meeting.

5 Whilst the adjournment of the meeting will afford our respective clients (and other parties cited in the interdict application) an opportunity to continue to engage in order to achieve a mutually acceptable commercial resolution to the matters in issue (both in the interdict application and the declaratory application as defined below), it is self-evident that the declaratory application ("the declaratory application") issued by the first respondent in the High Court, Kwa-Zulu Natal Local Division under case number D4472/2023 needs to be progressed in parallel with these discussions.

6 **In light of the fact that the meeting of creditors will be adjourned, your client's urgent application is no longer urgent. Please procure that that matter is removed from the urgent roll on 13 June 2023 *sine die*.**

7 You are invited to respond as a matter of urgency to the proposals enunciated above in order that the Court may be advised at the earliest opportunity of the status of the application and hopefully obviate a learned judge from having to read the papers.

8 Finally, our failure to address this matter more fully at this stage should not be construed as a waiver of our clients' rights, or as a concession of any of the assertions contained in the founding papers in the interdict application.,

Yours faithfully

Werksmans Attorneys

CC: **Garlicke & Bousfield Inc**
howard.stephenson@gb.co.za

Minister of Trade, Industry and Competition
EbrahimPatel@thedtic.gov.za
mernest@thedtic.gov.za

South African Sugar Millers' Association NPC
Deane.Rossler@sasa.org.za

South African Cane Growers' Association NPC
central@canegrowers.co.za

South African Farmers' Development Association NPC
tsibiya@sa-fda.org.za

Cox Yeats Attorneys
mjackson@coxyeats.co.za

Shepstone & Wylie
afd@wylie.co.za; nerissa.pillay@wylie.co.za;

UCL Company (Proprietary) Limited
lutger@ucl.co.za

"FA8"

WEBBER WENTZEL
in alliance with > Linklaters

Attention: Danny Andropoulos

Werksmans Attorneys
The Central
96 Rivonia Road
Sandton
2196

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

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	Our reference	Date
Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/Ms N Harduth/ tjb/TONG7430.11/#9477837v1	P Singh / L Kahn / L Kamukwamba/ 3058873	1 December 2023

Dear Mr Andropoulos

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") AND OTHERS // SOUTH AFRICAN SUGAR ASSOCIATION AND OTHERS: CASE NUMBER D4772/23

1. We refer to:

1.1 the order of Judge Vahed, dated 29 November 2023, *dismissing* the above application for, among others, declaratory relief to the effect that the business rescue practitioners ("**the BRPS**") are empowered to suspend any obligation of THL arising from the Sugar Industry Agreement, 2000, ("**Regulatory Obligations**") for the duration of the business rescue proceedings ("**the dismissal order**"); and

1.2 the two business rescue plans published by your clients on 30 November 2023 ("**the BR Plan**").

2. Your clients have published the BR Plan notwithstanding our clients several requests for an undertaking that your clients desist from taking any further steps to publish and vote on the BR Plan pending Judge Vahed's judgment and order in the declarator.

3. Judge Vahed handed down his dismissal order electronically on 29 November 2023, and notified all parties that same day that judgment would be handed down electronically at 14h00 on 4 December 2023. Although judgment has not yet been handed down, it is obvious from the dismissal order that Judge Vahed will find that the BRPs are *not* empowered to suspend the Regulatory Obligations. Despite this, your clients have proceeded to publish the BR Plan.

4. We are still considering the BR Plan, which is voluminous, however it is sufficient to mention for the present purposes that at several points in the BR Plan, particularly at pages 52 to 53, at paragraph 5.3.5.17 on page 58, and at page 89, that the BRPs reiterate their view that the Regulatory Obligations are indeed capable of suspension, have been lawfully suspended and that SASA is and should be treated as an unsecured concurrent creditor in respect of the Regulatory Obligations. This is in flagrant disregard of the dismissal order and the pending judgment which would no doubt follow the result.

5. Nonsensically and in direct contradiction of the Order, the BR Plan:

5.1 records that "Immediate payment of the SASA amount would have the effect of elevating SASA's status to that of preferred creditor. This would unduly prejudice the remaining body of creditors and would be legally impermissible"

5.2 contains a proposal (at pages 91 to 92) of how to treat the Regulatory Obligations "*in the event that the Declaratory Application is not finally determined in favour of THL (i.e. after any and all appeals have been finally exhausted) and it is confirmed that the BRPs were not entitled to suspend the SASA Payment Obligations*"; and

5.3 only mentions the dismissal order and pending judgment, much later at paragraph 6.3.2.6 on page 104 of the BR Plan, together with mention of the BRPs intention to consider appealing against the judgment and order.

6. The BR Plan treats the dismissal order and pending judgment as an afterthought when it is pivotal to determining the content of the BR Plan. Moreover, the BR plan is misleading and based on an incorrect interpretation of the Companies Act. The legal position has now been clarified. Further, the proposed way of treating the Regulatory Obligations is entirely at

odds with the dismissal order and, we submit, the pending judgment. It does not put SASA or the industry in the position they should have been in, had the Regulatory Obligations not been unlawfully suspended by the BRPs. It also does not make any provision whatsoever for the payment of the costs order against THL in paragraph 1 of the dismissal order.

7. Again, we highlight what was stated at paragraph 169.3 of your clients' founding affidavit in the declaratory application, specifically that:

> *"from the applicants' point of view, the outcome of those disputes will determine the payments that must be made during the business rescue which, in turn, will have an impact on the prospect of THL being rescued, and potentially the content of its proposed business rescue plan."* (Our emphasis)

8. Accordingly, the publication of the BR Plan was premature and unlawful. Likewise, it would be premature and unlawful for the BRPs to proceed to convene any vote on the BR Plan as presently formulated. We note, in this regard, that a vote is scheduled for 8 December 2023 (**"the vote"**).

9. We request that your client provide us with a written undertaking, by no later than close of business today, **Friday, 1 December 2023**:

9.1 that your client will withdraw the BR Plan as presently formulated in order to:

9.1.1 amend the BR plan in accordance with the effects of the deferral order and judgment; and

9.1.2 consequently, defer the vote;

alternatively;

9.2 if your client does not intend to withdraw the BR plan:

9.2.1 that your client will defer the vote on the BR Plan to no earlier than January 2024 (to allow our client to bring the necessary proceedings in less urgent circumstances).

10. The undertaking in paragraph 9 is made in the context that your client had previously undertaken to provide our client with no less than 30 days' prior written notice of its intention to reconvene the vote in paragraph 4.2 of your letter to us dated 9 June 2023, attached marked **"A"**.

11. Should we not receive the undertaking referred to in paragraph 9.1 above, our client will apply for urgent interim interdictory relief without any further notice to you.

12. To our knowledge your clients have not brought the publication of and forthcoming vote on the BR Plan to the attention of Judge Vahed and we will proceed to do so, should your clients fail to provide us with the undertaking referred to in paragraph 9 above.

13. All of our client's rights remain 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

COPY BY EMAIL TO:

GARLICKE & BOUSFIELD INC.
Attorneys for the First and Second Respondents
howard.stephenson@gb.co.za

STATE ATTORNEY
Attorneys for the Third Respondent
thmaphumulo@justice.gov.za

GARLICKE & BOUSFIELD INC.
Attorneys for the Fourth and Twelfth Respondents
Andre.liebenberg@gb.co.za; Loryn.liberty@gb.co.za

SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC
Fifth Respondent
Olivia.Finnemore@sacanegrowers.co.za; thomas.funke@sacanegrowers.co.za

DANKA SENEKAL INC.
Attorneys for the Sixth Respondent
jsenekal@dankasenekal.com; vsingh@dankasenekal.com

COX YEATS
Attorneys for the Eighth Respondent
tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za; lmapiki@coxyeats.co.za

COX YEATS
Attorneys for the Ninth Respondent
mjackson@coxyeats.co.za

SHEPSTONE & WYLIE
Attorneys for the Tenth and Eleventh Respondents
Nerissa.pillay@wylie.co.za; afd@wylie.co.za

WERKSMANS
ATTORNEYS

DELIVERED BY 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

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

and to

Cox Yeats Attorneys
Email: TScheepers@coxyeats.co.za; LMapiki@coxyeats.co.za;
JRodd@coxyeats.co.za

and to

Garlicke & Bousfield Inc
Email: andre.liebenberg@gb.co.za

YOUR REFERENCE: P Singh/L Kahn/L Kamukwamba/3058873
OUR REFERENCE: Mr T Boswell/Mr D Andropoulos/Mr D Hertz/Ms S Gast/Ms N Harduth /tjb/TONG7430.11/#9477837v1
DIRECT PHONE: +27 11 535 8459/+27 11 535 8248/+27 11 535 8283/+27 11 535 8131/+27 11 535 8220
EMAIL ADDRESS: tboswell@werksmans.com/dandropoulos@werksmans.com/dhertz@werksmans.com/ sgast@werksmans.com/nharduth@werksmans.com

9 June 2023

Dear Sirs

RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED // THE BUSINESS RESCUE PRACTITIONERS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) AND OTHERS - REQUEST FOR ALLOCATION OF URGENT APPLICATION

1 We, as you are aware, represent the first to fourth respondents in the in the application ("the interdict application") which was emailed to us late on the evening of 7 June 2023, and which it is intended be set down for hearing at 9:30 on Tuesday, 13 June 2023.

2 It is recorded in paragraph 142 of the founding affidavit in the interdict application -

> "*The applicants seek to interdict the meeting convened for the consideration and adoption of the plan pending the final determination of the declaratory*",
>
> ("the relevant extract").

3 As already agreed, our client will proceed with Part A of its declaratory application next week. Your client (and the other respondents) should proceed to file their answering affidavits in the declaratory application without delay.

4 Without conceding the applicants' entitlement to the relief sought in the interdict application, a majority of the creditors of the first respondent have agreed to adjourn the meeting. Our clients have obtained an oral undertaking from THL's lenders that they will vote in favour of an adjournment of the meeting on the basis that -

4.1 the meeting will be reconvened to a date no later than end of September, but not earlier than the end of August 2023; and

4.2 the applicants in the urgent application receive no less than 30 days prior written notice of the intended date of the reconvened meeting.

5 Whilst the adjournment of the meeting will afford our respective clients (and other parties cited in the interdict application) an opportunity to continue to engage in order to achieve a mutually acceptable commercial resolution to the matters in issue (both in the interdict application and the declaratory application as defined below), it is self-evident that the declaratory application ("the declaratory application") issued by the first respondent in the High Court, Kwa-Zulu Natal Local Division under case number D4472/2023 needs to be progressed in parallel with these discussions.

6 **In light of the fact that the meeting of creditors will be adjourned, your client's urgent application is no longer urgent. Please procure that that matter is removed from the urgent roll on 13 June 2023 *sine die*.**

7 You are invited to respond as a matter of urgency to the proposals enunciated above in order that the Court may be advised at the earliest opportunity of the status of the application and hopefully obviate a learned judge from having to read the papers.

8 Finally, our failure to address this matter more fully at this stage should not be construed as a waiver of our clients' rights, or as a concession of any of the assertions contained in the founding papers in the interdict application.,

Yours faithfully

Werksmans Attorneys

CC: **Garlicke & Bousfield Inc**
howard.stephenson@gb.co.za

Minister of Trade, Industry and Competition
EbrahimPatel@thedtic.gov.za
mernest@thedtic.gov.za

South African Sugar Millers' Association NPC
Deane.Rossler@sasa.org.za

South African Cane Growers' Association NPC
central@canegrowers.co.za

South African Farmers' Development Association NPC
tsibiya@sa-fda.org.za

Cox Yeats Attorneys
mjackson@coxyeats.co.za

Shepstone & Wylie
afd@wylie.co.za; nerissa.pillay@wylie.co.za;

UCL Company (Proprietary) Limited
lutger@ucl.co.za

From: Simone Gast
To: Junaid Nyker
Cc: Lubumba Kamukwamba; Lara Kahn; Prelisha Singh; howard.stephenson@gb.co.za; thmaphumulo@justice.gov.za; Andre.liebenberg@gb.co.za; Loryn.liberty@gb.co.za; Olivia.Finnemore@sacanegrowers.co.za; thomas.funke@sacanegrowers.co.za; jsenekal@dankasenekal.com; Danny Andropoulos; Trevor Boswell; David Hertz; vsingh@dankasenekal.com; tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za; lmapiki@coxyeats.co.za; mjackson@coxyeats.co.za; Nerissa.pillay@wylie.co.za; afd@wylie.co.za; Kay Morgan
Subject: RE: Tongaat Hulett Limited (In business rescue) ("THL") and Others // South African Sugar Association and Others ("SASA") [WW-WS_JHB.FID2571882] [IMAN-LITIGATION.FID633068]
Date: 01 December 2023 17:35:01

Dear Sirs

We refer to your letter of today's date.

We do not intend dealing with each assertion in your letter which failure should not be construed as an admission as to the correctness thereof or as a waiver of our clients' rights to deal therewith in due course, which rights are, both in this respect and generally, fully reserved.

Our clients have instructed us to record that they decline to provide the undertakings sought in your letter.

We are authorised to accept service of any application foreshadowed in your letter.

Yours faithfully
Werksmans

Simone Gast
Director
T +27 11 535 8131 F +27 11 535 8566 E sgast@werksmans.com

The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196
Private Bag 10015, Sandton, 2146, South Africa
T +27 11 535 8000 F +27 11 535 8600 W www.werksmans.com

From: Junaid Nyker <Junaid.Nyker@webberwentzel.com>
Sent: 01 December 2023 12:37 PM
To: Danny Andropoulos <dandropoulos@werksmans.com>; Trevor Boswell <TBoswell@werksmans.com>; David Hertz <DHertz@werksmans.com>; Simone Gast <sgast@werksmans.com>
Cc: Lubumba Kamukwamba <Lubumba.Kamukwamba@webberwentzel.com>; Lara Kahn <Lara.Kahn@webberwentzel.com>; Prelisha Singh <Prelisha.Singh@webberwentzel.com>; howard.stephenson@gb.co.za; thmaphumulo@justice.gov.za; Andre.liebenberg@gb.co.za; Loryn.liberty@gb.co.za; Olivia.Finnemore@sacanegrowers.co.za; thomas.funke@sacanegrowers.co.za; jsenekal@dankasenekal.com; vsingh@dankasenekal.com; tscheepers@coxyeats.co.za; jrodd@coxyeats.co.za; lmapiki@coxyeats.co.za; mjackson@coxyeats.co.za; Nerissa.pillay@wylie.co.za; afd@wylie.co.za; Kay Morgan <Kay.Morgan@webberwentzel.com>; Max du Plessis <maxduplessis@mac.com>; catherine@thulamelachambers.co za; Dugald Robertson <dugaldr@capebar.co.za>
Subject: RE: Tongaat Hulett Limited (In business rescue) ("THL") and Others // South African Sugar Association and Others ("SASA") [WW-WS_JHB.FID2571882]
Importance: High