

**IN THE HIGH COURT OF SOUTH AFRICA  
(KWAZULU-NATAL LOCAL DIVISION, DURBAN)**

Case number:

In the matter between:

**RGS GROUP HOLDINGS LIMITED**

Applicant

and

**TONGAAT HULETT LIMITED**

First Respondent

**(IN BUSINESS RESCUE)**

**TREVOR JOHN MURGATROYD N.O.**

Second Respondent

**PETRUS FRANCOIS VAN DEN STEEN N.O.**

Third Respondent

**GERHARD CONRAD ALBERTYN N.O.**

Fourth Respondent

**TERRIS AGRIPRO (MAURITIUS)**

Fifth Respondent

**REMOGGO (MAURITIUS) PPC**

Sixth Respondent

**GUMA AGRI AND FOOD SECURITY LTD**

Seventh Respondent

**(MAURITIUS)**

**THE AFFECTED PERSONS IN THE FIRST**

Eighth Respondent

**RESPONDENT'S BUSINESS RESCUE**

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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE THAT** application will be made on behalf of the abovementioned applicant on **Wednesday, 13 December 2023** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the forms and service provided for in terms of the rules and directing that this application be heard on an urgent basis in terms of Uniform Rule 6(12).

2. Directing that this application be consolidated for joint hearing with the applications filed by (i) RCL Foods Sugar & Milling (Pty) Ltd under case number D13763/2023, and (ii) the South African Sugar Association under case number D13739/2023.
3. Directing that:
  - 3.1. The second to fourth respondents must proceed to convene the meeting in terms of section 151 of the Companies Act 71 of 2008 on Thursday, 14 December 2023 ("**the Meeting**");
  - 3.2. The second to fourth respondents be prohibited and restrained from conducting a "pre-meeting proxy vote" in advance of the Meeting in order to determine the sequence in which the two business rescue plans will be tabled for consideration at the Meeting;
  - 3.3. The second to fourth respondents must at the Meeting first table the RGS Plan for consideration and, after all motions in relation to the RGS Plan have been finalised, call for a vote on the adoption of the RGS Plan;
  - 3.4. if the RGS Plan receives insufficient votes to be adopted, the second to fourth respondents must then table the Vision Plan for consideration and possible adoption.
4. That the costs of this application be paid by the first to fourth respondents and any party who opposes this application, jointly and severally, the one paying the other to be absolved, which costs are to include those consequent on the employment of two counsel.
5. Further and/or alternative relief.

**TAKE NOTICE FURTHER THAT** the affidavit of **SHASHIKANT MANGALI** will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the applicant has appointed **BERKOWITZ COHEN WATRSKI**, 2nd Floor, 102 Stephen Dlamini Road, Musgrave, 4001 as its attorneys of record, at which address it will accept service of all notices and process filed in these proceedings.

The applicant consents to service by email at the following addresses:

- (a) [greg@efglaw.co.za](mailto:greg@efglaw.co.za) copied to [naomi@efglaw.co.za](mailto:naomi@efglaw.co.za)
- (b) [cmeyfarth@berklaw.co.za](mailto:cmeyfarth@berklaw.co.za) and [cpillay@berklaw.co.za](mailto:cpillay@berklaw.co.za)

**TAKE NOTICE FURTHER THAT** if the first to fourth respondents or any other party intends opposing the relief sought, they must:

- (a) File a notice of intention to oppose before 17h00 on Monday, 11 December 2023;
- (b) File their answering affidavit(s), if any, before 12h00 noon on Tuesday, 12 December 2023;
- (c) If the above timeframes are observed, the applicant will file its replying affidavit, if any, before 08h00 on Wednesday, 13 December 2023.

**KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY**

Dated at **DURBAN** on this 11<sup>TH</sup> day of **DECEMBER 2023**.

*Mealy*

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To: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**  
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AND TO: **WERKSMANS ATTORNEYS**

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Attorney for the Eight Respondent

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Ref: H Stephenson

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(MAURITIUS)**

Seventh Respondent

**THE AFFECTED PERSONS IN THE FIRST  
RESPONDENT'S BUSINESS RESCUE**

Eighth Respondent

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**CERTIFICATE OF URGENCY**

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I, the undersigned,

**RICHARD GRAEME GOODMAN SC**

do hereby certify that I am an Advocate of the above Honourable Court and that I have perused



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 Cape Town on this 11<sup>th</sup> day of DECEMBER 2023



R G GOODMAN SC

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**SHASHIKANT MANGALI**

do hereby make oath and say that:

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1. I am an adult male employed by the applicant as its head of strategic investment and development. The applicant's Durban operations are conducted from offices located at 21 Aurora Drive, Umhlanga Ridge.
2. I am duly authorised to bring this this application and to depose to this affidavit on the applicant's behalf. I refer to the applicant below as "**RGS**".
3. The facts to which I testify below are to the best of my belief both true and correct. They fall within my personal knowledge or are apparent from documentation under my control by virtue of my aforesaid position, save where the context indicates the contrary.
4. Where I make submissions of a legal nature I do so on the advice of RGS's legal representatives, which advice I accept.
5. For ease of reference, the parties cited in this application have been described in an annexure to this affidavit, attached marked "**SM1**".
6. I refer below to:
  - 6.1. the first respondent as "**THL**";
  - 6.2. the second to fourth respondents collectively as "**the BRPs**";
  - 6.3. the fifth to seventh respondents collectively as "**the Vision Parties**";
  - 6.4. the eighth respondent as "**the IDC**";
  - 6.5. the ninth respondent as "**the Lender Group**";

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- 6.6. the business rescue plan pertaining to RGS's offer to acquire THL out of business rescue published by the BRPs on 29 November 2023 as "**the RGS Plan**".
- 6.7. the business rescue plan pertaining to the Vision Parties offer published by the BRPs on 29 November 2023 as "**the Vision Plan**".
- 6.8. the Companies Act 71 of 2008 as "**the Companies Act**";
- 6.9. the meeting in terms of section 151 of the Companies Act currently scheduled for Thursday, 14 December 2023 as "**the Meeting**".

## OVERVIEW

7. In terms of this application, RGS seeks an order compelling the BRPs to:
  - 7.1. proceed with the Meeting on Thursday, 14 December 2023;
  - 7.2. table the RGS Plan for consideration first (i.e. ahead of the Vision Plan) at the Meeting;
  - 7.3. entertain a motion by RGS to amend the RGS Plan, as contemplated in section 152(1)(d)(i) of the Companies Act, at the Meeting in order to accommodate SASA's claim against THL in the RGS Plan;
  - 7.4. call for a vote on the adoption of the RGS Plan, as amended, at the Meeting.
8. This application has regrettably been precipitated by the stance adopted by the BRPs in their supplementary answering affidavit filed in the urgent applications brought by RCL Foods Sugar & Milling (Pty) Ltd ("**RCL**"), and the South African

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Sugar Association ("**SASA**"), both of which applications are pending before Mr Justice Vahed and are due to be heard on Wednesday, 13 December 2023 ("**the Urgent Applications**").

9. Although the BRPs initially opposed the Urgent Applications on the basis that the Meeting must proceed on 14 December 2023, they indicate in their supplementary answering affidavit in the Urgent Applications ("**the BRP Supplementary AA**") that:


9.1. The IDC has agreed to extend the PCF facility in the THL business rescue to the end of February 2024 on condition that (i) the Meeting be convened to vote on a business rescue plan by no later than 15 January 2024, and (ii) that a business rescue plan that is acceptable to the IDC is adopted by no later than 15 January 2024 (paragraph 6 of the BRP Supplementary AA);

9.2. On this basis that BRPs express their "support" for an adjournment of the Meeting to "no earlier than Monday, 8 January 2023, but no later than Thursday, 11 January 2024, to permit the proposed Plans to be amended and to afford all affected persons time to consider the revisions." (paragraph 10 of the BRP Supplementary AA).

10. The BRPs' suggestion that the Meeting be adjourned yet again is irrational, unjustifiable and directly at odds with the contents of the affidavit filed by the IDC to intervene in the Urgent Applications ("**the IDC Affidavit**").

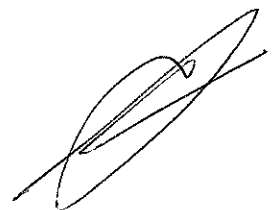
11. In the IDC Affidavit, the IDC clearly states *inter alia* at paragraph 57 that "it is imperative that the plans are considered and voted on by creditors on or before

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Thursday, 14 December 2023” and it explains why this is so by setting out the substantial processes that will have to be followed after a business rescue plan is adopted in order to ensure the viability of THL post business rescue.

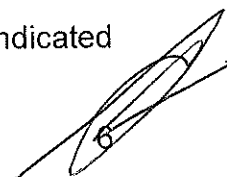
12. The BRPs blatantly ignore the existential dangers to the integrity and viability of the THL business rescue set out in great detail in the IDC Affidavit and state quite glibly at paragraph 8 of the BRP Supplementary AA that “[t]he extension of the PCF affords THL some breathing room – although a vote on a business rescue plan remains urgently necessary and cannot be postponed beyond 12 January 2024 (being the last business day before the condition imposed by the IDC...is required to be fulfilled.)” The condition imposed by the IDC is the condition that a business rescue plan be adopted by no later than 15 January 2024.
13. The BRPs simply disregard what the IDC has stated expressly in the IDC Affidavit: that the Meeting must proceed on 14 December 2023 in order to leave enough time to (i) address the security required by the IDC to ensure that the PCF facility remains available to THL, and (ii) address THL’s “significant working capital requirements going into the next crushing season”. I humbly request that the contents of paragraphs 57 – 65 of the IDC Affidavit be read as if incorporated herein.
14. Instead, the BRPs propose to convene the Meeting just a couple of business days before the IDC’s deadline, leaving no time for the successful bidder and the IDC to work together to ensure the long-term survival of THL post business rescue.



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15. The BRP's support of yet another adjournment of the Meeting is bizarre in circumstances where the RGS Plan is fully funded and capable of (i) adoption at the Meeting on 14 December 2023, and (ii) immediate implementation.
16. RGS has informed the BRPs in terms *inter alia* of a letter sent to the BRPs on 6 December 2023 that it is in productive negotiations with SASA and RCL and that it expects to reach a settlement with those parties imminently. A copy of this letter is annexed, marked "SM2".
17. The BRPs acknowledge that RGS has offered SASA 100 cents in the rand on SASA's claim against THL at paragraph 9.1 of the BRP Supplementary AA.
18. On Wednesday, 6 December 2023 RGS and RCL reached an agreement in principle regarding the amendment of the RGS Plan to recognise SASA's claims in the THL business rescue in a manner that is acceptable to RCL and SASA and is consistent with the judgment handed down by Mr Justice Vahed on 29 November 2023. RCL conveyed to RGS that the proposal should be transmitted to SASA as RCL could act on SASA's behalf in this regard. On the same day the RGS proposal regarding the SASA Claim (as agreed in principle with RCL) was transmitted in writing to Ms Mary Ramkelawon, the Chief Financial Officer of SASA.
19. On Friday 8 December 2023, RGS met with SASA – which was represented by its independent chairperson Advocate Fay Mukaddam and Ms Ramkelawon – to discuss the aforesaid RGS proposal and the consequential amendments of the RGS Plan. The meeting was productive and resulted in confirmation that agreement had indeed been reached in principle with SASA. SASA conveyed to RGS that SASA had apprised the BRPs of the RGS proposal. SASA indicated

B. P.



that it would now wait to see how the RGS proposal regarding SASA's claims against THL is included in the amended RGS Plan.

20. It should be noted that a key component of RGS' proposal to SASA is that the appeal of the judgment and order of Mr Justice Vahed will not be pursued even if Mr Justice Vahed were to grant leave to appeal following the hearing of the application for leave to appeal on Wednesday, 13 December 2023.
21. There is no need in RGS' view to encumber the business rescue processes of THL, Tongaat Hulett Sugar South Africa and Voermol (Pty) Ltd with an unnecessary and lengthy appeal process when a commercial settlement is available to the parties.
22. The process of making the necessary SASA-related amendments to the RGS Plan is at an advanced stage of completion and a revised plan will be ready by Thursday, 14 December 2023 when the Meeting should proceed and at which time the amended RGS Plan can be introduced by way of a motion for the amendment of the published version of the RGS Plan as contemplated in section 152(1)(d)(i) of the Companies Act.
23. The RGS Plan incorporating the SASA-related amendments will be shared with SASA, RCL and the BRPs ahead of the Meeting and before the hearing of the Urgent Application on Wednesday, 13 December 2023. The upshot of the SASA-related amendments is that it will no longer be necessary for SASA to interdict the holding of the Meeting at least insofar as it relates to the RGS Plan.
24. RGS fully expects SASA and RCL to support the aforesaid amendments to the RGS Plan at the Meeting.

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- 25. This will dispose of the last remaining hurdle for the RGS Plan to be adopted at the Meeting which will therefore be capable of proceeding on Thursday, 14 December 2023.
  
- 26. I stress in this regard that the only amendment that the RGS Plan requires is that necessary to accommodate SASA, no other creditors will be affected by this SASA-related amendment.
  
- 27. There is thus no reason for creditors or affected parties to consider the SASA-related amendment to the RGS Plan to such an extent that the Meeting needs to be adjourned on that basis (as suggested by the BRPs in the BRP Supplementary AA).
  
- 28. There is moreover no reason why the Meeting should be adjourned on the basis that the Vision Parties are still in negotiations with SASA. For reasons that will become apparent from what is set out below, the Vision Plan is not ripe for either adoption or implementation as the Vision Parties have not procured the necessary funding on which its agreement with the Lender Group is premised and that agreement therefore lapsed on 6 December 2023. The Vision Plan is therefore invalid and cannot be adopted.
  
- 29. At any rate, the BRPs (and the Lender Group) should not be choosing sides between RGS and the Vision Parties and the RGS Plan should be put up for a vote at the earliest possible occasion. There is no justifiable reason to delay a vote on the RGS Plan until such a time as the Vision Plan is capable of implementation.



30. If the Lender Group – or whoever holds the Lender Group's claims in the THL business rescue when the Meeting is convened on Thursday, 14 December 2023 – do not consider the RGS Plan to be acceptable they hold more than enough votes to singlehandedly vote the RGS Plan down. They can therefore suffer no prejudice from the Meeting proceeding on Thursday, 14 December 2023.

## THE VISION PLAN

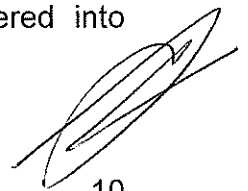
### *The Vision Plan is not capable of adoption*

31. The Vision Plan is premised on the Vision Parties successfully acquiring the Lender Group's claims in the THL business rescue ahead of the meeting.
32. A copy of the agreement concluded between the Lender Group and the Vision Parties is annexed, marked "**SM3**" ("**the Vision / Lender Agreement**"). It is evident from clause 6.2.1 of the Vision / Lender Agreement that it was a condition of that agreement that the Vision Parties pay the relevant consideration to the Lender Group by no later than noon on 6 December 2023.
33. On Thursday, 7 December 2023 RGS met with the Lender Group. 28 lender representatives attended the virtual meeting representing all of the major lenders. It was confirmed to RGS at this meeting that:
- 33.1. the Vision Parties failed to make payment to the Lender Group as contemplated in clause 6.2.1 of the Vision / Lender Agreement;
  - 33.2. the Vision / Lender Agreement therefore lapsed;
  - 33.3. no new agreement has been concluded between the Lender Group and the Vision Parties.

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34. On this basis the submission made on behalf of the Vision Parties at the hearing of the Urgent Applications before Mr Justice Vahed on Thursday 7 December 2023 to the effect that the Vision Parties "had the necessary funds available" was clearly false.
35. This in fact marks the second time that the Vision Parties have failed to secure the funding necessary to purchase the Lender Group's claims in the THL business rescue. I refer the court in this regard to page 43 of the Vision Plan where the BRPs record that the Vision Parties and Lender Group had previously informed the BRPs of the fact that the Vision Parties were to acquire the Lender Group's claims and that they would not vote for a business rescue plan related to the strategic equity partner selected by the BRPs, i.e. Kagera Sugar, and would only support a the Vision Plan.
36. This was the position some five months ago when the strategic equity partner process was concluded by the BRPs on 17 July 2023.
37. The Vision Parties have still not secured the necessary funding and it is inconceivable that the BRPs should now be attempting to adjourn the Meeting to provide the Vision Parties with more time to secure the funds they need to acquire the Lender Claims.
38. On Friday 8 December 2023, RGS's transactional attorneys, White & Case, sent an email to the BRPs in terms of which the BRPs were requested to confirm whether the Vision Parties had *inter alia* (i) acquired the Lender Group claims, (ii) if not, whether the Vision / Lender Agreement had lapsed, (iii) if that agreement had lapsed, whether a new agreement had been entered into

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between the Vision Parties and the Lender Group, and (iv) if such new agreement had been concluded, when it was concluded.

39. An email in response was sent on behalf of the BRP later on Friday, 8 December 2023 in terms of which it was recorded that "[t]he BRPs are not privy to any of the detail of the discussions between the Terris Consortium [i.e. the Vision Parties] and the Lender Group." Copies of the abovementioned two emails are annexed, marked "SM4".

40. The fact that the BRPs, who are responsible for the publication of the Vision Plan, have not confirmed whether or not the Vision Plan is unconditionally funded and whether the Vision Parties have acquired the Lender Group's claims (which is an event on which the Vision Plan is premised and without which it cannot proceed) amounts to a serious dereliction of the BRPs' statutory duties.

41. RGS's attorneys wrote to the BRPs explaining the aforesaid on 11 December 2023 and demanded that the BRPs provide an undertaking to the effect that they would use their best endeavours to support the amendment of the RGS Plan at the Meeting on 14 December 2023 and that they would table the RGS Plan for adoption at that Meeting. A copy of this letter is annexed, marked "SM5".

42. At the time that this application was being prepared the BRPs had made no undertaking to this effect and their position, as articulated in the BRP Supplementary AA, remained unchanged.

43. If the Vision Parties have not procured their funding or purchased the Lender Group claims prior to the Meeting on 14 December 2023, the BRPs must clearly

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withdraw the Vision Plan due to its inability to be implemented at the date of the Meeting.

44. It cannot seriously be suggested that the Vision Plan complies with the applicable statutory requirements in circumstances where the bidder in question has neither the necessary funding nor the necessary agreement with the Lender Group on which the offer is premised.
45. In these circumstances, the RGS Plan is undeniably the only valid business rescue plan in existence.
46. The withdrawal of the Vision Plan should not result in the adjournment of the Meeting insofar as it relates to the consideration of, amendment to and voting on the RGS Plan.

***The Vision Plan is in any event unlawful***

47. Taking account of the definition of "business rescue" in section 128(1) of the Companies Act read with sections 5 and 7(k) thereof, it is trite that a business rescue plan cannot be:
  - 47.1. designed to be in, or further, the interests of some stakeholders to the exclusion of others; nor
  - 47.2. a private transaction between certain stakeholders dressed up as a business rescue plan.
48. It is patently clear that the Vision Plan fails on both of these respects.



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49. The BRPs, in promoting and favouring the Vision Plan, are simply attempting to facilitate the Lender Group's desire to escape their exposure to THL so as to avoid the Lender Group's risk in relation to the business rescue process and the regulatory approvals that will be required to implement any business rescue plan.
50. Therefore, only the interests of the Lender Group are being considered to the detriment of all other affected persons and stakeholders. While it is clear that the Lender Group are not precluded from selling their claims, what they and the BRPs cannot do is to hold up or "hijack" the THL business rescue process to allow for the private deal between the Lender Group and the Vision Parties to be concluded.
51. This is contrary to the requirement of Chapter 6 of the Companies Act that business rescue processes must be completed expeditiously and the requirement that the interests of all stakeholders must be balanced.
52. The Vision Plan is premised on a substantial uncertainty (i.e. contingency) regarding whether the purchase of the Lender Group claims can ever be achieved by the Vision Parties – which contingency has twice become manifest (as indicated above).
53. The BRPs have repeatedly informed RGS and all affected parties that the THL business rescue process is "creditor led" but what they really mean is "Lender Group led" because they have not taken the views or interests of any other creditors into account and have ostensibly done the bidding of the Lender Group to assist the Lender Group in furthering its own aims rather than the aims of rescuing THL and its subsidiaries.

B-P

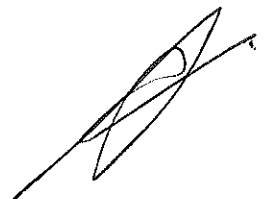


54. At a fundamental level therefore, the Vision Plan does not comply with the definition of "business rescue plan" in that it patently does not maximise the likelihood of the company continuing in existence on a solvent basis.

#### THE PRE-MEETING PROXY VOTING

55. In circumstances where two business rescue plans are published for consideration by affected persons, the only correct procedure is for both business rescue plans to be deliberated on, amended if required (pursuant to a motion to amend), and voted on at the Meeting.
56. It is neither appropriate nor lawful to ask the creditors to determine the sequence in which the voting on the plans should take place as the BRPs have sought to do.
57. This is especially so where the interests of the Lender Group or the Vision Parties, depending on who owns the Lender Group claims at the relevant time, diverge from the interests of RGS and it would appear to be a foregone conclusion that the Vision Parties or the Lender Group – depending who holds the Lender Group's claims – will simply vote for the Vision Plan to be considered at the Meeting first, ahead of the RGS Plan.
58. If the Vision Plan is considered first at the Meeting on 14 December 2023, then it would be possible for the Vision Parties and/or the Lender Group to vote to adjourn the Meeting for any "plausible" reason that would afford the Vision Parties additional time into the new year in order to procure the funding they need to purchase the Lender Group's claims.

B.P.

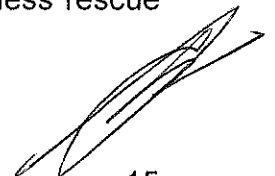


59. The sequence of voting at the Meeting is irrelevant. The plans can be voted on in any sequence. What is essential is that both plans must be voted on at the Meeting on 14 December 2023 so that an outcome for each plan is determined i.e., one may be approved and the other rejected or both may be rejected (it is not possible that both plans are approved).
60. This too was communicated to the BRPs in terms of the letter of 11 December 2023, attached above as "SM4", and appropriate undertakings were sought from the BRPs.
61. In particular, the BRPs' attention was specifically drawn to the fact that if the Vision Plan were to be withdrawn ahead of the Meeting on the basis that the Vision Parties had not procured the necessary funding or purchased the Lender Group claims, then only the RGS Plan must be considered at the Meeting in terms of section 152 of the Companies Act.

#### **THE BRPs' INTENTION TO RE-PUBLISH THE BUSINESS RESCUE PLANS**

62. At paragraph 10 of the BRP Supplementary AA, the BRPs indicate that they intend to "amend" both the RGS Plan and the Vision Plan and that this is *inter alia* why they support an adjournment of the Meeting to a date between 8 and 11 January 2024.
63. It is understood that what the BRPs intend is to republish duly amended versions of the RGS and Vision Plans.
64. There is no procedure in Chapter 6 of the Companies Act for the republication of a business rescue plan that has already been published. If a business rescue

B. P.





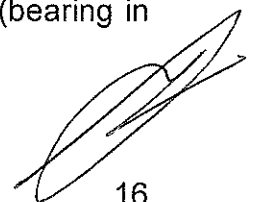
plan is to be amended, section 152(1)(d)(i) of the Companies Act provides for a procedure to amend the plan at the relevant meeting.

65. Amendments to the plans should and can therefore be dealt with at the Meeting in accordance with the statutory procedure. This does not mean that parties affected by the amendments will not be consulted and that such amendments will not be subject to negotiation between the parties affected by those amendments.

## CONCLUSION

66. It is submitted that the BRPs' conduct has created a reasonable impression that they are conducting the THL Business Rescue solely for the benefit of the Vision Parties and / or the Lender Group.
67. A certain level of obedience to the Lender Group's interests on the part of the BRPs might be justifiable on pragmatic grounds. However, the BRPs' fidelity to what they describe as a "creditor driven process" has crossed the line of what is defensible on that basis. There is little evidence that the BRPs are discharging their duties with THL's best interests as their paramount consideration.
68. In this regard it should be emphasised that the business rescue plan that is likely to attract the most votes from the Lender Group is not necessarily the business rescue plan that best serves the interests of the company and its post-business rescue longevity.
69. This is especially true in circumstances where the Lender Group will be paid a similar amount at closing date by both the Vision Parties and RGS (bearing in mind that RGS will pay R90 million more at closing).

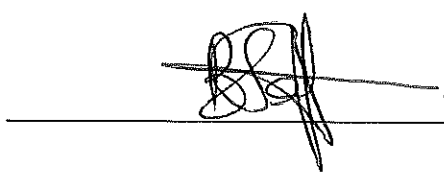
B.P.



- 70. It is submitted that on these facts, the interests of unsecured creditors and THL's post-business rescue position should be determinative and that RGS has made out a case to be permitted the opportunity to have its plan put to a vote.
- 71. RGS has established a clear right to the relief sought, a reasonable apprehension of harm, and there is clearly no alternative satisfactory remedy that can ensure that the BRPs keep to the relevant deadlines and observe the rights of affected persons.
- 72. I therefore pray for an order in terms of the notice of motion.

  
 \_\_\_\_\_  
**SHASHIKANT MANGALI**

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the 11 day of **DECEMBER 2023**, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.

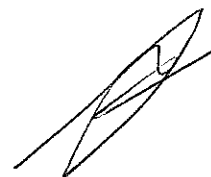
  
 \_\_\_\_\_  
**COMMISSIONER OF OATHS**

**BULELWA PAKAMA JAFTA  
 2ND FLOOR 102 STEPHEN DLAMIN  
 RD MUSGRAVE DURBAN 4001  
 COMMISSIONER OF OATHS  
 PRACTISING ATTORNEY RSA**

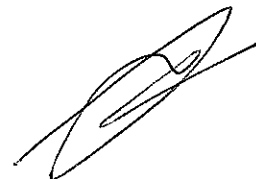
"SM1"

**PARTIES**

1. The applicant is **RGS GROUP HOLDINGS LIMITED** a company duly incorporated in terms of the laws of the Republic of Mauritius, having its principal place of business at No. 5 President John Kennedy Street, Port Louis, Mauritius (I refer to the applicant below as "**RGS**").
2. The first respondent is **TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**, a public company duly incorporated in terms of the company laws of the Republic of South Africa, with registration number 1892/000610/06, currently in business rescue, having its principal place of business at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal (I refer to the first respondent below as "**THL**").
3. The second respondent is **TREVOR JOHN MURGATROYD N.O.**, an adult male director of Metis Strategic Advisors (Pty) Ltd which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. Mr Murgatroyd is one of the three duly appointed joint business rescue practitioners of THL.
4. The third respondent is **PETRUS FRANCOIS VAN DEN STEEN N.O.**, an adult male director of Metis Strategic Advisors (Pty) Ltd which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. Mr van den Steen is one of the three duly appointed joint business rescue practitioners of THL.



5. The fourth respondent is **GERHARD CONRAD ALBERTYN N.O.**, an adult male director of Metis Strategic Advisors (Pty) Ltd which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. Mr Albertyn is one of the three duly appointed joint business rescue practitioners of THL.
6. The fifth respondent is **TERRIS AGRIPRO (MAURITIUS)** (registration number 171903GBC), a company duly registered and incorporated in accordance with the laws of the Republic of Mauritius.
7. The sixth respondent is **REMOGGO (MAURITIUS) PCC** (registration number 117836 c1/GBL), a fund registered and incorporated in accordance with the laws of the Republic of Mauritius.
8. The seventh respondent is **GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)** (registration number: C192979), a company duly registered and incorporated in accordance with the laws of the Republic of Mauritius.
9. The eighth respondent is **THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE**. These parties are joined in this application insofar as they are interested in the outcome of the Meeting and interested in the contents of the business rescue plans. No relief is sought against the eighth respondent.



B.f.

**Naomi**

**From:** Shawe, Lionel <lionel.shawe@whitecase.com>  
**Sent:** Saturday, 09 December 2023 10:39  
**To:** 'Ruan Kotze'  
**Subject:** FW: Tongaat Hulett Limited (In Business Rescue)

**From:** Patrick Birkett <patrick@bsm.africa>  
**Date:** Friday, 08 Dec 2023 at 7:40 PM  
**To:** Shawe, Lionel <lionel.shawe@whitecase.com>  
**Cc:** Peter van den Steen <peter@metis.co.za>, Gerhard Albertyn <gerhard@metis.co.za>, Dave Lake <dave@metis.co.za>, Trevor Murgatroyd <trevor@metis.co.za>, Ashleigh Cohen <ashleigh@metis.co.za>, Danny Andropoulos <dandropoulos@werksmans.com>  
**Subject:** RE: Tongaat Hulett Limited (In Business Rescue)

Dear Lionel,

Thank you for your email below.

Unfortunately, the BRPs have limited information at their disposal, as they have received no formal communication from the Lender Group in relation to the subject matter of your enquiries. Suffice it to say, that based on currently available information, the Terris Business Rescue Plan will require some modification, as will the RGS Business Rescue Plan.

The BRPs are not privy to any of the detail of the discussions between the Terris Consortium and the Lender Group. To the extent that your client requires further detailed information, may I suggest that they direct their enquiries directly to the Lender Group.

In the interim, we await your client's revised proposal for inclusion into the RGS Business Rescue Plan (in its amended form).

Kind regards,  
 Patrick

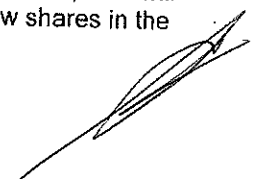
**From:** "Shawe, Lionel" <lionel.shawe@whitecase.com>  
**Date:** Friday, 08 December 2023 at 15:41  
**To:** Trevor Murgatroyd <trevor@metis.co.za>, Peter van den Steen <peter@metis.co.za>, Gerhard Albertyn <gerhard@metis.co.za>  
**Cc:** Danny Andropoulos <dandropoulos@werksmans.com>  
**Subject:** Tongaat Hulett Limited (In Business Rescue)

Dear Trevor, Peter and Gerhard

RGS Holdings Limited ("RGS") have requested us to address this correspondence to you.

Paragraph 6.1.3.1 of the Business Rescue Plan (Vision Transactions) (the "Vision Plan") in relation to Tongaat Hulett Limited (In Business Rescue) ("THL") states that:

"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 Vision Plan therefore depends on the Vision Parties acquiring the Lender Group Debt before the voting date which was, but for the order of the High Court, to have occurred on 8 December 2023. RGS have asked us to request you to advise, in your capacities as business rescue practitioners of THL:

- whether the Vision Parties have in fact acquired the Lender Group Debt on the basis that it is stated in paragraph 6.1.1.6 of the Vision Plan that completion of the acquisition of the Lender Group Debt was anticipated to take place before the date of the Meeting (i.e. the original date of the Meeting being 8 December 2023);
- if not, whether the agreement between the Lender Group and the Vision Parties for the purchase of the Lender Group Debt referenced in paragraph 6.1.1.6 of the Vision Plan has lapsed or remains in full force and effect;
- if such agreement has lapsed, whether a new agreement has been entered into between the Vision Parties and the Lender Group for the acquisition of the Lender Group Debt; and
- if a new agreement has been concluded, when such new agreement was concluded.

We look forward to hearing from you.

Kind regards

Lionel

Lionel Shawe | Partner  
 T +27 11 341 4010 M +27 83 456 8930 E [lionel.shawe@whitecase.com](mailto:lionel.shawe@whitecase.com)  
 White & Case SA | Katherine Towers, 1st Floor | 1 Park Lane, Wierda Valley  
 Sandton, Johannesburg, 2196 | Republic of South Africa

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B.P.

details via email. Also note that we have not changed our banking details.



ATTORNEYS  
NOTARIES  
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From: Greg

Sent: Wednesday, 06 December 2023 02:33

To: 'Danny Andropoulos' <dandropoulos@werksmans.com>; Naomi <naomi@efglaw.co.za>;  
lionel.shawe@whitecase.com; mhanisi@rgs-holdings.com; hasnain@rgs-holdings.com; aquil@rgs-holdings.com;  
Ron Goldstein <ron@goldstein.co.za>; olwethu.gusha@whitecase.com; sibusiso.zungu@whitecase.com; chris@rgs-  
holdings.com

Cc: trevor@metis.co.za; peter@metis.co.za; gerhard@metis.co.za; dave@metis.co.za; patrick@bsm.africa;  
shaun@bsm.africa; David Hertz <DHertz@werksmans.com>; Trevor Boswell <TBoswell@werksmans.com>; Simone  
Gast <sgast@werksmans.com>; 'AgencySBSA@standardbank.co.za' <AgencySBSA@standardbank.co.za>;  
'goertel@ensafrica.com' <goertel@ensafrica.com>; 'howard.stephenson@gb.co.za'  
<howard.stephenson@gb.co.za>; 'Lara.Kahn@webberwentzel.com' <Lara.Kahn@webberwentzel.com>

Subject: RE: RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) [IMAN-COMMERCIAL.FID842069]

Dear Sirs

Kindly find attached letter.

Yours faithfully

EFG Incorporated  
Gregory Alan Edelstein  
Director  
27 Fricker Road  
Illovo  
Docex 261  
Randburg  
Tel : 011 341 0510  
Fax : 011 341 0537  
E-mail : greg@efglaw.co.za  
BEE Verification Status: Level 4

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**From:** Thulani Dlamini <tdlamini@werksmans.com> **On Behalf Of** Danny Andropoulos  
**Sent:** Tuesday, 28 November 2023 16:49  
**To:** Naomi <naomi@efglaw.co.za>; Greg <greg@efglaw.co.za>; lionel.shawe@whitecase.com; mhanisi@rgs-holdings.com; hasnain@rgs-holdings.com; aquil@rgs-holdings.com; Ron Goldstein <ron@goldstein.co.za>; olwethu.gusha@whitecase.com; sibusiso.zungu@whitecase.com; chris@rgs-holdings.com  
**Cc:** trevor@metis.co.za; peter@metis.co.za; gerhard@metis.co.za; dave@metis.co.za; patrick@bsm.africa; shaun@bsm.africa; David Hertz <DHertz@werksmans.com>; Danny Andropoulos <dandropoulos@werksmans.com>; Trevor Boswell <TBoswell@werksmans.com>; Simone Gast <sgast@werksmans.com>  
**Subject:** RE: RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) [IMAN-COMMERCIAL.FID842069]

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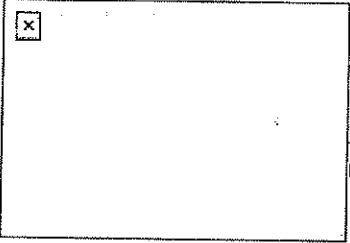
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 ATTORNEYS

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Dear Sirs,

Please see the attached letter for your attention.

Yours faithfully,



**Danny Andropoulos**  
 Director  
 +27 11 535 8248 +27 11 535 8676 dandropoulos@werksmans.com  
 The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196  
 Private Bag 10015, Sandton, 2146, South Africa  
 +27 11 535 8000 +27 11 535 8600 www.werksmans.com

**From:** Naomi <naomi@efglaw.co.za>  
**Sent:** 28 November 2023 09:27 AM  
**To:** trevor@metis.co.za; patrick@bsm.africa; peter@metis.co.za; dave@metis.co.za; gerhard@metis.co.za; shaun@bsm.africa; Danny Andropoulos <dandropoulos@werksmans.com>; ashleigh@metis.co.za; David Hertz <DHertz@werksmans.com>; Trevor Boswell <TBoswell@werksmans.com>; Simone Gast <sgast@werksmans.com>  
**Cc:** lionel.shawe@whitecase.com; mhanisi@rgs-holdings.com; hasnain@rgs-holdings.com; aquil@rgs-holdings.com; aquil@rgs-holdings.com; Ron Goldstein <ron@goldstein.co.za>; olwethu.gusha@whitecase.com; sibusiso.zungu@whitecase.com; chris@rgs-holdings.com; Greg <greg@efglaw.co.za>  
**Subject:** RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Dear Sirs,

Please find our letter attached for your attention.

Yours Faithfully

EFG INCORPORATED  
 Ground Floor  
 27 Fricker Road

B-P



Illovo  
Docex 261  
Randburg  
Tel: 011 341 0510  
BEE Verification Status: Level 4

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-----Original Message-----

From: scans <[scans@efg.law.co.za](mailto:scans@efg.law.co.za)>  
Sent: Tuesday, November 28, 2023 9:13 AM  
To: Naomi <[naomi@efg.law.co.za](mailto:naomi@efg.law.co.za)>  
Subject: Message from KM\_C458

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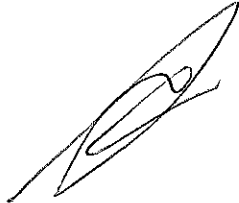
B.P

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B-P



5 December 2023

Our Ref: G Edelstein/nf

Your Ref: Mr D Hertz/Mr D Andropoulos/Mr

T Boswell/Ms S Gast/tjb/

TONG7430.13/#9803931v8

**Mr D Hertz**

[dhertz@werksmans.com](mailto:dhertz@werksmans.com)

**Mr D Andropoulos**

[dandropoulos@werksmans.com](mailto:dandropoulos@werksmans.com)

**Mr T Boswell**

[tboswell@werksmans.com](mailto:tboswell@werksmans.com)

**Ms S Gast**

[sgast@werksmans.com](mailto:sgast@werksmans.com)

**Copy to:**

**Mr Ven Seerangam**

The Standard Bank of South Africa Limited

As Facility Agent on behalf of The Senior Lenders of Tongaat Hulett Limited

[AgencySBSA@standardbank.co.za](mailto:AgencySBSA@standardbank.co.za)

**Mr G Oertel**

ENSAfrica

[goertel@ensafrika.com](mailto:goertel@ensafrika.com)

**Mr H Stephenson**

Garlicke & Bousfield

[howard.stephenson@gb.co.za](mailto:howard.stephenson@gb.co.za)

**Ms L Kahn**

Webber Wentzel

[Lara.Kahn@webberwentzel.com](mailto:Lara.Kahn@webberwentzel.com)

5 December 2023

**URGENT**

edelstein farber grobler

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Incorporating the practice of

JEFF AFRIAT INCORPORATED

Reg: 2016/CO5632/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT

ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

Ground Floor, 27 Fricker Rd, Illovo, Jhb | P.O. Box 412049 Craighall, Jhb, 2024

Docex 261 Randburg | T: 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za

Conveyancing: ronel@efglaw.co.za

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

B.P.

Dear Sirs

**RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**

1. We refer to the above matter and to our previous letter of 28 November 2023. For ease of reference, definitions attributed to words in our letter of 28 November 2023 have been retained.
2. The purpose of this letter is to address (i) the urgent applications filed today by the South African Sugar Association (“SASA”) and RCL Foods Sugar & Milling (Pty) Ltd (“RCL”), and (ii) RGS’s continued concerns regarding possible unwarranted adjournments of the Section 151 Meeting for reasons relating to the status of the Terris Transaction.

***The SASA litigation***

3. Mr Justice Vahed issued an order dismissing the application brought by the BRPs under case number D4472/2023 on Wednesday, 29 November 2023 and handed down judgment yesterday (i.e. 4 December 2023) (“*the Judgment*”).
4. Pursuant to the Judgment, both SASA and RCL have launched urgent applications today to interdict the Section 151 Meeting from proceeding on Friday, 8 December 2023 *inter alia* on the basis that neither of the business rescue plans published by the BRPs on 29 November 2023 give due recognition to SASA’s rights as set out in the Judgment.

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Reg: 2016/005637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT  
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
Ground Floor, 27 Fricker Rd, Illovo, Jhb | P.O. Box 412049 Craighall, Jhb, 2024  
Docex 261 Randburg | T: 011 341 0510/29  
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za  
Conveyancing: ronel@efglaw.co.za  
www.efglaw.co.za

B.P.

5. RGS has in the meantime entered into discussions with RCL in terms of which RGS has in summary offered to pay SASA 100 cents in the rand on its claim against THL, payable at closing date (i.e. with no deferred payment terms), excluding interest on all historic outstanding amounts which are to be written off by SASA.
6. RCL has indicated that it will not persist with the interdictory relief it seeks in relation to the RGS Plan in the event that agreement is reached in the coming days.
7. The BRPs should therefore consider RCL's urgent application in the light of the ongoing discussions between RGS and RCL and the fact that RCL has indicated that it will not persist with the interdictory relief it seeks if the negotiations prove successful.
8. RGS is confident that the remaining terms and conditions of the RGS Plan can be finalised in the coming days and ahead of the Section 151 Meeting. It is moreover RGS's intention to amend its plan in relation to the amounts due to SASA as well as other small changes that have no material bearing on the amounts payable to all other creditors.
9. Given the fact that THL's PCF facility will expire on 8 December 2023, coupled with the imperative to conclude business rescue proceedings as expeditiously as possible, RGS fully expects the BRPs to use their best endeavours to support RGS in its discussions with RCL and SASA with a view to avoiding a further adjournment of the Section 151 Meeting.

*Further adjournment on grounds related to the Terris Transaction*

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JEFF AFRIAT INCORPORATED

Reg: 2016/005637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT  
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
Ground Floor, 27 Fricker Rd., Illovo, Jhb | P.O. Box 412049 Craighall, Jhb, 2024  
Docex 261 Randburg | T: 011 341 0510/29  
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za  
Conveyancing: ronel@efglaw.co.za  
www.efglaw.co.za

B.P.



ATTORNEYS  
NOTARIES  
CONVEYANCERS

10. As matters stand, the Terris Plan is not funded and if unconditional funding is not forthcoming by tomorrow (i.e. 6 December 2023) the agreement concluded between Terris and the Senior Lenders will lapse rendering the Terris Plan incompetent (i.e. if Terris does not obtain unconditional funding by the contractual deadline of 6 December 2023 the Terris Plan will not constitute a 'business rescue plan' as contemplated in the Act and will not therefore be capable of adoption at the Section 151 Meeting).
11. By contrast, and as the BRPs are fully aware, the RGS Plan is fully funded and ripe for implementation.
12. RGS understands that the BRPs, pursuant to their view that the THL business rescue is "creditor driven", would be minded to agree to further adjournments of the Section 151 Meeting should the Senior Lenders request it.
13. The BRPs' stance in this regard is unjustifiable as it is at odds with their statutory duties to act impartially in the best interests of THL.
14. The import of the BRPs' aforesaid statutory duties is quite clearly that the BRPs must consider the merits of any request for a further postponement themselves and they must do so objectively in order to decide whether it would be in the best interests of the THL business rescue.
15. The BRPs cannot therefore abdicate their statutory obligations and simply grant a postponement of the Section 151 Meeting because the Senior Lenders ask for it.

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INCORPORATED

Incorporating the practice of  
JEFF AFRIAT INCORPORATED

Reg: 2014/005637/21

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16. In circumstances where the agreement reached between Terris and the Senior Lenders will lapse tomorrow if Terris is unable to secure the necessary funding, it would clearly not be in THL's best interests for the BRPs to grant a further postponement of the Section 151 Meeting to accommodate the Senior Lenders and afford Terris more time to procure funding (which would remain a highly contingent eventuality).
17. As recorded in your letter of 11 August 2023, when RGS was first afforded access to the data room to conduct a due diligence investigation, the BRPs informed RGS that they would not delay the business rescue process to give RGS time to submit an unconditional offer in circumstances where it was thought that Kagera was likely to submit an unconditional offer imminently. RGS expects the same principle to apply presently.

*Conclusion*

18. RGS therefore requires a written undertaking from the BRPs **urgently but by no later than 12h00 on Wednesday, 6 December 2023** to the effect that they will not agree to a further postponement of the Section 151 Meeting at the Senior Lenders' instance or for any other reason related to the status of the Terris Transaction.
19. In the meantime, RGS's rights, including its right to place this correspondence before a judge in due course, remain strictly reserved.

Yours sincerely

edelstein farber grobler  
INCORPORATED

Incorporating the practice of  
JEFF AFRIAT INCORPORATED

Reg: 2016/005637/21

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B.P.

"SM3"

EXECUTION VERSION

TRANSFER CERTIFICATE

**To:** THE STANDARD BANK OF SOUTH AFRICA LIMITED (acting through its Corporate and Investment Banking division), as facility agent (the "Facility Agent")

**From:** ABSA BANK LIMITED ("Absa")  
THE STANDARD BANK OF SOUTH AFRICA LIMITED (acting through its Corporate and Investment Banking division) ("SBSA")  
FIRSTSTRAND BANK LIMITED (acting through its Rand Merchant Bank division) ("RMB")  
INVESTEC BANK LIMITED (acting through its Corporate and Institutional Banking division)  
INVESTEC BANK LIMITED (acting through its Investment Banking Division: Corporate Solutions)  
NEDBANK LIMITED ("Nedbank")  
THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA  
SANLAM LIFE INSURANCE LIMITED (acting through its Sanlam Specialised Finance 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  
ASHBURTON FUND MANAGERS PROPRIETARY LIMITED (acting for and on behalf of its clients)  
(collectively, the "Existing Lenders" and each an "Existing Lender" as the context may require)

**And from:** VISION INVESTMENTS 155 PROPRIETARY LIMITED (the "New Lender", and together with the Existing Lenders and the Facility Agent, collectively, the "Parties" and each a "Party" as the context may require)

20 November 2023

Dear Sirs,

TONGAAT HULETT LIMITED Common Terms Agreement, dated on or about 2 December 2021 (the "Agreement")



1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate and:
- 1.1. "Consideration" shall bear the meaning ascribed thereto in clause 6.1;
- 1.2. "Facility Agent Account" means the following bank account of the Facility Agent:
- |                      |  |
|----------------------|--|
| Bank:                | Standard Bank                                |
| Bank address:        | 88 Commissioner Street, Johannesburg, 2001   |
| Branch / SWIFT code: | 00 02 05                                     |
| Account name:        | Corporate Banking Disbursement Account No. 2 |
| Account number:      | 00 970 538 4                                 |
| Reference:           | Thor – Acquisition of Claims                 |
- 1.3. "Proportionate Share" means, in respect of each Existing Lender and as at the Transfer Date, that portion of the Consideration to which that Existing Lender is entitled in terms of clause 6.1, being such amount as set out at Schedule 1 (*Proportionate Share*);
- 1.4. "Senior Facility E Agreement" means the agreement titled "ZAR600 000 000 Senior Secured Borrowing Base Facility" entered into on or about 29 July 2022 between certain of the Existing Lenders, the Facility Agent and the Borrower; and
- 1.5. "Transfer Date" means date on which the New Lender has irrevocably and unconditionally effected payment of the Consideration into the Facility Agent Account in accordance with the provisions of clause 6 and the proceeds of such payment (in an amount equal to the Consideration) stand to the credit of the Facility Agent Account.
2. **Transfer of Senior Facility Commitments and Senior Facility Outstandings: Senior Facility A, Senior Facility B, Senior Facility C and Senior Facility D**
- 2.1. In terms of clause 24.5 (*Procedure for transfer*) of the Agreement, each Existing Lender, with effect from the Transfer Date, transfers to the New Lender, by cession and delegation:
- 2.1.1. Its Senior Facility A Commitment, Senior Facility B Commitment, Senior Facility C Commitment and Senior Facility D Commitment (as applicable); and
- 2.1.2. all of its rights and obligations under the Finance Documents (in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender) (as applicable).
- 2.2. On and with effect from the Transfer Date, the New Lender:
- 2.2.1. becomes party to the Agreement and each other relevant Finance Document as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender;



B.P.

- 2.2.2. becomes party to the Intercreditor Agreement as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender;
  - 2.2.3. undertakes to perform all the obligations expressed in the Agreement, the Intercreditor Agreement and the other applicable Finance Documents to be assumed by a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender; and
  - 2.2.4. agrees that it shall be bound by all the provisions of the Agreement, the Intercreditor Agreement and other applicable Finance Documents as if it had been an original party to those Finance Documents as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender.
- 2.3. On and with effect from the Transfer Date and against the implementation of the transactions set out at clauses 2.1 and 2.2, each Existing Lender shall:
- 2.3.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender; and
  - 2.3.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender.

3. Senior Facility E

- 3.1. It is recorded that, as at the date of this Transfer Certificate:
- 3.1.1. no "Senior Facility E Outstandings" are outstanding under the Finance Documents;
  - 3.1.2. each "Senior Facility E Commitment" has been irrevocably and unconditionally cancelled; and
  - 3.1.3. no "Senior Facility E Commitment" is capable of utilisation by any member of the South African Group.
- 3.2. On and with effect from the Transfer Date, each Existing Lender which is a "Senior Facility E Lender" shall:
- 3.2.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as "Senior Facility E Lender"; and



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3.2.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as "Senior Facility E Lender".

3.3. Capitalised and italicised terms where used in this clause 3 herein shall bear the meanings ascribed thereto in the Senior Facility E Agreement.

4. **Senior Overdraft Facilities**

4.1. It is recorded that, as at the date of this Transfer Certificate:

4.1.1. no Senior Overdraft Facility Outstandings are outstanding under any Senior Overdraft Facility Agreement;

4.1.2. each Senior Overdraft Facility Commitment has been irrevocably and unconditionally cancelled; and

4.1.3. no Senior Overdraft Facility is capable of utilisation by any member of the South African Group.

4.2. On and with effect from the Transfer Date, each of SBSA and RMB (in its capacity as Senior Overdraft Facility Lender) shall:

4.2.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Overdraft Facility Lender; and

4.2.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Overdraft Facility Lender.

5. **Transfer of Ancillary Facility Outstandings**

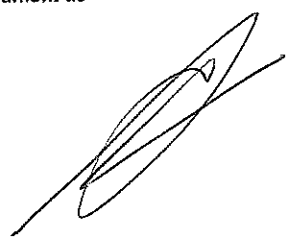
5.1. Each of SBSA, RMB and Nedbank (each in its capacity as an Ancillary Facility Lender), with effect from the Transfer Date, transfers to the New Lender, by cession and delegation:

5.1.1. all claims to payment and repayment of all Ancillary Facility Outstandings (save for any Ancillary Facility Outstandings under any credit card, Diners card, fleet card, corporate card or similar line made available by any such Ancillary Facility Lender to members of the South African Group); and

5.1.2. all of its rights and obligations under the Finance Documents (in its capacity as an Ancillary Facility Lender).

5.2. On and with effect from the Transfer Date the New Lender:

5.2.1. becomes party to the Agreement and each other relevant Finance Document as an Ancillary Facility Lender;



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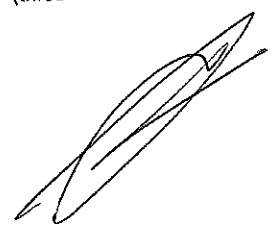
Transfer Certificate (Ternis)  
Execution Version

- 5.2.2. becomes party to the Intercreditor Agreement as an Ancillary Facility Lender;
  - 5.2.3. undertakes to perform all the obligations expressed in the Agreement, the Intercreditor Agreement and the other applicable Finance Documents to be assumed by an Ancillary Facility Lender; and
  - 5.2.4. agrees that it shall be bound by all the provisions of the Agreement, the Intercreditor Agreement and other applicable Finance Documents as if it had been an original party to those Finance Documents as an Ancillary Facility Lender.
- 5.3. On and with effect from the Transfer Date and against the implementation of the transactions set out at clauses 5.1 to 5.2 (inclusive), each of SBSA, RMB and Nedbank (each in its capacity as an Ancillary Facility Lender) shall:
- 5.3.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender; and
  - 5.3.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender.
- 5.4. On and with effect from the Transfer Date, Absa (in its capacity as an Ancillary Facility Lender) (the "Excluded Ancillary Facility Lender") shall, without derogating from its rights under the Ancillary Facility Documents concluded by it with members of the South African Group:
- 5.4.1. cease to be a party to the Intercreditor Agreement, the Common Terms Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender; and
  - 5.4.2. shall have no further rights and obligations under the Intercreditor Agreement, the Common Terms Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender.

it being recorded that the Ancillary Facilities made available by the Excluded Ancillary Facility Lender, and the Ancillary Facility Documents concluded by it with members of the South African Group, shall remain unamended and of full force and effect.

6. Consideration and payment

- 6.1. In consideration for the transactions set out at clauses 2 and 5, the New Lender unconditionally and irrevocably agrees to pay to the Facility Agent (for the account of each Existing Lender in its Proportionate Share) an amount equal to ZAR3 510 000 000 (three billion five hundred and ten million Rand) (the "Consideration").



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Transfer Certificate (Terris)  
Execution Version

- 6.2. The payment of the Consideration shall be made by the New Lender:
  - 6.2.1. by no later than noon South Africa Time on 6 December 2023 (the "Required Payment Date and Time"); and
  - 6.2.2. in cash, in immediately available funds, without withholding, set-off or deduction, into the Facility Agent Account.
- 6.3. The Facility Agent shall promptly (but in any event by no later than close of business, South African time on the date of receipt) notify the Existing Lenders and the New Lender of the proceeds of the payment contemplated in clause 6.1 being received and standing to the credit of the Facility Agent Account.
- 6.4. Should the New Lender fail to comply with its payment obligations in terms of clause 6.2.1 by the date and time specified in that clause, this Transfer Certificate shall terminate and shall be of no further force and effect and no Party shall have any claim, of whatsoever nature, against any other Party in connection with any of the transactions set out in this Transfer Certificate.

7. Information

- 7.1. The New Lender shall, promptly after becoming aware thereof, notify the Existing Lenders in writing of any committee of the Public Investment Corporation ("PIC") taking any decision to approve or reject the Proposed PIC Funding Transaction, which notification shall, if such approval is given, set out any conditions to which such approval may be subject. For the purposes of this clause 7.1, "Proposed PIC Funding Transaction" means the transaction proposed to be concluded between the New Lender and PIC in terms of which PIC shall, by no later than the Required Payment Date and Time, advance monies at least equal to ZAR2 000 000 000 (two billion Rand) to the New Lender to enable the New Lender to partially discharge the Consideration.
- 7.2. The New Lender shall, by no later than 28 November 2023, provide the Existing Lenders with evidence to their satisfaction that at least ZAR1 600 000 000 (one billion six hundred million Rand) of immediately available monies stand to the credit of a bank account maintained by the New Lender with a South African bank acceptable to the Existing Lenders.

8. Limitation of the responsibility of Existing Lenders

Without derogating from the provisions of clause 24.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement:

- 8.1. the Existing Lenders make no representation or warranty and assumes no responsibility to the New Lender for:
  - 8.1.1. the legality, validity, effectiveness, adequacy or enforceability of the Financing Agreements or any other documents;

B.P.

Transfer Certificate (Tervis)  
Execution Version

- 8.1.2. the financial condition of any Obligor, any Security Provider or any other member of the Group;
- 8.1.3. the performance and observance by any Obligor, any Security Provider and/or any other member of the Group of its obligations under the Financing Agreements or any other documents; or
- 8.1.4. the accuracy of any statements (whether written or oral) made in or in connection with any Financing Agreement or any other document,

and any representations or warranties implied by law are excluded;

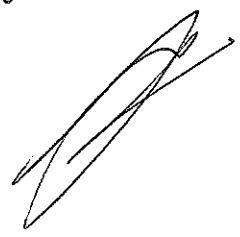
8.2. the New Lender confirms to the Existing Lenders that it:

- 8.2.1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor, each Security Provider, each member of the Group and its related entities in connection with its participation in the Agreement and the other Financing Agreements and has not relied on any information provided to it by any Existing Lender in connection with any Financing Agreement; and
- 8.2.2. will continue to make its own independent appraisal of the creditworthiness of each Obligor, each Security Provider, each member of the Group and its related entities whilst any amount is or may be outstanding under the Financing Agreement or any Senior Facility Commitment or Ancillary Facility Commitment is in force; and
- 8.2.3. agrees that nothing in this Transfer Certificate or any other Financing Agreement obliges an Existing Lender to:
  - 8.2.3.1. accept a re-transfer from the New Lender of any of the rights and obligations transferred in terms of this Transfer Certificate; or
  - 8.2.3.2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor, any Security Provider or any other member of the Group of its obligations under the Financing Agreements or otherwise.

9. Resignation of The Standard Bank of South Africa Limited as Facility Agent

With effect from the Transfer Date:

- 9.1. The Standard Bank of South Africa Limited (as facility agent) shall, notwithstanding the provisions of clause 26.1.11.2 of the Agreement, have resigned as Facility Agent; and



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9.2. the New Lender shall have appointed Vision Investments 155 Proprietary Limited as Facility Agent.

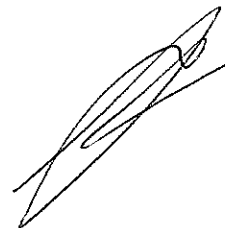
10. **General**

10.1. The physical address, email address and attention details for notices of the New Lender for the purposes of clause 33 (*Notices*) of the Agreement are set out in the Schedule.

10.2. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

10.3. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by South African law.

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PROPORTIONATE SHARE

Existing Lender	Proportionate Share
The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)	ZAR1 001 311 473.58
Nedbank Limited	ZAR730 354 034.38
Absa Bank Limited	ZAR435 092 480.03
FirstRand Bank Limited (acting through its Rand Merchant Bank division)	ZAR582 307 864.93
Investec Bank Limited (acting through its Corporate and Institutional Banking division)	ZAR155 394 086.62
Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)	ZAR155 394 086.62
The Land and Agricultural Development Bank of South Africa	ZAR190 785 222.15
Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)	ZAR77 949 267.16
Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)	ZAR15 860 750.29
Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)	ZAR66 318 232.85
Sanlam Specialised Finance Proprietary Limited	ZAR24 308 092.09
Momentum Metropolitan Life Limited	ZAR46 104 517.89
Ashburton Fund Managers Proprietary Limited (acting for and on behalf of its clients)	ZAR28 819 891.39

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Transfer Certificate (Teris)  
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**SCHEDULE 2**

**Administrative Details of the New Lender**

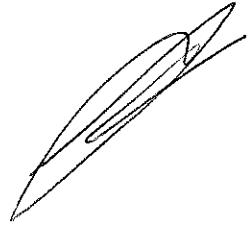
Notice details:

Physical address: 134 Beethoven Street, Waterkloof Glen, Pretoria, Gauteng, 0010

Email: rute@remoggo.com

Addressee: Rute Moyo

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Transfer Certificate (Terms)  
Execution Version

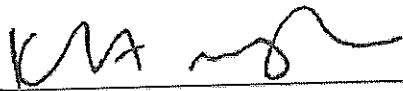
**SIGNATURE PAGE**

This Transfer Certificate is accepted by the Facility Agent.

SIGNED at Rosebank on this the 20th day of November 2023

For and on behalf of

**The Standard Bank of South Africa Limited**  
(acting through its Corporate and Investment  
Banking division)



Name: Kelly-Ann Myles  
Capacity: Head: Agency  
Who warrants his authority hereto

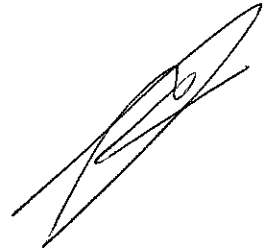
For and on behalf of

**The Standard Bank of South Africa Limited**  
(acting through its Corporate and Investment  
Banking division)

---

Name:  
Capacity:  
Who warrants his authority hereto

B-P



Transfer Certificate (Terms)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of  
**Absa Bank Limited**

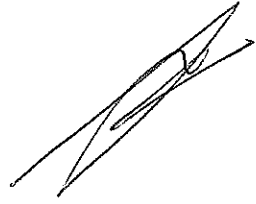
For and on behalf of  
**Absa Bank Limited**

DocuSigned by:  
*Christopher Li Green*  
C3CD8348CF83492...

DocuSigned by:  
*Anthony Evens*  
60STDBB068EB475...

Name: **Christopher Li Green**  
Capacity: **Authorized**  
Who warrants his authority hereto

Name: **Anthony Evens**  
Capacity: **Authorised**  
Who warrants his authority hereto



B. P

Transfer Certificate (Term)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Rosebank on this the 19 day of November 2023

For and on behalf of

**The Standard Bank of South Africa Limited**  
(acting through its Corporate and Investment  
Banking division)

*Martin Baumgartner*

Name: **Martin Baumgartner**  
Capacity: **Head, BS&R, Risk, CIB**  
Who warrants his authority hereto

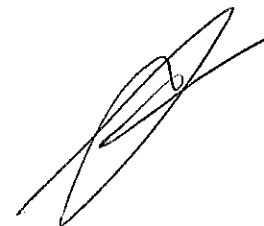
For and on behalf of

**The Standard Bank of South Africa Limited**  
(acting through its Corporate and Investment  
Banking division)

*SL*

Name: **Scott Lavery**  
Capacity: **Investment Banking - Head Trade**  
Who warrants his authority hereto

*B. P.*



Transfer Certificate (Terre)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Johannesburg on this the 20 day of November 2023

For and on behalf of  
**FirstRand Bank Limited**  
(acting through its Rand Merchant Bank division)

*Christopher Alderson*

\_\_\_\_\_  
Name: Chris Alderson  
Capacity: Authorised  
Who warrants his authority hereto

For and on behalf of  
**FirstRand Bank Limited**  
(acting through its Rand Merchant Bank division)



\_\_\_\_\_  
Name: Jean du Plessis  
Capacity: Authorised  
Who warrants his authority hereto



*B.P.*

Transfer Certificate (Terria)  
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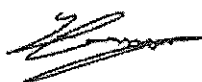
**EXISTING LENDER**

SIGNED at \_\_\_\_\_ on this the 20th day of November 2023

For and on behalf of

**Investec Bank Limited**

(acting through its Corporate and Institutional  
Banking division)



\_\_\_\_\_  
Name: Igna Ferreira  
Capacity: Authorised Signatory  
Who warrants his authority hereto

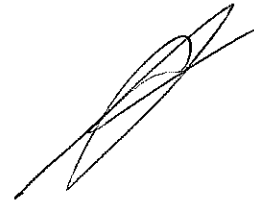
For and on behalf of

**Investec Bank Limited**

(acting through its Corporate and Institutional  
Banking division)



\_\_\_\_\_  
Name: Andrew Kunyamane  
Capacity: Authorised Signatory  
Who warrants his authority hereto



B.P.

Transfer Certificate (Terre)  
Execution Version

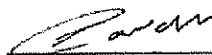
**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at \_\_\_\_\_ on this the 20th day of November 2023

For and on behalf of

**Investec Bank Limited**  
(acting through its Investment Banking Division,  
Corporate Solutions)



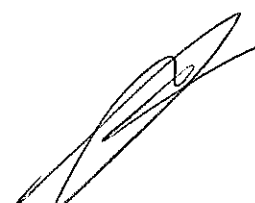
Name: Kerry Caldwell  
Capacity: Authorised Signatory  
Who warrants his authority hereto

For and on behalf of

**Investec Bank Limited**  
(acting through its Investment Banking Division,  
Corporate Solutions)



Name: Ricardo Lupini  
Capacity: Authorised Signatory  
Who warrants his authority hereto



B. A

Transfer Certificate (Terms)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at \_\_\_\_\_ on this the 20th day of November 2023

For and on behalf of  
Nedbank Limited

For and on behalf of  
Nedbank Limited



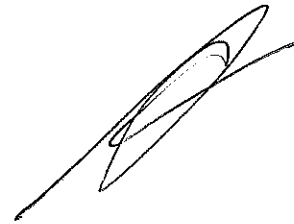
Name: Priyan Govender  
Capacity: Authorised  
Who warrants his authority hereto

Name: Vuyisa Sobayeni  
Capacity: Authorised  
Who warrants his authority hereto

For and on behalf of  
Nedbank Limited



Name: Wellwood Nortier  
Capacity: Authorised  
Who warrants his authority hereto



B-P.



SS

Transfer Certificate (Terria)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at \_\_\_\_\_ on this the 20th day of November 2023

For and on behalf of  
**The Land and Agricultural Development  
Bank of South Africa**

*Stephen Sebueng*  
Stephen Sebueng  
20/11/2023 13:54:41(UTC+02:00)

Name: **Stephen Sebueng**  
Capacity: **EM: Legal Services**  
Who warrants his authority hereto

For and on behalf of  
**The Land and Agricultural Development  
Bank of South Africa**

*Faride Stiglingh*  
Faride Stiglingh  
20/11/2023 14:26:41(UTC+02:00)

Name: **Faride Stiglingh**  
Capacity: **EM: Post Investment Services**  
Who warrants his authority hereto



*B.P.*

Transfer Certificate (Terms)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

**Sanlam Life Insurance Limited**  
(acting through its Sanlam Specialised Finance  
division)

For and on behalf of

**Sanlam Life Insurance Limited**  
(acting through its Sanlam Specialised Finance  
division)

*Howard van der Merwe*

\_\_\_\_\_  
Name: **Howard van der Merwe**  
Capacity: **Authorised Signatory**  
Who warrants his authority hereto

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto



*B.c.f*

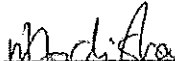
**SIGNATURE PAGE**

**EXISTING LENDER**

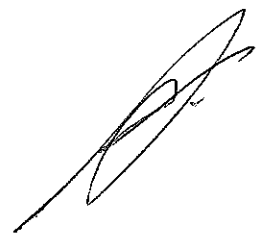
SIGNED at Pretoria on this the 20th day of November 2023

For and on behalf of  
**Sanlam Investment Management  
Proprietary Limited**  
(acting on behalf of its third party clients)

For and on behalf of  
**Sanlam Investment Management  
Proprietary Limited**  
(acting on behalf of its third party clients)

  
\_\_\_\_\_  
Name: **Mokgatla Madisha**  
Capacity: **Authorised Signatory**  
Who warrants his authority hereto

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto



B.P.

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Cape Town on this the 20th day of November 2023

For and on behalf of  
**Sanlam Life Insurance Limited**  
(acting through its Sanlam Investment  
Management division)

For and on behalf of  
**Sanlam Life Insurance Limited**  
(acting through its Sanlam Investment  
Management division)



\_\_\_\_\_  
Name: **Cecilia Le Roux**  
Capacity: **Authorised Signatory**  
Who warrants his authority hereto

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto



B.A

59

Transfer Certificate (Ternis)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

**Sanlam Specialised Finance Proprietary  
Limited**

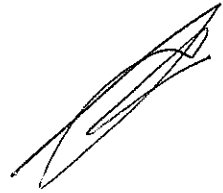
*Howard van der Merwe*

\_\_\_\_\_  
Name: **Howard van der Merwe**  
Capacity: **Authorised Signatory**  
Who warrants his authority hereto

For and on behalf of

**Sanlam Specialised Finance Proprietary  
Limited**

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto



*B.P.*

Transfer Certificate (Terms)  
Execution Version


**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Cape Town on this the 20th day of November 2023

For and on behalf of  
**Sanlam Life Insurance Limited**  
(acting through its Sanlam Investment  
Management division)

For and on behalf of  
**Sanlam Life Insurance Limited**  
(acting through its Sanlam Investment  
Management division)

  
\_\_\_\_\_  
Name: **Cecilia Le Roux**  
Capacity: **Authorised Signatory**  
Who warrants his authority hereto

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto



B-P.

Transfer Certificate (Terms)  
Execution Version


**SIGNATURE PAGE**

**EXISTING LENDER**

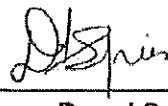
SIGNED at \_\_\_\_\_ on this the 20th day of November 2023

For and on behalf of  
**Momentum Metropolitan Life Limited**

For and on behalf of  
**Momentum Metropolitan Life Limited**

  
\_\_\_\_\_

Name: Kagiso Tsatsane  
Capacity: Authorised Signatory  
Who warrants his authority hereto

  
\_\_\_\_\_

Name: Duard Spies  
Capacity: Authorised Signatory  
Who warrants his authority hereto



B.P.

Transfer Certificate (Terrie)  
Execution Version

**SIGNATURE PAGE**

**EXISTING LENDER**

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

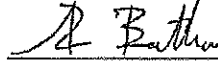
**Ashburton Fund Managers Proprietary Limited**  
(acting for and on behalf of its clients)



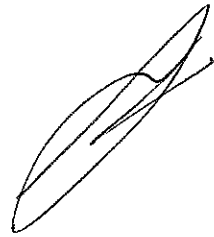
Name: Santhuri Thaver  
Capacity: Authorised Signatory  
Who warrants his authority hereto

For and on behalf of

**Ashburton Fund Managers Proprietary Limited**  
(acting for and on behalf of its clients)



Name: Albert Botha  
Capacity: Authorised Signatory  
Who warrants his authority hereto



B.P.



Transfer Certificate (Terra)  
Execution Version

**SIGNATURE PAGE**

**NEW LENDER**


SIGNED at \_\_\_\_\_ on this the 20th day of November 2023

For and on behalf of  
Vision Investments 155 Proprietary Limited

For and on behalf of  
Vision Investments 155 Proprietary Limited

\_\_\_\_\_  
Name: **BUTENHURO MOYO**  
Capacity: **DIRECTOR**  
Who warrants his authority hereto

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto

  
B.P.

Naomi

**From:** Shawe, Lionel <lionel.shawe@whitecase.com>  
**Sent:** Saturday, 09 December 2023 10:39  
**To:** 'Ruan Kotze'  
**Subject:** FW: Tongaat Hulett Limited (In Business Rescue)

"SM4"

**From:** Patrick Birkett <patrick@bsm.africa>  
**Date:** Friday, 08 Dec 2023 at 7:40 PM  
**To:** Shawe, Lionel <lionel.shawe@whitecase.com>  
**Cc:** Peter van den Steen <peter@metis.co.za>, Gerhard Albertyn <gerhard@metis.co.za>, Dave Lake <dave@metis.co.za>, Trevor Murgatroyd <trevor@metis.co.za>, Ashleigh Cohen <ashleigh@metis.co.za>, Danny Andropoulos <dandropoulos@werksmans.com>  
**Subject:** RE: Tongaat Hulett Limited (In Business Rescue)

Dear Lionel,

Thank you for your email below.

Unfortunately, the BRPs have limited information at their disposal, as they have received no formal communication from the Lender Group in relation to the subject matter of your enquiries. Suffice it to say, that based on currently available information, the Terris Business Rescue Plan will require some modification, as will the RGS Business Rescue Plan.

The BRPs are not privy to any of the detail of the discussions between the Terris Consortium and the Lender Group. To the extent that your client requires further detailed information, may I suggest that they direct their enquiries directly to the Lender Group.

In the interim, we await your client's revised proposal for inclusion into the RGS Business Rescue Plan (in its amended form).

Kind regards,  
Patrick

**From:** "Shawe, Lionel" <lionel.shawe@whitecase.com>  
**Date:** Friday, 08 December 2023 at 15:41  
**To:** Trevor Murgatroyd <trevor@metis.co.za>; Peter van den Steen <peter@metis.co.za>, Gerhard Albertyn <gerhard@metis.co.za>  
**Cc:** Danny Andropoulos <dandropoulos@werksmans.com>  
**Subject:** Tongaat Hulett Limited (In Business Rescue)

Dear Trevor, Peter and Gerhard

RGS Holdings Limited ("RGS") have requested us to address this correspondence to you.

Paragraph 6.1.3.1 of the Business Rescue Plan (Vision Transactions) (the "Vision Plan") in relation to Tongaat Hulett Limited (In Business Rescue) ("THL") states that:

"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."

B-F

The Vision Plan therefore depends on the Vision Parties acquiring the Lender Group Debt before the voting date which was, but for the order of the High Court, to have occurred on 8 December 2023. RGS have asked us to request you to advise, in your capacities as business rescue practitioners of THL:

- whether the Vision Parties have in fact acquired the Lender Group Debt on the basis that it is stated in paragraph 6.1.1.6 of the Vision Plan that completion of the acquisition of the Lender Group Debt was anticipated to take place before the date of the Meeting (i.e. the original date of the Meeting being 8 December 2023);
- if not, whether the agreement between the Lender Group and the Vision Parties for the purchase of the Lender Group Debt referenced in paragraph 6.1.1.6 of the Vision Plan has lapsed or remains in full force and effect;
- if such agreement has lapsed, whether a new agreement has been entered into between the Vision Parties and the Lender Group for the acquisition of the Lender Group Debt; and
- if a new agreement has been concluded, when such new agreement was concluded.

We look forward to hearing from you.

Kind regards

Lionel

**Lionel Shawe** | Partner  
 T +27 11 341 4010 M +27 83 456 8930 E [lionel.shawe@whitecase.com](mailto:lionel.shawe@whitecase.com)  
 White & Case SA | Katherine Towers, 1st Floor | 1 Park Lane, Wierda Valley  
 Sandton, Johannesburg, 2196 | Republic of South Africa

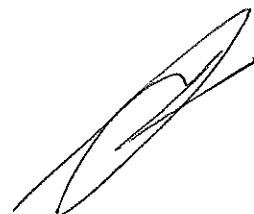
**WHITE & CASE**

=====  
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Our external privacy policy is available on <https://www.whitecase.com/privacy-policy>.

=====  


B.P.

**Naomi**

---

**From:** Greg  
**Sent:** Monday, 11 December 2023 07:09  
**To:** David Hertz; Danny Andropoulos; Trevor Boswell; Simone Gast  
**Cc:** AgencySBSA@standardbank.co.za; goertel@ensafrica.com;  
howard.stephenson@gb.co.za; Lara.Kahn@webberwentzel.com; Haroon Laher;  
Naomi  
**Subject:** RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)  
**Attachments:** lettertowerksmansrgs11dec2023final2.pdf

"SM5"

Dear Sirs

Kindly find attached letter for your urgent attention,

Yours faithfully

EFG Incorporated  
Gregory Alan Edelstein  
Director  
27 Fricker Road  
Illovo  
Docex 261  
Randburg  
Tel : 011 341 0510  
Fax : 011 341 0537  
E-mail : greg@efglaw.co.za  
BEE Verification Status: Level 4

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The sender accepts no liability of whatever nature for any loss, liability, damage or expense resulting directly or indirectly from the access of any files which are attached to this message.

**EXTREMELY IMPORTANT NOTICE:**

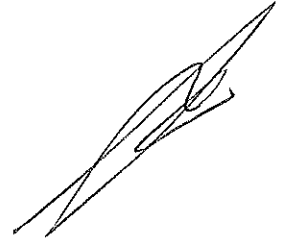
*Due to the risk of email related fraud, please note that we shall never advise you of a change in banking/account*



details via email. Also note that we have not changed our banking details.



ATTORNEYS  
NOTARIES  
CONVEYANCERS





Our Ref: G Edelstein/nf  
 Your Ref: Mr D Hertz/Mr D Andropoulos/Mr  
 T Boswell/Ms S  
 Gast/tjb/TONG7430.13/#9803931v8

**Werksmans Attorneys**

Dear Sirs

**RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN  
 BUSINESS RESCUE)**

**Mr D Hertz**  
[dhertz@werksmans.com](mailto:dhertz@werksmans.com)

**Mr D Andropoulos**  
[dandropoulos@werksmans.com](mailto:dandropoulos@werksmans.com)

**Mr T Boswell**  
[tboswell@werksmans.com](mailto:tboswell@werksmans.com)

**Ms S Gast**  
[sgast@werksmans.com](mailto:sgast@werksmans.com)

**Copy to:**

**Mr Ven Seerangam**  
 The Standard Bank of South Africa Limited  
 As Facility Agent on behalf of The Senior Lenders of Tongaat Hulett Limited  
[AgencvSBSA@standardbank.co.za](mailto:AgencvSBSA@standardbank.co.za)

**Mr G Oertel**  
 ENSAfrica  
[goertel@ensafrika.com](mailto:goertel@ensafrika.com)

edelstein farber grobler  
 INCORPORATED

Incorporating the practice of  
 JEFF AFRIAT INCORPORATED

Reg: 2016/CO5637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT  
 ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
 Ground Floor, 27 Fricker Rd., Illovo, Jhb | P.O. Box 412049 Creighton, Jhb, 2024  
 Docex 261 Randburg | T: 011 341 0510/29  
 Litigation: greg@efglaw.co.za | jeff@efglaw.co.za  
 Conveyancing: ronei@efglaw.co.za  
[www.efglaw.co.za](http://www.efglaw.co.za)

A large, stylized handwritten signature in black ink, appearing to be 'S. H.' or similar.

Handwritten initials 'S.H.' in black ink.



**Mr H Stephenson**  
Garlicke & Bousfield  
[howard.stephenson@gb.co.za](mailto:howard.stephenson@gb.co.za)

**Ms L Kahn**  
Webber Wentzel  
[Lara.Kahn@webberwentzel.com](mailto:Lara.Kahn@webberwentzel.com)

**Mr H Laher**  
Faskin Inc  
[hlaher@fasken.com](mailto:hlaher@fasken.com)

11 December 2023

**URGENT**

Dear Sirs

**RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**

1. We refer to the above matter and to your letter of 6 December 2023.
2. The purpose of this letter is to:
  - 2.1. provide an update regarding the ongoing negotiations between RGS and RCL / SASA;
  - 2.2. convey RGS' position that the section 151 meeting (the "Meeting") must (unless interdicted by the High Court) proceed on Thursday, 14 December 2023;
  - 2.3. address the status of the Terris / Vision Transaction as it relates the timing of the holding of the Meeting.

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JEFF AFRIAT INCORPORATED

Reg: 2016/005637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT  
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
Ground Floor, 27 Fricker Rd, Illovo, Jhb | P.O. Box 412049 Craighall, Jhb, 2024  
Docex 261 Randburg | T: 011 341 0510/29  
Litigation: [greg@efglaw.co.za](mailto:greg@efglaw.co.za) | [jeff@efglaw.co.za](mailto:jeff@efglaw.co.za)  
Conveyancing: [ronel@efglaw.co.za](mailto:ronel@efglaw.co.za)  
[www.efglaw.co.za](http://www.efglaw.co.za)

B.P.

*RCL and SASA*

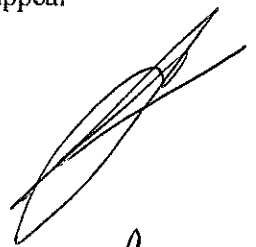
3. On Wednesday, 6 December 2023 RGS and RCL reached an agreement in principle regarding the amendment of the RGS BR Plan to recognise SASA's claims in the THL business rescue in a manner that is acceptable to RCL and SASA and is consistent with the judgment handed down by Mr Justice Vahed on 29 November 2023. RCL conveyed to RGS that the proposal should be transmitted to SASA as RCL could not bind SASA. On the same day the RGS proposal regarding the SASA Claim (as agreed in principle with RCL) was transmitted in writing to Mary Ramkelawon, the Chief Financial Officer of SASA.
  
4. On Friday 8 December 2023, RGS met with SASA to discuss the aforesaid RGS proposal and the consequential amendments of the RGS BR Plan. The meeting was productive and resulted in confirmation that agreement had indeed been reached in principle with SASA. SASA conveyed to RGS that SASA had apprised the BRPs of the RGS proposal. SASA indicated that it would now await to see how the RGS proposal regarding the SASA Claims is included in the amended RGS BR Plan.
  
5. It should be noted that a key component of RGS' proposal to SASA is that the appeal of the judgment and order of Mr Justice Vahed will not be pursued even Vahed J were to grant leave to appeal following the hearing of the application for leave to appeal on Wednesday, 13 December 2023. There is no need in RGS' view to trammel the business rescue process of THL, Tongaat Hulett Sugar South Africa and Voermol (Pty) Ltd with an unnecessary and lengthy appeal process when a commercial settlement is available to the parties.

edelstein, farber grobler  
INCORPORATED

Incorporating the practice of  
JEFF AFRIAT INCORPORATED

Reg: 2014/CO5637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT  
 ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
 Ground Floor, 27 Fricker Rd, Illovo, Jhb - P.O. Box 412049 Craighall, Jhb, 2024  
 Docex 261 Randburg | T: 011 341 0510/29  
 Litigation: greg@efglaw.co.za | jeff@efglaw.co.za  
 Conveyancing: rohel@efglaw.co.za  
 www.efglaw.co.za



B.P.



6. The process of making the necessary SASA-related amendments to the RGS BR Plan is at an advanced stage of completion and a revised plan will be ready by Thursday, 14 December 2023 when the Section 151 meeting (“the Meeting”) will proceed and at which time the amended RGS BR Plan can be introduced by way of a motion for the amendment of the published version of the RGS BR Plan as contemplated in section 152(1)(d)(i) of the Companies Act. The RGS BR Plan incorporating the SASA-related amendments will, however, be shared with SASA, RCL and the BRPs ahead of the Meeting and before the hearing of the interdict proceedings in the High Court on Wednesday. The upshot of the SASA-related amendments is that it will no longer be necessary for SASA to interdict the holding of the Meeting at least insofar as it relates to the RGS BR Plan. This will clear a hurdle for the Meeting to proceed on Thursday, 14 December 2023.
7. Given the fact that the RGS offer is fully funded and SASA’s and RCL’s objections to the RGS BR Plan were the only impediments to the RGS BR Plan being tabled for adoption at the Meeting on Thursday, 14 December 2023, RGS reiterates that it fully expects the BRPs to use their best endeavours to support RGS in doing all things necessary to ensure that the RGS BR Plan, as amended, is tabled for adoption at the Meeting.
8. Any conduct to the contrary on the part of the BRPs would be in breach of the BRPs’ statutory duties to act in THL’s best interests and would moreover be antithetical to the contents of the answering affidavit deposed to by Mr Albertyn on 6 December 2023 on behalf of the BRPs in the urgent applications brought by RCL and SASA.

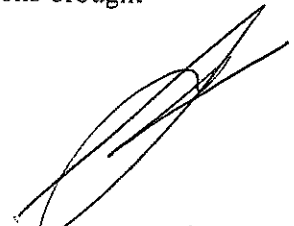
***The BRPs’ proposal to adjourn the Meeting***

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Reg: 2016/CO5637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT  
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
Ground Floor, 27 Fitcher Rd, Moyo, Jhb | P.O. Box 412049 Craighall, Jhb. 2024  
Docex 261 Randburg | T: 011 341 0510/29  
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za  
Conveyancing: ronel@efglaw.co.za  
www.efglaw.co.za



B.L.

9. RGS notes with concern the suggestion by the BRPs contain in paragraph 10 of Gerhard Albertyn’s Answering Affidavit dated 10 December 2023 (the “**BRP Answering Affidavit**”) filed in the interdict proceedings that the BRPs “*support the adjournment of the section 151 meeting currently scheduled for 14 December 2023 to no earlier than Monday, 8 January 2024, but no later than Thursday, 11 January 2024*” ostensibly to permit the proposed business rescue plans to be amended and to afford all affected persons time to consider the revisions.
  
10. As indicated above the RGS proposal in relation to SASA is agreed in principle with SASA given that a detailed proposal was submitted to RCL and SASA. As these amendments to the RGS BR Plan affect only SASA no other affected person would be prejudiced by the amendments. We fully expect SASA and RCL to support these amendments. There should also be no reason for the BRPs to object to the SASA-related amendments to the RGS BR Plan.
  
11. If the Terris / Vision Parties are not able to finalise their discussions with SASA prior to the Meeting that in and of itself should not preclude the Meeting going ahead to consider and if thought fit adopt the RGS BR Plan. If RGS is able to agree a proposal with SASA in the short time available, then there is no reason why the Terris / Vision Parties should not be able to do so. If it comes down to a lack of financial resources on the part of the Terris / Vision Parties, or a need on the part of the Terris / Vision Parties to raise finance before or after the Meeting, to make an offer to SASA sufficient to satisfy SASA that it would be able to accept such a proposal, that fact should not cause a delay to the Meeting. It is not up to the BRPs to facilitate adjournments of the Meeting to allow the Terris /

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INCORPORATED

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JEFF AFRIAT INCORPORATED

Reg: 2016/005637/21

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ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA  
Ground Floor, 27 Fricker Rd, Illovo, Jhb | P.O. Box 412049 Craighall, Jhb, 2024  
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Conveyancing: ronel@efglaw.co.za  
www.efglaw.co.za

B.P.



Vision parties to get their funding in order especially not when the RGS BR Plan does not require, nor is dependent on, any third party funding being raised.

- 12. RGS is in discussions with the Lender Group regarding amendments to the RGS BR Plan following comments received from the Lender Group's attorneys, ENSAfrica. These Lender Group-related amendments are being progressed and RGS sees no reason why these discussions cannot be finalised with the Lender Group ahead of the Meeting. As with the SASA-related amendments to the RGS BR Plan, the Lender Group-related amendments will be introduced by way of a motion for the amendment of the published version of the RGS BR Plan as contemplated in section 152(1)(d)(i) of the Companies Act. This is the correct procedure for the adoption of amendments to a published business rescue plan.
  
- 13. It is stated in paragraph 9.3 of the BRP Answering Affidavit that the Terris / Vision Parties are in discussions with the Lender Group regarding their proposal. The Terris / Vision Parties' BR Plan relies on the Lender Group Claims being purchased ahead of the Meeting. RGS is aware that the Terris / Vision Parties have not on two occasions been in a position to raising the necessary funding to pay the Lender Group for the Lender Group Claims resulting both agreements for the purchase of the Lender Group Claims having lapsed. The discussions between the Terris / Vision Parties and the Lender Group can therefore only relate to affording the Terris / Vision Parties additional time to come up with the funding to pay the purchase price for the Lender Group Claims. It is not the task of the BRPs to facilitate extensions of time during the THL business rescue process to allow a proposing party to raise financing. This is particularly the case in the circumstances of the Terris / Vision BR Plan which envisages a purchase of the Lender Group Claims and is

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therefore predicated on a private deal being done between the Terris / Vision Parties and the Lender Group.

14. Although the BRPs have refused to comment on the status of the Terris / Vision BR Plan or confirm whether the Terris / Vision Parties procured the funding which was a condition to their agreement with the Lender Group by the contractual deadline of 6 December 2023, RGS's own enquiries have revealed that this has not in fact occurred and that the agreement reached between the Vision Parties and the Lender Group therefore lapsed on 6 December 2023. This much was confirmed to RGS during a meeting with the Lender Group on Thursday, 7 December 2023. One would have expected the BRPs to have made similar enquiries. To say, as Patrick Birkett stated in his response to White & Case's email of 8 December 2023 enquiring as to the status of the Terris / Vision BR Plan as it relates to the purchase the Lender Group Claims, that the BRPs *"are not privy to any of the detail of the discussions between the Terris Consortium and the Lender Group"* is a significant dereliction of duty on the part of the BRPs who are responsible for ensuring the publication of a compliant business rescue plan. Given the experience of the BRPs involved in this matter this conduct is somewhat remarkable.
  
15. Suffice to say, if the Terris / Vision Parties have not procured their funding or purchased the Lender Group Claims prior to the Meeting, the correct procedure is to withdraw the Terris / Vision BR Plan due to its inability to be implemented at the date of the Meeting. It cannot seriously be suggested that the Terris / Vision BR Plan complies with the applicable statutory requirements in circumstances where the bidder in question has neither the necessary funding nor the necessary agreement with the Lender Group on which the offer is

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premised. However, the withdrawal the Terris / Vision BR Plan should not result in the adjournment of the Meeting insofar as it relates to consideration of, amendment to and voting on the RGS BR Plan. At such point there can be no doubt that the RGS BR Plan is the only valid business rescue plan for THL in existence.

16. In the IDC's Supporting Affidavit for Application to Intervene and Answering Affidavit in the Interdict Applications (the "IDC Affidavit") the IDC, in its capacity as PCF Lender, clearly states that the Meeting must proceed on Thursday, 14 December 2023 despite the arrangements for the extension of the PCF not yet being in place. See paragraphs 57 and 62 of the IDC Affidavit. The IDC Affidavit therefore does not support the position in the BRP Answering Affidavit that the extension of the PCF facility means that the Meeting should be adjourned.
17. Consequently, RGS once again finds itself in a position where it has no option but to seek urgent assurances from the BRPs that they will not facilitate a further adjournment of the Meeting under any circumstances or otherwise act to afford an advantage or undue benefit to the Terris / Vision Parties in breach of their duties as business rescue practitioners.

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*The lawfulness of the Terris / Vision BR Plan*

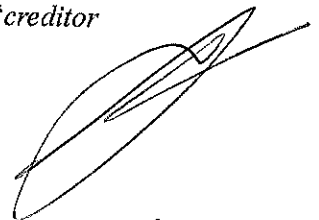
18. Taking account of the definition of “*business rescue*” in section 128(1) of the Companies Act read with sections 5 and 7(k) of the Companies Act, it is trite that a business rescue plan cannot be:
- 18.1. designed to be in, or further, the interests of some stakeholders to the exclusion of others; nor
- 18.2. a private transaction between certain stakeholders dressed up as a business rescue plan.
19. It is manifest that the Terris / Vision BR Plan fails on both of these respects. The BRPs are simply trying to facilitate the Lender Group’s desire to exit their exposures to THL so as to remove the risk of the Lender Group in relation the business rescue process and the regulatory approvals that will be required to implement any business rescue plan. Therefore, only the interests of the Lender Group are being considered to the detriment of all other stakeholders. While it is clear that the Lender Group are not precluded from selling their claims, what they and the BRPs cannot do is hold up or “hijack” a business rescue process to allow for the private deal between the Lender Group and the Terris / Vision Parties to be done. This is contrary to the requirement of Chapter 6 that business rescue processes must be completed expeditiously and the requirement that the interests of all stakeholders must be balanced.
20. The Terris / Vision BR Plan contains a substantial uncertainty that the purchase of the Lender Group Claims can ever be completed – which eventuality has twice played out. The BRPs have repeatedly said that the process is “*creditor*

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*lead*” but what they really mean is “*Lender Group lead*” because they have not taken the views or interests of any other creditors into account and have ostensibly done the bidding of the Lender Group to assist the Lender Group in furthering its own aims rather than the aims of rescuing THL, THSSA, Voermol and THD.

21. Furthermore, at a basic level therefore the Terris / Vision BR Plan does not comply with the definition of “*business rescue*” in that it patently does not maximise the likelihood of the company continuing in existence on a solvent basis.
22. RGS reserves the right to address the lawfulness of the Terris / Vision BR Plan in the appropriate forum should it deem it necessary to do so.

***The Status of the Pre-Meeting Proxy Vote Proposed by the BRPs***

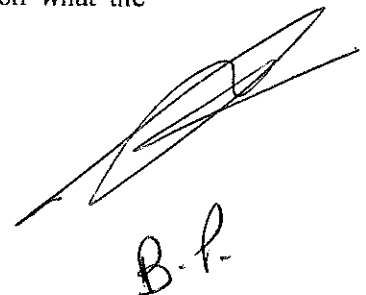
23. In circumstances where two business rescue plans are published for consideration by affected persons, the only correct procedure is for both business rescue plans to be deliberated on, amended if required pursuant to a motion to amend and voted on at the Meeting.
24. It is not appropriate nor lawful to ask the creditors to determine the sequence in which the voting on the plans should take place. This is especially the case where the interests of the Lender Group or the Terris / Vision Parties, depending on who owns the Lender Group Claims at the relevant time, diverge from the interests of RGS and it would appear to be a foregone conclusion what the outcome of a pre-vote would be.

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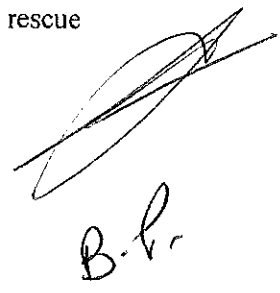
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- 25. The sequence of voting is irrelevant. The plans can be voted on in any sequence. The important point is that both plans must be voted on so that an outcome for each plan is determined i.e., one may be approved and the other rejected or both may be rejected (it is not possible that both plans are approved). The outcome of the vote on the plans should, however, remain unannounced until both votes have occurred after deliberations on and (if required) amendments to both plans have taken place. Both plans would therefore fall to be dealt with in terms of the provisions of sections 152 and 153 of the Companies Act. If the Meeting is adjourned for any reason, it should be adjourned for both plans without a vote on either occurring. The procedural matters relating to amendments and adjournments for both plans should occur before the vote on the plans.
  
- 26. RGS requires an undertaking from the BRPs that the Pre-Meeting Proxy Vote will be cancelled and that the RGS BR Plan and the Terris / Vision BR Plan will be dealt with in accordance with the procedure set out above and in particular that:
  - 26.1. both plans will be voted on (as amended if amendments are adopted at the Meeting); and
  
  - 26.2. the results of the votes will be announced by the BRPs only after both votes have occurred.

This process will respect the status of both plans as published business rescue plans.





27. Of course, if the Terris / Vision BR Plan is withdrawn as contemplated in paragraph 15 only the RGS BR Plan must be considered at the Meeting in terms of section 152 of the Companies Act.

***Republication of the Business Rescue Plans***

28. We understand the BRPs are suggesting that they will republish the business rescue plans on Tuesday, 12 December 2023 due to amendments being made to both business rescue plans.
29. We point out that there is no procedure in Chapter 6 of the Companies Act for the republication of a business rescue plan that has already been published. If a business rescue plan is to be amended sections 152(1)(d)(i) and (ii) of the Companies Act provide for a procedure to amend the plan at the relevant meeting or to direct the business rescue practitioner to adjourn the meeting to revise the plan for further consideration.
30. RGS therefore does not agree to the republication of the business rescue plans ahead of the Meeting. Amendments to the plans should be dealt with at the Meeting in accordance the set procedure. This does not mean that parties affected by the amendments will not be consulted and that such amendments will not be subject to negotiation between the parties affected by those amendments.

***Conclusion***

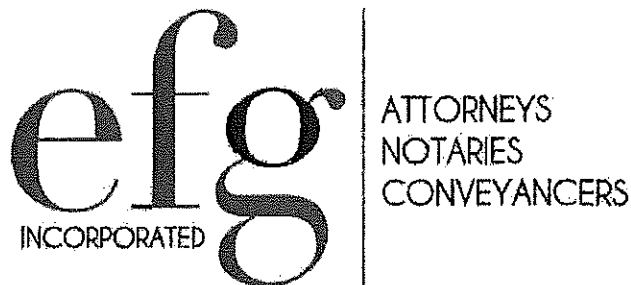
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31. RGS therefore, once again, requires a written undertaking from the BRPs **urgently but by no later than 09h00 on Tuesday, 12 December 2023** to the effect that they will:
- 31.1. Use their best endeavours to support the amendment of the RGS BR Plan at the Meeting; and
- 31.2. Proceed to table the RGS BR Plan for adoption at the Meeting.
32. These undertakings amount to no more than a statement of the BRPs statutory obligations. Should the BRPs act contrary to the terms of the abovementioned undertakings, regardless of whether they are confirmed in written format or not, RGS will have no choice but to approach the High Court for urgent relief to compel the BRPs to (i) convene the Meeting on 14 December 2023, and/or (ii) entertain a motion for the amendment of the RGS BR Plan at the Meeting, and/or (iii) call a vote for the adoption of the RGS BR Plan at the Meeting.
33. In the meantime, RGS's rights, including its right to place this correspondence before a judge in due course, if necessary, remain strictly reserved.

Yours sincerely,

EFG INC

A handwritten signature in black ink, followed by the initials 'B.P.' written below it.

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