



AMENDED BUSINESS RESCUE PLAN

(AMENDMENTS TO BE PROPOSED AT MEETING OF CREDITORS)

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

in relation to

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED

(IN BUSINESS RESCUE)

prepared by the Joint Business Rescue Practitioners

Publication Date: As published on 29 November 2023 and to be considered
for

CORPORATE INFORMATION AND ADVISOR DETAILS

Company

Tongaat Hulett Sugar South Africa Limited (in Business Rescue)

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CHAPTER 1 – INTRODUCTION

1. Structure of the Business Rescue Plan

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

1.1. Chapter 1 – Introduction

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

1.2. Chapter 2 – Proposals

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

1.2.1. Part A – Background

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

1.2.2. Part B – Proposals

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

1.2.3. Part C – Assumptions and Conditions

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

1.3. Chapter 3 – General

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

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

1.4. Chapter 4 – Conclusion and BRPs Certificates

This chapter contains the BRPs' recommendation and the certificate that is required to accompany each business rescue plan in terms of the Companies Act.

2. Executive Summary:

2.1. Capitalised terms and/or expressions shall have the meanings assigned to them in paragraph 3.

2.2. The business rescue proceedings of THSSA are inextricably linked with those of THL, its ultimate parent and its legal "principal".

2.3. No trading (in a legal context) takes place in THSSA which operates as an agent for a previously undisclosed principal, ultimately being THL. As a result, the business rescue proceedings of THSSA are wholly dependent on the business rescue proceedings and business rescue plan of THL- (which plan has now been approved and Adopted).

~~2.4. It is noted that the affected persons of The THL have been provided with two alternative amended business rescue plans for their consideration. The two separate plan was considered at the THL section 151 (of the Companies Act) meeting reconvened on 10 January 2024. This meeting was stood down and continued into 11 January 2024. On 11 January 2024, the amended THL business rescue plans that have been published are predicated on proposals received respectively from the Vision Parties and RGS.~~

~~2.5. The relevant THL business rescue plans are to be plan was considered and voted on during the 8 December 2023 THL Section 151 Meeting.~~

2.4. ~~Complete details.~~ The THL business rescue plan was approved with an overwhelming majority of ~~the Vision Parties~~ support and was duly Adopted ("Adopted THL Plan"). The Adopted THL Plan is final and binding on THL and all of THL's affected persons.

~~2.6.~~ 2.5. ~~The business rescue plans which have~~ Adopted THL Plan has been provided in full to the Affected Persons of THSSA together with this Business Rescue Plan.

~~2.7.~~ 2.6. There are no operations taking place in THSSA, which is essentially a dormant company. There are no assets of significance beneficially owned by THSSA to be realised, so any Creditor Claims against THSSA will in effect be made against the THSSA shell which will in turn have a commensurate claim against THL (in terms of the Adopted THL business rescue planPlan).

~~2.8.~~ 2.7. To the extent that a Creditor does lodge a claim against THSSA, it would have arisen from the performance of THSSA as the agent acting on behalf of its undisclosed principal. The principal was disclosed on or about 20 December 2022 to be THL. Therefore, any Claims against THSSA will result in THSSA having a commensurate claim against THL (in terms of the duly Adopted THL business rescue planPlan).

~~2.9.~~ 2.8. Any Claim that THSSA has against THL will be treated, in the Adopted THL business rescue planPlan, on the same basis as all other Unsecured Creditor Claims against THL. To the extent there is any Distribution payable by THL to its Unsecured Creditors, THSSA will be entitled to a recovery on its claim against THL.

~~2.10.~~ 2.9. The proceeds so received will be shared pro-rata between all Claims against THSSA, which include the Lender Group Claims ~~amounting to c.R7.7bn~~(which claims are in the process of being acquired by the Vision Parties in terms of the Adopted THL Plan) amounting to c.R8bn as a result of guarantee/suretyship arrangements entered into by THSSA.

~~2.11.~~2.10. Once the THSSA Business Rescue Plan has been approved, Adopted and fully implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions and/or payments as provided for in this Business Rescue Plan, any remaining Creditor Claims will become Unenforceable.

~~2.12.~~2.11. Creditors will be asked to vote on the Business Rescue Plan at the Meeting scheduled for ~~Friday 8 December 2023~~Wednesday 31 January 2024.

~~2.13.~~2.12. Affected Persons are referred to Table 2 of this Business Rescue Plan which sets out the Claims that the BRPs have accepted and/or recognised, as well as the status assigned to the underlying Creditors.

~~2.14.~~2.13. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.10 and 15 of this Business Rescue Plan.

~~2.15.~~2.14. Creditors will each have a Voting Interest equal to the value of their Claims, as determined by the BRPs (refer to paragraph 5.11).

~~2.16.~~2.15. For the Business Rescue Plan to be Adopted it must be supported by the holders of more than 75% of the Creditors' Voting Interests that were voted, and the votes in support of the Business Rescue Plan must include at least 50% of the Independent **Creditors'** Voting Interests, if any, that were voted.

~~2.17.~~2.16. The Business Rescue Plan does not alter the rights of the Shareholder of the Company and the Shareholder will therefore not be required to, nor is it entitled to, vote on this Business Rescue Plan.

~~2.18.~~2.17. Creditor's attention is directed to the ~~outcome of the vote on and implementation of the THL business rescue plan~~Adopted THL Plan, which directly impacts the outcome of this (**the Company's**) Business Rescue Plan and its resulting impact on **THSSA's** Creditors. This is directly as a result of the impact of or the operation of the Agency Agreements.

3. Interpretation

3.1. The following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings;

3.1.1. "Adopted/Adoption/Adopting" means that a business rescue plan has been finally approved in accordance with section 152(2), read with section 152(3) of the Companies Act;

3.1.2. "Advisors" means the advisors to the BRPs, including but not limited to Metis, Werksmans and BSM and the advisors' respective officers, representatives, and employees;

3.1.3. "Affected Person/s" shall bear the meaning ascribed thereto in section 128(1)(a) of the Companies Act, being (as may be applicable) **the Company's Shareholders, Creditors, employees and trade unions**;

3.1.4. "AFSA" means the Arbitration Foundation of Southern Africa;

3.1.5. "Agency Agreements" **means various** written legal agreements, entered into by THL and certain of its subsidiaries (including the Company), which entail one or more subsidiaries acting as the agent for an undisclosed principal. In all such cases, the ultimate principal is THL, whereby the agent subsidiary conducts(ed) relevant business on behalf of the ultimate principal;

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

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

- 3.1.8. "BRPs" means the joint business rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;
- 3.1.9. "BSM" means **BSM Advisory Proprietary Limited** (registration number: 2019/457342/07), a company registered and incorporated in accordance with the company laws of South Africa;
- 3.1.10. "Business Day" means any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 3.1.11. "Business Rescue" means the business rescue proceedings of the Company conducted under Chapter 6 of the Companies Act;
- 3.1.12. "Business Rescue Costs" means the remuneration, expenses, disbursements, and fees of the BRPs and their Advisors, as well as the other costs incurred in the Business Rescue;
- 3.1.13. "Business Rescue Plan" means this document together with all of its annexures, as amended from time to time, prepared in accordance with section 150 of the Companies Act;
- 3.1.14. "CIPC" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 3.1.15. "Claims" means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages), the cause of action in respect of which arose prior to the Commencement Date and/or under section 136(3) of the Companies Act;

- 3.1.16. "Commencement Date" means 22 December 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;
- 3.1.17. "Company" or "THSSA" means **Tongaat Hulett Sugar South Africa** Limited (registration number: 1965/000565/06), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;
- 3.1.18. "Companies Act" means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;
- 3.1.19. "Concurrent Claim" means any Claim (other than a Disputed Claim) which is unsecured and which does not enjoy a statutory preference as envisaged in the Companies Act;
- 3.1.20. "Creditor" means any creditor with a monetary Claim against the Company, including without any limitation, PCF Lenders, Disputed Creditors and contingent Creditors;
- 3.1.21. "Disputed Claim" – means any Claim where the existence, value, class of the Claim, or security in respect of a Claim, is disputed by the BRPs and/or by an Affected Person;
- 3.1.22. "Disputed Creditor" means a Person with a Disputed Claim;
- 3.1.23. "Dispute Mechanism" means the dispute resolution mechanism set out in paragraph 15;
- 3.1.24. "Distributions" means payments made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan;

- 3.1.25. "Financially Distressed" or "Financial Distress" shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;
- 3.1.26. "High Court" means the High Court of South Africa;
- 3.1.27. "Independent Creditor" means a Creditor, with a Claim as accepted and/or recognised by the BRPs, to whom the definition in section 128(1)(g) of the Companies Act applies;
- 3.1.28. "Insolvency Law" means the Insolvency Act 24 of 1936, as amended and Chapter 14 of the Companies Act 61 of 1973, read with item 9 of Schedule 5 of the Companies Act;
- 3.1.29. "Lender Group" means the group of banks and financial institutions, all of whom were Secured Creditors, who ~~are~~were the primary lenders to THL;
- 3.1.30. "Management" means the management team of THL who have been responsible for managing the day-to-day operations of the Company from the Commencement Date under the supervision and authority of the BRPs;
- 3.1.31. "Meeting" means the virtual meeting to be held in terms of section 151 of the Companies Act on ~~Friday 8 December 2023~~Wednesday 31 January 2024 at 10:00am for the purpose of voting on this Business Rescue Plan;
- 3.1.32. "Metis" means **Metis Strategic Advisors Proprietary Limited** (registration number 2015/220685/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;

- 3.1.33. "Murgatroyd" means Trevor John Murgatroyd a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.34. "PCF" means post commencement finance obtained by the Company from a PCF Creditor or PCF Lender as contemplated in section 135(2) of the Companies Act;
- 3.1.35.** "PCF Creditor" means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during the Business Rescue;
- 3.1.36.** "PCF Employee" means any employee of the Company, if applicable, who rendered services to the Company and is owed any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable during the Business Rescue as contemplated in section 135(1) of the Companies Act;
- 3.1.37. "PCF Lenders" means any/all financier(s) advancing PCF to the Company;
- 3.1.38. "Proposal/s" means the proposals set out in Chapter 2 of this Business Rescue Plan;
- 3.1.39. "Publication Date" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being ~~29 November 2023~~; 22 January 2024;
- 3.1.40. "Rand" or "R" or "ZAR" means the lawful currency of South Africa;
- 3.1.41. "Rejection Date" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;

~~3.1.42. "RGS" means RGS Group Holdings Limited (registration number C134230 — C2/GBL) a company registered and incorporated in accordance with the laws of Mauritius;~~

~~3.1.43.~~ 3.1.42. "SA Sugar" means **THL's** sugar operations comprising of the following divisions: Agriculture Land; The Mills; Darnall sugar mill; cane procurement and cane supply management; trademarks and other intellectual property, marketing, sales and distribution; the Refinery; and Voermol animal feeds division.

~~3.1.44.~~ 3.1.43. "SARS" means the South African Revenue Services;

~~3.1.45.~~ 3.1.44. "SASA" means the **South African Sugar Association** (registration number 1915/00023/00), an association incorporated in terms of Section 2 of the Sugar Act 1978;

~~3.1.46.~~ 3.1.45. "Secured Creditor" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;

~~3.1.47.~~ 3.1.46. "Securities" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a profit company, as defined in the Companies Act;

~~3.1.48.~~ 3.1.47. "Shareholder" means ~~athe~~ shareholder, as defined in section 1 of the Companies Act, of the Company;

~~3.1.49.~~ 3.1.48. "South Africa" means the Republic of South Africa;

~~3.1.50.~~ 3.1.49. "Substantial Implementation Date" means the date upon which the BRPs file a notice of substantial implementation of the Business Rescue with the CIPC, which filing will be **in the BRPs'** sole and absolute discretion, as envisaged in paragraph 12;

~~3.1.51.~~3.1.50. "Tax" includes any tax, imposition, levy, duty, charge, fee, deduction or withholding of any nature (including securities transfer tax and stamp, documentary, registration, or other like duty) and any interest, penalty or other amount payable in connection therewith, which is lawfully imposed, levied, collected, withheld or assessed under the laws of South Africa or any other relevant jurisdiction and "Taxes", "Taxation" and other cognate terms shall be construed accordingly;

~~3.1.52.~~3.1.51. "Vision Parties" (including Vision Investments 155 Proprietary Limited or any other nominee company) means a grouping made up of the following participants: Terris AgriPro (Mauritius) (registration number: 171903 GBC), registered and incorporated in Mauritius; Remoggo (Mauritius) PCC (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of Mauritius; Guma Agri and Food Security Ltd (Mauritius) (registration number: C192979), registered and incorporated in Mauritius; and Almoiz NA Holdings Ltd (registration number: 67410836) registered and incorporated in accordance with the laws of the United Arab Emirates;

~~3.1.53.~~3.1.52. "THD" means **Tongaat Hulett Developments Proprietary** Limited (registration number: 1981/012378/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

~~3.1.54.~~3.1.53. "THL" means Tongaat Hulett Limited (registration number: 1892/000610/06)), a public company incorporated in accordance with the laws of South Africa;

~~3.1.55.~~3.1.54. "THL Group" means **THL and each of its subsidiaries;**

~~3.1.56.~~3.1.55. "THL Mozambique" means **all THL's direct and indirect** shares in its subsidiaries operating in the Republic of Mozambique

and operating in accordance with the laws of Mozambique as set out in Annexure A;

~~3.1.57.~~3.1.56. "Unenforceable" means the inability to enforce any and all Claims against the Company, as envisaged in section 154 and/or as read with section 152 of the Companies Act, upon the Adoption and implementation of the Business Rescue Plan;

~~3.1.58.~~3.1.57. "Unsecured Creditors" means all Creditors with Concurrent Claims against the Company;

~~3.1.59.~~3.1.58. "van den Steen" means Petrus Francois van den Steen a BRP as contemplated in section 128(1)(d) of the Companies Act;

~~3.1.60.~~3.1.59. "VAT" means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;

~~3.1.61.~~3.1.60. "Voermol" means Voermol Feeds Proprietary Limited (registration number 1936/007892/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue

~~3.1.62.~~3.1.61. "Voting Interest" means a voting interest as defined in section 128(1)(j) of the Companies Act, calculated on the value of a Creditor's Claim as accepted and/or recognised by the BRP per this Business Rescue Plan;

~~3.1.63.~~3.1.62. "Werksmans" means Werksmans Incorporated (registration number: 1990/007215/21), a firm of attorneys practising as such at The Central, 96 Rivonia Road, Sandton, 2196.

3.2. Paragraph headings in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation

of, nor modify or amplify the terms of this Business Rescue Plan or any paragraph hereof, unless a contrary intention clearly appears.

3.3. Words importing:

3.3.1. any one gender includes the other gender;

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

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

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

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

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

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

3.8. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing

on the next day, if the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.

- 3.9. Any reference to days (other than a specific reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.
- 3.10. Words or terms that are capitalised and not otherwise defined in the body of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of headings or tables) shall bear the meaning assigned to them in the Companies Act.
- 3.11. The use of the word "including", "includes" or "include" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and *the eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.
- 3.12. To the extent that any provision of this Business Rescue Plan is ambiguous, it is to be interpreted in a manner that is consistent with the purposes of the Business Rescue provisions in Chapter 6 of the Companies Act.
- 3.13. Unless otherwise stated, all references to sections are references to sections in the Companies Act.
- 3.14. All information provided in the Business Rescue Plan is reflected as at the Publication Date, unless otherwise indicated in the Business Rescue Plan.

4. Disclaimer

- 4.1. The BRPs in the preparation of this Business Rescue Plan have relied on information obtained from the books and records of the Company, meetings **held with relevant persons including the Company's directors**, Management,

staff, suppliers, clients, Advisors and other service providers of the Company, and studies and reports commissioned from various technical and other professional advisors in connection with the affairs of the Company.

- 4.2. Whilst the BRPs have made efforts to ensure the accuracy of the information **contained herein, it should be noted that the BRP's investigations have been** limited in nature due to:
 - 4.2.1. the time constraints placed on the BRPs by the Companies Act and Creditors;
 - 4.2.2. pressure from Affected Persons to effect a reasonably paced rescue;
 - 4.2.3. limited financial and human resources available to the Company;
and
 - 4.2.4. the state of affairs of the Company.
- 4.3. **The BRPs have not carried out an audit of the Company's documents and/or** records, nor have they had adequate opportunity to independently verify all information provided to them by the Company and/or relevant third parties.
- 4.4. Nothing contained in the Business Rescue Plan shall constitute any form of legal or other advice to any Affected Person, and the BRPs do not make any representations in respect thereof.
- 4.5. Neither the BRPs nor their Advisors shall be responsible for any acts taken **by (or omissions arising from) any Affected Persons' reliance on this Business** Rescue Plan.
- 4.6. Affected Persons are advised and encouraged to consult with their own independent attorney, accountant, or other professional advisor in respect of this Business Rescue Plan should they so wish or require.

CHAPTER 2 – PROPOSAL

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is a private company which is a wholly owned subsidiary of THL. An organogram of the THL Group is contained in Annexure A.

5.2. Director(s) of the Company:

5.2.1. As at the Publication Date, the directors of the Company, according to the CIPC, are Mr Robert Aitken, Mr Avinash Gobind and Mr David Howells.

5.3. Company Information:

Financial Year End	31 March
Registered Business Address	Amanzimnyama Hill Road Tongaat Kwa-Zulu Natal 4400
Postal Address	P O Box 3 Tongaat KwaZulu Natal 4400
Business Telephone Number	+27 (32) 439 4000
Auditors	Ernst & Young

5.4. Company Background:

5.4.1. The Company is part of the THL Group which is an agri-processing business with a c.130-year history and a strong socio-economic legacy in Southern Africa. The THL Group has operations in South Africa, Zimbabwe, Mozambique and Botswana which collectively make up the THL Group.

5.4.1.1. Tongaat Hulett Sugar focuses on cane growing, sugar milling and refining throughout the Southern African region.

5.4.1.2. The businesses of THL in South Africa have historically, in part, been carried on by operational or functional subsidiaries, which in respect of THSSA has been (and is) in terms of two broad contractual relationships, briefly described as follows:

- Main Agency Agreement concluded in April 1989 in terms of which a main agent, being THSSA, acts as the agent of THL; and
- Sub-Agency Agreement concluded in August 1997 in terms of which a sub-agent, being Voermol, acts as the agent for THSSA, the intention being that the sub-agent, Voermol, performs for THSSA the obligations that THSSA has undertaken to perform as agent of THL.

5.4.1.3. As a result of the Agency Agreements THSSA does not in a legal sense carry on any activities for its own benefit that would generate revenue for itself, and is wholly financially dependent on THL. THL's SA Sugar division is operated by THL and pursuant to relevant Agency Agreements between THL, the Company and

Voermol. The respective Agency Agreements are now in the process of being unwound.

5.4.1.4. Ultimately, from a THSSA perspective, the Agency Agreements entail:

- Assets: Assets are held nominally as they are those of the ultimate principal, being beneficially owned by THL;
- Tenure: The Agency Agreement(s) and agency arrangement(s) are generally active for an indefinite period of time and terminable on one **month's written notice**. The Agency Agreements are in the process of being unwound, which will result in the entire SA Sugar division being conducted solely in THL, as a division, with no further agency relationship and/or representation;
- Disclosure: The existence of the Agency Agreement(s) was previously undisclosed to third parties. However, pursuant to a letter dated 20 December 2022 from THSSA and Voermol to all known creditors of those companies, the Agency Agreement arrangements were disclosed;
- Recourse: The Company has at all times acted as the agent of THL, on the basis that THL has been its undisclosed principal. Consequently, all transactions that have historically been concluded by the Company with any person or entity, have been so concluded by the Company in its capacity as agent for a previously undisclosed principal, being THL. Now that the existence of the Agency

Agreements have been disclosed, any dealings with the Company will be expressly on the basis that it is contracting on behalf THL. As an extension of this THSSA/THL relationship, Voermol has at all times acted as the agent of the Company (and by virtue of the aforementioned THSSA/THL agency arrangement as the sub agent of THL), on the basis that the Company has been its direct undisclosed principal and THL its ultimate undisclosed principal. Consequently, all transactions that have historically been concluded by Voermol with any person or entity, have been so concluded by Voermol in its capacity as agent for an undisclosed principal, being the Company and, by virtue of the aforementioned THSSA/THL agency, as the sub agent of THL.

- In summary: The effect is that all assets, liabilities, income and expenses of the Company are legally those of THL, as its ultimate principal. Any claims instituted against THSSA and/or Voermol will result in those entities having a corresponding claim against THL.
- If an Affected Person requires further details relating to the Agency Agreements, such Affected Person is invited to contact the BRPs using the contact details set out in paragraph 16.

5.4.1.5. The extent of the challenges faced by THL, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial misstatements and historic mismanagement. These factors have resulted in the

loss of significant value for THL's shareholders and other stakeholders.

5.5. Events which led to the Company commencing Business Rescue:

5.5.1. It is the BRPs understanding that the cause of the Company's Financial Distress is set out in the statement, attached hereto as Annexure B. Furthermore Affected Persons are encouraged to also read the THL sworn statement as contained in the ~~Adopted THL business rescue plan~~Plan.

5.6. Aims and objectives of Business Rescue:

5.6.1. In terms of the Companies Act, the Company's Business Rescue will aim to facilitate its rehabilitation by (inter alia) providing for –

5.6.1.1. the temporary supervision of the Company by the BRPs, and the management of its affairs, business, and property by the BRPs;

5.6.1.2. a temporary moratorium on the rights of claimants against the Company or in respect of property in its possession; and

5.6.1.3. the development and implementation of a Business Rescue Plan which has as its aim either or both of –

- the rescue of the Company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; and/or

- achieving a better return for the **Company's** Creditors or Shareholder than would result from the immediate liquidation of the Company.

5.6.1.4. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet the standards set out in paragraph 5.6.1.3 above.

5.7. Business Rescue events:

5.7.1. Salient dates pertaining to the Business Rescue of the Company are set out in Table 1 below.

Table 1
Business Rescue events

BUSINESS RESCUE EVENT	DATE
Board Resolution to commence the Business Rescue	18 December 2022
Commencement date of the Business Rescue	22 December 2022
Appointment of the BRPs	
Notice to Affected Persons of the commencement of Business Rescue and the appointment of the BRPs	22 December 2022
First statutory meeting of employees	N/A
First statutory meeting of Creditors	11 January 2023
Requests for an extension of the date to publish the Business Rescue Plan	25 January 2023, 22 February 2023, 28 March 2023, 25 April 2023, 31 August 2023 and 26 October 2023, <u>21 November 2023 and 11 January 2024</u>
Confirmation of extension of the date to publish the Business Rescue Plan	27 January 2023, 27 February 2023, 31 March 2023, 28 April 2023, 8 September 2023 and

	30 October 2023, <u>23 November 2023 and 11 January 2024</u>
Notice concerning subordinated Creditors' Voting Interests	N/A
Publication of the initial Business Rescue Plan	31 May 2023
Meeting to consider the initial business rescue plan: Outcome – Meeting adjourned and Business Rescue Plan to be amended and meeting to be reconvened at a date no later than 30 September 2023	14 June 2023
Court hearing dates in relation to the SASA declarator	13 and 14 September 2023
Vision Parties enter a Claim sales agreement with Lender Group <u>Publication of the amended business rescue plan</u>	2029 November 2023
Publication of the revised business rescue plan <u>Distribution of the proposed amendments to the Business Rescue Plan previously published on 29 November 2023</u>	29 November 2023 <u>22 January 2024</u>
Meeting to consider the revised <u>amended</u> business rescue plan	8 December 2023 <u>31 January 2024</u>

5.7.2. All notices that have been published to the Affected Persons of the Company can be obtained from the THL website at www.tongaat.com, under the Business Rescue tab.

5.8. Steps taken since the appointment of the BRPs:

5.8.1. Statutory Obligations – the Company and the BRPs have met and complied with statutory reporting and meeting obligations as required in terms of Chapter 6 of the Companies Act.

5.8.2. Management Control - In terms of section 140(1)(a) of the Companies Act, the BRPs took full management control of the Company and have delegated certain functions to Management in terms of section 140(1)(b) of the Companies Act.

5.8.3. Investigations - The BRPs have investigated the affairs of the Company and have satisfied themselves that, inter alia, the Company is in Financial Distress and that there is a reasonable prospect of the Company being rescued.

5.8.4. Business Rescue Plan:

5.8.4.1. In terms of section 150(5) of the Companies Act, the Business Rescue Plan was required to be published on or about 30 January 2023 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the ~~Publication Date~~publication date up to 31 May 2023.

5.8.4.2. The BRPs in May 2023 were still reluctant to publish a business rescue plan until such time as they were able to put forward sufficiently detailed Proposals to Affected Persons. However, at that time certain critical Secured Creditors declined to agree to any further extensions and insisted that the BRPs put forward the initial business rescue plan. The BRPs therefore published the initial business rescue plan on 31 May 2023, a document which was, due to the lack of clarity at the time, somewhat conditional.

5.8.4.3. The meeting to vote on the published business rescue plan was convened and scheduled to take place on 14 June 2023.

5.8.4.4. On or about 8 June 2023, an urgent application was brought by RCL Foods & Sugar Milling (Pty) Ltd ("RCL") **to interdict the meeting to be held on 14 June**

2023 to consider and vote on the published THL business rescue plan.

- 5.8.4.5. At the meeting held on 14 June 2023 motions were proposed, seconded and carried to adjourn the meeting to vote on the business rescue plan to no later than 30 September 2023 and agreed that no less than **30 days' prior written notice of the intended date of** the reconvening of the adjourned meeting must be provided to Creditors, as was deemed to be necessary and expedient.
- 5.8.4.6. In addition to the adjournment of the meeting, the BRPs were requested to amend the THL business rescue plan to incorporate the details of the final transaction accepted and agreed with the selected SEP.
- 5.8.4.7. The process to finalise the transaction details however took longer than anticipated at the time when the initial adjournment was decided upon. As a result, at a meeting held on 8 September 2023 creditors approved a further adjournment of the meeting to vote on the business rescue plan to no later than 30 November **2023 and that no less than 30 days' prior written notice** of the intended date of the adjourned meeting must be provided to Creditors.
- 5.8.4.8. A notice was issued on 6 October 2023 convening the meeting to vote on the business rescue plan to be held on 7 November 2023. In light of the request to extend the publication date of the Company's amended business rescue plan to no later than 24 November 2023 the notice convening the meeting on 7 November

2023 was withdrawn. The reconvened meeting ~~will~~was to be held no later than 30 November 2023, in accordance with the agreement of creditors at the meeting held on 8 September 2023.

5.8.4.9. Subsequent to the above, the requisite majority of creditors agreed to an extension of the date for publication of the business rescue plan to no later than 24 November 2023 and to the application of the notice periods as detailed in S151(1) and (2) of the Companies Act.

5.8.4.10. Additional information came to the attention of the BRPs that required further updating of the drafted amended Business Rescue Plan. It was therefore necessary and expedient to extend the publication date for a very short period and therefore also to adjourn the Meeting to a slightly later date, in order to allow creditors sufficient time to consider the contents of the amended Plan. The requisite majority of creditors agreed to an extension of the date for publication of the business rescue plan to no later than 29 November 2023 and to the adjournment of the meeting to vote on the business rescue plan to no later than 8 December 2023.

5.8.4.11. The business rescue of THL has been bedevilled by numerous challenges, not least of which has been the ongoing threat and/or institution of legal proceedings aimed at *inter alia* interdicting the business rescue process, made and/or brought at the instance of various groups and/or entities with frequently divergent interests, which if not adequately anticipated and/or fully dealt with will frustrate and possibly

altogether halt the business rescue process, with the almost inevitable consequence of liquidation.

5.8.4.12. The abovementioned ongoing challenges and/or legal action have had the unfortunate effect of delaying the meetings to vote on a plan and extending the duration of the business rescue proceedings.

5.8.4.13. As a result, on 13 December 2023, the BRPs requested THL's creditors to provide their consent for the adjournment of the THL section 151 of the Act meeting to no later than 11 January 2024 to consider and vote on an amended business rescue plan.

5.8.4.14. The THL section 151 meeting was reconvened on 10 January 2024, which meeting was stood down and continued into 11 January 2024. It was deemed appropriate to allow time for the Adoption of the THL business rescue plan and to hold the section 151 meeting for THSSA at a later date. Since the business rescue proceedings of the Company are wholly dependent on the business rescue proceedings of THL and inextricably linked to the business rescue plan of THL, on 11 January 2024 the BRPs requested Creditors to provide their consent for the adjournment of the Section 151 Meeting of the Company to a date within 3 weeks from the date at which the THL 151 Meeting has been concluded and wherein the section 152(2) vote has taken place.

~~5.8.4.10.~~ 5.8.4.15. Section 151(1) of the Companies Act requires that within 10 days after publishing a business rescue plan, the BRPs must convene a 151 Meeting. Since the Business Rescue Plan was published on 29 November

2023, this plan will be 'republished' on 22 January 2024 including relevant amendments for consideration by Creditors at the section 151 Meeting to be held on 31 January 2024.

5.8.5. Employees

5.8.5.1. The Company has no employees.

5.8.6. Creditors

5.8.6.1. The first meeting of Creditors, as contemplated in section 147 of the Companies Act, was convened virtually on 11 January 2023.

5.8.6.2. No Creditors Committee has been formed.

5.8.7. Claims Reconciliation

5.8.7.1. Other than the Claims of the Lender Group, the BRPs had received Claims previously directly against the Company (rather than against THL, the ultimate principal) however since the initial plan, these creditors have withdrawn their Claims against the Company and resubmitted those Claims against THL. Therefore there are no other Claims against the Company.

5.9. Material assets and security (Section 150(2)(a)(i)):

5.9.1. There are no material assets by virtue of the relevant Agency Agreements as indicated above.

- 5.9.2. Any Claim made by Creditors against the Company will result in a claim against THL for a similar amount.
- 5.9.3. Although it would not be legally correct, if one were to ignore the legal effect of the Agency Agreements, the balance sheet of THSSA as at 31 December 2022, the nearest practicable date to the Commencement Date, would record the following:

BALANCE SHEET AT 31 DECEMBER 2022		TONGAAT HULETT SUGAR SOUTH AFRICA
		(ZAR)
ASSETS		995 842 976
NON CURRENT ASSETS		730 887 821
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS		730 887 821
AMOUNTS OWING FROM GROUP COMPANIES		-
CURRENT ASSETS		264 955 155
CASH AND CASH EQUIVALENTS		264 955 155
EQUITY & LIABILITIES		995 842 976
CAPITAL & RESERVES		(3 009 625 329)
SHARE CAPITAL AND PREMIUM		100
RETAINED EARNINGS / (ACCUMULATED LOSSES)		(3 009 625 429)
LIABILITIES		4 005 468 305
NON CURRENT LIABILITIES		4 005 468 305
AMOUNTS OWING TO GROUP COMPANIES		4 005 468 305
- SAA/ISA		730 887 821
- THA Investment		3 009 625 329
- THL Bank Accounts		264 955 155
CURRENT LIABILITIES		-

- 5.9.4. Readers are reminded of the fact that, despite THSSA being a dormant company, it has in place a guarantee/suretyship in favour of the Lender Group for the obligations of THL towards the Lender

Group. In addition, THSSA has also provided a cession of shares and claims to the Lender Group as security for the suretyship/guarantee. Therefore, in an unlikely scenario that it were to be found that the Agency Agreement is not valid, the Lender Group ~~will~~(or its successor) would have security over any assets found to be owned by THSSA.

- 5.9.5. Taking account of the Agency Agreement in place and its legal effect, the THSSA balance sheet reflects the following assets and liabilities:

BALANCE SHEET AT 31 DECEMBER 2022		TONGAAT HULETT SUGAR SOUTH AFRICA
		(ZAR)
ASSETS		100
NON CURRENT ASSETS		100
AMOUNT DUE BY HOLDING COMPANY - THL		100
EQUITY & LIABILITIES		100
CAPITAL & RESERVES		100
SHARE CAPITAL AND PREMIUM <i>ISSUED AND FULLY PAID: 100 ORDINARY SHARED OF R1 EACH</i>		100

- 5.10. Creditors of the Company (Section 150(2)(a)(ii)):

- 5.10.1. The BRPs will continue to **accept the Company's records in respect** of any Creditor as being correct, unless and until the relevant Creditor proves otherwise.
- 5.10.2. To this end, the BRPs have accepted that THSSA has no Creditors in its own right, and that **THSSA's** obligations to Creditors are assumed by THL pursuant to the relevant Agency Agreement(s).

- 5.10.3. However, the counterparties to contracts entered into by THSSA as agent for an undisclosed principal have the right to elect to pursue their claims against the agent (i.e. THSSA) or against the principal (i.e. THL), once the principal has been disclosed (which it has).
- 5.10.4. As THL has been disclosed as the ultimate principal, Creditors may therefore elect to claim against THSSA or against THL. As at the Publication Date, no Creditors have elected to pursue a Claim against THSSA. ~~In addition,~~ It is noted that the Lender Group ~~Claim~~ Claims in an amount of c. ~~R7.7bn~~ R8bn against the Company, are pursuant to a guarantee/suretyship signed by the Company in favour of the Lender Group for the obligations of THL towards the Lender Group.
- 5.10.5. Although not legal advice, it is the BRPs suggestion that all such claims should be made against THL and not THSSA. Creditors should take their own legal advice in this regard.
- 5.10.6. Claims that are not reflected in this Business Rescue Plan will be regarded as Disputed Claims, should any be submitted, and Disputed Creditors may be allowed a Voting Interest at the Meeting only as determined by the BRPs in their sole discretion. Any such allowance by the BRPs shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim⁷, and will be further dealt with in accordance with the Dispute Mechanism set out in paragraph 15.
- 5.10.7. The Claims that the BRPs have accepted, in whole or in part, are set out in the table hereunder. A summary of the various classes of Creditors of the Company as at the Commencement Date, updated for subsequent movements/repayments where applicable and PCF advanced, is reflected in the table hereunder:

Table 2

Summary of the Various Classes of Creditors of the Company
(updated as at 31 October 2023)

CREDITOR TYPE / DESCRIPTION	ACCEPTED/PROVEN CLAIM AMOUNT (R)
SECURED CREDITORS	7 993 094 455
Lender Group facilities	7 708 147 777
Lender Group bilateral arrangements	284 946 678
PCF CREDITORS	R0
PREFERENT CREDITORS	R0
Preferent Creditors (<i>N/A in business rescue</i>)	R0
Preferent Employees	R0
INDEPENDENT UNSECURED CREDITORS	0
Trade Creditors	0
NON-INDEPENDENT UNSECURED CREDITORS	0
Inter-Company Loans	0
TOTAL	7 993 094 455

5.10.8. All Creditors who believe that they have a Claim against the Company are referred to and should treat Table 2 as the BRPs' notification of the Claims (including the quantum thereof) that have been accepted by the BRPs for purpose of the Business Rescue. If any Creditor is in disagreement with the information provided in Table 2 (being a Disputed Creditor), such Disputed Creditor should utilise the Dispute Mechanism set out in paragraph 15.

5.10.9. Following the Adoption and implementation of this Business Rescue Plan, any remaining Claims of Creditors of the Company will become Unenforceable, other than as provided for in this Business Rescue Plan.

5.11. Voting interests and voting by proxy:

5.11.1. Voting Interests

5.11.1.1. In accordance with section 145(4) of the Companies Act, a Creditor is entitled to vote on the Adoption of the Business Rescue Plan, as follows –

- a Secured Creditor and/or Unsecured Creditor has a Voting Interest equal to the value of the amount owed to that Creditor by the Company; and
- an Unsecured Creditor who would be subordinated in a liquidation has a Voting Interest, as independently and expertly appraised and valued at the request of the BRPs, equal to the amount, if any, that the Unsecured Creditor could reasonably expect to receive on a liquidation of the Company as set out in section 145(4)(b) of the Companies Act.
- It is recorded that there are no subordinated creditors.

5.11.2. Voting

5.11.2.1. All Creditors will have a Voting Interest as set out in Table 2 above in respect of any vote conducted at the Meeting, subject to the BRPs discretion contemplated in paragraph 5.10.6 above and directly below.

- Disputed Creditors may be allowed a Voting Interest at the Meeting as may be determined by the BRPs in their sole discretion and any such determination shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim.

- Disputed Creditors are invited to seek an amendment to their Voting Interest (relative to Table 2 above) up to 24 hours before the Meeting. Any BRP agreement to amend a Disputed Creditor's Voting Interest shall not be construed as an acceptance of the existence or quantum of such Claim, as such determination will be made solely for the purposes of determining that Disputed Creditor's Voting Interest at the Meeting. Unless the BRPs specifically advise a Disputed Creditor otherwise, Disputed Creditors will still be required to follow the Dispute Mechanism set out in paragraph 15 below.

5.11.3. Independent Creditors

5.11.3.1. In accordance with sections 145(5)(a) and 145(5)(c) of the Companies Act, the BRPs are required to determine whether or not a Creditor is an Independent Creditor for purposes of the Business Rescue.

5.11.3.2. For purposes of this Business Rescue Plan, the BRPs have determined that all Creditors with accepted and/or recognised Claims are Independent Creditors and will be counted as such for purposes of any votes cast at the Meeting to approve this Business Rescue Plan.

5.11.4. Shareholders

5.11.4.1. In accordance with section 146(d) of the Companies Act, a Shareholder is entitled to vote on the Business Rescue Plan if it alters the rights associated with the class of Securities held by that Shareholder.

5.11.4.2. This Business Rescue Plan does not alter the rights associated with any Securities and/or class of Securities and, accordingly, the sole Shareholder is not required to, nor entitled to, vote on this Business Rescue Plan.

5.11.5. Vote by Proxy

5.11.5.1. Voting by proxy is permitted. A proxy form is enclosed as Annexure C.

5.11.5.2. Notwithstanding these forms, the BRPs have the discretion to accept any proxy submitted, acceptable to the BRPs, no matter its form.

5.11.5.3. The proxy forms must include an appropriate resolution (for a juristic entity or trust) or power of attorney (for an individual) giving such representative the authority to attend and vote at the meeting on behalf of the juristic person, trust or individual.

5.11.5.4. Affected Persons who are voting by proxy are reasonably required to lodge each or any of their proxy forms by no later than 17h00 on ~~Wednesday, 6 December 2023~~Monday 29 January 2024 or if by email, by no later than 17h00 on ~~Thursday, 7 December 2023~~Tuesday 30 January 2024.

5.12. Probable Liquidation Dividend Estimate (Section 150(2)(a)(iii)):

5.12.1. The BRPs have not engaged an independent expert to determine the probable dividend that Creditors and/or Shareholders would likely receive if, instead of being placed into Business Rescue, the

Company was placed in liquidation as at the Commencement Date. The effect of the Agency Agreements is that all assets, liabilities, incomes and expenses are legally those of THL as principal and as a result there are no assets in the Company. Therefore the probable liquidation dividend estimate for Creditors of the Company would be zero. Affected Persons are referred to the Adopted THL ~~business rescue plan~~Plan and the probable liquidation dividend estimate contained therein.

5.13. Holders of the Company's issued Securities (Section 150(2)(a)(iv)):

5.13.1. This Business Rescue Plan does not alter the rights of Shareholders as envisaged in section 152(3)(c) of the Companies Act.

5.14. **BRPs' remuneration (Section 150(2)(a)(v)):**

5.14.1. Since THSSA operates as the agent of THL, the affairs of the Company are inextricably linked to the affairs of THL, therefore no separate BRP remuneration agreement has been concluded with the Company. The THL BRP remuneration agreement has been designed in a manner that recognises that the financial affairs of THL and of the Company are inexorably linked and that, consequently, the most efficient methodology to be adopted in remunerating the BRPs is through THL, notwithstanding that certain of the activities they undertake in earning such remuneration will relate directly to the Company.

5.15. Proposal made informally by Creditors (Section 150(2)(a)(vi)):

5.15.1. No informal proposals have been made by a Creditor or Creditors of the Company with regards to this Business Rescue Plan.

6. PART B – The Proposal

6.1. Terms of the Proposal

- 6.1.1. The effect of the Agency Agreements is that all of THSSA's assets, liabilities, income and expenses are ultimately those of THL as ultimate principal.
- 6.1.2. There are thus no assets of significance beneficially owned by the Company to be realised and available to satisfy any Creditor claims made directly against THSSA in this Business Rescue. Creditors have the choice to elect to submit a claim directly against the Company or against THL (the principal). Should a Creditor choose to prove their Creditor Claim against the Company there will be no prospect of any direct recovery from THSSA by such Creditor(s), however, as noted in the paragraphs below, indirect claims against THL will be in effect.
- 6.1.3. In the event it becomes necessary to dispose of the THL Mozambique assets held by THSSA **on THL's behalf**, directly rather than in terms of the Agency Agreements, these assets will be sold as part of the THL process(es) in accordance with the Adopted THL business rescue plan~~Plan~~. The proceeds arising from this source will accrue to the benefit of the Lender Group in terms of the security held over these assets.
- 6.1.4. In accordance with the Agency Agreements, the Company operated (and still operates) as agent for the ultimate principal, being THL. Therefore, any Creditor Claims submitted to the Company will result in the Company having a commensurate claim against THL, its principal.
- 6.1.5. The resulting claim by the agent (the Company) against the principal (THL) will be treated as a Concurrent Claim in the Business Rescue proceedings of THL and will share pro-rata in any

distributions made by THL to its Unsecured Creditors in accordance with the Adopted THL ~~Business Rescue~~ Plan.

6.1.6. The aggregate of all recoveries made from any distributions by THL to the Company will firstly be utilised to fund any Business Rescue Costs of the Company and, secondly, should there be any remaining funds, such funds will be made available by the Company as Distributions to its Creditors.

6.1.7. The Creditors of the Company will then share pro-rata in any such Distributions.

6.1.8. It should be noted that the Lender Group has a claim against the Company in an amount of c. ~~R7.7bn~~ R8bn, which will share in any Distributions made. As there are no significant other Claims against the Company, the Lender Group (or its successor) is likely to be the recipient of significantly all of any Distributions. Readers should bear in mind that despite the Company being a dormant company, it has provided security to the Lender Group by way of a cession of shares and claims for its suretyship/guarantee obligations to the Lender Group.

~~6.1.9. In light of the~~ The THL amended business rescue plans, ~~it is envisaged that either the Vision Parties or RGS will acquire~~ plan was considered at the THL section 151 (of the Companies Act) meeting reconvened on 10 January 2024. This meeting was stood down and continued into 11 January 2024. On 11 January 2024, the Lender Group Claims.

~~6.2.1.1. It is noted that the affected persons of THL have been provided with two alternative business rescue plans for their consideration. The two separate~~ amended THL business rescue plans that have been published are predicated on proposals received respectively from the Vision Parties and RGS plan was

~~6.3. The relevant THL business rescue plans are to be~~ considered and voted on during the 8 December 2023. The THL business rescue plan was approved with an overwhelming majority of support and was duly Adopted ("Adopted THL Section 151 Meeting."

~~6.2. Complete details of the Vision Parties and RGS proposals may be found in the respective Plan"). The Adopted THL business rescue plans which have~~ Plan is final and binding on THL and all of **THL's** affected persons.

~~6.4.6.3. The Adopted THL Plan has~~ been provided ~~in full~~ to the Affected Persons of THSSA together with this Business Rescue Plan.

~~6.5.6.4.~~ Effects of the Proposal:

~~6.5.1.6.4.1.~~ Ongoing role of the Company and the treatment of existing contracts (Section 150(2)(b)(iii):

~~6.5.1.1.6.4.1.1.~~ Where the BRPs determined it to be in the best interests of Creditors to continue with counterparty agreements concluded with the Company in its capacity as agent of THL, such agreements have continued.

~~6.5.1.2.6.4.1.2.~~ Agreements concluded with the Company are, however, subject to ongoing evaluation and negotiations by the BRPs in an effort to mitigate risks and optimise the success of the Business Rescue.

~~6.5.1.3.6.4.1.3.~~ Section 136(2)(a) of the Companies Act allows the BRPs to entirely, partially, or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under an agreement (including any form of *sui*

generis agreement) to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue. All Company obligations are currently under review and the BRPs reserve their rights in this regard. All Unsecured Creditor amounts owing and unpaid as at the Commencement Date will remain subject to the moratorium and will be treated as an Unsecured Creditor Claim. Any such Claim which remains outstanding as at the Substantial Implementation Date in terms of this Business Rescue Plan will become Unenforceable.

~~6.5.1.4.~~6.4.1.4. The BRPs further have the right, in terms of section 136(2)(b) of the Companies Act, to apply to the High Court to cancel and/or terminate any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and that would otherwise become due during the Business Rescue.

~~6.5.1.5.~~6.4.1.5. Counterparties to all agreements in which the Company's obligations are suspended or cancelled should be guided by the moratorium which excludes a claim by a contractual counterparty for specific performance. Such party will have a Claim for damages in terms of section 136(3) of the Companies Act. Where that Claim is not reflected in Table 2, the course of action available to that party is to submit a claim for damages as a Disputed Creditor and to follow the Dispute Mechanism set out in paragraph 15.

~~6.5.2.6.4.2.~~ The property of the Company that is to be available to pay Creditors' Claims in terms of the Business Rescue Plan (Section 150(2)(b)(iv))

~~6.5.2.1.6.4.2.1.~~ As there are no assets of consequence beneficially owned, due to the effect of the Agency Agreements, there is unlikely to be any recovery for Creditors from this source.

~~6.5.3.6.4.3.~~ Effect on Creditors (Section 150(2)(b)(v))

~~6.5.3.1.6.4.3.1.~~ Distributions will be made in the following order of priority in accordance with the Business Rescue Plan for the duration of Business Rescue. This ranking is in accordance with the provisions of the Companies Act.

~~6.5.3.2.6.4.3.2.~~ Proceeds from Unencumbered Assets, if any, will be applied in the following order of priority:

- Business Rescue Costs;
- PCF Employees to the extent that amounts due and payable, for services rendered during Business Rescue, that remain unpaid. The Company does not have any employees;
- Unsecured PCF Creditors, who will rank in the order in which the PCF was provided;
- Preferent Employees;
- Unsecured Creditors (if there is any residual); and thereafter
- Shareholders (if there is any residual).

~~6.5.3.3.6.4.3.3.~~ A Secured Creditor will receive Distributions arising from the realisation of the value of its security. If any residual Claim remains unpaid from the

realisation of any security, that Creditor's remaining claims will be treated as an Unsecured Creditor with respect to that residual Claim and which will become Unenforceable. If any surplus proceeds remain after the Distributions to Secured Creditors, such proceeds will be allocated towards Distributions to Unsecured Creditors.

~~6.5.3.4.6.4.3.4.~~ Expected Distribution to Creditors: Creditors Claims against the Company, arising from the Agency Arrangements, will be submitted as a claim in the Business Rescue of THL. Accordingly the expected distributions to Creditors of THSSA will be commensurate with those provided for in the Adopted THL ~~business rescue plan~~Plan.

~~6.5.3.5.6.4.3.5.~~ To the extent that agreements concluded between the Company and counterparties and/or obligations are cancelled, modified, suspended or restructured, any Claim for damages will be limited as contemplated in paragraph 6.4.3.6.

~~6.5.3.6.6.4.3.6.~~ Claims for damages, whether contractual or delictual against the Company, once determined through the Dispute Mechanism paragraph 15 or by the High Court or similar proceedings, as the BRPs may consent to, will be treated as follows–

- as an Unsecured Creditor, unless the Creditor holds security for such Claim;
- shall be limited to general damages as determined through the Dispute Mechanism or by the High Court or similar proceedings as the BRPs may in

their sole discretion consent to. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable at the time of entering into the relevant contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of an agreement so as to be said to flow naturally and generally and not to be too remote; and

- shall exclude all indirect, punitive, special, incidental, or consequential loss, including injury to business reputation, loss of profits and/or loss of business opportunities.

~~6.5.3.7~~6.4.3.7. If this Business Rescue Plan is Adopted and implemented by payment of a final Distribution, if applicable, in accordance with this Business Rescue Plan, all remaining Claims will become Unenforceable. Should there not be any funds available for Distributions, all Claims will become Unenforceable.

~~6.5.3.8~~6.4.3.8. For the avoidance of doubt, any Claims which SARS may have against the Company in respect of tax debts owed prior to the Commencement Date, among other things, under section 22(3) of the Value Added Tax Act 89 of 1991, the Income Tax Act 58 of 62 or in respect of an audit under the Tax Administration Act 28 of 2011 for any date or year of assessment preceding the Commencement Date, will be Unenforceable under and in terms of this Business Rescue Plan. Any income tax debt owed to SARS prior to the Commencement Date will become unenforceable upon Adoption of the Plan.

~~6.5.3.9.~~6.4.3.9. Any VAT related claims from SARS and any other SARS Claims arising from transactions that occurred prior to the Commencement Date have been recognised as Concurrent Claims in the Business Rescue Plan and SARS will be treated in the same manner as all other Unsecured Creditors and therefore will be entitled to the same Distribution as all other Unsecured Creditors.

~~6.5.3.10.~~6.4.3.10. This means that upon payment of a final Distribution, or if no Distributions are available, in terms of this Business Rescue Plan, any remaining unpaid portions of the Claims will have become Unenforceable and no Creditor will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.

~~6.5.3.11.~~6.4.3.11. Creditors voting in favour of the Business Rescue Plan do not thereby accede to the discharge of the whole or part of their debt in terms of section 154(1) of the Companies Act. No Creditors are deemed to have lost the right to enforce their Claims, save that upon Adoption and implementation of the Business Rescue Plan, Creditors' remaining Claims will become Unenforceable against the Company in terms of section 154(2) of the Companies Act.

~~6.5.3.12.~~6.4.3.12. After payment of the final Distribution, or if no Distributions are available, and prior to a notice of substantial implementation being filed with the CIPC, the Company may be returned to its director(s) or an application may be made for the Company's deregistration, alternatively, the Company's

provisional or final liquidation, as the BRPs in their sole discretion may determine.

~~6.5.3.13~~6.4.3.13. Claims will only become Unenforceable in accordance with the Business Rescue Plan upon the Adoption and implementation of the Business Rescue Plan. In the event of any breach by the Company of its obligations to creditors in terms of the Business Rescue Plan, or in the event the Company is placed in liquidation other than as catered for in this Business Rescue Plan under paragraph 6.4.3.12, the full balance due to creditors in terms of their original Claims against the Company shall immediately become due, owing and payable by the Company to the creditors, subject to the provisions of section 135 of the Companies Act.

~~6.5.4~~6.4.4. Effect on Employees (Section 150(2)(c)(ii)) - The Company has no employees.

~~6.5.5~~6.4.5. Effect on Director(s) and Management - Directors have continued to exercise the functions of a director, subject to the authority of the BRPs.

7. Binding nature of this Business Rescue Plan
- 7.1. The BRPs draw the attention of Affected Persons to the provisions of section 152(4) of the Companies Act.
- 7.2. This section provides that once a Business Rescue Plan has been Adopted, it is binding on the Company, its Creditors (including all Claims, whether accepted by the BRPs as Creditors, whether Disputed Creditors, conditional Claims, prospective Claims, damages Claims and/or unliquidated Claims) and every holder of the Company's Securities (the latter in terms of the provisions

of section 146(d) and 152(3)(c) of the Companies Act) whether or not such a Person was –

- 7.2.1. present at the Meeting to determine the future of the Company;
- 7.2.2. voted in favour of the Adoption of the Business Rescue Plan; or
- 7.2.3. in the case of Creditors, has proven a Claim against the Company.

8. Moratorium (Section 150(2)(b)(i))

- 8.1. The moratorium imposed by section 133 of the Companies Act prohibits any legal proceedings, including enforcement action, against the Company, or in relation to any property belonging to the Company or lawfully in its possession, from being commenced or proceeded with for the duration of the Business Rescue except with the written consent of the BRPs or with the leave of the High Court.
 - 8.2. This means, among other things, that Affected Persons will not be able to proceed in any forum against the Company for, among other things, the non-payment of debts during Business Rescue, except with the written consent of the BRPs or with the leave of the High Court.
 - 8.3. The moratorium in relation to the Company took effect on the Commencement Date and will remain in place for the duration of Business Rescue, until the termination of Business Rescue as defined in paragraph 11.
- ## 9. Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi))
- 9.1. With this, the Business Rescue of the Company is intended to rescue the Company or, in the alternative, achieve a better return compared to liquidation as outlined in paragraph 5.6.1.3.

9.2. Should the SA Sugar division be sold, it is likely that the shares in THSSA will be sold with the business of SA Sugar.

10. Risks of the Business Rescue Plan

10.1. The implementation of the Proposals contained in this Business Rescue Plan is subject to factors potentially not known to the BRPs as at the Publication Date. The following risks should be borne in mind, as they may adversely impact the ultimate outcome of the implementation of this Business Rescue Plan:

10.1.1. Unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever.

10.1.2. Existing litigation not progressing in the manner anticipated.

10.1.3. Any changes in legislation that impact the Business Rescue.

10.1.4. Any legal challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto.

10.1.5. Any regulatory challenges of any nature whatsoever, howsoever arising as well as any consequential statutory liability.

10.1.6. Any unforeseen circumstances, outside of the control of the BRPs, of any nature whatsoever, howsoever arising, that impact the Business Rescue.

10.1.7. Any damages or penalties claimed against the Company which were unforeseen.

10.1.8. Unexpected liquidity events, withdrawal or restricted access to PCF provided by the PCF Lenders or delays thereto.

- 10.1.9. The final verification and agreement of Claims taking longer than expected.
- 10.1.10. Material discrepancies in the information made available to the BRPs by Management.
- 10.1.11. Incomplete, inaccurate accounting records of the Company and inadequate supporting information.
- 10.1.12. The deterioration and worsening of market conditions.
- 10.1.13. Any events and outcomes that may lead to the discovery of fraud, misrepresentation, corrupt practices, or other such matters relating to the Company prior to the implementation of the Business Rescue Plan.
- 10.1.14. The variation in the exchange rates affecting the Business Rescue.
- 10.1.15. Ambiguous provisions in the Companies Act which are subject to varied interpretation.
- 10.1.16. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the **Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.**

11. Termination of Business Rescue (Section 150(2)(c)(iii))

11.1. The Business Rescue will end:

- 11.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s or the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;
 - 11.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;
 - 11.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or
 - 11.1.4. if a High Court orders the conversion of the Business Rescue into a liquidation.
12. Substantial Implementation (Section 150(2)(c)(i)(bb))
- 12.1. Substantial Implementation will be deemed to have occurred upon the BRPs deciding, in their sole discretion, that the following has taken place:
- 12.1.1. the Adopted THL ~~business-rescue-plan~~ Plan has been ~~adopted and~~ implemented to the satisfaction of the BRPs;
 - 12.1.2. final Distributions have been paid to Creditors and/or an appropriate mechanism, acceptable to the BRPs in their sole discretion, such as the appointment of a Receiver, has been put in place for the payment of any remaining Distributions to Creditors; and
 - 12.1.3. to the extent relevant, all Business Rescue Costs relating to the Business Rescue of the Company have been paid and settled in full or suitable arrangements acceptable to the BRPs have been put in place in this regard.

- 12.2. Notwithstanding the above, the Substantial Implementation of this Business Rescue will remain within the sole and reasonable discretion of the BRPs.
13. Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv))
- 13.1. The Company does not, as a result of the Agency Agreements, have any assets or liabilities of significance and is not expected to trade. As a result, the projected balance sheet will most likely remain as it currently is and its income statement will remain with no income.
- 13.2. The effect of the Agency Agreements is that all assets, liabilities, incomes and expenses are those of THL as principal.
- 13.3. The projected balance sheet has been included, however the projected income statement has not as there will be no income or expenses as mentioned above.

THSSA BALANCE SHEET	31 March 2025	31 March 2026	31 March 2027
ASSETS	100	100	100
NON CURRENT ASSETS	100	100	100
AMOUNT DUE BY HOLDING COMPANY - THL	100	100	100
EQUITY & LIABILITIES	100	100	100
CAPITAL & RESERVES	100	100	100
SHARE CAPITAL AND PREMIUM <i>ISSUED AND FULLY PAID: 100 ORDINARY SHARED OF R1 EACH</i>	100	100	100

CHAPTER 3 – ADMINISTRATIVE MATTERS

14. Existing litigation or alternate dispute resolution proceedings
- 14.1. Annexure D lists the matters already subject to a dispute resolution process as at the Publication Date.

14.2. Save as is otherwise provided for in this Business Rescue Plan and/or the Companies Act, all Affected Persons who have or will institute legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be required to submit a Claim for consideration by the BRPs in accordance with the provisions of this Business Rescue Plan.

14.3. The BRPs shall be entitled to institute any proceedings against any Affected Person in any forum (and will not be subject to the Dispute Mechanism in paragraph 15 below) for any purpose, including, recovering money that is due to the Company or preventing Affected Persons from delaying the implementation of the Business Rescue Plan or bringing any application to liquidate the Company.

15. Dispute Mechanism

15.1. Subject to paragraph 14.1 above and save as provided for in section 133 of the Companies Act, any disputes related to the interpretation or application of this Business Rescue Plan, the Business Rescue Proceedings, and/or the **Disputed Claims of all Disputed Creditors ("Disputed Matters") must be resolved in accordance with the Dispute Mechanism outlined below, other than in circumstances where the BRPs and the relevant counterparty (the "Disputing Party") otherwise mutually agree in writing.** Even in circumstances where an agreement legally requires otherwise as to how a Disputed Matter must be resolved, Disputing Parties and the Company are encouraged, and may elect and agree in writing, to resolve such matters through the Dispute Mechanism.

15.2. The Dispute Mechanism procedure will be as follows –

15.2.1. The BRPs have incorporated into this Business Rescue Plan a Dispute Resolution Process (refer to Annexure E) that has been jointly established and endorsed by the Arbitration Foundation of

South Africa ("AFSA") and the South African Restructuring and Insolvency Practitioners Association NPD ("SARIPA") specifically for the purpose of resolving disputes arising in connection with **business rescue proceedings** ("the AFSA/SARIPA Process"). The advantages of adopting the AFSA/SARIPA Process are (inter alia) that it:

- 15.2.1.1. is specifically designed for use in business rescue plans;
 - 15.2.1.2. will be populated by arbitrators experienced in business rescue law and proceedings;
 - 15.2.1.3. is designed to avoid the costs and time delays experienced in court proceedings, and in certain overcomplicated and extended arbitration proceedings;
 - 15.2.1.4. has a mechanism which enables the arbitrator to adapt each arbitration to fit the specific circumstances; and
 - 15.2.1.5. brings with it a flexibility which allows the BRPs and **claimant's, by mutual agreement, to opt out of the AFSA/SARIPA Process** if so elected.
- 15.2.2. All Disputing Parties are referred to Table 2 in relation to their Disputed Matters and are required to contact the BRPs at br@tongaat.com within 30 days of the Disputing Party becoming aware of the Disputed Matters in order to register their disagreement ("Disagreement").
- 15.2.3. The Disputing Party must endeavour to reach agreement with the BRPs on the Disputed Matter within the ensuing 15 days after their Disagreement has been registered, or such longer period as the

BRPs may allow. If the Disputing Party does not avail itself of this opportunity within the time period allowed, then the Disputing Party shall be deemed to have abandoned its Claim and will not, in accordance with section 154 of the Companies Act, be entitled to enforce, at a later date, any Claim that that Disputing Party believes it has against the Company.

15.2.4. If the Disagreement is not so resolved, the BRPs will inform the Disputing Party accordingly and this will be known as the Rejection Date.

15.3. Any Disputed Matter of whatsoever nature relating to:

15.3.1. the acceptance or rejection of any Claim whether in whole or in part or the value or ranking of any Claim or the recognition of any security or preference, lien or hypothec attaching to such claim;

15.3.2. claims which are not reflected in the records of the Company and are not recognised under the Business Rescue Plan; and/or

15.3.3. the proper interpretation or implementation of any provision or matter addressed in this Business Rescue Plan;

which is not resolved in terms of paragraph 15.2.3 above shall be submitted for final determination in accordance with the AFSA-SARIPA RULES, attached hereto as Annexure E, by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

15.4. The BRPs may, however, in their sole and absolute discretion agree with the Disputed Creditor that the Disputed Claim/s be settled. To the extent that any amount remains unpaid after such settlement, the remaining amount will become Unenforceable.

- 15.5. Should any monetary award be made against the Company, including a costs award, then that award will be treated as a Concurrent Claim in the Business Rescue.
- 15.6. Notwithstanding anything to the contrary in this paragraph 15 or elsewhere in the Business Rescue Plan, the BRPs shall not, in any circumstance, be obliged to prosecute, progress or further the Claim of any Creditor beyond the provisions of this paragraph 15. The Company may, however, in the discretion of the BRPs, continue to prosecute any one or more of its counterclaims.
16. Domicilium
- 16.1. The BRPs choose *domicilium citandi et executandi* ("Domicilium") for all purposes relating to the Business Rescue up until the Substantial Implementation Date, including the giving of any notice and the serving of any process, at the physical and e-mail addresses set out below:
- 16.1.1. Physical address: Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400
- 16.1.2. E-mail address: br@tonga.com
- 16.1.3. Attention: Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn
- 16.2. The BRPs shall be entitled, up until the Substantial Implementation Date, by giving written notice to Affected Persons, to vary their physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary their e-mail Domicilium to any other e-mail address.
- 16.3. Any notice given or process served by any Affected Person to the BRPs, which is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the BRPs' physical Domicilium for the time being, shall be deemed

(unless the contrary is proved by the BRPs) to have been received by the BRPs at the time of delivery.

16.4. Any notice given or process served by any Affected Person to the BRPs, which is transmitted by e-mail to the BRPs' e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs on the Business Day immediately succeeding the date of successful transmission thereof.

16.5. Any notice or process in terms of, or in connection with, this Business Rescue Plan shall be valid and effective only if in writing and if received or deemed to have been received by the BRPs.

16.6. For the avoidance of doubt, it is recorded that –

16.6.1. following the Substantial Implementation Date, the Business Rescue of the Company would have terminated; and

16.6.2. no notice or process served in terms of this paragraph shall be taken into consideration by the BRPs (unless they in their sole discretion choose to consider such notice or process) on or after the Substantial Implementation Date.

17. Ability to amend the Business Rescue Plan

17.1. In respect of an amendment to correct a clerical error and that will not be prejudicial to the rights of Creditors as set out herein, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.

17.2. In the event of any other amendments to this Business Rescue Plan, the BRPs shall consult with Affected Persons in terms of section 150 of the Companies

Act, and be entitled to propose an amendment for consideration and voting at a Meeting conducted in terms of section 151 of the Companies Act. Such amendment shall only be effective should it be Adopted in the same manner as provided for in section 152 of the Companies Act.

18. Severability

18.1. Each provision of this Business Rescue Plan is, notwithstanding the grammatical relationship between that provision and the other provisions of this Business Rescue Plan, severable from the other provisions of this Business Rescue Plan.

18.2. Any provision of this Business Rescue Plan, which is or becomes invalid, unenforceable, or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable, or unlawful, without invalidating or affecting the remaining provisions of this Business Rescue Plan which shall remain of full force and effect.

18.3. The BRPs declare that it is their intention that this Business Rescue Plan would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability, or unlawfulness at the time of execution of this Business Rescue Plan.

19. Conclusion

19.1. For the reasons set out above it is the view of the BRPs, notwithstanding the risks and challenges inherent in this Business Rescue Plan, that:

19.1.1. there is a reasonable prospect of a successful Business Rescue, that balances the rights and interests of all relevant stakeholders and Affected Persons, in accordance with the objectives of Chapter 6 of the Companies Act; and

19.1.2. should the Business Rescue Plan not be Adopted, the BRPs are of the view that the Business Rescue will have to be converted to liquidation proceedings immediately.

20. **BRPs' certificates**

20.1. We, the undersigned, hereby certify that to the best of our knowledge and belief:

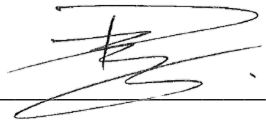
20.1.1. any information provided herein appears to be reasonably accurate, complete, and up to date;

20.1.2. **we have relied on financial information including** opinions and reports furnished to us by the Board and Management;

20.1.3. any projections provided are reasonable estimates made in good faith based on factual information and assumptions as set out herein;

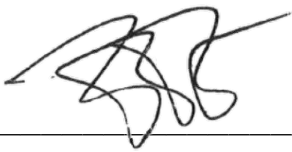
20.1.4. in preparing the Business Rescue Plan, we have not undertaken an audit of the information provided to us, although where practical,

we have endeavoured to satisfy ourselves of the accuracy of such information.



Peter van den Steen

Date: 22/01/2024



Trevor Murgatroyd

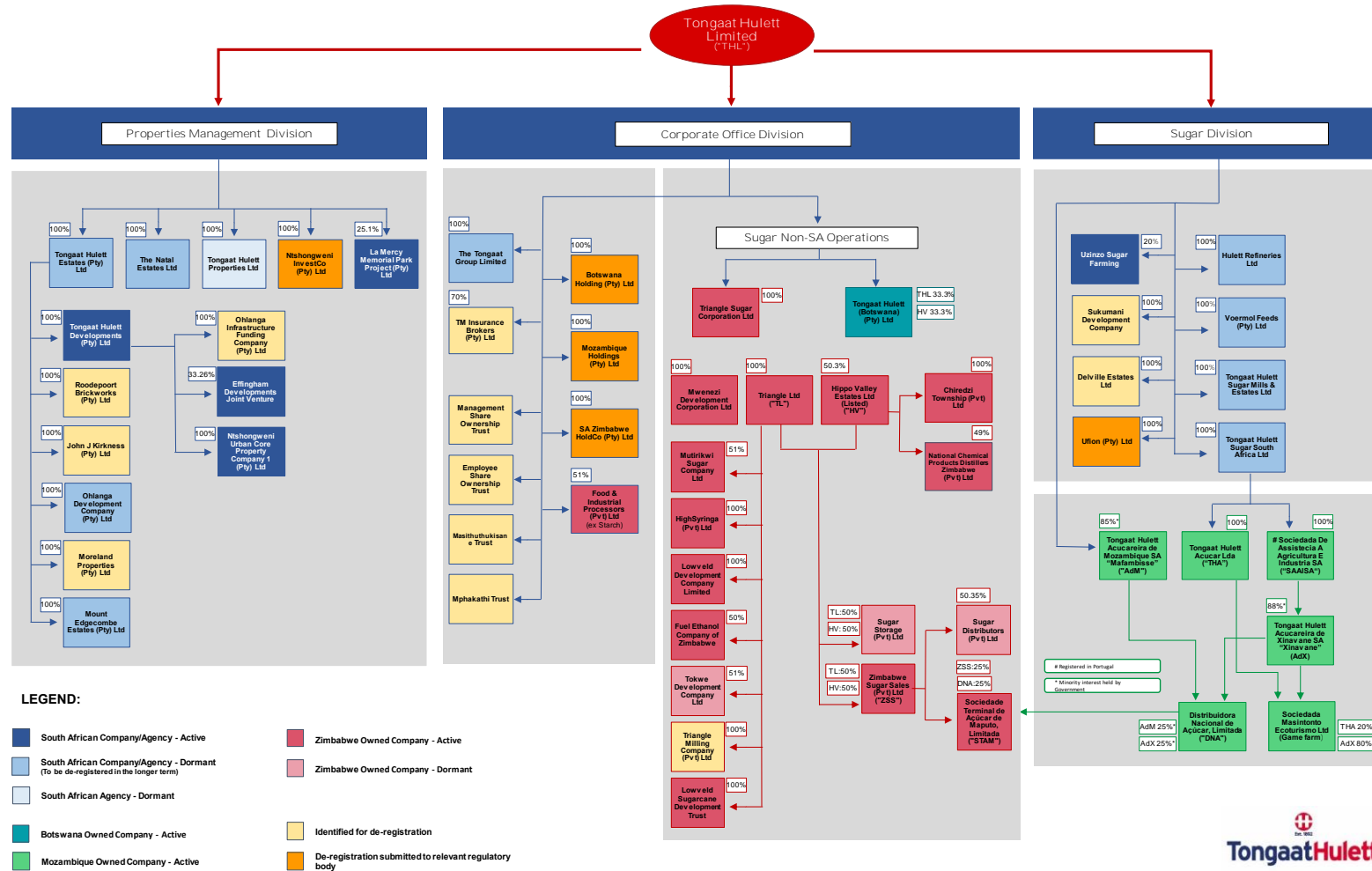
Date: 22/01/2024



Gerhard Albertyn

Date: 22/01/2024

ANNEXURE A – GROUP STRUCTURE



Source: Extract from the Company's Organogram updated as of 20/11/2023.

ANNEXURE B – EVENTS WHICH LED TO THE COMPANY COMMENCING
BUSINESS RESCUE

(THSSA DIRECTORS STATEMENT ATTACHED SEPARATELY)

SWORN STATEMENT

I, the undersigned,

JOHN GAVIN HUDSON
(Identity Number: 700818524082)

do hereby state as follows –

1 I am a director of Tongaat Hulett Sugar South Africa Limited (registration number 1965/000565/06) (the "**Company**"), a public company, with its registered address at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400, and principal place of business at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400.

2 I am duly authorised to depose to this sworn statement on behalf of the Company.

3 This Sworn Statement is made by me on behalf of the Company to support the commencement of business rescue proceedings ("**Business Rescue**") in terms of Section 129 of the Companies Act 71 of 2008 ("**Act**").

4 With this Sworn Statement, I intend to provide the relevant information that was presented to the Company's board of directors and is required in order to demonstrate that the Company should be placed in Business Rescue.

5 The information contained in this Sworn Statement and the opinions expressed in the Sworn Statement relate to the financial difficulties of the Company and how the Company can –

5.1 be rescued and continue as a going concern as an alternative to liquidation; or

5.2 pay a higher dividend to its creditors than that which would become payable to creditors if the Company were to be liquidated.

FINANCIAL DISTRESS

6 The Company's sole shareholder is Tongaat Hulett Limited (registration number 1892/000610/06) (the "**Parent**"), which is, together with its subsidiaries, (the "**Group**") a leading agribusiness with a 130 year history and a strong socio-economic legacy in Southern Africa. It has operations in South Africa, Zimbabwe, Mozambique and Botswana.

7 The Company, as a wholly owned subsidiary of the Parent, -

7.1 acted as agent for the Parent, as undisclosed principal, when contracting with third parties;

7.2 holds certain licences, permits, share investments and bank accounts in its name as agent and for the benefit of the Parent, as undisclosed principal;

7.3 does not operate any businesses for its own benefit that would generate revenue for the Company;

7.4 has irrevocably and unconditionally, on a joint and several basis with other companies within the Group, guaranteed the Parent's senior debt facilities totalling c.R6.67 billion; and

7.5 is wholly financially dependent on the Parent for its ongoing liquidity and cashflows.

8 As such the financial stability of the Company is inextricably linked to the financial stability of the Parent.

9 Presently, some of the creditors who have been made aware by the Company that the Parent is the undisclosed principal of the Company have elected to claim performance

from the Company, instead of the Parent which is in business rescue.

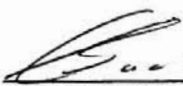
- 10 The extent of the challenges faced by the Parent, who voluntarily entered into business rescue on 27 October 2022 by board resolution, are well publicised. Given the Parent's own financial distress, it is no longer able to fund the Company and cannot make payment to the aforesaid creditors outside the provisions of Chapter 6 of the Companies Act.
- 11 Aside from an intercompany claim against the Parent of R100.00, ("Intercompany Claim") the Company does not own any assets for its own benefit. The assets that are held by the Company, other than the Intercompany Claim, are held by the Company on behalf of the Parent, and these assets have been encumbered as security for the Parent's lenders. Further, the Company does not operate any businesses for its own benefit that would generate revenue for the Company. The Company has, as such, not been able to source alternate funding
- 12 Lastly, the Parent has defaulted on the senior debt facilities totalling c. R6.67 billion and, as guarantor, the Company is also liable to the Lenders for this amount.
- 13 In light of the above, the Company is financially distressed, within the meaning of Section 128 of Chapter 6 of the Act, in that, *inter alia* –
 - 13.1.1 the Company is currently not able to generate these funds itself, nor is it able to raise it from the companies within the Group, and/or third parties in the immediate future; and
 - 13.1.2 the Company is unable to pay all of its debts as they fall due and payable within the immediately ensuing six months (in terms of section 128(1)(f)(i) of the Act.
- 14 The Company cannot, however, be placed into liquidation as certain of the licenses and permits it holds in its name as agent and for the benefit of the Parent, as undisclosed principal, may then lapse.
- 15 It is evident from what is set out in the preceding paragraphs that, not only is the Company's financial position inextricably linked with the Parent, but their fortunes are also inextricably linked too. That is, the Company is such a composite element of the Parent that its rescue will likely benefit the rescue of the Parent and vice versa.

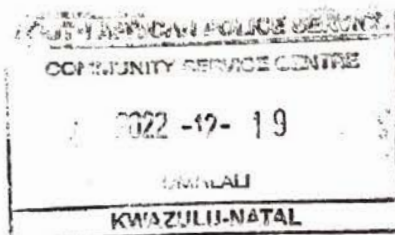
REASONABLE PROSPECT OF RESCUE

- 16 Notwithstanding the above, the directors of the Company believe that there is a reasonable prospect of rescuing the business of the Company, if action is taken immediately and if the Company commences Business Rescue. If the Company is placed under supervision, initiatives can be taken by business rescue practitioners, when duly appointed, to take the following steps –
 - 16.1 imposing an immediate temporary moratorium on all payments to creditors in terms of Section 133 of the Act;
 - 16.2 engaging in discussions with various parties regarding the provision of post commencement financing and/or equity funding to the Company in order to adequately capitalise the Company;
 - 16.3 considering the possible suspension or cancellation of various contracts in terms of Section 136(2) of the Companies Act; and
 - 16.4 a restructure of, *inter alia*, the debt of the Parent, and by implication, the Company, with its creditors.
- 17 Accordingly, the Company through its board of directors, is of the view that the Company is financially distressed, but that there remains a reasonable prospect of rescuing the Company and accordingly that the Company should be placed in Business Rescue.


JOHN GAVIN HUDSON

I certify that this statement was signed and sworn to before me at
SAPS eMhlati on this the 19th of DECEMBER 2022 by the
deponent after he declared that he knew and understood the contents of this statement, that
he had no objection to taking the prescribed oath and has taken the prescribed oath which he
considered binding on his conscience, having complied with regulations contained in
government notice R1258 of 21 July 1972, as amended.

 053210116
W10
COMMISSIONER OF OATHS
Name: Siva Govender
Address: Box 49 eMhlati 4390
Capacity: Police man



ANNEXURE C - PROXY FORM FOR CREDITORS OF TONGAAT HULETT SUGAR
**SOUTH AFRICA PROPRIETARY LIMITED (IN BUSINESS RESCUE) ("THE
COMPANY")**

For use by the Creditors of the Company at a meeting ("151 Meeting") convened in terms of Section 151 of the Companies Act to be held electronically via a video-conferencing platform on ~~Friday 8 December 2023~~ Wednesday 31 January 2024 at 10:00am or at any subsequent adjournment of the meeting.

Entity represented (per the Company's Business Rescue Plan):

I/We _____ do hereby appoint:

- i. _____; or failing him/her
- ii. _____; or failing him/her
- iii. the BRP, who acts as Chairman of the meeting,

as my/our proxy to act for me/us and on my/our behalf at the 151 Meeting which will be held for the purpose of considering and, if deemed fit, voting: (indicate with an X)

- 1. To direct the BRPs to adjourn the meeting in order to revise the Amended Business Rescue Plan for further consideration:

In Favour _____ Against _____ Abstain _____

- 2. Approval of the proposed Amended Business Rescue Plan, with or without modification:

In Favour _____ Against _____ Abstain _____

SIGNED at _____ on this _____ day of 2024.

SIGNATURE

Power of Attorney / Authorising Resolution attached (where applicable)

NOTES:

1. A Creditor may insert the name of a proxy or the names of two alternative **proxies of his/her choice in the space provided, with or without deleting "the Chairman of the meeting". The person whose name stands first on the form** of proxy and who is present at the 151 Meeting will be entitled to act as proxy to the exclusion of those whose names follow.
2. The form of proxy must either be:
 - i. Delivered and lodged at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal, 4400, to be received by not later than 17h00 on ~~Wednesday, 6 December 2023~~ Monday 29 January 2024, two days prior to the meeting; or
 - ii. emailed to br@tonga.co.za by not later than 17h00 on ~~Thursday, 7 December 2023~~ Tuesday 30 January 2024.
3. The completion and lodging of this form of proxy will not preclude the relevant Creditor from attending the 151 Meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such Creditor wish to do so.
4. Capitalised words not otherwise defined in this proxy form shall have the meaning ascribed to them in the Business Rescue Plan.
5. If this proxy is signed under power of attorney or on behalf of a company, such authority (i.e. power of attorney (for an individual) or authorising resolution (for a juristic person), as applicable) must accompany it.

ANNEXURE D - EXISTING LITIGATION AND ALTERNATIVE DISPUTE PROCEEDINGS

Plaintiff/ Defendant/ Applicant/ Respondent	Description	Status	Quantum
Competition Commission of SA ("CCSA')	The CCSA commenced with an investigation into complaints of excessive pricing lodged by Coca-Cola Beverages South Africa (CCBSA).	THSSA cooperated with the Competition Commission's investigation into the CCBSA complaint and provided relevant information to the Commission where requested to do so. The Commission completed its investigation into the complaint in July 2021 and decided not to refer the complaint to the Competition Tribunal for adjudication. CCBSA has brought a review application requesting that the Competition Tribunal review the Commission's decision. CBBSA intend bringing an application to have the matter "transferred" to the Competition Appeal Court. This is being opposed on the basis that the Competition Act nor the Tribunal Rules allow for a "transfer" of the matter . A formal application to have the matter transferred has been filed by CCBSA which has been opposed by THL, Illovo and RCL.	Fine of 10% of turnover

GR Cane Haulage	Recovery & counterclaim: Diversion Overcharge	THSSA instituted an action against GR Cane Haulage for diversion overcharges . GR Cane has brought a counterclaim of R6m for, inter alia, penalties, tolls and damages for mill inefficiencies. The matter has, however, been placed on hold given the unavailability of Tongaat witnesses. Attempts to settle the matter continue.	R2.9m
Ex-employee Mara Moyolo	Civil claim for Recovery of funds	Recovery against the employee defrauded the company with over an extended period. The employee was dismissed in 2019. The matter is proceeding.	R10m
Ex- employee Amanda Randeira	Civil action (delictual) instituted against THSSA	The Plaintiff instituted a delictual claim against THSSA and an ex-employee) in the amount of some R31m in relation to employment issues. The matter continues to be defended.	R31m
State	Inquest relating to a fatality of an employee at Mill	Matter pending in the Mtunzini Magistrate's court, an inquest relating to a fatality of an employee in 2015. Awaiting further direction from the Magistrate on setting the matter down for hearing. In August 2023, Magistrate has handed down decision that no party is liable for the deceased's death . The deceased's family have filed a notice for the Magistrate to provide reasons. The matter is ongoing.	Not applicable
Riverwalk Trading 87 CC	Recovery of funds relating to goods sold & delivered	Default Judgment granted on 17 October 2022. Execution proceedings continue.	R3m
Nadine Chetty-Kahn	Civil Action instituted against THSSA as Second Defendant	Plaintiff instituted a claim in respect of injuries suffered as a result of an injury suffered while visiting the Darnall Country Club.	R350k

		<p>THL owns the property and is leased to the Darnall Country Club, who have been cited as the First Defendant. THL insurers have been briefed and the matter is being defended on behalf of THL as Second Defendant in the normal course. Judgment was taken against the Darnall Country Club, who are in the process of applying for a rescission of judgment.</p>	
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Source: The Company's litigation register updated as of 16/11/2023

ANNEXURE E - AFSA-SARI PA RULES

(ATTACHED SEPARATELY)



THE AFSA-SARIPA RULES FOR THE RESOLUTION OF DISPUTES IN BUSINESS RESCUE PROCEEDINGS

1. THE RULES: STATUS AND PURPOSE

- 1.1 These Rules have been established and endorsed by the Arbitration Foundation of South Africa (AFSA) and the South African Restructuring and Insolvency Practitioners Association NPD (SARIPA) for the purpose of resolving disputes arising in connection with business rescue proceedings.
- 1.2 AFSA and SARIPA share joint oversight over the administering Secretariat and the Panel of Arbitrators identified in these Rules and may jointly supplement or amend these Rules from time to time as circumstances dictate.
- 1.3 Such joint oversight is exercised through the AFSA-SARIPA Business Rescue Division within the AFSA corporate structure.

2. SUPERVISION OF THE AFSA SECRETARIAT

- 2.1 The AFSA-SAPIRA Secretariat is the administering authority appointed by the AFSA Business Rescue Division to supervise and administer the resolution of disputes under these Rules.
- 2.2 Parties to any dispute undertake to co-operate with the AFSA Secretariat in order to assist it in its functions. Parties further undertake to deal with any requests made to them by the Secretariat quickly and constructively.
- 2.3 The address of the AFSA Secretariat is c/o AFSA at 1st Floor, Grindrod Tower, 8A Protea Place, Sandown, or PO Box 653007, Benmore, 2010, Telephone no. (011) 320-0600, Docex 143, Randburg.
- 2.4 All communication with the AFSA Secretariat may be effected by email or online.
- 2.5 Any communications between the parties and the arbitrator should take place through the AFSA Secretariat, which is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues arising out of these Rules.

3. INITIATING DISPUTE RESOLUTION

- 3.1 Any party to a dispute (the claimant) shall initiate the dispute resolution procedure by submitting the REQUEST FOR ARBITRATION in the form set out in Appendix A accompanied by payment of the claimant's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand).

- 3.2 The claimant must simultaneously transmit a copy of the REQUEST FOR ARBITRATION to the Business Rescue Practitioner and to any other party against whom the claimant also seeks any relief or order.

4. INTERRUPTION OF PRESCRIPTION

- 4.1 The simultaneous transmission of the REQUEST FOR ARBITRATION in proper form to the Secretariat and to the BRP and any other person against whom any relief or order is sought shall interrupt the running of prescription subject to 4.3 below.
- 4.2 The date of interruption shall be the date of receipt by AFSA of the REQUEST FOR ARBITRATION but subject to 4.3 below.
- 4.3 Prescription shall only be interrupted in this manner if the AFSA Secretariat accepts the REQUEST FOR ARBITRATION and if the claimant thereafter prosecutes the claim to finalisation under these Rules without falling into default.

5. ACCEPTANCE OR REJECTION OF THE REQUEST FOR ARBITRATION

- 5.1 The Secretariat, if satisfied:
- 5.1.1 that the REQUEST FOR ARBITRATION has been completed in proper form and that payment of the claimant's share of its management and administration fee has been made; and
 - 5.1.2 that the dispute falls within the terms of the reference to arbitration contained in the Business Rescue Plan,
- shall accept the REQUEST FOR ARBITRATION and must notify the parties that it has referred the matter to arbitration and that the steps set out in the rest of the Rules will follow.
- 5.2 If the REQUEST FOR ARBITRATION does not comply with the requirements of 5.1 above the Secretariat will refuse the request to arbitrate in which case if the deficiency can be rectified, and is rectified, the REQUEST FOR ARBITRATION may be re-submitted.

6. RESPONSE BY THE BRP

Within ten business days from the date of receipt by the BRP, the BRP shall simultaneously transmit to the claimant, the Secretariat and any implicated person the BRP's response to Appendix A to the REQUEST FOR ARBITRATION, such response to be marked Appendix B and in which:

- 6.1 the BRP must either confirm as accurate or otherwise correct the information set out in paragraphs 1 – 4 and 6 of Appendix A;

- 6.2 the BRP must answer the claimant's claim as set out in paragraph 5 of Appendix A by way of a brief written statement indicating which statements made in support of the claim in paragraph 5 of Appendix A are admitted and which parts are denied, and why they are denied, further showing clearly and concisely the reasons and contentions which are relied upon to refute the claimant's claim;
- 6.3 Appendix B shall be accompanied by payment of the BRP's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand) plus VAT.

7. RESPONSE BY ANY OTHER IMPLICATED PARTY AND COUNTERCLAIMS

- 7.1 The provisions of Rule 6 will separately apply to any party against whom any claimant seeks an order whether separately from or in addition to any relief sought against the BRP.
- 7.2 In the event that the BRP or other implicated party seeks relief against the claimant for any reason the grounds for such reciprocal claim shall also be concisely set out together with such relief as is sought.

8. MEDIATION

Should both parties agree, or should the AFSA Secretariat so direct, the dispute will first be referred to mediation for a quick and amicable resolution. In such an instance the Secretariat will make the necessary arrangements for the mediation and will appoint the mediator. The Secretariat will issue directions as to the process to be followed.

9. SELECTING THE ARBITRATOR

- 9.1 Unless the parties have notified the Secretariat within four business days of the claimant transmitting the REQUEST FOR ARBITRATION that they have selected a particular arbitrator on the approved Panel of Arbitrators the Secretariat will select an arbitrator from the Panel.
- 9.2 The arbitrator, whether selected by the parties or by the Secretariat, must confirm that he or she is not conflicted in any way and is able to deal with the matter without delay and has signed the AFSA Code of Conduct for Arbitrators.

10. OBJECTION TO ARBITRATOR'S APPOINTMENT, RECUSAL AND REPLACEMENT

- 10.1 In the event that any party has a substantive objection to the appointment of a particular arbitrator or to the conduct of the arbitrator thereafter that party must inform the Secretariat within three days following notification of the appointment or following it first becoming aware of the conduct which is the subject of complaint. The Secretariat

will rule on the merits of the objection and either set aside the arbitrator's appointment or confirm same and its decision is final.

- 10.2 An arbitrator shall recuse himself or herself when, due to physical, mental, or other disability, he or she becomes incapable properly to perform his or her duties, and in circumstances which would require a judicial officer to recuse himself or herself.
- 10.3 The Secretariat shall be entitled, after a written or oral hearing (as directed by the Secretariat) of the parties and the arbitrator, to terminate the appointment of an arbitrator on the grounds that he or she has become disqualified from acting or continuing to act in terms of these Rules, or his or her inability or refusal to act, or that he or she has failed timeously and effectively to perform any of his or her functions as arbitrator.
- 10.4 Where the position of arbitrator falls vacant for any reason the Secretariat will appoint a substitute arbitrator who shall have the power to act in the arbitration and make an award as if originally appointed and the substitute arbitrator may proceed on the evidence recorded in the proceedings before his or her appointment or may make re-call for further examination the person/s who gave such evidence.

11. SECRETARIAT'S NOTIFICATION TO THE ARBITRATOR

- 11.1 The Secretariat must immediately notify the arbitrator of his or her appointment, confirm and approve the fees chargeable by the arbitrator and transmit to the arbitrator Appendix A and Appendix B for the immediate attention of the arbitrator.
- 11.2 The Secretariat must arrange an initial meeting between the arbitrator and the parties as quickly as possible following the arbitrator's appointment.

12. THE INITIAL MEETING AND TIMETABLE

- 12.1 The purpose of the initial meeting is to allow the arbitrator after consultation with the parties to decide whether the fair and expeditious determination of the dispute:
 - 12.1.1 requires further elaboration of the claim or the response and, if so, in what respects;
 - 12.1.2 requires the production of books or documents and if so which books or documents must be produced;
 - 12.1.3 permits the submission of evidence and contentions upon which the parties rely in written form and without the need for oral presentation.

12.2 In determining the procedure for the determination of the dispute the arbitrator:

12.2.1 must draw up a timetable for the progress of the matter to finalisation and notify the Secretariat of the timetable;

12.2.2 must give priority to the need for the expedited determination of the dispute and to a cost-effective process; and

12.2.3 if the substance of the proceedings involves a review of any decision, act or ruling of the Business Rescue Practitioner then the proceedings should be conducted by way of written evidence and submissions save for oral argument;

12.2.4 in choosing the appropriate procedure to be followed the arbitrator must be satisfied that each party will (barring default) enjoy a fair and equal opportunity to present its case.

13. PAYMENT OF THE ARBITRATOR'S FEES AND CHARGES

13.1 The fees and charges of the arbitrator will be paid by the Secretariat to the arbitrator and it is the obligation of the parties to pre-pay the Secretariat the invoiced amount of such fees and charges on demand.

13.2 In the event of the failure by any party to pre-pay such amount the provisions of Rule 13 will apply to the defaulting party and the other party or parties will, in the interim, be called upon to pay the deficit.

14. ARBITRATOR'S POWERS IN THE EVENT OF DEFAULT

Should any party to the proceedings:

14.1 fail to pay the Secretariat's management and administration fee; or

14.2 fail to pay the amount invoiced for that party's share of the arbitrator's fees and charges; or

14.3 fail to comply with the provisions of these Rules notwithstanding prior warning by the Secretariat or by the arbitrator; or

14.4 fail to carry out the terms of any ruling or directive of the arbitrator or the Secretariat; or

14.5 is guilty of delaying conduct so as to give rise to a substantial risk of serious prejudice to the other party or parties,

then:

14.6 where a party is in default due to failure to pay its share of any management and administration fee or arbitrator's fee when requested by the Secretariat that party will lose the right to participate in the arbitration process and the proceedings will continue to their conclusion in the absence of such party unless the arbitrator orders otherwise in the special circumstances of the case; and

14.7 where the default is of any other sort as itemised above the arbitrator can either:

14.7.1 give that party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the arbitration with the same consequences as set out above; or

14.7.2 warn the party in writing that its default or omission may make it liable to a punitive order of costs irrespective whether it succeeds in the arbitration or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.

15. **GENERAL POWERS OF THE ARBITRATOR**

15.1 The arbitrator shall have the widest discretion and powers allowed by law to ensure the just, expeditious, economical, and final determination of all the disputes raised in the proceedings, including the matter of costs.

15.2 Without detracting from the generality of the foregoing, the arbitrator shall have the powers:

15.2.1 to rule on his or her own jurisdiction;

15.2.2 to admit claims or any security or preference whether recognised under the Business Plan or not and to review and set aside a ruling of the Business Rescue Practitioner in regard to the admission or rejection of claims including the power to admit a rejected or partially rejected claim or any security or preference;

15.2.3 to deal with cases of default in accordance with the powers conferred upon the arbitrator in terms of these Rules;

15.2.4 to make any ruling or give any direction mentioned in these Rules or as he or she otherwise considers necessary or advisable for the just, expeditious, economical and final determination of all the disputes raised on the pleadings, including the matter of costs;

15.2.5 to extend before or after their expiry, or abbreviate any time limits provided for in these Rules or by his or her rulings or directions;

15.2.6 to order any party who is a claimant, or claimant under a counterclaim, to furnish security for costs in respect of his claim or counterclaim;

15.2.7 to allow (but only with their express written consent) other parties to be joined in the arbitration proceedings, and to make an award on all issues submitted by all parties, including parties so joined;

15.2.8 to make an order as to costs and

15.2.9 to make any settlement agreement concluded between the BRP, claimant and any other party to the arbitration proceedings, an award which will have the same effect as an award made at the conclusion of the arbitration proceedings.

16. INTERLOCUTORY MATTERS AND TEMPORARY ORDERS

Should the need arise for any party to seek interim or temporary relief before the arbitration is finalised, that party may apply to the arbitrator to grant such interlocutory order or give the required temporary relief and the arbitrator shall have the same power to do so as if the matter were one heard by a Judge of the High Court save that if by law such power or order cannot be exercised or given by an arbitrator then, and then only, should the parties refer such matter to an appropriate Court.

17. THE AWARD

17.1 The arbitrator must give his/her award within thirty days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariats permits an extension of that time.

17.2 The arbitrator's award must be published to the parties in an appropriate fashion as determined by the AFSA Secretariat.

17.3 Unless the parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award. In cases where the AFSA Secretariat has been instructed otherwise, the appeal provisions contained in Article 22 of the AFSA Rules for Commercial Arbitrations will apply.

18. NON-LIABILITY OF AFSA-SARIPA DIVISION, THE SECRETARIAT AND THE ARBITRATOR

The AFSA-SARIPA Division and its Secretariat shall not be liable to any party for any act or omission relating to an arbitration conducted under its aegis, and shall have no liability or responsibility towards the parties or to any arbitrator in respect of any arbitration commenced under the aegis of the AFSA-SARIPA

Division but not completed according to these Rules. An arbitrator appointed by the AFSA-SARIPA Division shall not be liable for any act or omission relating to an arbitration in which he or she was the arbitrator, except in the case of deliberate misconduct.