

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

Case number: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED	Applicant
-----------------------------------	-----------

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
GERHARD CONRAD ALBERTYN N.O.	Fourth Respondent
VISION INVESTMENTS 155 (PTY) LTD	Fifth Respondent
TERRIS AGRIPRO (MAURITIUS)	Sixth Respondent
REMOGGO (MAURITIUS) PCC	Seventh Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Eighth Respondent
ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES)	Ninth Respondent
THE LENDER GROUP OF TONGAAT HULETT LIMITED	Tenth Respondent
MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE	Eleventh Respondent
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Twelfth Respondent

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IN THE HIGH COURT OF SOUTH AFRICA
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Eleventh Respondent

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

Twelfth Respondent

CERTIFICATE OF URGENCY

I, the undersigned,

RUAN KOTZE

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

The applicant's grounds for urgency, which are summarised at paragraphs 54 to 72 of the founding affidavit, are briefly as follows:

1. RGS contends that the business rescue plan adopted in the business rescue of the first respondent ("**THL**") has failed due to the fifth to ninth respondents' ("**the Vision Parties**") failure to raise the funds necessary to implement the transactions on which the plan is premised.
2. The business rescue plan was premised on the Vision Parties fully acquiring the claims and security of circa R8.5 billion held against THL by the Lender Group, a group of thirteen banks and financial institutions which together hold by far the largest claim in the business rescue ("**the Acquisition**" and "**the LG Claims**").¹
3. The Vision Parties have at all times kept the terms of the agreement concluded between them and the Lender Group in relation to the Acquisition secret ("**the Acquisition Agreement**"). The second to fourth respondents ("**the BRPs**") prepared the business rescue plan on the basis that THL is not party to the Acquisition Agreement despite the Acquisition itself forming part of what is

¹ Founding affidavit at paragraph 11.

described in paragraph 2.2 of the business rescue plan as the “key feature” thereof.² The terms of the Acquisition Agreement are therefore not in the plan.

4. Pursuant to the Acquisition, the Vision Parties were to implement a debt-to-equity conversion in terms of which they would swap circa R4.9 billion of the Lender Group’s former claims for a 97% shareholding in THL (“**the Conversion**”). The Vision Parties would then retain a claim of R3.6 billion against THL but would grant THL a three-year interest payment holiday.³
5. The Acquisition was announced by the BRPs on 9 November 2023 and creditors were initially informed that the Acquisition would be complete by the time that the creditors meeting in terms of section 151 of the Companies Act 71 of 2008 (“**the Companies Act**”) was called to vote on the business rescue plan.⁴
6. The Acquisition was not achieved when the Creditors Meeting was convened on 10 and 11 January 2024 (“**the Creditors Meeting**”). At the meeting, creditors expressed concern regarding the Vision Parties’ ability to fund the implementation of the business rescue plan. The BRPs, however, assured creditors that they had received a letter from Standard Bank confirming that the Vision Parties had sufficient funds to implement the business rescue plan.⁵
7. At the conclusion of the Creditors Meeting, creditors voted to adopt the business rescue plan on the basis of the aforesaid assurances regarding the Vision Parties’ ability to fund the implementation of the transactions contemplated therein (i.e the Acquisition and the Conversion).

² Founding affidavit at e.g. paragraphs 215 to 217.

³ *Id* at paragraph 11.

⁴ *Id* at paragraphs 80 and 83.

⁵ *Id* at paragraphs 39 to 40, and 127.

8. The Conversion could not be implemented without shareholders' approval since it would dilute the value of all pre-existing shareholding in THL to 2.7% while allotting a 97.3% shareholding to the Vision Parties.
9. The BRPs issued a circular to shareholders prior to the shareholders meeting that had been called to seek approval for the Conversion ("**the Circular**" and "**the Shareholders Meeting**"). It was evident from the Circular that the Acquisition had not been achieved and that the Lender Group (i.e. not the Vision Parties) would retain a claim of R3.6 billion against THL should the Conversion be approved, resulting in continued finance costs of approximately R448 million per annum for THL, all of which is contrary to the express terms of the plan.⁶
10. RGS contends that the BRPs acted unlawfully in seeking shareholders' approval of the Acquisition on the aforesaid basis since the business rescue plan authorised by creditors only permits the Conversion to proceed once the Vision Parties have fully acquired the LG Claims. Since the Circular contemplated a claim of R3.6 billion being retained by the Lender Group it was in breach of the express terms of the business rescue plan.⁷
11. At the Shareholders Meeting, which was convened on 8 August 2024, shareholders voted to reject the Conversion inter alia on the basis that the Acquisition had not been achieved and pursuant to shareholders' view that it was "misplaced and grossly unreasonable" to expect them to agree to the dilution of their shareholding under the circumstances (i.e. given that the Vision Parties had

⁶ Founding affidavit at paragraph 168.

⁷ *Id* at paragraph 37.

failed to raise the funds necessary to implement the Acquisition) (“**the Rejection of the Conversion**”).⁸

12. Subsequent to the Rejection of the Conversion, on 16 August 2024, the BRPs informed affected persons that:⁹

12.1. they would proceed with an alternative transaction in terms of which they would sell all THL’s assets to the Vision Parties and then delist THL from the Johannesburg Stock Exchange and liquidated its “shell” (“**the Vision Asset Transaction**”);

12.2. The Vision Parties will discharge the purchase consideration due in terms of the Vision Asset Transaction by setting the value thereof off from the LG Claims.

13. The Vision Asset Transaction, like the Conversion, cannot therefore proceed unless and until the Vision Parties have achieved the Acquisition.

14. RGS moreover contends that the Vision Asset Transaction is unlawful inter alia because:

14.1. The Vision Asset Transaction is only addressed on one page of the 578 page business rescue plan and in a manner that does not comply with the provisions of section 150 of the Companies Act since it fails to provide the mandatory information required by that section in relation to inter alia (i) the conditions that must be satisfied for the Vision Asset Transaction to be implemented, (ii) the effect that the Vision Asset Transaction will have on employees and the terms and conditions of their

⁸ Founding affidavit at paragraphs 29 – 30 and 41.

⁹ *Id* at paragraph 41.

- employment, and (iii) the financial information that is required to be provided in relation to the implementation of the Vision Asset Transaction (e.g. the taxes and transactional costs that it will attract);
- 14.2. The Vision Asset Transaction was not explained to creditors during the Creditors Meeting. While creditors were assured during the meeting that the Vision Parties had sufficient funds to implement the business rescue plan and that this would save THL from liquidation, the Vision Asset Transaction is intended to result in THL's liquidation and has been resorted to because Vision did not have the funds necessary to achieve the Acquisition;
- 14.3. The Vision Asset Transaction is designed to achieve precisely the result that creditors were assured the adoption of the business rescue plan would avoid, i.e. the delisting and liquidation of THL;
- 14.4. The Vision Asset Transaction amounts to a private or controlled liquidation conducted under the guise of business rescue for the benefit of the Vision Parties and is therefore unlawful.
15. RGS also contends that the business rescue plan has lapsed given that it has proven incapable of implementation within a reasonable time.
16. RGS, which is an admitted creditor of THL, therefore submitted an offer to acquire THL out of business rescue to the BRPs on two occasions after it became evident that the Vision Parties did not have the funds required to achieve the Acquisition. The RGS offer can be incorporated into a new business rescue plan in terms of which over R4.4 billion can be injected directly into THL, THL's listing

on the JSE can be retained, THL's employees can retain their employment, and THL will not be liquidated.

17. The BRPs refused RGS' offer on the basis that the business rescue plan remains valid and that they are dutybound to proceed with the Vision Asset Transaction culminating in THL's delisting and liquidation.
18. RGS subsequently demanded that the BRPs and the Vision Parties publish inter alia the following information on THL's business rescue website for the benefit of affected persons: (i) the Acquisition Agreement, (ii) confirmation of the amounts paid by the Vision Parties to the Lender Group, (iii) confirmation as to whether the Lender Group has transferred the LG Claims to the Vision Parties despite the fact that the latter have not paid the purchase price due in relation thereto.
19. The Vision Parties refused to disclose this information. The BRPs informed RGS that they had instructed their attorneys to write to the Vision Parties and the Lender Group "insisting" that the Acquisition Agreement be provided for dissemination to affected persons.¹⁰
20. The Acquisition Agreement has not been provided despite the BRPs' insistence.
21. RGS contends that it does not stand to receive substantial redress at a hearing in due course inter alia because:
 - 21.1. the result of the Vision Asset Transaction (i.e. THL's delisting and liquidation) is manifestly irreversible;
 - 21.2. if RGS is correct that the Vision Asset Transaction is unlawful every incremental step taken in implementing it is similarly unlawful and will

¹⁰ Founding affidavit at paragraph 217 – 219.

have irreversible external effects even before the entire transaction is fully implemented;

- 21.3. the BRPs are proceeding to implement the Vision Asset Transaction in circumstances where, on their own version, they do not have a copy of the Acquisition Agreement, the Vision Parties have refused to produce the Acquisition Agreement despite the BRPs' "insistence", and the Vision Asset Transaction cannot be implemented if the Acquisition is not first achieved.
22. RGS contends that it is essential that this application be heard on an urgent basis so that the Court may determine the lawfulness of the Vision Asset Transaction before it is implemented even partially as this will result in creditors, employees, shareholders and all affected persons suffering irreparable harm.
23. In terms of Part A of the notice of motion RGS seeks (i) an interim interdict pending the adjudication of the Part B relief (i.e. the setting aside of the business rescue plan), and (ii) the disclosure of essential information regarding the Acquisition.
24. The need for a hearing on Part A can be avoided entirely if the Vision Parties act with the required degree of transparency and provide affected persons with a copy of the Acquisition Agreement and proof of what has been paid and what rights have been transferred in terms thereof.

DATED at CAPE TOWN on this 6th day of NOVEMBER 2024.



RUAN KOTZE

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

Twelfth Respondent

NOTICE OF MOTION

PART A

TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on **THURSDAY, 28 NOVEMBER 2024** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6 (12).
2. To the extent necessary, that the applicant be granted leave to bring this application against the first respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008 (*"the Companies Act"*).
3. That pending the final determination of the relief sought under Part B, the first to ninth respondents be interdicted from proceeding with or in any way progressing or implementing the so-called Vision Asset Transaction in terms of which all the first respondent's assets will be transferred to the fifth respondent, or any other entity nominated by the Vision Parties, following which the first respondent will be delisted and liquidated.
4. That the second to fourth respondents (*"the BRPs"*) be directed to publish the following information on the first respondent's business rescue website within 7 business days:
 - 4.1. A statement providing all the information contemplated in sections 150(2)(c), 150(3), and 150(4) of the Companies Act 71 of 2008 in relation to the Vision Asset Transaction;

- 4.2. A comprehensive description of all the agreements and transactions that have been concluded / are intended to be concluded in terms of the Vision Asset Transaction, including all the main steps in those transactions;
 - 4.3. A statement confirming whether or not the Industrial Development Corporation of South Africa, in its capacity as a post commencement finance creditor of the first respondent, has consented to the Vision Asset Transaction.
5. That the fifth to ninth respondents (*"the Vision Parties"*) be directed to provide the following information to the BRPs for publication on the first respondent's business rescue website within 7 business days:
- 5.1. Copies of all the versions, i.e. the current version as well as all past versions, of the acquisition agreement concluded between the Vision Parties and the Lender Group in terms of which the Vision Parties were / are to acquire the Lender Group's claims and security in the business rescue of the first respondent (*"the Acquisition Agreement"*);
 - 5.2. Proof of all payment(s) made by the Vision Parties to the Lender Group in terms of the Acquisition Agreement including the amount(s) of such payments;
 - 5.3. Proof that the Lender Group has transferred all its claims and security in the THL business rescue to the Vision Parties, alternatively proof of the nature and extent of such claims and security as have been transferred;

- 5.4. Confirmation under oath that they have not concluded and will not in future conclude any agreement(s) with the Lender Group in terms of which, whether directly or indirectly, any of the first respondent's assets (including any such assets which are intended to be transferred under the Vision Asset Transaction) will be sold upon or after the conclusion of the first respondent's business rescue in order to apply the proceeds of such sale(s) to settle any amount(s) due:
- 5.4.1. by the Vision Parties to the Lender Group, whether under the Acquisition Agreement or otherwise;
- 5.4.2. to any other creditor(s) of the first respondent.
6. That the applicant be granted leave to supplement its founding affidavit prior to the hearing on Part B.
7. That the costs of Part A be paid by the first to ninth respondents, in addition to any party opposing the relief sought in Part A, on scale C including the costs of two counsel where so employed.
8. Further and/or alternative relief.

PART B

TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant, on papers duly supplemented, and on an expedited date to be arranged with the Judge President and/or the Senior Civil Judge for an order in the following terms:

1. That the business rescue plan adopted in relation to the first respondent on 11 January 2024 be set aside.
2. That the costs of Part B be paid by the first to ninth respondents, in addition to any party opposing the relief sought in Part A, on scale C including the costs of two counsel where so employed.
3. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **MOMADE AQUIL RAJAHUSSEN** shall be used in support of this application.

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

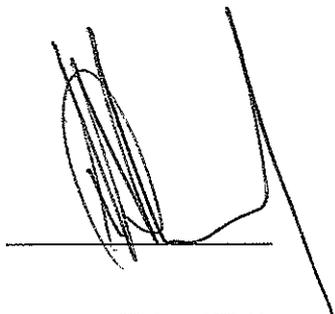
TAKE NOTICE FURTHER that the applicant agrees to accept service of all process filed in these proceedings by email at devin@dmiatt.co.za and shelin@dmiatt.co.za .

TAKE NOTICE FURTHER that any party who intends to oppose this application must:

- (i) notify the applicant's attorneys in writing by **no later than 17h00 on Wednesday, 13 November 2024;**
- (ii) deliver their answering affidavits, if any, by **no later than 17h00 on Friday, 22 November 2024.**

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at **DURBAN** on this 6TH day of **NOVEMBER 2024.**


DMI ATTORNEYS

Applicant's Attorneys

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TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
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AND TO: POWERTRANS SALES AND SERVICES

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Email: info@powertrans.co.za

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**THE AFFECTED PERSONS IN THE FIRST
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Twelfth Respondent

FOUNDING AFFIDAVIT

Paul
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A handwritten signature in black ink, appearing to be 'Ami', with the date '26' written below it.

I, the undersigned,

MOMADE AQUIL RAJAHUSSEN

do hereby make oath and say that:

1. I am an adult male and the chairman of the applicant ("**RGS**"). I am duly authorised to institute these proceedings on RGS' behalf and to depose to this affidavit.
2. RGS is an admitted creditor in the first respondent's business rescue and therefore has standing to bring this application.
3. The facts contained in this affidavit are within my personal knowledge, save where the context indicates otherwise and are, to the best of my belief, both true and correct. Where I rely on information provided to me by others, I believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the applicant's legal representatives.
4. To avoid prolixity, the citations of the parties to this application are set out in the document annexed, marked "**MAR1**".
5. For ease of reference, I refer herein below to:
 - 5.1. The first respondent as "**THL**";
 - 5.2. The second to fourth respondents as "**the BRPs**";
 - 5.3. The fifth to ninth respondents as "**the Vision Parties**" or "**Vision**";
 - 5.4. The tenth respondent as "**the Lender Group**";



3

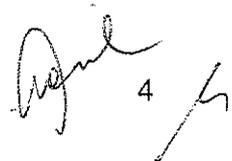
5.5. The eleventh respondent as “**Powertrans**”; and

5.6. The Companies Act 71 of 2008 as “**the Companies Act**”.

INTRODUCTION

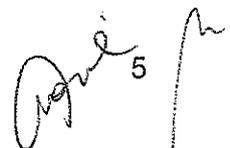
6. THL was placed under voluntary business rescue supervision more than two years ago on 27 October 2022. The BRPs were appointed on the same day.
7. The business rescue plan adopted by creditors at the creditors meeting held on 10 and 11 January 2024 is premised on transactions proposed by the Vision Parties (“**the Creditors Meeting**” and “**the Adopted Plan**”). A copy of the Adopted Plan is annexed, marked “**MAR2**”. Only annexures “G” and “I” to the Adopted Plan have been included as so not to burden the Court unnecessarily.
8. Although the factual background to this application is somewhat complicated, the central issue could not be simpler: the Vision Parties have failed to raise the funds necessary to implement the Adopted Plan.
9. The question that arises is whether the BRPs may now proceed – in terms of the “alternative” Vision Asset Transaction – to sell THL’s assets to Vision and then delist and liquidate THL’s “shell”, thereby destroying a 135-year-old company and obliterating the value of its listed shares entirely.¹
10. This question (i.e. whether the BRPs may lawfully proceed with the Vision Asset Transaction) falls to be considered in light of the following facts (all of which are discussed in more detail below):

¹ The Vision Asset Transaction is discussed in more detail at paragraph 41 below.



- 10.1. in terms of the “key feature” of the Adopted Plan, THL was meant to be “rescued” with its listing on the JSE being retained resulting in the “avoidance of a major humanitarian and financial catastrophe in the KZN region in general, and in the sugar supply chain in particular” which would have ensued if THL were to be liquidated;²
- 10.2. the “key feature” of the Adopted Plan failed because Vision did not have the funds necessary to implement it. This (i.e. Vision’s lack of funds) resulted in shareholders refusing to approve the “key feature” of the Adopted Plan;
- 10.3. the fact that the BRPs and Vision will now resort to delisting and liquidating THL (in terms of the Vision Asset Transaction) is therefore the result of Vision’s own failure to raise the funds necessary to implement the “key feature” of the Adopted Plan;
- 10.4. creditors were repeatedly assured by both the BRPs and the Vision Parties at the Creditors Meeting that Vision had sufficient funds to implement the “key feature” of the Adopted Plan (which funds were evidenced by a letter received by the BRPs from Standard Bank “**the Standard Bank Letter**”);
- 10.5. no explanation has been provided by either the BRPs or the Vision Parties in relation to why Vision has in fact proven not to have access to the funds necessary to implement the “key feature” of the Adopted Plan

² Adopted Plan at e.g. paragraph 2.5 on page 8.

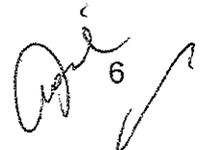
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despite (i) the aforesaid assurances provided at the Creditors Meeting, and (ii) the existence of the Standard Bank Letter;

- 10.6. at the Creditors Meeting the Vision Asset Transaction was mentioned very briefly on only two occasions, when it was described simply as an “asset sale”. Neither the BRPs nor the Vision Parties explained (i) that the Vision Asset Transaction would result in the delisting and liquidation of THL, or (ii) that by voting to adopt the Vision Plan creditors were purportedly authorising the BRPs to proceed directly with the Vision Asset Transaction in the event that the “key feature” of the plan failed (i.e. that the BRPs would not consult creditors, convene a further creditors meeting, or seek creditors approval to proceed with the delisting and liquidation of THL);
- 10.7. the Vision Asset Transaction is directly contradictory to the material representations made by the BRPs and Vision Parties to creditors at the Creditors Meeting and pursuant to which representations creditors voted to adopt the Vision Plan;
- 10.8. the Vision Asset Transaction, which is described in brief outline in a single paragraph of the 578-page Adopted Plan,³ does not comply with the provisions of section 150 of the Companies Act and does not therefore constitute a self-standing alternative business rescue plan capable of implementation in its current form;⁴

³ Adopted Plan at paragraph 6.1.7 on page 93.

⁴ The Vision Asset Transaction does not comply with section 150 of the Companies Act because no information is provided or has since been provided as to inter alia (i) the nature of the transactions to



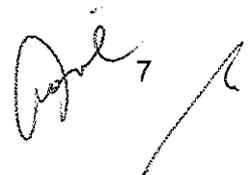
- 10.9. neither creditors nor shareholders have been asked to vote to approve the BRPs' decision to "switch" from implementing the "key feature" of the Adopted Plan to implementing the Vision Asset Transaction.
11. The failed "key feature" of the Adopted Plan was comprised of two related transactions (collectively "**the Key Feature**"): ⁵
- 11.1. First, the full acquisition by the Vision Parties of the claims and security held by the Lender Group against THL, valued at c.R8.5 billion ("**the LG Claims**" and "**the Acquisition**" respectively); ⁶
- 11.2. Second, the conversion by the Vision Parties (by then owning the Lender Group's former claims and security) of c.R4.9 billion worth of those claims and security into a 97.3% equity stake in THL ("**the Conversion**"), with the remaining c.R3.6 billion of the former Lender Group's claims being retained by the Vision Parties on "significantly more favourable terms" to THL ("**the Retained Vision Debt**"). ⁷
12. I pause to stress that the Key Feature of the Adopted Plan was never therefore premised on the Vision Parties making any noteworthy capital injection into THL but rather on the Vision Parties acquiring ownership of THL's largest debt (i.e. the Acquisition of the LG Claims), reducing that debt by c.R4.9 billion (i.e. the

be executed in terms thereof, (ii) the conditions which must be satisfied in order for those transactions to be executed, (iii) the financial projections in relation thereto (especially as regards tax liabilities and transaction fees), or (iv) the effect that the Vision Asset Transaction will have on THL employees and the terms and conditions of their employment.

⁵ Adopted Plan at paragraph 2.3 on page 6.

⁶ Adopted Plan at paragraph 2.3 on page 6 and paragraph 3.1.85 on page 25, read with the updated figures contained in the Circular to shareholders dated 10 July 2024, annexure "MAR3" below.

⁷ Adopted Plan at paragraph 6.1.3.1 on page 81 read with the updated figures provided in the Circular.



Conversion), and offering THL “significantly more favourable terms”⁸ in relation to the Retained Vision Debt of c.R3.6 billion (i.e. the Key Feature of the Adopted Plan).

13. The Key Feature of the Adopted Plan was intended to relieve THL of its financial distress and allow it to exit business rescue with a viable prospect of growth and “the continuity of the business in the long-term”.⁹ It was on this basis that creditors voted to approve the Adopted Plan.
14. The Key Feature of the Adopted Plan failed because the Vision Parties failed to raise the funds necessary to complete the Acquisition which in turn resulted in shareholders refusing to approve the Conversion. Both the Acquisition and the Conversion have thus failed.
15. Affected persons were unaware that the Acquisition had failed until the shareholders rejected the Conversion for that reason. This is because the Vision Parties and the Lender Group have at all times kept their agreement (pursuant to which the former would acquire all the latter’s claims and security) secret. I refer to this agreement below as “**the Acquisition Agreement**”.
16. The BRPs have supported this secrecy and have stated under oath in previous litigation, as well as in correspondence leading up to the filing of this application, that they do not have a copy of the Acquisition Agreement despite being responsible for the implementation of the Adopted Plan. They have contended

⁸ Adopted Plan at the second bullet point below paragraph 6.1.3.1 on page 81.

⁹ See e.g. Adopted Plan at paragraph 6.1.5.2 on page 83.



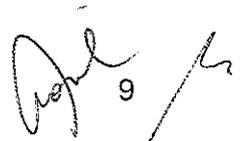
that this is so inter alia because THL is not party to the Acquisition Agreement which they say constitutes a separate private agreement between third parties.¹⁰

17. According to the BRPs, THL's creditors "are only concerned with" the transactions contemplated in the Adopted Plan (i.e. not with the Acquisition Agreement).¹¹ This is quite obviously wrong since (i) the Acquisition is part of the Key Feature, (ii) the failure of the Acquisition has resulted in the failure of the Key Feature, and (iii) the failure of the Key Feature has resulted in the BRPs and Vision embarking on a process to delist and liquidate THL (in terms of the Vision Asset Transaction).
18. The fallacy of the BRPs' argument that creditors are not concerned with the Acquisition / the Acquisition Agreement is also borne out by the fact that neither the Conversion nor the Vision Asset Transaction could ever be implemented unless and until the Acquisition has been completed (i.e. Vision has raised the funds to acquire the LG Claims).
19. This is so because the Vision Parties must have completed the Acquisition in order to:
 - 19.1. convert the former¹² LG Claims into shares in THL in terms of the Conversion;

¹⁰ See e.g. paragraph 129 below.

¹¹ See paragraph 244 of the BRPs answering affidavit in the Powertrans Application quoted at paragraph 175 below.

¹² Adopted Plan at paragraph 2.3.2 on page 7, paragraph 2.5.4 on page 9, the second paragraph on page 84, and paragraph 6.1.3.1 on page 81.



- 19.2. pay for THL's assets by way of a set-off of the former LG Claims in terms of the Vision Asset Transaction (i.e. Vision will not pay for THL's assets but will discharge the purchase price by simply reducing the LG Claims by the value of the purchase price – see paragraph 41.1 below).
20. The successful completion of the Acquisition is therefore a condition precedent to the implementation of the Adopted Plan. It directly affects the rights and interests of all affected persons.
21. It bears repeating that Vision's failure to raise the funds required to complete the Acquisition resulted in shareholders refusing to approve the Conversion. This rendered the Key Feature incapable of implementation and resulted in the BRPs' decision to proceed with the Vision Asset Transaction (i.e. to delist and liquidate THL).
22. The secrecy of the Acquisition Agreement coupled with the intended result of the Vision Asset Transaction (i.e. the delisting and liquidation of THL) demonstrates that THL's business rescue has become a private liquidation that conduces to the benefit of the Vision Parties, the BRPs and the Lender Group at the manifest expense of the rights and interests of all affected persons.¹³ Private or controlled liquidations conducted under the guise of business rescue are, however, unlawful.

¹³ As to the benefit that the BRPs stand to gain, see the issues raised by shareholders in relation to success fees negotiated by the BRPs with the Lender Group discussed as paragraphs 31 to 32 below.

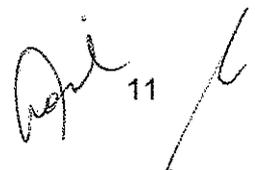
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23. Pursuant to the failure of the Key Feature, RGS has twice submitted offers to the BRPs to acquire THL out of business rescue since it became apparent that Vision lacked the funds necessary to avoid the delisting and liquidation of THL.
24. It was within the powers of the BRPs (i) to declare that the Adopted Plan has failed, and (ii) to accept RGS' offers and formulate a new business rescue plan on the basis thereof, but the BRPs have instead adopted the view that they remain "dutybound" to implement the Vision Asset Transaction despite:
- 24.1. the fact that it will result in the delisting and liquidation of THL;
- 24.2. the fact that there is no indication that the Vision Parties will at long last succeed in raising the funds required to implement the Vision Asset Transaction (i.e. the funds required to complete the Acquisition) which they have consistently failed to do since the Acquisition Agreement was first announced by the BRPs on 9 November 2023.
25. Barring this Court's urgent intervention, THL will be destroyed despite the availability of a viable alternative in terms of which over R4.4 billion would be injected directly into THL.

OVERVIEW

26. The failure of the Key Feature of the Adopted Plan (i.e. the Acquisition, Conversion, and Retained Vision Debt) became apparent to shareholders on 10 July 2024 when the BRPs issued a circular to shareholders in relation to the then upcoming shareholders meeting which had been scheduled for 8 August 2024 and at which shareholders would be asked to cast their votes to approve the

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Conversion (“**the Circular**” and “**the Shareholders Meeting**” respectively). A copy of the Circular is annexed, marked “**MAR3**”.

27. Shareholders’ approval of the Conversion was required by law because the Conversion would have diluted the collective pre-existing shareholding of THL to 2.7% while leaving the Vision Parties with a 97.3% shareholding in THL.

28. In terms of the Circular, the BRPs informed shareholders that the Retained Vision Debt (paragraph 11.2 above) would in fact be retained by the Lender Group and not the Vision Parties. In this regard the Circular states inter alia that:

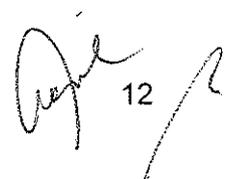
28.1. the implementation of the Conversion would achieve a reduction of the LG Claims to “more sustainable levels” and that the final commercial terms of the R3.6 billion debt to be retained by the Lender Group “are equivalent to the existing Lender Group Facilities’ terms which are expected to be amended when the revision of such terms are finalised between the parties” after the Conversion;¹⁴

28.2. the aforesaid reduction of the LG Claims to “more sustainable levels” would result in THL continuing to incur approximately R448 million in finance costs on the remaining LG Claims (which had not been Acquired by the Vision Parties).¹⁵

29. At the Shareholders Meeting on 8 August 2024 shareholders voted to reject the Conversion (“**the Rejection of the Conversion**”). The shareholders’ decision to

¹⁴ The Circular at e.g. page 17 sub-paragraph (c).

¹⁵ *Id* at page 25 point 4 under the heading “commentary”.



reject the Conversion was materially influenced by the Vision Parties' failure to complete the Acquisition as contemplated in the Adopted Plan.

30. This much is evident inter alia from a letter addressed to the BRPs by shareholders on 7 August 2024, prior to the Shareholders Meeting. In terms of this letter, a copy of which is attached marked "**MAR4**", shareholders indicated that they considered it "misplaced and grossly unreasonable" to expect them to approve (i) the dilution of their combined shareholding in THL to 2.7%, and (ii) the issuing to Vision of what amounts to a 97.3% shareholding in THL, in circumstances where the Acquisition had not been achieved.

31. In a subsequent letter of 16 August 2024 (i.e. also prior to the Shareholders Meeting), a copy of which is annexed marked "**MAR5**", Shareholders moreover informed the BRPs that:

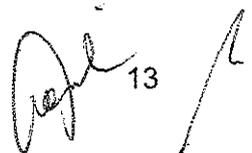
31.1. According to the Circular, THL is advised by both:

31.1.1. Metis Strategic Advisors (Pty) Ltd ("**Metis**"), the company at which the BRPs are employed; and

31.1.2. Birkett Stewart McHendrie Corporate Finance aka BSM Advisory (Pty) Ltd ("**BSM**");

31.2. Shareholders understood that Metis and BSM are related companies having common management and that they were advising THL in terms of a joint venture concluded between them;

31.3. The Adopted Plan states that "Metis has an advisory mandate with the Company paid on hourly rates for services rendered, and in addition has

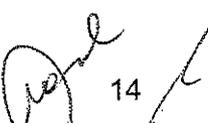
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an agreed success fee arrangement with the Lender Group linked to the repayment of PCF [post commencement finance]";¹⁶

- 31.4. It appeared to shareholders that Metis may be conflicted since, while it is appointed to serve the interests of THL, it is incentivised to act in favour of the Lender Group (given the aforesaid success fee agreement);
- 31.5. The Adopted Plan similarly states that "BSM has an advisory mandate with the Company paid on hourly rates for services rendered. In addition BSM has an agreed success fee arrangement linked to the outcome of Project BSM";¹⁷
- 31.6. It is unclear from the Adopted Plan what Project BSM is and with whom the agreed success fee arrangement was concluded by BSM.
32. In light of the above, shareholders requested the BRPs to provide copies of the various advisory mandate and success fee agreements as well as various fee statements and invoices issued pursuant thereto.
33. Given that shareholders proceeded to reject the Conversion it follows that these concerns were not addressed by the BRPs to shareholders' satisfaction.
34. It is clear from the information provided in the Circular that the Acquisition has not been completed by the Vision Parties who, along with the BRPs, have subsequently alleged that the remainder of the purchase price due by the Vision

¹⁶ Adopted Plan at paragraph 5.3.12.1 on page 74.

¹⁷ *Id* at paragraph 5.3.12.4 on page 75.


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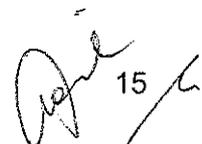
Parties to the Lender Group under the Acquisition Agreement is now only due by 31 December 2024 (see paragraph 229.5 below).

35. This alleged new payment deadline (which has not been verified) is the latest in a series of indulgences and / or extensions secretly granted to the Vision Parties by the Lender Group in relation to the payment deadline stipulated in the Acquisition Agreement. This in circumstances where affected persons were initially informed during November 2023 that the Acquisition would be complete by the time the Creditors Meeting was convened.¹⁸
36. The information provided to shareholders in terms of the Circular is moreover in direct breach of various material provisions of the Adopted Plan. In terms of the Adopted Plan creditors only sanctioned the Conversion to occur after the prior Acquisition by the Vision Parties of all the Lender Group's claims and security against THL.¹⁹
37. By attempting to procure shareholder approval for the Conversion in circumstances where they were aware that the Acquisition had not been completed, the BRPs acted in direct breach of the terms of the Adopted Plan approved by creditors ("**the Breach of the Adopted Plan**"). This is unlawful.
38. Although it is indisputable that the Adopted Plan expressly contemplates the full Acquisition by the Vision Parties of all the Lender Group's claims,²⁰ both the BRPs and the Vision Parties have subsequently argued – inter alia in terms of

¹⁸ See paragraph 83 below.

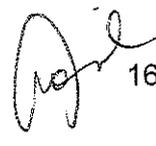
¹⁹ See the definition of "Vision Debt" on pages 84 – 85 of the Adopted Plan read with paragraph 14.1.1.11 on page 129 and paragraph 14.1.2.8 on page 131 – 132.

²⁰ *Ibid.*

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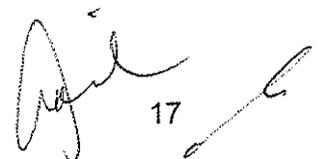
an application brought by Powertrans (prior to the Rejection of the Conversion) which is pending in the Durban Division of this Court – that all that the Adopted Plan requires is for the Vision Parties to acquire R4.9 billion worth of the LG Claims in order to implement the Conversion / the Vision Asset Transaction (“**the Partial Acquisition Argument**”). I debunk the Partial Acquisition Argument in detail at paragraphs 174 to 195 below.

39. How it came to pass that the full Acquisition failed due to a lack of funding remains a mystery given that (i) the BRPs repeatedly assured creditors at the Creditors Meeting – prior to the adoption of the plan – that the Vision Parties were fully funded, had “sufficient funds to implement the business rescue plan [i.e. the Adopted Plan]”, and (ii) the BRPs had received the Standard Bank Letter confirming the availability of the aforesaid funds. A copy of the Standard Bank Letter is annexed, marked “**MAR6**”.
40. This calls the BRPs’ conduct and / or the contents of the Standard Bank Letter into serious question and demands an explanation.
41. Following the Rejection of the Conversion the BRPs issued a notice on THL’s business rescue website on 16 August 2024, a copy of which is annexed marked “**MAR7**”, informing affected persons that:
 - 41.1. The BRPs would now proceed, in terms of a so-called “alternative transaction” mentioned in brief outline in the Adopted Plan, to sell all of THL’s assets to the Vision Parties “by way of a set off of the purchase consideration for such assets against the Lender Group Claims” (“**the Vision Asset Transaction**” and “**the VAT Set-Off**” respectively);

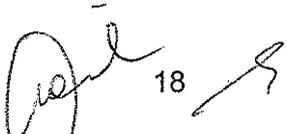
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- 41.2. the Vision Asset Transaction “will result in THL’s shares having nil value, which will practically necessitate the delisting of THL from the JSE and the shell being liquidated.”
42. Notably, the BRPs informed shareholders in terms of the Circular that, in their view, the Vision Asset Transaction does not require shareholder approval, meaning that the delisting and liquidation of THL in terms of the Vision Asset Transaction can in their opinion proceed without further approval from either shareholders or creditors.²¹
43. Previously, during 2023 and prior to the adoption of the Vision Plan, RGS also prepared a business rescue plan which was published by the BRPs during November 2023 alongside the Vision plan. RGS, however, withdrew its plan prior to the Creditors Meeting after it formed the view that the BRPs favoured the Vision Parties improperly and unfairly. I discuss the circumstances surrounding the withdrawal of RGS’ business rescue plan in detail below (see paragraphs 99 – 119).
44. When it became apparent to RGS that the Vision Parties failed to raise the funds necessary to complete the Acquisition and implement the Adopted Plan, RGS submitted a new offer to acquire THL out of business rescue on two occasions, first on 8 July 2024 and then on 17 September 2024 (“**the RGS Offer**”).
45. Measured objectively, the terms of the RGS Offer are demonstrably superior in every respect to those of the Vision Asset Transaction. In summary:

²¹ Paragraph (v) on page 16 of the Circular.

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- 45.1. In terms of the RGS Offer R 4 451 451 350 will be injected directly into THL. R4 billion of this will then be used by THL to settle the LG Claims in full with the remaining R451 451 350 being used by THL to immediately settle all unsecured creditors' claims up to R75 000 and 65 cents in the rand of any remaining unsecured claims (i.e. above R75 000). The balance of 35 cents in the rand of remaining unsecured creditors' claims will then be repaid in five equal annual instalments. By contrast, in terms of the Vision Asset Transaction, the Acquisition would be completed outside of the business rescue process if and when the Vision Party raise the necessary funds, and unsecured creditors would be paid a total of only R75 million amounting to just 5 cents in the rand of unsecured creditors' claims;
- 45.2. RGS will advance a subordinated shareholders loan to THL in the amount of R525 956 121 plus interest in order to fully settle the South African Sugar Association's claim against THL ("**the SASA Claim**"). This loan will only become repayable to RGS when (i) THL's assets exceed its liabilities, and (ii) the post commencement finance provided by the Industrial Development Corporation of South Africa ("**the IDC**" and "**the IDC PCF**") has been repaid in full. By contrast, the Vision Parties will pay an amount equal to the SASA Claim into escrow and only pay it over to SASA if the latter succeeds in a pending SCA appeal in terms of which the BRPs are disputing THL's liability to SASA. Vision's ability to raise the funds required to pay this amount into escrow is seriously questionable since it has not even been able to raise the funds required to complete the Acquisition;

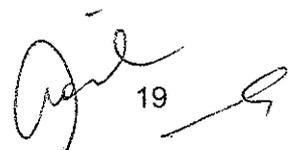
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- 45.3. In terms of the RGS Offer, THL would retain its listing on the JSE and continue trading in substantially the same form as it did prior to business rescue. Conversely, THL will be delisted and liquidated in terms of the Vision Asset Transaction;
- 45.4. In terms of the RGS Offer, pre-existing shareholding would be diluted to 10% (as opposed to the 2.7% contemplated in the Conversion). Conversely, in terms of the Vision Asset Transaction the value of pre-existing shareholding will be destroyed completely;
- 45.5. In terms of the RGS Offer, THL's employees would retain their jobs. Conversely, neither the BRPs nor the Vision Parties have provided any details regarding the effect that the Vision Asset Transaction will have on employees' terms and conditions of employment. This is in breach of the provisions of section 150(2)(c)(ii) of the Companies Act.
46. As already mentioned, the BRPs refused to consider the RGS Offer on both occasions pursuant to their mistaken belief that the Adopted Plan remains binding and that they therefore remain "dutybound" to implement it, i.e. to proceed to delist and liquidate THL.²²

RGS' MAIN CONTENTIONS

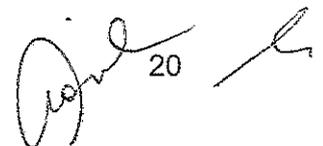
47. Based on what is set out above in the first section of this affidavit, and the elaboration provided below, RGS' main contentions in support of the relief it seeks are as follows.

²² See paragraph 209 below.

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48. **First**, the Acquisition is a condition precedent to the Adopted Plan since until the Acquisition has been completed neither the Conversion nor the Vision Asset Transaction can be implemented. Affected persons therefore have a statutory right of disclosure in relation to the terms of the Acquisition Agreement as per section 150(2)(c)(i) of the Companies Act.
49. **Secondly**, since the Adopted Plan does not stipulate a date by which the Acquisition was to be completed, I am advised that the law imposes a requirement to the effect that the Acquisition had to occur within a reasonable time. It is clear that the Vision Parties have failed to conclude the Acquisition within a reasonable time because:
- 49.1. Affected persons were initially informed in terms of the First Vision Plan (published on 29 November 2023 see paragraph 82 below) that the Acquisition would be concluded by the time the Creditors Meeting was convened. That deadline was missed. The Adopted Plan assumes that both the Acquisition and the Conversion would be completed by 1 April 2024, that deadline has also been missed.²³ The Acquisition has thus not been concluded almost a year after it was first announced by the BRPs on the Stock Exchange News Service ("**SENS**" see paragraph 80 below);
- 49.2. The Vision Parties' failure to complete the Acquisition within a reasonable time has had direct external consequences that have been to the detriment of THL and all affected persons. The failure to conclude

²³ Adopted Plan at paragraph 14.1.1.1 on page 127, and at paragraph 14.1.2.1 on page 130.

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the Acquisition resulted in the Shareholders Meeting only being convened on 8 August 2024 (when the timetable provided in the Adopted Plan states that the Shareholders Meeting was expected to occur “around early March 2024”).²⁴ The fact that the Acquisition had not been concluded when the Shareholders Meeting was eventually convened contributed materially to shareholders’ decision to reject the Conversion. In addition, the aforesaid delays have resulted in THL incurring significant additional expenses including finance costs in relation to inter alia the IDC PCF, the LG Claims and the SASA Claim;

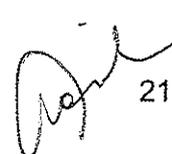
49.3. Since both the Acquisition and the Conversion, which together constitute the Key Feature of the Adopted Plan have failed, the Adopted Plan itself has lapsed given that it has proven incapable of implementation within a reasonable time and having regard to the settled legal requirement that business rescue proceedings must be concluded as expeditiously as possible.

50. **Thirdly**, the Vision Asset Transaction is in any event unlawful because:

50.1. It does not constitute a valid self-standing alternative business rescue plan since it was not published or presented to creditors as such and the single paragraph²⁵ in the Adopted Plan which outlines the Vision Asset Transaction does not comply with the minimum requirements for a business rescue plan contemplated in section 150 of the Companies

²⁴ Adopted Plan on page 91.

²⁵ The Vision Asset Transaction is described in outline in paragraph 6.1.7 of the Adopted Plan at page 93 thereof.

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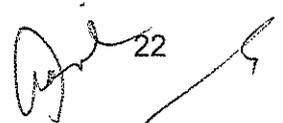
Act.²⁶ The Vision Asset Transaction cannot therefore be implemented unless and until (i) it is published for creditors' approval in a form that complies with section 150, and (ii) creditors have voted to approve it;

50.2. It in any event breaches (i) the representations made to creditors by the BRPs and Vision Parties at the Creditors Meeting, and (ii) the central undertakings contained in the Adopted Plan, on strength of which undertakings creditors voted to adopt the plan;²⁷

50.3. The disposal of all of THL's assets, including its business divisions as going concerns, to the Vision Parties in terms of the Vision Asset Agreement is prohibited by paragraph 11.5 of Schedule 11 of the JSE Listings Requirements ("the Listings Requirements") which is to the effect that THL, as a listed company, may only dispose of a substantial part of its business or issue shares to raise cash if it is experiencing severe financial difficulty and, failing such disposal or share issue for cash, business rescue practitioners or liquidators are likely to be appointed. Since THL is already under business rescue supervision and since the sale contemplated in the Vision Asset Transaction would not generate any cash (the purchase consideration being discharged by way

²⁶ See paragraphs 198 to 202 below.

²⁷ Adopted Plan at paragraphs 2.3.1 to 2.3.3 on page 7. These undertakings are in summary that after implementation of the Adopted Plan (i) THL would continue to trade substantially in its pre-Commencement Date composition, (ii) THL's balance sheet would be recapitalised by way of the Conversion, (iii) THL's listing on the JSE would be retained, and (iv) no retrenchments of THL employees were contemplated. The Vision Asset Transaction, which the BRPs have confirmed will result in the delisting and liquidation of THL, directly infringes the undertakings in (i) to (iii) above and is silent with regard to the impact thereof on employees (an aspect that must be disclosed in terms of section 150(2)(c)(ii) of the Companies Act).

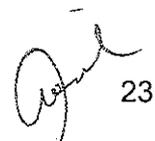
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of the VAT Set-Off) the Listings Requirements proscribe the implementation of the Vision Asset Transaction;

- 50.4. The Vision Asset Transaction amounts to a private liquidation of THL for the benefit of the Vision Parties and to the detriment of THL and all other affected persons which is inconsistent with inter alia section 150 of the Companies Act.
51. In light of the above, it is clearly within the discretion and powers of the BRPs to declare that the Adopted Plan has failed.
52. The BRPs' conduct, viewed objectively, appears inexplicably committed to implementing the Vision Asset Transaction despite the destructive consequences thereof (to both THL and affected persons) and despite the availability of an alternative in the form of the RGS Offer.
53. In this regard, the issues raised by shareholders in relation to the BRPs' possible conflict of interest arising from the success fee agreements concluded by them with the Lender Group are of serious concern (see paragraph 31 above).

URGENCY

54. RGS quite clearly does not stand to obtain substantial redress from a hearing in due course.
55. The Vision Asset Transaction will culminate in the delisting and liquidation of THL. That result can never be undone and would signal the death of a 132-year-old company; precisely the outcome that the business rescue process in general and the Adopted Plan in particular are designed to avoid.

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56. The BRPs have confirmed that they are proceeding to implement the Vision Asset Transaction without first seeking further approval from either creditors or shareholders, and despite their ignorance regarding the status of the Acquisition.
57. In correspondence exchanged prior to the filing of this application, the BRPs have indicated that they were informed by the Vision Parties and the Lender Group that (i) the Acquisition Agreement remains “in place”, and (ii) that the balance of the purchase price due by Vision thereunder is payable by 31 December 2024.²⁸
58. The BRPs have not, however, suggested that they have verified any of the above information or, more pertinently, that they have received some new objective indication on strength of which they believe the Vision Parties will now succeed in raising the necessary funds to complete the Acquisition by 31 December 2024 when the Vision Parties have failed to raise the funds in the preceding 12 months.²⁹
59. Since the BRPs do not have a copy of the Acquisition Agreement their views in relation to its status amount to hearsay.
60. It is moreover of serious concern that the BRPs, in response to one of RGS’s letters of demand, informed RGS that their attorneys, Werksmans, had written to the Vision Parties and the Lender Group to “insist” that the latter provide a copy

²⁸ See paragraph 229.5 below.

²⁹ The Acquisition having first been announced by the BRPs via a SENS announcement on 9 November 2023, see annexure “MAR9”.

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of the current version of the Acquisition Agreement to the BRPs for dissemination to affected persons.³⁰

61. Nothing, however, came of the Werksmans letter “insisting” that the current version of the Acquisition Agreement be provided to the BRPs. When RGS pointed out in later correspondence that:³¹

61.1. the BRPs had not provided any feedback regarding whether they had received a copy of the Acquisition Agreement and, if not, why the agreement is being withheld from the BRPs despite their “insistence” that it be disseminated to affected persons;

61.2. the reasonable inference to be drawn from the fact that the Acquisition Agreement has not been forthcoming is that it remains conditional on the fulfilment by the Vision Parties of their outstanding payment obligations and that none of the Lender Group’s claims or security have been transferred to the Vision Parties

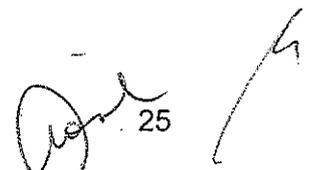
the BRPs simply responded with bare denials and no explanation was ever provided.³²

62. The fact that the Vision Parties and Lender Group would ignore correspondence from the BRPs’ attorneys “insisting” that the Acquisition Agreement be provided to the BRPs for dissemination to affected persons is extremely concerning,

³⁰ See paragraph 217.3 below.

³¹ See paragraphs 218.7 to 218.8 below.

³² See annexure “MAR33” below.

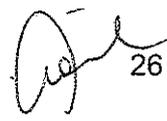
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supports the view that THL's business rescue has turned into a private liquidation, and demonstrates that the BRPs are not in control of the process.

63. This severe irregularity alone justifies this Court's urgent intervention.
64. Despite demand, neither the BRPs nor the Vision Parties have provided an estimated timetable relating to the implementation of the Vision Asset Transaction.³³ The BRPs have, however, stated in correspondence to RGS that the Vision Asset Transaction is "complex" and will be "more time consuming [than the Conversion] to complete".³⁴
65. The BRPs and Vision Parties have successfully challenged the urgency of an application brought by Powertrans during January 2024 after the adoption of the Vision Plan – in which RGS sought leave to intervene – on the basis that the implementation of the Conversion was still months away having regard to the estimated timetable provided in the Adopted Plan.
66. I submit that any similar argument in response to this application based on the timing of the implementation of the Vision Asset Transaction, e.g. on the basis that the purchase price due under the Acquisition Agreement is now allegedly only due on 31 December 2024, would be devoid of merit for inter alia the following reasons:
- 66.1. Should RGS' allegation that the Vision Asset Transaction is unlawful be confirmed by this Court in due course, every incremental step taken by the BRPs and the Vision Parties in progressing and implementing the

³³ See paragraph 218 below, RGS letter of 2 October 2024 (annexure "MAR25") at paragraph 28.

³⁴ See paragraph 229.3 to 229.4 below.

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Vision Asset Transaction would have been unlawfully taken and would potentially affect innocent third parties or have other external effect, thereby increasing the risk that such implementation steps would be incapable of reversal;

66.2. Given the extreme delays and total lack of progress that has been made in implementing the Adopted Plan since 11 January 2024, it is crucial for the good administration and prospects of success of THL's business rescue that the lawfulness of the Vision Asset Transaction be determined now, regardless of the outcome. Should the Vision Asset Transaction be unlawful, it is in the interests of THL and all affected persons that this Court make that determination as soon as possible in order to provide the maximum amount of time for the business rescue process to be salvaged e.g. before THL's access to PCF is terminated by the IDC (the PCF facility is currently due to expire on 6 December 2024).³⁵

67. This Court's urgent intervention is moreover justified on the basis of the prima facie unlawfulness of the Vision Asset Transaction which is demonstrated inter alia by:

67.1. the fact that the BRPs and Vision Parties assured creditors on the first day of the Creditors Meeting that Vision had sufficient funds to implement the Key Feature of the Adopted Plan and indicated that the BRPs had received proof to this effect (i.e. the Standard Bank Letter), while on the second day of the Creditors Meeting the BRPs tabled and passed an

³⁵ As confirmed by the BRPs in their August 2024 business rescue status update report published on the THL business rescue website.

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amendment proposed by the Lender Group in terms of which the statement in paragraph 2.2. of the Amended Vision Plan, to the effect that the BRPs and Lender Group had received proof that Vision had the funds necessary to execute the transaction contemplated in the plan, was deleted (see paragraphs 127 and 131.1 vs. paragraphs 146 to 148 and 156 to 157 below);

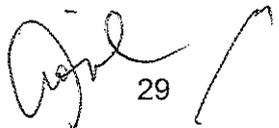
- 67.2. the fact that the Vision Asset Transaction breaches (i) the representations made to creditors by the BRPs and Vision Parties at the Creditors Meeting, and (ii) the central undertakings contained in the Adopted Plan, on strength of which undertakings creditors voted to adopt the plan;³⁶
 - 67.3. the fact that the Vision Asset Transaction does not comply with the mandatory provisions of section 150 of the Companies Act,
 - 67.4. the fact that the Vision Asset Transaction is in breach of the Listings Requirements,
 - 67.5. the fact that the Vision Asset Transaction amounts – at least prima facie – to a private liquidation conducted under the guise of business rescue.
68. This unlawfulness justifies the hearing of this application on an urgent basis.

³⁶ Adopted Plan at paragraphs 2.3.1 to 2.3.3 on page 7. These undertakings are in summary that after implementation of the Adopted Plan (i) THL would continue to trade substantially in its pre-Commencement Date composition, (ii) THL's balance sheet would be recapitalised by way of the Conversion, (iii) THL's listing on the JSE would be retained, and (iv) no retrenchments of THL employees were contemplated. The Vision Asset Transaction, which the BRPs have confirmed will result in the delisting and liquidation of THL, directly infringes the undertakings in (i) to (iii) above and is silent with regard to the impact thereof on employees (an aspect that must be disclosed in terms of section 150(2)(c)(ii) of the Companies Act).

69. Ultimately, the fact that the Vision Parties have refused – despite demand – to provide RGS and all affected persons with proof that they (i) now have access to the funding necessary to complete the Acquisition, and (ii) have already acquired the Lender Group's claims despite not having settled the purchase price, is *per se* sufficient grounds to establish urgency.
70. Had the Vision Parties been able to demonstrate proof of funds and by extension their ability to complete the Acquisition and conclude the business rescue proceedings in the near and direct future, they would surely have done so in response to the correspondence sent by RGS leading up to the filing of this application (as to which see paragraphs 212 – 232 below).
71. The only reasonable inference to be drawn from the Vision Parties' failure to provide the necessary proof of funds is that the Acquisition Agreement remains in limbo (as it has been since at least April 2024) because the Vision Parties have failed to secure the necessary funding to complete the Acquisition.
72. Leaving aside for the moment the question as to the legality of the Vision Asset Transaction, it is patently in the interests of all parties concerned that Vision's access to the funds necessary to implement the Adopted Plan be determined urgently. If Vision is not in funds, THL's business rescue is currently doomed to failure.

NATURE AND SCOPE OF RELIEF SOUGHT

73. In terms of Part A of this application RGS seeks the following substantive relief on an urgent basis:


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- 73.1. an interim interdict *pendente lite* (i.e. pending the adjudication of Part B) restraining the BRPs and Vision Parties from taking any further steps to progress or in any way implement the Vision Asset Transaction;
- 73.2. an order directing the BRPs (i) to comply with the provisions of sections 150(2)(c), 150(3) and 150(4) of the Companies Act in relation to the Vision Asset Transaction, (ii) to provide a comprehensive description of the agreements and transactions that have been concluded / are intended to be concluded to implement the Vision Asset Transaction, and (iii) to provide a statement confirming whether or not the IDC – which (as the provider of the IDC PCF that is keeping THL afloat) has security over THL's assets which cannot therefore be sold without its consent – has provided the necessary consent for the BRPs to proceed with the Vision Asset Transaction ("**the IDC Consent**");
- 73.3. an order directing the Vision Parties to provide the following to the BRPs for publication on the THL business rescue website:
- 73.3.1. Copies of all the versions, i.e. both the current version and all previous versions, of the Acquisition Agreement;
- 73.3.2. Proof of all payments that have been made by the Vision Parties to the Lender Group under the Acquisition Agreement;
- 73.3.3. Proof that the Lender Group has transferred all its claims and security against THL to the Vision Parties;
- 73.3.4. Confirmation under oath that the Vision Parties have not and will not in future conclude any agreement(s) with the Lender Group

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in terms of which, whether directly or indirectly, any of THL's assets (including such assets which are intended to be transferred under the Vision Asset Transaction to the fifth respondent or any other entity nominated by the Vision Parties) will be sold upon or after the conclusion of THL's business rescue in order to apply the proceeds to settle any amounts due:

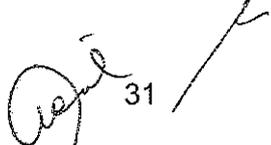
73.3.4.1. by Vision to the Lender Group, whether under the Acquisition Agreement or otherwise;

73.3.4.2. to any other creditor(s) of THL.

74. In terms of Part B, the applicant will seek – on papers duly supplemented – an order setting aside the Adopted Plan on an expedited hearing date to be arranged with the Honourable Judge President and / or the Senior Civil Judge.

75. Save in the event of opposition, no relief is sought either in Part A or in Part B against:

75.1. The Lender Group, which has been cited due to its status as an affected person and, more pertinently, as a party to the Acquisition Agreement. Given that the relief sought in Part A includes the disclosure of the Acquisition Agreement and the current status of the parties' performance thereunder, the Lender Group has been cited specifically rather than generally under the citation of all affected persons (i.e. the twelfth respondent). Although no relief is sought against the Lender Group, it is requested to file a notice to abide if it chooses not to oppose this application so as to avoid a situation where the Vision Parties claim to

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be unable to make the disclosures contemplated in the Part A relief on the basis that to do so would result in them breaching the confidentiality provisions of the Acquisition Agreement;

75.2. Powertrans, which has been cited specifically rather than generally due to the fact that it has an application pending in the Durban Division of this Court that may be affected by the relief sought in this application;

75.3. The affected persons in THL's business rescue who are cited given their clear interest in these proceedings.

BACKGROUND

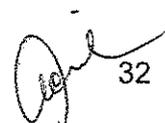
(i) The Vision Parties, the Vision Plan, and the Acquisition Agreement

76. During 2023 the BRPs embarked on what they referred to as a strategic equity partner ("SEP") selection process, i.e. a process of identifying an investor or "equity partner" to acquire THL out of business rescue.

77. On 21 July 2023 the BRPs announced that they had identified their preferred SEP, Kagera Sugar Limited ("**Kagera**"), a Tanzanian company.

78. However, during November 2023 *City Press* published an article, a copy of which is annexed marked "**MAR8**", titled *Robert Gumede's consortium takes control of Tongaat Hulett*. The article reported the following information that the BRPs had yet to share with affected persons:

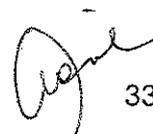
78.1. Mr Gumede's Terris Consortium had "outwitted competitors" by "buying out 12 banks that had a combined claim of R8 billion against cash-

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strapped multinational sugar company, Tongaat Hulett” and that “Terris now owns” THL (referred to below as “**the Terris Transaction**”);

- 78.2. Kagera’s bid had been mired in a scandal relating to a false promise of funding that had been provided to Kagera by an IDC official and on strength of which Kagera had convinced the BRPs to select it as the preferred SEP. The implication of the aforesaid being that Kagera did not in fact have the funds necessary to fulfil the obligations expected from it as the preferred SEP.
79. As will become apparent from what is set out below, the Terris Consortium is a name previously used by the Vision Parties (i.e. the sixth to ninth respondents).
80. On 9 November 2023, the BRPs issued a SENS announcement referring to recent media reports and confirming that the Lender Group had informed the BRPs that it had “entered into” the Terris Transaction which entailed the disposal of the Lender Group’s claims and security to the Terris Consortium (i.e. the Terris Transaction). The BRPs further indicated that the Terris Transaction was subject to payment of the purchase price for the Lender Group’s claims but that they had been informed that payment is “expected to happen in the very near term.” A copy of the SENS announcement is annexed, marked “**MAR9**”.
81. The Terris Transaction is simply another name for the Acquisition Agreement.
82. On 29 November 2023 the BRPs published two business rescue plans; one titled “Vision Transactions” – as by then Terris had changed its name to Vision – and the other titled “RGS Transactions” (“**the First Vision Plan**” and “**the First RGS Plan**” respectively).


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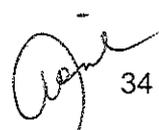
83. Paragraph 2.2. of the First Vision Plan, which appeared under the heading *Executive Summary*, provided as follows:

“2.2 The **key feature** of this Business Rescue Plan, pursuant to the Adoption and implementation of this Business Rescue Plan, **is the acquisition by the Vision Parties of the substantial Claims and security held by the Lender Group** in the amount of cR7.7bn (which acquisition is anticipated to have been completed by the date of the Meeting) and the subsequent conversion by the Vision Parties of a material portion of such Claims into new equity in THL (“the Vision Transactions”). This together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):

2.2.1 the **continued trading of THL substantially in its pre-Commencement Date composition**. In this regard it is noted that THD [Tongaat Hulett Developments (Pty) Ltd] will remain a subsidiary of THL, subject to the implementation of THD’s business rescue plan;

2.2.2 the **recapitalisation of the THL balance sheet** through the Proposal put forward in this Business Rescue Plan, in particular the **conversion** by the Vision Parties of a material portion of the **former** Lender Group Claims into equity; and

2.2.3 the **continued listing of THL on the JSE**, albeit with current Shareholders becoming minority shareholders and the Vision Parties in aggregate holding the bulk of the listed shares in the


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Company following the abovementioned debt to equity conversion.” (emphasis added.)

84. Paragraph 2.2 of the First Vision Plan is annexed, marked “**MAR10**”. Given its limited relevance and the indisputable nature of its contents, a full copy of the First Vision Plan has not been annexed to avoid prolixity. A full copy thereof will however be made available to the Court.
85. It is evident from what is set out above that the First Vision Plan was premised on the Vision Parties acquiring the Lender Group’s claims and security *prior* to the adoption by creditors of the First Vision Plan (i.e. that the Vision Parties would acquire the Lender Group’s claims and then vote those claims in favour of the Vision Plan at the creditors meeting to be convened in terms of section 151 of the Companies Act).
86. This is demonstrated by the following recordal by the BRPs at pages 45 – 46 of the First Vision Plan:

“Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. **The Vision Parties have made clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote such Claims in favour of a business rescue plan predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.**

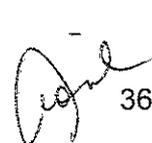

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It is noted that **as at the Publication Date, the acquisition of the Claims of the Lender Group by the Vision Parties have not been completed.**"

(emphasis added.)

87. The aforesaid extract from the First Vision Plan is annexed, marked "**MAR11**".
88. Both the First Vision and First RGS Plans were subsequently amended to take the SASA Claim into account as a post commencement debt pursuant to a judgment to that effect that was handed down by Mr Justice Vahed on 4 December 2023 ("**the Vahed Judgment**").³⁷ I refer to the amended plans below as the "**Amended Vision Plan**" and the "**Amended RGS Plan**" respectively. Both Amended Plans were published by the BRPs on 2 January 2024.
89. The Amended Vision Plan included the following material amendments to the First Vision Plan:
- 89.1. the Vision Transactions were altered to state (at paragraphs 2.2 – 2.3) that the Acquisition would now occur "upon the adoption of" the Vision Plan and that the Vision Parties would finalise the acquisition of the Lender Group claims "if" the Vision Plan is approved (cf. the extract from the First Vision Plan at paragraph 83 above where it was initially stated

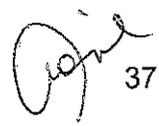
³⁷ The BRPs had initially given notice that the creditors meeting in terms of section 151 of the Companies Act would be convened on 8 December 2023. Until then the BRPs had deemed THL's statutory financial obligations to SASA as being subject to the business rescue moratorium under section 136(2) of the Companies Act and had therefore suspended payments to SASA. SASA disputed the BRPs' classification of its claims against THL resulting in the BRPs filing an application for a declaratory order. That application came before Mr Justice Vahed who handed down judgment in favour of SASA on 4 December 2023. On 5 December 2023 both SASA and RCL Foods Sugar & Milling (Pty) Ltd ("**RCL**") filed urgent applications to interdict the creditors meeting scheduled for 8 December 2023 and to force the amendment of the RGS and Vision Plans to classify and deal with SASA's claim of c. R1.1 billion as a post commencement debt.

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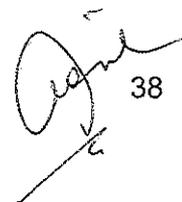
that the Acquisition was anticipated to have been completed by the time the Creditors Meeting was convened);

- 89.2. SASA's claims as per the Vahed Judgment were addressed in terms of amendments to paragraph 6.1.6.1 in terms of which the Vision Parties undertook to pay an amount equal to the SASA Claim into escrow pending the final determination of an appeal against the Vahed Judgment launched by the BRPs on the basis that such amount will be paid to SASA should the judgment on appeal be in its favour.
90. Copies of the aforesaid extracts from the Amended Vision Plan are annexed, marked "**MAR12**".
91. A copy of a previous iteration of the Acquisition Agreement dated 20 November 2023 is annexed marked "**MAR13**". It is evident from this version of the Acquisition Agreement, which lapsed due to non-payment by Vision, that:
- 91.1. the transfer of the Lender Group's claims and security would only occur once the Lender Group had received payment of the full purchase price due by the Vision Parties (clause 1.5);
- 91.2. the Vision Parties were obligated to provide the Lender Group with "evidence" that "at least" R1.6 billion was immediately available in the Vision Parties' account "by no later than 28 November 2023" (clause 7.2);
- 91.3. the purchase price due by Vision was an amount "equal to" R3 510 000 000 (clause 6.1);

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- 91.4. the Vision Parties were contractually obligated to make payment of the purchase price by no later than noon on 6 December 2023, failing which the Vision Agreement would “terminate” and “be of no further force and effect” (clauses 6.2 and 6.4).
92. The aforesaid terms of the lapsed Acquisition Agreement are consistent with the non-negotiable terms demanded by the Lender Group in discussions with RGS when RGS was preparing the First and Amended RGS Plans during October and November 2023.
93. It would moreover be non-sensical for the Lender Group to transfer any of its claims to the Vision Parties prior to having been paid since the latter would then be in a position to conclude the business rescue process on their own terms resulting in the release of THL from its debts and leaving the Lender Group unable to enforce its claims either against THL or against the Vision Parties, unless the Lender Group have concluded a further secret agreement with Vision in terms of which Vision has undertaken to sell THL assets post closure of the business rescue in order to settle the amount due by them under the Acquisition Agreement, I deal with this risk in more detail below.³⁸
94. As indicated above, the Vision Parties have refused – despite demand from RGS and “insistence” from the BRPs – to provide a copy of the current version of the Acquisition Agreement for dissemination to affected persons.
95. Given that it is common cause that the Acquisition has not yet been concluded and the status of the Acquisition Agreement is known only to the Vision Parties

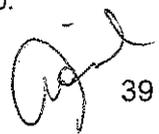
³⁸ See paragraphs 190 to 195 below.

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and the Lender Group, it is incumbent on the Vision Parties to demonstrate – both in terms their opposition to this application and to affected persons in general – that they have the funds necessary to complete the Acquisition in the immediate future on a concrete timeline, since if they are not in funds the Vision Asset Transaction – like the Conversion before it – will be incapable of implementation even if this Court were to find that it is lawful (which is denied).

96. Finally, it is evident *inter alia* from (i) the fact that the previous version of the Acquisition Agreement lapsed due to non-payment on 6 December 2023 (paragraph 91.4 above), and (ii) the fact that the projected income statement and balance sheet contained in the Adopted Plan both proceed on the assumption that the Acquisition would have been completed by 1 April 2024,³⁹ that Vision has negotiated and the Lender Group has agreed to various extensions of the payment deadline contemplated in the Acquisition Agreement in order to assist Vision (i.e. give it as much time as it needs to raise the funds necessary to discharge the purchase price).
97. These extensions and indulgences have, like the Acquisition Agreement itself, been kept secret. RGS' queries have, however, revealed that each time the Vision Parties have missed a payment deadline the Acquisition Agreement itself was not concluded afresh but that an addendum thereto was simply executed setting a new payment deadline, ultimately resulting in the deadline of 31 December 2024.

³⁹ Adopted Plan at paragraph 14.1.1.1 on page 127 and paragraph 14.1.2.1 on page 130.


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98. The conclusion of secret extensions and indulgences are moreover consistent with Vision's allegation that it "had a right to" proceed with the Conversion, not that it had Acquired the LG Claims necessary to implement the Conversion (see paragraphs 182 to 195 below). I have no means of proving this, but it is in the direct knowledge of the Vision Parties who are invited to produce the relevant documentation as proof of the true position.

(ii) The withdrawal of the RGS Plan

99. The Amended RGS Plan was withdrawn on 9 January 2024. An overview of the circumstances surrounding its withdrawal were set out:

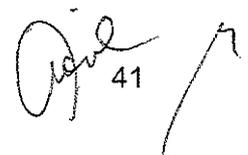
99.1. in a letter addressed by RGS to the BRPs on 9 January 2024, a copy of which is annexed marked "**MAR14**";

99.2. in a letter addressed by RGS to the IDC on 11 January 2024, a copy of which is annexed marked "**MAR15**".

100. It is evident from the aforesaid letter to the BRPs that RGS was of the view that the BRPs had acted inappropriately, amongst other things, by placing impediments in the way of RGS' proposals while showing bias in favour of Vision's proposals, and that RGS's board of directors did not trust that the BRPs were acting as honest independent professionals and believed that the BRPs would continue to work against RGS even if the Amended RGS Plan were to be adopted.


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101. RGS had formed the view that the BRPs had made use of information confidential to the Amended RGS Plan – to which they had access – to assist Vision in addressing defects in the Amended Vision Plan.
102. In terms of the letter to the IDC of 11 January 2024, RGS informed the IDC that it would be willing to reengage in THL's business rescue process and reinstate the Amended RGS Plan if the IDC agreed to lead RGS' engagements with the BRPs.
103. Despite the above, the BRPs and Vision will likely argue that the withdrawal of the Amended RGS Plan was in fact related to an irregular and untruthful letter that had been issued by ABSA Mozambique in favour of RGS and which RGS unwittingly provided to the BRPs in circumstances where RGS was ignorant of the falsity of the letter ("**the ABSA Mozambique Letter**").
104. The ABSA Mozambique Letter was procured for the following reasons and in the following context.
105. During October 2023 the Lender Group made enquiries as to whether RGS would consider potentially purchasing the Lender Group's claims prior to the vote to approve a business rescue plan. RGS agreed to consider this alternative approach.
106. It was in the context of these negotiations (i.e. not in the context of the RGS Plan) that the Lender Group indicated that since RGS' cash reserves – which were sufficient to fully fund the acquisition of the Lender Group's claims – were held in Mozambican bank accounts, the Lender Group would consider any offer to be

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made by RGS to be more attractive if RGS deposited an initial amount of R2 billion with a member of the Lender Group in South Africa.

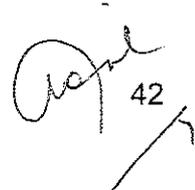
107. However, given the requirement to obtain the approval of the Central Bank of Mozambique for any transfer of funds to South Africa, which could only be obtained under Mozambiquan law once a contract for the purchase of the Lender Group Claims had been concluded, the transfer of funds to a South African bank was not legally possible.

108. From RGS' point of view and after consultation with its advisers, the next best alternative was for RGS to place the R2 billion into an account held with a Mozambican branch or subsidiary of one of the South African banks that are members of the Lender Group. Given that RGS already has an established banking relationship with Absa Bank Mozambique, RGS considered Absa Bank Mozambique to be the most practical option for this purpose. RGS therefore took steps to implement this proof of funds mechanism by procuring the ABSA Mozambique Letter.

109. The ABSA Mozambique Letter was thus obtained and provided to certain members of the Lender Group.

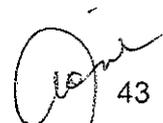
110. RGS's negotiations with the Lender Group however collapsed when it became known that the Lender Group had concluded the Terris Transaction (i.e. the Acquisition Agreement with Vision).

111. At this stage the ABSA Mozambique Letter had therefore become moot (i.e. since it had not been provided as proof of funds in relation to the RGS Plan but

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rather as proof of funds in context of the Lender Group's offer that RGS acquire its claims and security in terms of a separate agreement).

112. When the Terris / Vision Transaction lapsed for the first time due to non-payment by Vision (see paragraph 91.4 above), the Lender Group reinitiated contact with RGS to ascertain whether RGS was still amenable to concluding an agreement to acquire the Lender Group's claims.
113. In response, an RGS representative in South Africa confirmed to the Lender Group (ABSA South Africa in particular) that:
 - 113.1. the confirmation of funds set out in the Absa Bank Mozambique Letter was accurate at the time provided (as far as the representative was aware);
 - 113.2. the funds were to be placed with Absa Bank Mozambique in connection with the proposed acquisition of the Lender Group's claims to prove availability of funds but since the Lender Group had concluded the Terris Transaction a decision was taken to move the funds back to short term investment instruments as Absa Mozambique does not give good treasury rates; and
 - 113.3. RGS would be willing to reinstate the deposit arrangements with Absa Bank Mozambique in connection with an agreed transaction between RGS and the Lender Group.
114. Therefore, by 20 November 2023, ABSA South Africa was already aware that there were no funds on deposit with Absa Bank Mozambique either in connection


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with RGS' possible acquisition of the Lender Group's claims or in connection with RGS' business rescue proposals for THL.

115. As to the veracity of the ABSA Mozambique Letter, upon investigation by RGS it emerged that:

115.1. A junior manager of RGS who had been instructed to make the deposit into an ABSA Mozambique account had reservations about doing so given the interest that would be forgone if the funds were moved to the ABSA Mozambique account;

115.2. This junior manager, without the knowledge of RGS senior management, took it upon himself to arrange for an ABSA Mozambique official to be provided with evidence of the funds held by RGS in other bank accounts and to issue the ABSA Mozambique Letter on that basis alone (i.e. in the knowledge that RGS held the funds but in the absence of the funds being deposited with ABSA Mozambique);

115.3. Senior management of RGS only became aware of the issue for the first time when the genuineness of the Absa Bank Mozambique Letter was called into question by ABSA South Africa on 15 December 2023 (i.e. when the information set out in paragraph 113 was provided the more senior RGS official who provided it was unaware that the Absa Bank Mozambique Letter was untruthful.)

116. Although RGS regrets this unfortunate incident, its senior management played no part therein and was ignorant of the untruthful statements inadvertently made to ABSA South Africa.


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117. In particular, I wish to point out that it would have been counter intuitive for RGS to have produced a "fraudulent" confirmation of funds letter purportedly from Absa Bank Mozambique, and which was provided to ABSA South Africa, when Absa South Africa could easily check the genuineness of the confirmation – as indeed occurred.

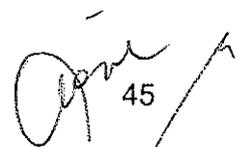
118. In fact, the whole point of placing the funds with Absa Bank Mozambique and obtaining the confirmation from Absa Bank Mozambique was so that the funds would be verifiable by, and be visible to, ABSA South Africa and thereby assist in demonstrating to the Lender Group that RGS was "good for the money" in connection with the possible acquisition by RGS of the Lender Group's claims.

119. The ABSA Mozambique Letter is therefore clearly of no continued significance. This is further demonstrated by the fact that the financing for the RGS Offer will now be provided by Afrexim Bank in terms of a USD 500 million facility, USD 300 million of which is specifically intended for the RGS Offer, and which funds will be deposited directly by Afrexim Bank into a South African bank account should the RGS Offer be accepted by creditors in due course.

(iii) The Creditors Meeting

120. The Creditors Meeting was held virtually and was recorded. The recordings of both day one and day two of the meeting will be loaded onto a memory stick and provided to the Court.

121. The Vision Asset Transaction was mentioned only twice during the Creditors Meeting. On the first day, Mr Murgatroyd stated that if the Conversion was not


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achieved the transaction may be switched to an “asset sale”.⁴⁰ On the second day, while discussing amendments that the Vision Parties wished to make to the plan before it being put to the vote, Mr Murgatroyd referred to an amendment in terms of which it was clarified that the SASA escrow arrangement would continue in the event of the “asset transaction.”⁴¹

122. No mention was made during the entire meeting of the fact that under the Vision Asset Transaction THL would be delisted and liquidated. It was simply referred to as an asset sale or an asset transaction and no information was provided at all as to what it entailed.

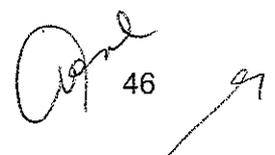
123. In fact, creditors were told that voting for the Vision plan would avoid liquidation.

124. On the first day of the meeting Vision’s representative, Rob Bessinger, addressed creditors. He informed the meeting that Vision had completed a detailed due diligence on THL and had formulated a very detailed five-year plan for the company which plan Vision believed would result in a “long-term and sustainable Tongaat business and importantly will ensure that [sic] the continued trading of Tongaat and, what nobody wants, will definitely avoid a liquidation scenario.” He also stated that Vision’s plan for THL would result in the recapitalisation of the balance sheet and that Vision “will continue with the listing of Tongaat on the JSE.”⁴²

⁴⁰ Video Day 1 from 00:42:24.

⁴¹ Video Day 2 from 00:44:40.

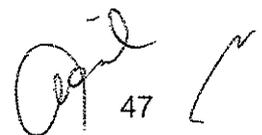
⁴² Video Day 1 from 00:57:30.

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125. Later on the first day of the meeting, the BRPs answered questions submitted by creditors. Creditors submitted questions in written form on the video conferencing platform and selected questions were then read out by Mr Albertyn.
126. One creditor asked the following question: for the collective benefit and understanding of all parties present please provide insights into the due diligence process undertaken to verify the sourcing and reliability of Vision's funding, understanding that these safeguards will greatly assist in understanding and evaluating the viability and integrity of the Vision plan.⁴³
127. Mr Murgatroyd's response was simply that the BRPs had received the Standard Bank Letter confirming that Vision had sufficient funding to implement the business rescue plan.
128. Mr Albertyn then informed the meeting that another creditor had stated that neither the IDC nor the BRPs had addressed the funding / acquisition costs in relation to [the Acquisition Agreement] which was critical to the success of the plan. Mr Albertyn mentioned that there were a couple more similar questions that had been submitted by other creditors regarding the transaction between Vision and the Lender Group and the fact that that transaction was not outlined in the plan.⁴⁴
129. Mr Murgatroyd's response was that the Acquisition Agreement is a transaction and negotiation directly between Vision and the Lender Group and that the BRPs and / or THL were not party to. He said that the BRPs had a high-level

⁴³ Video Day 1 from 01:21:10.

⁴⁴ Video Day 1 from 01:22:11.

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understanding of what the transaction entails but that specific details of the transaction were between the parties.

130. Next, Mr Albertyn read out a statement followed by three questions that had been submitted by a creditor. The statement was as follows: the BRPs have been advised that Vision will upon the adoption of the plan acquire the Lender Group's claims and security, and the BRPs say that Vision has a substantial cash deposit available for payment to the Lender Group and that if the plan is approved Vision will finalise the acquisition of the claims. The BRPs say that the Lender Group and the BRPs have received proof that Vision has sufficient funds to execute the contemplated transaction as per the business rescue plan.⁴⁵

131. The three questions that followed the statement and Mr Murgatroyd's answers thereto were as follows:

131.1. Question 1: what does substantial deposit mean?

Answer: We haven't looked at what substantial deposit is but the Standard Bank Letter says that there is sufficient funding to implement the plan.

131.2. Question 2: What proof have the BRPs received that Vision have funds to finalise the acquisition and when will the acquisition occur?

Answer: The Standard Bank Letter but lets finish then I'll get to the point.

⁴⁵ Video Day 1 from 01:29:20.

131.3. Question 3: What are the terms of the acquisition not set out in the plan and how do creditors assess the likelihood of the acquisition being completed?

Answer: That is between the Lender Group and Vision but the fact that the Lender Group approves the business rescue plan should give creditors comfort that the transaction will be implemented.

132. A creditor next asked whether the BRPs could address how the Vision plan maximises the likelihood of THL continuing in existence on a solvent basis and what work the BRPs had done to satisfy themselves in this regard.⁴⁶

133. Mr Murgatroyd answered as follows: I'm not sure we can at this stage say that it maximises but it certainly... if you go and look at the provisions in chapter 6 of the Companies Act there is a reasonable prospect of rescue, the reasonable prospect of rescue does not imply that there needs to be a maximisation of certain things. The measurement is against can you get a better return than a liquidation or can you return the company to solvency or profitability. So with what Rob Bessinger [i.e. the Vision representative] has mentioned earlier, I think certainly where we are at at the moment if we get this plan approved its going to be far better than the company ending up in liquidation.

134. Mr van den Steen then added the following: It's a little bit different to for instance a liquidation where absolute maximisation of realisation of assets is aimed at in a liquidation whereas in business rescue it's to beat the liquidation outcome as

⁴⁶ Video Day 1 from 01:31:06.

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one of the hurdles but also it is to try and preserve and save employment and also the continuation of a company trading with its suppliers, creditors, and service providers which has obviously a multiplier effect on the wider community so there is not only one single outcome that is looked for it is a balancing act between all different affected persons and stakeholders.

135. Next, Mr Albertyn read out the following question: There are clearly two parts to this transaction, the acquisition by Vision and [sic] Lender claims, this is between the Lenders and Vision and has no involvement by THL or the BRPs. The transaction leaves the balance sheet exactly the same as now...The proposals are scant and vague and do not satisfy going concern requirements. Immediately after the plan is adopted the balance sheet has zero equity and the burden of debt will weigh heavily on the company. Are the BRPs satisfied that this plan meets the requirements of business rescue as per the Companies Act?⁴⁷

136. Mr Murgatroyd answered as follows: I have partly answered that question in my previous response but the idea is not, business rescue is not a magic wand where today you have a problem and tomorrow you have a hero. This is a process that you've got to go through. And I think the alternative of not having this plan approved today is dire and we shouldn't even consider that. Rob Bessinger did share the insights of where they are planning to go so I think approving this plan is far better than the alternative and I therefore still remain of the view that there is a reasonable prospect of rescue.

⁴⁷ Video Day 1 from 01:34:35.

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137. Mr Murgatroyd then asked whether Mr Bessinger was still on the call and if there was anything that he would like to add since the questions essentially related to the future of THL.
138. Mr Bessinger commented as follows: Regarding sustainability, Vision will acquire the Lender Group position and then implement the Conversion. It is key for us and this remains our whole philosophy is to get the business solvent as soon as possible, we think that can happen very quickly, and to actually come out of business rescue. Post business rescue the balance sheet will be improved and we see the business improving going forward. Its not a magic wand but there is a plan and we believe we can take the business forward and see a very very positive future for the business. We wouldn't put our own money into the business if we didn't believe it could be returned to its former past, and actually even diversify and go better than that.
139. The next question was whether the transaction between Vision and the Lender Group (i.e. the Acquisition) had been concluded and whether the Lender Group had been paid already or whether payment was conditional on Vision taking control of THL after business rescue.⁴⁸
140. Mr Murgatroyd responded by informing the meeting that there had been a request from the Lender Group to stand the meeting down to finalise certain aspects of their transaction and that he therefore did not know the full answer to the question yet. He said that he would continue answering questions before the meeting is stood down.

⁴⁸ Video Day 1 from 01:49:35.

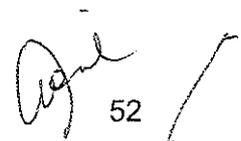
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141. A creditor then asked the following: in light of the BRPs not having details of Vision's acquisition funding, can the BRPs still contend that the plan has reasonable prospects of success.⁴⁹
142. Mr. Murgatroyd said that this had already been addressed and that confirmation of Vision's funding had been received [i.e. the Standard Bank Letter], and that if the IDC's security requirements could be met all would be good to go.
143. The meeting was then stood down until 14h00. When the meeting reconvened, it was stood down further at the Lender Group's request to 16h00. When the meeting resumed at 16h00 it was stood down to 14h00 the next day (i.e. 11 January 2024).
144. When the meeting reconvened at 14h00 on 11 January 2024 Mr Murgatroyd said that there had been various discussions with the IDC and the Lender Group which had now been completed and that the meeting could therefore proceed.
145. Mr Murgatroyd then indicated that he would move straight on to motions that had been brought to amend the plan. He explained in this regard that there were two sets of amendments that needed to be considered and approved by the meeting.⁵⁰
- 145.1. First, the amendments that had been circulated in red mark up in the Amended Vision Plan that was published on 2 January 2024 which related to the treatment of the SASA Claim. Mr Murgatroyd said that these first set of amendments would be taken as having been read by

⁴⁹ Video Day 1 from 01:52:40.

⁵⁰ Video Day 2 from 00:33:09.

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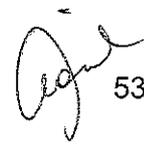
creditors (i.e. since they were indicated in the Amended Vision Plan which had already been circulated to creditors);

145.2. Second, further amendments that had been brought by the Lender Group and the Vision Parties which were not reflected in mark up in the Amended Vision Plan ("**the Additional Amendments to the Vision Plan**").

146. Mr Murgatroyd then proceeded to address the Additional Amendments to the Vision Plan. For present purposes, only the Additional Amendments proposed by the Lender Group are relevant.

147. Until the Creditors Meeting paragraph 2.2 of the Amended Vision Plan (that was published on 2 January 2024) read as follows:

The BRPs have been advised that the Vision Parties will upon Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The Lender Group and the BRPs have received proof that the Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan. The BRPs are advised by the Vision Parties that know your client ("**KYC**") and Financial Intelligence Centre Act ("**FICA**") requirements have been complied with. The Vision Transaction does not involve, nor is it dependent on, financing to be provided by the Public Investment Corporation ("**PIC**").

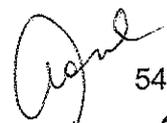
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148. The Additional Amendments to paragraph 2.2 of the Amended Vision Plan that were proposed by the Lender Group were then displayed on screen for creditors to consider. Pursuant to these amendments, paragraph 2.2. now read as follows with additions indicated by underlining and deletions indicated by strikethrough:

The BRPs have been advised that the Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The Lender Group and the BRPs have received proof that the substantial cash deposit (referred to above) is held in a bank account in South Africa. ~~Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan.~~ The BRPs are advised by the Vision Parties that know your client ("KYC") and Financial Intelligence Centre Act ("FICA") requirements have been complied with. The Vision Transaction does not involve, nor is it dependent on, financing to be provided by the Public Investment Corporation ("PIC").

149. A creditor requested that the Additional Amendments be circulated to creditors after the meeting.⁵¹ Mr Murgatroyd agreed to do so and said that the Amended RGS Plan would be further amended with the Additional Amendments and uploaded onto the THL business rescue website.

⁵¹ Video Day 2 from 00:38:00.

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150. Mr Murgatroyd then proceeded to take the meeting through the latest amendments proposed by the Vision Parties.
151. The motions brought by the Lender Group and the Vision Parties to update the Amended Vision Plan with the Additional Amendments were then put to the vote and adopted.
152. The meeting concluded with the vote in terms of which the Amended Vision Plan, as updated in terms of the Additional Amendments, was adopted.
153. There are three aspects of the events that took place at the Creditors Meeting that are remarkable.
154. **First**, is the fact that the Vision Asset Transaction was only mentioned twice in the briefest of terms, was referred to as an asset sale or an asset transaction, and no mention was made of the fact that it in fact entailed the delisting and liquidation of THL.⁵²
155. **Second**, is the fact that creditors were repeatedly assured that the Vision Plan would result in THL being saved, that THL would continue to exist in a sustainable form, that it could be restored to solvency quickly and that the possibility of not voting for the Vision Plan was dire and unthinkable.
156. **Third**, in response to multiple questions regarding whether the Vision Parties had funds to implement the Acquisition Agreement and complete the Acquisition, and questions regarding the due diligence that the BRPs had done to verify that the Vision Parties had access to the necessary funds:

⁵² Video Day 1 from 00:42:24 and Video Day 2 from 00:44:40.

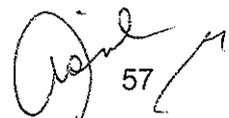
- 156.1. Mr Murgatroyd, on the first day of the meeting, repeatedly referred to the Standard Bank Letter which stated that the Vision Parties had sufficient funds to implement the business rescue plan;
- 156.2. However, on the second day of the meeting after the adjournment that had been requested by the Lender Group, Mr Murgatroyd asked creditors to vote on the Additional Amendments sought by the Lender Group, including those to paragraph 2.2. of the Amended Vision Plan (see paragraph 148 above) in terms of which the following sentence was deleted therefrom: ~~Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan.~~
157. Mr Murgatroyd said nothing of the significance of this amendment, which creditors had not had an opportunity to consider prior to the Creditors Meeting. He did not inform creditors that the aforesaid amendment rendered the Standard Bank Letter and all assurances that had been provided on strength thereof earlier during the same meeting utterly meaningless.
158. It was on this basis that creditors were induced to vote in favour of adopting the Vision Plan.

(iv) The Failed Conversion

159. As a creditor, RGS naturally could not participate in the Shareholders Meeting, and I have no insight into what occurred and what was said during that meeting. The result was, however, that shareholders voted to reject the Conversion.


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160. I have already addressed the correspondence sent by shareholders to the BRPs ahead of the Shareholders Meeting in terms of which shareholders' motivations for rejecting the Conversion are at least partially evident (see paragraphs 30 – 33 above).
161. It is however necessary to elaborate on the fact that the manner in which the Conversion was presented to shareholders for approval resulted in the Breach of the Adopted Plan.
162. For legal reasons that will be explained in argument, Shareholders were neither entitled nor required to vote on the adoption of the Amended Vision Plan, but their approval was separately required to approve the Conversion due to the dilutionary effect thereof.
163. This means that:
- 163.1. the terms and provisions of the Adopted Plan were crystallised by creditors' vote to adopt the Amended Vision Plan and those terms and provisions could not be altered after the Creditors Meeting (except theoretically on the basis of certain amendment provisions of the Adopted Plan which were not invoked and are therefore irrelevant);
- 163.2. the BRPs were therefore required to present the Conversion to shareholders for their approval in the form in which it appeared in the Adopted Plan.
164. The Conversion contemplated in the Adopted Plan is unequivocally premised on the prior Acquisition by the Vision Parties of all the Lender Group's claims and security.



165. This is evident inter alia from the following provisions of the Adopted Plan:

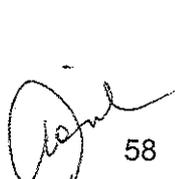
165.1. Paragraph 2.3 which reads in relevant part as follows: “The key feature of the Business Rescue Plan, pursuant to its Adoption and implementation, is the acquisition by the Vision Parties of the substantial Lender Group Claims (as noted above) and the **subsequent** conversion by the Vision Parties of a material portion of such Claims into new equity in THL (“the Vision Transactions”)...” (emphasis added);⁵³

165.2. The term “Vision Transactions” is similarly defined in paragraph 3.1.85 of the Adopted Plan to mean “the acquisition by the Vision Parties of **the substantial Claims and security previously held** by the Lender Group and the **subsequent** conversion by the Vision Parties of a portion of such claims into new equity in THL.” (emphasis added);⁵⁴

165.3. Paragraph 2.5.4 of the Adopted Plan, which lists one of the results that the plan will have if implemented, reads as follows: “the implementation of a partial debt-for-equity swap [i.e. the Conversion] by the Vision Parties subscribing for new shares in the Company that would result in the Vision Parties collectively owning 97.3% of the total issued share capital of the Company. The consideration for such subscription will be c.R4.2 bn based on current balances which will be discharged by a **reduction of the former Lender Group Claims against THL (those**

⁵³ Adopted Plan page 6.

⁵⁴ *Id* page 25.


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purchased by the Vision Parties) to c. R3.6bn." (emphasis added.)⁵⁵

See also paragraph 6.1.3.1 of the Adopted Plan;⁵⁶

165.4. The term "Vision Debt" is defined in a bullet point listing one of the "key details" of the Vision Transactions as follows: "There will be **c.R3.6bn** in remaining **ex**-Lender Group debt outstanding and **owing by THL to the Vision Parties ("Vision Debt")** and this will remain in place and will be restructured accordingly between THL and the Vision Parties on market related terms." (emphasis added.);⁵⁷

165.5. Paragraph 14.1.1.11 of the Adopted Plan lists one of the material assumptions of the projected Income Statement provided in the Adopted Plan to be the following: "Vision Debt – The forecast assumes that Vision Debt of R3.6bn will remain owing as term debt. The Vision Parties have agreed to an interest payment holiday for the first three years, subsequently interest will be incurred at a market-related interest rate and will not be serviced in cash but capitalised. (This is not binding on the Vision Parties, but merely for illustration purposes)."⁵⁸

165.6. Paragraph 14.1.2.8 of the Adopted Plan lists one of the material assumptions of the projected Balance Sheet provided in the Adopted Plan to be the following: "Vision Debt – **The forecast assumes that Vision Debt of R3.6bn will remain owing as term debt.** The Vision Parties have agreed to an interest payment holiday for the first 3 years,

⁵⁵ Adopted Plan page 9.

⁵⁶ *Ibid* page 81.

⁵⁷ *Ibid* pages 84 – 85.

⁵⁸ *Ibid* page 129.

subsequently interest will be incurred at a market-related interest rate and will not be serviced in cash but capitalised. (This is not binding on the Vision Parties, but merely for illustration purposes). – **The balance of the Vision Parties' claim is assumed to be converted to equity.**⁵⁹

(emphasis added.)

166. The aforesaid excerpts from the Adopted Plan demonstrate unequivocally that (i) the Conversion was only authorised to occur once the full acquisition by the Vision Parties of all the Lender Group's claims and security against THL had been completed, and (ii) the Retained Vision Debt of R3.6 was to be retained by Vision which was to grant THL a three-year interest payment holiday thereon.

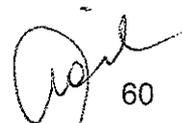
167. As indicated above, however, that is not the Conversion that the BRPs presented to shareholders for approval.

168. In terms of the Circular, the BRPs informed shareholders that the Retained Vision Debt (paragraph 11.2 above) would in fact be retained by the Lender Group and not the Vision Parties. In this regard the Circular states inter alia that:

168.1. the implementation of the Conversion would achieve a reduction of the LG Claims to "more sustainable levels" and that the final commercial terms of the R3.6 billion debt to be retained by the Lender Group "are equivalent to the existing Lender Group Facilities' terms which are expected to be amended when the revision of such terms are finalised between the parties" after the Conversion;⁶⁰

⁵⁹ Adopted Plan pages 131 – 132.

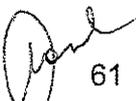
⁶⁰ The Circular at e.g. page 17 sub-paragraph (c).


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- 168.2. the aforesaid reduction of the LG Claims to “more sustainable levels” would result in THL continuing to incur approximately R448 million in finance costs on the remaining LG Claims (which had not been Acquired by the Vision Parties).⁶¹
169. The above is also reflected in the financial analysis of the Conversion provided in the Circular which clearly indicates that the debt of R3.6 billion will be retained by the Lender Group after the implementation of the Conversion and not by the Vision Parties.⁶²
170. The terms of the Conversion as set out in the Circular therefore differ in material respect to the terms of the Conversion as authorised in terms of the Adopted Plan.
171. In presenting shareholders with the Conversion in the terms contemplated in the Circular, the BRPs acted *ultra vires* the Adopted Plan and thus unlawfully. The extent to which the Conversion set out in the Circular differed from that authorised in the Adopted Plan is material and could not have been inadvertent.
172. This discrepancy must have been born of the fact that the BRPs had learned that the Acquisition had failed due to Vision’s lack of funds.
173. The BRPs never informed creditors or other affected persons either that the Acquisition had failed or that the Lender Group would retain a R3.6 billion claim against THL if the Conversion contemplated in the Circular were approved by shareholders.

⁶¹ The Circular at page 25 point 4 under the heading “commentary”.

⁶² *Ibid.*

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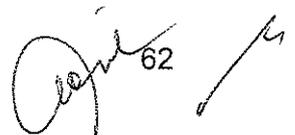
(v) The false Partial Acquisition Argument

174. In their answering affidavits to the application brought by Powertrans that is pending in the Durban Division of this Court ("**the Powertrans Application**"), the BRPs and Vision Parties advanced inter alia the following allegations in response to contentions that the Acquisition has failed (both the Powertrans Application – which was filed on 15 April 2024 – and all the affidavits therein precede the Shareholders Meeting and the Rejection of the Conversion).

175. The BRPs' answering affidavit contains inter alia the following allegations (to avoid prolixity, I refer only to paragraphs in the answering affidavit that are relevant for present purposes):

"236 The [Acquisition Agreement] was concluded between the Lender Group and Vision before the [Creditors Meeting]. Although the BRPs were not provided with a copy of it (due to the sensitive price and commercial information that it contained and the perceived risk of that information being leaked), we were provided with assurances from both the Lender Group and Vision that Vision had already brought into South Africa and paid a substantial non-refundable deposit to the Lender Group, **which would vest Vision with sufficient debt previously held by the Lender Group to enable the [Conversion] provided for in the Plan, to occur. We were also informed that the further funds would be paid in a second tranche before the end of 2024.**

238 **By the time of the [Creditors] Meeting**, then, the Lender Group and Vision had already concluded a binding agreement, and

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Vision had already paid a sum, **that was sufficient to enable the [Conversion] envisaged in the Plan, to take place** (should all other relevant suspensive conditions be met). **We had sufficient information before us to determine, and to represent to the Affected Persons (as we did), that we considered the Vision Plan viable.**

240 The Lender Group and Vision Parties have confirmed, and the BRPs were and remain satisfied, that the exchange of debt-for-equity aspect [i.e. the **Conversion**] of the **Vision Plan can be implemented immediately on the Plan becoming unconditional and was not dependent upon any future payment of purchase consideration** or the conclusion of further terms between the Lender Group and Vision. Therefore, the BRPs were satisfied that the [Conversion] proposed in the Plan could competently proceed.

242 The applicant's obsession with the terms of that agreement [the Acquisition Agreement] is perplexing. In the context of information required by a creditor to vote on a proposed business rescue plan, all that is relevant to a creditor is whether the adopted BR Plan is capable of implementation.

243 **The substantial deposit paid by Vision** (which has since been disclosed, in the first Powertrans application, to be in excess of R1.5 billion) **was sufficient to vest it with a right to acquire the Lender Group's claims/debt which, in turn, was sufficient to**

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be exchanged for shares in THL, if any when the [Conversion] goes ahead. The Plan is thus capable of implementation.

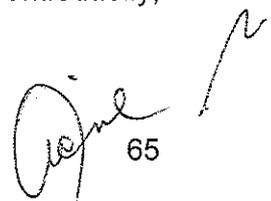
244 If Vision were, for some reason, not to pay the balance of the purchase price owed to the Lender Group under [the Acquisition Agreement], that would not invalidate the Vision Plan. The transaction provided for in the Plan, and the transaction governed by the [Acquisition Agreement] are separate agreements. **THL's creditors are only concerned with the former.**

245 Similarly, because the purchase price of the Lender Claims has been structured as an exchange of debt for shares, **there is no need for the Vision parties to furnish proof of funding.** There is therefore no merit in the allegations contained in paragraph 179 (pp63) of the founding affidavit, and in turn, **no basis for the applicant's concern that Vision lacks sufficient funds. The "key feature" as it pertains to the Vision Plan is the exchange of shares for the Lender Group debt in excess of R3.6 bn.** This is already in place and will be governed by the terms of the Subscription Agreement." (emphasis added.)

176. A copy of the section of the BRPs' answering affidavit in the Powertrans Application which contains the abovementioned paragraphs is annexed, marked "**MAR16**". To avoid prolixity, a full copy of the affidavit has not been annexed but will be provided to the Court.

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177. The allegations made by the BRPs in their affidavit in the Powertrans Application are astonishing given that they are entirely irreconcilable with (i) the terms of the Adopted Plan, and (ii) the representations made by the BRPs at the Creditors Meeting.
178. The BRPs' allegation that the Vision Parties were only required to acquire a sufficient portion of the LG Claims to implement the Conversion (i.e. the Partial Acquisition Argument) is contrary to the express provisions of the Adopted Plan as I have already demonstrated above. The Adopted Plan unequivocally provided for the full Acquisition by Vision of all the Lender Group's claims and security before the Conversion was authorised to proceed (see paragraph 165 above).
179. The BRPs' allegation that there was no need for Vision to provide proof of funding in relation to the Acquisition and that neither the Acquisition Agreement nor the Adopted Plan would be impacted at all should Vision fail to raise the funds necessary to discharge the purchase price above the deposit, are belied by the representations made by the BRPs at the Creditors Meeting in relation to the existence of proof of funds and the fact of the Standard Bank Letter.
180. It is moreover inconceivable that the BRPs were aware during the Creditors Meeting that only a partial Acquisition was required to implement the Plan but that they intentionally withheld this information from creditors.
181. In light of the mutually destructive allegations made by the BRPs (i) at the Creditors Meeting, and (ii) in their answering affidavit in the Powertrans Application, one way or another, they appear to have acted untruthfully, deceptively and therefore unlawfully.

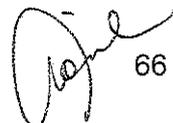
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182. For their part the Vision Parties made inter alia the following allegations in their answering affidavit in the Powertrans Application:

“67 The “key feature” of the BR Plan, pursuant to its adoption and implementation, is the acquisition by Vision of the claims and security of the Lender Group and the subsequent partial debt-to-equity swap by Vision that will result in Vision owning 97% of the total issued share capital in THL (referred to in the BR Plan as “the Vision Transactions”).

70 The applicant appears to fail to appreciate the various aspects of the BR Plan as set out above. The commercial terms between the Lender Group and Vision (which were agreed prior to the [Creditors Meeting]) do not form part of the “key feature” of the BR Plan. **Instead, it is the effect of those commercial terms, that result in the “key feature”,** being Vision’s acquisition of the claims and security of the Lender Group *and* the subsequent [Conversion].

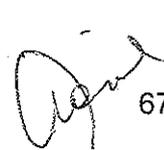
81 The Vision Parties and THL have been able to agree upon a subscription transaction [i.e. the Conversion] and advance all ancillary acts required to perform such a transaction **in light of the fact that Vision has, since the adoption of the BR Plan, held, and continues to hold, a right to advance a partial debt-to-equity exchange as contemplated in the BR Plan. The obligation to make payment of a second instalment to the Lender Group in respect of the claims against THL is in no**

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way dependent on the Vision Transactions, given that Vision has already paid a substantial deposit entitling it to complete the Vision Transactions.” (emphasis added.)

183. Copies of the abovementioned paragraphs are annexed, marked “**MAR17**”. To avoid prolixity, a full copy of the affidavit has not been annexed but will be provided to the Court.
184. Vision’s argument that the Acquisition Agreement can be separated from the effect of its terms is artificial and of no consequence even if correct (which is denied). The fact is that the acquisition contemplated in the Acquisition Agreement and the acquisition contemplated in the Key Feature of the Adopted Plan are one and the same.
185. Vision’s careful and deliberate use of words is important. They do not say that the Acquisition has been completed or that they have acquired any of the LG Claims. Instead, they say that since the Vision Plan was adopted Vision has “held and continues to hold a right to advance a partial [Conversion] as contemplated in the [Adopted Plan]” (emphasis added).
186. There are two important aspects to the above allegation:
- 186.1. First, the statement that Vision has “a right to advance” the Conversion implies that they came to an agreement with the Lender Group in terms of which the latter would permit them to proceed with the Conversion, despite the Acquisition not having been completed and despite the purchase price thereunder not having been paid, provided that the Vision

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Plan was adopted and the subscription agreement required to implement the Conversion was agreed and shareholder consent obtained;

- 186.2. Second, the reference to a "partial" Conversion requires clarification. The Adopted Plan has always contemplated a partial Conversion in the sense that the Vision Parties were always only going to convert c.R4.9 billion of the total former LG Claims of c.R8.5 billion. For reasons already provided above,⁶³ however, the Adopted Plan does not permit a partial Conversion in the sense of a scenario where the Acquisition has failed but the Conversion is implemented nonetheless with the Lender Group retaining R3.6 billion (i.e. the Retained Vision Debt).
187. It is an open secret in the industry that Vision's efforts to raise the funds necessary to complete the Acquisition have failed decisively and that their final pleas for financing from the IDC, the PIC, and the Lender Group itself have all been rejected.
188. Although this is hearsay, it is so because the Vision Parties and the Lender Group insist unlawfully on secrecy when the Acquisition Agreement and the status of its implementation should always have been known to affected persons. Only the Vision Parties have the information to prove that my statement is false, and they are invited to do so with reference to verifiable information.
189. Until Vision puts up definitive evidence of its funding (or lack thereof), the allegation advanced by them in their answering affidavit in the Powertrans Application referred to in paragraph 186.1 above, i.e. that they had "a right to

⁶³ See paragraph 165 supra.


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advance” the Conversion, strongly suggests that Vision and the Lender Group have negotiated and agreed further terms to the Acquisition Agreement in response to Vision’s failure to raise the required funds to complete the Acquisition.

190. Quite clearly, if the Retained Vision Debt of R3.6 billion will be retained by the Lender Group, the latter will also retain security over THL assets to the same value. This means that the Lender Group would be in a position to:

190.1. permit the Conversion to proceed despite not having been paid under the Acquisition Agreement thereby allowing Vision to acquire THL resulting in the closure of business rescue proceedings;

190.2. subsequently enforce its R3.6 billion claims and security against THL.

191. Logically, rather than having to enforce its R3.6 billion claims and security against THL after closure of the business rescue, it is more likely that the Vision Parties and the Lender Group would have agreed that the Lender Group would permit the Conversion to proceed without being paid on condition that the Vision Parties then sell THL assets directly after business rescue in order to settle the amount owing to the Lender under the Acquisition Agreement.

192. This would explain (i) Vision’s statement that it had “a right to advance” the Conversion (as opposed to saying that they had acquired the LG Claims necessary to do so), and (ii) why the Lender Group would have permitted the Conversion to proceed despite not having been paid.

193. It also means that the same arrangement can be carried through into the Vision Asset Transaction in relation to which Vision still needs to acquire the same

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amount of LG Claims as it required for the Conversion (i.e. c. R4.9 billion worth) in order to pay for THL's assets in terms of the VAT Set-Off (see paragraph 41.1 above).

194. If further terms of the nature described above have been concluded between the Lender Group and the Vision Parties, it would effectively allow the latter to secretly pay for the Acquisition (and therefore the acquisition of THL itself) from the proceeds of a sale of THL property post business rescue.
195. The allegation that Vision had "a right to advance" the Conversion is moreover consistent with the conclusion of the secret indulgences and extensions granted by the Lender Group to Vision in relation to the payment deadline of the purchase price due under the Acquisition Agreement (see paragraphs 96 to 97 above). It suggests that the Lender Group agreed to terms pursuant to which it remained open to Vision to complete the Acquisition and proceed with the Conversion whenever it finally succeeded in raising the funds to settle the purchase price.

(vi) The Vision Asset Transaction

196. The Vision Asset Transaction is contained in paragraph 6.1.7 of the Adopted Plan which reads as follows:

"Alternative transactions in the event of a failure to secure approval for the issue of new THL shares to the Vision Parties by way of a debt/equity swap [i.e. Conversion]

- 6.1.7.1 In the event of, for whatever reason, a failure to secure the consents and / or approvals required in order for the proposed issue of THL shares to the Vision Parties to be effected (resulting in such parties not holding the anticipated 97.3% of the then shares in issue), the BRPs and the Vision Parties have agreed that, as an integral part of the Proposals and this Business Rescue Plan, the currently proposed Vision Transactions will be switched from those contemplating and issue of THL shares to

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transactions contemplating the acquisition by the Vision Parties of THL's assets and businesses (as going concerns) on the basis that:

- payment for such assets will be effected by way of a set off against the Secured Claims [i.e. the LG Claims] then held by the Vision Parties;
- suitable arrangements being made for payment of the full balance outstanding in respect of the IDC PCF Facility;
- the sale of THL's assets and businesses will be to an entity nominated by the Vision Parties;
- unsecured Creditors and Secured Creditors would otherwise be treated as contemplated in the currently contemplated Vision Transactions;
- the Vision Parties will ensure that THL has sufficient funds to enable it to implement this Business Rescue Plan;
- the sale of THL's assets will be subject to the requisite regulatory and other approvals common for transactions of this nature in each jurisdiction;
- once it has sold its assets and businesses (as going concerns), THL will be delisted from the JSE and liquidated (noting that hits shares would have nil value); and
- to the fullest extent possible Vision Parties and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders, other than Shareholders and the HSE as a result of the delisting / liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated Vision Transactions been implemented."

197. It is submitted that the above paragraph and bullet points do not, in terms of section 150 of the Companies Act, constitute a self-standing alternative business rescue plan capable of immediate implementation without further elaboration or recourse to creditors for approval.

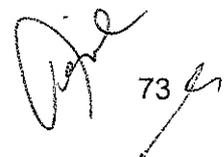
198. Full legal argument will be advanced in this regard at the hearing, but it is immediately apparent that the Vision Asset Transaction does not contain the following information:

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- 198.1. the conditions that must be satisfied for the Vision Asset Transaction to come into operation and be fully implemented (section 150(2)(c)(i));
 - 198.2. the effect that the Vision Asset Transaction will have on employees and their terms and conditions of employment (section 150(2)(c)(ii));
 - 198.3. the circumstances in which the business rescue plan will end (section 150(2)(c)(iii));
 - 198.4. a projected balance sheet and statement of income and expenses for the ensuing three years including a statement of the material assumptions on which the balance sheet and income statement are based (150(2)(c)(iv) and 150(3));
 - 198.5. the BRPs' certificate contemplated in section 150(4) of the Companies Act.
199. There is no indication whatsoever, nor have the BRPs provided an indication subsequently, of the nature of the transactions that they proposed to execute in order to implement the Vision Asset Transaction.
200. While this would naturally include some sort of sale agreement or an agreement that results in the same conclusion as a sale, the transaction in question would be hugely complex (as conceded by the BRPs)⁶⁴ given the size, nature, and age of the underlying assets and the taxes and transactional costs that a transaction of that magnitude would attract.

⁶⁴ See paragraphs 229.3 and 229.4 below.

201. It is moreover by no means apparent that THL's assets and businesses can be sold as going concerns. The last financial results released by THL are unaudited financials for the year ended 31 March 2022. No financial information, even in unaudited form, has been released since then.
202. The requirements of section 150(2)(c)(ii) of the Companies Act in relation to employees is not satisfied by the statement contained in the last bullet point of the Vision Asset Transaction. To say that the Vision Parties and BRPs will "to the fullest extent possible" "seek to" ensure that the Vision Asset Transaction will leave employees in "substantially the same position" as they would have been if the Key Feature had succeeded, and THL was not delisted and liquidated, by no means satisfies the statutory requirement in relation to employees and in fact amounts to no more than a nebulous statement of intention.
203. Even if the Vision Asset Transaction did comply with section 150 of the Companies Act in its current form, Vision is still required to:
- 203.1. complete the full Acquisition of all the LG Claims (including security) in order to proceed with the Vision Asset Transaction. As I have demonstrated above, the Adopted Plan does not authorise Vision to do anything if it has not first completed the full Acquisition (see paragraph 165 above), this is also reflected in the first bullet point under paragraph 6.1.7 of the Adopted Plan (paragraph 196 above);
- 203.2. obtain the IDC Consent. This is a crucial requirement since the IDC hold security over THL's assets in terms of the IDC PCF. I have been informed that the IDC has refused to provide its consent for the Vision Asset



Transaction. The BRPs and Vision Parties are invited to prove the contrary;

- 203.3. in relation to THL's Mozambiquan and Zimbabwean businesses, obtain consent from those governments who as shareholders in those businesses have rights of pre-emption (in terms of the relevant MOIs) in any sale in terms of which ownership of those businesses changes hands.
204. Furthermore, there are two major systemic issues with the Vision Asset Transaction that render it unlawful.
205. **First**, is the fact that it was not explained to creditors at the Creditors Meeting. Creditors were not informed that it would result in the delisting and liquidation of THL. The BRPs and Vision Parties appear to have been content to assume that (i) creditors had found the single paragraph in the plan dealing with the Vision Asset Transaction, and (ii) that they understood what it entailed despite the abovementioned non-compliances with the requirements of section 150 of the Companies Act.
206. Creditors were in fact informed in unequivocal terms that there was proof that the Vision Parties had sufficient funds to implement the Key Feature of the Adopted Plan (i.e. the Standard Bank Letter), and that by voting to adopt the Vision Plan THL's liquidation would be avoided.⁶⁵ These false representations induced creditors to vote in favour of adopting the Vision Plan. The Vision Asset Transaction is therefore unlawful

⁶⁵ See paragraphs 120 to 158 above.

207. **Second**, is the fact that the Vision Asset Transaction amounts to a private or controlled liquidation that enures only to the benefit of the Vision Parties and the Lender Group, does not result in a better return for creditors or shareholders than that which would be achieved at an arm's length liquidation, offends the spirit and objectives of the business rescue process, and is therefore unlawful.

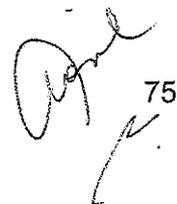
(vii) The RGS Offer and correspondence between the parties

208. The RGS Offer was first submitted on 8 July 2024 (**"the First RGS Offer"**) and an updated version thereof was then submitted on 17 September 2024 (**"the Second RGS Offer"**) (see paragraph 44 above). Copies of the First and Second RGS Offers are annexed, marked **"MAR18"** and **"MAR19"** respectively.

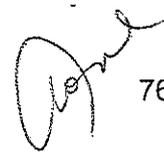
209. The BRPs' responses rejecting the First RGS Offer (9 July 2024) and the Second RGS Offer (18 September 2024), in terms of which they expressed the view that the Adopted Plan remains binding and that they are dutybound to implement it, are annexed marked, **MAR20"** and **"MAR21"** respectively.

210. The material terms of the First and Second RGS Offers, summarised at paragraph 45 above, are identical. The only substantive difference between the two offers is the First RGS Offer stated that RGS was in a position to close the relevant transaction before the end of 2024. However, given the time that subsequently elapsed, the Second RGS Offer states that RGS would be able to close the transactions within four months after the adoption of those transactions as an approved business rescue plan.

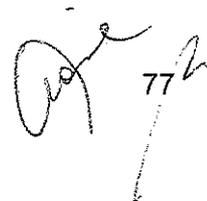
211. RGS' financial obligations under the RGS Offer are backed by:

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- 211.1. Up to USD 300 million of a USD 500 million facility to be provided by Afrexim Bank; and
- 211.2. Credit guarantees to be issued in favour of the Lender Group, SASA, and the IDC by Empresa Moçambicana de Seguros SA ("**EMOSE**").
212. On 5 September 2024 RGS' attorneys ("**DMA**") addressed a letter to the BRPs' attorneys ("**Werksmans**") and the Vision Parties' attorneys ("**Stein Scop**"), a copy of which is annexed, marked "**MAR22**". This letter was copied to the Lender Group and the IDC.
213. In terms of this letter, RGS inter alia:
- 213.1. informed the BRPs and Vision that it had taken legal advice subsequent to the Rejection of the Conversion which was to the effect that the Adopted Plan had lapsed and that the Vision Asset Transaction was in any event unlawful;
- 213.2. stated that since Vision had failed to complete the Acquisition, they were in materially the same position as they had been when the Acquisition Agreement was first announced by the BRPs in the SENS of 9 November 2023;
- 213.3. informed the BRPs and Vision that the Vision Asset Transaction was incapable of lawful implementation in its current form since it clearly does not satisfy the requirements of section 150 of the Companies Act;

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- 213.4. informed the BRPs and Vision that the Adopted Plan did not remain binding in light of the above simply because creditors had voted to adopt it;
- 213.5. stated that, given the existential nature of the Vision Asset Transaction, confirmation of the fact that Vision has made payment under the Acquisition Agreement and had acquired all the LG Claims and security was more relevant than ever since Vision could not discharge the purchase price due under the Vision Asset Transaction by way of the VAT Set-Off unless it had in fact acquired all the LG Claims and security;
- 213.6. demanded that the BRPs and Vision provide copies of the following by no later than close of business on 10 September 2024: (i) the Acquisition Agreement, (ii) confirmation of whether Vision had discharged the purchase price due thereunder and if not the rand value of any deposit or partial payment that has been made, (iii) any and all further agreements concluded between Vision and the Lender Group in relation to the Acquisition which qualify or encumber the Acquisition or impose obligations on Vision to sell or otherwise encumber THL assets after the business rescue process has been concluded.
214. Vision and the BRPs both responded on 10 September 2024, copies of their letters in response are annexed, marked "**MAR23**" and "**MAR24**".
215. In its response, Vision inter alia:
- 215.1. noted that RGS had engaged the services of the same attorneys as Powertrans and suggested that RGS' letter of 5 September appeared to



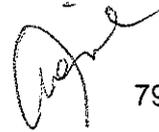
be nothing more than a further attempt by RGS, whose credibility has been seriously brought into question [by the withdrawal of the RGS Plan and the ABSA Mozambique Letter] to scupper the implementation of the business rescue plan and derail the entire business rescue process to advance its own commercial interests;

- 215.2. denied the contents of RGS' letter of 5 September 2024 and refused to provide the documents demanded therein;
- 215.3. stated that "[t]he commercial terms of the transaction between our clients and the Lender Group remain confidential. Those commercial terms are not a key feature of the BR Plan and are not information that ought to have been disclosed in the BR Plan";
- 215.4. threatened that should RGS proceed to launch this application, Vision would oppose the application, seek punitive costs, and seek security for costs against RGS given its status as a *peregrinus* of this Court.
216. The suggestion that RGS should provide security for costs is surprising since the Vision Parties too are *peregrini*. Should they in fact demand security for costs from RGS, similar security will be demanded of them.
217. In their response, the BRPs inter alia:
- 217.1. also noted RGS' use of the attorneys used by Powertrans and stated that "[t]he overwhelming inference to be drawn from the above is that RGS has, at all times, been the *eminence gris* of the litigation proceedings ("the Powertrans application")...and that such litigation is indeed being

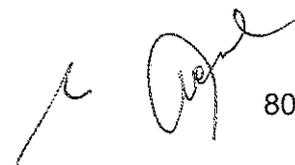
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funded and controlled by RGS, with Powertrans merely acting as a nominal party.”;

- 217.2. denied the contents of RGS' letter of 5 September 2024;
- 217.3. stated in relation to the production of the Acquisition Agreement that “[w]e have, however, addressed correspondence on our clients’ instructions to the Lender Group and Vision insisting that the [Acquisition Agreement] be furnished to the BRPs for dissemination to, inter alia, affected persons. As at the time of despatching this letter, the [Acquisition Agreement] has not yet been received” and “...we have called upon the Lender Group and Vision to furnish a copy of the [Acquisition Agreement] for dissemination to, inter alia, affected persons. We tender to provide it to your offices, on receipt”;
- 217.4. threatened both RGS and its attorneys with punitive costs orders should this application be filed.
218. RGS responded in a letter of 2 October 2024, a copy of which is annexed, marked “**MAR25**”. This letter too was copied to the Lender Group and the IDC (i.e. like RGS's first letter of 5 September 2024 had been) In terms of this letter RGS inter alia:
- 218.1. referred to the Second RGS Offer which had been submitted on 17 September 2024, after the BRPs and Vision's letters of 10 September 2024 and confirmed that in terms of the RGS Offer the Lender Group would receive R400 million more than the amount offered by Vision;


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- 218.2. stated that in terms of the Second RGS Offer, RGS had requested the BRPs to table the RGS Offer for creditors' consideration at a meeting to be convened in terms of section 151 of the Companies Act on the basis that the Vision Asset Transaction could not be implemented without creditors' approval given its current non-compliance with section 150 of the Companies Act;
- 218.3. stated that after the rejection of the Second RGS Offer, RGS had awaited the publication of details regarding the nature of the transactions that will be concluded in terms of the Vision Asset Transaction, the conditions which apply thereto, and the timeline for their implementation but – despite having had the opportunity to do so since 8 August 2024 – the BRPs had yet to provide creditors and affected persons with any of these essential details;
- 218.4. repeated that the Vision Asset Transaction could not be implemented unless and until Vision had fully Acquired the LG Claims and security;
- 218.5. referred to the correspondence addressed to the BRPs by shareholders prior to the Shareholders Meeting and stated that one of the shareholders' chief concerns had been the lack of confirmation that Vision had in fact concluded the Acquisition despite Vision's known previous failures to consummate the Acquisition Agreement;
- 218.6. reminded the BRPs that they and the Vision Parties had assured creditors at the Creditors Meeting that Vision was fully funded and ready to implement the Vision Plan;



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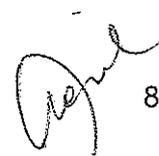
- 218.7. referred to the BRPs' insistence (as conveyed in their letter of 10 September 2024) that the Lender Group and Vision provide a copy of the acquisition agreement which would then be provided to RGS;
- 218.8. stated that, since the BRPs had neither disseminated the Acquisition Agreement to affected persons nor provided any feedback to RGS regarding whether or not the agreement had been produced by the Lender Group and / or the Vision Parties, and if not, why the agreement was being withheld despite the BRP's insistence that it be produced, the reasonable inference to be drawn was that the Acquisition Agreement remained conditional on the fulfilment by Vision of their outstanding payment obligations and that none of the Lender Group's claims or security had been transferred to the Vision Parties;
- 218.9. stated that since no timeline for the implementation of the Vision Asset Transaction had been provided, RGS will have no choice but to bring an urgent application if the information and documentation demanded is not provided "in the coming week";
- 218.10. demanded that a list of information and documentation be provided by close of business on 7 October 2024.
219. The Vision Parties did not respond to this letter. The BRPs responded on 7 October 2024, a copy of which response is annexed, marked "**MAR26**".
220. In their letter of 7 October 2024, the BRPs stated that in order to enable them to respond substantively to RGS' letter of 2 October 2024, they required information



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from the Lender Group and requested that RGS consent to its letter of 2 October 2024 being furnished to the Lender Group and its advisors.

221. RGS responded on the same day in an email in terms of which it pointed out to the BRPs that its letter of 2 October 2024, like its previous letter, indicated that it was copied to the Lender Group and the IDC, and that the request for RGS to consent to the letter being furnished to the Lender Group was therefore superfluous. RGS requested that the BRPs indicate by when a substantive response to RGS' letter could be expected. A copy of this email is annexed, marked "**MAR27**".
222. The BRPs responded by email on 9 October 2024. In their email they sought to argue that the email under cover of which RGS' letter of 2 October 2024 was sent to the BRPs "fails to indicate that [the letter] was in fact sent to the Lender Group", i.e. despite the fact that the letter itself indicated that it was copied to the Lender Group.
223. The BRPs also indicated that the demands in RGS' letter "have been directed to the attorneys representing both Vision and the Lender Group" and that the BRPs had called for a response to their request [i.e. that the Acquisition Agreement be provided] in the coming days and that the "nature of such response will inform both the timing and our ability to respond substantively" to RGS' demands.
224. Lastly, the BRPs stated that RGS' requests that the information demanded be provided urgently "are belied by the fact that your requests for information and documents have been reiterated over an extensive period and the factual position as articulated by our clients in response has remained unchanged" and

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that this “fact is inimical to your client’s assertions of urgency”. A copy of this email is annexed, marked “**MAR28**”.

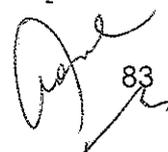
225. RGS responded in an email on 10 October 2024, a copy of which is annexed, marked “**MAR29**”. In terms of this email, RGS:

225.1. denied that it reiterated requests for information over an extensive period of time, stated that it was in fact Powertrans that had done so, and pointed out that “[d]espite these legitimate requests from creditors and shareholders the BRPs have failed and/or refused to provide even the most basic explanation regarding the so-called Vision Asset Transaction in terms of which the BRPs intend to transfer all THL’s assets to Vision, delist and liquidate THL”;

225.2. stated that all affected persons had a right to the information demanded and that this information should have been disseminated to all affected persons freely [i.e. without reminder or demand];

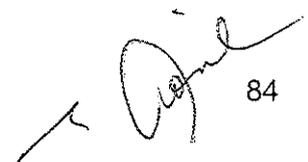
225.3. stated that “[g]iven the continued uncertainty regarding the nature and effect of the transactions that will be implemented in terms of the Vision Asset Transaction, the often cited potentially disastrous impact that the liquidation of THL could have on employees and the KZN economy remains a critically important consideration”;

225.4. stated that it was important for all affected persons to be provide with confirmation that (i) ownership of all the Lender Group’s claims and security had been transferred to Vision despite their failure to pay the purchase price, and (ii) that no agreements had been concluded



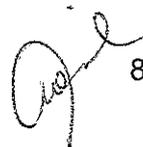
between Vision and the Lender Group in terms of which THL assets will be sold after closure of the business rescue in order to settle the Lender Group or any other creditors which Vision has proven incapable of settling due to their failure to raise the necessary financing.”;

- 225.5. Demanded that the outstanding information and documentation be provided by 14 October 2024 failing which RGS would have no option but to proceed to court.
226. The BRPs responded in an email on Monday, 14 October 2024 stating that they did not anticipate being in a position to respond by close of business on that day but that they would, however, be in a position to respond “during the course of next week”. A copy of this email is annexed, marked “**MAR30**”.
227. RGS responded by email on the same day. RGS took issue with the BRPs’ vague undertaking to respond “during the course of next week” and demanded a response by close of business. A copy of this email is annexed, marked “**MAR31**”.
228. The BRPs responded on the same afternoon stating that they had mistakenly said that they would respond during the “course of next week” and that their response would come during “this week”. A copy of this email is annexed, marked “**MAR32**”.
229. The BRPs provided a substantive response in a letter of 16 October 2024, a copy of which is annexed, marked “**MAR33**”. In terms of this letter the BRPs inter alia:

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- 229.1. argued that the information and documentation demanded by RGS had been substantively addressed in prior correspondence and, in certain respects, in the affidavits filed in the Powertrans Application;
- 229.2. stated that since shareholders rejected the Conversion on 8 August 2024 it was unreasonable, commercially untenable, and unrealistic to expect the Vision Asset Transaction to have been implemented already and that they were engaging with Vision and the Lender Group to facilitate its implementation “as expeditiously as circumstances permit”;
- 229.3. stated that the Vision Parties and the Lender Group “require a reasonable opportunity to negotiate, draft and conclude, what is, on any conceivable metric, a significantly complex transaction”;
- 229.4. provided the following expertly non-specific elaboration on the complexity of the Vision Asset Transaction while admitting that the transaction had “structural issues”:

“10 ...the Vision Sale of Asset Transaction is a complex multi-jurisdictional transaction requiring consideration of, inter alia, the regulatory requirements and implications in each jurisdiction, tax optimisation, consideration of licencing and permit/authority requirements, required land transfers, assignments of contracts and requisite counterparty consents, employee transfers, interactions with key stakeholders (including the Lender Group, the IDC and shareholder bodies) and consideration of complex legal issues including the interplay between various items of difference legislation (“the Structural Issues”).

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

Case number: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED	Applicant
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and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
GERHARD CONRAD ALBERTYN N.O.	Fourth Respondent
VISION INVESTMENTS 155 (PTY) LTD	Fifth Respondent
TERRIS AGRIPRO (MAURITIUS)	Sixth Respondent
REMOGGO (MAURITIUS) PCC	Seventh Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Eighth Respondent
ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES)	Ninth Respondent
THE LENDER GROUP OF TONGAAT HULETT LIMITED	Tenth Respondent
MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE	Eleventh Respondent
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Twelfth Respondent

INDEX 2 of 5

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11. Since 8 August 2024 –

11.1 the legal, commercial, tax, regulatory and other professional teams advising the BRPs, Vision, the Lender Group, and the IDC, have been interacting, on an ongoing basis, multiple times each week since the [Rejection of the Conversion] occurred, to progress the Vision Sale of Asset transaction and work through and resolve the Structural Issues. This is, understandably, a time consuming and complex process; and

11.2 significant progress has been made since [the Rejection of the Conversion] in identifying and resolving the Structural Issues. The transactional structure has been identified and is being refined. The commercial agreement required to document same are being negotiated, drafted, and exchanged between the relevant counter parties and no significant commercial impediments have been identified to date. The relevant regulatory authorities are being consulted on an ongoing basis in order to arrive at the most expeditious and efficient methodology for implementing the Vision Sale of Asset transaction.”

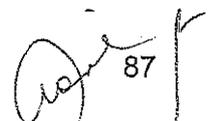
229.5. stated in response to RGS’ “frequent observation” that Vision had not discharged the purchase price under the Acquisition Agreement that such payment was only due and payable on 31 December 2024 and that is was consequently “premature” to suggest that Vision are in default of their obligations to the Lender Group;

229.6. reiterated that the Adopted Plan remained capable of implementation;

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- 229.7. stated that the Vision Asset Transaction would be implemented as follows: “the manner in which Vision proposes to transfer THL’s assets to a company nominated by Vision (“the purchaser”) and thereafter delist and liquidate the “shell” of THL pursuant to the Vision asset transaction will be achieved by means of, inter alia, the conclusion of an appropriate sale agreement taking into account, inter alia, all of the considerations referred to above.”;
- 229.8. stated that their failure to provide the information and documentation demanded by RGS “is as a consequence of the fact that [the BRPs] do not have the necessary information in their possession to do so” but that they had “written again to Vision and the Lender Group requiring them to provide” the BRPs with further information.
230. The BRPs’ arguments that the issues and questions raised in RGS’ letters have already been dealt with earlier in responses to Powertrans or in their answering affidavit in the Powertrans Application are clearly wrong.
231. Ignoring for the moment that such earlier correspondence was between the BRPs and Powertrans, all such exchanges – to the extent that they were in fact provided – pre-dated the Rejection of the Conversion and the announcement of the Vision Asset Transaction and therefore have no bearing on the lawfulness, validity, or implementability of the Vision Asset Transaction.
232. What is clear on the BRPs’ own admission, is that creditors have made sustained requests for information to which they are entitled (e.g. the Acquisition Agreement and confirmation regarding the performance by Vision thereunder).



These requests have been met by technical arguments and explanations rather than with the provision of the pertinent information requested.

RGS HAS MADE OUT A CASE FOR PART A RELIEF

(i) Interdictory Relief

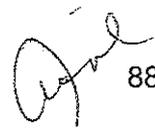
233. I have demonstrated above that the Vision Asset Transaction is, at bare minimum, prima facie unlawful, that affected persons have been refused the information to which they are entitled in relation to the Vision Asset Transaction under section 150 of the Companies Act, and that the business rescue process is riddled with serious irregularities.

234. Since the Vision Asset Transaction will culminate in the irreversible delisting and liquidation of THL, it's further progression and / or implementation must be interdicted pending the determination by this Court of its legality under Part B.

235. I submit that RGS has made out a case for an interim interdict for the following reasons.

A prima facie right

236. RGS is a creditor and an affected person in THL's business rescue. It has participated actively in the business rescue process and currently has an offer on the table in terms of which it wants an opportunity to seek creditors' approval to incorporate the transactions contemplated in the RGS Offer into a lawful business rescue plan that will save THL from liquidation and offer all affected persons – including the Lender Group – a significantly better outcome than that which they stand to receive if the Vision Asset Transaction is implemented.

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237. RGS, like all affected persons, therefore, has a right to a lawful business rescue process.
238. I have demonstrated above, at minimum on a prima facie basis, that the aforesaid right has been infringed in multiple respects. I re-emphasise only two of these.
239. **First**, during the Creditors Meeting, creditors were concerned about Vision's ability to finance the implementation of the Vision Plan. Numerous questions and queries were raised in this regard (significantly more than in relation to any other topic), in response to which the BRPs and Vision reassured creditors that Vision had the funds necessary to implement the Key Feature of the Plan and avoid THL being liquidated.
240. Consonant with this, the chairman of the employee's committee, in his address to the Creditors Meeting, stated in relation to the Vision Plan that "security of funding is seen as a critical factor" given the collapse of proposals made by previous interested parties (i.e. Kagera).⁶⁶
241. If creditors had been informed that Vision's ability to fund the implementation of the Vision Plan was not assured, and if it had been explained to them that, if Vision failed to fund the Acquisition, THL would be liquidated in terms of the Vision Asset Transaction, there is a realistic possibility that creditors would not have voted to adopt the Vision Plan (like shareholders – who were presented with more information that creditors did not have – voted to reject the

⁶⁶ Video Day 1 from 00:45:10.

Conversion). This is especially so in circumstances where unsecured creditors stand to receive only 5 cents in the rand.

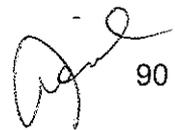
242. It is egregious that the BRPs – on the second day of the Creditors Meeting – tabled the Lender Group’s motion to amend the plan by deleting the statement in paragraph 2.2. thereof (to the effect that the BRPs and Lender Group had received proof that Vision had sufficient funds to execute the business rescue plan), and that they did so without informing creditors that this was destructive of the assurances that had been provided on the first day of the meeting.

243. **Second**, the fact that the Vision Parties have refused – even in the teeth of the BRPs’ insistence – to produce the Acquisition Agreement and confirm the status of their performance thereunder gives rise to a clear inference of impropriety that must be investigated and addressed.

244. The Vision Parties’ persistent failure to produce the Acquisition Agreement and confirm the status of their performance thereunder has taken on heightened significance since the failure of the Key Feature of the Adopted Plan and the announcement of the Vision Asset Transaction.

245. The BRPs and Vision were not authorised by creditors, and cannot therefore be permitted, to proceed to delist and liquidate THL in terms of the Vision Asset Transaction in circumstances where:

245.1. Creditors were assured that Vision had sufficient funds to implement the Key Feature of the Adopted Plan and voted for the adoption of the Vision Plan on that basis; and

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- 245.2. The failure of the Key Feature of the Adopted Plan and the result – i.e. that THL will now be delisted and liquidated – has been brought about by Vision's failure to raise the funds required to complete the Acquisition.
246. I submit that these factors, read in light of what is set out above, evidence a prima facie right on RGS's part which justifies the granting of an interim interdict.
247. I am moreover advised that the provisions of section 152(4) of the Companies Act – which are to the effect that an adopted plan is binding on the company and on all creditors regardless of how they voted – does not insulate an unlawful business rescue plan (or a plan that is implemented unlawfully in a manner that is inconsistent with its terms) from being set aside on review. Full legal argument will be advanced in this regard at the hearing.
248. Finally, it bears mention that it is not only RGS' rights that are at stake. Thousands of employees and unsecured creditors share the same rights and interests and stand to suffer the same harm but are not in a financial position to litigate and / or are not aware of the breaches of their rights.

Well-grounded apprehension of irreparable harm

249. A combined delisting and liquidation is the worst-case scenario for THL, its employees, creditors, trading partners, and the KZN economy. It is precisely what the business rescue process was designed to avoid.
250. Should the Vision Asset Transaction be implemented in circumstances where Vision has not paid for the Acquisition and /or will sell THL assets in order to repay the Lender Group, all affected persons in THL's business rescue would suffer irreparable harm.

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251. Creditors' claims would have been extinguished by the conclusion of the business rescue process. Their financial losses would have enabled Vision to take ownership of THL in circumstances where Vision has failed to honour its obligations in terms of the Adopted Plan.

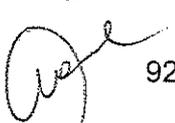
The balance of convenience

252. The balance of convenience is demonstrably in favour of the granting of an interim interdict. If the interim interdict is not granted THL will be delisted and liquidated or steps towards that result will be taken which will have external effect or involve third parties and would thus be incapable of reversal.

253. Even if Part B is heard before the culmination of the Vision Asset Transaction (i.e. delisting and liquidation), RGS and affected persons would still have suffered the manifest prejudice of being subjected to an unlawful process which racks up additional expenses (especially finance costs) every day that it is permitted to continue. Those costs would be wasted if the Vision Asset Transaction is set aside.

254. By contrast, the THL and the Vision Parties would suffer no prejudice if they were ordered to down tools on the Vision Asset Transaction for a short period of time until Part B is determined. Should they be successful in Part B they could simply proceed with implementation.

255. RGS is committed to having Part B heard as expeditiously as possible and has indicated in the notice of motion that Part B will be enrolled on an expedited hearing date to be arranged with the Judge President and/or the Senior Civil Judge.

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256. Alternatively, should the respondents be amenable, RGS tenders to have Part B set down in terms of a court order to be taken by agreement at the hearing of Part A. Such court order could include a timetable for the filing of further affidavits and heads of argument pursuant to which Part B could be heard urgently.

No adequate alternative remedy

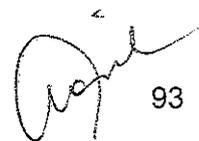
257. RGS has no alternative remedy let alone an adequate one. No other relief can prevent or reverse THL being delisted and liquidated or compensate RGS and affected persons in the event that RGS is successful in Part B.

258. Furthermore, no alternative remedy can shield THL from the financial damage that it is sustaining by way of finance expenses, BRP costs, and transactional fees in relation to the Vision Asset Transaction.

(ii) Disclosure of essential information

259. It is submitted that the information contemplated in paragraphs 4.1 to 4.3 and 5.1 of the notice of motion is information to which RGS has a right of disclosure in terms of section 150 of the Companies Act (as do all affected persons). This information constitutes the minimum information required to bring the Vision Asset Transaction within the definition of a valid business rescue plan.

260. The information contemplated in paragraphs 5.2 to 5.4 (i.e. a full disclosure of Vision's performance under the Acquisition Agreement, proof that it has taken transfer of the Lender Group's claims and security, and confirmation that it has not agreed to sell THL assets after business rescue closes) arguably extends

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beyond what would ordinarily be required under section 150 of the Companies Act in relation to a valid business rescue plan.

261. It is, however, submitted that a full and frank disclosure of all the aforesaid information is entirely justified when regard is had to the unjustified secrecy and numerous irregularities that have characterised the implementation of the Adopted Plan.

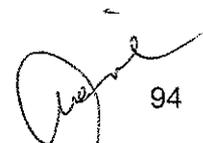
LEAVE TO INSTITUTE THIS APPLICATION AND SERVICE THEREOF

262. To the extent necessary, RGS seeks leave to bring this application in terms of section 133(1)(b) of the Companies Act. This application clearly raises issues which impact directly on RGS' rights as well as those of all affected persons, the broader sugar industry and the KZN public.

263. Pursuant to what is set out in this affidavit, I submit that it is in the interests of justice that RGS be granted leave to bring this application.

264. As regards service, the BRPs bear the duty under *inter alia* sections 128, 144 and 145 of the Companies Act to provide notice to creditors, employees and affected persons of "each court proceeding" concerning the business rescue proceedings.

265. The BRPs have consistently observed their duty as aforesaid during the various court applications that preceded the present by posting notices on the THL business rescue website and uploading copies of the papers filed of record therein for access by affected persons.

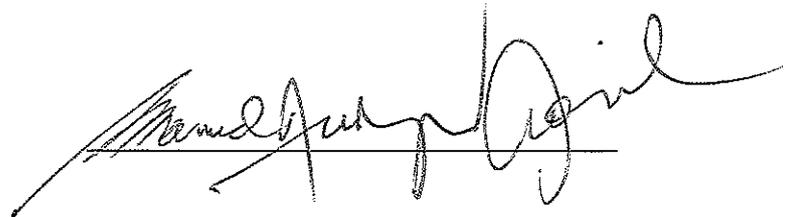
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266. It is expected that the BRPs will do the same presently and, given what is set out above, that affected persons will consult the THL business rescue website as they have done previously.

267. At any rate, it is impossible for the applicant to effect service on the thousands of affected persons in the THL business rescue and, to the extent necessary, condonation has been sought for any departure from the ordinary forms and service for which it is submitted, good cause has been shown in the circumstances of this case.

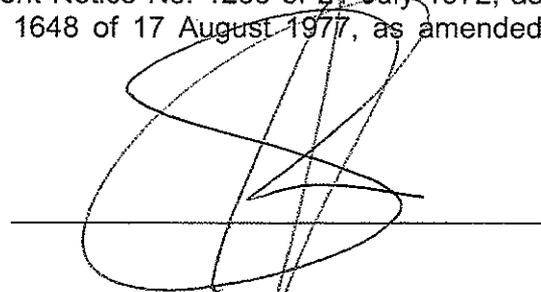
CONCLUSION

268. I therefore respectfully pray for an order in terms of Part A of the notice of motion.



MOMADE AQUIL RAJAHUSSEN

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at 21st B M on this the 6th day of **NOVEMBER 2024**, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.



**COMMISSIONER OF OATHS
RAJESH MAHARAJ**

Attorney
Commissioner of Oaths

RHM ATTORNEYS
Kings Park Medical Center 95
Lion Match Office Park
892 Umgeni Road, DBN
072 915 9920

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

Case number:

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Fifth Respondent

TERRIS AGRIPRO (MAURITIUS)

Sixth Respondent

REMOGGO (MAURITIUS) PCC

Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Eighth Respondent

**ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB
EMIRATES)**

Ninth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED

Tenth Respondent

**MOHINI SINGARI NAIDOO t/a POWERTRANS SALES
AND SERVICE**

Eleventh Respondent

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

Twelfth Respondent

DRAFT ORDER

HAVING READ THE PAPERS FILED OF RECORD AND HEARD COUNSEL FOR THE APPLICANT, THE FIRST TO FOURTH RESPONDENTS, AND THE FIFTH TO NINTH RESPONDENTS, THE FOLLOWING ORDER IS ISSUED:

1. The applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms is condoned, and the applicant is permitted to bring this application as a matter of urgency in terms of Rule 6 (12).
2. The applicant is granted leave to bring this application against the first respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008 (*"the Companies Act"*).
3. Pending the final determination of the relief sought under Part B, the first to ninth respondents are hereby interdicted from proceeding with or in any way progressing or implementing the so-called Vision Asset Transaction in terms of which all the first respondent's assets will be transferred to the fifth respondent, or any other entity nominated by the Vision Parties, following which the first respondent will be delisted and liquidated.
4. The second to fourth respondents (*"the BRPs"*) are directed to publish the following information on the first respondent's business rescue website within 7 business days:
 - 4.1. A statement providing all the information contemplated in sections 150(2)(c), 150(3), and 150(4) of the Companies Act 71 of 2008 in relation to the Vision Asset Transaction;
 - 4.2. A comprehensive description of all the agreements and transactions that have been concluded / are intended to be concluded in terms of the

Vision Asset Transaction, including all the main steps in those transactions;

- 4.3. A statement confirming whether or not the Industrial Development Corporation of South Africa, in its capacity as a post commencement finance creditor of the first respondent, has consented to the Vision Asset Transaction.
5. The fifth to ninth respondents (*“the Vision Parties”*) are directed to provide the following information to the BRPs for publication on the first respondent’s business rescue website within 7 business days:
- 5.1. Copies of all the versions, i.e. the current version as well as all past versions, of the acquisition agreement concluded between the Vision Parties and the Lender Group in terms of which the Vision Parties were / are to acquire the Lender Group’s claims and security in the business rescue of the first respondent (*“the Acquisition Agreement”*);
 - 5.2. Proof of all payment(s) made by the Vision Parties to the Lender Group in terms of the Acquisition Agreement including the amount(s) of such payments;
 - 5.3. Proof that the Lender Group has transferred all its claims and security in the THL business rescue to the Vision Parties, alternatively proof of the nature and extent of such claims and security as have been transferred;
 - 5.4. Confirmation under oath that they have not concluded and will not in future conclude any agreement(s) with the Lender Group in terms of which, whether directly or indirectly, any of the first respondent’s assets

(including any such assets which are intended to be transferred under the Vision Asset Transaction) will be sold upon or after the conclusion of the first respondent's business rescue in order to apply the proceeds of such sale(s) to settle any amount(s) due:

5.4.1. by the Vision Parties to the Lender Group, whether under the Acquisition Agreement or otherwise;

5.4.2. to any other creditor(s) of the first respondent.

6. The applicant is granted leave to supplement its founding affidavit prior to the hearing on Part B.
7. The costs of Part A shall be paid by the first to ninth respondents on scale C, including the costs of two counsel where so employed.

BY ORDER OF COURT

COURT REGISTRAR

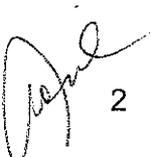
THE PARTIES

1. The applicant is **RGS GROUP HOLDINGS LIMITED** a company duly incorporated in terms of the laws of the Republic of Mauritius with registration number C124230-C2/GBL, having its principal place of business at no 5 President John Kennedy Street, Port Louis, Mauritius.
2. The first respondent is **TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**, a public company duly incorporated in terms of the company laws of the Republic of South Africa, with registration number 1892/000610/06, currently in business rescue, having its principal place of business at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal. I refer to the first respondent below as "**THL**".
3. The second respondent is **TREVOR JOHN MURGATROYD N.O.**, an adult male director of Metis Strategic Advisors (Pty) Ltd which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. Mr Murgatroyd is one of the three duly appointed joint business rescue practitioners of THL.
4. The third respondent is **PETRUS FRANCOIS VAN DEN STEEN N.O.**, an adult male director of Metis Strategic Advisors (Pty) Ltd which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. Mr van den Steen is one of the three duly appointed joint business rescue practitioners of THL.
5. The fourth respondent is **GERHARD CONRAD ALBERTYN N.O.**, an adult male director of Metis Strategic Advisors (Pty) Ltd which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.



Mr Albertyn is one of the three duly appointed joint business rescue practitioners of THL.

6. For ease of reference, I refer to the second to fourth respondents collectively below as “**the BRPs**”.
7. The fifth respondent is **VISION INVESTMENTS 155 (PTY) LTD** (registration number: 2023/178789/07), a private company with limited liability duly incorporated in terms of the company laws of the Republic of South Africa and having its principal place of business at 135 Beethoven Street, Waterkloof Glen, Pretoria.
8. The sixth respondent is **TERRIS AGRIPRO (MAURITIUS)** (registration number 171903GBC), a company duly registered and incorporated in accordance with the laws of the Republic of Mauritius.
9. The seventh respondent is **REMOGGO (MAURITIUS) PCC** (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of the Republic of Mauritius.
10. The eighth respondent is **GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)** (registration number: C192979), a company duly registered and incorporated in accordance with the laws of the Republic of Mauritius.
11. The ninth respondent is **ALMOIZ NA HOLDINGS LTD** (registration number: 67410836), a company registered and incorporated in accordance with the laws of the United Arab Emirates.


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12. For ease of reference, I refer to the fifth to ninth respondents collectively below as "**the Vision Parties**".
13. The tenth respondent is **THE LENDER GROUP** of THL as defined in paragraph 3.1.41 of the adopted business rescue plan being a group of thirteen banks and financial institutions who collectively hold admitted secured claims worth c.R8.5 billion in THL's business rescue. No relief is sought against the Lender Group save in the event of opposition. Should the Lender Group elect not to oppose this application they are requested to file a formal notice to abide the outcome thereof.
14. The eleventh respondent is **MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE** a sole proprietorship having its principal place of business at 14 – 16 Blue Street, Isithebe, Kwa-Zulu Natal ("**Powertrans**").
15. The twelfth respondent is **THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE**. These parties are joined in this application insofar as they are interested in the outcome of these proceedings. No relief is sought against these respondents, save in the event of opposition.

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**ADOPTED AMENDED BUSINESS RESCUE PLAN INCLUDING
AMENDMENTS PROPOSED AND APPROVED AT MEETING OF
CREDITORS ON 11 JANUARY 2024
(VISION TRANSACTIONS)
(MARKED UP VERSION)**

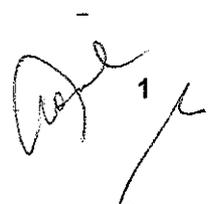
prepared in terms of section 150 of the Companies Act 71 of 2008

in relation to

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

prepared by the Joint Business Rescue Practitioners

**As originally published on 29 November 2023 including amendments
as approved and adopted on 11 January 2024**



CORPORATE INFORMATION AND ADVISOR DETAILS**Company**

Tongaat Hulett Limited

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Preparation of the Independent Liquidation Dividend Estimate

BDO

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Legal Advisors to the Company

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Cox Yeats Attorneys

Restructuring Advisors to the Company

Metis Strategic Advisors

Matuson and Associates

BSM

Tenurey BSM

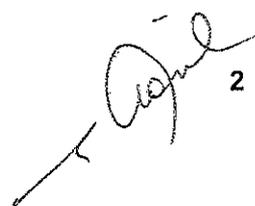
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CHAPTER 1 – INTRODUCTION

1. Structure of the Business Rescue Plan

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

1.1. Chapter 1 – Introduction

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

1.2. Chapter 2 – Proposals

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

1.2.1. Part A – Background

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

1.2.2. Part B – Proposals

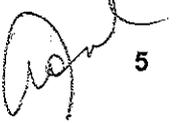
This part describes the Proposals to Affected Persons and the benefits and risks of Adopting the Business Rescue Plan.

1.2.3. Part C – Assumptions and Conditions

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

1.3. Chapter 3 – General

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

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mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

1.4. Chapter 4 – Conclusion and BRPs Certificates

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

2. Executive Summary

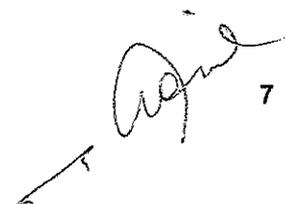
2.1. Capitalised terms and/or expressions used in this Executive Summary shall have the meanings assigned to them below in paragraph 3.

2.2. The BRPs have been advised that the Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The Lender Group and the BRPs have received proof that the substantial cash deposit (referred to above) is held in a bank account in South Africa. Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan. The BRPs are advised by the Vision Parties that know your client ("KYC") and Financial Intelligence Centre Act ("**FICA**") requirements have been complied with. The Vision Transaction does not involve, nor is it dependent on, financing to be provided by the Public Investment Corporation ("**PIC**").

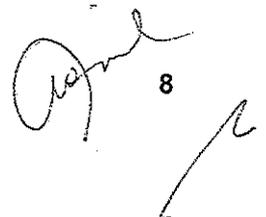
2.3. The key feature of this Business Rescue Plan, pursuant to its Adoption and implementation, is the acquisition by the Vision Parties of the substantial Lender Group Claims (as noted above) and the subsequent conversion by the Vision Parties of a material portion of such Claims into new equity in THL ("**the Vision Transactions**"). This, together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):



- 2.3.1. the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan;
 - 2.3.2. the recapitalisation of the THL balance sheet through the Proposals put forward in this Business Rescue Plan, in particular the conversion by the Vision Parties of a material portion of the former Lender Group Claims into equity; and
 - 2.3.3. the continued listing of THL on the JSE, albeit with current Shareholders becoming minority shareholders and the Vision Parties in aggregate holding the bulk of the listed shares in the Company following the abovementioned debt to equity conversion.
- 2.4. The strategy to be adopted by the BRPs in the execution of this Business Rescue Plan, in summary, is to:
- 2.4.1. implement and complete the Vision Transactions;
 - 2.4.2. continue to run the operations of the THL businesses until completion of the Vision Transactions and the completion of the parallel business rescues of THD, THSSA and Voermol;
 - 2.4.3. secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process;
 - 2.4.4. continue the process of business improvement which, may include some degree of rationalisation of the cost base of the THL operations and head office (which process may include some employee retrenchments);

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- 2.4.5. resolve the current dispute with SASA in relation to the payment obligations owing by THL to SASA arising after commencement of Business Rescue (i.e. from 28 October 2022);
 - 2.4.6. oversee the parallel business rescues of THD, THSSA and Voermol;
 - 2.4.7. engage with and renegotiate to the satisfaction of IDC or any other third-party, and service in the normal course of business, any working capital facility approved and advanced by IDC or any other third party to the Company as PCF (it being recorded that no obligation exists on the part of the IDC to increase or extend its existing PCF advanced to the Company); and
 - 2.4.8. to the extent possible, make payment (in full or in part) in relation to all remaining claims held by the Company's Creditors as contemplated in this Business Rescue Plan. For the avoidance of doubt, where there are insufficient or no funds available for Distribution(s) or other means in respect of any payment against any Claim against the Company, the residual Claim that remains unpaid will become Unenforceable against the Company. This does not apply to the payment arrangement agreed to in relation to SASA nor to the R75m to be made available to Unsecured Creditors.
- 2.5. If approved and successfully implemented as contemplated herein, this Business Rescue Plan will result in:
- 2.5.1. the rescue of the Company (or as an alternative, the business of the Company) which will continue in business – albeit under new ownership;
 - 2.5.2. the avoidance of a major humanitarian and financial catastrophe in the KZN region in general, and in the sugar supply chain in particular as outlined in more detail in paragraph 9.3.5;



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- 2.5.3. the opportunity for new jobs to be created as the business grows under new ownership with Vision Parties as SEPs;
- 2.5.4. the implementation of a partial debt-for-equity swap by the Vision Parties subscribing for new shares in the Company that would result in the Vision Parties collectively owning 97.3% of the total issued share capital of the Company. The consideration for such subscription will be c.R4.1bn based on current balances which will be discharged by a reduction in the former Lender Group Claims against THL (those purchased by the Vision Parties) to c.R3.6bn;
- 2.5.5. in addition to the c.R1.3bn already paid to various critical suppliers (see below), the Vision Parties have agreed to (either by making a loan to THL or otherwise ensuring THL is able to so) THL paying an amount of R75m as a Distribution to Unsecured Creditors, pro-rata to their respective Claims. Such Distribution is to be made subsequent to full implementation of the Vision Transactions;
- 2.5.6. a positive outcome for Unsecured Creditors. In this regard it is noted that in liquidation Unsecured Creditors would be anticipated to receive nil. Equally so – without the abovementioned amount being made available by the Vision Parties – Unsecured Creditors would be anticipated to receive nil in this business rescue;
- 2.5.7. existing Shareholders retaining an interest of 2.7% of the equity in THL with its positively recapitalised balance sheet. In this regard, it is noted that in liquidation shareholders would have been anticipated to receive nil. Equally so, in an alternatively structured transaction (the sale of the assets of THL to the Vision Parties), shareholders would again be anticipated to receive nil. Consequently, this proposal results in positive value accruing to shareholders through the retention of their shareholdings and



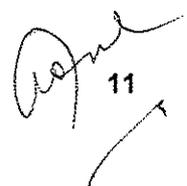
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becoming minority shareholders in the still-listed, post-recapitalisation, Vision Parties-controlled THL;

- 2.5.8. a portion or the entire amount of the IDC PCF Facility is to be secured in a working capital facility which is sufficient to fund the working capital requirements of the Company for at least the duration of the Business Rescue proceedings, and thereafter it would be the goal of the Vision Parties to secure working capital facilities into the future beyond the Adoption and subsequent implementation of this Business Rescue Plan; and
- 2.5.9. THL retaining its listing on the JSE.
- 2.6. Subsequent to the Adoption of this Business Rescue Plan, in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of new THL shares to the Vision Parties to be effected, this Business Rescue Plan contemplates in substitution that the currently proposed Vision Transactions will be switched from transactions contemplating a new issue of THL shares to transactions contemplating the acquisition by the Vision Parties of all of THL's assets and businesses (as going concerns) (see paragraph 6.1.7 below).
- 2.6.1. Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by such a change, once it has sold its assets and businesses (leaving THL as an empty shell), THL will be delisted from the JSE and liquidated, resulting in its shares (those held by existing Shareholders) having nil value.
- 2.7. Once this Business Rescue Plan has been approved, Adopted and implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions as provided for, any residual Creditor Claims will become Unenforceable, other than as specifically provided for in this Business Rescue Plan.


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- 2.8. Affected Persons have been provided with two alternative business rescue plans (including this one) for their consideration and both such business rescue plans will be placed before a meeting of Creditors for approval of the proposed amendments, and if so approved thereafter for the approval and Adoption of one of the business rescue plans. Should either the first or the second business rescue plans not be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes contemplated in section 153(1).
- 2.9. Affected Persons are referred to Annexure **A** of this Business Rescue Plan which sets out the Claims that the BRPs have accepted and/or recognised, as well as the status assigned to Creditors.
- 2.10. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.3.7 and 16 of this Business Rescue Plan.
- 2.11. Creditors each have a Voting Interest equal to the value of their Claims, as accepted and/or recognised by the BRPs as set out in Annexure **A** (see paragraph 5.3.8).
- 2.12. 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.
- 2.13. As this Business Rescue Plan does not alter the rights of the holders of any class of the Company's securities, Shareholders are neither required nor entitled to vote on the plan in order for the plan to be Adopted.
- 2.14. Ad hoc meetings with certain Shareholders and their representatives have taken place since the commencement of business rescue proceedings with the aim of constructively engaging with information sharing and solution



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

- 2.15. Prior to the publication of this Business Rescue Plan the Lender Group held security over all material assets of the Company including, without limitation, a reversionary cession in security in respect of those assets over which IDC has prior ranking security as a PCF Lender; and would, in the absence of the Proposals contemplated in this Business Rescue Plan, likely be the recipients of most, if not all, Distributions arising from liquidation or any alternative proposals.
- 2.16. Upon, and after the Adoption of this Business Rescue Plan, the Vision Parties will acquire the Claims and security of the Lender Group (see paragraph 2.2 above) and will be substituted as the Secured Creditor.
- 2.17. In endeavouring to balance the rights of all stakeholders following the principles set out in section 7(k) of the Companies Act, the BRPs have reached agreement with Vision Parties in terms of which those parties will facilitate a Distribution of R75m in aggregate to the Unsecured Creditors, which Creditors would otherwise realise nil. This concession is coupled with the proposed structure of the Vision Transactions which will result in the Company's Shareholders retaining a 2.7% interest in the recapitalised (and still listed) THL – again noting that without the proposed structure Shareholders would have received nil.
- 2.18. The Vision Parties have accordingly agreed to make available R75m to be paid by THL to Unsecured Creditors following the implementation of the Vision Transactions (as referenced above in paragraph 2.5.5).
- 2.19. A constant factor at play in the execution of this Business Rescue is the enormous social impact that would result from a collapse of, in particular,



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the South African sugar businesses, and thus the need to balance this alongside the interests of the other stakeholders in this Business Rescue. The Vision Transactions have at their heart, the intention of relieving THL of its Financial Distress, maintaining the operations of the underlying businesses of THL, building the businesses of THL into the future with the support of the Vision Parties as SEPs, and thus avoiding the otherwise catastrophic social impact that would result from a collapse of THL.

- 2.20. In assessing this Business Rescue Plan, cognisance should be taken of the extent of payments already made to third-party growers and other critical suppliers with pre-Commencement Date Claims. The amount of pre-Commencement Date Unsecured Creditors' Claims paid equates to c.R1.3bn as of 31 October 2023, of which c.R1.1bn related to payments made to cane growers in the interest of keeping the industry as stable as possible. In the absence of Business Rescue, these amounts would merely have been Concurrent Claims with little to no prospect of recovery.
- 2.21. Finally in assessing this Business Rescue Plan, cognisance should be taken of the importance of the role of IDC in providing significant PCF which has been the oxygen and lifeblood of this rescue process, without which it is probable that the liquidation of THL would have ensued. The BRPs have constantly been aware that working capital for this highly seasonal business is critical to its survival – both during the business rescue proceedings and beyond – and have consequently factored this ongoing PCF/working capital requirement into the decision making and processes embarked on in reaching the point of publication of this Business Rescue Plan. Having said that, the BRPs point out that there is no obligation on the part of IDC to increase or extend the terms of its existing PCF advanced to the Company.
- 2.22. For the benefit of the readers of this Business Rescue Plan, the BRPs have compiled a summary (refer to Annexure L) of their views and understanding of the key challenges currently facing the sugar industry and reflect on the challenges faced by THL before and during the Business Rescue process in this regard.


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3. Interpretation

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

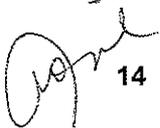
3.1.1. **"Absa Corporate Finance (M&A Advisory)"** means the corporate finance business unit within the Corporate and Investment Banking Division of Absa Bank Limited (registration number: 1986/004794/06), a company registered and incorporated in accordance with the company laws of South Africa;

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

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

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

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

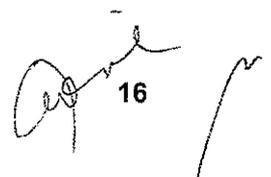

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- 3.1.6. "**AFSA**" means the Arbitration Foundation of Southern Africa;
- 3.1.7. "**Agency Agreements**" means various written legal agreements, entered into by the Company and certain of its subsidiaries, which entail one or more subsidiaries acting as the agent for an undisclosed principal. In all such cases, the ultimate principal is THL, whereby the agent subsidiary conducts(ed) relevant business on behalf of the ultimate principal;
- 3.1.8. "**Albertyn**" means Gerhard Conrad Albertyn a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.9. "**BDO**" means BDO Business Restructuring Proprietary Limited (registration number: 2002/025164/07), a company registered and incorporated in accordance with the company laws of South Africa;
- 3.1.10. "**Board**" means the board of directors of the Company as at the Publication Date as set out in paragraph 5.2;
- 3.1.11. "**BRPs**" means the joint business rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;
- 3.1.12. "**BSM**" means BSM Advisory Proprietary Limited (registration number: 2019/457342/07), a company registered and incorporated in accordance with the company laws of South Africa;
- 3.1.13. "**Business Day**" means any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 3.1.14. "**Business Rescue**" means the business rescue proceedings of the Company conducted in terms of Chapter 6 of the Companies Act;



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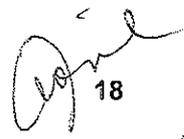
- 3.1.15. "**Business Rescue Costs**" means all relevant costs incurred in the execution of this Business Rescue, including the remuneration, expenses, disbursements and fees of the BRPs and of their Advisors;
- 3.1.16. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time in accordance with the Companies Act, and prepared in accordance with section 150 of the Companies Act;
- 3.1.17. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 3.1.18. "**Claims**" means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages), the cause of action in respect of which arose prior to or after the Commencement Date and/or under section 136(3) of the Companies Act;
- 3.1.19. "**Closing Date**" means the date of fulfilment of the last of the conditions precedent needing to be fulfilled in relation to the definitive agreements to be concluded in relation to the Vision Transactions;
- 3.1.20. "**Commencement Date**" means 27 October 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;
- 3.1.21. "**Company**" or "**THL**" means Tongaat Hulett Limited (registration number: 1892/000610/06)), a public company incorporated in accordance with the laws of South Africa, listed on the JSE, which

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shares are currently suspended from trading, at present under Business Rescue;

- 3.1.22. "**Companies Act**" means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;
- 3.1.23. "**Competition Act**" means the Competition Act 89 of 1998, as amended, including the regulations promulgated thereunder;
- 3.1.24. "**Competition Commission**" means the Competition Commission as constituted in the Competition Act;
- 3.1.25. "**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;
- 3.1.26. "**Creditor**" means any creditor, including without any limitation, PCF Lenders, Disputed Creditors and contingent Creditors, with a monetary Claim against the Company;
- 3.1.27. "**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;
- 3.1.28. "**Disputed Creditor**" means a Creditor with a Disputed Claim;
- 3.1.29. "**Dispute Mechanism**" means the dispute resolution mechanism set out in paragraph 16;
- 3.1.30. "**Distributions**" means a transfer of money or other property of the Company, including its own shares, made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan, including any deemed Distributions as contemplated in this Business Rescue Plan;

- 3.1.31. "**Financially Distressed**" or "**Financial Distress**" shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;
- 3.1.32. "**Gledhow**" means Gledhow Sugar Company Proprietary Limited (in business rescue);
- 3.1.33. "**Gledhow s175 Claim**" means the claim of SASA against THL in respect of the special levy under clause 175 of the SI Agreement in respect of Gledhow in the amount of R97,015,921;
- 3.1.34. "**High Court**" means the High Court of South Africa;
- 3.1.35. "**IDC**" means Industrial Development Corporation of South Africa Limited (registration number 1940/014201/06), a company registered and incorporated in accordance with the laws of South Africa;
- 3.1.36. "**IDC PCF Facility**" means the PCF loan facility provided by the IDC to the Company in an initial principal amount of R1.2bn on or about 23 December 2022, the principal amount of which facility:
- 3.1.36.1. was increased to R1.725bn on or about 28 July 2023;
- 3.1.36.2. was increased to R2.3bn on or about 5 October 2023,
- and the principal amount of which facility may increase to approximately R2.6bn as contemplated by paragraph 5.3.5.7 below;
- 3.1.37. "**IDC Security**" means the first-ranking security cession of bank accounts and trade debtors and encumbrance over all inventories (and any related insurance claims) held by IDC to secure the IDC PCF Facility;


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- 3.1.38. "**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;
- 3.1.39. "**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;
- 3.1.40. "**Kagera Sugar**" or "**Kagera**" means Kagera Sugar Limited (incorporation number 5036), a limited liability company registered and incorporated in accordance with the laws of Tanzania;
- 3.1.41. "**Lender Group**" means the group of lenders to the Company, all of whom are Secured Creditors, including The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division), Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Investment Banking Division, Corporate Solutions), Investec Bank Limited (acting through its Corporate and Institutional Banking division), The Land and Agricultural Development Bank of South Africa, Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance Markets division), Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients), Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division), Sanlam Specialised Finance Proprietary Limited, Momentum Metropolitan Life Limited, Nedbank Limited, and Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);
- 3.1.42. "**LRA**" means the Labour Relations Act 66 of 1995, as amended;
- 3.1.43. "**Management**" means the management team of the Company who have been responsible for managing the day-to-day operations

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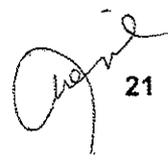
of the Company from the Commencement Date under the supervision and authority of the BRPs;

- 3.1.44. **"Matuson"** means Matuson and Associates Proprietary Limited (registration number 2009/008967/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;
- 3.1.45. **"Meeting"** means the virtual meeting to be held in terms of section 151 of the Companies Act on Wednesday 10 January 2024 at 08:00am for the purpose of considering and if deemed appropriate amending or voting on this Business Rescue Plan;
- 3.1.46. **"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;
- 3.1.47. **"Mills"** means the Company's three operational sugar mills in South Africa, being the mills located in Amatikulu, Felixton and Maidstone;
- 3.1.48. **"Murgatroyd"** means Trevor John Murgatroyd a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.49. **"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;
- 3.1.50. **"PCF Creditor"** means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during the Business Rescue;
- 3.1.51. **"PCF Employee"** means any employee of the Company who rendered services to the Company and is owed any remuneration,

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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;

- 3.1.52. "**PCF Lenders**" means any/all financier(s) advancing PCF to the Company, it being recorded that as at the Publication Date, IDC and GuardRisk are the only PCF Lenders;
- 3.1.53. "**PIC**" means the Public Investment Corporation SOC Limited;
- 3.1.54. "**Proposals**" means the proposals set out in Chapter 2 of this Business Rescue Plan;
- 3.1.55. "**Publication Date**" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being **29 November 2023**;
- 3.1.56. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;
- 3.1.57. "**Refinery**" means the Company's central sugar refinery located in Durban, KwaZulu-Natal;
- 3.1.58. "**Rejection Date**" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;
- 3.1.59. "**RGS**" means RGS Group Holdings Limited (registration number C134230 – C2/GBL) a company registered and incorporated in accordance with the laws of Mauritius;
- 3.1.60. "**SARS**" means the South African Revenue Services;
- 3.1.61. "**SA Sugar**" means the Company's South African sugar operations comprising of the following divisions: Agricultural Land; the Mills;


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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;

3.1.62. "**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;

3.1.63. "**SASEXCOR**" means the S.A. Sugar Export Corporation (Pty) Ltd;

~~3.1.64. "**SASEXCOR Export Proceeds Receivable**" means export proceeds payable by SASEXCOR to THL in an aggregate amount of ZAR828,365,605 the payment of which to THL has been withheld by SASEXCOR on the basis that SASA has alleged that THL has not made payment of its redistribution levies to SASA;~~

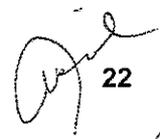
~~3.1.65.~~ 3.1.64. "**Secured Creditor**" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;

~~3.1.66.~~ 3.1.65. "**Securities**" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a company, as defined in the Companies Act;

~~3.1.67.~~ 3.1.66. "**Shareholder**" means a shareholder, as defined in section 1 of the Companies Act, of the Company;

~~3.1.68.~~ 3.1.67. "**South Africa**" means the Republic of South Africa;

~~3.1.69.~~ 3.1.68. "**Strategic Equity Partners**" or "**SEPs**" means potential strategic equity partners/investors in the Company and/or the THL Group and/or the potential acquirer of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique and/or the potential acquirer of SA Sugar only;


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~~3.1.70~~~~3.1.69.~~ **"Substantial Implementation Date"** means the date upon which the BRPs file a notice of substantial implementation of the Business Rescue with the CIPC, which filing will be made in the BRPs' sole and absolute discretion, as envisaged in paragraph 13;

~~3.1.71~~~~3.1.70.~~ **"Sugar Act"** means the Sugar Act, 1978;

~~3.1.72~~~~3.1.71.~~ **"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;

~~3.1.73~~~~3.1.72.~~ **"THA"** means Tongaat Hulett Acucareira de Mozambique, S.A. (registration number 100264501), a company duly incorporated in accordance with the laws of Mozambique;

~~3.1.74~~~~3.1.73.~~ **"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;

~~3.1.75~~~~3.1.74.~~ **"THL Botswana"** means Tongaat Hulett (Botswana) Proprietary Limited (registration number: 5032), a private company with limited liability incorporated in accordance with the laws of Botswana;

~~3.1.76~~~~3.1.75.~~ **"THL Group"** means THL and each of its subsidiaries, joint ventures and associated companies;


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~~3.1.77.~~3.1.76. **"THL Mozambique"** means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Mozambique and operating in accordance with the laws of Mozambique as set out in Annexure C;

~~3.1.78.~~3.1.77. **"THL Zimbabwe"** means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Zimbabwe and operating in accordance with the laws of Zimbabwe as set out in Annexure C;

~~3.1.79.~~3.1.78. **"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;

~~3.1.80.~~3.1.79. **"Trade Unions"** means UASA – The Union ("**UASA**"), The Association of Mineworkers and Construction Union ("**AMCU**") and the Food and Allied Workers Union ("**FAWU**");

~~3.1.81.~~3.1.80. **"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;

~~3.1.82.~~3.1.81. **"Unsecured Creditors"** means all Creditors with Concurrent Claims against the Company;

~~3.1.83.~~3.1.82. **"van den Steen"** means Petrus Francois van den Steen a BRP as contemplated in section 128(1)(d) of the Companies Act;

~~3.1.84.~~3.1.83. **"VAT"** means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;


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~~3.1.85-3.1.84.~~ **"Vision Parties"** means a grouping made up of the following participants: Terris AgriPro (Mauritius) (registration number: 171903 GBC), registered and incorporated in Mauritius; Remoggo (Mauritius) PCC (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of Mauritius; Guma Agri and Food Security Ltd (Mauritius) (registration number: C192979), registered and incorporated in Mauritius; and Almoiz NA Holdings Ltd (registration number: 67410836) registered and incorporated in accordance with the laws of the United Arab Emirates;

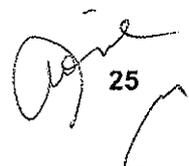
~~3.1.86-3.1.85.~~ **"Vision Transactions"** means the acquisition by the Vision Parties of the substantial Claims and security previously held by the Lender Group and the subsequent conversion by the Vision Parties of a portion of such Claims into new equity in THL;

~~3.1.87-3.1.86.~~ **"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;

~~3.1.88-3.1.87.~~ **"Voting Interest"** means a voting interest as defined by section 128(1)(j) of the Companies Act, calculated on the value of a Creditor's Claim as accepted and/or recognised by the BRP per this Business Rescue Plan;

~~3.1.89-3.1.88.~~ **"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.

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- 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



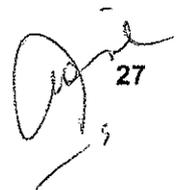
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which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.

- 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

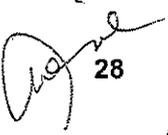
- 4.1. The BRPs in the preparation of this Business Rescue Plan have relied on information obtained from the books and records of the Company, meetings held with relevant persons including the Company's directors, Management, staff, suppliers, clients, Advisors and other service providers of the Company,



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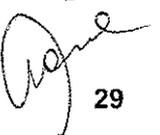
and studies and reports commissioned from various technical and other professional advisors in connection with the affairs of the Company.

- 4.2. Whilst the BRPs have made efforts to ensure the accuracy of the information contained herein, it should be noted that the BRPs investigations have been limited in nature due to:
- 4.2.1. the time constraints placed on the BRPs by the Companies Act and Creditors;
 - 4.2.2. pressure from Affected Persons to affect a reasonably paced rescue;
 - 4.2.3. limited financial and human resources available to the Company; and
 - 4.2.4. the state of affairs of the Company; and
 - 4.2.5. the non-completion of annual financial statement audits as at the date of Publication.
- 4.3. The BRPs have not carried out an audit of the Company's documents and/or records, nor have they had adequate opportunity to independently verify all information provided to them by the Company and/or relevant third parties.
- 4.4. This Business Rescue Plan contains forecast financial information that is not drafted in terms of the JSE Listings Requirements. This disclaimer is provided to clarify the nature and limitations of the information contained in this Business Rescue Plan.
- 4.5. By accessing and reviewing this Business Rescue Plan, you acknowledge and accept the above disclaimer. It is important to exercise caution and diligence when considering the contents of this Business Rescue Plan and to consult with relevant experts and advisors as necessary. The Company disclaims any liability for any loss or damage resulting from the use or reliance on the


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information contained herein. It is important to note the information and forecasted data of this Business Rescue Plan have not been reviewed or audited by the Company's external auditor.

- 4.6. JSE Listings Requirement: The forecast financial information presented in this Business Rescue Plan has been prepared in accordance with section 150 of the Companies Act, but has not been prepared in accordance with the JSE's Listings Requirements. Therefore, it does not meet the specific reporting and disclosure standards set forth by the JSE.
- 4.7. Nothing contained in the Business Rescue Plan shall constitute any form of legal or other advice to any Affected Person, and the BRPs do not make any representations in respect thereof.
- 4.8. The BRPs have not independently assessed the forecast value of THL post the implementation of this Business Rescue Plan beyond satisfying themselves that the Proposals will result in a reasonable prospect of THL being rescued and trading successfully after implementation of the Plan and the Proposals.
- 4.9. Neither the BRPs nor their Advisors shall be responsible for any acts taken by (or omissions arising from) any Affected Persons' reliance on this Business Rescue Plan.
- 4.10. Affected Persons are advised and encouraged to consult with their own independent attorney, accountant, or other professional advisor in respect of this Business Rescue Plan should they so wish or require.



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CHAPTER 2 – BACKGROUND AND PROPOSALS

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is a public company listed on the Johannesburg Stock Exchange and is the parent company (directly or indirectly) of numerous entities. An organogram of the group of entities is contained in Annexure C.

5.2. Directors of the Company:

5.2.1. As at the Publication Date, the executive directors of the Company, according to the CIPC, were Dan Marokane (acting Chief Executive Officer) and Robert Aitken (Chief Financial Officer).

5.3. Company Information:

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

5.3.1. Company Background:

5.3.1.1. The Company is part of the THL Group which is an agri-processing business with a c.130-year history and a

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strong socio-economic legacy in Southern Africa. The THL Group has operations in South Africa, Zimbabwe, Mozambique and Botswana which collectively make up the THL Group.

5.3.1.2. Across Southern Africa, the THL Group's operations are of significant scale geographically, economically, and socially, as set out below:

- the THL Group's production facilities have the capacity to crush 12.7 million tons of sugarcane (5.8 million tons provided by third-party growers) to produce 1.5 million tons of raw sugar, 750 000 tons of refined sugar, 400 000 tons of animal feed and 40 million litres of ethanol; and
- at the peak of the sugar season, the THL Group's operations employ more than 23 000 people, support more than 185 000 employment opportunities and provide a livelihood to more than 21 000 farmers (many of whom are small-scale growers).

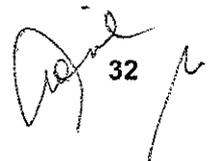
5.3.1.3. In South Africa, the profile of the Company's sugar operation, property business and head office is set out below:

- the Company's operations are located in the KwaZulu-Natal province in the districts of Ethekewini, Zululand, Umkhanyakude, King Cetswayo, and iLembe;
- the Company's trading activities during the 2023 financial year generated revenue of c.R7.8bn;



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- the Company has 5 production facilities with the capacity to crush 5.45 million tons of sugarcane to produce 600 000 tons of raw sugar, 600 000 tons of refined sugar (c.50% of the total South African sugar industry's market requirements) and 400 000 tons of animal feed;
- the Company's ongoing agriculture activities span 11 300 hectares and as such it owns a substantial and valuable land portfolio, of which some 9 600 hectares are considered developable and located within the primary growth corridors of KwaZulu-Natal;
- the Company sources c.91% of its sugarcane from independent farmers, over 15 000 of which are small-scale farmers and co-operatives, and its transformational partnership with Uzinzo Sugar Farming has established the largest black grower in the South African sugar industry;
- a total of c.2 500 people are employed by the Company, with a further c.23 000 indirect employment opportunities created within South Africa. The communities in which the Company operates not only benefit from employment opportunities, but also the Company's socio-economic development initiatives and investments; and
- as identified in an independent assessment of the Company's economic footprint, it has been estimated that arising from the Company's trading



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activities during the 2021 financial year, an additional c.R28.8bn of output was produced within the South African economy, contributing c.R11bn to the GDP of South Africa (based on direct, indirect and induced impacts).

5.3.1.4. The current THL Group structure comprises of c.60 subsidiaries and associated companies, however many of the South African and Zimbabwean companies are dormant or investment holding entities with limited trading activity. A detailed group structure is reflected in Annexure C. From this it will be noted that certain of the legal entities trade as divisions of the Company pursuant to Agency Agreements that were entered into in the 1980's and which are in the process of being unwound.

5.3.1.5. The most relevant of the Agency Agreements are those in relation to THSSA and Voermol. THSSA and Voermol do not carry on any activities for their own benefit that would generate revenue for themselves, and they are wholly financially dependent on the Company. The Company's SA Sugar division is operated by the Company and pursuant to relevant Agency Agreements between the Company and THSSA and Voermol. These Agency Agreements entail:

- **Assets:** Assets of the agents are held nominally as they are those of the principal, being beneficially owned by the Company.
- **Tenure:** The agreements and agency arrangements are generally active for an indefinite period of time and terminable on one month's

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written notice. The Agency Agreements are in the process of being unwound, which will result in the entire SA Sugar division being conducted solely in the Company, as a division, with no further agency relationship and/or representation.

- Disclosure: The existence of the Agency Agreements was previously undisclosed to third parties. However pursuant to a letter dated 20 December 2022 from THSSA and Voermol to all known creditors of those companies, the Agency Agreement arrangements were disclosed.
- Recourse: THSSA has at all times acted as the agent of the Company, on the basis that the Company has been its undisclosed principal. Consequently, all transactions that have historically been concluded by THSSA with any person or entity, have been so concluded by THSSA in its capacity as agent for an undisclosed principal, being the Company. Now that the existence of the Agency Agreement has been disclosed, any dealings with THSSA will be on the basis that it is contracting on behalf of the Company. Furthermore, Voermol has at all times acted as the agent of THSSA (and by virtue of the aforementioned THSSA agency, as the sub agent of the Company), on the basis that THSSA has been its undisclosed principal and the Company the ultimate undisclosed principal. Consequently, all transactions that have historically been concluded by Voermol with any person or entity, have been so concluded by Voermol in its capacity as agent for an undisclosed principal, being THSSA and, by

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virtue of the aforementioned THSSA agency, as the sub agent of the Company.

- In summary: The effect is that all assets, liabilities, income and expenses are those of the Company, as principal. Any claims instituted against THSSA and/or Voermol will result in those entities having a corresponding claim against THL.

5.3.1.6. The extent of the challenges faced by the Company, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial misstatements and historic mismanagement. These factors have resulted in the loss of significant value for the Company's Shareholders and other stakeholders.

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

5.3.2.1. It is the BRPs understanding that the cause of the Company's Financial Distress is set out in the statement, attached hereto as Annexure **B**.

5.3.3. Aims and objectives of Business Rescue:

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

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



- a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
- the development and implementation of a Business Rescue Plan which has as its aim either or both of:
 - the rescue of the Company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; and/or
 - achieving a better return for the Company's Creditors or Shareholders than would result from the immediate liquidation of the Company.

5.3.3.2. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet both of the objectives set out in the immediate paragraphs above.

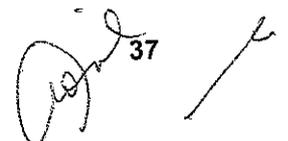
5.3.4. Business Rescue events:

5.3.4.1. The salient dates pertaining to the Business Rescue of the Company are set out below:

BUSINESS RESCUE EVENT	DATE
Board Resolution to commence the Business Rescue	26 October 2022
Commencement date of the Business Rescue	27 October 2022
Appointment of the BRPs	
Notice to Affected Persons of the commencement of Business Rescue and the appointment of the BRPs	27 October 2022
First statutory meeting of employees	3 November 2022

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First statutory meeting of Creditors	8 November 2022
Requests for an extension of the date to publish the Business Rescue Plan	8 November 2022, 24 January 2023, 22 February 2023 29 March 2023, 31 August 2023, 26 October 2023 and 21 November 2023
Confirmation of the extension of the date to publish the Business Rescue Plan	15 November 2022, 27 January 2023, 27 February 2023 31 March 2023, 8 September 2023, 30 October 2023, and 23 November 2023
Meetings in terms of section 143 of the Companies Act to vote on the BRPs' remuneration agreement: Shareholders meeting Creditors meeting	9 December 2022 9 December 2022
Publication of the initial business rescue plan	31 May 2023
Meeting to consider the initial business rescue plan: Outcome – Meeting adjourned and Business Rescue Plan to be amended and meeting to be reconvened at a date no later than 30 September 2023	14 June 2023
Notice to Affected Persons regarding application to the High Court of South Africa, KwaZulu-Natal Local Division, Durban under case number D4472/2023 ("SASA Declarator Application")	15 June 2023
Court hearing dates in relation to the SASA Declarator Application	13 and 14 September 2023
Meeting with Shareholders	26 September 2023
Publication of the amended Business Rescue Plans	29 November 2023
Expiry and repayment of current IDC PCF Facility	30 November 2023
IDC PCF Facility extended to 28 February 2024	13 December 2023
Court hearing relating to various matters concluding with an order adjourning the S151 Meeting <i>sine die</i>	13 December 2023
Distribution of the proposed amendments to the Business	2 January 2024



Rescue Plans previously published on 29 November 2023	
Meeting to consider the amended Business Rescue Plans	10 January 2024

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

5.3.5. Steps taken since the appointment of the BRPs:

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

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

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

5.3.5.4. Operations

- A key priority for the BRPs has been to bring about stability and thereafter continuity to the business and operations of the Company. Shortly after the Commencement Date, the SA Sugar operations were brought to a standstill as there was no free

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cash available to fund operations or to settle Creditors or Employees.

- Shortly thereafter the BRPs secured PCF to fund short-term working capital requirements, which facilitated the restart of the SA Sugar operations. Thereafter the BRPs secured further PCF (as detailed below) to complete the 2022/23 South African sugar season and to carry out the critical off-crop capital expenditure and/or maintenance (“**off-crop programme**”). The SA Sugar business is now funded (for a limited period) and is operating under the BRPs’ guidance. The existing, and only PCF facility secured by the Company, expires and is repayable on or before 30 November 2023.

- Cost Reduction Initiatives:
 - Since their appointment the BRPs have made ongoing efforts to reduce operating costs of the Company wherever possible.
 - It is envisaged that various cost reduction and efficiency improvement initiatives will continue to be implemented throughout the Business Rescue process.
 - See Annexure **D** for a detailed summary of all initiatives implemented and the associated outcomes.

5.3.5.5. Other business rescue proceedings - Included in the operations of the THL Group are wholly owned subsidiaries THSSA, THD and Voermol, each of which is in business rescue. The BRPs are also overseeing each of these inter-related business rescues, with each

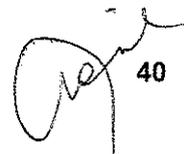
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of these subsidiaries having its own business rescue plan.

5.3.5.6. International operations - THL Zimbabwe, THL Botswana and THL Mozambique are not in business rescue, continue to operate as independent legal entities and are self-funding.

5.3.5.7. PCF Funding - Since their appointment, the BRPs have devoted significant time and resources towards engaging with the Lender Group and thereafter IDC, in order to secure and structure the requisite PCF to support the SA Sugar operations and avoid its collapse into liquidation - initially to restart operations, and latterly to complete the 2022/23 sugar season and carry out the off-crop programme necessary to commence the 2023/24 season. This was secured as follows:

- the raising of initial PCF from the Lender Group in an amount of R900m, which brought about short-term stability in order for the Company to restart the Mills and Refinery operations - which PCF was repaid from the proceeds of the IDC PCF Facility raised from IDC as outlined below;
- the subsequent increase in facilities to R1.2bn in PCF raised from IDC, on a secured basis, which enabled the Company to fund its working capital requirements to the end of June 2023, including its annual off-crop maintenance programme;
- the initial facility raised from the IDC PCF Facility was applied to repay the Lender Group PCF in order

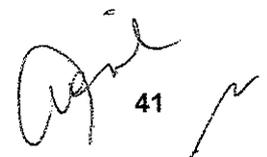
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for the Lender Group to release their security over the bank accounts, inventory and trade receivables (and any related insurance claims), which is now the first-ranking security of the IDC for its PCF Claim;

- the subsequent increasing of facilities to R1.725bn PCF from IDC, on a secured basis, which enabled the Company to fund its working capital requirements to 6 October 2023;
- the subsequent increasing of facilities to R2.3bn PCF from IDC, on a secured basis, which enabled the Company to fund its working capital requirements to 30 November 2023; and
- the facility has been extended to 28 February 2024 subject to, *inter alia*, Adoption of this Business Rescue Plan by 15 January 2024 and the provision of security to cover the security shortfall projected by IDC on its PCF Claim in a form and manner acceptable to IDC.

5.3.5.8. Strategic Equity Partner –

- In February 2023, the BRPs embarked on an accelerated sales process aimed at engaging with potential SEPs interested in the acquisition of or investment in either:
 - 1) THL itself or the whole of the THL Group;
 - 2) all of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique; or
 - 3) the SA Sugar operations.


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- The logic for the abovementioned three acquisition options was premised on alignment with the basis on which the critical PCF funding had been secured. This PCF funding conditionality required that the sugar enterprise of THL in all jurisdictions was maintained as a whole and not disposed of in part, or on a piecemeal basis. SA Sugar was however separately included by the BRPs as an option to enable any such offers to be considered as an alternative to the disposal of the whole – and which would necessarily need to replace the PCF facility as part of such a transaction.
- SEPs were identified through a process referencing previous interested parties and key market participants who demonstrated the following criteria:
 - interest in investing in or acquiring the THL Group as a whole, or the SA Sugar businesses of THL;
 - relevant industry and regional technical expertise and operational ability;
 - balance sheet strength and funding capacity;
 - a plausible business case being presented for the future of the acquired businesses; and
 - valuation of the relevant assets and/or offer price that demonstrated a likely ability to conclude a transaction.
- Whilst a substantial number of potential SEPs were initially considered, a final list of eight potential SEPs that met the criteria (highlighted above) were provided access to conduct a comprehensive due



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diligence. Final offers were received on 15 June 2023.

- After discussions with the Lender Group the preferred SEPs were approached again and provided with an opportunity to improve their offers (both in terms of certainty of price and overall certainty of closing), which culminated in a short listing of two final bidders.
- The BRPs and their advisors, carefully considered the respective SEP bids and analysed a number of qualitative and quantitative factors relating to each SEP's offer. Such considerations included (inter alia) financial, operational, strategic fit, cultural considerations and execution ability.
- After a rigorous process, and after consultation with numerous parties including the Lender Group, on 17 July 2023, Kagera Sugar was identified and confirmed as the preferred bidder by the BRPs and confirmed as the Strategic Equity Partner to be included in the business rescue plan for consideration by Creditors.
- Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. The Vision Parties had made it clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote such Claims in favour of a business rescue plan

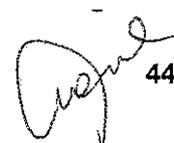


predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.

- The BRPs have been advised that the Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims.

5.3.5.9. Business Rescue Plan Publication

- In terms of section 150(5) of the Companies Act, a business rescue plan was required to be published on or before 1 December 2022 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the Publication Date up to 31 May 2023.
- The BRPs in May 2023 were still reluctant to publish a business rescue plan until such time as they were able to put forward sufficiently detailed Proposals to Affected Persons. However, at that time, the Lender Group declined to agree to any further extensions and insisted that the BRPs put forward the initial business rescue plan. The BRPs therefore published the initial business rescue plan on 31 May 2023, a document which was, due to

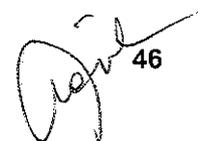
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the lack of clarity at the time, somewhat conditional.

- The meeting to vote on the published business rescue plan was convened and scheduled to take place on 14 June 2023.
- On or about 8 June 2023, an urgent application was brought by RCL Foods & Sugar Milling (Pty) Ltd ("**RCL**") to interdict the meeting to be held on 14 June 2023 to consider and vote on the published business rescue plan.
- At the meeting held on 14 June 2023 motions were proposed, seconded and carried to adjourn the meeting to vote on the business rescue plan to no later than 30 September 2023 and agreed that no less than 30 days' prior written notice of the intended date of the reconvening of the adjourned meeting must be provided to Creditors, as was deemed to be necessary and expedient.
- In addition to the adjournment of the meeting, the BRPs were requested to amend the business rescue plan to incorporate the details of the final transaction accepted and agreed with the selected SEP.
- At a meeting held on 8 September 2023 creditors approved a further adjournment of the meeting to vote on the business rescue plan to no later than 30 November 2023 and that no less than 30 days' prior written notice of the intended date of the adjourned meeting must be provided to Creditors.

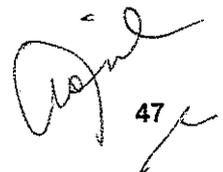

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- Creditors have also approved the consequently required extension of the publication date of the Company's amended business rescue plan to no later than 24 November 2023.
- A notice was issued on 6 October 2023 convening the meeting to vote on the business rescue plan to be held on 7 November 2023. In light of the request to extend the publication date of the Company's amended business rescue plan to no later than 24 November 2023 the notice convening the meeting on 7 November 2023 was withdrawn. The meeting will be held no later than 30 November 2023, in accordance with the agreement of Creditors at the meeting held on 8 September 2023.
- Subsequent to the above, the requisite majority of creditors agreed to an extension of the date for publication of the amended business rescue plan to no later than 24 November 2023 and to the application of the notice periods as detailed in Section 151(1) and (2) of the Companies Act.
- Additional information came to the attention of the BRPs that required further updating of the drafted amended Business Rescue Plan. It was therefore necessary and expedient to extend the publication date for a very short period and therefore also to adjourn the Meeting to a slightly later date, in order to allow creditors sufficient time to consider the contents of the amended Plan. The requisite majority of creditors agreed to an extension of the

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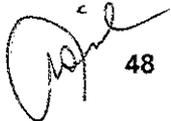
date for publication of the business rescue plan to no later than 29 November 2023 and to the adjournment of the meeting to vote on the business rescue plan to no later than 8 December 2023.

- On 29 November 2023 the BRPs published the business rescue plan.
- On 5 December 2023 urgent applications were brought by RCL and SASA ("**the RCL and SASA Applications**") to interdict the meeting to be held on 8 December 2023 to consider and vote on the published business rescue plans and to set aside the business rescue plans published on 29 November 2023. These applications were opposed by THL, the BRPs, IDC and RGS.
- In terms of an order handed down by Vahed J on 7 December 2023 the RCL and SASA Applications were adjourned to 13 December 2023 and the meeting to vote on the business rescue plans was adjourned from 8 December 2023 to 14 December 2023.
- On 10 December 2023 the BRPs filed a further answering affidavit in respect of the RCL and SASA Applications in terms of which the BRPs confirmed their support for the adjournment of the meeting to vote on the business rescue plans to a date not earlier than 8 January 2024 but not later than 11 January 2024.



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- On 11 December 2023 an urgent application was brought by RGS to direct the BRPS to convene the meeting to vote on the published business rescue plans on 14 December 2023. This application was opposed by THL.
- On 13 December 2023 Vahed J ordered *inter alia* that:
 - the meeting to vote on the business rescue plans convened for 14 December 2023 be adjourned *sine die* and be reconvened on a date not later than 11 January 2023; and
 - the business rescue plans published on 29 November 2023 in their unamended form shall not be voted on.
- The business rescue of THL has been bedevilled by numerous challenges, not least of which has been the ongoing threat and/or institution of legal proceedings aimed at *inter alia* interdicting the business rescue process, made and/or brought at the instance of various groups and/or entities with frequently divergent interests, which if not adequately anticipated and/or fully dealt with will frustrate and possibly altogether halt the business rescue process, with the almost inevitable consequence of liquidation.
- In order to militate against further challenges to the business rescue process, and given the credibility of the two proposals to be presented to Affected persons, the BRPs have therefore elected


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to implement the following methodology to ensure that Creditors have both the opportunity to review the alternative business rescue proposals currently available, and the right to vote on the proposal of their choosing:

- two alternative business rescue plans (this being one of them) were published on the Publication Date;
- amendments will be proposed to both such business rescue plans at the Meeting;
- following adoption of the amendments to each such business rescue plan (and only if such amendments are adopted) it will be presented to and voted on by Creditors with the expectation that one such business rescue plan will be approved and the other will be rejected; and
- should neither of the two amended business rescue plans be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes contemplated in section 153(1) of the Companies Act.

5.3.5.10. SASA

- As at the Commencement Date, THL owed SASA an amount of c.R479m. However, it is noted that SASA has taken the liberty of withholding export proceeds that THL would otherwise be entitled to and unilaterally reduced the amount that SASA


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allegedly ~~is~~ was owed by THL to SASA to c.R59m. This treatment ~~is~~ was not accepted by the BRPs and the BRPs and THL reserves~~d~~ the right to take the necessary steps to recover the unpaid amounts, **unless there is a settlement concluded with SASA.**

- The BRPs suspended THL's obligations to SASA for the duration of Business Rescue. The unpaid amount that has accrued since the Commencement Date amounts to c.R1.1bn. With effect from 1 April 2023, subject to availability of funding, THL recommenced its payment obligations to SASA.
- Various industry participants were of the view that the BRPs did not have the right to suspend the THL obligations to SASA and the matter was referred to the Sugar Industry Appeals Tribunal ("**SI Tribunal**"). The BRPs were of the view that the SI Tribunal does not have jurisdiction to make a ruling on matters related to the Companies Act (i.e. section 136 thereof). As a result, THL and its BRPs brought an application ("**the Declarator Application**") in the High Court of South Africa, KwaZulu-Natal Local Division, Durban ("**the High Court**") under case number D4472/2023, seeking the following orders:
 - declaring that the BRPs are empowered to suspend, for the duration of the business rescue proceedings, any obligation of THL which arises under the Sugar Industry Agreement, 2000 ("**the SI Agreement**");

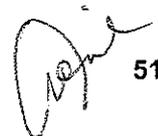
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alternatively, declaring that the BRPs are empowered to suspend, for the duration of the business rescue proceedings any redistribution payment, and related levies and interest that become due by THL, and which would otherwise become due during the business rescue proceedings. The BRPs seek this declaration in respect of their powers of suspension of a company's obligations under section 136(2)(a)(i) of the Companies Act; or

- alternatively to the preceding paragraphs, and in the event that the Court finds that the obligations under the SI Agreement are not amenable to suspension:

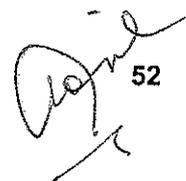
- o declaring section 136(2)(a)(i) of the Companies Act unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and
- o reading in the words "or regulatory regime" after the word "agreement" in section 136(2)(a)(i) of the Companies Act.

- THL's payment obligations in terms of the SI Agreement referred to above include substantial and onerous levy and redistribution payments to SASA charged since the Commencement Date in excess of R1.1bn ("**the SASA Amounts**"). The provisions of the SI Agreement entail, inter alia, that THL as an over-performing miller is obliged to pay a substantial proportion of its refined white sugar proceeds over to SASA for redistribution to

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other competitor millers who have sold less than their production share (i.e. under-performing sugar millers), despite such payments not being related to the commercial realities of the cost of such production.

- In order to temporarily insulate THL from these onerous obligations that would prevent it from being rescued, during February 2023 the BRPs suspended all of THL's payments obligations to SASA arising under the SI Agreement for the duration of the business rescue proceedings in terms of section 136(2) of the Companies Act. The BRPs did so having taken legal advice, including the advice of senior counsel.
- With the assistance of the post-commencement financiers, mainly the IDC (with the BRPs gratitude), THL has, since April 2023 recommenced payment of SASA obligations and an amount of c.R771m (as at 31 October) has been paid in settlement of amounts owing to SASA in respect of local market redistribution charges and levies that have arisen since 1 April 2023. The SASA Amounts charged between 28 October 2022 and 31 March 2023 have not been discharged and will be treated as set out in clause 6.1.6.1 below. The amounts owed to SASA as at the commencement of business rescue on 27 October 2022 amounting to approximately c.R420m, increased by levies in an amount of c.R59m, leaving a total amount of c.R479m, which has similarly not been discharged.

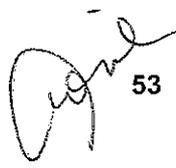


- In a letter dated June 2023, ~~t~~The BRPs have agreed with SASA that, without detracting from THL's and/or the BRPs' assertions in the SASA Declarator Application and subject to the continued availability of funding acceptable to THL, THL has and will make payment of all redistribution ("**LMR**") levies due to SASA with effect from 1 April 2023.

- In the letter dated June 2023, SASA and THL have agreed that the payments will be made on condition that:
 - the payments made by THL will only be applied towards the LMR and Levies obligations that have arisen or will arise after 1 April 2023 and will not be applied to any of the amounts which SASA asserts are due, owing and payable in respect of the period prior to 1 April 2023; and

 - SASA will comply with its obligations with effect from 1 April 2023 and will not withhold any proceeds including future export and export carry-over payments (2023/2024 season and onwards) that THL may become entitled to from 1 April 2023. Those proceeds will be paid to THL by SASA as and when they fall due for payment.

- The above agreement is without prejudice to and in no way detracts from the rights of either SASA or THL relating to the SASA Declarator Application.


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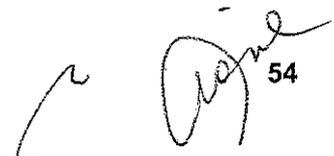
- On 29 November 2023, the Declaratory Application was dismissed with costs. The Declaratory Proceedings Judgement in respect of such order was handed down on 4 December 2023. THL and the BRPs have filed their leave to appeal the Declaratory Proceedings Judgement.

5.3.5.11. Settlement of Litigation Matters:

- In anticipation of the commencement of a mediation process, the Company and Deloitte & Touche South Africa ("**Deloitte**") concluded a settlement agreement in February 2023. The settlement related to claims which the Company had asserted against Deloitte which arose from and relate to the appointment of Deloitte as auditor of the Company for the financial years ended 31 March 2012 to 31 March 2018 (both inclusive). Deloitte paid an amount of R260m to the Company without admission of liability. The BRPs, having taken legal advice in this regard, were of the considered opinion that an expeditious settlement on these terms was in the best interests of the Company.

5.3.5.12. Growers

- Growers and grower representative boards have been engaged on a regular basis at the various sugar mills with the aim of fielding questions, dealing with uncertainties and to keep them updated. All cane payments pre- and post-commencement of business rescue proceedings have been honoured to date in an effort to shield

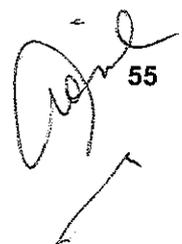


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the growers from economic hardship. Payments made to the growers since the commencement of business rescue proceedings total R4.7bn (at 31 October 2023). Grower support and engagements have been robust and productive from both the view of the BRPs and that of the growers. Both the SACGA and SAFDA have also been engaged formally and informally in an effort to keep lines of communication open.

5.3.5.13. Employees

- Employees have continued to be employed by the Company on the same terms and conditions as before the Commencement Date.
- The first statutory meeting of employees, in terms of section 148 of the Companies Act, was convened in person and virtually on 8 November 2022. Thereafter, an employees' committee was formed by employee representatives who volunteered or who were nominated by their colleagues to represent them on the committee. To date, the BRPs have held numerous virtual meetings with the employees' committee to discuss the Business Rescue of the Company, the most recent of which was held on 12 October 2023.
- The remaining executive directors and members of the THL Group executive committee of the Company have continued in the employ of the Company and have worked with and will continue to work with the BRPs while they remain in the employ of the Company. Mr Gavin Hudson and Mr



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Simon Harvey resigned with effect 28 February 2023.

5.3.5.14. Creditors

- The first meeting of Creditors, as contemplated in section 147 of the Companies Act, was convened virtually on 8 November 2022.
- At the first statutory meeting of Creditors, the BRPs advised Creditors of the right to form a Creditors' committee. A Creditors' committee has since been formed with Mr Hans Klopper having been appointed by the Creditors as the chairman of the committee. The BRPs have agreed that the Company is prepared to remunerate the chairperson on the basis of time spent solely in such role. The chairperson is also an advisor to one of the Creditors, which Creditor is liable for the costs related to time spent by Mr Klopper in the fulfilment of his services to that Creditor.
- The first Creditors' committee meeting was convened virtually on 24 November 2022 and numerous subsequent Creditors' committee meetings have been held, the most recent of which was held on 12 October 2023.

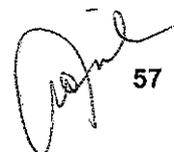
5.3.5.15. Consultations – The BRPs have consulted with various Affected Persons relating to the developments within the Business Rescue and the development of the Business Rescue Plan, in addition to the publishing of regular notices and/or status reports to Affected Persons. The BRPs have consulted and engaged with a



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number of key Shareholders (representing in excess of 30% of the shareholding in THL) during the Company's Business Rescue. In addition to this, after an appropriate SENS announcement a general update shareholders meeting was held virtually on 26th September 2023.

- 5.3.5.16. Claims Reconciliation – The BRPs have received Claims from numerous Affected Persons. A verification process has been undertaken to reconcile the Claims received with the amounts reflected in the records of the Company. For the avoidance of doubt, the BRPs will rely on the records of the Company unless proven otherwise, per paragraph 5.3.7 and 16. Further details relating to Claims are also set out in paragraph 5.3.7, read with Annexure **A**.
- 5.3.5.17. Contracts – None of the Company's obligations have so far been cancelled during Business Rescue, however the BRPs reserve the right to do so. The BRPs have exercised the right to suspend certain obligations and also reserve the rights to suspend other such obligations at the appropriate time in accordance with section 136 of the Companies Act.
- 5.3.5.18. Cash Management – The BRPs continue to manage and monitor the liquidity, cash flow and financial position of the Company, control payments and enforce general controls.
- 5.3.5.19. In-country engagements – Focussed stakeholder engagements were held in both Zimbabwe and Mozambique to ensure a common understanding of the reasons why the business in South Africa was placed

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under business rescue, the implications of business rescue and the envisaged path to be travelled towards finding a rescue solution. The engagements were targeted at senior managers in the business, in-country independent board members, industry regulators, industry association bodies, minority shareholders in Mozambique and relevant government ministries in both countries. In Zimbabwe, the head of state has been kept updated through in-person briefings on the progress of the business rescue by the local Chairman and interim THL CEO. Further engagements by the BRPs will be arranged when required. The engagements are continuous where key milestones in the business rescue process trigger a focussed stakeholder management follow up with either written or in person communication as may be deemed appropriate.

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

5.3.6.1. The below summary of the material assets of the Company is the pre-Commencement Date **book values** of the Company's assets (not Group consolidated) as at 31 October 2022, the nearest practicable date to the Commencement Date, as extracted from the accounting records of the Company.

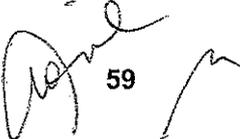
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MATERIAL ASSET LISTING		R'm
ASSETS		5 897
NON-CURRENT ASSETS		2 638
LAND AND BUILDINGS		331
PLANT AND MACHINERY		552
VEHICLES		23
FURNITURE AND OFFICE EQUIPMENT		9
COMPUTERS		2
OTHER		164
RIGHT-OF-USE ASSETS		7
BIOLOGICAL ASSETS		145
INTANGIBLE ASSETS		82
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS		1 164
AMOUNTS OWING FROM GROUP COMPANIES		44
OTHER NON-CURRENT ASSETS		115
CURRENT ASSETS		3 259
INVENTORIES		1 876
BIOLOGICAL ASSETS		127
AMOUNTS OWING FROM GROUP COMPANIES		273
TRADE AND OTHER RECEIVABLES		639
CASH AND CASH EQUIVALENTS		344

NOTES

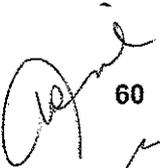
- 1) INTANGIBLE ASSETS:
 - (i) Software = R50,9m
 - (ii) Cane Supply Agreements = R63,3m
 - (iii) Capital WIP (Software) = R8,5m
- 2) OTHER NON-CURRENT ASSETS:
 - (i) Pension Fund ESA asset = R50,4m
 - (ii) NCR Lease Incentive = R26,6m
 - (iii) Unzinzo Lease Incentive = R38,1m

- 5.3.6.2. The gross (i.e. before costs) realisable value of the assets as determined by BDO in the Liquidation Estimated Outcome Statement amount to c.R5.1bn.
- 5.3.6.3. Movable assets, bank account monies, insurances, intellectual property rights, shares in subsidiaries, investments, claims, trade receivables, group claims, property disposal proceeds, debt reduction proceeds and properties were all encumbered and secured in favour of the Lender Group, save for IDC Security.
- 5.3.6.4. The Lender Group have a reversionary cession in favour of the Lender Group of all IDC Security.

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5.3.6.5. By way of summary, the Lender Group hold the following security:

- Cession in security of:
 - all shares in and claims against THL Zimbabwe, THL Botswana, THL Mozambique and/or all other investments (including, without limitation, all shares and claims against all subsidiaries of the Company);
 - all claims of whatsoever nature (excluding trade receivables and any related insurance claims, which are the subject of IDC Security, but subject to the Lender Group's reversionary security cession) and/or recoveries related thereto and/or proceeds from sale transactions;
 - all bank accounts and all monies standing to the credit thereof from time to time (excluding those bank accounts which are subject to IDC Security, but subject to the Lender Group's reversionary security cession);
 - all intellectual property rights;
 - all insurances and claims payable in connection therewith (excluding those insurances which are subject to IDC Security, but subject to the Lender Group's reversionary security cession);
 - rights under all property disposal and other debt reduction transactions;

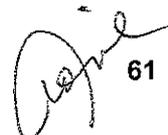

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- general notarial bonds over all movable assets (which was perfected during November 2022 via an application to Court and with the BRPs consent, which was subsequently made an order of Court on or about 17 May 2023);
- mortgage bonds over immovable properties (including the Agricultural Land) registered in the relevant Deeds Office/s set out in Annexure **E** for ease of reference; and
- cross guarantees and indemnities provided to THL are summarised below:

No.	Name of Original Guarantor	Jurisdiction of Incorporation	Registration Number
1	Tongaat Hulett Developments (Pty) Ltd	South Africa	1981/012378/07
2	Voermol Feeds (Pty) Ltd	South Africa	1936/007892/07
3	Tongaat Hulett Sugar South Africa Ltd	South Africa	1965/000565/06
4	Tongaat Hulett Estates (Pty) Ltd	South Africa	1967/006009/07
5	The Natal Estates Limited	South Africa	1902/000899/06
6	Ohlanga Development Company (Pty) Ltd	South Africa	1968/009161/07

5.3.6.6. Cash balances, inventories and trade and other receivables are/were encumbered, with the consent of the Lender Group, in favour of the IDC, as security for the PCF provided by the IDC to the Company.

5.3.6.7. For completeness the table below shows the full summary balance sheet of the **Company (not consolidated)** as at 31 October 2022, the nearest practicable date to the Commencement Date.

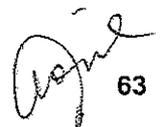
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THL BALANCE SHEET AT 31 OCTOBER 2022		R'm
ASSETS		5 897
NON CURRENT ASSETS		2 638
PROPERTY PLANT AND EQUIPMENT		1 227
RIGHT-OF-USE ASSETS		7
INTANGIBLE ASSETS		82
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS		1 164
AMOUNTS OWING FROM GROUP COMPANIES		44
OTHER NON-CURRENT ASSETS		115
CURRENT ASSETS		3 259
INVENTORIES		1 876
BIOLOGICAL ASSETS		127
AMOUNTS OWING FROM GROUP COMPANIES		273
TRADE AND OTHER RECEIVABLES		639
CASH AND CASH EQUIVALENTS		344
EQUITY & LIABILITIES		5 897
CAPITAL & RESERVES		4 184
SHARE CAPITAL AND PREMIUM		1 679
ACCUMULATED LOSSES	-	5 866
OTHER RESERVES		3
LIABILITIES		10 080
NON CURRENT LIABILITIES		601
AMOUNTS OWING TO GROUP COMPANIES		220
POST-RETIREMENT BENEFIT OBLIGATIONS		357
GOVERNMENT GRANTS		19
LEASE LIABILITIES		4
CURRENT LIABILITIES		9 479
BORROWINGS		6 969
TRADE AND OTHER PAYABLES		2 488
GOVERNMENT GRANTS		20
LEASE LIABILITIES		3

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

- 5.3.7.1. The BRPs will continue to accept the Company's records in respect of any Creditor as being correct, unless and until the relevant Creditor proves otherwise to the satisfaction of the BRPs, or through the Dispute Mechanism process as set out in paragraph 16 below.
- 5.3.7.2. Alleged Claims that are not reflected in Annexure **A** of this Business Rescue Plan will be regarded as Disputed Claims, and Disputed Creditors may be allowed a Voting Interest at the Meeting if so determined by the BRPs in their sole discretion. Any such allowance by the BRPs shall be without prejudice to the Company's rights to continue to dispute the Disputed Claim and will be further dealt with in accordance with the Dispute Mechanism contemplated in paragraph 16.
- 5.3.7.3. The Claims that the BRPs have accepted, in whole or in part, are set out Annexure **A**. A summary of the various classes of Creditors of the Company as at the Commencement Date, updated for subsequent movements/repayments and PCF advanced, is reflected in the table hereunder:


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**Table 2: Summary of the Various Classes of Creditors of the Company
(updated as at 31 October 2023)**

CREDITOR TYPE / DESCRIPTION	ACCEPTED/PROVEN CLAIM AMOUNT
SECURED CREDITORS	8 045 562 161
Lender Group Facilities	7 708 147 777
Lender Group Bilateral Arrangements	284 946 678
Other	52 467 707
PCF CREDITORS	2 152 647 811
IDC Facilities - Secured PCF facility	2 118 858 799
Guardrisk Insurance PCF facility	33 789 012
PREFERENT CREDITORS	22 470 000
Preferent creditors (<i>N/A in business rescue</i>)	-
Preferent employees: Post-retirement medical aid liability for current employees	12 596 000
Preferent employees: Post-retirement gratuity for current employees	9 874 000
SASA CLAIMS	1 601 365 245
SASA pre-BR	479 936 395
SASA post-BR	1 121 428 850
UNSECURED CREDITORS	989 268 897
Trade Creditors *	520 385 641
Post-retirement medical aid liability for past/retired employees	326 449 000
Employee ex-gratia payments (past employees)	1 706 587
Other Provisions	8 073 891
Accrual for Leave pay	56 057 051
Accrual for Trade Payables	12 258 528
Other Accruals	14 122 387
SARS (potential VAT pre-BR clawback in terms of s22(3) of the VAT Act)	50 215 813
NON-INDEPENDENT UNSECURED CREDITORS	248 077 086
Inter-Company Loans	247 329 051
Intercompany BR claims (Agency Agreement)	
Voermol:	748 036
THSSA:	-
TOTAL	13 059 391 201

5.3.7.4. All Creditors who believe that they have a Claim against the Company are referred to Annexure **A** and should treat Annexure **A** as the BRPs' notification of the Claims (including the quantum thereof) that have been accepted by the BRPs for purpose of the Business Rescue and voting on the Business Rescue Plan. If any Creditor is in disagreement with the information provided in Annexure **A** (being a Disputed Creditor), such Disputed Creditor should utilise the Dispute Mechanism set out in paragraph 16.

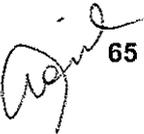
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5.3.7.5. Following the Adoption and implementation of this Business Rescue Plan, any remaining Claims of Creditors of the Company will become Unenforceable, other than as provided for in this Business Rescue Plan.

5.3.8. **Voting interests and voting by proxy:**

5.3.8.1. Voting Interests

- In accordance with section 145(4) of the Companies Act, a Creditor is entitled to vote on the Adoption of the Business Rescue Plan, as follows –
 - a Secured Creditor and/or Unsecured Creditor has a Voting Interest equal to the value of the amount owed to that Creditor by the Company; and
 - an Unsecured Creditor who would be subordinated in a liquidation has a Voting Interest, as independently and expertly appraised and valued at the request of the BRPs, equal to the amount, if any, that the Unsecured Creditor could reasonably expect to receive on a liquidation of the Company as set out in section 145(4)(b) of the Companies Act.
- Creditors are advised that a recent judgement handed down by Wilson J in the High Court, Johannesburg in the matter of Wescoal Mining stated that PCF creditors did not have a vote in business rescue proceedings. Subsequent to the judgment in the Wescoal Mining case, a judgment, contradicting that judgment, was handed down by

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Norman J, sitting in the Eastern Cape High Court, in the case of Pruta Securities (Jersey) Limited v Roper N.O and Others, in which that court held that a PCF lender is a creditor for purposes of chapter 6 of the Companies Act. The BRPs are advised that the judgement in the Wescoal Mining case is in the process of being appealed and, as such the effect of the judgement has been suspended pending the outcome of the appeal. For the time being, the BRPs will afford IDC the right to vote its PCF claim at the proposed Section 151 Meeting until such time as there is a binding judgement to the contrary.

- It is recorded that there are subordinated non-independent Creditors in the total amount of R89m and that the value ascribed to those subordinated non-independent Creditors in line with the independent appraisal is nil. A notice concerning subordinated non-independent Creditors' Voting Interests was circulated on 3 March 2023.

5.3.8.2. Voting

- All Creditors will have a Voting Interest as set out in Annexure **A** in respect of any vote conducted at the Meeting, subject to the BRPs' discretion contemplated in paragraph 5.3.7.2 and directly below.
- Disputed Creditors may be allowed a Voting Interest at the Meeting as may be determined by the BRPs in their sole discretion and any such determination shall be without prejudice to the

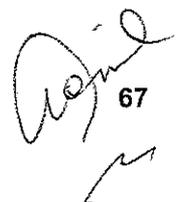
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Company's rights to continue to dispute the Disputed Claim.

- Disputed Creditors are invited to seek an amendment to their Voting Interest (relative to Annexure **A**) up to 24 hours before the Meeting. Any BRP agreement to amend a Disputed Creditor's Voting Interest shall not be construed as an acceptance of the existence or quantum of such Claim, as such determination will be made solely for the purposes of determining that Disputed Creditor's Voting Interest at the Meeting. Unless the BRPs specifically advise a Disputed Creditor otherwise, Disputed Creditors will still be required to follow the Dispute Mechanism set out in paragraph 16 below.

5.3.8.3. Independent Creditors

- In accordance with sections 145(5)(a) and 145(5)(c) of the Companies Act, the BRPs are required to determine whether or not a Creditor is an Independent Creditor for purposes of the Business Rescue.
- For purposes of this Business Rescue Plan, the BRPs have determined that all Creditors with accepted and/or recognised Claims are Independent Creditors and will be counted as such for purposes of any votes cast at the Meeting to approve this Business Rescue Plan.

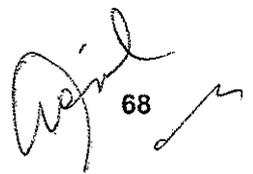

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5.3.8.4. Shareholders

- In accordance with section 146(d) of the Companies Act, a Shareholder is entitled to vote on the Business Rescue Plan if it alters the rights associated with the class of Securities held by that Shareholder.
- This Business Rescue Plan contemplates (inter alia) the issue of new shares to the Vision Parties. Such issue will not, however, alter the rights associated with the class of Securities held by Shareholders. Accordingly, Shareholders are not required nor entitled to vote on the Business Rescue Plan in terms of section 152(3)(c) of the Companies Act.
 - To the extent required, Shareholders will, during the implementation of this Business Rescue Plan, be invited to vote (*inter alia*) on the issue of shares in relation to the debt to equity conversion in terms of section 41(3) of the Companies Act.

5.3.8.5. Vote by Proxy

- Voting by proxy for the Meeting is permitted. A proxy form for Creditors voting on this Business Rescue Plan at the Meeting is enclosed as Annexure F.
- Creditors should carefully note the different proxies to be used for:

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- (i) voting on this Business Rescue Plan at the Meeting (which proxy is enclosed as Annexure **F** to this Business Rescue Plan); and
 - (ii) voting for the alternative business rescue plan at the Meeting (which proxy will be enclosed as an annexure in that business rescue plan).
- Notwithstanding these forms, the BRPs have the discretion to accept any proxy submitted, acceptable to the BRPs, no matter its form.
 - Proxy forms must include an appropriate resolution (for a juristic entity or trust) or power of attorney (for an individual) giving such representative the authority to attend and vote at the meeting on behalf of the juristic person, trust or individual.
 - Affected Persons who are voting by proxy are reasonably required to lodge each or any of their proxy forms for the vote on the business rescue plan at the Section 151 Meeting, by no later than **17h00 on Monday 8 January 2024** if delivered by hand or if by email, by no later than **17h00 on Tuesday, 9 January 2024**.

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

- 5.3.9.1. The BRPs engaged BDO as an independent expert to determine the probable dividend that Creditors and Shareholders would likely receive if, instead of being


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placed into Business Rescue, the Company was placed in liquidation as at the Commencement Date.

5.3.9.2. From the **Table 3** below the following is noted:

- The cash, inventories and debtors, previously security assets held in favour of the Lender Group, are instead now security held by IDC as the PCF Lender. The Lender Group has security over other movable assets, immovable assets and investments which in aggregate (based on the BDO estimates below) equate to a gross amount of c.R3.095bn.

5.3.9.3. A summary of the BDO estimated liquidation realisations, costs and probable Distribution to Creditors per Creditor class, is reflected in Table 3 below:

Table 3: Probable Liquidation Dividend per Class of Creditor/Shareholder (in the event that the Company were to have been placed in liquidation as at the Commencement Date)

	<i>c/R</i>	<i>R'm</i>
Gross proceeds from the realisation of assets by a liquidator		5,080
Movable Assets		473
Inventory		1,387
Immovable Assets		433
Investments		2,189
Cash		437
Debtors		163
Less expenses incurred by liquidator during liquidation process		1,100


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Net proceeds after expenses available for distribution to creditors		3,980
Order of preference – Application of the net proceeds of the realisation of assets		
1 st payment by law – Secured Creditors	55,02	3,980
2 nd payment by law – Statutory preferent creditors	0,00	0
Available for distribution to Unsecured Creditors	0,00	0

Note: As the net proceeds available for distribution to Creditors in liquidation would be insufficient to enable a full recovery for Creditors, **Shareholders would not be entitled to a surplus distribution on liquidation.**

- 5.3.9.4. If an Affected Person requires details relating to the Probable Liquidation Dividend Estimate calculation, such Affected Person is invited to contact the BRPs using the details set out in paragraph 17.1.2.
- 5.3.9.5. BDO requires that any Creditor requesting a copy of the Probable Liquidation Dividend Estimate report sign a hold-harmless letter in favour of BDO.
- 5.3.9.6. The following disclaimers are attached to the BDO Probable Liquidation Dividend Estimate:
- *"Any person who is not an addressee of this report or who has not signed and returned to BDO either a "no-reliance" or an "assumption of duty" release letter is not authorised to have access to this report. We do not accept or assume responsibility to any unauthorised person to whom this report is shown or any other person who may otherwise gain access to it.*

- *"If any unauthorised person chooses to rely on the contents of this report, they do so entirely at their own risk. Should any unauthorised person obtain access to and read this report, such person accepts and agrees that:*
 - *This report was prepared in accordance with instructions provided by the BRPs exclusively for the sole benefit and use of the BRPs and inclusion in their BR Plan;*
 - *BDO, its partners, employees and agents neither owe, nor accept any duty or responsibility to the reader, whether in contract or otherwise (including without limitation, negligence and breach of statutory duty), or howsoever otherwise arising. We make no representations regarding this report or the accuracy of the contents including that the information has not changed since the date of this report;*
 - *We shall not be liable in respect of any loss, damage or expense of whatsoever nature which results from any use the reader may choose to make of this report, or any reliance the reader may seek to place on it, or which is otherwise consequent upon access to this report by the reader;*
 - *The report is not to be referred to or quoted, in whole or in part, in any other document, other than the BR Plan or made available to any third party, without BDO's express written consent."*



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5.3.10. List of the holders of the Company's issued Securities (Section 150(2)(a)(iv)):

5.3.10.1. Please refer to Annexure **H** for the full securities listing as at 3 November 2023.

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

5.3.11.1. The regulations to the Companies Act prescribe an hourly tariff (inclusive of VAT) for the payment of the fees of a BRP.

5.3.11.2. The Company is classified, in terms of regulation 26(2) read with regulation 127(2)(b)(i) of the Companies Act, as a large company in that it has a public interest score greater than 500 points.

5.3.11.3. The Company's public interest score at the Commencement Date was 33,752 points.

5.3.11.4. Accordingly, in terms of regulation 127(5), the Company required the appointment of at least one senior BRP.

5.3.11.5. The BRPs' remuneration agreement was approved in terms of section 143 of the Companies Act and is final and binding on the Company. It was supported by:

- 100% of the Shareholders present and voting at the meeting convened in terms of section 143(3)(b) on 9 December 2022; and



- 99% of the holders of Creditors' Voting Interests present and voting at a meeting that was called in accordance with section 143(3)(a) on 9 December 2022.

5.3.11.6. A copy of the remuneration agreement is enclosed with Annexure **I**.

5.3.12. **Other Advisors**

5.3.12.1. Metis has an advisory mandate with the Company paid on hourly rates for services rendered, and in addition has an agreed success fee arrangement with the Lender Group linked to the repayment of PCF. These latter fees were recovered from proceeds received and attributable to the Lender Group from the realisation of their security (thus did not impact on other classes of Creditors).

5.3.12.2. Matuson has an advisory mandate with the Company linked to the sale of THL Zimbabwe and THL Mozambique, with such fees being recovered, with the Lender Group's approval, from proceeds received from the sale of assets over which the Lender Group holds security (thus not impacting other classes of Creditors). P Marsden of Matuson was a non-executive director of the Company and previously held the position of chief restructuring officer. P Marsden resigned as director on 8 September 2023.

5.3.12.3. Absa Corporate Finance (M&A Advisory) has an advisory mandate with the Company relating to the sale of THL Zimbabwe, THL Mozambique and THL Botswana. Should Absa Corporate Finance (M&A


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Advisory) not be required to run a sale process, they are entitled to a break fee, which has been approved by the Lender Group and which will be paid from the proceeds of the realisation of the Lender Group security (thus not impacting other classes of Creditors).

5.3.12.4. BSM has an advisory mandate with the Company paid on hourly rates for services rendered. In addition BSM has an agreed success fee arrangement linked to the outcome of Project BSM. Such costs are treated as Business Rescue Costs and will be deducted from the proceeds of relevant sales received by THL and/or from other facilities.

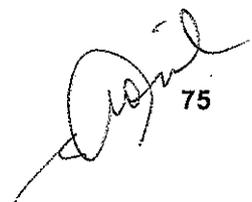
5.3.12.5. All other Advisors have advisory mandates with the Company paid on hourly rates for services rendered. Such costs are treated as Business Rescue Costs.

5.3.13. Proposals made informally by Creditors (Section 150(2)(a)(vi)) and other parties:

5.3.13.1. In terms of section 150(2)(a)(vi) of the Companies Act, the BRPs are required to disclose proposals made by a Creditor or Creditors of the Company with regard to this Business Rescue Plan.

5.3.13.2. Vision Parties' Proposals:

- This Business Rescue Plan is constructed around the Vision Parties' Proposals. Please refer to paragraph 6.1.5 for details of the Vision Transactions.



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5.3.13.3. RGS Proposals:

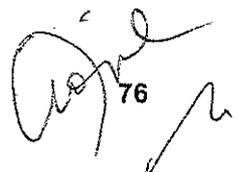
- Subsequent to acquiring a claim in order to be a Creditor, RGS provided the "**RGS Proposals**" to the BRPs.
- The key elements of the RGS Proposal are provided for the benefit of readers in a separate business rescue plan to be published simultaneously with this Business Rescue Plan.

5.3.13.4. Kagera Proposal:

- Subsequent to being selected in the SEP process, Kagera provided the "**Kagera Proposals**" to the BRPs.
- The Proposals put forward by Kagera have (*inter alia*) conditionality attached (relating to required exclusivity as a bidder) which cannot be accommodated by the BRPs at this time and, consequently, the Kagera Proposals will not be under consideration at the Meeting.
- The Vision Parties have furthermore advised that they would vote down any plan not contemplating the Vision Transactions.

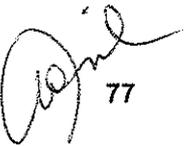
5.3.13.5. SARS Proposal:

- SARS has proposed certain wording for insertion into business rescue plans. The effect of the proposed clauses would be that SARS is granted a



preference above all other Unsecured Creditors in respect of certain pre-business rescue Claims.

- In business rescue, however, SARS is treated as an Unsecured Creditor, in line with relevant previous judgements. The BRPs have frequently engaged with SARS to understand their views on these additional clauses which they have submitted to THL in this Business Rescue. The liability that may arise from a potential SARS "VAT clawback" claim would result in a lower distribution to Unsecured Creditors.
- The BRPs have sought legal advice on this matter which confirmed that any VAT clawback claim which arises in Business Rescue, in respect of a vatable transaction which was concluded before the Commencement Date, should be treated as a pre-Business Rescue Concurrent claim because the provisions of the VAT Act/Tax Administration Act relating to the VAT clawback are inconsistent with and cannot be applied concurrently with Chapter 6 of the Companies Act without infringing upon provisions of Chapter 6 of the Companies Act. That is, the VAT clawback provisions would grant SARS a benefit over other Affected Persons that is not contemplated in Chapter 6 of the Companies Act. Accordingly, and upon a proper construction of the Companies Act, the advice concludes that the provisions of Chapter 6 of the Companies Act should prevail.


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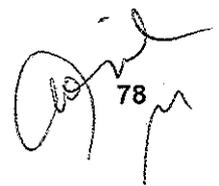

6. PART B – The Proposals

6.1. Terms of the Proposals

6.1.1. Relevant Factors:

6.1.1.1. THL has an extensive social and economic impact on the region within which it operates. It is beyond question that a successful rescue of THL's SA Sugar operations in South Africa will save tens of thousands, possibly hundreds of thousands, of direct and indirect jobs, and avoid a possibly widespread (upstream and downstream) economic and human catastrophe.

6.1.1.2. The Lender Group has security over all material assets of THL (other than certain bank accounts, inventory and trade receivables (and any related insurance claims), which are the security of IDC in respect of IDC's Claim as a PCF Lender). These security rights are in the process of being acquired by the Vision Parties in terms of the Vision Transactions. The Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. In this part of the Business Rescue Plan the words "**Lender Group**" and "**Vision Parties**" will be used thus interchangeably (and/or the rights held by such parties shall be referred to as "**Vision Lender Rights**") as they relate to the exercising of the rights being acquired by the Vision Parties.



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- 6.1.1.3. In view of the magnitude of the Lender Group Claims and voting interests being acquired, assuming the transaction is successfully completed the Vision Parties will collectively become the majority Creditor of THL.
- 6.1.1.4. Following their extensive discussions with the Lender Group for the acquisition of the Lender Group Claims and security, the Vision Parties presented their proposals to the BRPs for consideration. The BRPs, have thereafter consulted with the Vision Parties in relation to the development of the Vision Parties' Proposals ("**the Vision Proposals**") and the preparation of this Business Rescue Plan. This Business Rescue Plan encompasses the Vision Proposals.
- 6.1.1.5. As indicated in paragraph 5.3.5.8 above, Kagera Sugar were selected as the SEP. On 20 November 2023 the Lender Group notified the BRPs that they had entered into an agreement with the Vision Parties to sell its Claims against the Company, the agreement being unconditional but required payment in order to close the transaction. The BRPs were accordingly advised that the Vision Parties, once the beneficial owner(s) of the Lender Group Claims, would no longer support a Proposal entailing anything other than the Vision Transactions. Accordingly, and given that the Lender Group's Claims comprise some c.62% of the total Voting Interests, the BRPs formulated this Business Rescue Plan in line with the Vision Proposals.
- 6.1.1.6. The BDO report concludes that Unsecured Creditors would be unlikely to receive any recovery relating to their Claims in the event of a liquidation of THL. Given

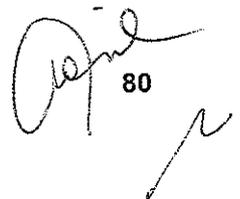


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the status quo with regards to the Company, the same outcome would result from the Business Rescue of the Company were the Claims to be settled strictly in accordance with the business rescue provisions of the Companies Act.

6.1.2. Distributions:

- 6.1.2.1. Notwithstanding the provisions of the Companies Act, however, the Vision Parties have undertaken that they will make available to Unsecured Creditors an amount of R75m. Unsecured Creditors will (pro rata) receive Distributions of (in aggregate) R75m upon full implementation of this Business Rescue Plan.
- 6.1.2.2. This will provide a benefit uplift to Unsecured Creditors in the Business Rescue Plan Proposals relative to the anticipated liquidation dividend of nil that would likely be received by Unsecured Creditors if the Company were to be placed in liquidation.
- 6.1.2.3. In order not to dilute this deemed Distribution to Unsecured Creditors, the relevant secured claims shortfall, if any, which the Lender Group/Vision Parties retain as Unsecured Creditor Claims (i.e. any remaining Lender Group/Vision Parties Claims which may remain following repayment from their respective security realisation proceeds) would not participate in the aforementioned R75m Distribution. It is recorded that the secured Claim of IDC, as PCF Lender, must be discharged in full by THL.
- 6.1.2.4. It should also be noted that, in addition to the above, to date Claims of Unsecured Creditors of c.R1.3bn

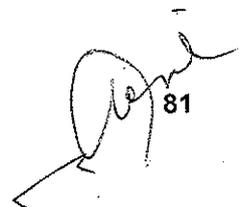

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have, in the course of the Business Rescue, already been paid, the majority of which related to payments to cane growers, many of which are small-scale farmers.

6.1.3. Equity Conversion:

6.1.3.1. As noted above, following the acquisition of the c.R8bn of Lender Group Debt by Vision Parties, THL will implement a partial debt-for-equity swap by way of the Vision Parties individually subscribing for new shares in the Company. The aggregate consideration for such subscription will be c.R4.1bn based on current balances which will be discharged by a reduction in the former Lender Group Claims against THL (those purchased by the Vision Parties) to c.R3.6bn. Resulting from this:

- the balance sheet of THL will be strengthened by c.R4.1bn based on current balances through debt-equity swap;
- the previous terms of the Lender Group Debt in respect of the R3.6bn retained by the Vision Parties will be renegotiated on terms anticipated to be significantly more favourable to THL;
- current Shareholders will retain value as 2.7% (in aggregate) shareholders in the still-JSE-listed, newly recapitalised THL (compared to nil in the event of a liquidation or completion of the Vision Proposals by way of an asset sale (rather than a share issue); and



- the balance of the issued shares (97.3% in aggregate) will be held variously by the members of the Vision Parties.

Readers are referred to Annexure **G** which, inter alia, contains details about who Vision Parties is and the Turnaround Plan.

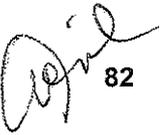
6.1.4. **Strategy Underlying the Proposed THL Business Rescue Plan**

6.1.4.1. The Business Rescue will seek to:

- continue the process to optimise the operations and cost base of THL's businesses and its head office;
- complete the Vision Transactions detailed above and below;
- renegotiate to the satisfaction of IDC, and service in the normal course of business, subject to the usual credit terms and requirements of IDC, a working capital facility to be approved and advanced by IDC to the Company as PCF; and
- manage and optimise the legally separate but interlinked business rescue proceedings of THD, Voermol and THSSA in parallel with the THL Business Rescue.

6.1.5. **The Vision Transactions**

6.1.5.1. The Vision Parties are:


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- Terris AgriPro (Mauritius), registered and incorporated in Mauritius;
- Remoggo (Mauritius) PCC, a fund registered and incorporated in accordance with the laws of Mauritius;
- Guma Agri and Food Security Ltd (Mauritius), registered and incorporated in Mauritius; and
- Almoiz NA Holdings Ltd, registered and incorporated in accordance with the laws of the United Arab Emirates.

6.1.5.2. The Vision Parties' primary objective is to ensure both the successful turnaround of THL in the short-term as well as the continuity of the business in the long-term. To achieve this objective, the Vision Parties have formulated a detailed business plan for THL, which includes a substantial capital expenditure programme to optimise the THL's South African operations. It is the parties' belief that this business plan can facilitate THL's return to sustained profitability and growth over time.

6.1.5.3. Key details of the Vision Transactions are summarised below:

- Pursuant to extensive discussions and engagements between the Lender Group and the Vision Parties, the Vision Parties are in a position to acquire the Claims of the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group



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

Case number: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED	Applicant
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and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
GERHARD CONRAD ALBERTYN N.O.	Fourth Respondent
VISION INVESTMENTS 155 (PTY) LTD	Fifth Respondent
TERRIS AGRIPRO (MAURITIUS)	Sixth Respondent
REMOGGO (MAURITIUS) PCC	Seventh Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Eighth Respondent
ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES)	Ninth Respondent
THE LENDER GROUP OF TONGAAT HULETT LIMITED	Tenth Respondent
MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE	Eleventh Respondent
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Twelfth Respondent

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1.	"MAR2" - Adopted Business Rescue Plan	201-290
2.	"MAR3" - Circular to Shareholders (10 July 2024)	291-300

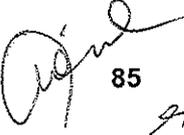
and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The funding requirements of the Vision Transaction are not dependent on financing to be provided by the PIC. Confirmation of available funding has been provided to the BRPs.

- The Vision Parties will, subsequent to acquisition of the Lender Group Debt, and subject to meeting all required regulatory conditions, implement a debt for equity swap, converting c.R4.1bn based on current balances of the former Lender Group debt by subscribing for new shares in THL.
- On a diluted basis, the above will result in existing Shareholders owning 2.7% (in aggregate) of all THL shares then in issue, and the Vision Parties collectively holding 97.3% (in aggregate) of all shares in issue.
- The authorised shares of THL amount to 5 000 000 000 shares. The issued shares of THL amounts to 135 112 506 shares. In terms of section 152(6)(a), the BRPs are authorised to determine the consideration for, and issue of, any authorised securities of the Company. The proposed issue would not require any increase in the currently authorised share capital of THL therefore not altering the rights associated with the class of Securities held by the existing Shareholders.
- There will be c.R3.6bn in remaining ex-Lender Group debt outstanding and owing by THL to the


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Vision Parties ("**Vision Debt**") and this will remain in place and will be restructured accordingly between THL and the Vision Parties on market related terms.

- Subject to the approval and Adoption of this Business Rescue Plan, the Vision Transactions will be subject to certain conditions, including legal, regulatory and other approvals common for transactions of this nature (in all relevant jurisdictions as applicable), which will potentially include (inter alia) Competition Commission approval (subject to legal counsel opinion on the matter) and potentially Takeover Regulation Panel ("**TRP**") approval. In order to maintain the JSE listing, THL (and the Vision Parties) will need to obtain certain dispensations and/or approvals as may be required from the JSE and/or TRP in order to implement the proposed transactions. In addition, the Company and BRPs, with the support of the Vision Parties, will need to secure confirmation from IDC that IDC will continue to provide a working capital facility to THL until at least the Closing Date.
- The aggregate of Distributions to Unsecured Creditors (over and above those already made,) will equate to R75m. The relevant Distributions will be shared among the Unsecured Creditors on a pro-rata basis. The entitlement of each Unsecured Creditor will be the percentage that their Claim bears to the total Concurrent Claims.


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- Upon payment of the Distributions, any remaining Claims held by Unsecured Creditors will be Unenforceable against THL.

- For the avoidance of doubt, it is recorded that (i) IDC is under no obligation to continue providing a working capital facility to the Company and (ii) IDC will require the amount payable in respect of its Claim for PCF advanced to the Company to be paid in full or secured in full to its satisfaction before it will consider an application by the Company to advance a new working capital facility. The IDC will be under no obligation to increase or extend its existing PCF advanced to the Company. In this regard, on adoption of the Business Rescue Plan, the Vision Parties will engage with the IDC regarding:
 - the detailed operational business plans supporting a turn-around plan and new growth areas;

 - the extension of the PCF (without any obligation on the part of IDC, as existing PCF Lender, to extend its current PCF facility) in a manner that will result in the extinguishment of the PCF;

 - the working capital requirements of THL;

 - the provision of any security (whether cash or assets) required in the interim and on an on-going basis, with an aim to convert the PCF to


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a sustainable working capital facility on terms acceptable to IDC; and

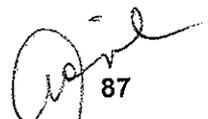
- potential support for small scale growers.

6.1.6. **Applicable to the Vision Transactions:**

6.1.6.1. Key Stakeholders:

- SASA:

- THL will discharge its future payment obligations towards SASA in accordance with the Sugar Industry Agreement, including ~~continuous~~ ongoing payment of SASA levies and the local market redistributions duly owed to SASA by THL.
- On 29 November 2023, the Declaratory Application was dismissed with costs by Vahed J. The judgement of Vahed J in respect of such order was handed down on 4 December 2023 ("**the Vahed Judgement**"). THL and the BRPs have applied for leave to appeal the decision. THL will abide by the final outcome of the appeal process of the Declaratory Application (i.e. after any and all appeals have been finally exhausted).
- SASA asserts that the outstanding amount as at 23 November 2023 (which takes into account the final 2023 season's local market redistribution and SASA levies and the set off of export proceeds payable by the


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SASEXCOR/SASA Export Proceeds Receivable to THL and which obligation to pay such proceeds has been assigned by SASEXCOR to SASA) is R525 956 121, which is in full and final settlement of SASA's statutory obligations ("SASA Claim"). THL agrees with the calculation of the SASA Claim and also agrees not to dispute the foregoing assignment or set off of the obligation to pay export proceeds by SASEXCOR to SASA.

- THL will, within twenty (20) Business Days after the Closing Date, but prior to substantial implementation~~implementation of the Business Rescue Plan:~~
 - o pay the SASA Claim into an escrow account ("**SASA Escrow**"); or
 - o should THL be unable to pay the full SASA Claim into the SASA Escrow within twenty (20) Business Days after the Closing Date~~implementation of the Business Rescue Plan by Creditors~~, Vision shall, on behalf of THL, pay the full SASA Claim into the SASA Escrow;
- THL agrees that the SASA Escrow shall be ringfenced in that the amounts retained in the SASA Escrow shall be solely payable to SASA. The SASA Escrow account shall be in the name of an independent reputable firm of attorneys ("**Independent Attorneys**") in a suitable interest bearing account, and for the benefit of


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such party as is ultimately successful in the Declaratory Application;

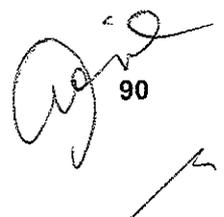
- in the event that the outcome of the appeal process is that the Vahed Judgement is:
 - o upheld THL will make payment of its full liability to SASA (including any order as to interest and costs of the appeal and costs of the Declaratory Application), within 10 Business Days after the handing down of the final appeal judgement by means of SASA calling on the Independent Attorneys to release funds from the available amount held in the SASA Escrow and pay same to SASA;
 - o overturned, THL shall be entitled to call on the Independent Attorneys to withdraw the SASA Claim from the SASA Escrow and pay same to THL;
- SASA will use all reasonable endeavours to recover the full amount of the outstanding levy claimed by SASA in respect of Gledhow Sugar Company (Pty) Ltd (in business rescue) ("**Gledhow**") in the amount of R97 015 921 in terms of section 175 of the SI Agreement ("**Gledhow Special Levy**"). Any shortfall from SASA's recovery of the Gledhow Special Levy will subsequently be settled by THL on conclusion of the Gledhow Business process.

6.1.6.2. In order for the Vision Transactions to be completed, this will require (inter alia):

- the Adoption of this Business Rescue Plan;
- agreement being reached with IDC with regard to the ongoing provision of PCF to THL until at least the completion of the Substantial Implementation Date; and
- the meeting of all conditions precedent contained in the final Vision Transactions agreement(s), including all required regulatory approvals (in all relevant jurisdictions as applicable).

6.1.6.3. The BRPs and their advisors expect to conclude binding terms of agreement with the Vision Parties (including any agreements with IDC) during January 2024. The final Closing Date for the Vision Transactions will be dependent on the timelines for the relevant regulatory approvals (in all relevant jurisdictions as applicable) being secured.

It is the agreed intention of the BRPs, Management and the Vision Parties to complete the Vision Transactions (and thereafter full implementation of the Business Rescue Plan) as time efficiently as possible. Below is a high-level forecast timetable following voting on the Business Rescue Plan, assuming plan Adoption on 10 January 2024. Note the dates below are purely estimates based on past experience and should be used as a rough guide only.



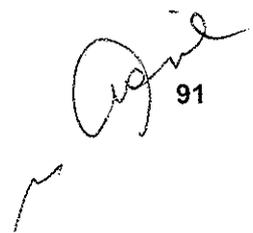
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Shareholder approval process (if required):

- Definitive transaction agreements signed in January 2024:
 - o Subscription agreement;
 - o Shareholder loan agreements for residual debt;
 - o Other (as may be required).
- SENS announcement detailing the transaction on the next business day after signing.
- JSE circular and dispensations submissions to JSE around end-January 2024.
- JSE circular approval by JSE (noting dispensations may be required) around end-February 2024.
- JSE circular distribution to shareholders around early March 2024.
- General meeting of shareholders to vote on the transaction (if so required) around late March 2024.
- Announcement of general meeting outcome on the same or next business day after general meeting.

Competition approval process (if required):

- Managed in parallel with the general meeting of shareholder's process.



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- Large merger in SA: 40 Business Days is the maximum for Competition Commission to consider plus unlimited 15 Business Days extensions to complete the investigation. The Competition Tribunal has a further 10 Business Days thereafter to set the matter down for hearing.
- However, given failing firm submission and concerns, it is anticipated that this process could be accelerated significantly.
- Competition filings may be required in Mozambique, Zimbabwe and Botswana, which are expected to take no more than 6 months.

Secured lender release of security:

To be managed in parallel with shareholder approvals.

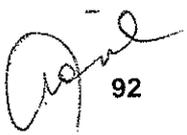
IDC approval process in respect of PCF and any additional facilities for working capital:

To be managed in parallel with shareholder approvals.

Exchange control application process (if applicable):

Expected in 2 months from submission. To be managed in parallel with shareholder approvals.

- 6.1.6.4. The BRPs continue with their endeavours to secure the ongoing PCF funding required from the IDC for the balance of the 2023/2024 sugar season and the closing of the Vision Transactions – and subsequent to full implementation of the Business Rescue Plan.


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6.1.7. Alternative transactions in the event of a failure to secure approval for the issue of new THL shares to the Vision Parties by way of a debt/equity swap

6.1.7.1. In the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of THL shares to the Vision Parties to be effected (resulting in such parties not holding the anticipated 97.3% of the then shares in issue), the BRPs and the Vision Parties have agreed that, as an integral part of the Proposals and this Business Rescue Plan, the currently proposed Vision Transactions will be switched from those contemplating an issue of THL shares to transactions contemplating the acquisition by the Vision Parties of THL's assets and businesses (as going concerns) on the basis that:

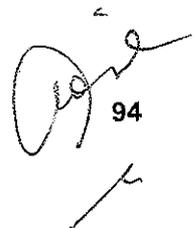
- payment for such assets will be effected by way of a set off against the Secured Claims then held by the Vision Parties;
- suitable arrangements being made for payment of the full balance outstanding in respect of the IDC PCF Facility;
- the sale of THL's assets and businesses will be to an entity nominated by the Vision Parties;
- Unsecured Creditors and Secured Creditors would otherwise be treated as contemplated in the currently contemplated Vision Transactions;


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- the Vision Parties will ensure that THL has sufficient funds to enable it to implement this Business Rescue Plan;
- the sale of THL's assets will be subject to the requisite regulatory and other approvals common for transactions of this nature in each jurisdiction;
- once it has sold its assets and businesses (as going concerns), THL will be delisted from the JSE and liquidated (noting that its shares would have nil value); and
- to the fullest extent possible Vision Parties and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders, other than Shareholders and the JSE as a result of the delisting/liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated Vision Transactions been implemented.

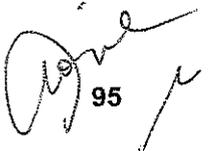
6.1.8. Alternative transactions in the event of a failure at the Meeting to Adopt this Business Rescue Plan encompassing the Vision Transactions

- 6.1.8.1. In the event of a failure of this Business Rescue Plan to be Adopted at the Section 151 Meeting, the following factors should be carefully considered in relation to any subsequent conclusion of an alternative transaction, noting in particular the required timing to achieve same.



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- The SA Sugar business operates on a highly seasonal basis with materially variable working capital requirements (entailing annual additional peak funding estimated at around R1.7bn) – dependent on industry dynamics, production and sales cycles.
- A significant investment process is undertaken annually from December to March (referred to as off-crop capital expenditure and/or maintenance (“**off-crop programme**”)) to enable critical proactive maintenance work to be performed ahead of the next season. Spending commitment towards the off-crop programme is required from as early as September onwards. For the ensuing off-crop programme, THL will look to the investing parties for guidance and assistance in securing the required funding.
- The introduction, negotiation, documentation and closing of any alternative transaction would require a significant amount of time to achieve. The time available to meet this requirement and the likelihood of success would be dependent on (i) Lender Group/Vision Parties support by virtue of both their voting power and (significantly) their security rights (the underlying Claims have been purchased by the Vision Parties); (ii) significant working capital funding support (i.e. agreement with IDC or an alternative financier in replacement of IDC); and (iii) creditor support in respect of any delays related to the further amendment of the Business Rescue Plan or its implementation etc.

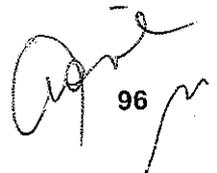


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- In the absence of continued Lender Group/SEP and working capital funding support, there would be a limitation on the ability to continue running the SA Sugar business in the ordinary course (in particular in relation to the off-crop programme).
- Any alternative transaction proposals should therefore be carefully considered in terms of the required support as outlined above, in addition to the timing and execution risks that may be relevant. Should Creditors wish for any such alternative proposal to be pursued, this Business Rescue Plan would need to be revised and a new Section 151 meeting of creditors convened to vote on such a revised Business Rescue Plan at a future date.
- Any motion (at the Meeting) to amend the Business Rescue Plan and consequently adjourn the Meeting should therefore be accompanied by clear plans for working capital funding and off-crop programme funding from such parties proposing such a motion, to the satisfaction of the BRPs.

6.1.9. Other Features of the Proposals

- 6.1.9.1. The THSSA and Voermol business rescues will operate in tandem with this Business Rescue Plan and will thus not result in any additional cash realisations to THL.
- 6.1.9.2. Voermol is a dormant company in business rescue with no assets and which is earmarked to eventually be wound up/deregistered. The division of THL, named Voermol, will remain in the Company. There will be no



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Distributions to the creditors of the Voermol legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to Voermol will result in Voermol having a commensurate claim in THSSA and THSSA in turn against THL, its principal. Any distribution received by Voermol from THSSA will be distributed by Voermol to the Creditors who chose to submit their claims with Voermol.

- 6.1.9.3. THSSA (as agent of THL) nominally owns THL's (the beneficial owner) 100% shareholding in THA and 100% of the shares in Sociedade de Assistencia a Agricultura e Industria S.A. (registration number 500253153), a company duly incorporated in accordance with the laws of Portugal. There will be no Distributions to the creditors of the THSSA legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to THSSA will result in THSSA having a commensurate claim in THL, its principal. Any distribution received by THSSA from THL will be distributed by THSSA to the Creditors who chose to submit their Claims with THSSA.

6.2. **Employee Matters**

- 6.2.1. Whilst the Vision Transactions do not contemplate retrenchments, the BRPs are continuing with their process of business optimisation, together with Management, and as such have not yet entirely ruled out the possibility of employee retrenchments. As a result, this Business Rescue Plan envisages a possible section 189 retrenchment process (in terms of the LRA), if so required. The Business Rescue Plan contemplates the Company meeting its

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relevant retrenchment financial obligations to all employees affected by any proposed section 189 process (in terms of the LRA) and/or in accordance with the Basic Conditions of Employment Act 75 of 1997.

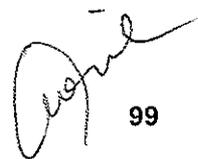
6.2.2. THL is currently contractually obliged to provide monthly post-retirement medical aid benefits for approximately 900 persons. Such persons are either (i) former employees of THL or other members of the THL Group, or their beneficiaries, who are now retired pensioners, or (ii) current employees of THL or other members of the THL Group, who may become entitled to these benefits when they retire. In this regard:

- These benefits were provided to employees who joined the company on or before 30 June 1996 following which this scheme was closed to new entrants.
- In terms of THL's post-retirement medical aid benefits policy, the post-retirement medical aid benefit provided is limited to 50% of the cost of contributing to the Discovery Health scheme's Classic Comprehensive Plan. Presently, this equates to a maximum monthly contribution of R6,626.00 in respect of a married recipient, and R3,405.00 for a single recipient.
- At present, the expected accrued liability for the provision of post-retirement medical aid benefits to all recipients, as at 31 October 2023, is c.R347m (determined actuarially in line with International Financial Reporting Standards). Of this amount, c.R12.6m relates to current employees and c.R325.8m relates to retired employees. The monthly cash flow impact to THL is c.R3.6m.


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- In the event of liquidation of THL the above claims would be entitled to nil value/distributions and the beneficiaries would thus receive no benefits from this scheme at all.
- As there are no unencumbered assets of significance, there is currently no available funding to settle any of the abovementioned obligations in respect of these Business Rescue proceedings. The BRPs are exploring ways in which to mitigate this situation.
- In light of the current Business Rescue proceedings, and subject to funding availability, the BRPs intend and hereby reserve their rights to engage with the recipients of these post-retirement medical aid benefits, to offer once-off lump sum payments or a payment arrangement to buy THL out of its current liabilities to provide these post-retirement medical aid benefits on an ongoing basis.
- These buy-out offers will be negotiated and concluded on terms and conditions acceptable to the BRPs and to the extent necessary the Vision Parties, and are aimed at ensuring not only that THL is able to reduce and/or eliminate its unfunded liabilities, but also in an endeavour to secure a financial benefit to the recipients who accept a buy-out offer, where there are currently none. In the absence of such agreement being concluded any such Claim will be regarded as an Unsecured Claim held by an Unsecured Creditor and after any Distributions will become Unenforceable as against the Company.

6.3. Effects of the Proposal:


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6.3.1. Extent to which the Company is to be released from the payment of its debts and the extent to which any debt is proposed to be converted to equity (Section 150(2)(b)(ii)):

6.3.1.1. Distributions will be made to Creditors as outlined in paragraph 6.3.4. Following the final Distributions being made, any remaining unpaid portions of the Claims will become Unenforceable and no Creditor will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.

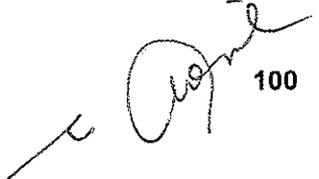
6.3.1.2. The ex-Lender Group Claims acquired by the Vision Parties will be partially converted into equity in THL as described in paragraph 6.1.5.3.

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

6.3.2.1. Upon the implementation of the Vision Transactions, the Business Rescue will be terminated and the Company handed back to its directors. Subject to the Vision Transactions being successfully implemented (and the alternative transactions not being employed), THL will remain listed on the JSE and at the appropriate time a request will be made to the JSE for the suspension of the shares to be lifted.

6.3.2.2. Where the BRPs have determined it to be in the best interests of Creditors to continue with counterparty agreements concluded with the Company, such agreements have continued.

6.3.2.3. Agreements concluded with the Company are, however, subject to ongoing evaluation and


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negotiations by the BRPs in an effort to mitigate risks and optimise the success of the Business Rescue.

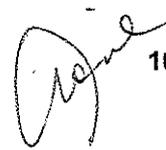
- 6.3.2.4. Section 136(2)(a) of the Companies Act allows the BRPs to entirely, partially, or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under an agreement (including any form of *sui generis* agreement) to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue. All Company obligations are continuously under review and the BRPs reserve their rights in this regard.
- 6.3.2.5. It is recorded that, where the BRPs have elected to suspend the Company's payment obligations, the aggrieved party may assert a Claim against the Company only for damages in terms of section 136(3) of the Companies Act. Such damages claim and/or suspended obligation amounts owing and unpaid will be treated as an Unsecured Claim of an Unsecured Creditor, and any balance remaining after any Distribution in terms of this Business Rescue Plan will become Unenforceable against THL.
- 6.3.2.6. As a reminder to Affected Persons, it is confirmed that an application was made to the High Court seeking the High Court's declaration that the BRPs have the right to suspend THL obligations to SASA under the SI Agreement. Separate notices have been circulated to Affected Persons in this regard. The relevant Court hearing was held on 13 and 14 September 2023. On 29 November 2023, the Declaratory Application was dismissed with costs. The judgement in respect of such



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order was handed down on 4 December 2023. THL and the BRPs have applied for leave to appeal the decision.

- 6.3.2.7. The BRPs further have the right, in terms of section 136(2)(b) of the Companies Act, to apply to the High Court to cancel and/or terminate any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and that would otherwise become due during the Business Rescue.
- 6.3.2.8. Counterparties to all agreements in which the Company's obligations are suspended or cancelled should be guided by the moratorium which excludes a claim by a contractual counterparty for specific performance. Such party will have a Claim for damages in terms of section 136(3) of the Companies Act. Where that Claim is not reflected in Annexure **A**, the course of action available to that party is to submit a claim for damages as a Disputed Creditor and to follow the Dispute Mechanism set out in paragraph 16.
- 6.3.3. Property of the Company that is to be available to pay Creditors' Claims in terms of the Business Rescue Plan (Section 150(2)(b)(iv))
- 6.3.3.1. Other than the issue of shares by the Company, or as otherwise specifically provided for in this Business Rescue Plan, it is not contemplated that any assets of the Company will be available to pay Creditors' Claims.
- 6.3.3.2. To the extent that any assets were to be made available to pay Creditors' Claims, readers are referred to paragraph 5.3.6.5 which outlines all the assets of the Company that have been encumbered via security

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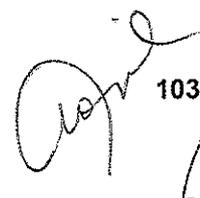
held by the Lender Group, and now to be acquired by the Vision Parties.

- 6.3.3.3. As a result, all movable assets, bank accounts, inventory and trade debtors (and any related insurance claims) are encumbered.
- 6.3.3.4. In relation to fixed assets, refer to Annexure E which outlines all related properties and relevant encumbrances.
- 6.3.3.5. Following the BRPs review, there are a very small number of properties which are unencumbered which have either small or negligible values attributed.
- 6.3.3.6. Accordingly, there are no material unencumbered assets available which would result in any value of significance being distributed to Unsecured Creditors in satisfaction of their claims other than as specifically provided for in this Business Rescue Plan.

6.3.4. Effect on Creditors (Section 150(2)(b)(v))

6.3.4.1. Secured Creditors:

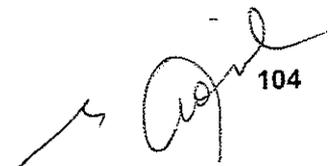
- No Distributions are expected to be made in relation to the Secured Creditors' Claims;
- c.R4.1bn, based on current balances of the Lender Group's Claims which are being acquired by the Vision Parties, will be converted to equity resulting in the Vision Parties owning 97.3% of the issued shares of THL;


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- The remaining Lender Group/Vision Parties indebtedness of c.R3.6bn will be restructured on terms anticipated to be more favourable to THL;
- The Company, with the support of the Vision Parties, will secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process.

6.3.4.2. Unsecured Creditors:

- Notwithstanding a strict application of the provisions of the Companies Act, under which it would be anticipated that Unsecured Creditors would not be entitled to any recovery on their claims:
 - payments made to date to Unsecured Creditors (primarily small scale farmers) amount to R1.3bn; and
 - further Distributions will be made to Unsecured Creditors (on a pro-rata basis) in the amount of R75m. The entitlement of each Unsecured Creditor will be the percentage that their Claim bears to the total Concurrent Claims.
- Subsequent to these Distributions having been paid to Unsecured Creditors, any remaining Claims will become Unenforceable.



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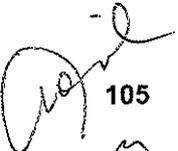
6.3.4.3. Other than as specifically provided for in this Business Rescue Plan, Distributions will be made in the following order of priority in accordance with the Business Rescue Plan for the duration of Business Rescue. This ranking is in accordance with the provisions of the Companies Act.

6.3.4.4. Proceeds from Unencumbered Assets, if any, will be applied as follows:

- Business Rescue Costs will be funded out of the ongoing PCF Facility. To the extent that there is insufficient funding available to cover these costs, funds will be deducted from the net proceeds of any asset disposals or claim recoveries;
- PCF Employees to the extent that amounts due and payable, for services rendered during Business Rescue, that remain unpaid;
- Unsecured PCF Creditors, who will rank in the order in which the PCF was provided;
- Preferent employees;
- Unsecured Creditors (if there is any residual); and
- Shareholders (if there is any residual).

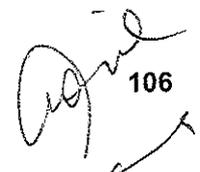
6.3.5. Expected Distributions to Creditors:

6.3.5.1. Distributions arising pursuant to the implementation of this Business Rescue Plan are expected to significantly


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exceed those calculated by BDO in the alternative scenario of an immediate liquidation of the Company.

- 6.3.5.2. This is already the case for Unsecured Creditors due to the pre-Commencement Date Unsecured Creditors' Claims which have been paid amounting to c.R1.3bn. Furthermore, Distributions to Unsecured Creditors will be enhanced by the concessions agreed to by the Vision Parties, which will result in a further R75m being paid to Unsecured Creditors.
- 6.3.5.3. To the extent that agreements concluded between the Company and counterparties and/or obligations are cancelled, modified, suspended or restructured, any proven and accepted Claim for damages will be treated as an Unsecured Creditor and will accordingly be entitled to participate, pro-rata, in the R75m aggregate Distribution noted above.
- 6.3.5.4. Claims for damages, whether contractual or delictual against the Company, once determined through the Dispute Mechanism paragraph 16 or by the High Court or similar proceedings, as the BRPs may consent to, will be treated as follows-
- as an Unsecured Creditor, unless the claimant holds security for such Claim;
 - shall be limited to general damages as determined through the Dispute Mechanism or by the High Court or similar proceedings as the BRPs may in their sole discretion consent to. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable


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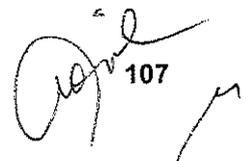
at the time of entering into the relevant contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of an agreement so as to be said to flow naturally and generally and not to be too remote; and

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

6.3.5.5. If this Business Rescue Plan is Adopted and implemented by payment of a final Distribution in accordance with this Business Rescue Plan, any remaining Claims will become Unenforceable against the Company by the relevant Creditor unless otherwise provided for in this Business Rescue Plan.

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

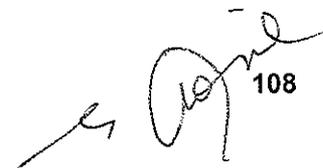
6.3.5.7. Any VAT related claims from SARS and any other SARS Claims arising from transactions that occurred prior to the Commencement Date have been recognised as



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Concurrent Claims in the Business Rescue Plan and SARS will be treated in the same manner as all other Unsecured Creditors and therefore will be entitled to the same Distribution as all other Unsecured Creditors.

- 6.3.5.8. This means that upon payment of a final Distribution in terms of this Business Rescue Plan, any remaining unpaid portions of the Claims will have become Unenforceable (unless otherwise provided in this Business Rescue Plan) and no Creditor, including SARS, will be entitled to enforce the balance of its Claims, or any portion of its Claims, against the Company.
- 6.3.5.9. Creditors voting in favour of the Business Rescue Plan do not thereby accede to the discharge of the whole or part of their debt in terms of section 154(1) of the Companies Act. The consequence of the Adoption and implementation of the Business Rescue Plan, Creditors' remaining Claims will become Unenforceable against the Company in terms of section 154(2) of the Companies Act.
- 6.3.5.10. After payment of the final Distributions and prior to a notice of substantial implementation being filed with the CIPC, the Company will be returned to its director(s).
- 6.3.5.11. Claims will only become Unenforceable in accordance with the Business Rescue Plan upon both the Adoption and subsequent implementation of this Business Rescue Plan. In the event of any breach by the Company of its obligations to creditors in terms of the Business Rescue Plan, or in the event the Company is

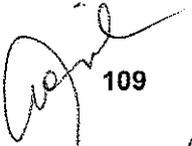


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placed in liquidation other than as catered for in this Business Rescue Plan under paragraph 6.3.5.9, the full balance due to Creditors in terms of their original Claims against the Company shall immediately become due, owing and payable by the Company to the creditors, subject to the provisions of section 135 of the Companies Act.

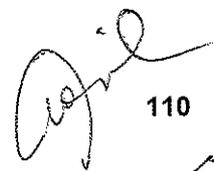
6.3.6. Effect on Holders of the Company's issued Securities

- The authorised shares of THL amount to 5 000 000 000 shares. The issued shares of THL amounts to 135 112 506 shares. In terms of section 152(6)(a), the BRPs are authorised to determine the consideration for, and issue of, any authorised securities of the Company.
- The Vision Parties will subscribe for shares in THL such that, after the issue of the new shares, the Vision Parties will in aggregate own 97.3% of the issued shares in THL.
- The Vision Parties will settle the subscription price for such shares by means of set off against its Claims against THL in an amount of c.4.1bn based on current balances, leaving a Secured Vision Lender Claim of c.R3.6bn.
- The effect of this on existing Shareholders will be to dilute the existing Shareholders to a shareholding equating to 2.7% of the then issued shares.


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6.3.7. Conditions that must be satisfied in order for the Business Rescue plan to come into operation (Section 150(2)(c)(i)(aa)) -

- 6.3.7.1. For this Business Rescue Plan to come into operation it must be approved by more than 75% of the creditors' voting interests that were voted and at least 50% of independent creditors' voting interest, if any, that were voted in accordance with the provisions of section 152(2) of the Companies Act at the meeting convened for this purpose in terms of Section 151 of the Companies Act.
- 6.3.7.2. To the extent that a Business Rescue Plan alters the rights associated with any class of Securities held by Shareholders, such Shareholders are entitled to vote on the Business Rescue Plan. This Business Rescue Plan will not alter the rights associated with the class of Securities held by Shareholders. Accordingly, Shareholders are not required nor entitled to vote on the Business Rescue Plan in terms of section 152(3)(c) of the Companies Act.
- 6.3.7.3. It is noted furthermore that, once this Business Rescue Plan has been Adopted, it may be necessary, pursuant to section 41(3) of the Companies Act, and pursuant to the JSE's Regulations, *inter alia* a special resolution of Shareholders will be required as a condition precedent to the implementation of the Vision Transactions.
- 6.3.7.4. Implementation of the Proposals implicit in this Business Rescue Plan will be conditional upon (*inter alia*) the following:


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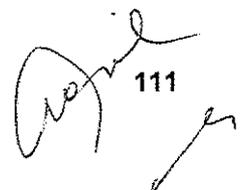

- agreement between the Company, the Vision Parties and IDC with regards to the ongoing provision of working capital to THL by IDC and the treatment of the relevant underlying security; and
- the meeting of all conditions precedent contained in the final transaction agreements.

6.3.8. Effect on Employees (Section 150(2)(c)(ii)) - The BRPs are continuing with their process of business optimisation, together with Management, and as such have not yet entirely ruled out the possibility of employee retrenchments. This Business Rescue Plan therefore contemplates a possible section 189 retrenchment process (in terms of the LRA), should it be required.

6.3.9. Effect on Director(s) and Management - Directors have continued to exercise the functions of a director, subject to the authority of the BRPs. The majority of the board members that were in office as at the date of commencement of business rescue proceedings have resigned. Currently there are two remaining board members, both of whom are executives.

6.3.10. Effect on subsidiaries - The investments in and claims against subsidiaries of the Company will be treated in accordance with the Proposals section of this Business Rescue Plan. With the requisite support of PCF Lenders, the Company will provide direct or indirect financial assistance to its related and inter-related companies/equity interests, which financial assistance may include without limitation the provision of loans, the issuance of guarantees (or other like instruments and/or Securities) and/or the subordination of claims owing to the Company by related or inter-related companies.

7. **Binding nature of this Business Rescue Plan**

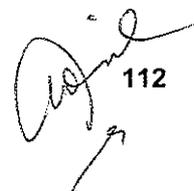


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- 7.1. The BRPs draw the attention of Affected Persons to the provisions of section 152(4) of the Companies Act.
- 7.2. This section provides that once a Business Rescue Plan has been Adopted, it is binding on the Company, its Creditors (including 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.



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8.3. The moratorium in relation to the Company took effect on the Commencement Date and will remain in place for the duration of Business Rescue, until the termination of Business Rescue as defined in paragraph 12.

9. Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi))

9.1. Through the implementation of this Business Rescue Plan the BRPs intend to optimise the returns for Creditors by implementing the Vision Transactions.

9.2. With this, the Business Rescue of the Company is intended to rescue the Company or, in the alternative, achieve a better return compared to liquidation as outlined in paragraph 5.3.3.

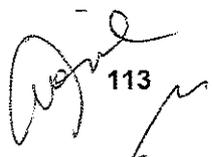
9.3. The financial benefits to Affected Persons through the Adoption and implementation of the Business Rescue Plan, as compared to a liquidation of the Company, are as follows –

9.3.1. Creditors / Liquidation Dividend –

9.3.1.1. the Distributions that all Creditors would have received in the alternative scenario of a liquidation of the Company as at the Commencement Date would be materially lower than the Distributions that have already been paid, together with those that are contemplated to be received by Creditors as a result of this Business Rescue Plan. This is expected to be true for both Secured Creditors and Unsecured Creditors.

9.3.2. Timing –

9.3.2.1. It is the view of the BRPs that typically a business rescue is concluded in a far shorter time frame than a liquidation of this nature.


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9.3.3. Employees –

9.3.3.1. Subject to the Business Rescue Plan being implemented the majority of employees of the various entities will remain employed. This will, however, be subject to:

- the Company possibly commencing with a section 189 process (in terms of the LRA);
- any retrenched employees will be entitled to their full retrenchment packages.

9.3.3.2. By comparison, in a liquidation –

- All jobs will immediately be suspended and, subject to the liquidator(s)'s intentions, may be lost immediately unless the liquidator agrees to continue trading against an indemnity. In the current circumstances, it is considered to be highly unlikely that a liquidator would agree to continue trading or that a liquidator would be indemnified against trading losses.
- Employees would in such circumstances be entitled to receive a maximum amount of R32,000 per employee, to the extent that there are funds available, and would be treated as an Unsecured Creditor for any balance.
- Employees will only receive payment once the final liquidation and distribution account has been approved at the end of the liquidation process.


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9.3.3.3. SARS –

- SARS ranks as an Unsecured Creditor under Business Rescue, whereas, under liquidation, SARS would rank as a statutory preferent creditor. In a liquidation, any dividend to Unsecured Creditors would be reduced by the Claim of SARS.

9.3.4. Shareholders –

9.3.4.1. In comparison to a liquidation scenario, in which shareholders would receive no return or nil cents in the Rand, this Business Rescue Plan envisages shareholders retaining 2.7% of the then issued shares of the Company, which shareholding remains listed on the JSE.

9.3.5. Socio-economic impact in South Africa –

9.3.5.1. Direct employment:

- In South Africa, THL's total employment comprises 2,563 employees as of 31 March 2023 who earned remuneration totalling c.R850 million which contributed substantially to thousands of households, including those within rural areas.
Through the Proposals, the vast majority of employment positions will be saved.

9.3.5.2. Indirect employment:

- In South Africa, THL generated a total economy-wide impact of 25,563 employment opportunities. The economy-wide impact contributed 0.22% to employment in South Africa along with an


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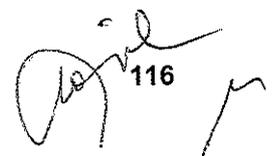
economy-wide effect measuring c.R7.95bn. **The rescuing of SA Sugar as contemplated in this Business Rescue Plan will result in the avoidance of any material impact of the tens of thousands of indirect employment positions noted above.**

9.3.5.3. Growers (including small-scale growers):

- THL remains committed to large and small-scale empowerment farming and during the 2023 financial year paid its growers c.R2.9bn for sugarcane delivered to its Mills. The Company's SA Sugar operation sources c.43% of its sugarcane from over 15,000 black farmers and cooperative members. Uzinzo Sugar Farming, THL's transformational partnership, remains the largest black grower in the South African sugar industry. **This Business Rescue Plan provides for continuity for growers.**

9.3.5.4. Land reform and restitution:

- THL recognises that land reform is primarily an issue of basic human rights. Under the land reform programme, the Company works with two categories of farmers: restitution communities and land reform growers farming for their own account. Typically, restitution communities acquire land, through a land claims process, as a group for the benefit of many beneficiaries. With land reform growers, on the other hand, the beneficiary is the applicant.
- The main objective of the restitution programme is to unlock the economic benefit of the land for the previously marginalized communities. It is also to



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enable communities, majority being rural communities, to drive the local economic development efforts in their local municipalities.

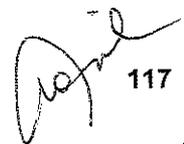
- THL has partnered with 13 restitution communities overseeing 6,000 hectares across South Africa in the sugarcane growing areas. Through this partnership, THL has been able to accelerate the implementation of the sugarcane development programme and rural development efforts. Communities have created employment opportunities, facilitated the transfer of agricultural and administrative skills and supported community upliftment activities.
- **This Business Rescue Plan provides for continuity in respect of such initiatives.**

9.3.5.5. Local taxes:

- Tax revenue consists of corporate taxes, personal taxes paid by the Company on behalf of its employees (including for example any taxes on salaries and wages and unemployment insurance) as well as any indirect taxes paid.
- Despite the Company having an assessed tax loss in respect of corporate taxes, it paid c.R82 million in taxes as a result of its operational and capital expenditure. The estimated direct, indirect and induced impact of THL's tax payments elsewhere in the economy are to the value of c.R482 million, c.R448 million, and c.R930 million, respectively.

9.3.5.6. Suppliers:

- THL's contribution to output, if its initial operational and capital expenditure are included, was c.R6.47bn in 2021. Adding all the direct, indirect

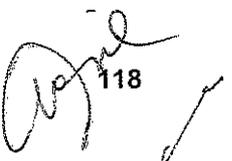

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and induced impacts generated an estimated economy-wide effect measuring R24.8bn.

- Number of suppliers as of March 2023 (excluding cane growers, statutory spend, imports): 1,420.
- Number of black owned suppliers: 701 or 49,4%.
- Number of black women owned suppliers: 610 or 43%.
- Number of Exempt Micro Enterprises and Qualifying Small Enterprises Suppliers (<R50 million per annum revenue): 1,169 or 82,3%.
- The Company has placed an emphasis on its Localisation Policy (refer below) within the operations and through the procurement department, which would increase these percentages in future.
- **This Business Rescue Plan provides for continuity for such suppliers.**

9.3.5.7. Other local businesses:

- Local communities and governments look up to the Company to facilitate equitable access to economic opportunities that empower individuals and enterprises to develop through employment, skills development, enterprise development and procurement opportunities. Rural and farming communities also look to the Company to support them in addressing issues of safety, health and environment.
- The Company's Localisation Policy was developed for THL to be proactive in the communication, management and facilitation of inclusive development and local participation opportunities with its local stakeholders and facilitate the implementation of Enterprise and Supplier


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Development interventions to improve the competitiveness or business-readiness of local Small, Micro and Medium Enterprises (“SMME’s”).

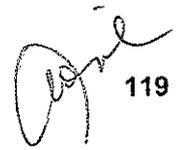
- Aligned with the policy, THL is in the process of implementing IThuba Centre, a community-based platform which local businesses can approach to be informed of available opportunities and requirements to qualify.
- **This Business Rescue Plan provides for continuity for such businesses.**

9.3.5.8. Mill clinics:

- The Company continues to be committed to supporting the government’s commitment to the Sustainable Development Goals and participating in all associated initiatives. THL values the contribution made by its employees and the Company works with them to invest in their health and well-being. Employees access primary healthcare services at on-site clinic facilities. THL funded clinics and hospitals screen, test, treat and seek to prevent diseases among employees and community members. Stakeholder engagement and corporate communication efforts regularly include matters of health and disease prevention in messages to workers and communities. An amount of c.R100 million was invested in health-related activities during 2021.

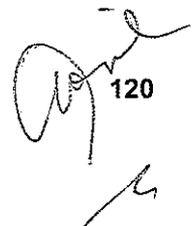
9.3.5.9. Education:

- Education is vital for the social and economic development and upliftment of any community and


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an essential tool to alleviate poverty and uplift future generations. The Company actively participates in the improvement of education in South Africa by partnering with government and other organisations, as well as schools to support literacy, science, technology, engineering, and mathematics ("**STEM**") programmes as well as the provision of quality school infrastructure for schools in rural KwaZulu-Natal. To date, the Company has invested c.R10 million in 13 rural schools in the iLembe and King Cetshwayo District Municipalities in KwaZulu-Natal and c.R7 million in education initiatives, including the ongoing provision of water and electricity to several schools, transport, maintenance, schoolbooks, furniture and bursaries.

- Within KwaZulu-Natal, THL has supported PROTEC, a leading South African non-profit organisation, operating in the field of developing STEM skills for gifted under-privileged students. This year, PROTEC together with its sponsors, are celebrating the graduation of 31 former students as they qualify with tertiary degrees ranging from B Eng Technology through to BSc Chemical Engineering.
- THL continues to play an active role in nurturing and growing talent for our own business, the sugar industry and the broader KwaZulu-Natal economy. The Company has 106 learners completing a range of programmes (engineers-in-training, interns, apprenticeships, learnerships and graduates) of which 92% are African, and 42% are female. The Company's focus on nurturing talent plays a critical role in the province's broader agenda of accelerating diversity and ensuring representation



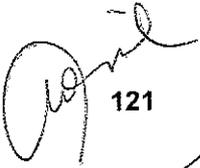
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of Africans and females within management roles. Outside of these programmes, the Company continues to invest in its employees and over the last three years has invested R10.5 million in training and development.

10. Risks of the Business Rescue Plan

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

- 10.1.1. Unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever.
- 10.1.2. Existing litigation not progressing in the manner anticipated.
- 10.1.3. Any changes in legislation that impact the Business Rescue.
- 10.1.4. Any legal challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto.
- 10.1.5. The non-availability of PCF for the duration of the Business Rescue and/or the available PCF not being sufficient for the duration of the Business Rescue and/or the PCF providers withdrawing their facilities due to insufficient security, the litigation and/or delaying of the Adoption of this Business Rescue Plan and/or the implementation thereof. The consequence of this will be dire for the continued operation of THL and the future of the Business Rescue.


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- 10.1.6. Any regulatory delays and/or challenges of any nature whatsoever, howsoever arising, which includes multi-jurisdictions as well as any consequential statutory liability.
- 10.1.7. The ability to effect the flow of funds between international jurisdictions and legal entities.
- 10.1.8. Any unforeseen circumstances, outside of the control of the BRPs, of any nature whatsoever, howsoever arising, that impact the Business Rescue, which may include disruptions to trading from suppliers who are Unsecured Creditors.
- 10.1.9. Any damages or penalties claimed against the Company which were unforeseen.
- 10.1.10. Any potential retrenchment processes taking longer than expected.
- 10.1.11. Any labour action arising as a result of the retrenchment process or Business Rescue.
- 10.1.12. Unexpected liquidity events, withdrawal or restricted access to PCF provided by the PCF Lenders or delays thereto.
- 10.1.13. The final verification and agreement of Claims taking longer than expected.
- 10.1.14. Material discrepancies in the information made available to the BRPs by Management.
- 10.1.15. The deterioration and worsening of market conditions.
- 10.1.16. Any events and outcomes that may lead to the discovery of fraud, misrepresentation, corrupt practices, or other such matters relating



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to the Company prior to the implementation of the Business Rescue Plan.

- 10.1.17. The variation in exchange rates and/or commodity prices affecting the Business Rescue.
- 10.1.18. Ambiguous provisions in the Companies Act which are subject to varied interpretation.
- 10.1.19. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.
- 10.1.20. JSE, financial reporting and transaction approval mechanisms proving problematic.
- 10.1.21. The macro-economic conditions in Zimbabwe remain a concern. The poor economic outlook is exacerbated by the suspension of duties on basic commodities including sugar, which resulted in lower cost imported sugar (which has unfair cost advantages) competing against locally produced sugar. This is slowing down sales significantly domestically, which is the preferred market, with the lost sales volumes being redirected into lower-priced export markets. Government interventions in respect of grower issues as well as the wage arbitration where minimum wages were increased to USD280 before the elections, had a significant impact on the cost base and cash flow of the business. The lack of security over land tenure due to the 99-year leases not signed creates further uncertainty.

11. PART C – Assumptions and Conditions of Proposal



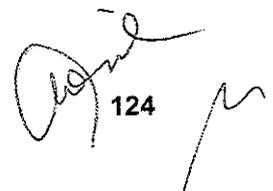
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11.1. PCF:

- 11.1.1. The successful implementation of the Business Rescue Plan and the Proposal is subject to receipt of the necessary PCF referred to in this Business Rescue Plan to the extent required and within the timing considered appropriate by the BRPs.
- 11.1.2. The BRPs remain in constant communication with the relevant PCF Lender(s) in this regard. It must be noted that any extension of the current PCF provided by IDC, as the sole PCF Lender, will at all times be required to satisfy the credit criteria of IDC, with IDC under no obligation to extend its PCF, the security provided is at all times sufficient to discharge the PCF obligation in full and without any shortfall.
- 11.1.3. The BRPs shall use their reasonable endeavours to procure the fulfilment of the required PCF drawdowns as soon as practically possible.
- 11.1.4. If the above-mentioned PCF is withdrawn without replacement, the BRPs may be faced with little alternative but to apply to the High Court to terminate Business Rescue and commence liquidation proceedings.

12. Termination of Business Rescue (Section 150(2)(c)(iii))**12.1. The Business Rescue will end:**

- 12.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s or the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;

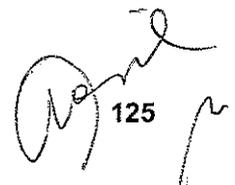


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- 12.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;
- 12.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or
- 12.1.4. if a High Court orders the conversion of the Business Rescue into a liquidation.

13. Substantial Implementation (Section 150(2)(c)(i)(bb))

- 13.1. Substantial Implementation will be deemed to have occurred upon the BRPs deciding, in their sole discretion, that the following has taken place:
 - 13.1.1. the transactions contemplated this Business Rescue Plan have been concluded. For the avoidance of any doubt, payment into the SASA Escrow is a transaction contemplated in this Business Rescue Plan;
 - 13.1.2. all amounts owing to IDC as PCF Lender, together with interest and all other amounts due and/or payable under the agreements concluded for the advance by IDC of PCF to THL, have been discharged or settled, in full or alternative arrangements are agreed;
 - 13.1.3. final Distributions have been paid to Creditors and/or an appropriate mechanism, acceptable to the BRPs in their sole discretion has been put in place for the payment of any remaining Distributions to Creditors; and
 - 13.1.4. all Business Rescue Costs relating to the Business Rescue have been paid and settled in full or suitable arrangements acceptable to the BRPs have been put in place in this regard.

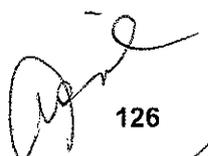

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13.2. Notwithstanding the above, the Substantial Implementation of this Business Rescue will remain within the sole and reasonable discretion of the BRPs.

14. Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv))

14.1. The Vision Transactions constitute the acquisition by the Vision Parties of the Claims and security held by the Lender Group and the subsequent conversion by the Vision Parties of a portion of such Claims into new equity in THL. The projected balance sheets and projected income statements reflected below have been prepared based on Management's assumptions and do not incorporate any business improvement plans and/or other initiatives that the Vision Parties may implement. In respect of the forecasts for the 2024 financial year, the underlying assumptions are based on the information available as at 31 October 2023. In respect of the forecasts for the 2025, 2026 and 2027 financial years, the underlying assumptions are based on the information available at 31 May 2023, with adjustments made for material changes to assumptions that have emerged since that date.

For comparability, the information in the projected balance sheets have been reflected in the same way as the balance sheet at 31 October 2022 with reference to paragraph 5.3.6.7.


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THL INCOME STATEMENT	31 March 2025	31 March 2026	31 March 2027
REVENUE	9 973	10 767	11 597
SUGAR INDUSTRY RELATED ADJUSTMENTS	- 251	- 696	- 819
COST OF SALES	- 8 472	- 8 758	- 9 355
GROSS PROFIT	1 250	1 313	1 423
MARKETING AND SELLING EXPENSES	- 221	- 235	- 250
ADMINISTRATIVE AND OTHER EXPENSES	- 1 008	- 1 003	- 1 070
EXPECTED CREDIT LOSSES	- 1	- 1	- 1
FAIR VALUE ADJUSTMENTS TO BIOLOGICAL ASSETS	37	3	2
OTHER OPERATING INCOME	331	366	392
PROFIT/(LOSS) FROM OPERATIONS BEFORE IMPAIRMENTS AND NON-TRADING ITEMS	388	443	496
IMPAIRMENT (LOSS)/REVERSAL	-	-	-
OTHER NON-TRADING ITEMS	-	-	-
PROFIT/(LOSS) FROM OPERATIONS	388	443	496
NET FINANCE (COSTS) / INCOME	- 1 140	- 883	- 939
DIVIDEND INCOME	12	12	13
PROFIT/(LOSS) BEFORE TAXATION	- 740	- 428	- 430
TAXATION	- 90	-	-
PROFIT/(LOSS) FOR THE PERIOD	- 830	- 428	- 430

14.1.1. Material Assumptions as per section 150(3)

14.1.1.1. The Projected Income Statement assumes that the Vision Transaction is completed on 1 April 2024.

14.1.1.2. Inflationary rates utilised in the forecast:

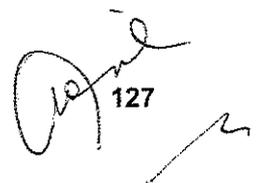
- FY 2025: 5.5%
- FY 2026: 5.0%
- FY 2027: 4.75%

14.1.1.3. Exchange rates utilised in the forecast:

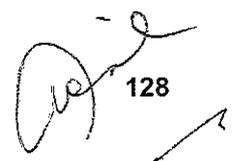
- FY 2025: R18.25 : USD1
- FY 2026: R18.50 : USD1
- FY 2027: R18.75 : USD1

14.1.1.4. World sugar prices utilised in the forecast:

- FY 2025: US¢ 20 per pound
- FY 2026: US¢ 19 per pound
- FY 2027: US¢ 18 per pound


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- 14.1.1.5. Sugar production includes the continued benefit of the reinvestment in milling efficiencies and assumes that there are no adverse weather conditions (e.g. drought) during the forecast period.
- 14.1.1.6. Local market demand for sugar is forecast to grow at c.1% per annum and assumes that there will be no further changes to the Health Promotion Levy.
- 14.1.1.7. THL will remain listed on the JSE, therefore the associated costs including non-executive director fees are included in the forecast.
- 14.1.1.8. Business Rescue and other restructuring costs:
- FY 2025:
 - no business rescue costs have been forecast on the assumption that the business rescue will be substantially implemented once the Vision Transactions have been implemented; and
 - legal costs on progressing the various criminal and civil cases in respect of the accounting irregularities identified in 2019 have been included in the forecast.
 - FY 2026 and FY 2027: No such costs have been included in the forecast.
- 14.1.1.9. In respect of the Post Retirement Medical Aid ("**PRMA**") obligation, the forecast assumes that the monthly contribution in respect of pensioners continues to be met by the Company. (This is not binding on the Company, but merely for illustration purposes. The wording set out in paragraph 6.2 remains applicable.)
- 14.1.1.10. Operational support fees and direct cost recoveries from the non-South African sugar operations:
- Botswana:
 - dividends are declared and paid annually (assuming same profit profile);



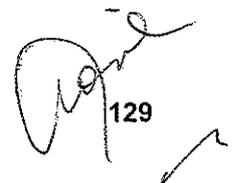
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- all direct costs are recovered in cash; and
- all operational support fees recovered in cash.
- Mozambique:
 - no dividends are assumed to be declared;
 - all direct costs are recovered in cash; and
 - operational support fees:
 - FY25: 50% of FY25 fee recovered in cash;
 - FY26: balance of FY25 fee and 100% of FY26 fee recovered in cash; and
 - FY27: 100% of fee recovered in cash.
- Zimbabwe:
 - no dividends are assumed to be declared;
 - all direct costs are recovered in cash; and
 - operational support fees:
 - FY25: 50% of FY25 fee recovered in cash;
 - FY26: balance of FY25 fee and 100% of FY26 fee recovered in cash; and
 - FY27: 100% recovered in cash.

14.1.1.11. Vision Debt

- The forecast assumes that Vision Debt of R3.6bn will remain owing as term debt. The Vision Parties have agreed to an interest payment holiday for the first 3 years, subsequently interest will be incurred at a market-related interest rate and will not be serviced in cash but capitalised. (This is not binding on the Vision Parties, but merely for illustration purposes).

14.1.1.12. The IDC post-Commencement Date funding has been assumed to remain in place at the current facility terms.

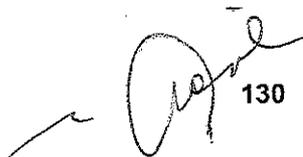


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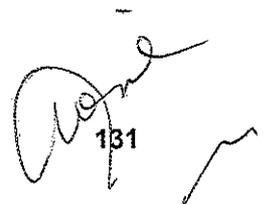
THL BALANCE SHEET	31 March 2025	31 March 2026	31 March 2027
ASSETS	5 534	5 907	6 109
NON CURRENT ASSETS	3 156	3 266	3 350
PROPERTY PLANT AND EQUIPMENT	1 878	2 015	2 135
RIGHT-OF-USE ASSETS	8	2	10
INTANGIBLE ASSETS	84	69	26
INVESTMENTS IN SUBSIDIARIES AND JOINT OPERATIONS	1 168	1 168	1 168
NET DEFERRED TAX	-	-	-
OTHER NON-CURRENT ASSETS	18	12	11
CURRENT ASSETS	2 378	2 641	2 759
INVENTORIES	838	945	1 061
BIOLOGICAL ASSETS	233	236	239
AMOUNTS OWING FROM GROUP COMPANIES	193	233	127
TRADE AND OTHER RECEIVABLES	1 073	1 179	1 285
CASH AND CASH EQUIVALENTS	41	48	47
EQUITY & LIABILITIES	5 534	5 906	6 109
CAPITAL & RESERVES	2 426	2 574	2 702
SHARE CAPITAL AND PREMIUM	6 389	6 389	6 389
ACCUMULATED LOSSES	- 8 806	- 8 954	- 9 082
OTHER RESERVES	- 9	- 9	- 9
LIABILITIES	7 960	8 480	8 811
NON CURRENT LIABILITIES	364	358	361
AMOUNTS OWING TO GROUP COMPANIES	-	-	-
POST-RETIREMENT BENEFIT OBLIGATIONS	354	350	346
DEFERRED INCOME - NC	-	-	-
PROVISIONS - NC	8	8	8
LEASE LIABILITIES - NC	2	-	7
CURRENT LIABILITIES	7 596	8 122	8 450
BORROWINGS	5 741	6 226	6 507
CREDITORS - PRE BR	580	580	580
SASA - PRE BR	59	59	59
SASA - POST BR	467	467	467
TRADE AND OTHER PAYABLES	743	788	834
DEFERRED INCOME	-	-	-
NET TAX LIABILITY	-	-	-
LEASE LIABILITIES	6	3	3

14.1.2. Material Assumptions as per section 150(3)

14.1.2.1. The Projected Balance Sheet assumes that the Vision Transaction is completed on 1 April 2024.


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- 14.1.2.2. As per the Vision Parties' Proposal, Unsecured Creditors will be entitled to a distribution of R75m.
- 14.1.2.3. THD:
- THD is being wound down in accordance with its business rescue plan.
 - The THD intergroup debtor is Unenforceable in line with the impact of THD's approved business rescue plan which entails a zero cents in the Rand distribution to Unsecured Creditors.
- 14.1.2.4. Intergroup creditors and/or debtors are taken over by the Vision Parties (excluding the THD balance as per 14.1.2.3 which remains unenforceable).
- 14.1.2.5. The site restoration provision in respect of a mothballed sorbitol facility will be subject to the Unsecured Creditor Distribution should a Claim materialise.
- 14.1.2.6. SASA: SASA asserts that the net outstanding amount as at 23 November 2023 is R525 956 116. The terms of settlement in respect of the SASA Claim shall be treated in the manner as set out in clause 6.1.6.1 above. For ease of reference and only for purposes of these forecasts it is assumed that the Declarator Judgement appeal process takes longer than three years, so SASA is not paid from the SASA Escrow before that.
- 14.1.2.7. PRMA: The forecast assumes that the PRMA obligations are met by the Company through the continued payment of the monthly medical aid contributions in respect of pensioners. (This is not binding on the Company, but merely for illustration purposes. The wording set out in paragraph 6.2 remains applicable.)
- 14.1.2.8. Vision Debt:



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- The forecast assumes that Vision Debt of R3.6bn will remain owing as term debt. The Vision Parties have agreed to an interest payment holiday for the first 3 years, subsequently interest will be incurred at a market-related interest rate and will not be serviced in cash but capitalised. (This is not binding on the Vision Parties, but merely for illustration purposes).
- The balance of the Vision Parties' claim is assumed to be converted to equity.

14.1.2.9. The forecast assumes that the IDC PCF Facility is refinanced and that the replacement lender will provide sufficient facilities to support the working capital and capital reinvestment requirements of THL at market-related interest rates.

14.1.2.10. Trade Payables includes pre-Commencement Date claims as per Annexure **A** after the Unsecured Creditor Distribution has been made as per paragraph 6.3.4.2 above.



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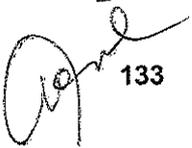
CHAPTER 3 – ADMINISTRATIVE MATTERS

15. Existing litigation or alternate dispute resolution proceedings

- 15.1. Annexure J lists the matters already subject to a dispute resolution process as at the Publication Date.
- 15.2. Save as is otherwise provided for in this Business Rescue Plan and/or the Companies Act, all Affected Persons who have instituted legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be required to submit a Claim for consideration by the BRPs in accordance with the provisions of this Business Rescue Plan.
- 15.3. The BRPs shall be entitled to institute any proceedings against any Affected Person in any forum (and will not be subject to the Dispute Mechanism in paragraph 16 below) for any purpose, including, recovering money that is due to the Company or preventing Affected Persons from delaying the implementation of the Business Rescue Plan or bringing any application to liquidate the Company.

16. Dispute Mechanism

- 16.1. Subject to paragraph 15 above and save as provided for in section 133 of the Companies Act, any disputes related to the interpretation or application of this Business Rescue Plan, the Business Rescue proceedings, and/or the Disputed Claims of all Disputed Creditors ("**Disputed Matters**") must be resolved in accordance with the Dispute Mechanism outlined below, other than in circumstances where the BRPs and the relevant counterparty (the "**Disputing Party**") otherwise mutually agree in writing. Even in circumstances where an agreement legally requires otherwise as to how a Disputed Matter must be resolved, Disputing Parties and the Company are encouraged, and may elect and agree in writing, to resolve such matters through the Dispute Mechanism.

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16.2. The Dispute Mechanism procedure will be as follows –

16.2.1. The BRPs have incorporated into this Business Rescue Plan a Dispute Resolution Process that has been jointly established and endorsed by the Arbitration Foundation of South Africa (“**AFSA**”) and the South African Restructuring and Insolvency Practitioners Association NPD (“**SARIPA**”) specifically for the purpose of resolving disputes arising in connection with business rescue proceedings (“**the AFSA/SARIPA Process**”). The advantages of adopting the AFSA/SARIPA Process are (inter alia) that it:

16.2.1.1. is specifically designed for use in business rescue plans;

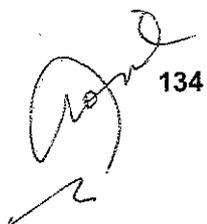
16.2.1.2. will be populated by arbitrators experienced in business rescue law and proceedings;

16.2.1.3. is designed to avoid the costs and time delays experienced in court proceedings, and in certain overcomplicated and extended arbitration proceedings;

16.2.1.4. has a mechanism which enables the arbitrator to adapt each arbitration to fit the specific circumstances; and

16.2.1.5. brings with it a flexibility which allows the BRPs and claimant’s, by mutual agreement, to opt out of the AFSA/SARIPA Process if so elected.

16.2.2. All Disputing Parties are referred to Annexure **A** in relation to their Disputed Matters and are required to contact the BRPs at br@tongaat.com within 30 days of the Disputing Party becoming aware of the Disputed Matters in order to register their disagreement (“**Disagreement**”).



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16.2.3. The Disputing Party must endeavour to reach agreement with the BRPs on the Disputed Matter within the ensuing 15 days after their Disagreement has been registered, or such longer period as the BRPs may allow. If the Disputing Party does not avail itself of this opportunity within the time period allowed, then the Disputing Party shall be deemed to have abandoned its Claim and will not, in accordance with section 154 of the Companies Act, be entitled to enforce, at a later date, any Claim that that Disputing Party believes it has against the Company.

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

16.3. Any Disputed Matter of whatsoever nature relating to:

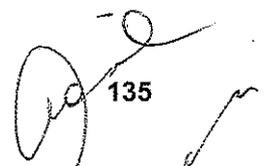
16.3.1. the acceptance or rejection of any Claim whether in whole or in part or the value or ranking of any Claim or the recognition of any security or preference, lien or hypothec attaching to such claim;

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

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

which is not resolved in terms of paragraph 16.2.3 shall be submitted for final determination in accordance with the AFSA-SARIPA RULES, attached hereto as Annexure **K**, by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

16.4. The BRPs may, however, in their sole and absolute discretion agree with the Disputed Creditor that the Disputed Claim/s be settled. To the extent that



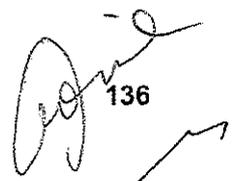
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any amount remains unpaid after such settlement, the remaining amount will become Unenforceable.

- 16.5. Should any monetary award be made against the Company, including a costs award, then that award will be treated as a Concurrent Claim in the Business Rescue.
- 16.6. Notwithstanding anything to the contrary in this paragraph 16 or elsewhere in the Business Rescue Plan, the BRPs shall not, in any circumstance, be obliged to prosecute, progress or further the Claim of any Creditor beyond the provisions of this paragraph 16. The Company may, however, in the discretion of the BRPs, continue to prosecute any one of more of its counterclaims.

17. Domicilium

- 17.1. The BRPs choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to the Business Rescue up until the Substantial Implementation Date, including the giving of any notice and the serving of any process, at the physical and e-mail addresses set out below:
- 17.1.1. Physical address: Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal, 4400
- 17.1.2. E-mail address: br@tonga.com
- 17.1.3. Attention: Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn
- 17.2. The BRPs shall be entitled, up until the Substantial Implementation Date, by giving written notice to Affected Persons, to vary their physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary their e-mail Domicilium to any other e-mail address.

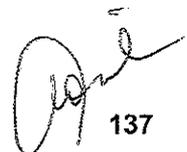


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- 17.3. Any notice given or process served by any Affected Person to the BRPs, which is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the BRPs' physical Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs at the time of delivery.
- 17.4. Any notice given or process served by any Affected Person to the BRPs, which is transmitted by e-mail to the BRPs' e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs on the Business Day immediately succeeding the date of successful transmission thereof.
- 17.5. Any notice or process in terms of, or in connection with, this Business Rescue Plan shall be valid and effective only if in writing and if received or deemed to have been received by the BRPs.
- 17.6. For the avoidance of doubt, it is recorded that –
- 17.6.1. following the Substantial Implementation Date, the Business Rescue of the Company would have terminated; and
- 17.6.2. no notice or process served in terms of this paragraph shall 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.

18. Ability to amend the Business Rescue Plan

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


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18.2. Other than as specifically contemplated in this Business Rescue Plan to the contrary, in the event of any other material amendments to this Business Rescue Plan, the BRPs shall consult with Affected Persons in terms of section 150 of the Companies Act and shall be entitled to propose an amendment for consideration and voting at a Meeting conducted in terms of Section 151 of the Companies Act. Such amendment shall only be effective should it be Adopted in the same manner as provided for in section 152 of the Companies Act.

~~18.2.~~18.3. The Vision Parties or any Creditor may at any time after the Adoption Date submit to the BRPs a proposed material amendment to the Business Rescue Plan, and if such proposed material amendment (i) is supported by creditors who hold at least 50% of the total Voting Interests of creditors, and (ii) is acceptable to BRPs, then the BRPs will be required to propose the proposed material amendment for consideration and voting at a meeting of creditors in the manner contemplated in clause 18.2.

19. **Severability**

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

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


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CHAPTER 4 – CONCLUSION AND BRPs’ CERTIFICATES

20. Conclusion

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

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

20.1.2. the aggregate Distribution is likely to result in Creditors receiving a higher return in the Business Rescue than would be anticipated to receive on a liquidation of the Company. This is already the case due to the extent of the pre-Commencement Date Claims that have already been paid and the fact that the values of the Secured Creditor security over the investments in THL Zimbabwe, THL Botswana and THL Mozambique materially exceed the liquidation estimate of BDO.

20.1.3. a substantial majority of employees will retain their employment positions (albeit under different ownership);

20.1.4. a successful Business Rescue will have a materially positive impact on employment and the local economy and avoid a social and economic catastrophe in the KwaZulu-Natal region; and

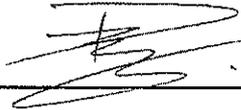
20.1.5. should the Business Rescue Plan not be Adopted, the BRPs are of the view that the Business Rescue will probably be terminated and converted to liquidation proceedings immediately following the provisions of section 153 of the Companies Act.

21. BRPs’ certificates



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- 21.1. We, the undersigned, hereby certify that to the best of our knowledge and belief:
- 21.1.1. any information provided herein appears to be reasonably accurate, complete, and up to date;
 - 21.1.2. we have relied on financial information including opinions and reports furnished to us by the Board and Management;
 - 21.1.3. any projections provided are reasonable estimates made in good faith based on factual information and assumptions as set out herein;
 - 21.1.4. in preparing the Business Rescue Plan, we have not undertaken an audit of the information provided to us, although where practical, we have endeavoured to satisfy ourselves of the accuracy of such information.



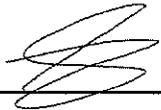
Peter van den Steen

Date: 11/01/2024



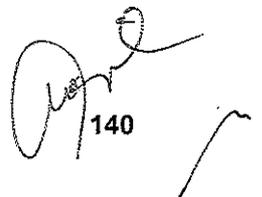
Trevor Murgatroyd

Date: 11/01/2024



Gerhard Albertyn

Date: 11/01/2024



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ANNEXURE G – VISION PARTIES TURNAROUND PLAN

EXTRACTS FROM THE VISION PARTIES' INITIAL EXPRESSION OF INTEREST AND FINAL BINDING OFFER DOCUMENTS RECEIVED BY THE COMPANY

About the Vision Parties

1. The Vision Parties represents a group of investors with notable experience in the sugar industry, Tongaat's operating jurisdictions, and capital investment in Southern Africa. The Vision Parties are made up of the following parties:

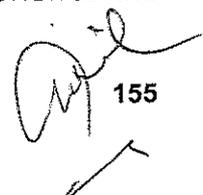
- 1.1. Terris Sugar Limited, an SPV of Terris Fund SPC ("**The Fund**"). The Fund has a successful track record of investing in and operating large scale businesses in South Africa (and internationally). The Fund's most recent realised investment was Samancor Chrome;
- 1.2. Remoggo (Mauritius) PCC ("**Remoggo**"). Remoggo is a Mauritian based investment holding company with investments in FMCG retail, agribusiness, logistics, and facilities management services in Zimbabwe and seven other African countries;
- 1.3. The Guma Group of Companies ("**Guma Group**") is a Pan African diversified global business with activities in ICT, mining, clean energy, tourism and leisure, manufacturing, trading, water & sanitation, railways, infrastructure development and construction, and agriculture. Based in South Africa, the Guma Group is a 100% black owned, hands-on operational and multi-industry investment powerhouse intensely focused on adding value and initiating growth by means of its entrepreneurial, operational and managerial participation. The Guma Group employs over 10 000 employees. The Guma Group operates globally and has an active presence in 32 countries on the African continent, including Mozambique, Zimbabwe, Mauritius, Botswana, DRC, Zambia, Kenya; and


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- 1.4. Almoiz Group ("**Almoiz**") is one of the largest agribusiness groups in Pakistan, with substantial interests in the sugar, energy, steel, animal feed, textiles and food and beverages sector. Amongst its holdings, the group owns and operates 5 sugar mills procuring cane from 40,000 farmers annually to produce over 650,000 tons of refined sugar. It is the only sugar milling group in Pakistan to be "Bonsucro Certified" for sustainable sugar production.
2. Additionally, the Vision Parties have previously engaged with both the PIC and IDC regarding their participation in the Proposed Transaction, and the Vision Parties is committed to work with the PIC, IDC, and GEPF to the extent they wish to participate in the Proposed Transaction.
3. The Vision Parties include a fully empowered entity (black-owned and controlled) in South Africa (through Guma) and Zimbabwe (through Remoggo) where THL has operations and empowerment credentials are necessary for regulatory approval and support.

Strategic rationale for the Proposed Transaction

1. The Vision Parties have been tracking the performance of Tongaat for approximately 5 years and believes the underlying assets and operating segments have value with the correct financing structures and operational expertise.
2. Given Tongaat's historical and current critical role in the agricultural sector of Southern Africa, and specifically its contribution to the local KZN economy, and the employment of approximately 40,000 people, who on average feed 7 dependents, the Vision Parties believe the value it will create will be holistic and make a significant sustainable contribution to all stakeholders in the region.
3. To date, the Vision Parties have already engaged in numerous discussions with management and the joint Business Rescue Practitioners to better understand the current situation of Tongaat. Additionally, the Vision Parties have engaged technical consultants to evaluate the current operations and have reviewed the

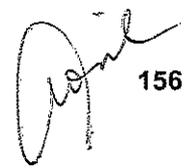


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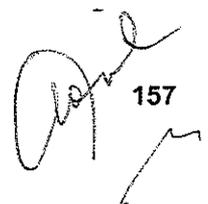
contents of the virtual data room previously made available. These activities have provided a further underpin to their strategic rationale for the Proposed Transaction.

Business case and Turnaround Plan

1. The Vision Parties have reviewed the sugar assets across all geographies and have identified scope for improvement.
2. In the short-to-medium term, the Vision Parties intend to stabilise and grow the operations and return the business to sustainable profitability. Many of the challenges faced by Tongaat's operations – issues related to delayed and deferred maintenance, old and improperly functioning machinery, frequent breakdowns and lost time, low milling efficiency – are areas where the Vision Parties have deep and distinctive expertise. Their detailed review of milling operations has given the Vision Parties confidence that they will be able to bring operations up to acceptable speed and efficiency within a reasonable timeframe and at a manageable cost.
3. In the medium term, the Vision Parties intend to give growers confidence that their cane will be processed timely to address cane security concerns, and to deploy Agri expertise to support further cane supply. The ultimate aim is to help Tongaat's SA operations to reach six million plus in annual crush. An estimated c.R4bn in capital expenditure over this period is intended to transition milling operations from medium-pressure at present to high-pressure steam, providing the platform to diversify into downstream activities such as power export, green steel and ethanol where the Vision Parties have significant expertise.
4. Additionally in Zimbabwe and Mozambique, the Vision Parties intend to engage regulators and other stakeholders to ensure that operating environments are stabilised, and the land tenure issues are resolved and that cane yields are improved for both owned fields and third-party cane farmers. In Botswana, the focus will be on ensuring that market share within the retail trade is enhanced through sustainable and low-cost sugar supply arrangements.


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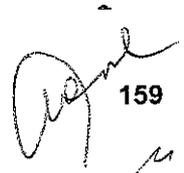
5. The Vision Parties have been actively tracking the performance of Tongaat for a significant period of time and believe that the underlying Target assets have value, that jobs can be saved, and that the Target can continue to play a critical role in the agricultural sectors in South Africa, Mozambique, Botswana and Zimbabwe.
6. The Vision Parties have significant breadth of experience in the sugar industry and in Tongaat's operating jurisdictions and have a successful track record of investing in and operating large-scale businesses in South Africa, Zimbabwe and Mozambique, as well as internationally. It is the Vision Parties' belief that their collective expertise will create significant value in the business if the correct capital structure and operational enhancements drive the business going forward.
7. Lastly, the Vision Parties has invested significant resources into understanding the Target and the current status of its operations. Their due diligence teams attended several site visits, conducted an extensive review of the data provided in the virtual data room and engaged in numerous sessions with Tongaat's management team to understand the technical, operational and financial status of the Target's operations.
8. Their findings support their investment thesis and confirm their belief that through their collective experience, the Vision Parties will be able to affect the successful turnaround of the Target through the implementation of their aforementioned business plan.
9. Across the jurisdictions in which the Target operates, the Vision Parties have also had extensive preliminary consultations with the relevant authorities.



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ANNEXURE I – BRPS' REMUNERATION AGREEMENT

(ATTACHED SEPARATELY BELOW)


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16 November 2022

BUSINESS RESCUE REMUNERATION AGREEMENT

between

TREVOR JOHN MURGATROYD

and

PETRUS FRANCOIS VAN DEN STEEN

and

GERHARD CONRAD ALBERTYN

and

TONGAAT HULETT LIMITED

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BUSINESS RESCUE REMUNERATION AGREEMENT

between

TREVOR JOHN MURGATROYD

and

PETRUS FRANCOIS VAN DEN STEEN

and

GERHARD CONRAD ALBERTYN

and

TONGAAT HULETT LIMITED

1 DEFINITIONS

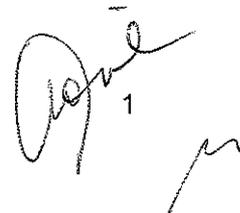
1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings -

1.1.1 "**Affected Persons**" - those persons who qualify as affected persons (as defined in section 128(1)(a) of the Companies Act) in relation to the Company;

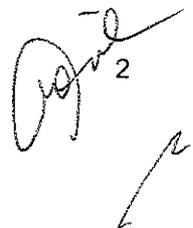
1.1.2 "**Agreed Remuneration**" - the remuneration payable by the Company to the BRPs recorded in clause 8.4 as contemplated in section 143(2) of the Companies Act, subject to the fulfilment of the Suspensive Conditions, and pursuant to, and with effect from, the occurrence of the Contingency Event;

1.1.3 "**Agreement**" - this agreement between the Parties, *inter alia*, for the payment by the Company to the BRPs of remuneration;

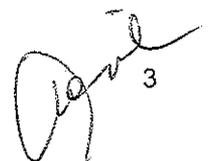
1.1.4 "**Albertyn**" – Gerhard Conrad Albertyn, with identity number: 8309195128084, being an experienced business rescue practitioner, licensed as such under and in terms of section 138(1)(b) of the Companies Act, read with section 138(2) thereof, by the Commission;



- 1.1.5 **"Bank Account"** - the Bank Account of the BRPs' Nominated Entity with the following details –
- Bank: Standard Bank
Accountholder: Metis Strategic Advisors Proprietary Limited
Account Number: 301934835
Branch Code: 051001
- 1.1.6 **"Board"** - the board of directors of the Company, from time to time;
- 1.1.7 **"BRPs"** - Murgatroyd, van den Steen and Albertyn, being the persons appointed in accordance with the applicable provisions of the Companies Act as the joint business rescue practitioners of the Company and of the Subsidiary;
- 1.1.8 **"BRPs' Nominated Entity"** - the entity which each BRP may nominate from time to time, to which that BRP's entitlement to his share of the BRPs' Remuneration will be paid;
- 1.1.9 **"BRPs' Remuneration"** - the total remuneration payable by the Company to the BRPs as set out in this Agreement;
- 1.1.10 **"Business Day"** - every day of the week other than a Saturday, Sunday or South African public holiday;
- 1.1.11 **"Business Rescue"** - the business rescue proceedings of the Company from the Commencement Date to the date of termination in accordance with chapter 6 of the Companies Act;
- 1.1.12 **"Business Rescue Plan"** - the business rescue plan finally adopted in respect of the Company in terms of the Companies Act;
- 1.1.13 **"Commencement Date"** - 27 October 2022;
- 1.1.14 **"Commission"** - the Companies and Intellectual Property Commission established by section 185 of the Companies Act;

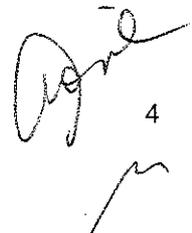
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- 1.1.15 "**Company**" – Tongaat Hulett Limited, with registration number 1892/000610/06, being a public listed company incorporated and carrying on business in accordance with the company laws of South Africa, presently under business rescue with effect from the Commencement Date;
- 1.1.16 "**Companies Act**" - the Companies Act, 71 of 2008, as amended;
- 1.1.17 "**Companies Act Regulations**" - the Regulations to the Companies Act, namely, those Regulations published under GNR.351 in Government Gazette 34239, dated 26 April 2011;
- 1.1.18 "**Contingency Event**" - the holding of the first meeting of the creditors of the Company pursuant to the Business Rescue;
- 1.1.19 "**Contingency Event Date**" - 8 November 2022;
- 1.1.20 "**CPI**" - as at any date means the Consumer Price Index in respect of all areas and for all items as published by Statistics SA (or its successor) in statistical release P0141 for the month immediately prior to the month in which that date occurs; provided that, if the Consumer Price Index is no longer published, the Parties shall agree in writing an alternative index and, failing such written agreement within 30 days after it is requested by any Party, such alternative index shall be the index which is most similar thereto and which shall be selected by the auditors of the Company;
- 1.1.21 "**Group**" – the Company and all of its direct and indirect Subsidiaries (as such term is defined in the Companies Act) and any other company in which the Company and/or any of its direct and indirect Subsidiaries holds a shareholding interest;
- 1.1.22 "**Metis**" - Metis Strategic Advisors Proprietary Limited (registration number 2015/220685/07) being a company incorporated and carrying on business in accordance with the company laws of South Africa;



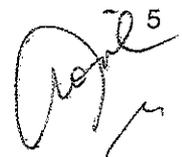
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- 1.1.23 "Murgatroyd" - Trevor John Murgatroyd, with identity number: 6211115087089, being a senior business rescue practitioner, licensed as such under and in terms of section 138(1)(b) of the Companies Act, read with section 138(2) thereof, by the Commission;
- 1.1.24 "Parties" - the parties to this Agreement, being the Company and the BRPs;
- 1.1.25 "PCF" - the provision to the Company of post-commencement finance as envisaged in section 135(2) of the Companies Act;
- 1.1.26 "Prime Rate" - the rate of interest (nominal annual compounded monthly in arrears) from time to time published by the Standard Bank of South Africa Limited as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of manifest or clerical error, be final and binding on the parties);
- 1.1.27 "Rand" or "R" - South African Rand, the lawful currency of South Africa;
- 1.1.28 "Signature Date" - the date of the last of the signatures to this Agreement;
- 1.1.29 "South Africa" - the Republic of South Africa;
- 1.1.30 "Subsidiary" – Tongaat Hulett Developments Proprietary Limited (registration number 1981/012378/07) being a company incorporated and carrying on business in accordance with the company laws of South Africa, being the holding company of the Company;
- 1.1.31 "Surviving Provisions" - clause 1, 18, 19 and any other provisions of this Agreement which are expressed to continue in force after termination or which by necessary implication must continue after termination;
- 1.1.32 "Suspensive Conditions" - the suspensive conditions in clause 4;



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- 1.1.33 "van den Steen" - Petrus Francois van den Steen, with identity number: 681107 5024 087, being a senior business rescue practitioner, licensed as such under and in terms of section 138(1)(b) of the Companies Act, read with section 138(2) thereof, by the Commission;
- 1.1.34 "VAT" - value-added tax levied in terms of the VAT Act;
- 1.1.35 "VAT Act" - Value-added Tax Act, 89 of 1991, as amended; and
- 1.1.36 "Werksmans" – Werksmans Incorporated, practising as such at, *inter alia*, 96 Rivonia Road, Sandton, Johannesburg.
- 1.2 In this Agreement –
- 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and includes that provision as modified or re-enacted from time to time;
- 1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 1.2.3 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.6 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement, the definition appearing

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in that clause shall prevail over any other conflicting definition appearing elsewhere in the Agreement;

- 1.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.2.8 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 1.2.9 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.2.10 the use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 1.2.11 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 1.2.12 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.



1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (ie the *contra proferentem* rule), shall not apply.

2 VOLUNTARY COMMENCEMENT OF THE BUSINESS RESCUE AND THE APPOINTMENT OF THE BRPS

2.1 On the Commencement Date –

2.1.1 the Board resolved that the Company voluntarily commence business rescue proceedings, and appointed the BRPs as the business rescue practitioners of the Company; and

2.1.2 the board of directors of the Subsidiary resolved that the Subsidiary commence business rescue proceedings, and appointed the BRPs as the business rescue practitioners of the Subsidiary.

2.2 On -

2.2.1 28 October 2022, the Commission confirmed the appointment of Van den Steen and Murgatroyd as a business rescue practitioner of the Company and the Subsidiary respectively, through the stamping and return of the requisite Form CoR 123.2;

2.2.2 2 November 2022, the Commission approved the appointment of Albertyn as a business rescue practitioner of the Company and the Subsidiary

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respectively, through the stamping and return of the requisite Form CoR 123.2.

2.3 Whilst the primary relevant business activities, assets and obligations of the Group fall predominantly within the Company, various cross-guarantee and other like security arrangements exist between the Company and the Subsidiary, and various lenders and other third parties, in respect of the obligations of the Company and the Subsidiary to such lenders and other third parties.

2.4 This Agreement is the remuneration agreement of the BRPs as contemplated in section 143(2) of the Companies Act. The financial arrangements in this Agreement have been designed in a manner which recognizes that the financial affairs of the Company and of the Subsidiary are in many instances inexorably linked and that consequently, the most efficient methodology to be adopted in so remunerating the BRPs, is through the Company, notwithstanding that certain of the activities they undertake in earning such remuneration, will relate to the Subsidiary.

3 STATUS OF THIS AGREEMENT AND RELATIONSHIP BETWEEN THE PARTIES

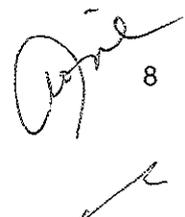
3.1 In performing their duties as the BRPs, the BRPs shall act in accordance with their obligations in terms of the Companies Act and in accordance with the terms and conditions of this Agreement.

3.2 This Agreement shall not constitute a contract of employment as between the BRPs and the Company in any way or manner whatsoever.

4 SUSPENSIVE CONDITIONS

4.1 The provisions of this Agreement (other than the Surviving Provisions which shall be unconditional and of immediate force and effect on and with effect from the Signature Date) are subject to the fulfilment of the following Suspensive Conditions by no later than 15 December 2022 –

4.1.1 the approval in terms of section 143(3)(a) of the Companies Act by the holders of a majority of the creditors' voting interests, as determined in accordance



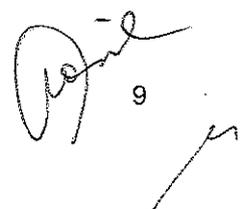
with sections 145(4) to 145(6) of the Companies Act, present and voting at a meeting called for the purpose of considering this Agreement; and

- 4.1.2 the approval in terms of section 143(3)(b) of the Companies Act by the holders of a majority of the voting rights attached to any shares of the Company that entitle the shareholder to a portion of the residual value of the Company on winding up, present and voting at a meeting called for the purpose of considering this Agreement.
- 4.2 The Parties shall, where it is within their respective power and control to do so, use their commercial endeavours to procure the fulfilment of each of the Suspensive Conditions, specifically by taking the steps envisaged in terms of section 143(3) of the Companies Act for the purpose of seeking the approvals contemplated in section 143(3) of the Companies Act.
- 4.3 If the Suspensive Conditions are not fulfilled by the date contemplated at clause 4.1, the BRPs shall have the election to terminate their appointment, resign as the BRPs of the Company with immediate effect (in which event the BRPs shall notify the Company in writing immediately). Should any of the BRPs elect not to terminate this Agreement and resign as the BRPs of the Company, that BRP shall be entitled to Agreed Remuneration.
- 4.4 If the Suspensive Conditions are not fulfilled, no Party shall have any claim against any other Party as a result of or in connection with any such non-fulfilment (other than a claim for a breach by a party of any of its obligations under this clause 4), and the Parties indemnify each other accordingly.

5 TERM OF THE APPOINTMENT OF THE BRPS

The appointment of the BRPs took effect on the Commencement Date (from which date, subject to the fulfilment of the Suspensive Conditions, this Agreement shall be of full force and effect), and shall endure until the earlier of –

- 5.1 the termination of the Business Rescue as contemplated in section 132 of the Companies Act;



- 5.2 the removal of the BRPs as contemplated in section 139 of the Companies Act; or
- 5.3 the resignation of the BRPs as contemplated in clause 4.3 or otherwise.

6 STATUS OF THE BRPS

- 6.1 The Companies Act contemplates that the appointment of a business rescue practitioner for the purposes of a Business Rescue shall take place as between the business rescue practitioner (licensed as such and for that purpose by the Commission) and the company in business rescue. As such, the appointment of the BRPs is made in their names.
- 6.2 It is recorded that the BRPs have nominated Metis as their respective BRPs' Nominated Entity for the time being. In the event that any BRP wishes to nominate a new entity, he may do so on written notice to the Company, at its email address recorded in clause 19.1.1 below.
- 6.3 Notwithstanding clause 6.1, the BRPs will perform their appointment hereunder as part of their duties and responsibilities to the BRPs' Nominated Entity.
- 6.4 It is therefore agreed that –
- 6.4.1 for as long as the BRPs remain engaged with or retain an interest in the BRPs' Nominated Entity, the benefits of any and all payments due and payable to the BRPs hereunder, including, but not limited to, the BRPs' Remuneration, properly vest in and accrue to and in favour of BRPs' Nominated Entity and for that purpose the BRPs are agents of the BRPs' Nominated Entity for purposes of section 54 of the VAT Act;
- 6.4.2 the BRPs antecedently divests, cedes and assigns their right, title and interest in and to the BRPs' Remuneration in favour of the BRPs' Nominated Entity, it being expressly recorded and agreed that, should the relationship between any or all of the BRPs and the BRPs' Nominated Entity come to an end, or any or all of the BRPs choose to appoint an alternative nominee at any time after the Signature Date, the contemplated divestment, cession and assignment by the BRPs of their right, title and interest in and to the BRPs' Remuneration in

favour of the BRPs' Nominated Entity will terminate with immediate effect in respect of such BRP and the BRP shall then be entitled to divest, cede and assign his right, title and interest in and to the BRPs' Remuneration in favour of an alternative nominee of his choosing; and

- 6.4.3 notwithstanding clauses 6.4.1 and 6.4.2, the BRPs shall be liable in full to and in favour of the Company in relation to the discharge of their duties as the BRPs of the Company as contemplated in the Companies Act.
- 6.5 Each BRP warrants that he has the capacity and requisite authority to enter into and to conclude this Agreement, and in particular, that his appointment as joint business rescue practitioner of the Company will not be in contravention of section 138(1) of the Companies Act.
- 6.6 This clause 6 constitutes a *stipulatio alteri* (right in favour of a third party) in favour of the BRPs' Nominated Entity, capable of acceptance by the BRPs' Nominated Entity at any time.

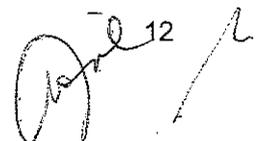
7 THE SUCCESS OR FAILURE OF THE BUSINESS RESCUE

- 7.1 It is expressly recorded and agreed that –
- 7.1.1 the Company irrevocably and unconditionally acknowledges that it is fully cognisant of its obligations under the Companies Act and in particular, but without limiting the generality of the Companies Act, Chapter 6 thereof. The Company shall render all assistance to the BRPs as may be required by the BRPs in the discharge by the BRPs of their duties in relation to the successful Business Rescue;
- 7.1.2 the Company shall procure that its Board, officers and employees shall likewise render all assistance to the BRPs as may be required by the BRPs in the discharge of their duties in relation to the successful Business Rescue.



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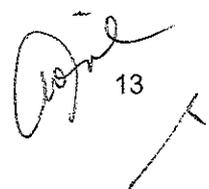
- 7.2 The Company undertakes, and shall procure that its board, the officers and employees shall also undertake, *inter alia* –
- 7.2.1 to assist the BRPs during the Business Rescue at all times, as set out in the Companies Act;
- 7.2.2 not to enter into any contract or bind the Company in any way without the prior written consent of the BRPs;
- 7.2.3 not to permit, in the case of the Company or misappropriate business opportunities during the Business Rescue;
- 7.2.4 not to make any disparaging comments or remarks in any public forum about the BRPs, their professional advisors or the Business Rescue proceedings; and
- 7.2.5 not to do anything that will jeopardise the successful Business Rescue.
- 7.3 The Company acknowledges that –
- 7.3.1 the BRPs are required by the Companies Act to investigate the affairs of the Company;
- 7.3.2 the BRPs shall take all necessary steps as prescribed by the Companies Act to rectify any transgressions of any law;
- 7.3.3 the role of the Board is subject to oversight by the BRPs during the Business Rescue and the Board shall report to the BRPs at all times, fully and effectually. The BRPs hereby exercise their right to delegate to the pre-existing management the BRPs powers and/or functions, subject to the continued oversight of the BRPs;
- 7.3.4 the BRPs are required to report to the relevant authorities as prescribed in the Companies Act any fraud or attempted fraud that was committed by any person in relation to the affairs of the Company;

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- 7.3.5 the Board may make no statements about the affairs of the Company or details of the Business Rescue Plan prior to the adoption thereof to any third party and all queries in relation thereto shall be required to be directed to the BRPs or whomsoever the BRPs has nominated to respond to such queries;
- 7.3.6 the BRPs have the authority to amend, suspend or, subject to procuring the requisite court order, cancel any agreements, contracts or any other obligations during the Business Rescue save for employment contracts, in accordance with the Companies Act;
- 7.3.7 the BRPs shall be responsible for authorising all payments made for and on behalf of the Company and no member of the Board or prescribed officer of the Company may make any payments to any party without the prior written consent of the BRPs; and
- 7.3.8 should the Company fail to obtain approval for the Business Rescue Plan, the Company may be placed in liquidation.

8 BRPS' REMUNERATION

- 8.1 The remuneration payable by the Company to the BRPs in terms of this Agreement shall comprise the Agreed Remuneration, as recorded in clause 8.4, and shall be applicable with effect from the Contingency Event Date.
- 8.2 In addition to the Agreed Remuneration, the Company shall reimburse the BRPs for any reasonable costs, expenses and disbursements incurred by any of them in the discharge of their duties and responsibilities such as –
- 8.2.1 travelling costs and expenses, it being noted that –
- 8.2.1.1 any travelling costs incurred by the BRPs in relation to the motor vehicle/s of the BRP shall be charged at the applicable Automobile Association of South Africa's recommended rate, excluding VAT;

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- 8.2.1.2 airline travel shall be with any recognised domestic or international carrier at the applicable full economy class fare save that any flight longer than two hours shall be business class fare;
- 8.2.2 accommodation costs and expenses;
- 8.2.3 any other costs and expenses reasonably incurred by the BRPs to the extent required in order for the BRPs to discharge their duties and responsibilities.
- 8.3 The fees payable to the BRPs under and in terms of this Agreement are exclusive of all reasonable costs and expenses which may of necessity be incurred by the BRPs and/or the Company, as the case may be, in relation to the employment and/or the engagement of all professionals or other service providers advising and/or providing services to the BRPs and/or the Company for the purposes of the Business Rescue.
- 8.4 **Agreed Remuneration**
- 8.4.1 For the purposes of calculating the Agreed Remuneration, time spent by each of the BRPs shall include, *inter alia*,:
- 8.4.1.1 time actually spent (without limitation) by the BRPs in acting as the BRPs of the Company subject to the completion by the BRPs of reasonable time attendance records to that effect;
- 8.4.1.2 any travelling time incurred by the BRPs in the discharge of the duties and responsibilities of the BRPs;
- 8.4.1.3 any planning, preparation and assessments completed and/or undertaken by the BRPs in the discharge of the duties and responsibilities of BRPs.
- 8.4.2 In accordance with section 143(2)(b) of the Companies Act, upon an extension in terms of section 150(5)(b) being granted, the Agreed Remuneration will include, with effect from the Commencement Date, an additional hourly amount, so as to bring (i) each of Murgatroyd's and van den Steen's individual

hourly rates to R4,400 (excluding VAT) per hour and (ii) Albertyn's individual hourly rate to R2,950 (excluding VAT) per hour.

- 8.5 Notwithstanding the provisions above, the Agreed Remuneration shall be increased annually on each anniversary of the Commencement Date by the CPI.

9 PAYMENT AND INVOICING

- 9.1 By virtue of the provisions of clause 6, all payments under and in terms of this Agreement shall be due and payable and shall be made by the Company to the BRPs' Nominated Entity into the Bank Account (the details of which may be varied by the BRPs on written notice to the Company from time to time).

- 9.2 The Company shall be required to pay the BRPs' Remuneration to the BRPs' Nominated Entity as follows, namely –

- 9.2.1 in the case of the Agreed Remuneration, the Company shall pay the Agreed Remuneration of the BRPs to the BRPs' Nominated Entity within five Business Days of the presentation of each weekly invoice (or upon agreement thereof by the BRPs, monthly) therefore, it being agreed that –

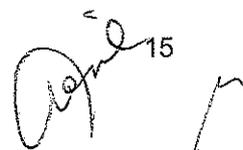
- 9.2.1.1 the BRPs' Nominated Entity shall provide the Company with a narration (together with all costs and expenses incurred by the BRPs) of the weekly attendances of the BRPs;

- 9.2.1.2 for purposes of each invoice, a week shall be the period commencing at 00h01 on every Sunday during the Business Rescue and ending at 24h00 on every succeeding Saturday during the Business Rescue; and

- 9.2.1.3 the BRPs' Nominated Entity shall submit each weekly invoice to the Company, marking these for the attention of the Chief Financial Officer;

- 9.3 It is expressly recorded and agreed that –

- 9.3.1 all invoices, accounts and vouchers, presented by the BRPs or the BRPs' Nominated Entity in respect of the Agreed Remuneration or reasonable costs,



expenses and disbursements, shall be paid by the Company within 5 (five) Business Days of presentation of the invoice;

9.3.2 the Company shall make payment of all amounts due to the BRPs' Nominated Entity without any deduction, setoff and/or withholding on any account, including, but not limited to, any taxes or other fees or amounts of any nature;

9.3.3 if the Company is required to deduct or withhold any amount from any amount payable by the Company to the BRPs' Nominated Entity under and in terms of this Agreement, the Company shall be required to increase the gross amount payable by the Company to the BRPs' Nominated Entity such that the BRPs' Nominated Entity receives payment of an amount equal to the amount of the applicable invoice of the BRPs' Nominated Entity.

9.4 The Company shall pay interest on any late payments by the Company to the BRPs' Nominated Entity, the applicable interest rate being the Prime Rate, from the due date of payment to the date of payment, both inclusive.

10 ENGAGEMENT BY THE BRPS OF PROFESSIONAL ADVISORS

10.1 The BRPs may retain the services of Werksmans and/or professional and other advisors to assist the BRPs during the Business Rescue, which engagement/s shall be subject to the terms and conditions of engagement letters between the Company (therein represented by the BRPs) and Werksmans and/or such other professional and other advisors.

10.2 The fees and costs of Werksmans and and/or professional and other advisors engaged to assist the BRPs during the Business Rescue are considered costs of the Business Rescue proceedings of the Company in terms of section 135(3) which are for the account of and payable by the Company.

11 OWNERSHIP

11.1 The BRPs and their professional and other advisors shall retain ownership, copyright and any other intellectual property rights, whether oral and/or tangible, as

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the case may be, as well as ownership itself, of any and all working papers of the BRPs and their professional advisors.

- 11.2 The BRPs shall be permitted to use the name of the Company as a reference in any proposals or any other similar submissions of the BRPs to any prospective client/s of the BRPs.

12 INSURANCE

- 12.1 The BRPs shall purchase professional indemnity and related insurance from Shackleton Risk Management Proprietary Limited or any other entity acceptable to the BRPs in an amount reasonably acceptable to the BRP ("**Insurance**"), it being noted that the Insurance cover as at the Signature Date is an amount of R200 million, which shall be reviewed and if appropriate be amended at the sole discretion of the BRPs.

- 12.2 The Company shall reimburse the BRPs for the cost of and insurance premiums in relation to the Insurance, or pay such amounts directly to Metis into the Bank Account or pay such amounts directly to the relevant insurer.

- 12.3 At the request of the Company, the BRPs shall furnish the Company with –

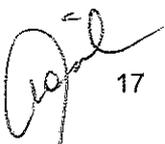
12.3.1 proof of payment of all insurance premiums;

12.3.2 a copy of the insurance policy relating to the Insurance.

- 12.4 The BRPs shall be entitled to reduce the aggregate amount of professional indemnity and related insurance and/or nominate an alternate insurance company by written notice to the Company at their discretion.

13 WARRANTY BY THE COMPANY

The Company hereby unconditionally and irrevocably warrants that it is a large company as envisaged in Regulation 127(2)(b)(i) of the Companies Act Regulations, that is, the public interest score of Company, as calculated in terms of Regulation 26(2) of the Companies Act Regulations, is more than 500 (five hundred).


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14 LIABILITY AND INDEMNITY

The Company hereby –

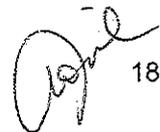
- 14.1 agrees to advance any and all expenses to the BRPs to defend litigation in any proceedings arising out of the performance by the BRPs of their duties under and terms of this Agreement; and
- 14.2 indemnifies the BRPs for any and all expenses contemplated in paragraph 14.1 irrespective of whether the Company has advanced those expenses to the BRPs.

15 EXCLUSION OF LIABILITY

- 15.1 As far as the law allows, the aggregate (total) liability of the BRPs (of any nature) to the Company, or any third party, will not exceed the proceeds of any professional indemnity cover the BRPs actually receives or that the BRPs' insurers pay to the company, or any third party.
- 15.2 This limit shall apply to liability that arises, including a liability arising by breach of contract, by a delict (including the delict of negligence) or arising by breach of statutory duty.
- 15.3 The BRPs hereby exclude any and all liability which may be described and/or characterised as indirect loss, pure economic loss and/or consequential damages.
- 15.4 The BRPs do not accept any liability for the acts, errors, omissions, or the fees of any advisers or service providers instructed by the BRPs on behalf of the Company.

16 RIGHTS AND OBLIGATIONS OF THE PARTIES IF THE BUSINESS RESCUE IS SET ASIDE FOR ANY REASON OR IS A NULLITY

- 16.1 Notwithstanding anything to the contrary in this Agreement, if the Business Rescue is set aside for any reason or is a nullity for whatever reason, the Company shall be liable to pay to the BRPs' Remuneration from the Commencement Date until the Business Rescue is set aside or is a nullity, as if the Business Rescue had not been set aside or is not a nullity, as the case may be.

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- 16.2 The Company shall be required to make payment of the amounts contemplated in paragraph 16.1 within five Business Days of the date on which the Business Rescue is set aside or is a nullity, as the case may be.

17 BREACH

Should any of the Parties hereto ("**Defaulting Party**") breach any of the provisions of this Agreement, and the breach is material and the Defaulting Party fails to remedy that breach within 10 (ten) Business Days ("**Ten Business Day Period**") after receipt of a written notice from the non-defaulting party (or if it is not reasonably possible to remedy the breach within the Ten Business Day Period, within such further period as may be reasonable in the circumstances provided that the Defaulting Party furnishes evidence within the Ten Business Day Period reasonably satisfactory to the non-defaulting party, that the Defaulting Party has taken whatever steps are available to the defaulting party, to commence remedying the breach), requiring the Defaulting Party to remedy that breach, the non-defaulting party shall be entitled to –

- 17.1 seek specific performance from the Defaulting Party; and/or
- 17.2 cancel this Agreement; and/or
- 17.3 seek to recover damages from the Defaulting Party,

on the occurrence of the material breach or on the expiry of the Ten Business Day Period, as the case may be.

18 ARBITRATION

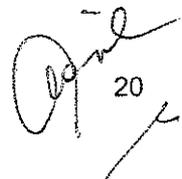
- 18.1 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to –
- 18.1.1 the interpretation of; or
- 18.1.2 the carrying into effect of; or


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- 18.1.3 any of the Parties' rights and obligations arising from; or
- 18.1.4 the termination or purported termination of or arising from the termination of; or
- 18.1.5 the rectification or proposed rectification of,

this Agreement, or out of or pursuant to this Agreement or on any matter which in terms of this Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

- 18.2 All disputes shall be finally determined in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("AFSA") without recourse to the ordinary courts of law, except as explicitly provided for in 18.8.
- 18.3 The Parties to the dispute shall agree on the arbitrator who shall be an attorney or senior advocate (with at least 10 years' experience) on the panel of arbitrators of AFSA. If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or senior advocate (with at least 10 years' experience) nominated by the Chairman of AFSA for the time being.
- 18.4 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.
- 18.5 The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.
- 18.6 The Parties irrevocably agree that, subject to 18.7 any decisions and awards of the arbitrator –



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- 18.6.1 shall be binding on them;
- 18.6.2 shall be carried into effect; and
- 18.6.3 may be made an order of any court of competent jurisdiction.
- 18.7 The Parties agree that there shall be a right of appeal against the decision of the arbitrator to an appeal panel of three arbitrators appointed by agreement between the Parties to the dispute, failing which the appeal arbitrators shall be appointed by the Chairman of AFSA.
- 18.8 Nothing contained in this 18 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending the determination of the dispute by arbitration. In respect of such proceedings, each of the Parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).
- 18.9 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 18.10 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 18.11 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

19 MISCELLANEOUS MATTERS

- 19.1 Any written notice in connection with this Agreement may be addressed –
- 19.1.1 in the case of the Company to –

address : Metis Strategic Advisors Proprietary Limited
 Jindal Africa Building Ground Floor, 22 Kildoon
 Road, Bryanston

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email : trevor@metis.co.za
peter@metis.co.za
gerhard@metis.co.za

and marked for the attention of Trevor Murgatroyd, Peter van den Steen
and Gerhard Albertyn;

19.1.2 in the case of van den Steen to –

address : Jindal Africa Building Ground Floor, 22 Kildoon Road,
Bryanston

email : peter@metis.co.za

and marked for the attention of Peter van den Steen;

19.2 in the case of Murgatroyd to –

address : Jindal Africa Building Ground Floor, 22 Kildoon Road,
Bryanston

email : trevor@metis.co.za

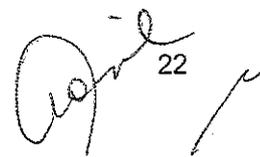
and marked for the attention of Trevor Murgatroyd;

19.3 in the case of Albertyn to –

address : Jindal Africa Building Ground Floor, 22 Kildoon Road,
Bryanston

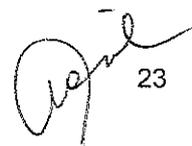
email : gerhard@metis.co.za

and marked for the attention of Gerhard Albertyn.



Handwritten signature and date: 22

- 19.3.1 The notice shall be deemed to have been duly given –
- 19.3.1.1 five Business Days after posting (14 Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of sub-clause 19.1;
- 19.3.1.2 on delivery, if delivered to the Party's physical address in terms of either sub-clause 19.1 or sub-clause 19.6 before 17h00 on a Business Day, or if delivered on a Business Day but after 17h00 on that Business Day or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was delivered;
- 19.3.1.3 on despatch, if sent to the Party's then e-mail address before 17h00 on a Business Day or if sent on a Business Day but after 17h00 on that Business Day, or on any day other than a Business Day, it will be deemed to have been given at 08h30 on the first Business Day after it was sent;
- unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 19.4 A Party may change that Party's address or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
- 19.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address in 19.1.
- 19.6 The Parties choose the physical addresses recorded at 19.1 as the physical addresses at which documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*).


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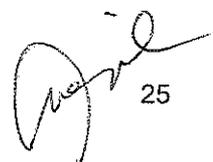

- 19.7 A Party may change that Party's address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
- 19.8 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen *domicilium citandi et executandi*.
- 19.9 This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.
- 19.10 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 19.11 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 19.12 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 19.13 A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.
- 19.14 This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

A handwritten signature in black ink, followed by the number '24' and a short horizontal line.

- 19.15 Subject to 18, the Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for any proceedings arising out of or in connection with this Agreement.
- 19.16 The Company shall bear the legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement. Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.
- 19.17 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.
- 19.18 Each of the Parties hereby respectively agrees and acknowledges that –
- 19.18.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- 19.18.2 each provision of this Agreement is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

Signed at Johannesburg on 24 November 2022

PETRUS FRANCOIS VAN DEN STEEN


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Signed at Johannesburg on 24 November 2022

TREVOR JOHN MURGATROYD

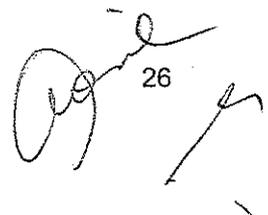
Signed at Johannesburg on 24 November 2022

GERHARD CONRAD ALBERTYN

Signed at Ballito on 28 November 2022

for **TONGAAT HULETT LIMITED (in
business rescue)**

who warrants that he is duly
authorised hereto



Handwritten signature and the number 26.

THIS CIRCULAR IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION

The definitions and interpretations commencing on page 6 of this Circular apply throughout this Circular, including this front cover.

Action required by Shareholders:

This Circular is important and should be read in its entirety, with particular attention to be given to the section entitled: "Action required by Shareholders" commencing on page 2 of this Circular, which sets out the detailed actions required of Shareholders in respect of the matters dealt with in this Circular.

If you are in any doubt as to what action you should take in relation to this Circular, please consult your CSDP, Broker, agent, banker, accountant, attorney or other professional advisor immediately.

If you have disposed of all your Shares, this Circular should be handed to the purchaser of such Shares or to the CSDP, Broker or other agent through whom such disposal was effected.

THL does not accept responsibility, and will not be held liable, under any applicable law, regulation or otherwise, for any action of, or omission by, any CSDP, Broker or other service provider to, or other agent of, any beneficial owner of Shares including, without limitation, any failure on the part of the CSDP, Broker or other service provider to, or agent of, any beneficial owner of Shares to notify such beneficial owner of the General Meeting or of the matters set out in this Circular.

This Circular does not constitute or form part of any offer, or invitation for or solicitation of any offer, to purchase, otherwise acquire, subscribe for, sell, otherwise dispose of, or issue, any security in any jurisdiction, nor shall it or any part of it form the basis of, or be relied on in connection with, any agreement or commitment whatsoever in any jurisdiction.



Est. 1892

TongaatHulett®**Tongaat Hulett Limited**

(Incorporated in South Africa)

(Registration Number: 1892/000610/06)

ISIN: ZAE000096541 JSE share code: TON

("THL" or the "Company")

CIRCULAR TO SHAREHOLDERS

seeking the approvals which the Company requires from Shareholders to enable it to proceed with the Equity Subscription, including, *inter alia*, the proposed:

- authorisation to issue additional Shares for the purpose of implementing the Equity Subscription considering that the voting power of such Shares, upon issue, will exceed 30% of the voting power of the Shares currently in issue and in order to issue Shares under the Equity Subscription contemplated in sections 41(1) and 41(3) of the Companies Act;
- the specific issue of in aggregate 4 864 887 494 shares to Vision Investments allowing the implementation of the Equity Subscription;

and incorporating:

- a notice convening a General Meeting of Shareholders; and
- a Form of Proxy (*blue*) in respect of the General Meeting (to be completed by Certificated Shareholders and Own-Name Dematerialised Shareholders only).

Business Rescue
Practitioners



METS

Corporate Advisor
to THL



JSE Sponsor
to THL



PSG CAPITAL

Financial Advisor to
Vision Investments



Standard Bank

Legal Advisor to THL



WERKSMANS
ATTORNEYS

Corporate Advisor to Vision Investments



Legal Advisor to Vision Investments



STEIN SCOP
ATTORNEYS

Date of issue: **Wednesday, 10 July 2024**

This Circular is available in English only. This Circular will be available electronically on the THL website (<https://www.tongaat.com>) from the date of issue of this Circular up to and including **Thursday, 8 August 2024** (both days inclusive).

IMPORTANT INFORMATION, DISCLAIMERS AND FORWARD-LOOKING STATEMENTS

The definitions and interpretations commencing on page 6 of this Circular apply to this section.

GENERAL

This Circular does not constitute or form part of any offer, or invitation for or solicitation of any offer, to purchase, otherwise acquire, subscribe for, sell, otherwise dispose of, or issue, any security in any jurisdiction, nor shall it or any part of it form the basis of, or be relied on in connection with, any agreement or commitment whatsoever in any jurisdiction (including, without limitation, South Africa, Australia, Canada, Japan, the United Kingdom, the United States of America, its territories and possessions, any state of the United States and the District of Columbia ("**United States**") or any member state of the European Economic Area).

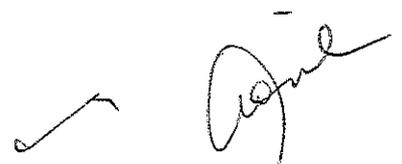
The Equity Subscription referred to in this Circular will be made in accordance with the applicable South African laws and regulations. The Circular will only be addressed to Persons to whom it may lawfully be made.

This Circular is not for distribution, directly or indirectly, in or into any jurisdiction outside of South Africa (including, without limitation, Australia, Canada, Japan, the United Kingdom, the United States or any member state of the European Economic Area) if such distribution is restricted or prohibited by, or would constitute a violation of, the relevant laws or regulations of such jurisdiction. If the distribution of this Circular and any accompanying documentation in or into any jurisdiction outside of South Africa is restricted or prohibited by, or would constitute a violation of, the laws or regulations of any such jurisdiction, this Circular is deemed to have been sent for information purposes only and should not be copied or redistributed.

The information contained in this Circular constitutes factual information as contemplated in section 1(3)(a) of the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended, and should not be construed as an express or implied recommendation, guide or proposal that the Vision Transaction and Equity Subscription or the present or future business or investments of THL is appropriate to the particular investment objectives, financial situations or needs of any Shareholder or prospective investor, and nothing in this Circular should be construed as constituting the canvassing for, or marketing or advertising of, financial services in South Africa.

DATE OF INFORMATION PROVIDED

Unless the context clearly indicates otherwise, all information in this Circular is provided as at the Last Practicable Date.

A handwritten signature in black ink, appearing to read 'Agnel', is written in the bottom right corner of the page. To the left of the signature is a simple checkmark symbol.

CORPORATE INFORMATION AND ADVISORS

Registered Office

Tongaat Hulett Limited
 (Registration number: 1892/000610/06)
 Amanzimnyama Hill Road, Tongaat,
 KwaZulu-Natal,
 South Africa
 (PO Box 3, Tongaat, KwaZulu-Natal,
 4400, South Africa)

Place of incorporation

South Africa

Date of incorporation

7 September 1892

Website: www.tongaat.com

Investor Enquiries

Michelle Jean-Louis Tel: +27 32 439 4000
 E-mail: investor.relations@tongaat.com

Legal Advisor to Vision Investments

Stein Scop Attorneys Inc.
 (Registration Number: 2015/306625/21)
 Second Floor, Capital Hill, 6 Benmore Rd,
 Morningside, Sandton, 2057
 Johannesburg, South Africa

Corporate Advisor to Vision Investments

Valorem Capital Limited
 (Registration number: 11370741)
 6 The Drive, Cobham, KT11 2JQ
 United Kingdom

Financial Advisor to Vision Investments

The Standard Bank of South Africa Limited
 (Registration Number 1962/000738/06)
 30 Baker Street
 Rosebank, 2196
 Johannesburg, South Africa

Company Secretary

JJ van Rooyen B.Proc, MBA
 Amanzimnyama Hill Road, Tongaat,
 KwaZulu-Natal, South Africa
 (PO Box 3, Tongaat, KwaZulu-Natal,
 4400, South Africa)
 E-mail: johann.vanrooyen@tongaat.com

Corporate Advisor to THL

BSM Advisory Proprietary Limited
 (Registration Number: 2019/457342/07)
 22 Kildoon Road
 Bryanston
 Gauteng
 2191

Legal Advisor to THL

Werksmans Incorporated
 Werksmans Attorneys
 (Registration number: 1990/007215/21)
 The Central, 96 Rivonia Rd, Dennehof, Sandton, 2196
 Johannesburg, South Africa

Sponsor to THL

PSG Capital Proprietary Limited
 (Registration Number 2006/015817/07)
 1st Floor, Ou Kollege
 35 Kerk Street
 Stellenbosch, 7600
 (PO Box 7403, Stellenbosch 7599)
 and
 Suite 1105, 11th Floor Sandton Eye Building
 126 West Street
 Sandton, 2196

Business Rescue Practitioners

Metis Strategic Advisors
 Registration Number 2015/220685/07
 22 Kildoon Road
 Bryanston
 Gauteng
 2191

ACTION REQUIRED BY SHAREHOLDERS

The definitions and interpretations commencing on page 6 of this Circular apply to this section.

This Circular is important and requires your immediate attention.

If you are in any doubt as to what action to take, please consult your CSDP, Broker, agent, banker, accountant, attorney or other professional advisor immediately.

If you have disposed of all your Shares, this Circular should be handed to the purchaser of such Shares or to the CSDP, Broker or other agent through whom such disposal was effected.

Shareholders are requested to take note of the following information regarding the actions required by them in connection with this Circular.

1. **General Meeting**

Shareholders are invited to speak and vote at, and participate in, a General Meeting, convened in terms of the Notice of General Meeting (which is attached to, and forms part of, this Circular) for purposes of considering and, if deemed fit, adopting, with or without modification, the resolutions set out in the Notice of General Meeting.

The General Meeting will be held at at 10:00 on Thursday, 8 August 2024 and will be conducted entirely by electronic communication, as contemplated in the MOI and in section 63(2)(a) of the Companies Act. Shareholders will accordingly only be able to access, and speak and vote at, and participate in, the General Meeting electronically via an electronic facility. Further details on the steps which need to be taken in order to access the electronic facility are provided in the Notice of General Meeting.

2. **Voting and attendance at the General Meeting**

2.1 **Dematerialised Shareholders other than Own-Name Dematerialised Shareholders**

If you have Dematerialised your Shares without "own name" registration, then the following is relevant to you in connection with the General Meeting:

Voting at the General Meeting

- Your CSDP or Broker should contact you to ascertain how you wish to cast your vote (or to ascertain whether you wish to abstain from casting your vote) at the General Meeting, and thereafter cast your vote (or abstain from casting your vote) in accordance with your instructions.
- If you have not been contacted by your CSDP or Broker, it is advisable that you contact your CSDP or Broker and furnish it with your voting instructions.
- If your CSDP or Broker does not obtain voting instructions from you, it should vote in accordance with the instructions contained in the mandate agreement between you and your CSDP or Broker.
- You must **NOT** complete the attached Form of Proxy (*blue*).

Attendance and representation at the General Meeting

In accordance with the mandate agreement between you and your CSDP or Broker, you must advise your CSDP or Broker if you wish to speak and vote at, and participate in, the General Meeting yourself or through a representative. If you do so, your CSDP or Broker should issue the necessary letter of representation to you or your representative to speak and vote at, and participate in, the General Meeting. In order to speak and vote at, and participate in, the General Meeting, you or your representative will additionally need to take the steps required in order to access the electronic facility, as provided in the Notice of General Meeting.

THL does not accept responsibility, and will not be held liable, under any applicable law, regulation or otherwise, for any action of, or omission by, any CSDP, Broker or other service provider to, or agent of, any beneficial owner of Shares, including, without limitation, any failure on the part of the CSDP, Broker or other service provider to, or agent of, any beneficial owner of Shares to notify such beneficial owner of the General Meeting or of the matters set out in this Circular.

2.2 Own-Name Dematerialised Shareholders and Certificated Shareholders

If you are a Certificated Shareholder or an Own-Name Dematerialised Shareholder, then the following actions are relevant to you in connection with the General Meeting:

Voting, attendance and representation at the General Meeting

- You may speak and vote at, and participate in, the General Meeting yourself or through a representative by registering to do so in the manner provided in the "Electronic Participation" section in the Notice of General Meeting.
- Alternatively, you may appoint one or more proxies to represent you at the General Meeting by completing the attached Form of Proxy (*blue*) in accordance with the instructions contained therein. In order for your proxy to speak and vote at, and participate in, the General Meeting, your proxy will additionally need to take the steps required in order to access the electronic facility, as provided in the "Electronic Participation" section in the Notice of General Meeting. A proxy need not be a Shareholder. For the purpose of effective administration, it is requested that the Form of Proxy (*blue*) be lodged with, emailed to or posted to the Transfer Secretaries, to the addresses provided below, so as to reach the Transfer Secretaries at or before **10:00 on Tuesday, 6 August 2024**:

Hand deliveries to:

Computershare Investor Services
Proprietary Limited
Rosebank Towers, 15 Biermann Avenue,
Rosebank, Johannesburg, 2196,
South Africa

Postal deliveries to:

Computershare Investor Services
Proprietary Limited
Private Bag X9000, Saxonwold,
Johannesburg, 2132, South Africa

Email deliveries to:

proxy@computershare.co.za

If you do not lodge, email or post the Form of Proxy (*blue*) so as to reach the Transfer Secretaries at or before **10:00 on Tuesday, 6 August 2024**, you will nevertheless be entitled to email the Form of Proxy (*blue*) to the Transfer Secretaries at proxy@computershare.co.za so as to reach them prior to the time of commencement of the General Meeting.

3. Identification of Shareholders and proxies and representatives

In terms of section 63(1) of the Companies Act, before any person may speak or vote at, or participate in, the General Meeting, that Person must present reasonably satisfactory identification, and the person presiding at the General Meeting must be reasonably satisfied that the right of the person to speak and vote at, and participate in, the General Meeting, either as a Shareholder, or as a proxy or a representative for a Shareholder, has been reasonably verified. Acceptable forms of identification include a valid green barcoded or smart card identification document issued by the South African Department of Home Affairs, a South African driver's licence or a valid passport. A Shareholder or its proxy or representative must electronically provide the necessary proof of its identification in accordance with the relevant provisions of the Notice of General Meeting before such person will be entitled to speak and vote at, and participate in, the General Meeting. If the Shareholder is not an individual, the necessary proof of identification of the representative (such as her/his valid green barcoded, or smart card identification document issued by the South African Department of Home Affairs, South African driver's licence or valid passport) must be accompanied by a copy of a resolution by the relevant entity which sets out that the representative is authorised to represent the relevant entity at the General Meeting.



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IMPORTANT DATES AND TIMES

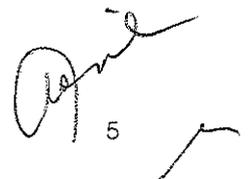
The definitions and interpretations commencing on page 6 of this Circular apply to this section.

2024

Record date to determine which Shareholders are entitled to receive the Circular incorporating the Notice of General Meeting	Friday, 5 July
Announcement advising of the posting of this Circular and giving the date and place of the General Meeting released on SENS on	Wednesday, 10 July
Circular and Notice of General Meeting posted to Shareholders on	Wednesday, 10 July
Last date to trade	Tuesday, 30 July
Record date to participate in and vote at the General Meeting	Friday, 2 August
Last day to lodge forms of proxy for the General Meeting by 10:00, for administrative purposes only, on	Tuesday, 6 August
General Meeting held at 10:00 on	Thursday, 8 August
Results of the General Meeting released on SENS on	Thursday, 8 August

Notes:

1. All dates and times above and elsewhere in this Circular are South African Standard Time.
2. The above dates and times are subject to amendments. Any material amendments will be released on SENS.
3. If the General Meeting is adjourned or postponed, Forms of Proxy (*blue*) submitted for the General Meeting will remain valid in respect of the resumption of the adjourned meeting, and the recommencement of the postponed meeting.



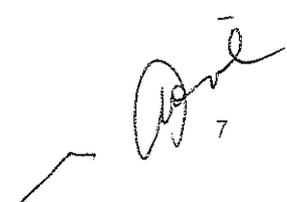
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DEFINITIONS AND INTERPRETATIONS

In this Circular (including the Notice of General Meeting and Form of Proxy) (*blue*), unless otherwise stated or the context indicates otherwise: (i) the words or expressions in the first column below shall have the meaning assigned to them in the second column; (ii) a reference to the singular shall include the plural and *vice versa*; (iii) a word or an expression which denotes one gender includes all other genders; (iv) a natural person includes a juristic person and *vice versa*; and (v) cognate words and expressions shall bear corresponding meanings:

“Almoiz”	means Almoiz NA Holdings Limited, a private limited liability company incorporated in accordance with the laws of the United Arab Emirates, with registration number 67410836;
“Almoiz SA”	means Almoiz SA Industries Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/178806/07, and a wholly owned subsidiary of the Almoiz;
“Approved Plan”	means the business rescue plan proposed to the creditors that was formally approved and adopted on 11 January 2024;
“BRPs”	means the joint business rescue practitioners of the Company, being Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn;
“Board” or “Directors”	means the board of directors of THL. The names of the directors of THL as at the date of this Circular are listed on page 13 of this Circular;
“Broker” or “Stockbroker”	means as defined in the Financial Markets Act, or its nominee;
“Business Day”	means a day, other than a Saturday, a Sunday or a statutory public holiday in South Africa, on which banks are generally open for business in South Africa, save where a reference to “Business Day” is made within the context of a law in which case it shall bear the meaning ascribed to it by that law, if any;
“Capital Portion”	means on any date, that component of the Lender Group Facility Balance as at that date, which comprises solely of capital i.e. excluding all accrued interest, fees, penalties and the like, and whether capitalised or not;
“Certificated Share”	means a Share which has not been Dematerialised, title to which is evidenced by a share certificate, or other physical document of title acceptable to the Company;
“Certificated Shareholders”	means Shareholders who hold Certificated Shares;
“CIPC”	means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
“Circular”	means this bound document dated Wednesday, 10 July 2024, including, without limitation, the Notice of General Meeting and the Form of Proxy (<i>blue</i>);
“Claims”	means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages), the cause of action in respect of which arose prior to or after the Commencement Date and/or under section 136(3) of the Companies Act;

“Claims Balance”	means an amount of R3.6 bn, constituting the Lender Group Facility Balance outstanding on the Subscription Date immediately following the implementation of the Equity Subscription, comprising the outstanding balance of the Capital Portion, accrued interest, fees (including, <i>inter alia</i> , restructuring, commitment, agency and administration fees) and/or other amounts howsoever named or described, in each instance then owing;
“Commencement Date”	means 27 October 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;
“Competition Act”	means the Competition Act 89 of 1998, as amended, including the regulations promulgated thereunder;
“Companies Act”	means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;
“Companies Regulations”	means the Companies Regulations, 2011, promulgated in terms of section 223 of the Companies Act, as amended from time to time;
“Company” or “THL”	means Tongaat Hulett Limited (Registration Number: 1892/000610/06), a limited liability public company incorporated in accordance with the laws of South Africa;
“Company Secretary”	means the company secretary of THL. The name of the company secretary as at the Last Practicable Date is stated in the “Corporate Information and Advisors” section of this Circular;
“Concurrent Claim”	means any Claim in accordance with the Approved Plan (other than a Disputed Claim) which is unsecured, and which does not enjoy a statutory preference as envisaged in the Companies Act;
“Conditions Precedent”	means the conditions precedent to the agreement regulating the Equity Subscription as set out in paragraph 5.5 of this Circular;
“Creditor”	in accordance with the Approved Plan means any creditor, including without any limitation, PCF lenders, disputed Creditors and contingent Creditors, with a monetary Claim against the Company;
“CSDP”	means a central securities depository participant, being a “participant” as defined in section 1 of the Financial Markets Act;
“Day”	means a calendar day, whether or not a Business Day;
“Dematerialised” or “Dematerialisation”	means the process whereby physical share certificates are replaced with electronic records evidencing ownership of shares in accordance with the rules of Strate, as contemplated in the Financial Markets Act;
“Dematerialised Share”	means a Share which has been Dematerialised;
“Dematerialised Shareholders”	means Shareholders who hold Dematerialised Shares;
“Distributions”	means a transfer of money or other property of the Company, including its own shares, made to Creditors in respect of their approved Claims as provided for in the Approved Plan, including any deemed Distributions as contemplated in the Approved Plan, and outlined in paragraph 6.1.2 of the Approved Plan;
“DNA”	means Distribuidora Nacional de Açúcar Limitada, a company incorporated to purchase, store, distribute and sell all of the sugar produced by the millers in Mozambique;
“Exchange Control Regulations”	means the Exchange Control Regulations, 1961 in South Africa means made in terms of the Currency and Exchanges Act No. 9 of 1933, as amended from time to time, and all directives and rulings issued thereunder;



“Equity Claim(s)”	means that component of the Capital Portion as at the Subscription Date, which when applied to effect the Equity Subscription, will result in the Lender Group Facility Balance, being in the amount of the Claim Balance;
“Equity Subscription Agreement”	means the agreement between THL, Vision Investments and the Vision SPVs governing the terms of the Equity Subscription concluded on the Signature Date, as restated and revised on or about 1 July 2024;
“Equity Subscription”	means the specific issue of in aggregate 4 864 887 494 shares in THL to be subscribed for by Vision Investments, and allotted and issued to Vision Investments by THL in accordance with and pursuant to the Equity Subscription Agreement, and which will be upon subscription and subject to compliance with the relevant provisions within the Equity Subscription Agreement, be distributed to the Vision Parties in the proportions set out in paragraph 5.3 of this Circular;
“Facility Agreements”	means the loan facilities in which facilities are provided by the Lender Group to THL, as amended from time to time;
“Financial Markets Act”	means the Financial Markets Act 19 of 2012, as amended from time to time;
“Form of Proxy”	means the form of proxy (<i>blue</i>) incorporated into this Circular for use by Certificated Shareholders and Own-Name Dematerialised Shareholders only, for purposes of appointing a proxy to represent such Shareholders at the General Meeting;
“General Meeting”	means the meeting of Shareholders to be held electronically only at 10:00 on Thursday, 8 August 2024 for the purpose of Shareholders considering, and if deemed fit, adopting, the Shareholder Resolutions, including a resumption of an adjourned meeting, and a recommencement of a postponed meeting;
“Guma Agri”	means Guma Agri and Food Security Limited, a private company limited by shares incorporated in Mauritius, with company file number C192979, having its registered office address at B45 Twenty Foot Road, 5th Floor La Croisette, Grand Baie Mauritius;
“IDC”	means Industrial Development Corporation of South Africa Limited, registration number 1940/014201/06;
“IDC PCF Facility”	means the PCF loan facility provided by the IDC to the Company in an initial principal amount of R1.2 bn on or about 23 December 2022, the principal amount of which facility: <ul style="list-style-type: none"> • was increased to R1.725 bn on or about 28 July 2023; • was increased to R2.3 bn on or about 5 October 2023; and the principal amount of which facility may increase from time to time;
“Independent Shareholders”	means THL Shareholders who are independent as contemplated in Takeover Regulation 86(4);
“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;
“Implementation”	means the Equity Subscription and implementation of the Approved Plan and the arrangements with other Persons;
“JSE”	means as the context requires, either the: (i) JSE Limited (Registration Number: 2005/022939/06), a limited liability public company incorporated in accordance with the laws of South Africa and licensed as an exchange under the Financial Markets Act; or (ii) securities exchange operated by the aforementioned company;



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

Case number: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED	Applicant
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and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
GERHARD CONRAD ALBERTYN N.O.	Fourth Respondent
VISION INVESTMENTS 155 (PTY) LTD	Fifth Respondent
TERRIS AGRIPRO (MAURITIUS)	Sixth Respondent
REMOGGO (MAURITIUS) PCC	Seventh Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Eighth Respondent
ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES)	Ninth Respondent
THE LENDER GROUP OF TONGAAT HULETT LIMITED	Tenth Respondent
MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE	Eleventh Respondent
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Twelfth Respondent

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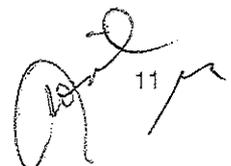
ITEM NO.	DESCRIPTION	PAGE NO.
1.	"MAR3" - Circular to Shareholders (10 July 2024)	301-329
2.	"MAR4" - Pike Law Letter (7 August 2024)	330-340
3.	"MAR5" - Pike Law Letter(16 August 2024)	341-342
4.	"MAR6" - Standard Bank Letter (21 December 2023)	343-343
5.	"MAR7" - Interim Report on the Statues of the Business Rescue Proceedings of THL (16 August 2024)	344-349
6.	"MAR8" - City Press Article (5 November 2023)	350-354
7.	"MAR9" - Tongaat Hulett Update Regarding Status of Business Rescue Plan and Recent Media Articles (9 November 2023)	355-355
8.	"MAR10" - First Vision Plan Extract (Paragraph 2.2)	356-357
9.	"MAR11" - First Vision Plan Extract	358-359
10.	"MAR12" - Amended Vision Plan Extract	360-369
11.	"MAR13" - Acquisition Agreement (20 November 2023)	370-395
12.	"MAR14" - RGS Letter to the BRPs (9 January 2024)	396-397
13.	"MAR15" - RGS Letter to the IDC (11 January 2024)	398-400

“Keni 62”	means Keni 62 Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/178882/07 and wholly owned subsidiary of the Guma Agri;
“Last Practicable Date”	means Thursday, 4 July 2024, being the last practicable date prior to the finalisation of this Circular;
“Lender Group”	means THL’s South African debt providers being, as at the Last Practicable Date: <ul style="list-style-type: none"> • Absa Bank Limited; • The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division) (including in its capacity as facility agent); • FirstRand Bank Limited (acting through its Rand Merchant Bank division); • Investec Bank Limited (acting through its Corporate and Institutional Banking division and its Investment Banking Division, Corporate Solutions); • Nedbank Limited; • The Land and Agricultural Development Bank of South Africa; • Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division); • Sanlam Investment Management Proprietary Limited (acting on behalf of its third-party clients); • Sanlam Specialised Finance Proprietary Limited; • Momentum Metropolitan Life Limited; and • Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);
“Lender Group Facilities”	means the loan facilities provided by the Lender Group to THL from time to time on or about December 2021;
“Lender Group Facility Balance”	means on any date, the outstanding balance owing under the Lender Group Facilities on that date, whether or not then due and owing and comprising capital, interest, fees and any other amounts required (including, <i>inter alia</i> , restructuring, commitment, agency and administration fees) or otherwise scheduled to be paid under the Lender Group Facilities;
“MOI”	means the memorandum of incorporation of the Company;
“Ngwenyama 62”	means Ngwenyama 62 Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/203278/07 and wholly owned subsidiary of the Guma Agri;
“Notice of General Meeting”	means the notice convening the General Meeting to conduct the business described therein and to consider and, if deemed fit, adopt, with or without modification, the Shareholder Resolutions, and which notice is attached to, and forms part of, this Circular;
“Own-Name Dematerialised Shareholders”	means Dematerialised Shareholders who have instructed their CSDP to hold their Dematerialised Shares in their own name on the sub-registers maintained by the CSDP;
“PCF”	means post commencement funding in respect of business rescue processes as governed within chapter 6 of the Act;
“Person”	means a natural person, firm, company, body corporate, juristic person, unincorporated association, regulatory authority or any association, trust, partnership, consortium, or other entity (whether or not having separate legal personality, and in each case in any jurisdiction);

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“PIC”	means Public Investment Corporation SOC Limited registration number 2005/009094/30;
“Record Date”	means the date on which Shareholders must be entered in the Securities Register in order to be eligible to speak and vote at, and participate in, the General Meeting, being Friday, 2 August 2024;
“Related”	means the meaning ascribed to it in the Companies Act, irrespective of the place of registration, establishment or incorporation of the relevant Person;
“Remoggo”	means Remoggo (Mauritius) PCC a private company limited by shares incorporated in Mauritius, with company file number C117836;
“the Requirements”	means the listings requirements of the JSE, as amended from time to time;
“SARS”	means South African Revenue Services;
“Secured Creditor”	in accordance with the Approved Plan means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;
“Securities Register”	means the register of Certificated Shareholders maintained by the Transfer Secretaries on behalf of the Company and each of the sub-registers of Dematerialised Shareholders maintained by the relevant CSDP’s in terms of the Financial Markets Act;
“SENS”	means the Stock Exchange News Service of the JSE;
“Shareholder Resolutions”	means the resolutions contained in the Notice of General Meeting;
“Shareholders”	means the registered holders of issued Shares from time to time;
“Share(s)”	means an ordinary share or shares in THL, listed on the JSE;
“Signature Date”	means the date on which the Equity Subscription Agreement was signed and executed meaning 9 May 2024;
“South Africa”	means the Republic of South Africa;
“Sponsor”	means PSG Capital Proprietary Limited (Registration Number: 2006/015817/07)), a limited liability private company incorporated in accordance with the laws of South Africa;
“Strate”	means Strate Proprietary Limited (Registration Number: 1998/022242/07), a limited liability private company incorporated in accordance with the laws of South Africa being a licensed central securities depository in terms of the Financial Markets Act, which is responsible for the electronic settlement system for transactions that take place on the JSE and off market trades;
“Subscription Date”	means the third Business Day following the date on which all of the Suspensive Conditions are fulfilled or waived in accordance with the Equity Subscription Agreement;
“Suspensive Conditions”	means the suspensive conditions applicable to the Equity Subscription Agreement;
“Takeover Regulations”	means the Takeover Regulations promulgated in terms of section 120 of the Companies Act, and forming part of the Companies Regulations;
“Terris”	means Terris AgriPro (Mauritius) (registration number: 171903 GBC), registered and incorporated in Mauritius;

“Terris Sugar”	means Terris Sugar South Africa Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/185173/07, and a wholly owned subsidiary of Terris;
“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;
“THSSA”	means Tongaat Hulett Sugar South Africa Limited (registration number: 1965/000565/06), a private subsidiary company of THL with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;
“Tokwe One”	means Tokwe One Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/203285/07, and a wholly owned subsidiary of Remoggo;
“Tokwe Two”	means Tokwe Two Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/203278/07, and a wholly owned subsidiary of Remoggo;
“Tokwe Three”	means Tokwe Three Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/203299/07, and a wholly owned subsidiary of Remoggo;
“Total Shares”	means at a point in time, the total number of Shares then in issue;
“Transfer Secretaries”	means Computershare Investor Services Proprietary Limited (Registration Number: 2004/003647/07), a limited liability private company incorporated in accordance with the laws of South Africa, and transfer secretaries to the Company;
“TRP”	means the Takeover Regulation Panel, established by section 196 of the Companies Act;
“Unsecured Creditors”	means all Creditors with Concurrent Claims against the Company
“Vision Investments”	means Vision Investments 155 Proprietary Limited, a private limited liability company incorporated in accordance with the laws of South Africa, with registration number 2023/178789/07, which is owned and controlled by the remaining Vision Parties and acts for and on behalf of the Vision Parties;
“Vision Parties”	<p>means a grouping made up of the following participants, none of which are related parties to THL, as defined in the Requirements:</p> <ul style="list-style-type: none"> • Terris; • Remoggo; • Guma Agri; • Almoiz; • Vision Investments; • Ngwenyama 62; • Keni 62; • Almoiz SA; • Tokwe One; • Tokwe Two; • Tokwe Three; and • Terris Sugar; <p>as the context requires, be a reference to any one of them;</p>



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“Vision Principals”

means:

- Terris;
- Remoggo;
- Guma Agri; and
- Almoiz;

“Vision SPVs”

means:

- Ngwenyama 62;
- Keni 62;
- Almoiz SA;
- Tokwe One;
- Tokwe Two;
- Tokwe Three; and
- Terris Sugar SA;

“Vision Transactions”

means Vision Investments’ acquisition of the Lender Group Facility Balance held by the Lender Group and the subsequent Equity Subscription as contemplated in this Circular to Shareholders; and

“ZAR,” “R” or “Rand”

means the South African Rand, the lawful currency of South Africa.





Est. 1892

Tongaathulett®

Tongaathulett Limited

(Incorporated in South Africa)
(Registration Number: 1892/000610/06)
ISIN: ZAE000096541 JSE share code: TON
("THL" or the "Company")

DIRECTORS

Executive Director:

RD Aitken (Interim *Chief Executive Officer*)

Non-executive Directors:

None

BRPs:

Trevor Murgatroyd
Peter van den Steen
Gerhard Albertyn


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CIRCULAR TO SHAREHOLDERS

1. INTRODUCTION AND PURPOSE OF THIS CIRCULAR

- 1.1 Shareholders are referred to the announcement released on SENS on 12 January 2024 in relation to the Approved Plan and the acquisition of the Lender Group Facility Balance amounting to *circa* R8.5 bn and the intended utilisation of a portion of such claims to be discharged, by means of exchange, through the subscription by Vision Investments for new equity in THL.
- 1.2 Shareholders should review this Circular in conjunction with the Approved Plan. The Approved Plan is available for inspection as indicated in paragraph 21 and is available on the Company website: <https://www.tongaat.com/1-3-thl-business-rescue-plan-29-november-2023-with-amendments-vision-clean/>.
- 1.3 THL is in severe financial distress as extensively detailed in the Approved Plan. Due to time constraints, as well as cost constraints, THL is not in a position to fully apply the provisions of the Requirements in as far as they apply to the implementation of the Approved Plan. THL and this Circular are, however, compliant with the Act and the specific carve outs provided in the Act in relation to the implementation of transactions contemplated in the Approved Plan.
- 1.4 THL's current position (*inter alia* due to processes still underway with regards to the auditing of annual financial statements and the financial distress which is to be addressed partly by the subject matter of this Circular to Shareholders) does not enable the Company to comply with all elements of the Requirements as would otherwise be required.
- 1.5 Considering the conditions contained in Schedule 11 of the Requirements and given the current circumstances, this Circular includes information required in terms of a specific issue of shares as governed by the Act and the Requirements with the exception of up-to-date audited financial information and financial impacts in terms of paragraph 11.19A(f).
- 1.6 The purpose of this Circular is to:
 - (i) outline key aspects of the Approved Plan and expand on the rationale for the implementation thereof;
 - (ii) provide Shareholders with additional information in relation to the Equity Subscription which requires Shareholder approval; and
 - (iii) convene the General Meeting in order for Shareholders to consider and vote on the Shareholder Resolutions for which Shareholder approval is sought.

2. THL BUSINESS DESCRIPTION AND MANAGEMENT INSIGHTS

- 2.1 THL is a leading agri-business in sugar, ethanol and animal feeds, with a significant asset base and footprint in Southern Africa. THL has ongoing agriculture activities with a substantial land portfolio within the primary growth corridors of KwaZulu-Natal, which has the potential to be converted to developable land at the appropriate time.
- 2.2 THL has consistently focused on creating mutually beneficial relationships by partnering with key stakeholders for the benefit of the people impacted by the Company's operations.
- 2.3 THL has four operations in Southern Africa with significant sugarcane facilities and extensive agricultural landholdings with the potential for future development, a growing animal feeds position and opportunities to further grow ethanol production and electricity generation.
 - (i) THL's sugar business focuses on cane growing, sugar milling and refining throughout the Southern African region. There are three operational mills in South Africa with an installed capacity to produce 600 000 tons of sugar per annum.

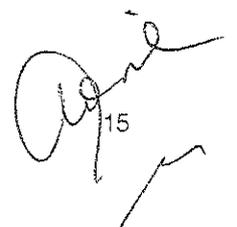
Voermol Feeds, an animal feeds business, is also part of the South African operations, manufacturing and marketing a range of energy and supplementary feeds to the livestock farming community.
 - (ii) In Mozambique, there are two operations that have a combined milling capacity in excess of 300 000 tons of sugar per annum.

- (iii) In Zimbabwe, there are two operations that have a combined installed milling capacity of 600 000 tons per annum, while the total refined sugar installed capacity is 60 000 tons per annum.
 - (iv) The Botswana operation has the capacity to pack and distribute 45 000 tons of sugar per annum.
- 2.4 In South Africa, in the season ended in December 2023, a strong operational performance has been driven by improved reliability and efficiency of the sugar operations. This was supported by good local market demand and higher export pricing, together with improved refining cost recoveries.
- 2.5 In Mozambique, overall performance was marginally affected by damage to fields caused by flooding that occurred at the beginning of the 2024 season. Sugar sales volumes have been impacted by the presence of imported sugar in the local market which has led to surplus exports at lower margins. The current Mozambique debt facilities are repayable in July 2024 and the process to refinance or extend these facilities is underway.
- 2.6 Zimbabwe's performance was negatively impacted by operational challenges in the milling operations. The impact of duty-free sugar imports depressing local market prices and the doubling of the minimum wage together with increasing cane purchase costs has significantly reduced margins.
- 2.7 In Botswana, local market price increases exceeded assumptions, while a shift towards higher brown sugar mix contributed to lower revenue per ton.

3. IMPLEMENTATION OF THE VISION TRANSACTIONS

3.1 Background to the Approved Plan

- (i) On 27 October 2022, the Board announced its decision to commence with voluntary business rescue proceedings in accordance with Chapter 6 of the Act, having determined that the Company faced circumstances constituting severe "financial distress" within the definition contained in section 128 of the Act. This was after the JSE suspended trading of THL's Shares on the exchange operated by the JSE on 20 July 2022, for failure to timeously publish its audited annual financial statements for the financial year ended 31 March 2022.
- (ii) The key feature of the Approved Plan, pursuant to its adoption and implementation, is the acquisition by Vision Investments of the Lender Group Facility Balance and the subsequent utilisation of the Equity Claims by Vision Investments to subscribe for Shares in THL. The intention is that this will result in (*inter alia*):
 - a. the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan;
 - b. the recapitalisation of the THL balance sheet, in particular the utilisation of a material portion of the former Lender Group Facility Balance to subscribe for equity; and
 - c. the possible continued listing of THL on the JSE, albeit with current Shareholders becoming minority Shareholders and Vision Investments holding the majority of the listed Shares in the Company on behalf of the Vision SPVs following the abovementioned Equity Subscription.
- (iii) If approved and successfully implemented as contemplated, the Approved Plan will result in:
 - a. the rescue of the Company (or as an alternative, the business of the Company) which will continue in business, albeit under new ownership;
 - b. the avoidance of a major humanitarian and financial catastrophe in the KwaZulu-Natal region in general, and in the sugar supply chain in particular as outlined in paragraph 9.3.5 of the Approved Plan;
 - c. the opportunity for new jobs to be created as the business grows under new ownership with Vision Parties;



- d. the implementation of the Equity Subscription by Vision Investments subscribing for new Shares in the Company which will result in Vision Investments owning *circa* 97.3% of the total issued Shares of the Company. The approximate value of the Equity Claim acquired by the Company for the Equity Subscription will be *circa* R4.9 bn based on the Lender Group Facility Balance as at the Signature Date of the Equity Subscription Agreement. The proportion of the Equity Claim (totalling an amount of *circa* R4.9 bn as at the Signature Date of the Equity Subscription Agreement, which amount will increase as explained and illustrated in note 6 in paragraph 8.8 below), utilised by Vision Investments in respect of the Equity Subscription, shall disappear by merger thereby discharging such Equity Claim portion of the Lender Group Facility Balance;
 - e. in addition to the *circa* R1.3 bn already paid to various critical suppliers by THL since the Commencement Date, Vision Investments has agreed to (either by making a loan to THL or otherwise ensuring THL is able to do so) THL paying an amount of R75 m as a Distribution to Unsecured Creditors, pro-rata to their respective Claims. Such Distribution is to be made subsequent to full implementation of the Vision Transactions;
 - f. a positive outcome for Unsecured Creditors. In this regard it is noted that in liquidation Unsecured Creditors would be anticipated to receive nil. Equally so, without the abovementioned amount being made available by Vision Investments, Unsecured Creditors would be anticipated to receive nil in the business rescue;
 - g. existing Shareholders retaining an interest of *circa* 2.7% of the equity in THL with its positively recapitalised balance sheet. In this regard it is noted that in liquidation Shareholders would have anticipated receipt of nil. Equally so, in an alternatively structured transaction (the sale of the assets, *as a going concern*, of THL to Vision Investments), Shareholders would again be anticipated to receive nil. Consequently, and should it be possible to remain listed on the JSE, this results in positive value accruing to Shareholders through the retention of their shareholdings and becoming minority shareholders in the still-listed, post recapitalisation, Vision Investments' controlled THL;
 - h. a portion or the entire amount of the IDC PCF Facility is to be secured in a working capital facility which is sufficient to fund the working capital requirements of the Company for at least the duration of the Business Rescue proceedings, and thereafter it would be the goal of Vision Investments to secure working capital facilities into the future beyond the implementation of the Approved Plan; and
 - i. if possible, THL retaining its listing on the JSE post reinstatement of trade of the Shares in issue, subject to compliance with the Requirements. Shares could potentially start trading again by as early as the beginning of 2025, if all the necessary Requirements in terms of the JSE Listing can be complied with, following which THL's share value will be re-established and Shareholders will have the option to sell THL Shares held, if intended to recognise and crystallise any losses.
- (iv) Shareholders are advised that although it is the intention of the Vision Parties and THL to retain THL's status as a listed company on the JSE, it is possible that the implementation of the Vision Transactions, and the potential mandatory offer that could result therefrom, may result in THL Shares being delisted from the JSE.
- (v) In the event of, for whatever reason, a failure to secure the consents, voting support and/or approvals required in order for the proposed issue of new THL Shares to Vision Investments (i.e., the Equity Subscription) to be effected, the Approved Plan contemplates in substitution that the currently proposed Vision Transactions will be switched from transactions contemplating the issue of new Shares to transactions contemplating the acquisition by Vision Investments of all of THL's assets and businesses (as going concerns) in terms of section 112(1)(a) of the Act which would not require Shareholder approval. Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by such a change, once it has sold its assets and businesses (leaving THL as an empty shell), THL will be delisted from the JSE (as it will no longer qualify to be listed on the exchange) and liquidated, resulting in its Shares (those held by existing Shareholders) having nil value.

3.2 Overview of Vision Parties

- (i) The Vision Parties represent a group of investors with notable experience in the sugar industry, THL's operating jurisdictions, and capital investment in Southern Africa. An overview of each Vision Party is set out below:
- a. Terris Sugar has a successful track record of investing in and operating large scale businesses in South Africa (and internationally). Terris Sugar's most recent realised investment was Samancor Chrome;
 - b. Remoggo is a Mauritian based investment holding company with investments in FMCG retail, agribusiness, logistics, and facilities management services in Zimbabwe and seven other African countries;
 - c. Guma Agri is a Pan African hands-on operational and multi-industry investment powerhouse intensely focused on adding value and initiating growth by means of its entrepreneurial, operational and managerial participation; and
 - d. Almoiz is one of the largest agribusiness groups in Pakistan, with substantial interests in the sugar, energy, steel, animal feed, textiles and food and beverages sector. Amongst its holdings, the group owns and operates 5 sugar mills procuring cane from 40,000 farmers annually to produce over 650,000 tons of refined sugar. It is the only sugar milling group in Pakistan to be "Bonsucro Certified" for sustainable sugar production.
- (ii) Additionally, the Vision Parties have previously engaged with both the PIC and IDC regarding their participation in the Vision Transactions, and the Vision Parties are committed to work with the PIC, IDC, and the Government Employees Pension Fund to the extent they wish to participate in the Vision Transactions.

3.3 Background to the Equity Subscription

- (i) The Approved Plan outlines Vision Investments acquiring *circa* R8.5 bn of the Lender Group Facility Balance (including accrued interest and fees), followed by the Equity Subscription. The consideration for such Equity Subscription will be determined as the total Lender Group Facility Balance on the Subscription Date less R3.6 bn (which, as at the Signature Date of the Equity Subscription Agreement was *circa* R4.9 bn based on current balances) which will be discharged, by means of exchange, of such amount of the former Lender Group Facility Balance against THL (i.e. those purchased by Vision Investments).
- (ii) The utilisation of the Equity Claims for the Equity Subscription will result in an equity issue of 4 864 887 494 Shares to Vision Investments holding *circa* 97.3% of the issued share capital of THL, post the Equity Subscription. Existing Shareholders will hold *circa* 2.7% which is 135 112 506 Shares, post the Equity Subscription.
- (iii) Based on the value of the Equity Claim as at the Signature Date of the Equity Subscription Agreement, a deemed share price of 101 cents per Share can be mathematically calculated. However, the deemed Share price has not been arrived at through any empirical determination of fair value given the financial distress of the Company, but rather as the total quantum of debt required to be discharged, by means of exchange for the issuance of the maximum number of available new equity shares in order to restore the company to solvency.
- a. It is the view of the Vision Parties that:
 - in the circumstance as described above, a deemed share price of 101 cents per Share is not representative of the fair value per Share; and
 - if a mandatory offer were to be triggered following the implementation of the Equity Subscription, the mandatory offer price would be determined based on the fair value and not on the deemed Share price of 101 cents per Share.
 - b. The weighted average trading price of the Shares is not available as THL has been suspended from the JSE as of July 2022.
 - c. The Equity Subscription will achieve a reduction in Lender Group Facility Balance to more sustainable levels. The commercial terms of the Claims Balance of R3.6 bn of debt, known as the Claim Balance, are equivalent to the existing Lender Group Facilities' terms, which

are expected to be amended when the revision of such terms are finalised between the parties after the Equity Subscription.

- (iv) With this further reduction in debt to more sustainable levels, the intention is to bring THL out of business rescue and for the Company to remain listed on the JSE.

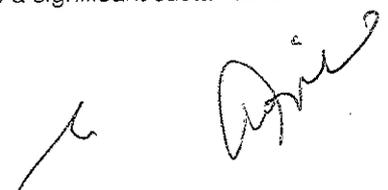
4. RATIONALE

4.1 Shareholder approval

- (i) In accordance with section 146(d) of the Act, a Shareholder is entitled to vote on a business rescue plan in the event it alters the rights associated with the class of securities held by that Shareholder. The Approved Plan did not alter any such rights and therefore, Shareholders were not required nor entitled to vote on the Approved Plan for its approval and adoption.
- a. The Approved Plan contemplated (*inter alia*) the Equity Subscription, which ultimately results in the equity issue which also would not alter the rights associated with the class of securities held by Shareholders, and therefore Shareholders were not required nor entitled to vote on the Approved Plan in terms of section 152(3)(c) of the Companies Act.
 - b. During the implementation of the Approved Plan, the Equity Subscription will lead to the issuance of Shares exceeding 30% of THL's current share capital. Given that section 41(3) of the Act in relation to other business rescue carve outs is unclear, shareholder approval is sought via a special resolution, requiring 75% or more of the votes cast in favour for clarity and avoidance of doubt.
 - c. Considering THL is a JSE listed entity, albeit in a suspended state, the JSE has considered the application of Schedule 11 of the Requirements and indicated that THL must seek Shareholder approval in the context of paragraph 5.51(g) of the Requirements with a 75% majority vote of the votes cast in favour of the JSE specific ordinary resolution. Various dispensations have been allowed considering Schedule 11 of the Requirements and the details of these dispensations and its impact on this Circular are outlined below:
 - Considering THL has been suspended since July 2022, providing share trading history for the time frame required by paragraph 7.C.14 cannot be complied with;
 - Financial impacts as are required in terms of paragraph 11.19A(f) of the Requirements will be outlined in paragraph 8 instead of detailed *pro forma* financial effects due to the detailed *pro forma* effects based on the year ended 31 March 2022 unaudited results being possibly misleading to Shareholders;
 - Considering there are no *pro forma* financial effects, no reporting accountants report on such *pro forma* financial effects is required; and
 - Audited financial statements for the period ended 31 March 2021, unaudited financial results for the period ended 31 March 2022 as published on 31 October 2023 (i.e. only comprise of the summarised consolidated statement of financial position, summarised consolidated statement of profit or loss and other comprehensive income, and the summarised consolidated statement of cash flows) are available on the THL website here: <https://www.tongaat.com/investors/integrated-reports/>
 - The financial results for the periods ended 31 March 2023 and 31 March 2024 are not yet completed and hence unavailable for incorporation by reference in the Circular.

4.2 The strategic rationale of the Approved Plan

- (i) The Vision Parties have been tracking the performance of THL for approximately five years and believe the underlying assets and operating segments have value with the appropriate financing structures and operational expertise that the Vision Parties bring.
- (ii) Given THL's historical and current critical role in the agricultural sector of Southern Africa, and specifically its contribution to the local KwaZulu-Natal economy, and the employment of approximately 27 000 people, who on average feed seven dependents each, THL and the Vision Parties believe the value created will be holistic and will make a significant sustainable contribution to all stakeholders in the region.



- (iii) To date, the Vision Parties have already engaged in numerous discussions with THL and the BRPs to better understand the current situation of THL. Additionally, the Vision Parties have engaged technical consultants to evaluate the current operations and have reviewed the contents of the virtual data room previously made available. These activities have provided a further underpin to the strategic rationale for the Vision Transactions.
- (iv) As the first step in implementing the Approved Plan, THL and Vision Investments envisage the Equity Subscription supporting the most effective method to harness the full potential of THL and effectively extract the Company from the business rescue process and set THL on the path to pre-Commencement Date trading and operations.

4.3 Counterfactual in the event of THL liquidation

- (i) In the event that the Equity Subscription is not implemented timeously, and the sale of business is not implemented either in terms of the Approved Plan, pursuant to section 153 of the Act, the Tongaat Group would be placed in liquidation.
- (ii) This will have a number of significant effects on creditors, stakeholders in the market, the competitive dynamics of the South African sugar market as well as animal feed industries, and the public interest broadly, in addition to Shareholders, including the following:
 - a. Employees:
 - Subject to the implementation of the Equity Subscription, the majority of THL's employees will retain their jobs. Conversely, in the event of liquidation, all 2 668 South African jobs would be immediately suspended, potentially leading to immediate job losses unless the liquidator opts to continue trading, which is deemed highly improbable due to the lack of indemnification against trading losses. Employees in liquidation scenarios would be treated as unsecured creditors, only receiving payment after the final liquidation process. It's highlighted that THL's South African employees earned around R850 m in remuneration, significantly impacting numerous households, including those in rural areas. Moreover, THL's operations contributed to a total economy-wide impact of 25 563 employment opportunities, accounting for 0.22% of employment in South Africa, and approximately R7.95 bn in household income. Consequently, the absence of the Equity Subscription would not only result in direct job losses but also substantial ripple effects throughout the economy.
 - b. THL's Creditors:
 - In comparison to adopting the Approved Plan, the distributions to creditors in a liquidation scenario would be notably lower, affecting both secured and unsecured creditors. Additionally, the duration of business rescue proceedings is typically much shorter than liquidation proceedings, potentially taking years to conclude. Notably, under business rescue in sections 128 to 155 of the Act, SARS will be ranked as an unsecured creditor, while in liquidation in terms of sections 96 to 102 of the Insolvency Act 24 of 1936, SARS would be ranked as a statutory preferred creditor. Consequently, in a liquidation scenario, any dividend to unsecured creditors, including employees, would be diminished by SARS' claims against the company, which is additional support for avoidance of a liquidation scenario.
 - c. Shareholders:
 - It is not anticipated that there will be any return to the Company's Shareholders in the event of liquidation or in the event of an asset sale pursuant to the Approved Plan.
 - d. Substantial Socio-Economic Impact:
 - THL's commitment to empowerment farming is evident through its significant payments to growers, particularly benefitting over 15 000 black farmers and cooperative members. However, in the event of liquidation, these crucial relationships and livelihoods would be jeopardised, impacting sugarcane sourcing and the empowerment of local communities. Similarly, THL's partnership with restitution communities, facilitating land reform and rural development, would abruptly cease, halting progress in economic empowerment and local development efforts.

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- The ripple effects of THL's potential liquidation extend beyond farming communities, encompassing tax revenues and supplier networks. THL's tax contributions, despite corporate tax losses, play a vital role in the South African economy, generating substantial direct, indirect, and induced impacts. Likewise, THL's liquidation would disrupt its extensive supplier base, significantly comprising black-owned and small enterprise suppliers, further exacerbating economic consequences and eroding valuable contributions to the country's fiscus and Gross Domestic Product.

4.4 Business case and turnaround plan

- (i) The Vision Parties and Vision Investments have reviewed the sugar assets across all geographies and have identified scope for improvement.
- (ii) In the short-to-medium term, the Vision Parties intend to continue THL management's strategy of stabilising and growing the operations and returning the business to sustainable profitability. Many of the challenges faced by THL's operations, such as issues related to delayed and deferred maintenance, old and improperly functioning machinery, frequent breakdowns and lost time, and low milling efficiency, relate to many years of underinvestment in the operations under the previous leadership. While significant progress has been made over the past four years in reinvesting into the production assets, the ability to address all these issues has been limited by the funding available and the capacity of THL. These are areas where the Vision Parties and Vision Investments have deep and distinctive expertise. Their detailed review of milling operations has given the Vision Parties confidence that Vision Investments will be able to bring operations up to acceptable speed and efficiency within a reasonable timeframe and at a manageable cost.
- (iii) In the medium term, the Vision Parties intend to enhance grower confidence that their cane will be processed timeously to address cane security concerns, and to deploy agricultural expertise to support the expansion of THL's cane supply. The ultimate aim is to help THL's South African operations to maximise their installed capacity in annual crush. A significant investment in capital expenditure over this period is intended to transition milling operations from medium-pressure at present to high-pressure steam, providing the platform to further expand and/or diversify into downstream activities where the Vision Parties have significant expertise.
- (iv) Additionally in Zimbabwe and Mozambique, the Vision Parties intend to engage regulators and other stakeholders to ensure that operating environments are stabilised, and the land tenure issues are resolved (as outlined in paragraph 10.1.21 of the Approved Plan) and that cane yields are improved for both owned fields and third-party cane farmers. In Botswana, the focus will be on ensuring that market share within the retail trade is enhanced through sustainable and low-cost sugar supply arrangements.
- (v) The Vision Parties believe that the underlying THL assets have value, that jobs can be saved, and that THL can continue to play a critical role in the agricultural sectors in South Africa, Mozambique, Botswana and Zimbabwe.
- (vi) The Vision Parties have significant breadth of experience in the sugar industry and in THL's operating jurisdictions and have a successful track record of investing in and operating large-scale businesses in South Africa, Zimbabwe and Mozambique, as well as internationally. It is the Vision Parties' belief that their collective expertise will create significant value in the business if an appropriate capital structure is implemented, and operational enhancements drive the business going forward.
- (vii) The Vision Parties have invested significant resources into understanding THL and the current status of its operations. Their due diligence teams attended several site visits, conducted an extensive review of the data provided in the virtual data room and engaged in numerous sessions with THL's management team to understand the technical, operational and financial status of THL's operations.
- (viii) Their findings support their investment thesis and confirm their belief that through their collective experience, the Vision Parties will be able to affect the ongoing successful turnaround of THL through the implementation of their aforementioned business plan.

- (ix) Across the jurisdictions in which THL operates, the Vision Parties have also had extensive preliminary consultations with the relevant authorities.

5. SALIENT TERMS OF THE EQUITY SUBSCRIPTION AND THE VISION TRANSACTIONS

The Equity Subscription and the Vision Transactions shall comprise *inter alia* the following elements:

5.1 Vision Transactions

- (i) Acquisition by Vision Investments of the Lender Group Facility Balance amounting to *circa* R8.5 bn (balance as at the Signature Date of the Equity Subscription Agreement);
- (ii) Subject to the fulfilment or waiver of the Suspensive Conditions of the Equity Subscription Agreement, the allotment and issue of the Shares to Vision Investments and Vision Investment complying with the provisions of section 46 of the Act, Vision Investments will utilise the Equity Claims to implement the Equity Subscription, and will have the right to distribute the Shares, by way of a *distribution in specie* in terms of section 46 of the Act, to the Vision SPVs in the proportions set out in paragraph 5.3 below, resulting in the Vision SPVs holding *circa* 97.3% of the Shares in THL. Please note the following:
 - a. Vision Investments is a newly incorporated special purpose vehicle that has been formed specifically to facilitate the implementation of the Equity Subscription;
 - b. The Vision SPVs are wholly owned subsidiaries of each of the respective Vision Principals;
 - c. Each of the Vision SPVs shall capitalise Vision Investments;
 - d. The Equity Claim consists of the Capital Portion of the loan facilities advanced by the Lender Group to THL in accordance with the Facility Agreements;
 - e. The proportion of the Equity Claim utilised by Vision Investments in respect of the Equity Subscription, shall disappear by merger, thereby discharging such proportion of the Lender Group Facility Balance; and
 - f. Pursuant to the implementation of the Equity Subscription by Vision Investments, the Vision SPVs will collectively become the holders of *circa* 97.3% of the Shares in THL;
- (iii) Existing Shareholders retain an interest of *circa* 2.7% in THL equity after the Equity Subscription;
- (iv) A replacement IDC facility will be negotiated with the IDC, in a manner that will result in the extinguishment of the PCF;
- (v) Following the outcome of an appeal process, the settlement (or provision therefore) of the South African Sugar Association (SASA) Claims is not a Suspensive Condition to the Equity Subscription however the signing of an appropriate escrow agreement is; and
- (vi) A R75 million distribution, paid *pro rata* to Unsecured Creditors' respective claims.

5.2 Confirmations from the Vision Parties and THL

- (i) The Vision Parties advise that:
 - a. they are not party to any agreement with any director of THL, or any Person who was a director of THL within the period of 12 (twelve) months preceding the Last Practicable Date; and
 - b. they are not party to any agreement with any Shareholder, or any Person which was a Shareholder within the period of 12 (twelve) months preceding the Last Practicable Date, which is considered by it to be material to a decision whether to vote in favour of the Shareholder Resolutions.
- (ii) The Company is not party to any agreement with:
 - a. Vision Investments and the Vision Parties, any director of Vision Investments and the Vision Parties, or any Person who was a director of Vision Investments or Vision Parties within the period of 12 (twelve) months preceding the Last Practicable Date, other than the Vision Transaction agreement and a non-disclosure agreement entered into with Vision Investments and the Vision Parties prior to the commencement of discussions in relation to the Vision Transaction; and

- b. any Shareholder, or any Person which was a Shareholder within the period of 12 (twelve) months preceding the Last Practicable Date, which is considered by the Company to be material to a decision whether to vote in favour of the Shareholder Resolutions.
- (iii) Rutenhuro Moyo ("**Rute**") is a principal (meaning that Rute is the primary party with significant authority and interest in these entities) in Tokwe One, Tokwe Two, Tokwe Three and Vision Investments, which are entities that are party to the Vision Transactions. Rute is not a related party in terms of the Requirements but for transparency Rute is a non-executive director of a material subsidiary of THL and he has recused himself from meetings up until the Approved Plan was adopted and resumed his duties from 14 February 2024.
- (iv) The Vision Parties have advised that neither it nor any other member of the Vision Parties have had any dealings in Shares during the 6 (six) month period ending on the Last Practicable Date nor will have any dealings in Shares up until Implementation.
- (v) As at the date of posting of this circular, the subscribers for the new equity to be issued in THL comprise Vision Investments as outlined in paragraph 5.3 or Annexure A of the Equity Subscription Agreement. The company has been advised that post the allotment and issue of such new equity, one or more direct shareholders may be introduced into the shareholder body of THL. The Company is not party to any of the negotiations which may result in the introduction of such direct shareholders but has been assured that the commercial parameters of the transactions described in this circular will not change pursuant thereto and all necessary regulations will be complied with.

5.3 Please see below table outlining the Shares to be held by the Vision SPVs following implementation of the Equity Subscription:

No	Details of Vision Party	Shares	Percentage interest in THL immediately after subscription
1	Ngwenyama 62	425 677 656	8.51%
2	Keni 62	425 677 656	8.51%
3	Almoiz SA	608 110 937	12.16%
4	Tokwe One	972 977 499	19.45%
5	Tokwe Two	912 166 405	18.24%
6	Tokwe Three	912 166 405	18.24%
7	Terris Sugar	608 110 937	12.16%
TOTAL		4 864 887 494	<i>circa 97.3%</i>

5.4 Provisions contained in the Equity Subscription Agreement

- (i) Vision Investments shall subscribe for the relevant Shares in THL pursuant to the Equity Subscription.
- (ii) The Equity Claim will be utilised by Vision Investments to discharge, by exchange, the Equity Subscription.
- (iii) As a consequence of the Vision Transactions, immediately post implementation of the Equity Subscription, the Claims Balance of the loan facilities (in an amount of R3.6 bn), advanced by the Lender Group in terms of the Facility Agreements, shall remain due by THL to Vision Investments, on terms which are no worse than the terms currently contained in the Facility Agreements.

5.5 Suspensive Conditions in the Equity Subscription Agreements

- (i) The implementation of the Equity Subscription is subject to the fulfilment or waiver of the following suspensive conditions:
- a. the passing of all resolutions (of whatsoever nature) required to give lawful effect to any agreements contemplated in the Equity Subscription agreement;
- b. the execution of the written agreements governing the concurrent creditor dividend escrow arrangements and such agreements becoming unconditional in accordance with their terms;

- c. the execution of the written agreements governing the SASA escrow arrangements and such agreements becoming unconditional in accordance with their terms;
- d. the consent of the applicable Competition Authorities to the Equity Subscription and the change of control of THL's group resulting therefrom and insofar as such consent is subject to the fulfilment of any terms and/or conditions, imposed by the Competition Authorities, that such terms and conditions are acceptable to the parties affected thereby and that such consent becomes unconditional;
- e. to the extent legally required, the passing of an ordinary resolution by the Shareholders of THL, waiving the requirement for a mandatory offer to be made by the Vision SPVs to any minority Shareholders of THL, to acquire all or a portion of the Shares held by such minority Shareholders, in accordance with regulation 86(7) of the Companies Regulations;
- f. the TRP exempting the Vision SPVs from any obligation to make a mandatory offer to existing Shareholders of THL consequent upon the Equity Subscription, on the basis that the majority of such Shareholders will have waived their entitlement to be made the mandatory offer by resolution passed by them in accordance with regulation 86(4) of the Companies Regulations;
- g. insofar as the above suspensive condition is waived by all the parties to the Equity Subscription Agreement and the Vision SPVs are required by the TRP to make a mandatory offer to minorities which is subject to the fulfilment of any terms and/or conditions imposed by the TRP, the Vision SPVs agree to make such mandatory offer provided the terms and conditions so imposed are acceptable to all the parties of the Equity Subscription Agreement affected thereby, and such conditions are fulfilled;
- h. to the extent legally required, the consent of the Financial Surveillance Department of the South African Reserve Bank to the transactions contemplated in the agreement regulating the Equity Subscription; and
- i. this Circular being posted by THL to its Shareholders and the Shareholders approving the resolutions proposed pursuant to such Circular, including without limitation, the approval of the proposed (i) special resolution of Shareholders required to implement the Equity Subscription pursuant to section 41(3) of the Companies Act and (ii) JSE ordinary resolution of Shareholders required in respect of a specific issue of shares.

6. AUTHORITY TO ISSUE SHARES IN TERMS OF THE EQUITY SUBSCRIPTION AND THE VISION TRANSACTIONS

- 6.1 As the voting power of the new Shares to be issued will exceed 30% (thirty percent) of the voting power of all the Shares in issue immediately prior to implementation, and the issue of those new Shares will, in terms of section 41 of the Act which is uncertain in relation to business rescue carve outs of the Act, require the approval of at least 75% (seventy five percent) of the votes exercised by Shareholder's voting (personally, by proxy or by representative) at the General Meeting for clarity and avoidance of doubt.
- 6.2 Special Resolution Number 1 set out in the Notice of General Meeting is the resolution proposing the issue of Shares under Vision Transactions. In order for Special Resolution Number 1 to be adopted, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on it.
- 6.3 In terms of section 152(6) of the Act provides that: "To the extent necessary to implement an adopted business rescue plan—(a) the practitioner may, in accordance with that plan, determine the consideration for, and issue any authorised securities of the company, despite section 38 or 40 of the Act to the contrary." Therefore, it is not deemed necessary to seek the 50% Ordinary Resolution required to place the Shares under the control of the directors.
- 6.4 In terms of the Requirements, paragraph 5.51(g) mandates the ordinary resolution relating to the Specific Issue of Shares requiring approval by at least 75% of Shareholders. Ordinary Resolution Number 1 set out in the Notice of General Meeting, is accordingly the resolution in terms of the Requirements proposing the Specific Issue of Shares to Vision Investments in terms of the Equity Subscription. Such approval must comprise 75% of Shareholders constituting public Shareholders, as defined in the Requirements.

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7. OTHER REGULATORY CONSIDERATIONS

- 7.1 The Equity Subscription, if approved by Shareholders and thereafter implemented accordingly, may result in Vision Investments or one of the Vision SPVs, acquiring more than 35% of the voting rights attaching to the Shares in terms of section 123 of the Act. In such an event and in terms of section 123 of the Act, such a person would be obliged to make a mandatory offer to the remaining Shareholders of THL. In accordance with regulation 86(4) of the Companies Regulations, Shareholders may waive their right to receive a mandatory offer.
- 7.2 In the event Shareholders provide the requisite authorities as outlined in this Circular and the Equity Subscription is approved, and an obligation to make a mandatory offer is triggered, Shareholders will be engaged further, through a TRP specific circular, to consider either:
- A mandatory offer in terms of section 123 of the Act; or
 - To waive their Shareholder right to receive a mandatory offer in accordance with regulation 86(4) of the Companies Regulations.

8. SHARE CAPITAL AND DEBT

- 8.1 At the Last Practicable Date, the authorised and issued shares in the Company are as follows:

- (i) Prior to the Equity Subscription:

Class of Shares	Number of Shares
Authorised Shares with no par value	5 000 000 000
Issued Shares with no par value	135 112 506
<i>Total stated capital of ZAR 1 678 804 483 (one billion six hundred and seventy-eight million eight hundred and four thousand four hundred and eighty-three Rand).</i>	

- (ii) Post the adoption of the required Shareholder Resolutions and the Equity Subscription which will issue a maximum number of Shares of 4 864 887 494, the authorised and issued shares of the Company will be as follows:

Class of Shares	Number of Shares
Authorised Shares with no par value	5 000 000 000
Issued Shares with no par value	5 000 000 000
<i>Total stated capital of ZAR 6 396 108 614 (Six billion three hundred and ninety-six million one hundred and eight thousand six hundred and fourteen Rand).</i>	

- 8.2 The number of Shares in issue post the Equity Subscription will be 5 000 000 000.
- 8.3 The pricing is unrestricted due to the fluctuation of the debt, considering the interest accrued on the capital portion of such debt, allocated for the Equity Subscription of 4 864 887 494 Shares. The final price will be contingent upon the date of Share issuance and the corresponding quantum of debt that is converted at that point.
- 8.4 Vision Investments will hold 4 864 887 494 Shares post the Equity Subscription which equates to circa 97.3%.
- 8.5 At the Last Practicable Date, 219 168 (two hundred and nineteen thousand one hundred and sixty-eight) Shares are held by Subsidiaries of THL in treasury for the purposes of fulfilling share awards outstanding in terms of the Company's management share ownership plan. These shares will be cancelled, as permissible in terms of the Company's management share ownership plan and MOI, and therefore there is no impact on the number of shares that can be issued in terms of the Equity Subscription.
- 8.6 There has been no issue of Shares in the 3 (three) years preceding the Last Practicable Date.

- 8.7 At the Last Practicable Date, all the authorised and issued shares in THL are of the same class and rank *pari passu* in every respect and accordingly, no shares have any special or preferent right to dividends, capital or profits or any other special or preferent right, including special or preferent redemption rights and special or preferent rights on liquidation or distribution of capital assets.
- 8.8 Financial analysis of the Equity Subscription post a proportionate *circa* R4.9 bn reduction of the Lender Group Facility Balance (based on the quantum of the Lender Group Facility Balance on the Signature Date of the Equity Subscription Agreement):

	Before Transaction March 2024	Total consolidated adjustment	Post transaction
Gross borrowings			
South Africa	9 528.4	(4 893.0)	4 635.4
<i>Lender Group</i>	8 493.0	(4 893.0)	3 600.0
<i>IDC PCF Facility</i>	1 006.6		1 006.6
<i>Other</i>	28.8		28.8
Mozambique	1 175.7		1 175.7
Zimbabwe	633.9		633.9
Total gross borrowing	11 338.0	(4 893.0)	6 445.0
Gross borrowings			
Non-current borrowings	1 479.7	3 600.0	5 079.7
Current borrowings	9 908.3	(8 493.0)	1 365.3
	11 338.0	(4 893.0)	6 445.0

Commentary:

- The Equity Subscription will achieve a reduction of *circa* R4.9 bn (based on the quantum of the Lender Group debt balance on the Signature Date of the Equity Subscription Agreement) in debt to more sustainable level through a reduction of the Lender Group Facility Balance to a balance of *circa* R3.6 bn. The final commercial terms of the remaining *circa* R3.6 bn of debt are still to be finalised.
- The movement of R3.6 bn in the long-term borrowings is the net movement of the increase in the non-current portion of borrowings, moving the current (short term) portion of borrowings relating to the Lender Group debt in full to non-current borrowings.
- The utilisation of the *circa* R4.9 bn (based on the quantum of the Lender Group debt balance on the Signature Date of the Equity Subscription Agreement) debt to subscribe for equity will result in an equity issue of 4 864 887 494 Shares and Vision Investments holding *circa* 97.3% of the issued share capital of THL, post the Equity Subscription. Previous Shareholders will hold *circa* 2.7% which is 135 112 506 Shares, post the Equity Subscription.
- At 31 March 2024, and prior to the Equity Subscription, the Lender Group Facility Balance owing by THL to the Lender Group totalled R8.5 bn. The finance costs incurred on the Lender Group Facility Balance for the year ended 31 March 2024 was R1.03 bn. Assuming the Equity Subscription occurred on 1 April 2023, the finance costs for the year incurred on the residual claim of R3.6 bn would reduce by R585 m to R448 m.
- In relation to the share capital to be issued, the Lender Group Facility Balance is unrestricted due to the fluctuation of the debt, considering the interest accrued on the capital portion of such debt. The final Equity Claim will be contingent upon the date of Share issuance and the corresponding quantum of the Lender Group Facility Balance, which is to be discharged, by means of exchange. Lender Group Facility Balance of *circa* R4.9 bn discharged, by means of exchange, for the issue of 4 864 887 494 Shares will result in a deemed Share value of 101c in relation to the exchange.

April
25

6. In the event the Subscription Date occurs at a later stage, the below outlines the expected indicative Share value over the next six months:

	Signature Date	31 May	30 June	31 July	31 August	30 September	31 October
Total Lender Group Facility Balance*	8 493.0	8 600.4	8 741.0	8 886.5	9 031.9	9 172.7	9 318.2
Claim Balance (as defined in the Equity Subscription Agreement)	3 600.0	3 600.0	3 600.0	3 600.0	3 600.0	3 600.0	3 600.0
Equity Claims	4 893.0	5 000.4	5 141.0	5 286.5	5 431.9	5 572.7	5 718.2
Shares issued	4 864 867 494						

Deemed Share value	1,01	1,03	1,06	1,09	1,12	1,15	1,18
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* The Total Lender Group Facility Balance may vary depending on the prevailing interest rates. The indicative amounts presented above are prepared on the basis of the interest rates remaining at the current rates.

9. DIRECTORS

9.1 Directors' remuneration

The remuneration of the Directors will not be varied as a consequence of Vision Transactions.

9.2 Directors' interests in Shares

The direct and indirect beneficial interests of Directors (and their associates), including, to the best of the Board's knowledge, any director of THL who resigned during the 18 (eighteen) months preceding the Last Practicable Date, in the issued Shares as at the Last Practicable Date were as follows:

Name	Number of Shares beneficially owned	Percentage of Total Shares
RD Aitken	57 580	0.04
JG Hudson	161 379	0.11
Total	218 959	0.15

There have been no changes in these beneficial interests as of the Last Practicable Date.

- 9.3 There have been no transactions in the past 18 months and therefore no directors have had a material beneficial interest in any such transactions.

10. SHAREHOLDERS

10.1 Major Shareholders and other top 5 shareholders prior to the new issue of Shares:

Details	Percentage	Number of Shares
Public Investments Corporation Limited	<i>circa</i> 16.62%	22 455 698
Artemis Investments Proprietary Limited	<i>circa</i> 14.88%	20 104 741
Braemer Trading Limited	<i>circa</i> 9.98%	13 484 228
PSG Fund Management:	<i>circa</i> 7.80%	10 538 775
Ushukela Investments Proprietary Limited (formerly Betelgeux Investments Proprietary Limited)	<i>circa</i> 2.94%	3 972 308
Ebrahim Ahmed Adamjee	<i>circa</i> 2.01%	2 715 761
Total	<i>circa</i> 54.23%	73 271 511

11. MATERIAL CONTRACTS

THL and its subsidiaries have not entered into any restrictive funding arrangements, as defined in the Requirements.

The details of the material terms of the historical Facility Agreements are set out in the reviewed condensed consolidated interim financial for the six months ended 30 September 2021, released 9 December 2021. Please see pages 49 to 51. This is available on the company's website here: at the following link: <https://www.tongaat.com/wp-content/uploads/2021/12/Interim-results-for-the-six-months-ended-30September-2021.pdf>

There have not been any material changes to the terms and conditions as disclosed above and incorporated by reference in paragraph 20 below and the Equity Subscription will not result in any change in the existing terms and conditions of the Facility Agreements.

12. RESOLUTIONS TO BE PROPOSED TO SHAREHOLDERS

The BRPs propose the Shareholder Resolutions for consideration, and if deemed fit, adoption, by Shareholders. The Shareholder Resolutions are set out in the Notice of General Meeting.

13. RECOMMENDATIONS

13.1 The BRPs are of the view that Vision Transactions are in the best interests of the Company. It follows that each of the BRPs unanimously recommends that Shareholders vote in favour of the Shareholder Resolutions. One of the reasons for this recommendation being that in the potential alternative transaction of a sale of the business and assets as a going concern, the Shareholders would realise Rnil, whereas, under this transaction the Shareholders retain *circa* 2,7%, which over time is likely to hold value and may be traded, subject to reinstatement by the JSE post restoration of outstanding compliance elements with the aim of reinstating the THL listing on the JSE.

13.2 Each Director who beneficially owns Shares will vote those Shares in favour of all the Shareholder Resolutions.

14. CONSENTS

Each advisor whose name appears on the inside front cover of this Circular has consented in writing to act in the capacity stated and to its name appearing in this Circular and has not withdrawn its consent prior to the Last Practicable Date.

15. EXPENSES

The estimated total amount of expenses (excluding VAT) relating to the specific issue as contemplated in the Requirements which have been incurred by the Company or that are expected to be incurred are set out below:

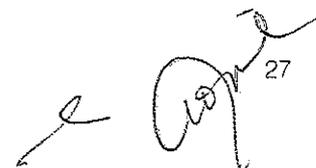
Expense Details	Payable to	Rand
JSE Documentation Fee	JSE	<i>circa</i> R26 815.13
JSE Listing Fee	JSE	<i>circa</i> R750 741.67

16. DIRECTORS' RESPONSIBILITY STATEMENT

The BRPs whose names are stated on page 13 collectively and individually accept full responsibility for the accuracy of the information contained in this Circular in relation to THL, and certify that, to the best of their knowledge and belief, there are no facts which have been omitted which would make any statement in this Circular in relation to THL false or misleading, and that all reasonable enquiries to ascertain such facts have been made and that this Circular contains all information required by the Act.

17. VISION INVESTMENTS DIRECTORS' RESPONSIBILITY STATEMENT

Vision Investments accepts full responsibility for the accuracy of the information contained in this Circular in relation to Vision Investments and the Vision Parties, and certify that, to the best of its knowledge and belief, there are no facts which have been omitted which would make any statement in this Circular in



relation to Vision Investments false or misleading, and that all reasonable enquiries to ascertain such facts have been made and that this Circular contains all information required by the Act.

Vision Investments confirms that none of the parties who are defined as Vision Parties, including all associates, are related parties to THL, as defined in the Requirements.

18. LITIGATION STATEMENT

18.1 THL Existing Litigation

Plaintiff/ Defendant/ Applicant/ Respondent	Description	Status and/or Reason	Quantum
THL (Plaintiff) Against Ex- Directors Staude, Munro and Slabbert	Recovery: For losses suffered from the findings of the PwC forensic report.	The pleadings in the matter have not closed as yet. The current status is that Staude and Slabbert have pleaded and THL has replicated. Once this is resolved we expect that pre-trial processes will only be finalised towards the end of 2024 where after we will likely seek a date of set down.	R450 m
THL (Plaintiff) against Hollar Insurance Company Limited/ Global Alliance or Global Alliance Insurance	Recovery: Insurance claim for damages suffered as a result of the failure of a diffuser	The claim is based on 2 Insurance Policies which it contends covered an insurable event, namely the failure of the diffuser at its Xinavane expansion project. Both parties have exchanged Heads of Argument on the jurisdictional point that was raised, and the matter was argued before the court a quo. Judgement was handed down in favour of the defendant and leave to appeal was granted by consent. The matter will now be heard by the Supreme Court of Appeal and a date for the hearing of the Appeal is awaited.	R52 m
THL (Plaintiff) against Emerald Insurers	Recovery: Business Interruption Claim against insurers for closure during KwaZulu-Natal riots	TH Refinery and mills in question were closed down as a consequence of the damage and looting activity in KwaZulu-Natal during July 2021. The loss or damage was described as being in close proximity to the mills thereby preventing any free or safe access to and from the sites. TH lodged a claim under the Riot Wrap Policy with Emerald Insurers which has been repudiated based on no actual damage preventing access to the facilities. Attempts to settle the matter have been unsuccessful. Summons has been issued and the matter is being defended. Defendant has filed a Plea and pre-trial preparation is underway. The matter is proceeding in the normal course.	R105 m
THL (Applicant)	South African Sugar Association (SASA)	An application has been made to the High Court of South Africa, KwaZulu-Natal Local Division, Durban, seeking the High Court's declaration that the BRPs were entitled in terms of section 136(2)(a) of the Companies Act to suspend THL's obligations to SASA under the Sugar Industry Agreement read together with the Sugar Act 9 of 1978. On 29 November 2023, the Declaratory Application was dismissed with costs by the Honourable Vahed J. The judgement in respect of such order was handed down on 4 December 2023. THL and the BRPs have applied for leave to appeal the decision. The leave to appeal hearing was held on 20 March 2024. Judgement is reserved by Vahed J. The parties have received judgement that the leave to appeal was not granted and THL has subsequently submitted a notice of intention to appeal to the Supreme Court of Appeal.	R526 m

Plaintiff/ Defendant/ Applicant/ Respondent	Description	Status and/or Reason	Quantum
THSSA (Respondent) together with other sugar manufacturers in a complaint investigated by the Competition Commission of SA ("CCSA")	THSSA	The CCSA commenced with an investigation into complaints of excessive pricing lodged by Coca-Cola Beverages South Africa ("CCBSA"). THS 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. Further CCBSA has requested that the application be "transferred" to the Competition Appeal Court. The Respondents have replied that there is no provision in the Competition Act for a "transfer" and any such application will be opposed. 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
THL (Plaintiff) against GR Cane Haulage	Recovery and counterclaim: Diversion Overcharge (THSSA)	THS SA instituted an action against GR Cane Haulage – the claim is for GR Cane having charged the incorrect rate and not having deducted the growers' portion during the 2015 Darnall/Maidstone diversion. GR Cane has brought a counterclaim for, <i>inter alia</i> , penalties, tolls and damages for mill inefficiencies. A pre-trial conference has been held, and dates for the delivery of a number of procedural notices were set. The matter has, however, been placed on hold given the unavailability of Tongaat witnesses. Attempts to settle the matter continue.	R2.9 m
THSSA (Plaintiff) against Ex- employee Mara Moyolo	Fraud (THSSA)	Recovery against the employee who defrauded the company over an extended period. She was dismissed in 2019. The matter is proceeding.	R10 m
THSSA (Defendant) in a claim by Amanda Randeira	Civil action instituted (THSSA)	The Plaintiff instituted a delictual claim against Tongaat Hulett Sugar South Africa and an ex-employee in the amount of some R31 m in relation to employment issues. The matter continues to be defended. Plaintiffs' attorneys have requested BRP's to agree to waive the s133 moratorium in the matter so it can be set down for trial. This request has been refused by the BRPs. This is still in process.	R32 m
THL (Respondent) in a claim by Mohini Singari Naidoo trading as Powertrans Sales & Services	Court Application in process	Powertrans has sought, <i>inter alia</i> , the following relief in the application: <ul style="list-style-type: none"> • declaring the Vision business rescue plan adopted in relation to THL at the meeting of creditors held on 11 January 2024 to be unlawful and setting it aside; • directing THL and the BRPs to comply, in the manner contemplated in section 7(k) of the Companies Act, with their duties and the procedures which are set out in sections 140(1)(d), 141(1) & (2)(a), 145(1)(a) and 150 to 152 of the Companies Act; and costs of the application. 	NIL

Save as set out above, as at the Last Practicable Date, there were no additional legal or arbitration proceedings, including any such proceedings which are pending or threatened, of which the directors of THL are aware and which may have or have had during the 12-month period preceding the date of issue of this Circular, a material effect on the financial position of THL.

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19. NOTICE OF GENERAL MEETING

The General Meeting will be held at **10:00** on **Thursday, 8 August 2024** in order for Shareholders to consider and, if deemed fit, adopt, with or without modification, the Shareholder Resolutions.

The General Meeting will be conducted entirely by electronic communication as contemplated in the MOI and section 63(2)(a) of the Companies Act, and Shareholders will accordingly only be able to access the General Meeting electronically via an electronic facility. More information in this regard is provided in the Notice of General Meeting.

20. DOCUMENTS INCORPORATED BY REFERENCE

The following document has been incorporated by reference and is available for viewing on the Company's website at the link below, as well as being available for inspection as set out in paragraph 21 below:

Material terms of the historical Facility Agreements set out in reviewed condensed consolidated interim financial results for the six months ended 30 September 2021, released 9 December 2021. Please see pages 49 to 51.

<https://www.tongaat.com/wp-content/uploads/2021/12/Interimresults-for-the-six-months-ended-30September-2021.pdf>

21. DOCUMENTS AVAILABLE FOR INSPECTION

The documents listed below will be available for inspection by Shareholders from Wednesday, 10 July, being the issue date of this Circular, up to and including the date of the General Meeting, on a virtual platform to which Shareholders will be granted access on a "read only" basis upon a request being sent to the Company Secretary (johann.vanrooyen@tongaat.com):

- 21.1 a signed copy of this Circular;
- 21.2 the Approved Plan;
- 21.3 the Equity Subscription Agreement;
- 21.4 Directors' service contracts;
- 21.5 THL and all of its subsidiary companies' memorandum of incorporation;
- 21.6 the audited consolidated annual financial statements of THL for the 3 (three) financial years ended 31 March 2019, 31 March 2020 and 31 March 2021;
- 21.7 the reviewed condensed consolidated interim financial results for the six months ended 30 September 2021; and
- 21.8 the unaudited interim financial results of THL for the 12 (twelve) months ended 31 March 2022.

By order of the Business Rescue Practitioners

TONGAAT HULETT LIMITED**REGISTERED OFFICE OF TONGAAT HULETT:**

Amanzimnyama Hill Road Tongaat, KwaZulu-Natal South Africa



ANNEXURE 1: NOTICE OF GENERAL MEETING



Est. 1892

TongaatHulett®

Tongaat Hulett Limited

(Incorporated in South Africa)

(Registration Number: 1892/000610/06)

ISIN: ZAE000096541 JSE share code: TON

("THL" or the "Company")

NOTICE OF GENERAL MEETING

NOTICE IS HEREBY GIVEN to the Shareholders that a general meeting of the Shareholders will be held at **10:00 (South African Standard Time) on Thursday, 8 August 2024.**

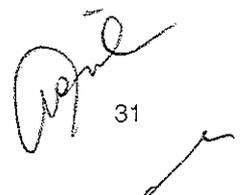
The General Meeting will be conducted entirely by electronic communication as contemplated in the MOI and in section 63(2)(a) of the Companies Act, and Shareholders will accordingly only be able to access the General Meeting electronically via an electronic facility. More information in this regard is provided under the heading "Electronic Participation" near the end of this Notice of General Meeting.

Purpose:

The purpose of the General Meeting is to consider and, if deemed fit, adopt, with or without amendment, the resolutions set out hereunder in the manner required by the Companies Act.

Notes:

- The definitions and interpretations commencing on page 6 of the Circular to which this Notice of General Meeting is attached, and of which it forms part, ("**Circular**") apply throughout this Notice of General Meeting.
- **In terms of section 63(1) of the Companies Act, before any person may attend or participate in the General Meeting, that person must present reasonably satisfactory identification, and the person presiding at the General Meeting must be reasonably satisfied that the right of the person to speak and vote at, and participate in, the General Meeting, either as a Shareholder, or as a proxy or a representative for a Shareholder, has been reasonably verified. Acceptable forms of identification include a valid green barcoded or smart card identification document issued by the South African Department of Home Affairs, a South African driver's licence or a valid passport. A Shareholder or its representative or proxy must electronically provide the necessary proof of its identification before such person will be entitled to speak and vote at, and participate in, the General Meeting. Such identification must be delivered by a Shareholder or its representative or proxy either:**
 - on registration, if such Shareholder or its representative or proxy is registering to participate in the General Meeting using the Computershare Summit platform; or
 - by email to the Transfer Secretaries at proxy@computershare.co.za, together with the request to participate in the General Meeting, if such Shareholder or its representative or proxy is requesting to participate in the General Meeting via email.
- If the Shareholder is not an individual, the necessary proof of identification of the representative (such as the representative's valid green barcoded or smart card identification document issued by the South African Department of Home Affairs, South African driver's licence or valid passport) must be accompanied by a copy of a resolution of the Shareholder which sets out that the representative is authorised to represent the Shareholder at the General Meeting.


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Record Dates:

In terms of section 59(1)(a) and (b) of the Companies Act, the Board has set the following record dates for the purposes of determining which Shareholders are entitled to:

- receive notice of the General Meeting (being the date on which a Shareholder must be registered in the Securities Register in order to receive this Notice of General Meeting), which date is **Friday, 5 July 2024**; and
- speak and vote at, and participate in, the General Meeting (being the date on which a Shareholder must be registered in the Securities Register in order to participate in, and speak and vote at, the General Meeting), which date is **Friday, 2 August 2024**.

Special Resolution Number 1 – Authorisation to issue additional Shares under Section 41 of the Companies Act

“Resolved as a special resolution that, in the event that the Shares to be issued pursuant to the Equity Subscription will have voting power which is equal to or exceeds 30% of the voting power of all the issued Shares immediately prior to such issue, and in order to issue Shares under the Equity Subscription to Shareholders contemplated in section 41(1) of the Companies Act, the Directors be and are hereby authorised, in terms of section 41(1) and section 41(3) of the Companies Act, to issue such Shares, which will rank pari passu with existing issued Shares.”

For Special Resolution Number 1 to be passed, votes in favour of the resolution must represent at least 75% (seventy-five percent) of the voting rights exercised at the General Meeting. None of the Vision Parties or their associates are currently Shareholders of THL and therefore will not be voting nor do they require to be excluded from such a vote.

Reason and effect:

The reason for the Special Resolution Number 1 is to enable the Company to issue Shares in terms of, or for the purposes of implementing, the Vision Transaction in relation to the Equity Subscription which have voting power equal to or in excess of 30% (thirty percent) of the voting power of all issued Shares immediately prior to the proposed issuance.

The effect of adopting Special Resolution Number 1 is that subject to the Board being authorised, on behalf of the Company, to issue Shares in terms of, or for the purposes of implementing, the Vision Transactions relating to the Equity Subscription having voting power equal to or in excess of 30% (thirty percent) of the voting power of all Shares in issue immediately prior to the proposed issuance.

Ordinary Resolution Number 1 – Specific authority to issue Shares

“Resolved that, subject to special resolution number 1 being passed by the requisite majority of Shareholders, the Company is authorised to allot and issue 4 864 887 494 new Shares in the authorised but unissued share capital of the Company, to Vision Investments, pursuant to the terms of the implementation agreement and specific issue, which will rank pari passu with existing issued Shares, as detailed in this Circular to which this notice of general meeting is attached.”

For Ordinary Resolution Number 1 to be passed, votes in favour of the resolution must represent at least 75% (seventy-five percent) of the voting rights exercised at the General Meeting. None of the Vision Parties or their associates are currently Shareholders of THL and therefore will not be voting nor do they require to be excluded from such a vote.

Reason and effect:

The reason for the Ordinary Resolution Number 1 is to enable the Company to issue Shares in terms of, or for the purposes of implementing, the Vision Transactions in relation to the Equity Subscription which have voting power and are a specific fresh issue of Shares in terms of the Requirements.

The effect of adopting Ordinary Resolution Number 1 is that subject to the Board being authorised, on behalf of the Company, to issue Shares in terms of, or for the purposes of implementing, the Vision Transactions relating to the Equity Subscription which have voting power and are a specific fresh issue of Shares in terms of the Requirements.

VOTING

The above resolutions will be voted on by way of a poll. On a poll every Shareholder, present personally or represented by proxy or by representative, shall be entitled to cast one vote per Share held.

CERTIFICATED SHAREHOLDERS AND OWN-NAME DEMATERIALISED SHAREHOLDERS

A Certificated Shareholder or Own-Name Dematerialised Shareholder or its representative may speak and vote at, and participate in, the General Meeting by registering to do so in the manner provided in the "Electronic Participation" section below.

Alternatively, a Certificated Shareholder or Own-Name Dematerialised Shareholder may appoint one or more proxies to represent it at the General Meeting by completing the attached Form of Proxy (blue) in accordance with the instructions contained therein. The Certificated Shareholder's or Own-Name Dematerialised Shareholder's proxy may then speak and vote at, and participate in, the General Meeting if the proxy registers to do so in the manner provided in the "Electronic Participation" section below. A proxy need not be a Shareholder.

For the purpose of effective administration, it is requested that the Form of Proxy (blue) be lodged with, emailed to or posted to the Transfer Secretaries, to the addresses provided below, so as to reach the Transfer Secretaries by no later than **10:00 on Tuesday, 6 August 2024**:

Hand deliveries to:

Computershare Investor Services
Proprietary Limited
Rosebank Towers, 15 Biermann Avenue,
Rosebank, Johannesburg, 2196,
South Africa

Postal deliveries to:

Computershare Investor Services
Proprietary Limited
Private Bag X9000, Saxonwold,
Johannesburg, 2132, South Africa

Email deliveries to:

proxy@computershare.co.za

If a Certificated Shareholder or Own-Name Dematerialised Shareholder does not lodge, email or post the Form of Proxy (blue) to reach the Transfer Secretaries by **10:00 on Tuesday, 6 August 2024**, the Shareholder will nevertheless be entitled to email the Form of Proxy (blue) to the Transfer Secretaries at proxy@computershare.co.za so as to reach them prior to the time of commencement of the General Meeting.

DEMATERIALISED SHAREHOLDERS OTHER THAN OWN-NAME DEMATERIALISED SHAREHOLDERS

A beneficial owner of Shares which has Dematerialised its Shares, other than a Dematerialised Own-Name Shareholder should note the following:

- its CSDP or Broker should contact it to ascertain how it wishes to cast its vote (or to ascertain whether it wishes to abstain from casting its vote) at the General Meeting, and thereafter cast its vote (or abstain from casting its vote) in accordance with those instructions;
- if it has not been contacted by its CSDP or Broker, it is advisable that it contact its CSDP or Broker and furnish it with its voting instructions; and
- if its CSDP or Broker does not obtain voting instructions from it, the CSDP or Broker should vote in accordance with the instructions contained in the mandate agreement between the beneficial owner and the CSDP or Broker.

In accordance with the mandate agreement with its CSDP or Broker, a beneficial owner of Shares which has Dematerialised its Shares, other than a Dematerialised Own-Name Shareholder must advise its CSDP or Broker if it wishes to speak and vote at, and participate in, the General Meeting itself or through a representative. If it does so, its CSDP or Broker should issue the necessary letter of representation to it or its representative to speak and vote at, and participate in, the General Meeting. In order to speak and vote at, and participate in, the General Meeting, the beneficial owner or representative will additionally need to take the steps required in order to access the electronic facility, as provided in the "Electronic Participation" section below.

ELECTRONIC PARTICIPATION

In accordance with the provisions of the Companies Act and the MOI, the General Meeting will be conducted entirely through electronic communication. The electronic meeting facility will enable all participants to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the General Meeting.

Voting via the electronic facility will be the only method available to Shareholders to vote their Shares at the General Meeting. The electronic facility which has been selected by THL for purposes of the General Meeting is the **Computershare Summit platform**, an electronic facility which may be accessed by using a smartphone, tablet or computer. Votes can be exercised between the commencement of the General Meeting and the closure of voting as announced by the Chairman during the General Meeting.



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A Shareholder or its representative or proxy which wishes to participate in the General Meeting will be required to either:

- register its personal details (including providing reasonably satisfactory identification, as contemplated earlier in this Notice of General Meeting), using the link <https://meetnow.global/ZA>, to enable it to participate in the General Meeting. For the purposes of effective administration, it is requested that such registration be completed by no later than **10:00 on Tuesday, 6 August 2024**. A Shareholder or its representative or proxy who does not complete registration by that time may still participate in the General Meeting via electronic communication by completing registration prior to the time of commencement of the General Meeting. If any Shareholder or its representative or proxy experiences any difficulty with such registration process, such Shareholder or its representative or proxy, as the case may be, should request an agent of the Transfer Secretaries to assist such Shareholder or representative or proxy with such difficulty by sending an email to proxy@computershare.co.za; or
- send a notice by email to the Transfer Secretaries at proxy@computershare.co.za advising that it wishes to participate in the General Meeting and attaching reasonably satisfactory identification, as contemplated earlier in this Notice of General Meeting. For the purpose of effective administration, it is requested that the email be sent so as to reach the Transfer Secretaries by no later than **10:00 on Tuesday, 6 August 2024**. A Shareholder or its representative or proxy who does not send an email so as to reach the Transfer Secretaries by that time may still participate in the General Meeting via electronic communication by emailing the Transfer Secretaries at proxy@computershare.co.za so as to reach them prior to the time of commencement of the General Meeting and attaching reasonably satisfactory identification.

Following successful completion of that registration process, a Shareholder or its representative or proxy can connect to the General Meeting by using the link <https://meetnow.global/ZA> and following the prompts on that website. A Shareholder or its representative or proxy will need the latest versions of Chrome, Safari, Internet Explorer 11, Edge or Firefox. A Shareholder or its representative or proxy should ensure that its browser is compatible.

Once a Shareholder or its representative or proxy has successfully authenticated, the info screen will be displayed. The Shareholder or its representative or proxy can then view company information, ask questions and watch the webcast.

If the General Meeting is being viewed on a computer, the webcast will automatically appear at the side once the meeting has started.

Voting:

- the chairman will open voting on all resolutions at the start of the meeting. Once the voting has opened, a Shareholder or its representative or proxy can navigate to the voting icon. From there, the resolutions and voting choices will be displayed;
- to vote, a Shareholder or its representative or proxy selects the voting direction from the options shown on screen. A confirmation message will appear to show the vote has been received;
- if a Shareholder or its representative or proxy wishes to change its vote, it should click on the change vote link and select another voting direction; and
- once the chairman has opened voting on the resolutions, voting can occur at any time during the meeting until the chairman closes the voting.

If a Shareholder or its representative or proxy experiences any difficulty with logging into the General Meeting, that Shareholder or its representative or proxy, as the case may be, should request an agent of the Transfer Secretaries to assist that Shareholder or representative or proxy with such difficulty by sending an email to proxy@computershare.co.za.

The cost of procuring the electronic facility will be for the account of the Company. The costs of accessing the electronic facility will be borne by the Shareholder.

It is recommended that Shareholders or their representatives or proxies log into the facility at least 15 (fifteen) minutes prior to the scheduled start time of the General Meeting.

The Company shall not be liable in the case of loss of network connectivity or other network failure, whether due to insufficient airtime, internet connectivity, internet bandwidth and/or power outages or otherwise, which prevents any Shareholder or its representative or proxy from participating in and/or voting at the General Meeting.

By order of the Business Rescue Practitioners

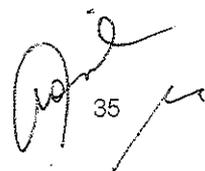
TONGAAT HULETT LIMITED

Registered office of Tongaat Hulett:

Amanzimnyama Hill Road
Tongaat, KwaZulu-Natal
South Africa

Transfer Secretaries

Computershare Investor Services Proprietary Limited
(Registration Number: 2004/003647/07)
Rosebank Towers, 15 Biermann Avenue, Rosebank
Johannesburg, 2196, South Africa
Private Bag X9000, Saxonwold,
Johannesburg 2132, South Africa
proxy@computershare.co.za


35



TongaatHulett®

Tongaat Hulett Limited

(Incorporated in South Africa)
 (Registration Number: 1892/000610/06)
 ISIN: ZAE000096541 JSE share code: TON
 ("THL" or the "Company")

FORM OF PROXY

FOR USE BY CERTIFICATED SHAREHOLDERS AND OWN-NAME DEMATERIALIZED SHAREHOLDERS AT THE GENERAL MEETING OF THL TO BE HELD ELECTRONICALLY AT 10:00 (SOUTH AFRICAN STANDARD TIME) ON THURSDAY, 8 AUGUST 2024.

For completion by Certificated Shareholders and Own-Name Dematerialised Shareholders who are unable to attend and vote at the General Meeting of the Company to be held electronically **at 10:00 on Thursday, 8 August 2024**, including a resumption of an adjourned meeting, and the recommencement at a postponed meeting ("**General Meeting**").

The definitions and interpretations commencing on page 6 of the Circular to which this Form of Proxy is attached apply throughout this Form of Proxy.

Each Certificated Shareholder and Own-Name Dematerialised Shareholder is entitled to appoint a proxy (who need not be a Shareholder) to speak and vote in place of that Shareholder at the General Meeting. Please read the notes to this Form of Proxy below.

I/We _____ (please print names in full)

of _____ (address)

Telephone/Cellphone number: _____ Email address: _____

being the holder/s of _____

Shares in the Company, do hereby appoint: _____

1. _____ or, failing him/her

2. _____ or, failing him/her

3. the chairman of the General Meeting,

as my/our proxy to attend, speak and vote for me/us and on my/our behalf at the General Meeting, and to vote or to abstain from voting at the General Meeting as follows on the ordinary and special resolutions to be proposed at such meeting:

	For	Against	Abstain
Special Resolution Number 1: Authorisation to issue additional shares under section 41 of the Companies Act			
Ordinary Resolution Number 1: Specific Authority to Issue Shares in terms of paragraph 5.51(g) of the Requirements			

Signed at _____ this _____ day of _____ 2024

Signature _____

Assisted by me, where applicable (name and signature) _____

Please read the notes and instructions below.

NOTES TO THE FORM OF PROXY

1. This Form of Proxy is only to be completed by Certificated Shareholders and Own-Name Dematerialised Shareholders.
2. A Shareholder may insert the name of a proxy or the names of two alternative proxies of the Shareholder's choice in the space provided. The Person whose name stands first on the Form of Proxy and who is present at the General Meeting will be entitled to act to the exclusion of those whose names follow.
3. The above resolutions will be voted on by way of a poll. On a poll, every Shareholder present personally or represented by proxy or by representative, shall be entitled to cast one vote per Share held.
4. A Shareholder's instructions to the proxy must be indicated by inserting the relevant numbers of votes exercisable by the proxy in the appropriate box or by inserting "X" should the Shareholder wish to vote all Shares held by it. Failure to comply will be deemed to authorise the proxy to vote or to abstain from voting, as the case may be, in respect of all the Shareholder's votes. A Shareholder or the proxy is not obliged to exercise all the votes exercisable by the Shareholder or by the proxy, but the total of votes cast and in respect of which abstention is recorded may not exceed the total of votes exercisable by the Shareholder or by the proxy.
5. Forms of Proxy must be dated and signed by the Shareholder appointing a proxy.
6. For purpose of effective administration, it is requested that the Form of Proxy be lodged with, emailed to or posted to the Transfer Secretaries, to the addresses provided below, so as to reach the Transfer Secretaries at or before **10:00 on Tuesday, 6 August 2024**:

Hand deliveries to:

Computershare Investor Services
Proprietary Limited
Rosebank Towers, 15 Biermann Avenue,
Rosebank, Johannesburg, 2196,
South Africa

Postal deliveries to:

Computershare Investor Services
Proprietary Limited
Private Bag X9000, Saxonwold,
Johannesburg, 2132, South Africa

Email deliveries to:
proxy@computershare.co.za

If a Certificated Shareholder or Own-Name Dematerialised Shareholder does not lodge, email or post the Form of Proxy to reach the Transfer Secretaries by **10:00 on Tuesday, 6 August 2024**, the Shareholder will nevertheless be entitled to email the Form of Proxy to the Transfer Secretaries at proxy@computershare.co.za so as to reach them prior to the time of commencement of the General Meeting.

7. Completing and lodging, emailing or posting this Form of Proxy will not preclude the relevant Shareholder from attending the General Meeting, speaking, and voting personally to the exclusion of any proxy appointed in terms hereof.
8. Documentary evidence establishing the authority of a Person signing this Form of Proxy in a representative capacity or other legal capacity must be attached to this Form of Proxy, unless previously recorded by the Transfer Secretaries or waived by the chairperson of the General Meeting.
9. The completion of blank spaces need not be initialled. Any alteration or correction made to this Form of Proxy must be initialled by the signatory/ies.
10. If any Shares are jointly held, all joint Shareholders must sign this Form of Proxy. If more than one of those Shareholders is present at the General Meeting either personally or by proxy, the Person whose name appears first in the Securities Register will be entitled to vote to the exclusion of the others.
11. Despite the foregoing, the chairman of the General Meeting may waive any formalities that would otherwise be a prerequisite for a valid Form of Proxy.

TRANSFER SECRETARIES' OFFICES

South Africa

Computershare Investor Services Proprietary Limited
(Registration Number: 2004/003647/07)
Rosebank Towers, 15 Biermann Avenue, Rosebank
Johannesburg, 2196, South Africa (Private Bag X9000, Saxonwold, 2132, South Africa)
Tel: +27 11 370 5000
Email: proxy@computershare.co.za

Summary of terms of section 58(8)(b)(i) of the Companies Act

- Section 58(8)(b)(i) provides that the form of proxy supplied by a company for the purpose of appointing a proxy must bear a reasonably prominent summary of the rights established by section 58 of the Companies Act, 2008, as amended, which summary is set out below:
- a shareholder of a company may, at any time, appoint any individual, including an individual who is not a shareholder of that company, as a proxy to, among other things speak and vote at, and participate in, a shareholders meeting on behalf of the shareholder;
- a shareholder may appoint two or more persons concurrently as proxies;
- a shareholder may appoint more than one proxy to exercise voting rights attached to different securities held by the shareholder;
- a proxy may delegate the proxy's authority to act on behalf of the shareholder to another person;
- a proxy appointment must be in writing, and dated and signed by the shareholder; and remains valid only until the meeting (including any resumption thereof pursuant to an adjournment or recommencement thereof pursuant to a postponement) ends, unless the proxy appointment is revoked, in which case the proxy appointment will be cancelled with effect from such revocation;
- a shareholder may revoke a proxy appointment in writing;
- a proxy appointment is suspended at any time and to the extent that the shareholder chooses to act directly and in person in the exercise of any rights as a shareholder; and
- a proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent the form of proxy provides otherwise.



15 Wittebomen Road
Silverhurst, Constantia
Cape Town, 7806
South Africa

T +27 21 795 0345
E info@pike-law.co.za
W www.pike-law.co.za

TONGAAT HULETT LIMITED

attn: JJ van Rooyen
email: Johann.vanRooyen@tongaat.com
cc: Metis Strategic Advisors, Business Rescue Practitioners
email: BR@tongaat.com, peter@metis.co.za, trevor@metis.co.za

our reference:
matter number: ART-002
your reference: Vision Plan
direct line: +27 (0) 21 286 1555
direct email: adam@pike-law.co.za
date: 7 August 2024

Dear Sir

TONGAAT HULETT LIMITED– BUSINESS RESCUE PRACTITIONER ENGAGEMENT

Introduction

1. We act for Artemis Investments Proprietary Limited, our clients.
2. We address this letter to you, in anticipation of the general meeting of the shareholders of Tongaat Hulett Limited ("**Company**") to be held on Thursday, 8 August 2024. The subject matter of the letter concerns *inter alia*:
 - 2.1 the lawfulness and the validity of the Approved Plan of 11 January 2024 ("**Approved Plan**");
 - 2.2 the omission of critical information and data in the Circular dated 10 July 2024 ("**Circular**");
 - 2.3 the business of the general meeting to be held on 8 August 2024;
 - 2.4 the approvals sought at the general meeting; and
 - 2.5 matters ancillary thereto.
3. You will see that the email to which this letter is attached has been copied to representatives of other shareholders, given their respective interests in the subject matter of this letter. At the meeting, all of the issues set out in this letter will need to be addressed, whether by the chairman of the meeting or the business rescue practitioners ("**Practitioners**").

the right to speak and be heard

4. Section 63(2) of the Companies Act 71 of 2008 ("**Act**") states that:

"... unless prohibited by its memorandum of incorporation, a company may provide for (a) a shareholders meeting to be conducted entirely by electronic communication; or (b) one or more shareholders, or proxies for shareholders, to participate by electronic communication in all or part of a shareholders meeting that is being held in person, as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting."
[emphasis supplied]

5. There remains the obligation on the Company to ensure equal access to the electronic meetings for shareholders as well as the obligation to ensure that each shareholder has the ability to communicate concurrently, as contemplated in section 63(2) of the Act. Whilst wholly virtual general meetings are permitted, their convening must comply with the requirements of subsection 63(2)(a) of the Act.

6. The term "*intermediary*" is not defined in the Act, but the ordinary meaning of intermediary would suggest that the Act prohibits any limitation by an intermediary on the rights of shareholders to communicate effectively for themselves or by proxies at a shareholders meeting. Accordingly, you are requested to ensure that shareholders:

6.1 are free to speak and pose questions in real time;

6.2 can communicate without excessive moderation and may be allowed to communicate verbally or in writing;

6.3 enjoy the same rights as if they were in an in-person general meeting; and

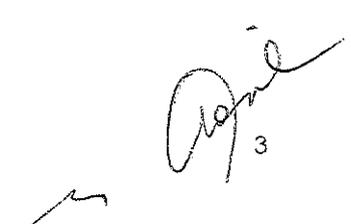
6.4 are not required to participate via an intermediary, which would contravene s63(2) of the Act.

7. You will appreciate that this general meeting may be the last opportunity for the present shareholders to participate meaningfully in the business of the Company. It is for that reason that the shareholders should be given every opportunity to speak and pose questions, to be given full and frank answers by the director and the Practitioners, and generally to hold the director and the Practitioners to account, in a manner that is open and transparent.

validity of the business rescue plan

8. Upon appointment, the authority of the board, and hence the management of the company, vests in the duly appointed business rescue practitioner.

9. The practitioner can only exercise those powers lawfully available to her. These include management power, the powers in memorandum of incorporation ordinarily available to the board, the statutory powers in the Act, and the particular powers relating to practitioners in general.
10. Subsection 152(5) of the Act requires the particular company, under the direction of the appointed practitioner, to take all necessary steps to attempt to satisfy any conditions on which the business rescue plan is contingent, and implement the plan as adopted. But, for subsection 152(5) to make sense, the business rescue plan must in fact be capable of being implemented by the particular company. Put differently, a business rescue plan which is incapable of being implemented by the company in question, cannot be valid.
11. Presently, the Company is incapable of concluding, rendering unconditional, implementing enforcing the acquisition agreement between the Vision Parties and the Lender Group, pursuant to which the Lender Group's Claims are acquired by the Vision Parties. Notwithstanding that the Lender Group may be bound by the Approved Plan, and that the Vision Parties have undertaken, in the Subscription Agreement, to be bound, neither the Company nor the Practitioners are able to enforce the acquisition agreement, as against the parties thereto.
12. Moreover, if the Lender Group Claim acquisition agreement should fail, neither the Company nor the Practitioners are in a position to compel the Vision Parties to perform in terms of the acquisition agreement or to seek appropriate recourse against a defaulting party. Given that this transaction is the fulcrum upon which the Approved Plan balances, the Approved Plan is flawed.
13. Assuming, that the acquisition agreement is concluded and capable of implementation by the Company in accordance with its terms (if needs be), there is another questionable aspect of Approved Plan that requires interrogation.
14. Once the Vision Parties are the holders of the Lender Group Claim, the Plan anticipates that the Vision Parties will implement a debt for equity swap by subscribing for new shares in the Company. This is a step that the Company and the Practitioners are unable to implement without the cooperation of the Vision Parties.
15. And, if an amended business rescue plan is put to the Vision Parties for a vote, they will not be obliged to vote in its favour. At that stage, the Company and the business rescue proceedings will be at the mercy of the Vision Parties, who may, at their whim, chose to put the Company into liquidation, and take control of the Company's assets and employ them to their own ends.

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16. Assuming, that the Vision Parties engage in good faith, there is yet another questionable aspect of Approved Plan that requires serious reconsideration. Although the Practitioners may determine the consideration for and issue the Subscription Shares, the Practitioners are not permitted to ignore the requirement that shareholders approve the dilution by way of a special resolution in terms of section 41 of the Act.
17. For these reasons, you will appreciate the serious misgivings our clients share, regarding the Approved Plan and the business to be voted upon during the forthcoming general meeting.

questions raised in the powertrans litigation

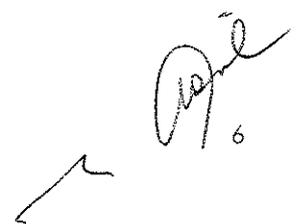
18. We express no opinion concerning the merits of the Powertrans litigation. That said, there are questions that the application raises, that remain unanswered.
19. A letter from Standard Bank was attached to the Practitioner's answering affidavits in the Powertrans application, which states that "*The account has sufficient cash for Vision to execute the contemplated transaction per the amended Vision business rescue plan dated 20 December 2023.*" The following issues arise:
- 19.1 There was no business rescue plan dated 20 December 2023;
- 19.2 The approved business rescue plan was originally dated 29 Nov 2023 and then amended on 10 January 2024.
20. Was Standard Bank given access to an unpublished business rescue plan?
21. The phrase "*amended Vision business rescue plan*" suggests that the Vision Parties submitted a business rescue proposal to the Practitioners and to Standard Bank, the terms of which are unknown. But, on the basis of the undisclosed proposal, the terms of which are not binding, Standard Bank purported to give an assurance.
22. The issue is that there is no way to confirm whether the "*contemplated transaction per the amended Vision business rescue plan dated 20 December 2023*" is the same as the transaction contemplated in the Circular and in the Approved Plan. For that reason, please disclose the "*amended Vision business rescue plan dated 20 December 2023*".
23. Paragraph 236 of the answering affidavit states that the Practitioners "*were provided with assurances from both the Lender Group and Vision that Vision had already brought into South Africa and paid a substantial non-refundable deposit to the Lender Group, which would vest Vision with sufficient debt previously held by the Lender Group to enable the debt-to-equity conversion provided for in the Plan, to occur.*"

24. If that is the case, it would mean that the non-refundable deposit:
- 24.1 which enables Vision to implement the debt-to-equity conversion, must be equal to the Equity Claim, which is used to implement the Equity Subscription;
- 24.2 must be equal to circa R4.9 bn.¹
25. Please confirm that the non-refundable deposit is equal to circa R4.9 bn.
26. Paragraph 240 of the answering affidavit states that the Practitioners "*remain satisfied, that the exchange of debt-for-equity aspect of the Vision Plan [...] was not dependent upon any future payment of purchase consideration [...]. Therefore, the BRPs were satisfied that the debt for equity exchange proposed in the Plan could competently proceed.*"
27. Please confirm that the Practitioners "*remain satisfied, that the exchange of debt-for-equity aspect [...] (is) not dependent upon any future payment of purchase consideration [...].*"
28. Paragraph 243 of the answering affidavit states that substantial deposit paid by Vision (in excess of R1,5 billion) is sufficient to vest it with a right to acquire the Lender Group's claim of R8.5 bn, and that the substantial deposit is sufficient to be exchanged for shares when the debt-to-equity conversion goes ahead, notwithstanding that the Equity Claim is worth circa R4.9 bn. Is this the case?
29. Paragraph 243 of the answering affidavit states that "*if Vision were not to pay the balance of the purchase price owed to the Lender Group under the Third Acquisition Agreement, that would not invalidate the Vision Plan.*" If that is the case, bearing in mind that the substantial deposit is in excess of R1,5 billion, how do the Practitioners understand that the Vision Parties would fund the balance of the Equity Claim?
30. Paragraph 340.11 of the answering affidavit states that "*Vision has acquired the Lender Group claims but payment of the balance of the purchase price (in addition to the substantial deposit) must be paid by a predetermined date*". If that is the case, it would mean that the Lender Group are no longer creditor, and would not be entitled to vote for the adoption of any further amendments to the Adopted Plan, should that be required. Please confirm our understanding is correct.

¹ Paragraph 3.1.(iii)(d) of the Circular.

the subscription agreement

31. Neither the Company nor the Vision Parties offer each other any warranties concerning the transaction contemplated in the Subscription Agreement. Accordingly, please confirm:
- 31.1 that the Vision Parties have, as a matter of fact and as a matter of law:
- 31.1.1 acquired all rights and unencumbered title in and to the Equity Claims from the Lender Group;
- 31.1.2 acquired all of the rights and entitlements to the security over the assets to which the Equity Claims relate from the Lender Group;
- 31.2 that the Lender Group have no further rights or title to the Equity Claims, and no further rights or entitlement to exercise the security over the assets to which the Equity Claims relate;
- 31.3 the date when the Lender Group disposed, and the Vision Parties acquired the Equity Claims and the related security;
- 31.4 that the Vision Parties are entitled to transfer the Equity Claims to the Company as consideration for the Subscription Shares;
- 31.5 that upon receipt of the Equity Claims, the encumbered assets held as security in relation to the quantum of the Equity Claim shall thereby become unencumbered;
- 31.6 that the Subscription Shares shall, in the hands of the Vision Parties, be and remain unencumbered;
- 31.7 that, in relation to clause 10.2.2, which states that after the Distribution of the Subscription Shares, to the particular Vision Parties, the Vision Party in question, and no other person, shall be entered into the securities register as the beneficial owner of the applicable Subscription Shares;
- 31.8 that the omission and/or failure by the Board and/or the Practitioners to conclude the Subscription Agreement without seeking any representations, warranties or indemnities from the Vision Parties was not negligent or a breach of trust, or a failure to act in good faith in the best interests of the Company or a failure to act with care, skill and diligence;
- 31.9 whether the Practitioners are able to mitigate the risk if the Vision Parties are unable to deliver the Equity Claims against the issue and allotment of the Subscription Shares.

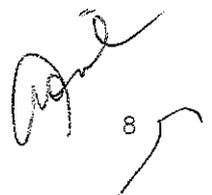
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the business rescue plan

32. The Approved Plan states that "*the BRPs have received proof that the substantial cash deposit (referred to above) is held in a bank account in South Africa. Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan.*" Accordingly, please confirm:
- 32.1 the holder / controller and the provider of "*the bank account in South Africa*";
- 32.2 the nature and the form of the proof the Practitioners obtained regarding the "*substantial deposit*", whether a bank guarantee, professional undertaking, confirmation of a deposit held in trust account or otherwise;
- 32.3 the identity of the person who provided the proof regarding the "*substantial deposit*";
- 32.4 what is meant by "*substantial*", that is what proportion of the purchase consideration is represented by the deposit;
- 32.5 what steps were taken and are being taken to ensure that the "*substantial deposit*" is secure and incapable of being moved or diverted;
- 32.6 that the Practitioners have personally verified that "*the Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan*", being the difference between the "*substantial deposit*" and the total purchase price consideration.
33. The Approved Plan states that the Practitioners "*are advised by the Vision Parties that know your client ("KYC") and Financial Intelligence Centre Act ("FICA") requirements have been complied with.*" Accordingly, please confirm:
- 33.1 which particular Vision Party advised the Practitioners that the KYC and FICA requirements were met;
- 33.2 whether the advising Vision Party gave that advice for and on behalf of all of the Vision Parties;
- 33.3 whether the Practitioners accepted the advice at face value or undertook their own due diligence;
- 33.4 in the event that the Practitioners undertook their own due diligence, what steps they took to confirm that the KYC and FICA requirements were met for each of the Vision Parties.

34. If only a portion of the purchase price has been paid for the total Lender Group claims, confirm:
- 34.1 what percentage of the total lender group claims have been acquired by Vision Investments;
- 34.2 whether a proportional amount of security relating to the claims have been transferred to Vision Investments;
- 34.3 whether the security has been divided and what ranking the affected parties have over the security;
- 34.4 in relation to the balance of the purchase price of the Lender Group claims whether the Practitioners have verified:
- 34.4.1 how the balance of the purchase price will be settled;
- 34.4.2 what steps are required to achieve this.
35. Are the Practitioners aware of any plan by Vision Investments to dispose of group assets to settle the balance of the purchase price? If so:
- 35.1 will Vision Investments exercise rights to realise assets encumbered for the purposes of securing the Claim Balance;
- 35.2 how will such a transaction be implemented;
- 35.3 how Vision Investments could apply the proceeds flowing from disposal of group assets to the outstanding purchase price.
36. Are the Practitioners aware of any contractual arrangements between any of the Vision Parties and the Lender Group other than the agreements disclosed in the Circular and in the Approved Plan relating to the subject matter of the business rescue proceedings?
37. The purpose of the Approved Plan is to rescue the Company, yet the Circular states² that the Approved Plan may, as an alternative to rescuing the Company, rescue the business.
38. It is the Practitioners' view that a business rescue plan can be implemented to save a business at the expense of the Company? Our understanding is that the purpose of business rescue is to preserve the entity, rather than the assets.

² 3.1(iii)(a).



39. The Circular states³ that the Approved Plan will result in *"the opportunity for new jobs to be created as the business grows under new ownership with Vision Parties"*. Our understanding is that the Company remains the owner of the business and the assets, but that the Approved Plan merely introduces a new consortium of majority shareholders. Please confirm that this is the case.

the circular

40. Paragraph 1.3 of the Circular states that *"Due to time constraints, as well as cost constraints, THL is not in a position to fully apply the provisions of the Requirements in as far as they apply to the implementation of the Approved Plan."*

41. The specific issue of shares has been a part of the Approved Plan since the 29 November 2023 version was published. Was it due to a *"time constraint"* or a *"cost constraint"* that precluded the preparation of *"up-to-date audited financial information and financial impacts"*?

42. Did the JSE consent to non-compliance? Did the JSE condone non-compliance with the Company's failure to include up-to-date audited financial information, and the financial impacts? If so, when?

43. If the transaction is not approved at the general meeting, the Circular states that Vision shall acquire the Company's assets and business as going concerns. Does THL's assets and businesses qualify as going concerns?

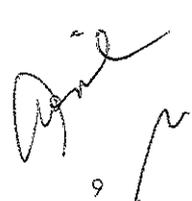
44. Whilst the disposals may not require shareholder approval in terms of section 112 of the Act, the disposals will require shareholder approval in terms of the Requirements, and there is no indication that these Requirements can or have been waived by the JSE. Moreover, the approval in terms of the Requirements is specifically a shareholder competency and need not be avoided due to *"time constraints"* and *"cost constraints"*.

45. Regarding paragraph 4.1.c of the Circular:

45.1 Why are the financial results for the periods ending 31 March 2023 and 31 March 2024 not complete?

45.2 Who bears responsibility for these failures?

³ 3.1 (iii) (c).



Handwritten signature and initials, possibly 'A. J. J.', with a small number '9' written below.

46. Regarding for paragraph 4.2.(i) of the Circular, the statement that "*the Vision Parties have been tracking the performance of THL for approximately 5 years*" appears to be misleading:

46.1 Vision Investments, Ngwenyama 62, Keni 62, Almoiz SA, Tokwe One, Tokwe Two, Tokwe Three, Terris Sugar SA were incorporated in 2023;

46.2 Guma Agri was incorporated in 2022;

46.3 Terris Agri was incorporated in 2020.

47. Remoggo, the Mauritian entity, ostensibly under the control of Rutenhuro Moyo, has three subsidiaries, namely Tokwe One, Tokwe Two and Tokwe Three. Why is Remoggo's shares in the Company held in three separate subsidiaries? Can the Company and the Practitioners give our clients an assurance that:

47.1 Tokwe One, Tokwe Two and Tokwe Three's holding company is and will remain Remoggo?

47.2 Remoggo's ultimate controlling shareholders is and will remain Rutenhuro Moyo?

48. Guma Agri, ostensibly under the control of Robert Gumede, has two subsidiaries, namely Ngwenyama 62 and Keni 62. Why are Guma Agri's shares in the Company held in two separate subsidiaries? Can the Company and the Practitioners give the shareholders assurance that:

48.1 Ngwenyama 62 and Keni 62's holding company and will remain Guma Agri?

48.2 Guma Agri's ultimate controlling shareholders is and will remain Robert Gumede.

directors' responsibility statement and business case and turnaround plan

49. The Circular states that the Practitioners, collectively and individually, accept full responsibility for the accuracy of the information contained in the Circular.

50. Do the Practitioners take responsibility for the forward-looking statements attributed to the Vision Parties? Alternatively, have the Vision Parties given any assurance to the Company or the Practitioners that the forward-looking statements attributable to them are binding or reliable?

closing

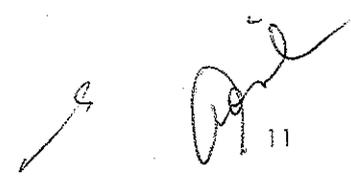
51. The acquisition by Vision Investments of all or some of the Lender Group claims does not in of itself form the basis of a business rescue plan. In broad terms, the substitution of a secured lender by another through the transfer of a Lenders Claims has no bearing on the Company. The company's liability remains due and payable, regardless of the identity of the entity that holds the Claim.

52. A valid business rescue plan must meet the requirements of the Act, and to that end, must require some form of restructuring of the balance sheet of the Company in order to improve its prospects of continuing as a going concern and becoming solvent.
53. The issue of shares in exchange for the delivery of R4.9 billion of the Lender Group claims, as well as the other key elements of the Approved Plan may constitute a valid plan, but only if the outright delivery of the loan claims and the outright delivery of the related security by Vision Investments is implemented. The issue of shares, in of itself, does not change the fortunes of the Company as no new cash is injected.
54. The Approved Plan ought to be premised on the acquisition by Vision Investments of all of the Lender Group claims and all of the related security, not part of them. If the Approved Plan is not premised on a wholesale acquisition of the claims and security, the Approved Plan cannot achieve its stated goal. Moreover, a business rescue plan that dilutes the rights of the shareholders to 2.7%, without the aforesaid wholesale acquisition would be misplaced and grossly unreasonable.
55. Until such time as the issues alluded to in this letter are ventilated, and absent a full and frank disclosure of information and documents requested herein, the shareholders do not have sufficient information before them to consider the consequences of the resolutions contemplated in the notice of the general meeting.

Yours sincerely

Adam Pike
Principal Attorney

PIKE | LAW

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



15 Wittebomen Road
Silverhurst, Constantia
Cape Town, 7806
South Africa

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TONGAAT HULETT LIMITED

attention: JJ van Rooyen
email: johann.vanrooyen@tongaaf.com
cc: Metis Strategic Advisors, Business Rescue Practitioners
email: BR@tongaaf.com; peter@metis.co.za; trevor@metis.co.za

our reference:	
matter number:	ART-002
your reference:	Vision Plan
direct line:	+27 (0) 21 286 1555
direct email:	adam@pike-law.co.za
date:	16 August 2024

Dear Sir

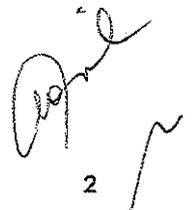
BUSINESS RESCUE PRACTITIONERS' REMUNERATION AGREEMENT - SECTION 143 OF THE COMPANIES ACT 71 OF 2008

1. The business rescue practitioners' ("**Practitioners**") remuneration agreement makes provision for the reimbursement of the Practitioners' reasonable costs, expenses and disbursements incurred by either of them (sic) in the discharge of their duties and responsibilities such as:
 - 1.1 travelling costs and expenses;
 - 1.2 accommodation costs and expenses; and
 - 1.3 any other costs and expenses reasonably incurred by the BRPs to the extent required in order for the BRPs to discharge their duties and responsibilities.
2. According to the circular dated 10 July 2024, the Company is advised by Metis Strategic Advisors ("**Metis**"), and Birkett, Stewart McHendrie ("**BSM**"). We understand that Metis and BSM are related, having common management, and are advising the Company via the instrumentality of a joint venture. We understand that two of Metis's founding partners hold appointment as the Company's business rescue practitioners.
3. The Adopted Plan states that Metis has an advisory mandate with the Company paid on hourly rates for services rendered, and in addition has an agreed success fee arrangement with the Lender Group linked to the repayment of post commencement finance.
4. It appears to us that Metis may be conflicted in as much as it is appointed to serve the interests of the Company, yet it is incentivised to act in favour of the Lender Group.

5. The Adopted Plan states that BSM has an advisory mandate with the Company paid at an hourly rate for services rendered. In addition, BSM has an agreed success fee arrangement linked to the outcome of Project BSM. According to the Approved Plan, the costs are treated as Business Rescue Costs and will be deducted from the proceeds of relevant sales received by THL and/or from other facilities.
6. It is unclear from the Adopted Plan what Project BSM is and with whom the agreed success fee arrangement was concluded. Moreover, Tenurey BSM, a BSM affiliate, is listed as an advisor in the Approved Plan, but has no role assigned to it therein.
7. In light of the foregoing, we would be grateful if you would send us, by no later than 23 August 2024, copies of:
 - 7.1 the whole of the Practitioners' remuneration agreement;
 - 7.2 statements of fees paid to the Practitioners;
 - 7.3 statements of costs, expenses and disbursements incurred by the Practitioners;
 - 7.4 the advisory mandate between Metis and the Company;
 - 7.5 the success fee agreement between Metis and the Lender Group;
 - 7.6 the advisory mandate between BSM and the Company;
 - 7.7 the success fee agreement to which BSM is a party;
 - 7.8 details of Project BSM; and
 - 7.9 the invoices issued by Metis and BSH to the Company for services rendered.

Yours sincerely

Adam Pike
Principal Attorney
PIKE | LAW



2



Corporate and Investment Banking

21 December 2023

Vision Investments 155 (Pty) Ltd
134 Beethoven Street
Waterkloof Glen
Pretoria
South Africa
0010

Dear Mr Rute Moyo,

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

As requested by the Business Rescue Practitioners of Tongaat Hulett Limited, this letter serves to confirm the following regarding the customer Vision Investments 155 (Pty) Ltd ("Vision"):

- Vision holds a Standard Bank account;
- The account has sufficient cash for Vision to execute the contemplated transaction as per the amended Vision business rescue plan dated 20 December 2023
- The account has sufficient cash to meet the proposed payment to unsecured creditors of R75 million as per the amended Vision business rescue plan dated 20 December 2023

We trust the above meets with you requirements.

This letter or your reliance on same does not give rise to any obligations or liability on the part of the Bank and/or its officials.

Yours sincerely,

[digitally executed]

Sean Wegerhoff
Executive, Advisory

21 December 2023

Date

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) Authorised financial services and registered credit provider (NCRCP15)

Directors: NMC Nyembezi (Chairman) L Fuzile* (Chief Executive Officer) LL Bam PLH Cook
A Daehnke* GJ Fraser-Molekoti Xueqing Guan¹ GMB Kennealy BJ Kruger Li Li¹ JH Maree
NNA Matyuzza ML Oduor-Otieno² ANA Peterside CON³ SK Tshabalala*

Company Secretary: K Froneman – 2023/06/12

* Executive Director ¹ Chinese ² Kenyan ³ Nigerian



TongaatHulett®

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

16 August 2024

INTERIM REPORT ON THE STATUS OF THE BUSINESS RESCUE PROCEEDINGS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("COMPANY" OR "THL")

1. **BACKGROUND**

- 1.1. The business rescue plan containing the Vision Parties' proposal, to be executed through Vision Investments 155 (Pty) Ltd ("**Vision**"), was approved and adopted by an overwhelming majority of creditors on 11 January 2024 (the "**Approved BR Plan**"). The Approved BR Plan remains binding on the Company and all affected persons, and the business rescue practitioners ("**BRPs**") remain obligated to implement the Approved BR Plan.
- 1.2. The Approved BR Plan contained two alternative transactions:
- 1.2.1. The first transaction contemplated an exchange of c. R5bn of the Lender Group claims by Vision for an equity stake of 97,3% of the shares in THL, thereafter leaving a materially reduced remaining claim of R3,6bn (the "**Equity Transaction**") owing by THL. The new terms relating to the remaining R3,6bn debt were to be agreed subsequent to the Equity Transaction but prior to substantial implementation and/or the termination of the THL business rescue ("**BR**"). The terms would need to be such that THL would no longer be financially distressed so that BR could be terminated.

- 1.2.2. The alternative transaction, arising as a result of the failure of the Equity Transaction, contemplates the sale by THL of all its assets (including its businesses as going concerns) to Vision by way of a set off of the purchase consideration for such assets against the Lender Group Claims (the "**Asset Transaction**").
- 1.2.3. The Asset Transaction contemplated in the Approved BR Plan will result in its shares (those held by existing Shareholders) having nil value, which will practically necessitate the delisting of THL from the JSE and the shell being liquidated. The employees, Unsecured Creditors and Secured Creditors would, however, be largely unaffected by such a change arising from the Equity Transaction to the Asset Transaction.
- 1.3. The implementation of the Approved BR Plan, as with most other BR plans, is that it is an incremental process.
- 1.4. In our view the Equity Transaction would have been the most efficient way in which to implement the Approved BR Plan, resulting in a speedy termination of BR and the return to normal operations. However, shareholders (as is their right) have chosen not to allow the Equity Transaction to be implemented and to consequently retain an investment in THL.
- 1.5. In accordance with the Approved BR Plan the Asset Transaction will now be pursued, in terms of which:
- 1.5.1. this change will not have any material impact on the operations of THL, nor (as noted above) on its employees, creditors, suppliers and customers. The implementation of the Asset Transaction will take longer to execute than the Equity Transaction would have, due to the additional structuring, and consents (including government, regulatory, and business counterparty) needed.
- 1.5.2. whilst the shareholders will retain a 100% interest in the shares of THL, THL will dispose of all its assets in accordance with the Asset Transaction which will practically necessitate the delisting of THL from the JSE and the shell being liquidated. As a result, THL shareholders will retain 100% of a shell company, with no prospect of recovery (compared to the 2,7% ownership stake which shareholders would have retained had the Equity Transaction been approved and completed).



2. **CONSIDERATIONS**

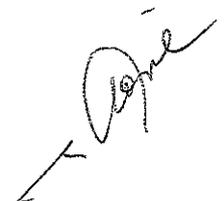
- 2.1. As reflected in the Approved BR Plan, the total claims against THL, including but not limited to those of the Lender Group, (excluding post BR supplies) amounted to approximately R13bn as at 31 October 2023.
- 2.2. As previously noted, Vision has acquired the claims of the Lender Group (a loan portfolio with a book value of approximately R8.6 billion) and paid a substantial deposit.
- 2.3. As at 31 October 2022 (the nearest practicable date to the commencement of BR) the book value of all assets of THL was c.R5.9bn. BDO estimated the "fire sale realisation" (liquidation value) of THL's assets would be c.R5.1bn.
- 2.4. From the above it is apparent that after the realisation of assets there will be debt remaining of approximately R7bn. As a result, in the event of a sale of assets, there would be no surplus available to shareholders.
- 2.5. Various media reports and certain shareholder comments suggest that a break-up of the group (i.e. sale of each asset on a piecemeal basis) would result in value remaining for shareholders. For this to happen, the assets of THL would need to realise well in excess of the remaining claims of c.R13bn (i.e. US\$710m @ say R18.30:\$1), before the escalation of the claims due to the accrual of interest.
- 2.6. In light of the conditions attached to the post commencement funding provided to THL by the IDC, any piecemeal transaction was prohibited. The process of the BR culminated in the adoption of the Approved BR Plan (designed to keep the group intact and preserve the availability of funding).
- 2.7. The consequence of the shareholders' vote would result in:
- 2.7.1. accepting a dilution of their shareholding from 100% to 2.7% by approving the Equity Transaction, or
- 2.7.2. crystallising a R0 share value pursuant to a sale of the THL assets.



- 2.8. The quantum of shareholder dilution contemplated in the Equity Transaction was not based on relative valuations (shareholder interests were negative), but rather the result of simple mathematics. The authorised shares of THL amounted to 5 000 000 000 shares and there were 135 112 506 shares in issue. The exchange of debt for equity contemplated all of the remaining unissued authorised shares being issued in exchange for the cancellation of c. R5bn of debt. Existing shareholders would have retained their 135 112 506 shares, which as a percentage of the then issued shares (i.e. 5 000 000 000) would have equated to 2.7%.
- 2.9. Shareholders have chosen to reject the Equity Transaction. The BRPs have not been presented with any workable alternative by the shareholders, whose objectives are unclear. Regardless of whether the shareholders had done so, the BRPs are bound by statute to pursue the implementation of the Approved BR Plan, and are not in a position to consider an alternative plan in any case.
- 2.10. This does not mean that the BR and/or the Approved BR Plan are doomed to failure. All it means is that the more efficient route for the implementation of the Vision BR Plan is no longer an option, but the less efficient and more procedurally complex route of the Asset Transaction will be followed.

3. STATUS AND WAY FORWARD

- 3.1. The BRPs remain of the view that there is a reasonable prospect of a successful business rescue.
- 3.2. While more time consuming to complete, there is no reason why an Asset Transaction cannot result in a re-capitalisation of the purchasing entity (Vision or its nominee "new THL"), such that the new THL is faced with a debt level that is a manageable quantum and repositions the new THL to operate successfully post BR.
- 3.3. Relative to the Equity Transaction, the Asset Transaction may take longer to complete given the need to obtain additional consents and approvals for the transfer of contracts, licenses and permits.
- 3.4. Despite the possible lengthier implementation of the Asset Transaction (as opposed to the implementation of the Equity Transaction), the implementation of the Asset Transaction should achieve the same result in establishing a stable operating basis going forward.



- 3.5. The end result contemplated in the Asset Transaction will now be that, inter alia:
- 3.5.1. Vision acquires from THL all of its assets (and businesses as going concerns along with employees on terms at least as favourable as their current terms of employment);
- 3.5.2. The existing shareholders of THL retain 100% of the shares in an empty THL shell company, which will be wound up;
- 3.5.3. THL and the BRPs will continue with the implementation of all other aspects of the Approved BR Plan and the applications for the necessary consents, and approvals;
- 3.5.4. The BR of THL will be terminated as soon as Substantial Implementation is achieved (as set out in the Approved BR Plan). See below in this regard.
- 3.6. THL, Vision and the BRPs are continuing with their interactions to satisfy the conditions on which the Approved BR Plan is contingent, aimed at ensuring the successful implementation of the plan as soon as possible.
- 3.7. The implementation of the Asset Transaction does not affect the Competition Tribunal South Africa approval already granted, which application contemplated the possibility of the Asset Transaction.

4. SUBSTANTIAL IMPLEMENTATION

- 4.1. To assist Affected Persons with an understanding of what remains to be done, we set out that which would constitute Substantial Implementation. The BRPs will only be in a position to terminate BR once Substantial Implementation is achieved or THL is no longer financially distressed.
- 4.2. In accordance with the Approved BR Plan, Substantial Implementation will be deemed to have occurred upon the following having taken place:
- 4.2.1. the Asset Transaction(s) contemplated in the BR Plan has been concluded;



- 4.2.2. the IDC PCF which has been provided to THL has been discharged/settled or alternative arrangements are agreed with IDC;
- 4.2.3. final Distributions have been paid to Creditors and/or an acceptable mechanism put in place for the payment of any remaining Distributions to Creditors;
- 4.2.4. the SASA Escrow has been given effect to; and
- 4.2.5. all Business Rescue Costs have been paid.

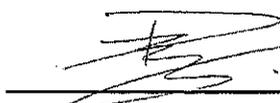
5. **CLOSING REMARKS**

- 5.1. It remains our view that the Company stands a reasonable prospect of being rescued successfully, as contemplated in section 128(1)(h) of the Companies Act, in a manner that will balance the rights and interests of all Affected Persons.
- 5.2. The fact that the Equity Transaction will not be pursued does not signal the end of the road for THL, but marks the beginning of the road for the Asset Transaction.
- 5.3. The Asset Transaction may merely extend the timetable for the implementation of the THL BR proceedings, but with the continued support of all employees, suppliers, creditors and stakeholders the rescue remains implementable.

Yours faithfully,



T Murgatroyd



P van den Steen



G Albertyn

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



05 Nov 2023

Robert Gumede's consortium takes control of Tongaat Hulett

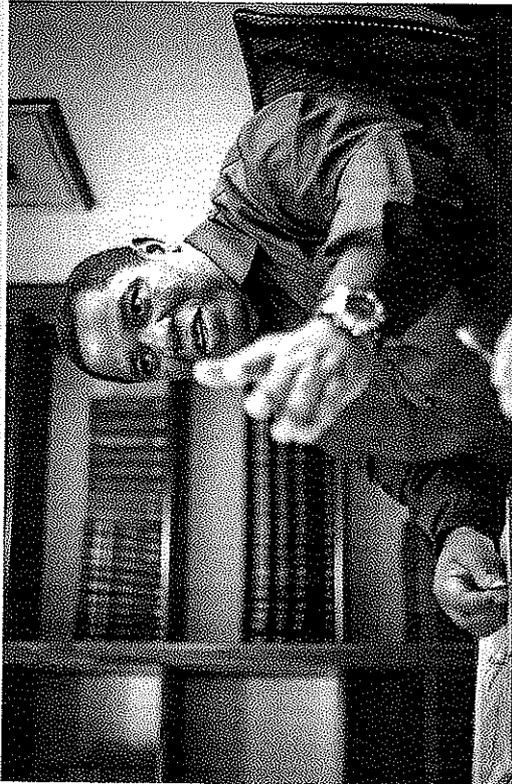
Sizwe Sane Yende

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Mayor Robert Gumede of Tanga Consortium.

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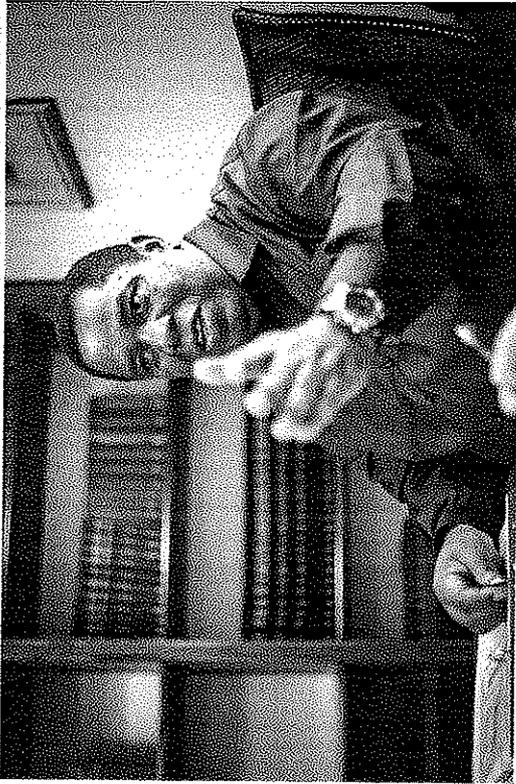


Photo: Reuters

NEWS

Mogul Robert Gumedé's Terris Consortium has outwitted competitors, using its strong financial muscle to buy out 12 banks that had a combined claim of R8 billion against cash-strapped multinational sugar company, Tongaat Hulett.

Terris Sugar, owned by Terris Consortium, is made up of seasoned business gurus — Zimbabwean Rutenhuro Moyo of Remoggo, Amre Youness of Samanco, Pakistani Nauman Khan of Almoiz Industries and Pepsi Bottling and Gumedé's Guma Africa Group.

City Press can confirm that Terris Sugar signed the deal on Friday afternoon, effectively closing the business rescue process, salvaging jobs in South Africa, Zimbabwe, Mozambique and Botswana, and restoring certainty among the region's governments and the industry.

Next on City Press

Water minister's first 100 days, mixed bag results on SARS writer crisis

1:34



My Profile

First Name

eg. John

eg. Smith

eg. 0823456789



Tongaat Hulett has been a major role player in creating jobs in southern Africa with 40 000 staff and sugarcane growers employed in KwaZulu-Natal, 15 000 in Zimbabwe, 11 500 in Mozambique and 800 in Botswana.

READ: Bidding for Tongaat Hulett now a two-horse race as Mozambique-based company shows interest

The JSE-listed company was put under business rescue after succumbing to financial distress due to management's manipulation of lucrative land parcels along the Durban north coast. Tongaat Hulett was a solid business worth about R23 billion.

An insider told City Press that Terris had begun their stealth manoeuvre to secure the company's lenders' claims about a month ago, probably foreseeing that the competition to purchase the company could attract many companies.

Terris now owns the biggest sugarcane plantations, mills, refineries and undeveloped land in the four countries, and inherits the workforce.

"They will move the company from business rescue and lift the suspension on the trade of shares once the business rescue practitioners present and hold a vote on the Terris Sugar scheme." The insider said:

Next on City Press

Water meter's first 100 days: mixed bag results on SAG water crisis

IN AFRICA



by Phyllis

This was a masterstroke deal for Terris Sugar, which avoided participating in the now compromised selected equity partnership (SEP) process led by the business rescue practitioners [BRPs].

Terris Sugar now holds over 80% of creditors' votes and any bidding company only required 75% of the votes to succeed. It will still inject the R3.6 billion required for the company's assets.

City Press understands that the company will grow the sugar business and is also contemplating diversifying into renewable energy generation.

Until now, Tanzanian-based Kagera Sugar appeared to be the favoured company to take over, but its bid was mired in a scandal that saw Industrial Development Corporation (IDC) executive, Fazel Moosa, resigning after giving a false promise of R2 billion in funding to Kagera.

The BRPs had already accepted Kagera as SEP until the truth came out about Moosa's role after the IDC conducted a forensic audit following complaints from other bidders.

Moosa had written a letter to Kagera, promising them funding. Kagera used that correspondence for its bid and convinced the BRPs.

The joint BRPs -- Trevor Murgatroyd, Peter van den Steen and Gerhard Albertyn -- insisted that they choose Kagera Sugar as SEP, following a stringent adjudication process.

READ: IDC official resigns after R2 billion false promise

The BRPs declined to comment: "As indicated, we are only formally responding through SENS [Stock Exchange News Service] or creditor updates. So, we won't be able to comment."

Publications Premiums

"I can confirm that we have signed an agreement with the Lender Group to acquire their R7.9 billion secured debt position in Tongaat Hulett, which effectively puts us in a very strong position to influence the future of Tongaat Hulett."

COMMENTS

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15 Apr

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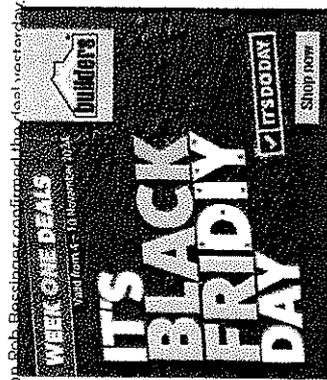
14 Apr

By Profita

14 Apr

Previous Results





Terris Sugar spokesperson Rob Bessinger confirmed the deal yesterday.

Bessinger said:

This will now allow us to submit our rescue plan for Tongaat Huett to the BRP so that it can form part of the BRP's plan that will be published and ultimately voted on by all creditors, including ourselves as the secured lenders of record, in the next few weeks.

We firmly believe that our plan is the only feasible one for Tongaat Huett, as it allows the business to remain intact, takes all stakeholders into consideration and caters for a substantial capital injection over the next few years to firstly stabilise and then grow and diversify the current business," he added.

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ROBERT GEMARIB

COMMENTS

Voting Booth

Another child has tragically died of suspected food poisoning in Alexandra, following the recent deaths of six children in Soweto. Do you believe our government is taking the measures necessary to urgently address this issue?

- No, there's no sense of urgency
- Yes, they are doing the best they can
- It can't all be left to government

Next on City Press

Water minister's first 100 days
 'Mank' boy results on SAs water

Vote

Results



Previous Results

TONGAAT HULETT LIMITED
(Incorporated in the Republic of South Africa)
Registration number: 1892/000610/06
Share code: TON
ISIN: ZAE000096541
("Tongaat" or "Company")



UPDATE REGARDING STATUS OF BUSINESS RESCUE PLAN AND RECENT MEDIA ARTICLES

The Business Rescue Practitioners are in the process of finalising the revised business rescue plan for Tongaat, which is expected to be published shortly.

We refer you to the recent announcements in the media regarding the potential disposal by Tongaat's secured lender group ("**Secured Lender Group**") of their claims and security ("**the Lender Claims**") against Tongaat to Terris Sugar, Guma, Remoggo and Almoiz ("**the Bidding Parties**").

We have been formally notified by the Secured Lender Group that they have entered into a transaction ("**the Transaction**") with the Bidding Parties for the disposal of the Lender Claims.

We are advised that the Transaction is subject to payment of the purchase price for the Lender Claims which we are informed is expected to happen in the very near term.

Shareholders will be advised accordingly as the Transaction develops.

Shareholders are further referred to the previous cautionary and renewal of cautionary announcements, the last of which was released on SENS on 31 October 2023. Tongaat's shares remain suspended on the JSE and shareholders are advised to continue to exercise caution in relation to the Company's securities until a further announcement is made.

9 November 2023

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

1.4. Chapter 4 – Conclusion and BRPs Certificates

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

2. Executive Summary

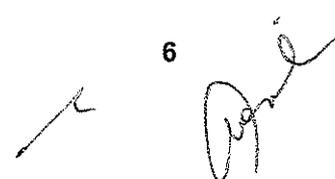
2.1. Capitalised terms and/or expressions used in this Executive Summary shall have the meanings assigned to them below in paragraph 3.

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

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

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

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

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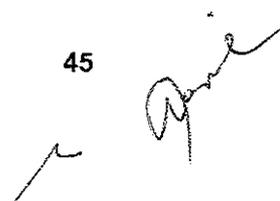
holding 95% of the then issued and listed shares in the Company immediately following the abovementioned debt to equity conversion (noting that RGS has stated its intention to subsequently sell down RGS Bidco's position such that RGS Bidco will retain a 51% - 60% shareholding within a year of concluding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

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

- 2.3.1. implement and complete the RGS Transactions comprising the acquisition by RGS Bidco of the Lender Group Claims and security and the conversion of such Claims into THL equity;
- 2.3.2. continue to maintain their control and oversight of the operations of the THL businesses until completion of the RGS Transactions and the completion of the parallel business rescues of THD, THSSA and Voermol;
- 2.3.3. secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process;
- 2.3.4. RGS has confirmed to the BRPs its undertaking that it will not implement any retrenchments of any employees of THL (other than potentially senior management whose employment will be subject to the restructure of the senior management structure) for a period of at least two years from the date of substantial implementation of the Business Rescue Plan. RGS will assess the performance of the THL Group and the various businesses after the expiry of the two year period. It is the intention of RGS to limit job losses and, therefore, any job losses suffered would be a last resort and all

provided access to conduct a comprehensive due diligence. Final offers were received on 15 June 2023.

- After discussions with the Lender Group the preferred SEPs were approached again and provided with an opportunity to improve their offers (both in terms of certainty of price and overall certainty of closing), which culminated in a short listing of two final bidders.
- The BRPs and their advisors, carefully considered the respective SEP bids and analysed a number of qualitative and quantitative factors relating to each SEP's offer. Such considerations included (inter alia) financial, operational, strategic fit, cultural considerations and execution ability.
- After a rigorous process, and after consultation with numerous parties including the Lender Group, on 17 July 2023, Kagera Sugar was identified and confirmed as the preferred bidder by the BRPs and confirmed as the Strategic Equity Partner to be included in the business rescue plan for consideration by Creditors.
- Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. The Vision Parties made clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote



such Claims in favour of a business rescue plan predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.

- It is noted that as at the Publication Date, the acquisition of the Claims of the Lender Group by the Vision Parties has not been completed. The RGS Proposals put forward in this Business Rescue Plan have therefore been based on numerous factors, including, but not limited to the benefits to the Company, the local community, Creditors, Shareholders and Employees – and on the ability of the proposer (in this case RGS) to make the financial commitments underpinning its proposals.

5.3.5.9. Business Rescue Plan Publication

- In terms of section 150(5) of the Companies Act, a business rescue plan was required to be published on or before 1 December 2022 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the Publication Date up to 31 May 2023.
- The BRPs in May 2023 were still reluctant to publish a business rescue plan until such time as they were able to put forward sufficiently detailed Proposals to Affected Persons. However, at that time, the Lender Group declined to agree to any further extensions and insisted that the BRPs put forward the initial business rescue plan. The BRPs

mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

1.4. Chapter 4 – Conclusion and BRPs Certificates

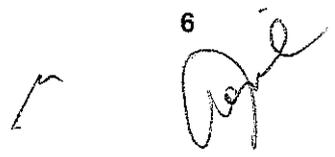
This chapter contains the BRPs' recommendation and the confirmatory certificate that is required to accompany the Business Rescue Plan.

2. Executive Summary

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

2.2. The BRPs have been advised that the Vision Parties will upon Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The Lender Group and the BRPs have received proof that the Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan. The BRPs are advised by the Vision Parties that know your client ("KYC") and Financial Intelligence Centre Act ("FICA") requirements have been complied with. The Vision Transaction does not involve, nor is it dependent on, financing to be provided by the Public Investment Corporation ("PIC").

~~2.2.2.3.~~ The key feature of this Business Rescue Plan, pursuant to ~~the~~its Adoption and implementation of this Business Rescue Plan, is the acquisition by the Vision Parties of the substantial Claims and security held by the Lender Group in the amount of c.R7.7bn (which, is the acquisition is anticipated to have been completed by the date Vision Parties of the Meetings substantial Lender Group Claims (as noted above) and the subsequent conversion by the Vision Parties of a material portion of such Claims into new equity in THL ("**the Vision Transactions**"). This, together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):



~~2.2.1.2.3.1.~~ _____ the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan;

~~2.2.2.2.3.2.~~ _____ the recapitalisation of the THL balance sheet through the Proposals put forward in this Business Rescue Plan, in particular the conversion by the Vision Parties of a material portion of the former Lender Group Claims into equity; and

~~2.2.3.2.3.3.~~ _____ the continued listing of THL on the JSE, albeit with current Shareholders becoming minority shareholders and the Vision Parties in aggregate holding the bulk of the listed shares in the Company following the abovementioned debt to equity conversion.

~~2.3.2.4.~~ The strategy to be adopted by the BRPs in the execution of this Business Rescue Plan, in summary, is to:

~~2.3.1.2.4.1.~~ _____ implement and complete the Vision Transactions, ~~following completion of the acquisition by the Vision Parties of the Lender Group Claims and security;~~

~~2.3.2.2.4.2.~~ _____ continue to run the operations of the THL businesses until completion of the Vision Transactions and the completion of the parallel business rescues of THD, THSSA and Voermol;

~~2.3.3.2.4.3.~~ _____ secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process;

~~2.3.4.2.4.4.~~ _____ continue the process of business improvement which, - may include some degree of rationalisation of the cost base of the THL

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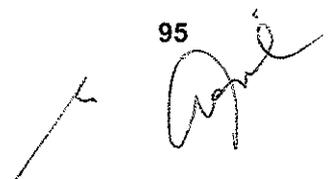

the Vision Parties will engage with the IDC regarding:

- the detailed operational business plans supporting a turn-around plan and new growth areas;
- the extension of the PCF (without any obligation on the part of IDC, as existing PCF Lender, to extend its current PCF facility) in a manner that will result in the extinguishment of the PCF;
- the working capital requirements of THL;
- the provision of any security (whether cash or assets) required in the interim and on an on-going basis, with an aim to convert the PCF to a sustainable working capital facility on terms acceptable to IDC; and
- potential support for small scale growers.

6.1.6. **Applicable to the Vision Transactions:**

6.1.6.1. Key Stakeholders:

- SASA:
- ~~On 29 November 2023, the Declaratory Application was dismissed with costs. The judgement in respect of such order will be handed down on 4 December 2023. Once the written judgement has~~



been received, THL and the BRPs will consider applying for leave to appeal the decision.

- ~~All the liabilities of THL towards SASA, whether occurring prior to or after the Commencement Date, will be treated in accordance with this Business Rescue Plan, as follows:~~

~~— in respect of all amounts owing to SASA as at Commencement Date (i.e. c.R479m) ("**Pre-Commencement SASA**") shall be treated as an Unsecured Creditor;~~

~~— SASA shall be entitled in respect of the Pre-Commencement SASA Claim to a pro rata share of any Distributions made to Unsecured Creditors in terms of this Business Rescue Plan; and the balance of the Pre-Commencement SASA Claim will become Unenforceable as outlined in this Business Rescue Plan;~~

~~— the BRPs suspended THL's obligation to pay all amounts accruing and payable to SASA under the SI Agreement ("**the SASA Payment Obligations**") from the Commencement Date until 31 March 2023, in terms of section 136(2)(a) of the Companies Act. According to the BRPs' calculations, the amount that would have become due and payable to SASA but for that suspension aggregates to c.R1.1bn ("**the Suspended SASA Claim**");~~

~~— it is the BRPs' opinion, that SASA is and should be treated as an Unsecured Concurrent Creditor in respect of the Suspended SASA~~

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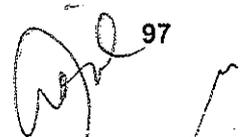
~~Claim, and that the Suspended SASA Claim qualifies SASA for receipt of its pro rata share of any Distributions made to the Unsecured Creditor body. SASA does not agree with this assessment and is of the opinion that the Suspended SASA Claim is payable in full;~~

~~In an attempt to mitigate the impact on SASA (and potentially the wider sugar industry participants), the BRPs will endeavour to reach a settlement with SASA in respect of the treatment in respect of the Suspended SASA Claim. Because settlement negotiations are ongoing and are being conducted on a confidential and 'without prejudice' basis THL's proposed settlement terms have not been included in this Business Rescue Plan;~~

THL will

~~in the event that a settlement cannot be reached between THL and SASA/Sasexcor, the Suspended SASA Claim will be treated as follows:~~

- ~~o IDC has a security interest in respect of any export proceeds payable by Sasexcor/SASA to THL. As a result, any application of such export proceeds to a settlement and or otherwise will require IDC consent thereto;~~
- ~~o all and any export proceeds owing and payable by Sasexcor to THL will be assigned and/or allocated to SASA, in~~

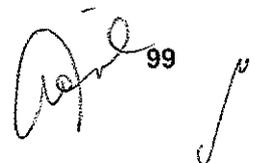
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- ~~(partial) settlement of the Suspended SASA Claim, subject to the IDC's consent;~~
- ~~e all and any payment obligations that SASA owes to THL and/or has withheld from THL will be set off against the Suspended SASA Claim;~~
- ~~e the treatment of the remaining outstanding amount ("~~the SASA Outstanding Balance~~") will depend on the final outcome of the Declaratory Application (i.e. after any and all appeals have been finally exhausted);~~
- ~~e in the event that the Declaratory Application is finally determined in favour of THL (i.e. after any and all appeals have been finally exhausted) and it is confirmed that the BRPs were entitled to suspend the SASA Payment Obligations during Business Rescue, and subject to the written consent of IDC, the SASA Outstanding Balance will be treated as a Claim of an Unsecured Creditor, and SASA shall be entitled to its pro-rata share of any Distributions made to Unsecured Creditors, whereafter any balance outstanding will become Unenforceable as outlined in this Business Rescue Plan; or~~
- ~~e in the event that the Declaratory Application is not finally determined in favour of THL (i.e. after any and all appeals~~



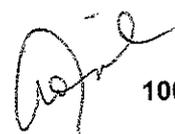
~~have been finally exhausted) and it is confirmed that the BRPs were not entitled to suspend the SASA Payment Obligations during Business Rescue, and subject to the written consent of IDC, the following will occur. The Suspended SASA Claim after application of any and all export proceeds due owing and payable by Sasexcor to THL as well as any other obligations that SASA owes to THL and/or has withheld from THL (c.R887m) is deducted from the Suspended SASA Claim and the then remaining balance outstanding shall be deemed to be R256m ("the **SASA Deemed Balance**"). The SASA Deemed Balance shall be paid by THL to SASA as follows: (i) R128m will be paid within 10 business days of delivery of a final order in the Declaratory Application (i.e. after any and all appeals have been finally exhausted); and (ii) the remaining approximately R128m will bear interest at the prime rate and will be settled in four equal bi-annual payments in advance, with the first payment commencing six months after delivery of the final order in the Declaratory Application (i.e. after any and all appeals have been finally exhausted); and~~

~~— without detracting from what is set out in paragraph 1.4 above, and without prejudice to the BRPs' right to suspend THL's payment obligations under the SI Agreement, whilst THL~~

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~~remains in Business Rescue, THL intends to discharge its future payment obligations towards SASA in accordance with the Sugar Industry Agreement. The BRPs remain of the opinion that neither SASA nor Sasexcor are entitled to apply set-off or to withhold payment of any amounts due to THL and reserves its rights in that regard, including continuous payment of SASA levies and the local market redistributions duly owed to SASA by THL.~~

- On 29 November 2023, the Declaratory Application was dismissed with costs by Vahed J. The judgement of Vahed J in respect of such order was handed down on 4 December 2023 ("the Vahed Judgement"). THL and the BRPs have applied for leave to appeal the decision. THL will abide by the final outcome of the appeal process of the Declaratory Application (i.e. after any and all appeals have been finally exhausted).
- SASA asserts that the outstanding amount as at 23 November 2023 (which takes into account the final 2023 season's local market redistribution and SASA levies and the set off of the SASEXCOR Export Proceeds Receivable to THL and which obligation to pay such proceeds has been assigned by SASEXCOR to SASA) is R525 956 121 ("SASA Claim").
- THL will, within twenty (20) Business Days after implementation of the Business Rescue Plan:

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- o pay the SASA Claim into an escrow account ("SASA Escrow"); or
 - o should THL be unable to pay the full SASA Claim into the SASA Escrow within twenty (20) Business Days after implementation of the Business Rescue Plan by Creditors, Vision shall, on behalf of THL, pay the full SASA Claim into the SASA Escrow;
- THL agrees that the SASA Escrow shall be ringfenced in that the amounts retained in the SASA Escrow shall be solely payable to SASA. The SASA Escrow account shall be in the name of an independent reputable firm of attorneys ("**Independent Attorneys**") in a suitable interest bearing account, and for the benefit of such party as is ultimately successful in the Declaratory Application;
- in the event that the outcome of the appeal process is that the Vahed Judgement is:
- o upheld THL will make payment of its full liability to SASA (including any order as to interest and costs of the appeal and costs of the Declaratory Application), within 10 Business Days after the handing down of the final appeal judgement by means of SASA calling on the Independent Attorneys to release funds from the available amount


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held in the SASA Escrow and pay same to SASA:

o overturned, THL shall be entitled to call on the Independent Attorneys to withdraw the SASA Claim from the SASA Escrow and pay same to THL:

- SASA will use all reasonable endeavours to recover the full amount of the outstanding levy claimed by SASA in respect of Gledhow Sugar Company (Pty) Ltd (in business rescue) ("Gledhow") in the amount of R97 015 921 in terms of section 175 of the SI Agreement ("Gledhow Special Levy"). Any shortfall from SASA's recovery of the Gledhow Special Levy will subsequently be settled by THL on conclusion of the Gledhow Business process.

6.1.6.2. In order for the Vision Transactions to be completed, this will require (inter alia):

- the Adoption of this Business Rescue Plan;
- agreement being reached with IDC with regard to the ongoing provision of PCF to THL until at least the completion of the Substantial Implementation Date; and
- the meeting of all conditions precedent contained in the final Vision Transactions agreement(s), including all required regulatory approvals (in all relevant jurisdictions as applicable).

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EXECUTION VERSION

TRANSFER CERTIFICATE

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

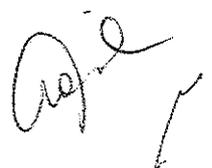
From: **ABSA BANK LIMITED** ("Absa")
THE STANDARD BANK OF SOUTH AFRICA LIMITED (acting through its Corporate and Investment Banking division) ("SBSA")
FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank division) ("RMB")
INVESTEC BANK LIMITED (acting through its Corporate and Institutional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

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

20 November 2023

Dear Sirs,

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



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



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

3. Senior Facility E

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



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

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

4. **Senior Overdraft Facilities**

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

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

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

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

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

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

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

5. **Transfer of Ancillary Facility Outstandings**

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

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

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

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

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

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

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

6. Consideration and payment

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

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

7. Information

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

8. Limitation of the responsibility of Existing Lenders

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

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

Transfer Certificate (Teris)
Execution Version

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

and any representations or warranties implied by law are excluded;

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

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

With effect from the Transfer Date:

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

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

10. **General**

- 10.1. The physical address, email address and attention details for notices of the New Lender for the purposes of clause 33 (*Notices*) of the Agreement are set out in the Schedule.
- 10.2. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 10.3. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by South African law.

A handwritten signature in black ink, appearing to be 'Amel', with a flourish extending from the bottom right.

Transfer Certificate (Terris)
Execution Version

SCHEDULE 1

PROPORTIONATE SHARE

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

A handwritten signature, possibly 'Alpine', with a checkmark below it.

Transfer Certificate (Terris)
Execution Version

SCHEDULE 2

Administrative Details of the New Lender

Notice details:

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

Email: rute@remoggo.com

Addressee: Rute Moyo



Transfer Certificate (Tervis)
Execution Version

SIGNATURE PAGE

This Transfer Certificate is accepted by the Facility Agent.

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

For and on behalf of

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



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

For and on behalf of

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

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Taris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of
Absa Bank Limited

For and on behalf of
Absa Bank Limited

DocuSigned by:
Christopher Li Green
C3CD8348CF63492...

DocuSigned by:
Anthony Evens
5087DBB000EB475...

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

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

[Handwritten signature]

Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Rosebank on this the 19 day of November 2023.

For and on behalf of

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

Martin Baumgartner

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

For and on behalf of

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

Scott Lavery

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

Scott Lavery

Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Johannesburg on this the 20 day of November 2023

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

Christopher Alderson

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

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



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

Andre

Transfer Certificate (Terms)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Investec Bank Limited

(acting through its Corporate and Institutional
Banking division)



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

For and on behalf of

Investec Bank Limited

(acting through its Corporate and Institutional
Banking division)



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



Transfer Certificate (Terrie)
Execution Version

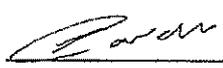
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EXISTING LENDER

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

For and on behalf of

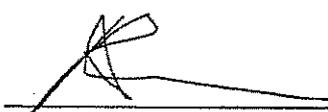
Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



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

For and on behalf of

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



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



Transfer Certificate (Toric)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Nedbank Limited



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

For and on behalf of

Nedbank Limited



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

For and on behalf of

Nedbank Limited



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



Transfer Certificate (Terris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

**The Land and Agricultural Development
Bank of South Africa**

Stephen Sebueng

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

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

For and on behalf of

**The Land and Agricultural Development
Bank of South Africa**

Faride Stiglingh

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

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

Faride Stiglingh

Transfer Certificate (Ternis)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Sanlam Life Insurance Limited

(acting through its Sanlam Specialised Finance
division)

Howard van der Merwe

Name: Howard van der Merwe

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

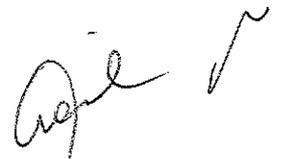
Sanlam Life Insurance Limited

(acting through its Sanlam Specialised Finance
division)

Name:

Capacity:

Who warrants his authority hereto



Transfer Certificate (Terms)
Execution Version

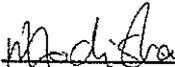
SIGNATURE PAGE

EXISTING LENDER

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

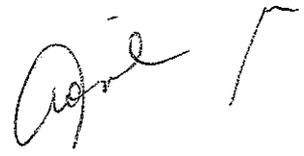
For and on behalf of
**Sanlam Investment Management
Proprietary Limited**
(acting on behalf of its third party clients)

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



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

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Terrie)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

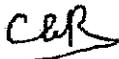
SIGNED at Cape Town on this the 20th day of November 2023

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)

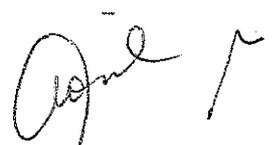
For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)



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

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Tarris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

**Sanlam Specialised Finance Proprietary
Limited**

For and on behalf of

**Sanlam Specialised Finance Proprietary
Limited**

Howard van der Merwe

Name: Howard van der Merwe
Capacity: Authorised Signatory

Who warrants his authority hereto

Name:
Capacity:

Who warrants his authority hereto

Transfer Certificate (Terris)
Execution Version

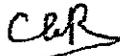
SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)

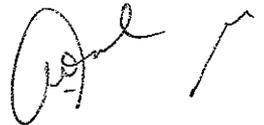


Name: **Cecilia Le Roux**
Capacity: **Authorised Signatory**
Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of
Momentum Metropolitan Life Limited

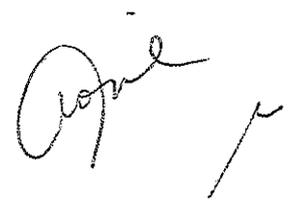
For and on behalf of
Momentum Metropolitan Life Limited



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



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



Transfer Certificate (Terris)
Execution Version

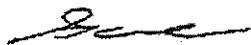
SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

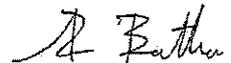
Ashburton Fund Managers Proprietary Limited
(acting for and on behalf of its clients)



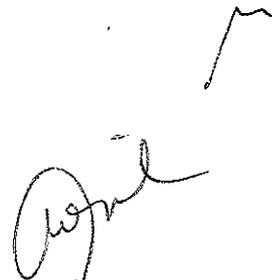
Name: Santhuri Thaver
Capacity: Authorised Signatory
Who warrants his authority hereto

For and on behalf of

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



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



Transfer Certificate (Terms)
Execution Version

SIGNATURE PAGE

NEW LENDER

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

For and on behalf of
Vision Investments 155 Proprietary Limited

For and on behalf of
Vision Investments 155 Proprietary Limited



Name: **RUTENHURO MOYO**
Capacity: **DIRECTOR**
Who warrants his authority hereto

Name:
Capacity:
Who warrants his authority hereto



"MAR14"



RGS GROUP HOLDINGS LTD

09 January 2024

BY EMAIL

To: Trevor Murgatroyd
 Peter van den Steen
 Gerhard Albertyn
 Joint Business Rescue Practitioners
 Tongaat Hulett Limited (in Business Rescue)
 Amanzimnyama Hill Road
 Tongaat
 4400
 KwaZulu-Natal

Dear Sirs,

RGS Group Holdings Ltd ("RGS") / Tongaat Hulett Limited ("THL") (In Business Rescue)

1. We refer to the meeting scheduled to be held on 10 January 2024 (the "**Meeting**") to consider the two business rescue plans published by the business rescue practitioners (the "**BRPs**") of THL on 29 November 2023 and setting out the respective proposals of RGS (the "**RGS BR Plan**") and the so-called "*Vision Parties*" (the "**Vision BR Plan**"), as such business rescue plans are proposed to be amended at the Meeting.
2. We hereby notify you that the Board of Directors of RGS (the "**Board**") has unanimously resolved to withdraw RGS' proposal for the acquisition of THL through the implementation of the RGS BR Plan. Consequently, it will no longer be necessary for the proposed amendments to the RGS BR Plan to be tabled for consideration or for the RGS BR Plan (as amended) to be placed before the Meeting for a vote.
3. We have previously written to the BRPs to express our serious concerns at the manner in which the Business Rescue Process of THL has been conducted by the BRPs. In the RGS' view the BRPs have not conducted themselves appropriately in accordance with their duties and obligations as business rescue practitioners nor in the interests of THL and its stakeholders. The BRPs have consistently taken steps to place impediments in the way of RGS' proposals and have been patently biased in favour of the proposals put forward by the Vision Parties (and the Terris Consortium, the former guise of the Vision Parties). The Board simply does not trust that the BRPs are honest independent professionals in this process as they should be and believes that the BRPs will continue to work against RGS even if the RGS BR Plan were to be adopted.
4. The events of the past week where the BRPs have actively taken steps to assist the Vision Parties to address defects in the Vision BR Plan and have again, in RGS' view,



RGS GROUP HOLDINGS LTD

made use of information confidential to the RGS proposal for this purpose have only reinforced the Board's view that the BRPs are not independent and are in fact hostile to RGS. Additionally, confidential information relating to RGS and the RGS proposal has again been leaked to journalists with a view to discrediting RGS and the RGS proposal.

5. In such circumstances the Board cannot justify the risk of paying away ZAR2 billion to the Lender Group prior to the closing of the transaction. In a normal course M&A transaction for the acquisition of a business payment would only occur at or shortly after closing of the transaction. This is the only basis on which the Board would be willing to proceed but we understand this will not be acceptable to the Lender Group who require upfront payments to be made to them. Given the risks, in the Board's view, of:
- (a) the Vision Parties most likely challenging the outcome of the vote at the Meeting were the RGS BR Plan to be adopted; and,
 - (b) the BRPs actively working to assist the Vision Parties in such challenge and/or to delay the implementation of the RGS BR Plan,

the Board is not able to authorise paying the consideration for the acquisition of THL until the closing date of the transaction occurs. However, since this structure of transaction will not be successful, the Board considers it more appropriate to withdraw RGS' proposal at this time.

6. This is not a decision the Board has taken lightly. This is especially so as RGS believes strongly that the RGS BR Plan is the most advantageous plan for THL and all its stakeholders and offers a fair price for the business and that RGS is the most appropriate partner for the future success of THL. Had the process been run fairly and independently and in the interests of THL and its stakeholders, RGS is firmly of the view that, the RGS BR Plan would be the only one of the two plans up for consideration at the Meeting.
7. We hope the business rescue process of THL will conclude successfully and that THL will be rescued. We have no desire to see THL fail and wish THL every success in the future.

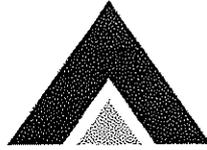
Yours sincerely,

M. Aquil Rajahussen
 M. Aquil Rajahussen
 (Executive Chairman) 09.01.24



RGS GROUP HOLDINGS LTD

[Handwritten signature]

"MAR15"

RGS GROUP HOLDINGS LTD

URGENT & CONFIDENTIAL

11 January 2024

BY EMAIL

To: **IDC - Industrial Development Corporation of South Africa Limited**
 19 Fredman Drive
 Sandown
 South Africa

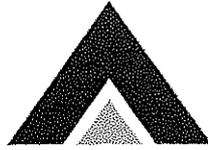
Attention: Mr David Jarvis / Ms Joanne Bate

Dear Sirs

RGS Group Holdings Ltd ("RGS") / Tongaat Hulett Limited ("THL") (In Business Rescue)

1. We refer to the meeting held on 10 January 2024 (the "**Meeting**") to consider the business rescue plan published by the business rescue practitioners (the "**BRPs**") of THL on 29 November 2023 and setting out the proposal of the so-called "*Vision Parties*" (the "**Vision BR Plan**"), as such business rescue plan is proposed to be amended at the Meeting.
2. As you are aware, RGS notified the BRPs on 9 January 2024 that that the board of directors of RGS (the "**Board**") had unanimously resolved to withdraw RGS' proposal for the acquisition of THL through the implementation of the business rescue plan proposed by RGS (the "**RGS BR Plan**").
3. The background to the withdrawal of the RGS BR Plan is that RGS has serious concerns regarding the manner in which the business rescue process of THL has been conducted by the BRPs. In the RGS' view the BRPs have not conducted themselves appropriately in accordance with their duties and obligations as business rescue practitioners nor in the interests of THL and its stakeholders. The BRPs have consistently taken steps to place impediments in the way of RGS' proposals and have been patently biased in favour of the proposals put forward by the Vision Parties (and the Terris Consortium, the former guise of the Vision Parties). The Board simply does not trust that the BRPs are honest independent professionals in this process as they should be and believes that the BRPs will continue to work against RGS even if the RGS BR Plan were to be adopted. We attach a copy of our letter of 9 January 2024 addressed to the BRP for your information (which is self-explanatory).
4. RGS (together with its advisers) attended the Meeting in its capacity as a creditor of THL. The events at the Meeting clearly indicated to RGS that its views of the process are well founded and that the Vision Parties do not have a viable business rescue plan for THL. It

1



RGS GROUP HOLDINGS LTD

is also quite apparent that the Vision Parties do not have an agreed transaction with the Lender Group or the Industrial Development Corporation of South Africa Limited (“IDC”). Their offers to the South African Sugar Association (“SASA”), the unsecured creditors, the shareholders of THL and the employees of THL are also woefully inadequate when compared to the RGS BR Plan.

5. RGS is consequently willing to reengage in this process subject to the condition that the engagement is led by IDC. IDC together with SASA has sufficient voting interests to ensure that the Vision BR Plan is not adopted, and IDC can guide the process to achieve an outcome that is more advantageous to all affected persons than the outcome envisaged by the Vision BR Plan and will ensure that IDC’s post-commencement financing for THL (the “IDC PCF”) is recovered in full. We are of the view that the Vision BR Plan is also unlawful in that, *inter alia*, it does not restore the solvency of THL.
6. We understand that IDC requires additional security for the IDC PCF. We have understood this fact since December 2023 when this was clearly stated in IDC’s court papers filed in connection with the various interdict proceedings relating to THL launched in December 2023. RGS has consequently envisaged in its planning that IDC’s requirement for additional security has to be accommodated.
7. For the purposes of providing IDC with additional security for the IDC PCF, RGS is willing to procure credit guarantee insurance of up to ZAR1 billion to cover the difference between ZAR1.8 billion and ZAR2.3 billion (which we understand to be the previous limit of the IDC PCF and the current limit of the IDC PCF) and to provide headroom should the IDC PCF need to be increased for the coming growing season. RGS will pay the premium for this credit guarantee insurance. In addition, RGS would subordinate all Lender Group Claims acquired to in favour of IDC’s claims under the IDC PCF until closing of the transaction envisaged by the RGS BR Plan (whereupon such Lender Group Claims will be fully converted into equity in THL).
8. Upon closing of the transaction contemplated by the RGS BR Plan, RGS have always envisaged that the full amount of the Lender Group Claims acquired will be converted to equity in THL thus freeing up the assets that are presently encumbered in favour of the Lender Group. RGS’ intent has been, and is, that all the assets presently securing the Lender Group Claims would be offered to IDC to secure a refinancing of the IDC PCF at closing of the transaction on appropriate terms – with the IDC PCF being changed to a fully secured senior term loan and revolving credit facility. This is in addition to RGS providing an additional unsecured working capital facility to THL on closing of the business rescue process. None of this can presently be accommodated within the construct of the Vision BR Plan.
9. RGS can therefore agree to bring the RGS BR Plan back to the table if IDC takes the lead in the process and subject to the following changes being made to the proposal to the Lender Group to acquire the Lender Group Claims:



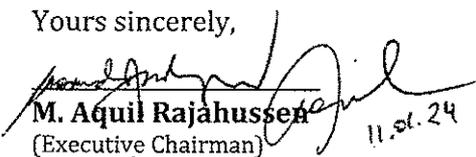
RGS GROUP HOLDINGS LTD

- 9.1 A deposit of ZAR500 million will be paid into a bank account in Mozambique with Nedbank (the "**Nedbank Account**") for the benefit of the Lender Group as a non-refundable deposit (the "**Lender Group Deposit**"). The Lender Group Deposit will be paid into the Nedbank Account prior to voting on the RGS BR Plan and locked up in the Nedbank Account. The Lender Group Deposit will be paid to the Lender Group on receipt of approval from the Central Bank of Mozambique ("**CBM**"), however, subject to the Lender Group signing the necessary agreement for the purchase of the Lender Group Claims (the "**Purchase Agreement**"); and
- 9.2 ZAR1.5 billion will be paid to the Lender Group within 5 (five) business days of receiving the approval of the CBM. In order to provide comfort to the Lender Group that this sum will be paid to them, RGS will procure credit guarantee insurance guaranteeing the payment of this sum which credit guarantee will be capable of being called on the 6th (sixth) business day of receiving the approval of the CBM, if RGS fails to deposit the referred balance amount, as we estimate that this should be done within 30 (thirty) days after signature of the Purchase Agreement.

Therefore, other than changing the basis upon which the initial ZAR2 billion payment is made to the Lender Group, all other terms of the amended RGS BR Plan as circulated on 2 January 2024 would remain unchanged.

10. We hope our proposals set out in this letter will be viewed favourably. We would welcome a meeting with IDC at your earliest convenience this morning to discuss our proposals. We would envisage the Meeting being adjourned to 15 January 2024 to allow the parties to finalise these proposals.
11. We look forward to hearing favourably from you.

Yours sincerely,


M. Aquil Rajahussen
 (Executive Chairman) 11.01.24





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

Case number: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED	Applicant
-----------------------------------	-----------

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
TREVOR JOHN MURGATROYD N.O.	Second Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Respondent
GERHARD CONRAD ALBERTYN N.O.	Fourth Respondent
VISION INVESTMENTS 155 (PTY) LTD	Fifth Respondent
TERRIS AGRIPRO (MAURITIUS)	Sixth Respondent
REMOGGO (MAURITIUS) PCC	Seventh Respondent
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Eighth Respondent
ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES)	Ninth Respondent
THE LENDER GROUP OF TONGAAT HULETT LIMITED	Tenth Respondent
MOHINI SINGARI NAIDOO t/a POWERTRANS SALES AND SERVICE	Eleventh Respondent
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Twelfth Respondent

INDEX 5 of 5

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7.	"MAR22" - RGS Letter to BRPs and Vision Parties (5 September 2024)	422-457
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"MAR16"

233 In short, the fact that the Vision Plan does not explain -

233.1 how THL's PCF debt will be settled, or where THL will obtain funding from for its working capital requirement post-implementation; or

233.2 the source of funds to discharge SASA's claim,

does not render the Vision Plan invalid or unlawful as alleged by the applicant. That information was not a requirement for the Plan.

(c) *The alleged "agreement to agree"*

234 The applicant alleges that the "*key feature*" of the Vision Plan is an *agreement to agree*. That, she says, is because the debt-to-equity conversion provided for in the Plan is dependent on the terms of a private agreement yet to be agreed between the Lender Group and Vision, which falls outside the knowledge and the purview of the BRPs.

235 The complaint is based on a fundamental misconception – ie that the viability of the Plan is dependent on an agreement yet to be reached. That is not correct.

236 The Third Acquisition Agreement was concluded between the Lender Group and Vision before the Meeting. Although the BRPs were not provided with a copy of it (due to the sensitive price and commercial information that it contained and the perceived risk of that information being leaked), we were provided with assurances from both the Lender Group and Vision that Vision had already brought into South

WJL 71 *Get* *B*

Africa and paid a substantial non-refundable deposit to the Lender Group, which would vest Vision with sufficient debt previously held by the Lender Group to enable the debt-to-equity conversion provided for in the Plan, to occur. We were also informed that the further funds would be paid in a second tranche before the end of 2024.

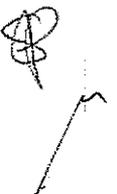
237 By that stage, the Lender Group had vetted and considered all of the relevant "Know Your Client" (KYC) information *vis-a-vis* the Vision parties. The BRPs have also had to satisfy ourselves of their ability to pay any amounts that are or will become due. On our assessment, there is no reason to doubt that Vision can and will meet its payment obligations; that is particularly so given that they have already made payment of a substantial **non-refundable** deposit to the Lender Group.

238 By the time of the Meeting, then, the Lender Group and Vision had already concluded a binding agreement, and Vision had already paid a sum, that was sufficient to enable the debt-to-equity conversion envisaged in the Plan, to take place (should all other relevant suspensive conditions be met). We had sufficient information before us to determine, and to represent to the Affected Persons (as we did), that we considered the Vision Plan viable.

239 Congruent with that, the Vision Plan indicates that a final and binding agreement has been concluded between the Lender Group and the Vision parties, but it does not specify the full payment details. The fact that the balance will be paid at a later date does not invalidate the Vision Plan.



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- 240 The Lender Group and Vision parties have confirmed, and the BRPs were and remain satisfied, that the exchange of debt-for-equity aspect of the Vision Plan can be implemented immediately on the Plan becoming unconditional and was not dependent upon any future payment of purchase consideration or the conclusion of further terms between the Lender Group and Vision. Therefore, the BRPs were satisfied that the debt for equity exchange proposed in the Plan could competently proceed.
- 241 It is denied that the BRPs had a duty to consult with all creditors regarding the Third Acquisition Agreement prior to the conclusion of the Third Acquisition Agreement between the Lender Group and Vision (paragraph 132 at pp 0049). Neither THL nor the BRPs are party to the transaction regulated by the provisions of the Third Acquisition Agreement (that is, the transaction between the Lender Group and Vision for the latter's acquisition of the former's debt). Because THL is not a party to that agreement, the BRPs have not been involved in negotiating its terms.
- 242 The applicant's obsession with the terms of that agreement is perplexing. In the context of information required by a creditor to vote on a proposed business rescue plan, all that is relevant to a creditor is whether the adopted BR Plan is capable of implementation.
- 243 The substantial deposit paid by Vision (which has since been disclosed, in the first Powertrans application, to be in excess of R1,5 billion) was sufficient to vest it with a right to acquire the Lender Group's claims/debt which, in turn, was sufficient to be exchanged for shares in THL, if and when the debt-to-equity conversion goes ahead. The Plan is thus capable of implementation.

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- 244 If Vision were, for some reason, not to pay the balance of the purchase price owed to the Lender Group under the Third Acquisition Agreement, that would not invalidate the Vision Plan. The transaction provided for in the Plan, and the transaction governed by the Third Acquisition Agreement are separate agreements. THL's creditors are only concerned with the former.
- 245 Similarly, because the purchase price of the Lender Claims has been structured as an exchange of debt for shares, there is no need for the Vision parties to furnish proof of funding. There is therefore no merit in the allegations contained in paragraph 179 (pp 63) of the founding affidavit, and in turn, no basis for the applicant's concern that Vision lacks sufficient funds. The "*key feature*" as it pertains to the Vision Plan is the exchange of shares for the Lender Group debt in excess of R3,6bn. This is already in place and will be governed by the terms of the Subscription Agreement.
- 246 The conclusion drawn by the applicant at paragraph 191 (pp 67) (in relation to paragraphs 61 and 62 of the first to fourth respondents' answering affidavit in the first Powertrans application) is misguided. The applicant appears to be confusing the Lender Group acquisition transaction with the Vision transaction (ie Vision's acquisition of its stake in THL). Paragraphs 61 and 62 of above referenced answering affidavit, by contrast, are referring to the latter agreement, which could only be concluded after the Vision Plan was adopted and approved by creditors at the Meeting.


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"MAR17"

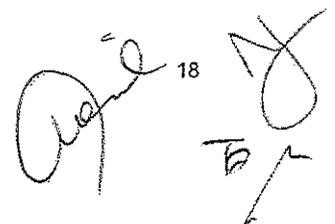
- 63.3.1 98.47% of the independent creditors voted in favour of the Amended Vision Plan; and
- 63.3.2 1.53% of the independent creditors voted against the Amended Vision Plan.
64. The Amended Vision Plan was therefore approved with an overwhelming majority of support and was accordingly adopted and became final and binding on THL and all affected persons.
65. As per section 152(4) of the Act, following the adoption of the Amended Vision Plan, the BR Plan became binding on THL, each creditor of the company and every holder of THL's securities, irrespective of whether such person was present at the s151 meeting, voted at the s151 meeting or proved a claim against THL (in the case of a creditor).

The BR Plan and the "Vision Transactions"

66. The reference to "Lender Group" refers to the group of lenders to THL, all of whom are secured creditors. The Lender Group enjoy claims exceeding R8 billion which are fully secured over all available assets of THL and its group companies.
67. The "key feature" of the BR Plan, pursuant to its adoption and implementation, is the acquisition by Vision of the claims and security of the Lender Group and the subsequent partial debt-to-equity swap by Vision that will result in Vision owning 97% of the total issued share capital of THL (referred to in the BR Plan as "the Vision Transactions").

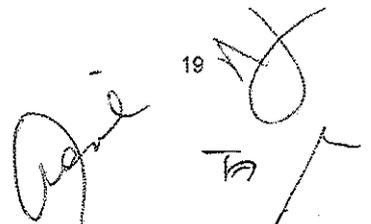
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68. The consideration for the subscription will be c.R4.1bn which will be discharged by a reduction in the Lender Group claims against THL (acquired by Vision) to c.R3.6bn.
69. In terms of the BR Plan, the following must occur before substantial implementation can take place:
- 69.1 completion of the Vision Transactions. In this regard, in order for the Vision Transactions to be completed, this will require, *inter alia*:
- 69.1.1 the adoption of the BR Plan (which has taken place) (paragraph 6.1.6.2);
- 69.1.2 an agreement being reached with the IDC pertaining to the ongoing provision of post commencement funding (**PCF**) to THL (paragraph 6.1.6.2);
- 69.1.3 the conclusion of final agreements pertaining to the Vision Transactions. (paragraph 6.1.6.3). These agreements encompass agreements between Vision and THL (separate to the arrangements between Vision and the Lender Group);
- 69.1.4 the satisfaction of all conditions set out in the final Vision Transactions agreements, including, legal, regulatory and other approvals (in all relevant jurisdictions) which will potentially (to the extent required) include, *inter alia*:
- 69.1.4.1 shareholder approval;

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- 69.1.4.2 approval from competition authorities in South Africa and in other jurisdictions;
- 69.1.4.3 approval from the Takeover Regulation Panel (TRP); and
- 69.1.4.4 attainment of certain dispensations and/or approvals as may be required from the Johannesburg Stock Exchange (JSE) and/or TRP in order to implement the proposed transaction;
- 69.2 payment by THL of the SASA Claim (as defined in the BR Plan) into an escrow account, alternatively, if THL is unable to pay the full SASA Claim, the payment by Vision of the full SASA Claim into an escrow account (paragraph 13.1.1) (this payment is only due 20 days after the Closing Date (being "*the date of fulfilment of the last of the conditions precedent needing to be fulfilled in relation to the definitive agreements to be concluded in relation to the Vision Transactions*");
- 69.3 the discharge or settlement of all amounts owing to the IDC as PCF funding lender, together with interest and all other amounts due and/or payable under the agreements concluded for the advance by IDC of PCF to THL (paragraph 13.1.2);
- 69.4 the payment of final distributions to creditors and/or an appropriate mechanism, acceptable to the BRPs in their sole discretion, being put in place for the payment of any remaining distributions to creditors (paragraph 13.1.3); and
- 69.5 the payment and settlement of all business rescue costs relating to the business rescue or suitable arrangements acceptable to the BRPs having been put in place (paragraph 13.1.4).

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Handwritten signatures and initials in black ink, including a large signature on the left and several initials on the right.

70. The applicant appears to fail to appreciate the various aspects of the BR Plan as set out above. The commercial terms between the Lender Group and Vision (which were agreed prior to the s151 meeting) do not form part of the "key feature" to the BR Plan. Instead, it is the effect of those commercial terms, that result in the "key feature", being Vision's acquisition of the claims and security of the Lender Group *and* the subsequent debt-for-equity swap.
71. The Vision Transactions as set out above are an element of the BR Plan. If achieved, it will not on its own result in the substantial implementation of the BR Plan and the rescue of THL. There are number of other elements to the BR Plan (i.e. the payment of the SASA Claim, the discharge or settlement of all amounts owing to the IDC, the payments of final distributions to creditors and the payment or settlement of all business rescue costs) that must be satisfied before the substantial implementation is or can be achieved.
72. By contrast, the failure to achieve the debt-for-equity swap contemplated in the Vision Transactions will not automatically result in the failure of the BR Plan. In paragraph 6.1.7 of the BR Plan, provision is made for an alternative transactions in the event of a failure to secure approval for the issue of new THL shares to Vision Parties by way of a debt-for-equity swap.
73. The alternative transaction contemplates that in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of THL shares to Vision to be effected (resulting in such parties not holding the anticipated 97.3% of the then shares in issue), the currently proposed Vision Transactions will be switched from those contemplating an issue

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80. Since the adoption of the BR Plan, Vision and THL have already taken substantial steps in progressing the BR Plan and the Vision Transactions. The progress made by the parties to the Vision Transactions, including an agreement regarding the terms of a subscription transaction for the debt-to-equity exchange, would not have been capable in circumstances where the Vision Parties and the Lender Group only had an agreement-to-agree. In due course, all of the necessary information will be contained in a circular to shareholders in respect of the proposed debt to equity exchange.
81. The Vision Parties and THL have been able to agree upon a subscription transaction and advance all ancillary acts required to perform such a transaction in light of the fact that Vision has, since the adoption of the BR Plan, held, and continues to hold, a right to advance a partial debt-to-equity exchange as contemplated in the BR Plan. The obligation to make payment of a second instalment to the Lender Group in respect of the claims against THL is in no way dependant on the Vision Transactions, given that Vision has already paid a substantial deposit entitling it to complete the Vision Transactions.
82. Given the foregoing, the parties to the Vision Transactions have already been able to:
- 82.1 approach the Competition Commission South Africa (**Competition Commission**) to inform the Competition Commission of the subscription for shares in THL by the Vision Parties. In this regard, the Competition Commission has already appointed an investigator to consider the subscription transaction and the activities of the parties thereto. The investigator has already engaged with the parties;

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"MAR18"



RGS GROUP HOLDINGS LTD

08th July 2024

BY EMAIL

To: **Trevor Murgatroyd**
Peter van den Steen
Gerhard Albertyn

Joint Business Rescue Practitioners
 Tongaat Hulett Limited (in Business Rescue)
 Amanzimnyama Hill Road
 Tongaat
 4400
 KwaZulu-Natal

Dear Sirs,

Tongaat Hulett Limited (In Business Rescue): Proposed Acquisition

1. We refer to the Business Rescue Plan of Tongaat Hulett Limited ("THL") adopted on 11 January 2024 (the "THL BR Plan") and the related business rescue plans of THL's subsidiaries (together with the THL BR Plan, the "BR Plans").
2. We understand that the BR Plans as adopted may not be capable of implementation on their current terms.
3. Consequently, RGS Group Holdings Ltd ("RGS") wishes to confirm that it remains interested in acquiring, and is willing to acquire, a controlling interest in THL (the "Transaction") on the following terms:
 - o RGS will inject **ZAR 4,451,451,350** into THL (the "Capital Injection") on closing of the Transaction in consideration for which RGS will acquire 90% of the issued shares in THL.
 - o The Capital Injection to be used as follows:
 - ZAR 4,000,000,000 will be paid to the Senior Secured Lenders by THL in full and final settlement of their claims against THL and its subsidiaries and following such payment all security held by the Senior Secured Lenders from THL and all of its subsidiaries will be released. It should be noted that the Transaction does not contemplate that RGS will acquire the claims of the Senior Secured Lenders but that RGS will fund THL for the purposes of settling the Senior Secured Lenders;

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- Unsecured Creditors [other than the South African Sugar Association (“SASA”) and the Industrial Development Corporation of South Africa Limited (“IDC”)] will be settled 100% of their unsecured credit claims as follows:
 - ZAR 451,451,350 will be utilised at closing date to settle unsecured creditor claims as follows:
 - i. To pay up to the first ZAR 75,000 of each such unsecured creditor’s claim; and
 - ii. To pay up to 65 cents in the Rand of any balance of each such unsecured creditor’s claim.
 - The balance of unsecured creditors’ claims, up to 35 cents in the Rand, will be paid in instalments over a five-year period starting from the first anniversary of the closing date on an interest free basis.
 - RGS will advance a subordinated shareholder loan to THL of ZAR 525,956,121 plus an amount equal to interest thereon calculated at the prime overdraft rate of First National Bank from 30 June 2024 to the date of payment which will be used to settle the agreed compromised claim of SASA. This loan will be subordinated and only repayable to the extent THL’s assets exceed its liabilities and the IDC’s post commencement finance facility has been repaid in full.
 - RGS will make available the necessary working capital facility to THL on closing of the Transaction which will be used in whole or in part to settle the IDC’s post commencement financing facility.
 - The Transaction will be implemented through a subsidiary of RGS incorporated in South Africa.
4. All of the above payments will be made by RGS on closing of the Transaction.
5. In order to finance the Transaction, we propose to utilise:
- Up to USD 300,000,000 of a USD 500,000,000 Global Corporate Facility (the “**Afreximbank Facility**”) to be provided to RGS by African Export Import Bank (“**Afreximbank**”); and
 - To the extent required, RGS’ own internal cash resources.
6. We attach a copy of a letter addressed to RGS by Afreximbank confirming that Afreximbank is in the process of approving the Afreximbank Facility. To the extent you



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wish to verify the contents of this letter you may contact the following person at Afreximbank:

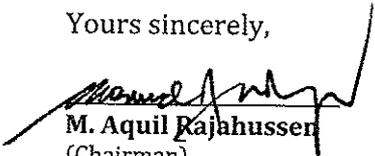
Mr Humphrey Nwugo
Regional Chief Operating Officer (Southern Africa)
Email: hnwugo@afreximbank.com

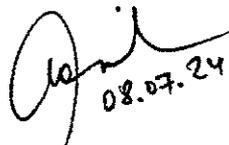
7. As additional comfort that RGS will meet its funding commitments under the Transaction we have arranged for credit guarantees to be issued in favour of the Senior Secured Lenders, SASA, and the IDC by EMOSE – Empresa Moçambicana de Seguros, S.A (“EMOSE”).
8. We attach a copy of a letter addressed to RGS by EMOSE confirming its willingness to issue the credit guarantees. To the extent you wish to verify the contents of this letter you may contact the following person at EMOSE:

Mr Santos Magaia
Chief Operating Officer
Email: santos.magaia@emose.co.mz
9. We believe we will be in a position to close the Transaction before the end of this calendar year.
10. As we have previously advised, we believe that significant synergies exist between the respective operations of THL and RGS and that RGS has the technical expertise to effect a permanent turnaround of THL’s business that keeps THL whole without any requirement to dispose of any parts of the THL Group.
11. This letter does not constitute a binding obligation on RGS and is subject to the adoption of amended business rescue plans for THL and its subsidiaries and the conclusion of definitive documentation.

We would welcome the opportunity to re-engage with you on the proposed Transaction and look forward to your favourable response.

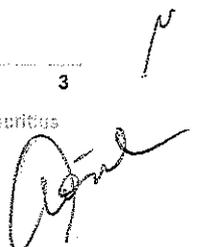
Yours sincerely,


M. Aquil Rajahussen
(Chairman)


08.07.24



RGS GROUP HOLDINGS LTD



"MAR19"



RGS GROUP HOLDINGS LTD

17 September 2024

BY EMAIL

To: **The Joint Business Rescue Practitioners of Tongaat Hulett Ltd**
Trevor Murgatroyd
Peter van den Steen
Gerhard Albertyn

Dear Sirs,

Tongaat Hulett Limited (In Business Rescue): Proposed Acquisition

1. We refer to the Business Rescue Plan of Tongaat Hulett Limited ("THL") adopted on 11 January 2024 (the "THL BR Plan") and the related business rescue plans of THL's subsidiaries (together with the THL BR Plan, the "BR Plans") as well as to our previous letter dated 8 July 2024.
2. Subsequent to our previous letter and on 8 August 2024 shareholders voted to reject the debt-to-equity conversion that was the "key feature" of the THL BR Plan. It is evident from correspondence sent to the BRPs by shareholders prior to the shareholders' meeting that the debt-to-equity conversion was rejected on grounds of the same concerns that RGS has consistently brought to your attention since the adoption of the THL BR Plan.
3. Chief amongst these concerns is the fact that the Vision Parties have still not paid the purchase price due by them for the acquisition of the Lender Group's claims and security, and that the Vision Parties have thus neither acquired nor taken transfer of the Lender Group's claims. Despite numerous requests from RGS, Powertrans, and latterly the shareholders, the Vision Parties have refused to provide any clarity in this regard and the BRPs have repeatedly stated that they do not have a copy of the acquisition agreement.
4. The significance of this lack of transparency derives from the unusual nature of the THL BR Plan in that the Vision Parties never intended to inject any capital into THL but rather undertook, once they had acquired the Lender Group's claims and security, (i) to acquire a 97.3% shareholding in THL in exchange for a c.R4 billion reduction of the Lender Group's former claims against THL; and, (ii) to retain the remaining c.R3.6 billion component of the Lender Group's former claims on terms "significantly more favorable" to THL. Shareholders therefore refused to approve the debt-to-equity conversion in



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circumstances where neither the BRPs nor the Vision Parties were willing to confirm that the latter had in fact taken ownership of the Lender Group's claims and security.

5. Following the rejection by shareholders of the debt-to-equity conversion the BRPs have issued numerous notices stating that they will now proceed with the "alternative transaction" referred to in paragraph 6.1.7 of the THL BR Plan ("**the Vision Asset Transaction**"). The Vision Asset Transaction entails the sale of all THL assets to a company to be nominated by the Vision Parties. The purchase price payable by the Vision Parties in this regard is to be set off against the Lender Group's claims and security.
6. The Vision Asset Transaction contemplated in paragraph 6.1.7 of the THL BR Plan does not, however, constitute a valid alternative business rescue plan. It does not comply with the provisions of, for example, section 150 of the Companies Act in that it does not include the mandatory statement of assumptions and conditions contemplated in section 150(2)(c) of the Act. No information is, for example, provided with regard to:
 - THL's current financial position (the financial information contained in the plan now being over 8 months old);
 - the taxes, recoupments and transactional expenses that the asset sale will attract; and,
 - the effect that the asset sale (which includes the sale of THL's businesses as going concerns) will have on the terms and conditions of employees' employment.
7. Since the debt-to-equity conversion has failed and the Vision Asset Transaction does not constitute a valid alternative business rescue plan, it will clearly be necessary to table the Vision Asset Transaction in an expanded form that complies with the requirements of *inter alia* section 150 of the Companies Act at a creditors' meeting for approval.
8. RGS Group Holdings Ltd ("**RGS**") wishes to confirm that it remains interested in acquiring, and is willing to acquire, a controlling interest in THL on the following terms (the "**RGS Transaction**"):
 - RGS will inject **ZAR 4,451,451,350** into THL (the "**Capital Injection**") on closing of the RGS Transaction in consideration for which RGS will acquire 90% of the issued shares in THL.
 - The Capital Injection to be used as follows:
 - ZAR 4,000,000,000 will be paid to the Senior Secured Lenders by THL in full and final settlement of their claims against THL and its subsidiaries and following such payment all security held by the Senior Secured Lenders from THL and all of its subsidiaries will be released. It should be noted that

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RGS GROUP HOLDINGS LTD

the RGS Transaction does not contemplate that RGS will acquire the claims of the Senior Secured Lenders, but that RGS will fund THL for the purposes of settling the Senior Secured Lenders;

- Unsecured Creditors [other than the South African Sugar Association (“SASA”) and the Industrial Development Corporation of South Africa Limited (“IDC”)] will be settled 100% of their unsecured credit claims as follows:
 - ZAR 451,451,350 will be utilised at closing date to settle unsecured creditor claims as follows:
 - i. To pay up to the first ZAR 75,000 of each such unsecured creditor’s claim; and
 - ii. To pay up to 65 cents in the Rand of any balance of each such unsecured creditor’s claim.
 - The balance of unsecured creditors’ claims, up to 35 cents in the Rand, will be paid in instalments over a five-year period starting from the first anniversary of the closing date on an interest free basis.
- RGS will advance a subordinated shareholder loan to THL of ZAR 525,956,121 plus an amount equal to interest thereon calculated at the prime overdraft rate of First National Bank from the date of advance to the date of payment which will be used to settle the agreed compromised claim of SASA. This loan will be subordinated and only repayable to the extent THL’s assets exceed its liabilities and the IDC’s post commencement finance facility has been repaid in full.
- RGS will make available the necessary working capital facility to THL on closing of the RGS Transaction which will be used in whole or in part to settle the IDC’s post commencement financing facility.

9. All of the above payments will be made by RGS on closing of the RGS Transaction.

10. In order to finance the RGS Transaction, we propose to utilize:

- Up to USD 300,000,000 of a USD 500,000,000 Global Corporate Facility (the “**Afreximbank Facility**”) to be provided to RGS by African Export Import Bank (“**Afreximbank**”); and,
- To the extent required, RGS’ own internal cash resources.

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RGS GROUP HOLDINGS LTD

11. We attach a copy of a letter addressed to RGS by Afreximbank confirming that Afreximbank is in the process of approving the Afreximbank Facility. To the extent that you wish to verify the contents of this letter you may contact the following person at Afreximbank:

Mr Humphrey Nwugo
Regional Chief Operating Officer (Southern Africa)
Email: hnwugo@afreximbank.com

12. As additional comfort that RGS will meet its funding commitments under the RGS Transaction we have arranged for credit guarantees to be issued in favour of the Senior Secured Lenders, SASA, and the IDC by EMOSE – Empresa Moçambicana de Seguros, S.A (“EMOSE”).

13. We attach a copy of a letter addressed to RGS by EMOSE confirming its willingness to issue the credit guarantees. To the extent you wish to verify the contents of this letter you may contact the following person at EMOSE:

Mr Santos Magaia
Chief Operating Officer
Email: santos.magaia@emose.co.mz

14. We believe we will be in a position to close the RGS Transaction within four (4) months of the adoption of the RGS Transaction as an approved business rescue plan.

15. As we have previously advised, we believe that significant synergies exist between the respective operations of THL and RGS and that RGS has the technical expertise to effect a permanent turnaround of THL’s business that keeps THL whole without any requirement to dispose of any parts of the THL Group.

16. RGS therefore requests that the RGS Transaction be considered by the BRPs as an alternative to the Vision Asset Transaction and that the BRPs then, in the exercise of their judgment, publish a plan that offers the best prospects of rescuing THL, offers the best return for creditors, and offers the best result for all affected persons including shareholders and employees.

17. This letter does not constitute a binding obligation on RGS and is subject to the adoption of amended business rescue plans for THL and its subsidiaries and the conclusion of definitive documentation.

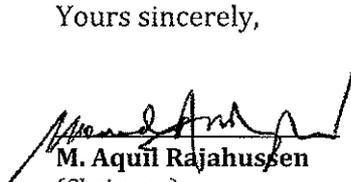
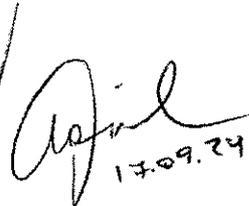
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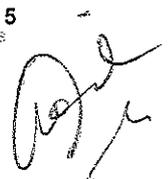
We would welcome the opportunity to engage with you further on the proposed RGS BR Plan and look forward to your favorable response.

Yours sincerely,


M. Aquil Rajahusfen
(Chairman) 



RGS GROUP HOLDINGS LTD

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WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Keeghan Sipahli
RGS Group Holdings Limited
keeghan@rgs-holdings.com

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OUR REFERENCE: Mr D Andropoulos/is/TONG7430.8/#8810305v2
DIRECT PHONE: +27 11 535 8248
DIRECT FAX: +27 11 535 8676
EMAIL ADDRESS: dandropoulos@werksmans.com

9 July 2024

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) : PROPOSED ACQUISITION

- 1 We act for the Business Rescue Practitioners ("**BRPS**") of Tongaat Hulett Limited (in Business Rescue) ("**THL**").
- 2 Your email dated 8 July 2024 and addressed to the BRPs refers (the "**Subject Email**").
- 3 The BRPs have instructed us to respond to the Subject Email as follows:-
 - 3.1 as you point out in the Subject Email, each of the BR Plans (as defined in the Subject Email) has been adopted;
 - 3.2 the BRPs are duty-bound to implement each of the BR Plans as approved and adopted;
 - 3.3 your beliefs and/or understandings as to the capability of the BR Plans to be implemented on their current terms are noted. In the absence of concrete motivation and incontrovertible proof by you, as to the basis for such beliefs and/or understandings, the BRPs cannot rely on, nor take account of same. There is a process presently under way for the implementation of the BR Plans, which is progressing in the manner anticipated;
 - 3.4 your interest in acquiring a controlling interest in THL is noted. You will appreciate that unless and until there is an absolute unsurmountable impediment to the implementation of the adopted

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagatjee NMN Shengu AL Bilaty RE Bonnet TJ Boswell W Brown PF Burger HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Grissel NA Hlatshwayo J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgama R Killoran N Kirby HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane JE Meiring H Michael SM Moerane R Moltse C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluhani BW Ntuli BPF Olivier Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisaniti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdinin B Rammala MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidia FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiewahn DC Williams E Wood BW Workman-Davies Consultants DH Rabin DG Williams



BR Plans, your interest cannot be advanced by the BRPs nor are the BRPs in a position to engage with you in relation to same.

Yours faithfully

Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

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"MAR21"



TongaatHulett®

RGS Group Holdings Limited
Email: aguil@rgs-holdings.com
keeghan@rgs-holdings.com

Attention: Mr A Rajahussen / Mr K Keeghan

18 September 2024

Dear Sirs

RE: PROPOSED ACQUISITION: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL"), MR TREVOR MURGATROYD N.O., MR PETER VAN DEN STEEN N.O. AND GERHARD ALBERTYN N.O. (collectively, "the BRPs")

- 1 We refer to your letter dated 17 September 2024 ("**your letter**").
- 2 We respond to your letter on the limited basis recorded below. Should it become necessary to address the remaining assertions or allegations therein (which are not admitted), our rights to do so are reserved.
- 3 The tone and content of your letter is impossible to reconcile with the content of the letter received from your attorneys (DMI Attorneys) dated 5 September 2024, which letter, threatens legal proceedings.
- 4 The Business Rescue Plan ("**the Plan**"), as approved and adopted, remains binding on THL, its creditors and shareholders in terms of section 152(4) of the Companies Act 71 of 2008 (as amended) ("**the Companies Act**"). The BRPs are duty-bound to continue to implement the Plan.
- 5 A binding agreement ("**the Acquisition Agreement**") between the Lender Group and the Vision Parties ("**Vision**") is in place. The BRPs are not aware of any breach by Vision of the terms of the Acquisition Agreement, including but not limited to, any failure by Vision to timeously meet any of their payment obligations.
- 6 The BRPs have been advised by both Vision and the Lender Group that Vision has acquired the Lender Group claims and that the balance of the purchase price has not yet fallen due for payment and must be paid before 31 December 2024.
- 7 The Plan (including the Alternate Plan referred to therein) is compliant with section 150(2) of the Companies Act.

Amanzimnyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa

Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • www.tongaat.com

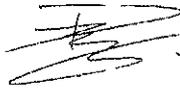
Tip-offs anonymous - Email: Tongaat@tip-offs.com Website: www.tip-offs.com FreeCall: 0800 212 157

- 8 The BR Plan does not provide for the sale of THL's businesses to a third party. In the event that the Plan fails, we will consider THL's position and next steps at that stage in discharge of our duties and responsibilities.

Yours sincerely,



TJ Murgatroyd
BUSINESS RESCUE PRACTITIONER
TONGAAT HULETT LIMITED



PF van den Steen
BUSINESS RESCUE PRACTITIONER
TONGAAT HULETT LIMITED



GC Albertyn
BUSINESS RESCUE PRACTITIONER
TONGAAT HULETT LIMITED





"MAR22"

422

Date: 05 September 2024

URGENT

Our Ref: Mr D Moodley/SG/Powertrans

Your Ref: Mr T Boswell/Ms S Gast/ag/TONG7430.15/
#10135080v1;
TER2/0004/B Scop

**TO: THE BUSINESS RESCUE PRACTITIONERS OF
TONGAAT HULETT LTD c/o WERKSMANS ATTORNEYS**

THE VISION PARTIES c/o STEIN SCOP ATTORNEYS

**ATT: Mr Trevor Boswell and Ms Simone Gast
Ms A Rakitzis Ho**

Per Email: tboswell@werksmans.com;
sgast@werksmans.com;
alexandra@steinscop.com

1st Floor

94 Florida Road
Durban, 4001

PO Box 35546
Northway, 4965

Tel: +27 31 301 8623

Email: reception@dmiatt.co.za

Dear Mr Boswell, Ms Gast and Ms Rakitzis Ho,

RE: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We refer to the above matter and confirm that we act on behalf of RGS Group Holdings ("**RGS**").
2. We address this letter to you jointly given the uniform application of its contents to both the BRPs and the Vision Parties.
3. After the shareholders meeting of 8 August 2024, at which shareholders voted not to approve the debt-to-equity conversion contemplated in paragraph 6.1.3 of the Adopted Plan, the BRPs issued an interim report on 16 August 2024 in terms of which they state their intention to proceed with what is termed an Asset Transaction ("**the Interim Report**" and "**the Asset Transaction**").

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

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4. The Asset Transaction is described by the BRPs in the Interim Report as being one of two “alternative transactions” contained in the Adopted Plan. The Asset Transaction would therefore appear to be a reference to the contents of paragraph 6.1.7 of the Adopted Plan at pages 93 – 94 thereof.
5. In terms of the Asset Transaction, and as a result of the failure of the debt-to- equity conversion, THL is apparently to sell all its assets to the Vision Parties “by way of a set off of the purchase consideration for such assets against the Lender Group Claims.” This process will culminate in the delisting and liquidation of the THL “shell”.
6. RGS has taken legal advice pursuant to the rejection of the debt-to-equity conversion by shareholders. The advice obtained is to the effect that the Adopted Plan has lapsed and that the so-called Asset Transaction is in any event incapable of lawful implementation.

Refusal to disclose the Acquisition Agreement and its current status

7. Before turning to address the above-mentioned issues, we are instructed to place on record that the failure of the debt-to-equity conversion and many of the other serious issues confronting THL’s business rescue process are directly attributable to the BRPs’ and Vision’s persistent refusal to disclose either the terms or the status of the agreement concluded between Vision and the Lender Group in relation to the acquisition by Vision of the Lender Group’s claims (“**the Acquisition**” and “**the Acquisition Agreement**”).
8. The Acquisition is described in paragraph 2.3 of the Adopted Plan as being the “key feature” thereof. The Acquisition was undeniably a pre-condition to the implementation of the debt-to-equity conversion and remains a pre-condition to the Asset Transaction. Neither of those transactions could / can proceed without the successful prior conclusion of the Acquisition.¹

¹ See for example paragraph 6.1.3.1 and the second paragraph on page 84 of the Adopted Plan in relation to the debt-to-equity conversion, and the first bullet point under paragraph 6.1.7.1 on page 93 of the Adopted Plan in relation to the Asset Transaction.

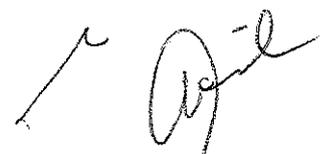


9. It is by now common knowledge that Vision has not made payment of the consideration due to the Lender Group in terms of the Acquisition Agreement and that the Acquisition has not therefore been completed. This is evident from the circular issued to shareholders in relation to the debt-to-equity conversion on 10 July 2024, which stated inter alia that the conversion would “achieve a reduction in [the] Lender Group Facility Balance to more sustainable levels” and confirmed that the Lender Group were intended to retain a claim of R3.6 billion against THL if the conversion were authorised by shareholders.
10. RGS has been informed by shareholders who voted against the debt-to-equity conversion that the unjustifiable lack of transparency on the part of the BRPs and Vision in relation to whether Vision had made payment under the Acquisition Agreement and whether Vision now in fact owns all of the Lender Group’ claims and security was central to shareholders’ rejection of the conversion and that its centrality in this regard is evident from correspondence addressed by shareholders to the BRPs prior to the shareholders meeting.
11. Given that the implementation of the Adopted Plan (i.e. both the debt-to-equity conversion and the Asset Transaction) is conditional on the prior successful implementation of the Acquisition Transaction, the Acquisition itself constitutes a condition to the Adopted Plan as contemplated in section 150(2)(c) of the Companies Act and the terms of the Acquisition Agreement should therefore have been disclosed in the Adopted Plan.
12. The status of the Acquisition Agreement remains critically relevant to both the validity and implementability of the Adopted Plan and the continued non- disclosure of both the terms and status thereof by the BRPs and Vision Parties is both unjustifiable and unlawful.

The Adopted Plan has lapsed

13. Almost eight months have elapsed since the adoption of the Vision Plan.

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

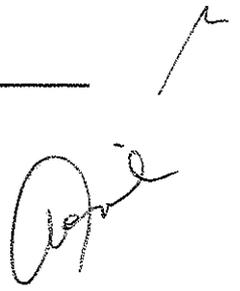


14. The Adopted Plan does not stipulate a date by which the Acquisition was to be completed which means that the law imposes a requirement to the effect that it (i.e. the Acquisition) had to occur within a reasonable time.
15. In their answering affidavits filed in the Powertrans application, both the BRPs and Vision Parties have admitted that the latter have not paid the purchase price due under the Acquisition Agreement.
16. The Adopted Plan itself contains numerous forecasted implementation dates which demonstrate what the BRPs and the Vision Parties themselves understood to constitute a reasonable time for the completion of the Acquisition and subsequent implementation of the plan:
 - 16.1. The projected income statement and balance sheet provided in the Plan both assume that the Vision Transactions (i.e. the Acquisition Agreement and the debt-to-equity conversion) would be completed on 1 April 2024.²
 - 16.2. The BRPs expected “to conclude binding terms of agreement with the Vision Parties (including any agreements with the IDC) during January 2024...”³
 - 16.3. The BRPs, THL management, and the Vision Parties intended “to complete the Vision Transactions...as time efficiently as possible” and to this end provided a forecast implementation timetable which set out the following timeframes:⁴
 - 16.3.1. Definitive transaction agreements were to be signed in January 2024 including the subscription agreement, shareholder loan agreements for residual debt, and any other agreements;
 - 16.3.2. A SENS announcement detailing the transactions was to be sent the next business day after signing;

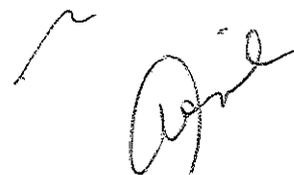
² Adopted Plan at paragraphs 14.1.1 and 14.1.2.

³ Adopted Plan at paragraph 6.1.6.3.

⁴ Adopted Plan pages 90 - 92.

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- 16.3.3. A JSE circular and dispensations submissions to the JSE were to occur “around end-January 2024”;
- 16.3.4. Approval of the JSE circular (noting dispensations may be required) was expected around end-February 2024;
- 16.3.5. A JSE circular regarding distribution to shareholders was expected “around early March 2024”;
- 16.3.6. A general meeting of shareholders to vote on the transaction (if required) was expected “around early March 2024”;
- 16.3.7. The announcement of the outcome of the vote held at the general meeting of shareholders was expected the same or next business day.
17. In fact, the shareholders meeting at which the debt-to-equity conversion was tabled for approval only occurred on 8 August 2024, seven months after the Vision Plan had been adopted and five months later than the date contained in the forecast timetable provided in the Adopted Plan. The shareholders then voted to reject the debt-to-equity conversion.
18. The legal advice obtained by RGS is to the effect that the Adopted Plan has therefore lapsed on grounds that it has proven incapable of implementation within a reasonable time (i.e. because (i) Vision has failed to raise the funds necessary to discharge the purchase consideration due under the Acquisition Agreement and take ownership of the Lender Group’s claims and security, and (ii) the shareholders rejected the debt-to-equity conversion).
19. In terms of the Interim Report the BRPs informed affected persons that they would now proceed with the Asset Transaction which they describe as “less efficient and more procedurally complex” and stated that this would “take longer to execute” than the debt-to-equity conversion would have.



20. Neither the BRPs nor the Vision Parties have provided any indication regarding the expected timeframe for the execution and implementation of the Asset Transaction.
21. It should be recalled that the BRPs first informed affected persons of the conclusion of the Acquisition Agreement in a SENS announcement published on 9 November 2023. This announcement confirmed prior media reports that the Vision Parties and the Lender Group had entered into the Acquisition Agreement.
22. The BRPs moreover recorded the circumstances surrounding the conclusion of the Acquisition Agreement at pages 43 – 44 of the first version of the Vision Plan (dated 29 November 2023) as follows:

“Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. The Vision Parties have made clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote such Claims in favour of a business rescue plan predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.”

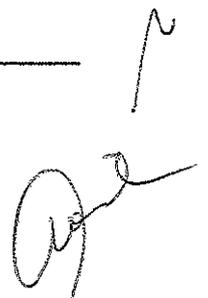
23. Although the BRPs and Vision Parties have at all times and despite repeated requests refused to disclose the Acquisition Agreement, a copy of a previous version thereof dated 20 November 2023 was attached to papers filed in the SASA litigation during December 2023. A copy of that agreement is for ease of reference annexed hereto marked “A”.
24. In terms of clauses 6.2 and 6.4 of the aforesaid version of the Acquisition Agreement, Vision was required to make payment of the consideration due thereunder by noon on 6 December 2023 failing which the agreement would terminate.



25. Since both the BRPs and Vision Parties have confirmed that the latter have to date still not paid the purchase price due under the Acquisition Agreement it is evident that that agreement has lapsed due to default of payment.
26. At best and even if successive new Acquisition Agreements have been concluded to provide Vision with more time to raise the purchase price, the Vision Parties remain in materially the same position now as they were when the conclusion of the Acquisition Agreement was formally announced in the SENS of 9 November 2024 (i.e. an agreement is in place but Vision has not discharged the purchase price and has therefore not taken transfer of the Lender Group's claims and security).
27. All of the above considerations serve to demonstrate that the Adopted Plan has lapsed and that it is not open to the BRPs to embark on an open-ended new process in relation to the so-called Asset Transaction.

The purported alternative transaction

28. The alternative Asset Transaction is in any event incapable of lawful implementation in its current form. It does not constitute a valid alternative business rescue plan (i.e. alternative to the debt-to-equity conversion) since it quite plainly does not comply with the requirements prescribed by section 150 of the Companies Act in relation to the minimum information that must be disclosed in a business rescue plan.
29. The proposals, assumptions, and conditions contained in the Adopted Plan only address the debt-to-equity conversion and the projected financial information contained therein is premised on the successful implementation of that conversion alone.
30. By contrast, a mere page and a half of the Adopted Plan is devoted to providing a vague description of the Asset Transaction (from page 93 – 94 thereof), which description does not extend to providing the mandatory minimum information contemplated in section 150 of the Companies Act. The Adopted Plan is silent

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regarding the assumptions, conditions, and financial projections on which the Asset Transaction is premised.

31. It is undeniable that the assumptions, conditions, and financial projections contained in the Adopted Plan in relation to the debt-to-equity conversion do not in any way apply to the Asset Transaction. Notably, no mention is made of the significant tax and transactional liabilities that the Asset Transaction will attract.
32. The BRPs appear to acknowledge these undisclosed issues in the Interim Report where they refer to the Asset Transaction as being “more procedurally complex” and recognise inter alia “the need to obtain additional consents and approvals for the transfer of contracts, licences and permits.”
33. The Asset Transaction cannot lawfully be progressed in the absence of full compliance with section 150 of the Companies Act, and the information prescribed in that section must therefore be disclosed to affected persons.

Conclusion

34. The delays in implementing the Adopted Plan and the failure of the debt-to-equity conversion are the direct result of the Vision Parties’ failure to consummate the Acquisition Agreement by remaining in default of payment of the purchase price due thereunder more than 10 months after the conclusion of that agreement.
35. This moreover demonstrates the fact that the Acquisition Agreement is a condition precedent to the implementation of the Adopted Plan (i.e. neither the debt-to-equity conversion nor the Asset Transaction are capable of implementation without the prior acquisition by the Vision Parties of the Lender Group’s claims and security).
36. The contentions previously advanced by both the BRPs and the Vision Parties to the effect that the Adopted Plan remains valid and binding simply because creditors voted to adopt it are moreover clearly unsustainable.



37. The Vision Plan can only remain valid and binding if the Acquisition has been successfully concluded and all the Lender Group's claims and security have been transferred to Vision.
38. Given the existential nature of the proposed Asset Transaction (i.e. the transfer of all THL's assets to a company nominated by Vision followed by the delisting and liquidation of THL), confirmation of the fact that Vision has made payment under the Acquisition Agreement and taken transfer of all the Lender Group's security and claims is now more relevant than ever.
39. This is especially so because Vision proposes to discharge the purchase consideration due for the acquisition of THL's assets in terms of the Asset Transaction by setting the purchase consideration off from the Lender Group's claims and security.
40. If Vision does not own all the Lender Group's claims and security such set off would clearly be impossible and the BRPs must therefore bear knowledge of the status of the Acquisition (i.e. the BRPs cannot possibly accept payment for all of THL's assets by way of the proposed set off if they have not verified that Vision have acquired all the Lender Group's claims and security).
41. Affected persons have a clear right to the disclosure of the Acquisition Agreement and confirmation of whether Vision has (i) paid the full purchase price due thereunder, and (ii) taken unencumbered and unqualified ownership of all of the Lender Group's claims and security.
42. We are thus instructed to demand, as we hereby do, that the BRPs and Vision Parties provide the following by **no later than close of business on Tuesday, 10 September 2024**:
- 42.1. A copy of the Acquisition Agreement;

A handwritten signature in black ink, appearing to be 'A. J. ...', with a checkmark above it.

- 42.2. Copies of any and all further agreements concluded in relation to the acquisition by the Vision Parties of the Lender Group's claims and security, including but not limited to any agreements which in effect:
- 42.2.1. qualify or encumber the aforesaid acquisition; or
- 42.2.2. impose obligations on the Vision Parties to sell or otherwise encumber THL assets after the business rescue process has been concluded.
- 42.3. Confirmation of whether the Vision Parties have discharged the purchase price due under the Acquisition Agreement and, if not, the rand value of any deposit or partial payment that has been made.
43. Should you refuse to provide the aforesaid information by close of business on Tuesday, 10 September 2024 we hold instructions to launch an urgent application to compel the disclosure thereof forthwith.

Yours faithfully,



D MOODLEY

DMI Attorneys

Copies to: **The Lender Group**
c/o The Lender Group Facility Agent
Standard Bank of South Africa
Corporate and Investment Banking Division
Mr Venashan Seerangam
Email: AgencySBSA@standardbank.co.za

The Industrial Development Corporation of South Africa
c/o Mr Haroon Laher
Faskens
Email: hlaher@fasken.com

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender



"A"

EXECUTION VERSION

TRANSFER CERTIFICATE

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

From: **ABSA BANK LIMITED** ("Absa")

THE STANDARD BANK OF SOUTH AFRICA LIMITED (acting through its Corporate and Investment Banking division) ("SBSA")

FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank division) ("RMB")

INVESTEC BANK LIMITED (acting through its Corporate and Institutional Banking division)

INVESTEC BANK LIMITED (acting through its Investment Banking Division: Corporate Solutions)

NEDBANK LIMITED ("Nedbank")

THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA

SANLAM LIFE INSURANCE LIMITED (acting through its Sanlam Specialised Finance division)

SANLAM INVESTMENT MANAGEMENT PROPRIETARY LIMITED (acting on behalf of its third party clients)

SANLAM LIFE INSURANCE LIMITED (acting through its Sanlam Investment Management division)

SANLAM SPECIALISED FINANCE PROPRIETARY LIMITED

MOMENTUM METROPOLITAN LIFE LIMITED

ASHBURTON FUND MANAGERS PROPRIETARY LIMITED (acting for and on behalf of its clients)

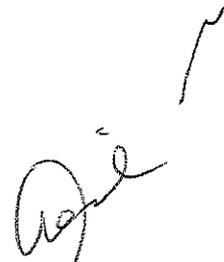
(collectively, the "Existing Lenders" and each an "Existing Lender" as the context may require)

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

20 November 2023

Dear Sirs,

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



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

- 2.2.2. becomes party to the Intercreditor Agreement as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender;
 - 2.2.3. undertakes to perform all the obligations expressed in the Agreement, the Intercreditor Agreement and the other applicable Finance Documents to be assumed by a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender; and
 - 2.2.4. agrees that it shall be bound by all the provisions of the Agreement, the Intercreditor Agreement and other applicable Finance Documents as if it had been an original party to those Finance Documents as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender.
- 2.3. On and with effect from the Transfer Date and against the implementation of the transactions set out at clauses 2.1 and 2.2, each Existing Lender shall:
- 2.3.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender; and
 - 2.3.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender.
3. **Senior Facility E**
- 3.1. It is recorded that, as at the date of this Transfer Certificate:
 - 3.1.1. no "*Senior Facility E Outstandings*" are outstanding under the Finance Documents;
 - 3.1.2. each "*Senior Facility E Commitment*" has been irrevocably and unconditionally cancelled; and
 - 3.1.3. no "*Senior Facility E Commitment*" is capable of utilisation by any member of the South African Group.
 - 3.2. On and with effect from the Transfer Date, each Existing Lender which is a "*Senior Facility E Lender*" shall:
 - 3.2.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as "*Senior Facility E Lender*"; and

Transfer Certificate (Tertis)
Execution Version

4.

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

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

4. **Senior Overdraft Facilities**

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

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

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

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

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

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

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

5. **Transfer of Ancillary Facility Outstandings**

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

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

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

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

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

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

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

6. **Consideration and payment**

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

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

7. **Information**

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

8. **Limitation of the responsibility of Existing Lenders**

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

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



Transfer Certificate (Terris)
Execution Version

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

and any representations or warranties implied by law are excluded;

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

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

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

With effect from the Transfer Date:

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

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

10. **General**

- 10.1. The physical address, email address and attention details for notices of the New Lender for the purposes of clause 33 (*Notices*) of the Agreement are set out in the Schedule.
- 10.2. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 10.3. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by South African law.

A handwritten signature in black ink, appearing to be 'Agnes', with a small flourish at the end.

Transfer Certificate (Terra)
Execution Version

SCHEDULE 1

PROPORTIONATE SHARE

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

Transfer Certificate (Terris)
Execution Version

SCHEDULE 2**Administrative Details of the New Lender**Notice details:

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

Email: rute@remoggo.com

Addressee: Rute Moyo



Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

This Transfer Certificate is accepted by the Facility Agent.

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

For and on behalf of

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

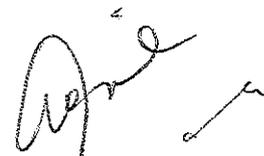


Name: Kelly-Ann Myles
Capacity: Head: Agency
Who warrants his authority hereto

For and on behalf of

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

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Terris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Absa Bank Limited

For and on behalf of

Absa Bank Limited

DocuSigned by:
Christopher Li Green
C3CD8348CF68482...

Name: **Christopher Li Green**

Capacity: **Authorized**

Who warrants his authority hereto

DocuSigned by:
Anthony Evens
5067DBB000EB475...

Name: **Anthony Evens**

Capacity: **Authorised**

Who warrants his authority hereto



Transfer Certificate (Tarris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Rosebank on this the 19 day of November 2023

For and on behalf of

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

Martin Baumgartner

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

For and on behalf of

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

Scott

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

Agne

Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Johannesburg on this the 20 day of November 2023

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Christopher Alderson

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

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



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



Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Investec Bank Limited

(acting through its Corporate and Institutional
Banking division)



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

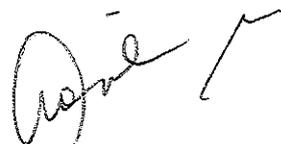
For and on behalf of

Investec Bank Limited

(acting through its Corporate and Institutional
Banking division)



Name: Andrew Kuyamane
Capacity: Authorised Signatory
Who warrants his authority hereto



Transfer Certificate (Termis)
Execution Version

SIGNATURE PAGE

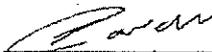
EXISTING LENDER

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

For and on behalf of

Investec Bank Limited

(acting through its Investment Banking Division,
Corporate Solutions)



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

For and on behalf of

Investec Bank Limited

(acting through its Investment Banking Division,
Corporate Solutions)



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



Transfer Certificate (Terris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Nedbank Limited



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

For and on behalf of

Nedbank Limited



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

For and on behalf of

Nedbank Limited



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



Transfer Certificate (Terris)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

**The Land and Agricultural Development
Bank of South Africa**

Stephen Sebueng

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

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

For and on behalf of

**The Land and Agricultural Development
Bank of South Africa**

Faride Stiglingh

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

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

Handwritten signature

Transfer Certificate (Tennis)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Sanlam Life Insurance Limited

(acting through its Sanlam Specialised Finance
division)

For and on behalf of

Sanlam Life Insurance Limited

(acting through its Sanlam Specialised Finance
division)

Howard van der Merwe

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

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Terms)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

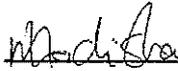
**Sanlam Investment Management
Proprietary Limited**

(acting on behalf of its third party clients)

For and on behalf of

**Sanlam Investment Management
Proprietary Limited**

(acting on behalf of its third party clients)



Name: **Mokgatla Madisha**
Capacity: **Authorised Signatory**

Who warrants his authority hereto

Name:

Capacity:

Who warrants his authority hereto



Transfer Certificate (Terra)
Execution Version

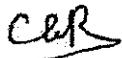
SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)



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

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Terms)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

**Sanlam Specialised Finance Proprietary
Limited**

Howard van der Merwe

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

For and on behalf of

**Sanlam Specialised Finance Proprietary
Limited**

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Tennis)
Execution Version

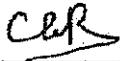
SIGNATURE PAGE

EXISTING LENDER

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

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

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



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

Name:
Capacity:
Who warrants his authority hereto



Transfer Certificate (Terms)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

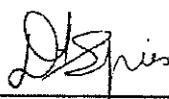
SIGNED at _____ on this the 20th day of November 2023

For and on behalf of
Momentum Metropolitan Life Limited

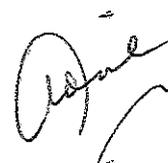
For and on behalf of
Momentum Metropolitan Life Limited



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



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



Transfer Certificate (Terra)
Execution Version

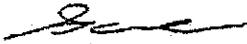
SIGNATURE PAGE

EXISTING LENDER

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

For and on behalf of

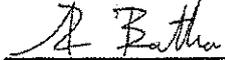
Ashburton Fund Managers Proprietary Limited
(acting for and on behalf of its clients)



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

For and on behalf of

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



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



Transfer Certificate (Tarris)
Execution Version

SIGNATURE PAGE

NEW LENDER

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

For and on behalf of
Vision Investments 155 Proprietary Limited

For and on behalf of
Vision Investments 155 Proprietary Limited



Name: **EUTENHURO MOYO**
Capacity: **DIRECTOR**
Who warrants his authority hereto

Name:
Capacity:
Who warrants his authority hereto





Co. Name: **Stein Scop Attorneys Inc.**
Registration No: **2015/306625/21**
Landline: **+2711 380 8080**
Email: **alexandra@steinscop.com**
Direct: **+2711 380 8087**
Mobile: **+2772 587 6361**
Our ref: **TER2/0004/ A Rakitzis Ho**
Your ref: **D MOODLEY**

Date: 10 September 2024

DMI Attorneys

Attention: Devindran Moodley

Per Email: devin@dmiatt.co.za
 shelin@dmiatt.co.za
 shreya@dmiatt.co.za

Dear Sirs,

Tongaat Hulett Limited (in business rescue)

1. We refer to your letter dated 5 September 2024 (**your letter**).
2. You now advise that, in addition to representing Mohini Singari Naidoo t/a Powertrans Sales And Services (**Powertrans**), you now also represent RGS Group Holdings Ltd (**RGS**). This factual circumstance alone supports our clients' and the business rescue practitioners' allegation that Powertrans has throughout the litigation launched by it against Tongaat Hulett Ltd (in business rescue) (**THL**) been a front for RGS to attack the business rescue plan.
3. Your letter appears to be nothing more than a further attempt by RGS, whose credibility has been seriously brought into question (particularly as a result of its withdrawal of the business rescue plan proposed by it at the eleventh hour and the fraudulent proof of payment), to scupper the implementation of the business rescue plan and derail the entire business rescue process to advance its own commercial interests.
4. We are instructed that, for reasons that have been fully ventilated in the affidavits filed by our clients in the Powertrans litigation, our clients deny that:
 - 4.1 the adopted business rescue plan (**the BR Plan**) has lapsed; or
 - 4.2 the asset transaction is incapable of lawful implementation.

Second Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton, Gauteng, 2057, South Africa

Directors: **G Stein; B Scop; S van der Weele; A Rakitzis Ho; S Buckas and C Badenhorst** | Consultant: **A Berman**
Senior Associates: **B Roxburgh; J Muller and L Grobler** | Associates: **B Badenhorst; A Maswodza; C Strachan and J Erasmus**
Chief Operating Officer: **Y de Waal**

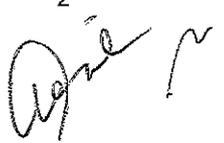
BGI | GLOBAL

5. The commercial terms of the transaction between our clients and the Lender Group remain confidential. Those commercial terms are not a key feature of the BR Plan and are not information that ought to have been disclosed in the BR Plan.
6. The substantial implementation of the BR Plan is not dependant on further commercial arrangements between the Lender Group and Vision. Substantial implementation can be achieved in the current circumstances.
7. There has been significant progress in the implementation of the BR Plan, which plan remains valid and binding, and our clients have, and will continue, to fully cooperate with the business rescue practitioners to achieve substantial implementation of the BR Plan as soon as possible.
8. There is simply no merit to the allegations contained in your letter and your client has no right to the documents or information demanded. Your client's demands are hereby refused.
9. Should your client proceed with the urgent application as threatened in your letter, we are instructed that our clients will oppose those proceedings and seek punitive costs against your client. You are forewarned that, as your client is a *peregrinus* of our courts, our client will seek security for costs.
10. Our failure to deal with any allegation set out in your letter should not be construed as an acceptance or admission thereof by our clients. Our clients reserve the right to respond more fully at the appropriate time, if required.
11. All our clients' rights remain reserved.

Yours faithfully

A Rakitzis Ho
Director

Sent electronically and therefore not signed

2


DELIVERED BY EMAIL

DMI Attorneys
Email: devin@dmiatt.co.za
Durban

Attention: Mr D Moodley

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

YOUR REFERENCE: Mr D Moodley/SG/Powertrans
OUR REFERENCE: Mr D Hertz / Mr T Boswell / Mrs S Gast / tjb/TONG7430.15/#10399401v1
DIRECT PHONE: +27 11 535 8283 / +27 11 535 8459 / +27 11 535 8131
EMAIL ADDRESS: dhertz@werksmans.com/tboswell@werksmans.com / sgast@werksmans.com

10 September 2024

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) | RGS GROUP HOLDINGS | MOHINI SINGARI NAIDOO T/A POWERTRANS SALES & SERVICES

- 1 We refer to your letter dated 5 September 2024 ("**your letter**").
- 2 We note that -
 - 2.1 you have now formally placed your offices on record for RGS Group Holdings (RGS);
 - 2.2 your reference at the top of the first page of your letter is "*Mr D Moodley/SG/Powertrans*"; and
 - 2.3 the subject line of your email under cover of which your letter was sent is "*Mohini Singari Naidoo t/a Powertrans Sales & Services / Tongaat Hulett Limited (in business rescue) and Others*".
- 3 The overwhelming inference to be drawn from the above is that RGS has, at all times, been the *eminence gris* of the litigation proceedings ("**the Powertrans application**") instituted by Mohini Singari Naidoo t/a Powertrans Sales and Services ("**Powertrans**"), and that such litigation is indeed being funded and controlled by RGS, with Powertrans merely acting as a nominal party. For the purposes of this letter, we refer to Powertrans and RGS collectively as "**your clients**".
- 4 Our failure to address any assertion or allegation in your letter should not be construed as an admission as to the correctness of any unanswered assertion or allegation, nor as a waiver of our clients' rights to respond thereto more fully in due course (should it become necessary to do so), which rights are, and remain, fully reserved.





5 Save as set out below, we have been instructed not to entertain the ongoing interrogatories contained in correspondence addressed by your clients, your clients' erstwhile attorneys or yourselves on behalf of your client, which failure should not be construed as a waiver of our clients' rights to do so in due course should the need arise, which rights are both in this respect, and generally, fully reserved.

6 **Ad paragraph 6 and 9 of your letter**

6.1 Our clients dispute that -

6.1.1 the Plan as approved and adopted by affected persons on 11 January 2024 ("**the Plan**") has "lapsed";

6.1.2 the "Asset Transaction" is incapable of lawful implementation; and

6.1.3 it is "common knowledge" that Vision has not made payment to the Lender Group.

6.2 The Plan, as approved and adopted, remains binding on THL, its creditors and shareholders in terms of section 152(4) of the Companies Act 71 of 2008 (as amended) ("**the Companies Act**"), and is being implemented.

6.3 Similarly, a binding agreement between the Lender Group and Vision is in place. To the best of the BRPs' knowledge, Vision has, and continues, to perform under it.

6.4 To date, Vision has made partial payment in respect of the Acquisition. In this regard -

6.4.1 Vision paid a deposit of R1.51 billion on or about 9 or 10 January 2024. This has been widely publicised;

6.4.2 the BRPs informed affected persons, at the meeting to vote on the adoption of the Plan on 10 January 2024, that Vision had already paid a substantial deposit to the Lender Group, which was sufficient to permit the debt-to-equity conversion provided for in the Plan, to proceed; and

6.4.3 the BRPs also communicated that they had received verbal confirmation from Standard Bank that the content of the Standard Bank letter dated 20 December 2023 applied to the Plan presented to the creditors at the meeting convened for 10 January 2024. This is dealt with in our clients' answering affidavit in the Powertrans application.

6.5 The BRPs have since been advised by both Vision and the Lender Group that -

6.5.1 Vision has acquired the Lender Group claims; and

6.5.2 the balance of the purchase price – being R2 billion – has not yet fallen due for payment and must be paid before 31 December 2024.

6.6 The BRPs are not aware of any breach by Vision of the terms of the Acquisition Agreement, including but not limited to, any failure by Vision to timeously meet any of their payment obligations.

2



7 Ad paragraphs 7 and 10 of your letter

- 7.1 The BRPs deny that they have refused to disclose the terms or status of the Acquisition Agreement, or that they have acted with a lack of transparency.
- 7.2 On 9 July 2024, we provided your offices with an affidavit deposed to by Mr Gerhard Albertyn in terms of Rule 35(12)(a)(iii). That affidavit records that the Third Acquisition Agreement, to which our clients are not party (as demanded in paragraph 42 of your letter) is not in our clients' possession or under their control.
- 7.3 Our clients cannot disclose documents that they do not have. Nor can they simply disregard the claims to confidentiality made by Vision and the Lender Group and disclose information over which such claims are made.
- 7.4 We have, however, addressed correspondence on our clients' instructions to the Lender Group and Vision insisting that the Third Acquisition Agreement be furnished to BRPs for dissemination to, *inter alia*, affected persons. As at the time of despatching this letter, the third Acquisition Agreement has not yet been received by our client.

8 Ad paragraphs 8, 11 and 12 of your letter

Our clients dispute the content of these paragraphs. There is nothing contained in your letter to support the untenable conclusion reached in paragraphs 11 and 12 thereof.

9 Ad paragraphs 13 to 27 of your letter

- 9.1 The high-level forecast timetable for implementation referred to in section 6.1.6.3 of the Plan was precisely that. As already stated in our clients' answering affidavit in the Powertrans application, -
- 9.1.1 the THL business rescue process and Vision transaction are unique both in terms of the structure thereof as well as complexity. These factors have contributed towards an extension of the forecasted time frames for completion of the Vision transaction; and
- 9.1.2 the BRPs have, over the past months, engaged extensively with THL, the JSE, the competition regulatory authorities, THL's sponsors, THL's advisors, Vision's advisors as well as multiple regulators in order to progress the Vision transaction, which process is ongoing.
- 9.2 As regards paragraph 20 of your letter, the BRPs and THL will continue to communicate with affected persons and shareholders in accordance with their statutory and regulatory obligations as prescribed in, *inter alia*, the Companies Act and the JSE Listings Requirements.
- 9.3 Your clients inexplicably refer to an agreement which has lapsed and has, to your clients' knowledge, been superseded with the Third Acquisition Agreement. The Third Acquisition Agreement was concluded between the Lender Group and Vision before the section 151 meeting. As already advised in our clients' and Vision's answering affidavits in the Powertrans application, the terms of the Third Acquisition Agreement have no bearing on the Plan.

3



10 Ad paragraphs 28 to 33 of your letter

- 10.1 The contents of these paragraphs, notwithstanding what is stated in paragraph 31 of your letter, are denied. The conclusion drawn by you in paragraph 32 of your letter is similarly denied.
- 10.2 With regard to paragraph 32 of your letter, it is clear from the Plan that the business (ie all its assets) of THL would be sold as a going concern. As a result, THL will become a dormant shell with no operations and/or assets. Forecasts for such a scenario would be meaningless as there would no longer be any business in THL and it would no longer have any assets.
- 10.3 Section 150 of the Companies Act has been complied with in the Plan, as has been demonstrated in both Powertrans applications.

11 Ad paragraphs 34 to 43 of your letter

- 11.1 The conclusions set out in paragraphs 34 to 41 of your letter are denied.
- 11.2 Any application brought by your clients against our clients to compel our clients to deliver a copy of the Acquisition Agreements, or any of the other documents identified in paragraph 42.2 of your letter, is doomed to failure since, to your clients' knowledge, such documents are not in the possession of our clients or under their control. Should your clients nevertheless proceed with the application threatened in paragraph 43 of your letter, our clients will seek punitive costs against your client and yourselves.
- 11.3 Nevertheless, as set out in paragraph 7.4 above, we have called upon the Lender Group and Vision to furnish a copy of the Third Acquisition Agreement for dissemination to, *inter alia*, affected persons. We tender to provide it to your offices, on receipt.

Yours faithfully

Werksmans Inc

4



"MAR25"

464

Date: 02 October 2024

URGENT

Our Ref: Mr D Moodley/SG/RGS

Your Ref: Mr T Boswell/Ms S Gast/ag/TONG7430.15/
#10135080v1;
TER2/0004/B Scop

**TO: THE BUSINESS RESCUE PRACTITIONERS OF
TONGAAT HULETT LTD c/o WERKSMANS
ATTORNEYS**

THE VISION PARTIES c/o STEIN SCOP ATTORNEYS

**ATT: Mr Trevor Boswell and Ms Simone Gast
Ms A Rakitzis Ho**

Per Email: tboswell@werksmans.com;
sgast@werksmans.com;
alexandra@steinscop.com

1st Floor

94 Florida Road

Durban, 4001

PO Box 35546

Northway, 4965

Tel: +27 31 301 8623

Email: reception@dmiatt.co.za

Dear Mr Boswell, Ms Gast and Ms Rakitzis Ho,

RE: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We refer to the above matter and confirm that we act on behalf of RGS Group Holdings ("RGS"). We refer also to our previous letter of 5 September 2024 and to the letters received from the BRPs and the Vision Parties in response on 10 September 2024.
2. Subsequent to the aforesaid correspondence, and on 17 September 2024, RGS submitted an updated offer to acquire THL out of business rescue ("the RGS Offer").

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

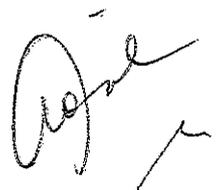
A handwritten signature in black ink, appearing to read 'April', is located in the bottom right corner of the page.

3. The terms of the RGS Offer are in summary as follows:
 - 3.1. RGS will inject R4 451 451 350 into THL in return for a 90% shareholding in the company;
 - 3.2. R4 billion will be applied by THL to settle the Lender Group's claims and security in full;
 - 3.3. R451 451 350 will be applied to settle unsecured creditors as follows:
 - 3.3.1. The first R75 000 of each claim will be settled immediately;
 - 3.3.2. Up to 65 cents in the rand of any balance of each claim will be settled immediately;
 - 3.3.3. The balance of all claims (i.e. up to 35 cents in the rand) will be paid in full in instalments over a five-year period starting from the first anniversary of the closing date of the RGS transaction;
 - 3.4. RGS will advance a subordinated shareholder loan to THL in the amount of R525 956 121 plus interest which will be used by THL to settle SASA's agreed compromised claim in full. The appeal proceedings pending in this regard will not be pursued.
4. The RGS offer therefore *inter alia* offers the Lender Group c. R400 million more than the Vision Parties have offered and moreover settles unsecured creditors in full (whereas Vision offers c. 5 cents in the rand), settles SASA in full (whereas Vision disputes this liability on appeal), and dilutes pre-existing shareholding to 10% (whereas the Vision Asset Transaction will destroy all pre-existing shareholding completely).
5. The BRPs were requested to table the RGS Offer for creditors' consideration at a meeting to be convened in terms of section 151 of the Companies Act. This request



was made on the basis that the Vision Asset Transaction, which is now being pursued subsequent to the rejection by shareholders of the Vision debt-to-equity conversion on 8 August 2024, cannot be implemented without creditors' approval given that the current Vision BR Plan does not provide the mandatory information contemplated in section 150 of the Companies Act in relation to the Vision Asset Transaction.

6. On 18 September 2024 the BRPs responded to the RGS Offer in a letter in terms of which they stated that the Vision BR Plan complied with section 150 of the Companies Act in relation to the Vision Asset Transaction, denied that the Vision BR Plan had failed pursuant to the rejection of the debt-to-equity conversion (insisting that the plan remained "binding"), and informed RGS that they would not therefore consider the RGS Offer.
7. RGS has subsequently awaited the publication of details regarding the nature of the transactions that will be concluded in terms of the Vision Asset Transaction, the conditions which apply thereto, and the timeline for their implementation.
8. Despite having had the opportunity to do so since 8 August 2024, the BRPs have yet to provide creditors and other affected persons with any of these essential details. The status update reports issued by the BRPs on the THL business rescue website simply refer to competition filings that have been made and states that the BRPs are *"continuing to take the necessary steps to satisfy all conditions on which the Plan is contingent, aimed at ensuring the successful implementation of the Plan."*
9. RGS and all affected persons therefore remain ignorant as to how the BRPs and Vision Parties propose to transfer all THL's assets to a company nominated by the Vision Parties and then delist and liquidate the *"shell"* of THL pursuant to the Vision Asset Transaction.
10. The express requirements of section 150 of the Companies Act have therefore patently not been met in relation to the Vision Asset Transaction.

A handwritten signature in black ink, appearing to be 'A. Naidoo', with a flourish at the end.

11. Critically, since under the Vision Asset Transaction the Vision Parties are to acquire all THL's assets in return for a reduction of / set off against the Lender Group's claims and security, the Vision Asset Transaction – even if otherwise lawful – cannot proceed unless and until the Vision Parties have fully acquired the Lender Group's claims and security in THL.
12. The Acquisition Agreement concluded between the Vision Parties and the Lender Group was announced via SENS on 9 November 2023, some 11 months ago. RGS and other affected persons have continuously called for confirmation that the Vision Parties have paid the full purchase price due under the Acquisition Agreement and taken transfer of all the Lender Group's claims and security. No such confirmation has been forthcoming, not even in partially redacted form.
13. As you are aware, one of the chief concerns expressed by shareholders ahead of the vote on the debt-to-equity conversion was that, despite confirmed previous failures on Vision's part to raise and settle the purchase price due under the Acquisition Agreement, no confirmation was provided to the effect that Vision had in fact settled the purchase price and taken transfer of the Lender Group's claims and security prior to the shareholders meeting of 8 August 2024.
14. That the lack of transparency in this regard was one of the main reasons why the debt-to-equity conversion was rejected is evident from correspondence in RGS's possession which was addressed to the BRPs by shareholders before the shareholders meeting.
15. It is therefore, with respect, insufficient for the BRPs to state as they did in their letter of 10 September 2024 that they have been advised that the Vision Parties have acquired the Lender Group's claims while only having paid a deposit under the Acquisition Agreement and remaining liable for payment of c. R2 billion.
16. It is evident from the copy of the Acquisition Agreement attached as annexure "A" to our letter of 5 September 2024 that the Lender Group would not transfer any claims or security until full payment of the purchase price due thereunder had been settled.

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

A handwritten signature in black ink, appearing to be 'A. Govender', is located in the bottom right corner of the page.

17. This is consistent with the terms known to RGS from its own negotiations with the Lender Group in relation to the RGS BR Plan that was published in November 2023. Indeed, it would not make commercial sense for the Lenders to transfer their claims against receipt of the deposit only since this would obviously leave them exposed should the Vision Parties default on the balance of the purchase price.
18. It bears mention too that at the creditors meeting held on 10 and 11 January 2024 the BRPs and Vision Parties assured creditors that the latter were fully funded and ready to implement the Vision BR Plan.
19. Both the BRPs and the Vision Parties attempt to gloss over the undeniable implications of the fact that the Vision Parties have still not settled the purchase price due under the Acquisition Agreement more than eight months hence.
20. The prior acquisition by the Vision Parties of the Lender Group's full claims and security is a condition precedent to the Vision Asset Transaction (proceeding for argument's sake on the basis that the transaction is otherwise lawful).
21. The position adopted by the BRPs and Vision Parties to the effect that they can simply proceed with the Vision Asset Transaction without having provided affected persons with either:
 - 21.1. Unequivocal confirmation that the Vision Parties have acquired all of the Lender Group's claims and security; or
 - 21.2. Details of the transactions that will be implemented in terms of the Vision Asset Transaction and the expected timeframes in relation thereto.

is unjustifiable and patently inconsistent with the governing provisions of the Companies Act

A handwritten signature in black ink, appearing to be 'D. Moodley', is located in the bottom right corner of the page.

22. After stating that the BRPs do not have a copy of the current version of the Acquisition Agreement (the so-called "Third Acquisition Agreement)", paragraph 7.4 of the BRPs' letter of 10 September 2024 provides as follows:

"We have, however, addressed correspondence on our clients' instructions to the Lender Group and Vision insisting that the Third Acquisition Agreement be furnished to BRPs [sic] for dissemination to, inter alia, affected persons. As at the time of despatching this letter, the third Acquisition Agreement has not yet been received."

23. To date, the BRPs have neither disseminated the Third Acquisition Agreement to affected persons nor provided any feedback to RGS regarding whether or not they have received a copy of the agreement and, if not, why the agreement is being withheld from the duly appointed BRPs of THL despite their "insistence" that it be disseminated.
24. The reasonable inference to be drawn from the fact that the Acquisition Agreement has not been forthcoming is that it remains conditional on the fulfilment by the Vision Parties of their outstanding payment obligations and that none of the Lender Group's claims or security has been transferred to the Vision Parties.
25. In an attempt to avoid the necessity of an urgent application RGS has provided ample time for the Acquisition Agreement to be produced and for details of the transactions relevant to the Vision Asset Transaction to be disclosed to affected persons on the THL business rescue website and/or via SENS.
26. However, since no timeline for the implementation of the Vision Asset Transaction has been provided but the BRPs have stated in their business rescue progress reports published on the THL website that all steps are being taken in relation to the implementation thereof, RGS will have no choice but to bring an application for urgent relief if the requested documents and information is not provided in the coming week.

A handwritten signature in black ink, appearing to be 'A. Naidoo', with a flourish underneath.

27. RGS repeats once again its suggestion that the Acquisition Agreement and documents evidencing (i) proof of the amount paid by the Vision Parties to the Lender Group, and (ii) the transfer of all the Lender Group's claims and security to the Vision Parties be provided to all affected persons with any confidential information redacted therefrom if necessary.
28. We are therefore instructed to demand, as we hereby do, that the following be published on the THL business rescue website by no later than **close of business on Monday, 7 October 2024**:
- 28.1. A copy of the current version of the Acquisition Agreement;
- 28.2. Proof of the amount paid by the Vision Parties to the Lender Group;
- 28.3. Proof that the Lender Group has transferred all its claims and security to the Vision Parties;
- 28.4. Details of the transactions to be implemented pursuant to the Vision Asset Transaction;
- 28.5. A timeline for the completion of the aforesaid transactions.
29. Should this information not be provided, RGS will have no option but to launch proceedings for urgent relief and reserves its right to place this letter (as well as the previous correspondence referred to herein) before the urgent judge.

Yours faithfully,


D MOODLEY

DMI Attorneys

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender



Copies to: **The Lender Group**

c/o The Lender Group Facility Agent
Standard Bank of South Africa
Corporate and Investment Banking Division
Mr Venashan Seerangam
Email: AgencySBSA@standardbank.co.za

The Industrial Development Corporation of South Africa

c/o Mr Haroon Laher
Faskens
Email: hlaher@fasken.com

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

A handwritten signature in black ink, appearing to be 'Agnel', with a checkmark below it.

DELIVERED BY EMAIL

DMI Attorneys
Email: devin@dmiatt.co.za
Durban

Attention: Mr D Moodley

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Tel +27 11 535 8000
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www.werksmans.com

"MAR26"

YOUR REFERENCE: Mr D Moodley/SG/Powertrans
OUR REFERENCE: Mr D Hertz / Mr T Boswell / Mrs S Gast / tjb/TONG7430.17/#10455806v1
DIRECT PHONE: +27 11 535 8283 / +27 11 535 8459 / +27 11 535 8131
EMAIL ADDRESS: dhertz@werksmans.com/tboswell@werksmans.com / sgast@werksmans.com

7 October 2024

Dear Sirs

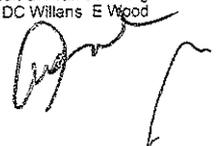
**TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) | RGS GROUP HOLDINGS | MOHINI SINGARI
NAIDOO T/A POWERTRANS SALES & SERVICES**

- 1 We refer to your letter dated 2 October 2024 ("**your letter**").
- 2 In order to enable our clients to respond substantively to your letter, our clients require information from the Lender Group. Please confirm that your client consents to our offices furnishing a copy of your letter to the Lender Group and their advisors.
- 3 In the interim, our failure to address any assertion or allegation in your letter should not be construed as an admission as to the correctness of any unanswered assertion or allegation, nor as a waiver of our clients' rights to respond thereto more fully in due course (should it become necessary to do so), which rights are, and remain, fully reserved.

Yours faithfully



Werksmans Inc



"MAR27"

Tuesday, November 5, 2024 at 18:08:59 South Africa Standard Time

Subject: Re: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]
Date: Tuesday, 08 October 2024 at 14:51:48 South Africa Standard Time
From: Shelin Gathiram
To: Simone Gast, Trevor Boswell
CC: erik@evhinc.co.za, legal2@goodrickes.co.za, shreya@dmiatt.co.za, alexandra@steinscop.com, Danny Andropoulos, David Hertz, Devindran Moodley
Attachments: image001.png, image002.jpg

Dear Mr Boswell and Ms Gast

We refer to your letter of 7 October 2024 in terms of which you request our client's consent for the BRPs to share our letter of 2 October 2024 with the Lender Group.

As indicated on the last page of the letter itself, our letter of 2 October 2024 was copied to the Lender Group and to the IDC. Mr Ven Seerangam of Standard Bank acknowledged receipt of the letter on behalf of the Lender Group on 3 October 2024.

Your request for our client to consent for the letter to be shared with the Lender Group is thus superfluous.

Kindly indicate by when we may expect a substantive response to our letter.

Yours faithfully,



SHELIN GATHIRAM
 CANDIDATE ATTORNEY

☎ (031) 301 8623
 ✉ shelin@dmiatt.co.za
 📍 1st Floor, 94 Florida Road,
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 4965

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From: Simone Gast <sgast@werksmans.com>
Date: Monday, 07 October 2024 at 18:08
To: Shelin Gathiram <shelin@dmiatt.co.za>, Devindran Moodley <devin@dmiatt.co.za>
Cc: "erik@evhinc.co.za" <erik@evhinc.co.za>, "legal2@goodrickes.co.za" <legal2@goodrickes.co.za>, "shreya@dmiatt.co.za" <shreya@dmiatt.co.za>, Trevor Boswell <TBoswell@werksmans.com>, "alexandra@steinscop.com" <alexandra@steinscop.com>, Danny Andropoulos <dandropoulos@werksmans.com>, David Hertz <DHertz@werksmans.com>
Subject: RE: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]

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 ATTORNEYS

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1 of 3

From: Trevor Boswell <TBoswell@werksmans.com>
Date: Wednesday, 09 October 2024 at 13:52
To: Shelin Gathiram <shelin@dmiaatt.co.za>
Cc: "erik@evhinc.co.za" <erik@evhinc.co.za>, "legal2@goodrickes.co.za" <legal2@goodrickes.co.za>, "shreya@dmiaatt.co.za" <shreya@dmiaatt.co.za>, "alexandra@steinscop.com" <alexandra@steinscop.com>, Danny Andropoulos <dandropoulos@werksmans.com>, David Hertz <DHertz@werksmans.com>, Devindran Moodley <devin@dmiaatt.co.za>, Bradley Scop <bradley@steinscop.com>, Jemma Muller <jemma@steinscop.com>, Casper Badenhorst <Casper@steinscop.com>, Simone Gast <sgast@werksmans.com>
Subject: RE: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]

Dear Sir / Madam

- 1 We refer to your email below.
- 2 The email under cover of which your letter dated 2 October 2024 ("**your letter**") was received fails to indicate that your letter was in fact sent to the Lender Group.
- 3 As is now common cause, our clients are not in possession of the majority of the information and documents referenced in your letter.
- 4 The demands in your letter ("**the demands**") have been directed to the attorneys representing both Vision and the Lender Group. We have called for a response to our requests within the coming days. The nature of such response will inform both the timing and our ability to respond substantively to the demands.
- 5 Your assertion that the matters traversed in your letter are required to be dealt with on an urgent basis, are belied by the fact that your requests for information and documents have been reiterated over an extensive period and the factual position as articulated by our clients in response thereto has remained unchanged. This fact is inimical to your client's assertions of urgency.

Yours faithfully
Werksmans



Trevor Boswell
Director
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Private Bag 10015, Sandton, 2146, South Africa
T +27 11 535 8000 F +27 11 535 8600 W www.werksmans.com

"MAR29"

Tuesday, November 5, 2024 at 18:16:38 South Africa Standard Time

Subject: Re: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]
Date: Thursday, 10 October 2024 at 12:26:58 South Africa Standard Time
From: Shelin Gathiram
To: Trevor Boswell
CC: erik@evhinc.co.za, legal2@goodrickes.co.za, shreya@dmiaatt.co.za, alexandra@steinscop.com, Danny Andropoulos, David Hertz, Devindran Moodley, Bradley Scop, Jemma Muller, Casper Badenhorst, Simone Gast
Attachments: image001.png, image002.png, image003.png, image004.jpg

Dear Sirs,

Kindly note that we hereby recall our email of 10 October 2024 at 12:04 and respond as follows:

Dear Mr Boswell

While it is true that you were not copied into the email in which our letter of 2 October 2024 was sent to the Lender Group, it is clearly indicated at the bottom of the letter itself that it was also being sent to the Lender Group and the IDC. The fact that you were not copied into our email to the Lender Group is of no consequence. At any rate, your letter of 7 October 2024 requesting our client's consent for our letter to be sent to the Lender Group was received at 18h08 on the day that the demand in our letter expired.

You state in your email under reply that our client has requested the relevant information on numerous occasions. That is incorrect, the request from RGS contained in our letter of 2 October 2024 was the first such request made by RGS.

It is, however, the case that Powertrans and multiple shareholders have made numerous similar requests in the past. Despite these legitimate requests from creditors and shareholders the BRPs have failed and/or refused to provide even the most basic explanation regarding the so-called Vision Asset Transaction in terms of which the BRPs intend to transfer all THL's assets to Vision, delist and liquidate THL.

As you are moreover aware, no details relating to the Vision Asset Transaction are provided in the Vision BR Plan and the formulaic business rescue progress reports published by the BRPs on the THL website are similarly devoid of any detail. This despite the fact that the BRPs announced that they would proceed to implement the Vision Asset Transaction on 16 August 2024.

The BRPs are responsible for the implementation of the Vision Asset Transaction. All affected parties have the right, in terms inter alia of section 150 of the Companies Act, to be informed of the nature of the transactions to be implemented in terms of a business rescue plan and the conditions and assumptions which adhere thereto. This information should already have been disseminated to all affected persons freely and the BRPs' refusal to provide it upon request is unlawful.

It bears mention that the BRPs, as officers of the court, should act impartially and should not be beholden to the wishes of either the Lender Group or the Vision Parties in the fulfilment of their statutory disclosure obligations to affected persons.

Given the continued uncertainty regarding the nature and effect of the transactions that will be implemented in terms of the Vision Asset Transaction, the often cited potentially disastrous impact that the liquidation of THL could have on employees and the KZN economy remains a critically important consideration.

Most pertinently, since (i) the Vision Parties now propose – in terms of the Vision Asset Transaction – to “pay” for all of THL's assets by way of a set off from the claims and security that they should long since have acquired from the Lender Group, and (ii) it is common cause that the Vision Parties have still not settled the purchase price due to the Lender Group for the acquisition of the latter's claims and security, all affected persons must be provided with unequivocal confirmation that:

- i) Ownership of all the Lender Group's claims and security have been transferred to the Vision Parties despite their failure to make payment in terms of the Acquisition Agreement;
- ii) No agreement(s) have been concluded between the Lender Group and the Vision Parties in terms of which THL assets will be sold after closure of the business rescue in order to either settle the Lender Group or any other creditors which Vision has proven incapable of settling due to their failure to raise the necessary financing.

The RGS offer avoids all of the abovementioned consequences entirely and affected persons have a clear

right to a frank and transparent explanation regarding the nature and effect of the Vision Asset Transactions as well as the conditions to which it is subject.

You are therefore requested to provide a date in the coming days by which your clients will provide substantive responses to our letter of 2 October 2024. Should this information not be forthcoming by Monday, 14 October 2024, our client, in the absence of any information regarding the nature of the Vision Asset Transactions or the implementation timeline thereof, will have no choice but to proceed to court.

Yours faithfully,



SHELIN GATHIRAM

CANDIDATE ATTORNEY

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A handwritten signature in black ink, appearing to be 'Shelin Gathiram', written in a cursive style.

"MAR30"

477

From: Simone Gast <sgast@werksmans.com>
Date: Monday, 14 October 2024 at 13:03
To: Shelin Gathiram <shelin@dmiatt.co.za>, Trevor Boswell <TBoswell@werksmans.com>
Cc: "erik@evhinc.co.za" <erik@evhinc.co.za>, "legal2@goodrickes.co.za" <legal2@goodrickes.co.za>, "shreya@dmiatt.co.za" <shreya@dmiatt.co.za>, "alexandra@steinscop.com" <alexandra@steinscop.com>, Danny Andropoulos <dandropoulos@werksmans.com>, David Hertz <DHertz@werksmans.com>, Devindran Moodley <devin@dmiatt.co.za>, Bradley Scop <bradley@steinscop.com>, Jemma Muller <jemma@steinscop.com>, Casper Badenhorst <Casper@steinscop.com>
Subject: RE: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]

Dear Sirs

Your replacement email dated 10 October 2024 ("your replacement email") refers. Whilst your replacement email now contains a deadline for a substantive response by close of business today, we do not anticipate being in a position to respond by close of business today. We will however be in a position to respond to your letter during the course of next week.

The content of this letter is not exhaustive and should not be construed as having dealt with all matters affecting the issues. Our clients' right to deal with any such matters in greater detail in due course and in the appropriate forum are reserved.

Yours faithfully
Werksmans

Simone Gast

Director

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WERKSMANS
ATTORNEYS

A member of the LEX Africa Alliance



Tuesday, November 5, 2024 at 18:23:37 South Africa Standard Time

Subject: Re: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]
Date: Monday, 14 October 2024 at 15:50:01 South Africa Standard Time
From: Shelin Gathiram
To: Simone Gast, Trevor Boswell
CC: erik@evhinc.co.za, legal2@goodrickes.co.za, shreya@dmiatt.co.za, alexandra@steinscop.com, Danny Andropoulos, David Hertz, Devindran Moodley, Bradley Scop, Jemma Muller, Casper Badenhorst
Attachments: image001.png, image002.png, image003.png, image004.png, image005.png, image006.jpg

Dear Ms Gast,

Our below email refers.

Kindly note that "Please provide your responses to the following **by close of business today:**" ought to be "Please provide your responses to the following **by close of business tomorrow 15 October 2024:**"

We trust the above is in order.

Yours faithfully,



SHELIN GATHIRAM
 CANDIDATE ATTORNEY

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From: Shelin Gathiram <shelin@dmiatt.co.za>
Date: Monday, 14 October 2024 at 15:25
To: Simone Gast <sgast@werksmans.com>, Trevor Boswell <TBoswell@werksmans.com>
Cc: "erik@evhinc.co.za" <erik@evhinc.co.za>, "legal2@goodrickes.co.za" <legal2@goodrickes.co.za>, "shreya@dmiatt.co.za" <shreya@dmiatt.co.za>, "alexandra@steinscop.com" <alexandra@steinscop.com>, Danny Andropoulos <dandropoulos@werksmans.com>, David Hertz <DHertz@werksmans.com>, Devindran Moodley <devin@dmiatt.co.za>, Bradley Scop <bradley@steinscop.com>, Jemma Muller <jemma@steinscop.com>, Casper Badenhorst <Casper@steinscop.com>
Subject: Re: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]

Dear Ms Gast

We refer to your email of 13h03 today.

We are instructed to place the following on record:

1. On 2 October 2024 we sent a letter in terms of which we demanded that the information listed in paragraph 28 thereof be published on the THL business rescue website by no later than close of business on Monday, 7 October 2024;
2. At 18h08 on Monday, 7 October 2024 (i.e. after our demand had expired) we received a letter from

A handwritten signature in black ink, appearing to be 'Shelin Gathiram'.

Werksmans requesting that our client provide its consent for our letter of 2 October 2024 to be shared with the Lender Group;

3. On Tuesday, 8 October 2024 we responded to your aforesaid letter by drawing your attention to the fact that our letter of 2 October 2024 indicated that it was copied to the Lender Group and that your request for our client to consent to the letter being shared with the Lender Group was thus superfluous. We also requested you to confirm by when we could expect a substantive response to our letter;
4. On Wednesday, 9 October 2024 Mr Boswell of your offices responded by stating that the demands in our letter of 2 October 2024 had been directed to the attorneys representing the Vision Parties and the Lender Group, that you had called for a response from them "within the coming days", and that "[t]he nature of such response" would inform both the timing of and your ability to respond substantively to the demands;
5. We responded on Thursday, 10 October 2024 by reiterating both our client's and all affected persons' right to the information demanded and the urgent need for such information to be provided. We again requested you to confirm by when you would provide a substantive response to our letter of 2 October 2024 and provided an extension of the demand period to today, i.e. Monday 14 October 2024. We again indicated that should the information demanded not be forthcoming our client would have no choice but to proceed to court.

Your email under reply, which simply states that you will be in a position to respond to our letter of 2 October 2024 "*during the course of next week*", is unacceptable and ignores our legal demand. You have moreover chosen not to provide any explanation for why you / your clients refuse to provide the information demanded in our letter of 2 October 2024 despite the fact that the initial demand and the extension thereto have both expired.

Please provide your responses to the following **by close of business today**:

1. While we understand it to be your client's position that they do not have a copy of the Acquisition Agreement, please confirm whether your failure to respond substantively to our letter of 2 October 2024 is due to your clients additionally not having any of the other information referred to in the demand contained in paragraph 28 of our letter of 2 October 2024?
2. Alternatively, should the other information which is subject to our demand (i.e. other than the acquisition agreement) be within your clients' knowledge and/or possession, please indicate why you have not provided such information already?
3. Your vague undertaking to respond to our letter of 2 October 2024 is unacceptable, we reiterate our request that you provide a specific date by when we can expect a response. Should you consider yourselves unable to do so, please provide reasons explaining why.

Our client's rights remain strictly reserved, including the right to place this correspondence before an urgent judge.

Yours faithfully,



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From: Simone Gast <sgast@werksmans.com>

Date: Monday, 14 October 2024 at 16:04

To: Shelin Gathiram <shelin@dmiatt.co.za>

Cc: "erik@evhinc.co.za" <erik@evhinc.co.za>, "legal2@goodrickes.co.za" <legal2@goodrickes.co.za>, "shreya@dmiatt.co.za" <shreya@dmiatt.co.za>, "alexandra@steinscop.com" <alexandra@steinscop.com>, Danny Andropoulos <dandropoulos@werksmans.com>, David Hertz <DHertz@werksmans.com>, Devindran Moodley <devin@dmiatt.co.za>, Bradley Scop <bradley@steinscop.com>, Jemma Muller <jemma@steinscop.com>, Casper Badenhorst <Casper@steinscop.com>, Trevor Boswell <TBoswell@werksmans.com>

Subject: RE: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]

Dear Sir/Madam

We refer to your two emails of today's date at 15h25 and 15h49, which we do not intend to fully respond to in this email.

In our email sent earlier today, we intended to say that we will be in a position to respond to your letter during the course of this week, not next week. The reference to "next week" was in error.

Yours faithfully
Werksmans

Simone Gast

Director

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16 October 2024

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") | RGS GROUP HOLDINGS | MOHINI SINGARI NAIDOO T/A POWERTRANS SALES & SERVICES

- 1 We refer to your letter dated 2 October 2024 ("**your letter**"), and your further correspondence traversing the same subject matter, addressed subsequent thereto.
- 2 Our failure to address any assertion or allegation in your letter or in your subsequent correspondence should not be construed as an admission as to the correctness of any unanswered assertion or allegation, or as a waiver of the BRPs' ("**our clients**") rights to respond thereto more fully in due course (should it become necessary to do so), which rights are, and remain, fully reserved.
- 3 The matters once again traversed in your letter have previously been raised by you in one or both of -
 - 3.1 Powertrans' Rule 35(12) Notice dated 4 June 2024, which was responded to in our letter dated 10 July 2024, as read with Mr Gerhard Albertyn's affidavit dated 9 July 2024;
 - 3.2 your letter dated 5 September 2024 ("**your 5 September letter**"), which was addressed in our response dated 10 September 2024; and
 - 3.3 RGS's offer letter dated 17 September 2024 ("**the offer letter**"), which was addressed by our clients in their response dated 18 September 2024 ("**the offer response letter**").
- 4 The issues raised in your letter have been substantively addressed in prior correspondence and, in some respects, in affidavits in the applications instituted by Mohini Singari Naidoo t/a Powertrans

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badel T Bata JD Behr AR Berman P Bhagattjee NMN Bhengu AL Bilaty RE Bonnet TJ Boswell W Brown HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollisen MGH Honiball BB Holz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Kiloran N Kirby HA Kotze S Krige CJ Latha H Laskov P Le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashafane JE Meiring H Michael SM Moerane R Moltse C Moraitis PM Mosebo NPA Metsiri L Naidoo K Neluheni BW Ntuli BPF Olivier Z Oosthuizen S Padyachy M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhin B Rammala MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Willans E Wood BW Workman-Davies Consultants DH Rabin DG Williams

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Sales and Services ("**Powertrans**"). This reinforces the cogency of the assertions in paragraph 3 of our letter dated 10 September 2024 ("**the 10 September letter**").

5 As noted in your letter -

5.1 the Business Rescue Plan, as approved and adopted by an overwhelming majority of creditors at the section 151 meeting held on 10 and 11 January 2024 ("**the Plan**"), was published in January 2024, approximately nine months ago; and

5.2 the Special General Meeting of shareholders took place approximately two months ago (on 8 August 2024).

6 At that Special General Meeting, the shareholders of THL voted against the special resolution required to permit the rights issue associated with the debt-to-equity conversion ("**the Negative Vote**").

7 The consequence of the Negative Vote is that, in terms of the approved Business Rescue Plan, the Business Rescue Practitioners are now required to implement the (alternate) Business Rescue Plan ("**the Vision Sale of Asset transaction**"), and to facilitate the implementation thereof.

8 In circumstances where the Negative Vote occurred on 8 August 2024 (a little over two months ago), it is unreasonable, commercially untenable, and unrealistic to expect that the Vision Sale of Asset transaction should already have been implemented.

9 We are representing the BRPs in engaging with both the Lender Group and Vision on an ongoing basis to actively facilitate implementation of the Vision Sale of Asset transaction, as expeditiously as circumstances permit. The parties involved require a reasonable opportunity to negotiate, draft and conclude, what is, on any conceivable metric, a significantly complex transaction.

10 In amplification of paragraph 9 above, the Vision Sale of Asset transaction is a complex multi-jurisdictional transaction requiring consideration of, *inter alia*, the regulatory requirements and implications in each jurisdiction, tax optimisation, consideration of licencing and permit/authority requirements, required land transfers, assignments of contracts and requisite counterparty consents, employee transfers, interactions with key stakeholders (including the Lender Group, the IDC and shareholder bodies) and consideration of complex legal issues including the interplay between various items of different legislation ("**the Structural Issues**").

11 Since 8 August 2024 -

11.1 the legal, commercial, tax, regulatory and other professional teams advising the BRPs, Vision, the Lender Group, and the IDC, have been interacting, on an ongoing basis, multiple times each week since the Negative Vote occurred, to progress the Vision Sale of Asset transaction and work through and resolve the Structural Issues. This is, understandably, a time consuming and complex process; and

11.2 significant progress has been made since the Negative Vote in identifying and resolving the Structural Issues. The transactional structure has been identified and is being refined. The commercial agreements required to document same are being negotiated, drafted, and exchanged between the relevant counter parties and no significant commercial impediments have been identified to date. The relevant regulatory authorities are being consulted on an ongoing basis in order to arrive at the most expeditious and efficient methodology for implementing the Vision Sale of Asset transaction.



- 12 The Lender Group, Vision, the IDC and the BRPs remain committed to the implementation of the Vision Sale of Asset transaction as expeditiously as circumstances permit.
- 13 In relation to your frequent observation that Vision have not discharged the purchase price payable by them in consideration for the acquisition of the Lender Group debt and associated rights, such payment is, to your knowledge, only due and payable on 31 December 2024. Consequently, it is premature to suggest that Vision are in default of their obligations to the Lender Group in respect of that purchase.
- 14 It is also incorrect that the offer letter of 18 September 2024 contained a request that the BRPs table the RGS offer for creditors' consideration at a meeting to be convened in terms of section 151 of the Companies Act 71 of 2008 (as amended) ("**the Companies Act**"). The offer letter contains no such request.
- 15 In any event, as previously advised, our clients are precluded from proposing a new business rescue plan to creditors in terms of section 151 of the Companies Act until a stage is reached where the Plan is incapable of implementation.
- 16 Since that is not presently the case, the BRPs are obliged, in terms of section 152(5) of the Companies Act, to -
 - 16.1 attempt to satisfy any conditions on which the Plan is contingent; and
 - 16.2 implement the Plan.
- 17 The above is destructive of your assertions that the issues identified in your letter demand urgent steps from the BRPs, let alone require urgent determination by a court. Reiterating a previous demand does not detract from this fact.
- 18 Your client is forewarned that should it seek the relief foreshadowed in your letter on an urgent basis, as contended in your letter, such application will be opposed on, *inter alia*, the ground that it is not urgent, and a punitive costs order will be sought against your client.
- 19 Against that background, we respond to the substance of your letter as follows -
 - 19.1 the contents of paragraphs 1 to 6 of your letter have been dealt with in paragraphs 4 to 8 of the offer response letter. Our clients' position has not changed, nor has their contention that the Plan complies with section 150 of the Companies Act.
 - 19.2 the contents of paragraphs 11 to 25 have been dealt with in -
 - 19.2.1 paragraphs 11 to 16 of our letter addressed to you dated 10 July 2024;
 - 19.2.2 the affidavit deposed to by Mr Gerhard Albertyn dated 9 July 2024; and
 - 19.2.3 paragraphs 7.1 to 7.4, 11.2 and 11.3 of the 10 September letter;
 - 19.3 without detracting from what is set out above, and in amplification, the manner in which Vision proposes to transfer THL's assets to a company nominated by Vision ("**the purchaser**") and thereafter delist and liquidate the "shell" of THL pursuant to the Vision asset transaction will be achieved by means of, *inter alia*, the conclusion of an appropriate sale agreement taking into account, *inter alia*, all of the considerations referred to above;



- 19.4 your client consistently refers to the incorrect Acquisition Agreement, despite our clients' repeated advice that that agreement has been superseded. This has been dealt with in our clients' answering affidavit in the Powertrans application and in paragraph 9.3 of the 10 September letter; and
- 19.5 your attempt to draw inferences from the incorrect Acquisition Agreement and RGS's negotiations with the Lender Group is misguided. The content of paragraphs 21 and 24 are specifically denied.
- 20 Insofar as the demand in your email dated 14 October 2024 ("**your 14 October email**") is concerned, our failure to respond substantively to your letter at this stage is as a consequence of the fact that our clients do not have the necessary information in their possession to do so. We have written again to Vision and the Lender Group requiring them to provide our clients with further information.

Yours faithfully

Werksmans

CC Stein Scop Attorneys
ENSAfrica