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

CASE NO: **2026-031780**

In the matter between:

Gerhard Conrad Albertyn NO ,Trevor John Murgatroyd NO ,Petrus Francois Van Den Steen NO	Plaintiff / Applicant / Appellant

and

Tongaat Hulett Limited,The Affected Persons	Defendant / Respondent

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Replying Affidavit

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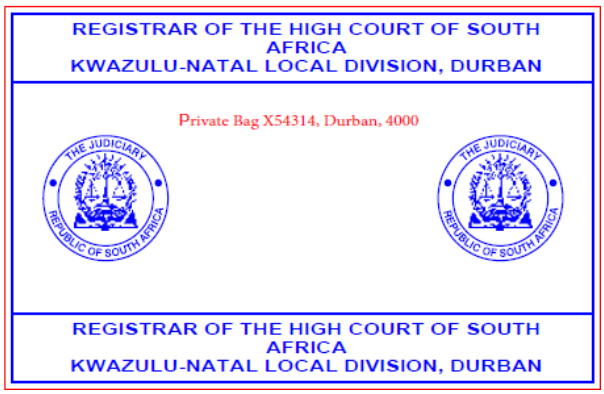

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IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: 2026-031780

In the matter between:

GERHARD CONRAD ALBERTYN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents

and

ABRINA 9422 (PTY) LIMITED	Intervening Party
RGS HOLDINGS (PROPRIETARY) LIMITED	Intervening Party

APPLICANTS':

1. **REPLYING AFFIDAVIT IN RESPONSE TO THE IDC'S ANSWERING AFFIDAVIT DATED 4 MARCH 2026**
2. **LIMITED REPLY TO VISION'S ANSWERING AFFIDAVIT DELIVERED IN RESPONSE TO RGS'S COUNTER APPLICATION**
3. **REPLYING AFFIDAVIT IN RESPONSE TO THE ANSWERING AFFIDAVIT OF SACGA**
4. **REPLYING AFFIDAVIT IN RESPONSE TO THE ANSWERING AFFIDAVIT DELIVERED BY ABRINA 9422 (PROPRIETARY) LIMITED**
5. **REPLYING AFFIDAVIT IN RESPONSE TO THE ANSWERING AFFIDAVIT DELIVERED BY THE MINISTER OF TRADE, INDUSTRY AND COMPETITION**

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I, the undersigned,

GERHARD CONRAD ALBERTYN

do hereby make oath and state that: -

1 I am the deponent to the founding affidavit in support of the application instituted by the business rescue practitioners of Tongaat Hulett Limited (in business rescue) (defined below as THL) for its provisional liquidation. My particulars appear from what is stated in my founding affidavit.

2 I am one of three jointly appointed business rescue practitioners of THL. I am authorised to depose to this affidavit in my capacity as such.

3 I attach marked "**THL1**" and "**THL2,**" confirmatory affidavits deposed to by Mr Trevor John Murgatroyd ("**Mr Murgatroyd**") and Mr Petrus Francois van den Steen ("**Mr Van den Steen**") in which they confirm the allegations made herein insofar as they relate to each of them.

4 The matters I traverse in this affidavit are, to the best of my knowledge, both true and correct. They are also within my personal knowledge - except where it is apparent from the context that they are not.

5 For the purposes of this affidavit, I refer to the following terms, as defined below -

5.1 **"Abrina"** is a reference to Abrina 9422 (Pty) Limited;

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5.2 **"Abrina's answering affidavit"** is a reference to the answering affidavit deposed to by Adharsh Kadarnath Maharaj on behalf of Abrina on 4 March 2026;

5.3 "**Adopted Plan**" means the Business Rescue Plan of THL as approved and adopted by an overwhelming majority of creditors at the Section 151 Meeting on 11 January 2024, which includes the Alternate Plan;

5.4 "**Alternate Plan**" means the sale of assets to Vision as contemplated in, *inter alia,* clause 6.1.7.1 of the Adopted Plan;

5.5 " **the IDC Answering Affidavit**" means the Answering Affidavit of Miya, that was received on 4 March 2026 and was deposed to by Miya subsequent thereto;

5.6 "**this application**" is a reference to the liquidation application instituted by the BRPs under the above case number on 12 February 2026;

5.7 "**the BRPs**" is a collective reference to the joint business rescue practitioners of THL, being Mr Murgatroyd, Mr Van den Steen and me;

5.8 "**the Companies Act**" means the Companies Act 71 of 2008 (as amended);

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5.9 "**founding affidavit**" means the founding affidavit in this application, to which I am the deponent;

5.10 "**IDC**" means The Industrial Development Corporation of South Africa Limited with registration number 1940/014201/06;

5.11 "**Lender Group**" means the erstwhile group of lenders to THL, all of whom were 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);

5.12 "**Lender Group Claims**" means the claims and security previously held by the Lender Group against THL, which were ceded to Vision, pursuant to a

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transfer certificate dated 3 November 2023, and after it (Vision) discharged its payment obligations owed to the Lender Group in full in May 2025;

5.13 "**Miya**" means Mr Bongani Miya in his capacity as Divisional Executive: Agro-Industries and Services Sector of the IDC;

5.14 **"SACGA**" is a reference to the South African Cane Growers Association NPC;

5.15 **"SACGA's answering affidavit"** is a reference to the answering affidavit deposed to by Thomas Bernhard Funke on behalf of SACGA on 3 March 2026;

5.16 "**Vision**" is a collective reference to Vision Investments 115 (Proprietary) Limited, Terris Agripro (Mauritius), Remoggo (Mauritius) PCC, Guma Agri and Food Security Ltd (Mauritius) And Almoiz Na Holdings Limited (United Arab Emirates);

5.17 **"Vision's answering affidavit"** means the affidavit deposed to by Rutenhuro Moyo on behalf of the sixth to tenth respondents on 5 March 2026;

5.18 "**Werksmans**" is a reference to Werksmans Attorneys Inc who are the BRPs attorneys of record in these proceedings and who have been the attorneys of record for THL upon the company having been placed in business rescue.

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6 It will be noted from the header to this affidavit that it constitutes the BRPs reply to each of the answering affidavits to which reference has been made. The BRPs have addressed each of the answering affidavits in the following order :

6.1 The IDC's answering affidavit dated 4 March 2026;

6.2 Vision's answering affidavit delivered in response to RGS's counter application;

6.3 the answering affidavit of SACGA;

6.4 the answering affidavit of Abrina; and

6.5 the answering affidavit of the Minister of Trade, Industry and Competition (**"the Minister"**).

7 When this application was called on 27 February 2026, this Court ordered, *inter alia*, that -

7.1 answering papers are to be filed by 17:00 on Wednesday, 4 March 2026; and

7.2 replying papers, if any, must be filed on or before Friday, 6 March 2026.

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8 Within the time period available for me to prepare replying papers in response to no less than four lengthy answering affidavits, it has not been possible for me to address all of the allegations and assertions contained in each answering affidavit. This massive pressure has been exacerbated by the fact that not one of the opposing parties (including the IDC) delivered their answering affidavits timeously and before 17:00 on 4 March 2026. The answering of the Minister was only delivered on 5 March 2026.

9 In this affidavit I have endeavoured to answer the main themes that pervade the various answering affidavits. The content of this affidavit does not constitute a comprehensive response. I reserve the BRPs right to supplement this affidavit in due course, should it become necessary to do so.

10 Against the background of what is set out above, any allegation and/or assertion contained in the various answering affidavits that is inconsistent with the content of this affidavit and/or the founding affidavit and which has not been specifically addressed by me in this affidavit and/or in the founding affidavit, is denied.

THE IDC

OVERVIEW AND SUMMARY OF RESPONSES TO THE IDC ANSWERING AFFIDAVIT

11 As will appear from what is set out in this affidavit, the IDC has not provided this Honourable Court with a single objective or factually tenable basis as to why this Court should exercise its discretion in refusing the relief sought by the BRPs. The

objective facts in the founding affidavit, which are not seriously disputed, overwhelmingly support the BRPs' position for at least the following reasons -

11.1 the IDC's contentions are clearly inconsistent and constitute an *ex post facto* defence of and rationalisation for its failure to (i) conclude an agreement with Vision and (ii) provide the desperately needed funding required by THL and are belatedly advanced to support its unjustified opposition to these proceedings;

11.2 it is untenable for the IDC to selectively rely upon representations from the BRPs to advance its case, when it is the same BRPs who identified a R600 million funding requirement which has, to date, not been satisfied;

11.3 once the BRPs concluded that no reasonable prospect of rescue existed, they were statutorily obligated to apply for liquidation. The peremptory wording in Section 141(2) does not allow for the introduction of a discretionary element into the decision which has now been made by the BRPs to launch this application. The BRPs cannot be criticised for discharging a mandatory statutory duty. The propriety of their conclusion is a matter for the court to assess under Section 141(3), but the BRPs' compliance with Section 141(2) is beyond reproach and in the circumstances is not genuinely criticised; and

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11.4 the IDC's characterisation of the application as "*premature*" in circumstances where it refused to provide urgently required funding conflates the practitioner's mandatory duty with the court's discretion;

11.5 the IDC's proposals amount to speculative optimism unsupported by concrete commitments. There is no -

11.5.1 binding funding commitment;

11.5.2 clearly identified alternative to the failed Plan;

11.5.3 stakeholder commitment from Vision; and

11.5.4 realistic timeframe for achieving the objectives of business rescue.

12 Stating that funding "*will be considered*" and that a fresh SEP process "*could*" identify a willing purchaser does not satisfy the statutory requirements contemplated by Chapter 6 of the Companies Act. "*Reasonable prospect*" requires more than a theoretical possibility; it requires a concrete, cogent, and objectively reasonable basis for concluding that a business rescue can be achieved. The IDC has not come close to satisfying these requirements.

13 On an objective assessment of the facts in the founding affidavit it is clear that there is no reasonable prospect of rescuing THL because -

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13.1 the Adopted Plan has failed;

13.2 the Sale Agreements have lapsed;

13.3 the conditions precedent have not been fulfilled;

13.4 Vision has refused to proceed with the IDC's proposals and has issued a demand to THL for payment of the amount of R11.7 billion;

13.5 no concrete alternative has been identified;

13.6 no binding funding commitment from the IDC (or anyone else for that matter) exists; and

13.7 THL has been in business rescue for over three years without achieving the objectives of Chapter Six. The BRPs have, with the assistance of the IDC PCF managed to maintain operations and to conduct, administer and operate the business of THL. However, on any version the significant changes in the sugar industry and trading conditions have necessitated further funding which all opposing parties refer to at length but which none have actually provided.

14 The BRPs have concluded that rescue is no longer achievable. The factual basis supporting that conclusion is exhaustively detailed in the founding affidavit. They have discharged their statutory duty by bringing this application. The socio-

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economic consequences of liquidation, whilst devastating and regrettable, do not override the statutory obligations of business rescue practitioners. As appears from the founding affidavit, the BRPs have done everything possible, and have explored every opportunity in an attempt to avoid this application but, regard being had to their statutory duties, they have been left with no alternative. Business rescue is intended to be a temporary measure; it cannot continue indefinitely in the hope that circumstances might change. All that the BRPs have been left with by the IDC and the other parties who have opposed this application is unsubstantiated and unsupported hope, without any unconditional financial commitment.

15 The BRPs respectfully submit that the court should grant an order discontinuing the business rescue proceedings of THL and placing the company into provisional liquidation.

16 Vision has not opposed (nor does it support) the liquidation. It has only opposed the relief sought by RGS in its counter application. But there are aspersions cast at the BRPs that cannot go unanswered. These assertions are inappropriate, factually inaccurate and designed to improperly impugn the BRPs conduct. For that reason I deal only with the assertions and allegations in Vision's affidavit which are directed at the BRPs.

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STRUCTURE OF THIS AFFIDAVIT

17 The first part of this affidavit in response to the IDC's answering affidavit is structured as follows -

17.1 first, I provide a concise recap of the Business Rescue Plan and the Sale Agreements;

17.2 second, I deal with the required legal framework to be taken into account for purposes of adjudicating this application;

17.3 third, I identify the basis for the IDC's opposition to this application;

17.4 fourth, I set out a brief chronology of the events that culminated in the launching of this application;

17.5 fifth, I address the IDC's arguments *vis-a-vis* the socio economic implications of THL being liquidated;

17.6 sixth, I deal with the IDC's legally inept invitation to the BRPs to embark upon a fresh SEP process;

17.7 seventh, I address the reasons why the IDC's Governance Processes are incompatible with THL's Urgent Requirements; and

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17.8 finally, I deal with the issue of costs.

RECAP: THE BUSINESS RESCUE PLAN AND THE SALE AGREEMENTS

18 Following THL's entry into business rescue in October 2022, the BRPs conducted an extensive Sale and Equity Process ("**SEP**") over a period of approximately 14 months.

19 Following the acquisition by Vision of the Lender Group claims, the SEP ultimately identified Vision as the only credible bidder prepared to acquire THL's business on terms acceptable to creditors.

20 Two business rescue plans were published, one for RGS and one for Vision. RGS withdrew at the last minute, which left only one plan to be considered by the creditors of THL.

21 The business rescue plan ("**the Adopted Plan**") was proposed by Vision and approved and adopted by an overwhelming majority of creditors present at the meeting held on 10 and 11 January 2024. The Adopted Plan was voted on by the Lender Group and not Vision, despite Vision's acquisition of the claims. This fact is common cause.

22 The Adopted Plan contemplated, *inter alia*, the disposal of THL's business to Vision through a series of interconnected transactions, which included, *inter alia* -

22.1 the South African Sale of Business Agreement which regulates the sale of THL's South African sugar operations to Vision, subject to conditions precedent including (i) the refinancing of the IDC PCF; and (ii) the payment of an amount in excess of R500 million to the South African Sugar Association ("**SASA**") into escrow and a R75 million distribution to concurrent creditors;

22.2 other offshore agreements which regulate the disposal of THL's interests in sugar operations in Zimbabwe, Botswana, and Mozambique; and

22.3 the acquisition agreements: in terms of which, Vision would acquire the Lender Group Claims (as defined in paragraph 5.12 above).

23 The Adopted Plan was the product of rigorous analysis by the BRPs, extensive stakeholder engagement and ultimately represented the only viable restructuring solution that was identified through a comprehensive market SEP process.

THE STATUTORY SCHEME THAT GOVERNS BUSINESS RESCUE AS CONTEMPLATED IN CHAPTER 6 OF THE COMPANIES ACT THAT IS RELEVANT TO AN ADJUDICATION OF THE RELIEF SOUGHT IN THIS APPLICATION

24 Chapter 6 of the Companies Act establishes a comprehensive statutory scheme for the rescue and recovery of financially distressed companies. The relevant provisions for purposes of this application are Sections 128, 133, 141, and 152.

25 The IDC correctly states that section 128(1)(b) defines *"business rescue"* as proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for -

25.1 the temporary supervision of the company, and of the management of its affairs, business, and property;

25.2 a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and

25.3 the development and implementation, if approved, of a plan to rescue 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 or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company.

26 Section 128(1)(h) provides that *"reasonable prospect"* means, in relation to business rescue proceedings, the prospect of achieving the goals of business rescue as contemplated in section 128(1)(b)(iii).

27 A *"reasonable prospect"* requires more than a mere theoretical possibility. A reasonable prospect in this context means "*not irrational*" and that there must be a "*reasonable*" rather than merely "*possible*" prospect of rescue. The test is

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objective: the court must assess whether there is a concrete, cogent, and objectively reasonable basis for concluding that the goals of the business rescue can be achieved.

28 Section 133 imposes a moratorium on legal proceedings against a company in business rescue. Subsection 133(1) provides, *inter alia*, that during business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except, *inter alia* -

28.1 with the written consent of the practitioner;

28.2 with the leave of the court and in accordance with any terms the court considers suitable; or

28.3 as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings began.

29 The moratorium is a fundamental feature of business rescue, providing the *"breathing space"* necessary for the practitioner to develop and implement a rescue plan.

30 However, the moratorium does not suspend the crystallisation of events of default under financing agreements; it merely suspends enforcement of the consequent claims. Vision's demand dated 8 February 2026 is legally ineffective to compel immediate payment whilst business rescue continues, but it is nevertheless probative evidence of the breakdown in stakeholder relationships.

31 Section 141 governs the termination of business rescue proceedings. Section 141(2)(a) is of central importance to this application. It provides that if at any time during business rescue proceedings, the practitioner concludes that there is no longer a reasonable prospect for the company to be rescued, the practitioner must -

31.1 inform the court, the company, and all affected persons in the prescribed manner of that conclusion; and

31.2 apply to the court for an order discontinuing the business rescue proceedings and placing the company into liquidation.

32 There are three key features of Section 141(2) which warrant emphasis -

32.1 the trigger is the practitioner's subjective conclusion that no reasonable prospect of rescue exists. The practitioner is not required to obtain stakeholder consensus, court approval, or creditor sanction before reaching this conclusion. The practitioner's professional judgment is determinative at this stage. The practitioner is entrusted by statute with the responsibility of

assessing whether rescue remains achievable. Stakeholders are entitled to oppose the application, but they cannot prevent the practitioner from bringing it;

32.2 once the practitioner reaches this conclusion, the statute is peremptory: the practitioner ***"must"*** inform the relevant parties and ***"must"*** apply for an order discontinuing business rescue and placing the company into liquidation. The word ***"must"*** is imperative, not permissive. The practitioner has no discretion to refrain from bringing the application, regardless of stakeholder objections, the desirability of alternative outcomes, or the socio-economic consequences of liquidation; and

32.3 the application is for an order *"discontinuing the business rescue proceedings and placing the company into liquidation."* This is the only relief contemplated by section 141(2)(a)(ii). The practitioner is not empowered to seek alternative relief such as a continuation of business rescue on modified terms.

33 Section 141(3) of the Companies Act confers a separate and distinct discretion upon the court. That section provides that upon receipt of an application in terms of subsection (2)(a)(ii), the court may -

33.1 make an order discontinuing the business rescue proceedings and placing the company into liquidation; or

33.2 decline to make such an order, if it finds that there is a reasonable prospect of the company being rescued.

34 Section 141(3) empowers the court, not the practitioner, to make the ultimate determination. This Honourable Court is not bound by the practitioner's conclusion; the court must independently assess whether the evidence supports a finding that no reasonable prospect of rescue exists. But the practitioner's professional judgment, informed by ongoing engagement with the company's affairs over an extended period, is entitled to substantial weight.

35 Section 141(3) draws a critical distinction between the practitioner's duty and the court's discretion. These roles operate sequentially, not concurrently, and must not be conflated as the IDC has done.

36 The practitioner's duty under Section 141(2) arises when the practitioner concludes that no reasonable prospect of rescue exists. The duty is to bring the application. The duty is mandatory and it is not negotiable. We, the BRPs, cannot be criticised for discharging a mandatory statutory obligation.

37 The court's discretion under Section 141(3) arises upon receipt of the application. The court is empowered to assess independently whether a reasonable prospect of rescue exists. The court may grant the order sought or decline to grant it. The court's discretion is informed by the evidence; the purpose of the Companies Act and the interests of all Affected Persons.

38 The IDC's characterisation of the application as *"premature"* or *"precipitous"* conflates the practitioner's duty with the court's discretion. The BRPs cannot be criticised for discharging their statutory duty. The propriety of the BRPs' conclusion is a matter for the court to assess under Section 141(3). It is not a basis for impugning the BRPs' compliance with Section 141(2).

39 Section 152(4) provides that an adopted business rescue plan is binding on the company, its creditors, and the holders of the company's securities, regardless of whether such persons were present at the meeting, voted in favour of adoption of the plan, or in the case of creditors, had proven their claims. The Adopted Plan is therefore binding on Vision, which proposed and voted in favour of the Adopted Plan.

40 The binding nature of the Adopted Plan does not, however, preclude the failure of the Adopted Plan if its provisions and conditions precedent are not fulfilled. The Adopted Plan contemplated specific conditions precedent including, *inter* alia, the refinancing of the PCF and the payment of over R500 million to SASA, which have not been met. The binding nature of the Adopted Plan cannot cure the failure of its conditions precedent.

41 I make some final observations vis-a-vis the IDC's incorrect interpretation of some of the provisions of Chapter 6 of the Companies Act -

42 The IDC -

42.1 asserts that "*... a business rescue practitioner is permitted, within the chapter 6 restructuring framework, to publish a revised business rescue plan after a business rescue plan that is adopted by creditors fails on its implementation.*", which assertion is misguided. The Companies Act does not state this it all - the IDC is conflating section 141 of the Companies Act with section 151 of the Companies Act which stipulates that if creditors reject a proposed business rescue plan during a duly convened meeting of creditors for the purposes contemplated in section 151 of the Companies Act, then the business rescue practitioners are permitted to propose an amendment or alterative to creditors;

42.2 asserts that "*chapter 6 restructuring scheme - (28.1) requires that the rights and interests of all parties and stakeholders affected by the business rescue should be considered and balanced so that a commercially fair and balanced outcome, cognizant of all rights and interests, is achieved through a restructuring solution*". But the IDC glibly ignores the fact that creditors voted overwhelmingly for the Vision solution;

42.3 alleges that *"In terms of the chapter 6 restructuring scheme, the PCF claim enjoys a superior ranking over the secured assets outlined earlier. Any change in that position will prejudice the rights and interests of IDC which seems indefensible and unreasonable given the support (the oxygen) that IDC has been providing to THL since late 2022 and in light of the position*

that I have set out above, that THL should not be placed in liquidation having regard to the current facts.". This is manifestly incorrect because secured claims remain secured claims and do not get back ranked by PCF.

42.4 Reference is made to the judgment of Sher AJ, as he was then, in *Booysen v Jonkheer Boerewynmakery (Proprietary) Limited*[1] as though it somehow supports its version. But it does not because the Adopted Plan considered the rights and interests of all parties which resulted a commercially balanced outcome. In fact, and what will appear from what is set out in this affidavit, Sher AJ's judgment is supportive of the case made out by the BRPs in this application in at least the following respects -

"[47] *... when seeking to interpret the provisions in a manner which promotes the "efficient" rescue of corporate entities the court must, in my view, also bear in mind that "it is axiomatic that business rescue proceedings, by their very nature, must be conducted with the maximum possible expedition".**[83]** Legislative recognition of this is reflected in the relatively short time-periods which are provided for in the Act for the implementation of such proceedings ...*;

"[51] *... if the purpose of the rescue plan is to throw a life-line to a company in financial distress to help keep it afloat, then*

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[1] [2016] ZAWCHC 192; [2017] 1 All SA 862 (WCC); 2017 (4) SA 51 (WCC)

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the moratorium serves to prevent it from being overwhelmed by stormy financial waters, and from being sunk by an opportunistic creditor's torpedo. It is plain however that the moratorium is not intended to be an absolute bar to legal proceedings against a company and it is intended to serve merely as a procedural limitation on a litigant's rights of action. Because it is only a procedural limitation and not a bar in itself to proceedings against a company in business rescue, the Supreme Court of Appeal held in Chetty that the requirement of consent from the practitioner or leave from the court, is not a jurisdictional fact or condition precedent for such legal proceedings and the legislature did not intend to invalidate or nullify such proceedings if they were brought without the requisite prior consent or leave having been obtained…";

"[52] *…the purpose of obtaining the consent of the business rescue practitioner or the leave of the court, was in order to afford the practitioner an opportunity to consider the nature and validity of the proposed claim which was to be made in the envisaged proceedings, and its potential impact on the "wellbeing" of the company and its ability to regain its financial health, and how best it was to be dealt with eg by settling it or by continuing with the litigation ..."*

THE MAIN THRUST OF THE IDC'S OPPOSITION TO THIS APPLICATION

43 The IDC opposes this application on the following (disputed) principal grounds -

43.1 the application is *"premature"* and the urgency is *"manufactured."*;

43.2 THL can operate within the existing R2.3 billion PCF facility until June 2026 without additional funding;

43.3 the failure of the Adopted Plan does not terminate business rescue; a fresh SEP process can be undertaken;

43.4 the IDC has proposed continued provision of PCF and will ***"consider"*** additional funding requests. At the time of deposing to this affidavit, the BRPs have not yet seen the facilities to which the IDC refers. The IDC fails to take this Honourable Court into its confidence by disclosing the quantum of the facility offered, the period thereof and the terms related thereto.

43.5 THL is *"not a failing business"* and is capable of being rescued within the Chapter 6 restructuring scheme;

43.6 Vision's demand dated 8 February 2026 is legally ineffective due to the moratorium in section 133; and

43.7 liquidation will be *"value destructive"* and contrary to stakeholder interests.

44 The BRPs submit that -

44.1 each of these grounds is misconceived, factually unsustainable, or legally irrelevant. The court should resolve the disputes in favour of the BRPs and grant the order sought;

44.2 the so-called disputes now raised by the IDC must be determined in favour of the BRPs, because the contemporaneous documents attached to the founding affidavit do not support the noble response of the IDC, in the face of public criticism and scrutiny in circumstances where the aforementioned documents reflect that the BRPs repeated requests over months for urgent and immediate funding, were not met.;

44.3 the BRPs have discharged our mandatory statutory duty under Section 141(2) of the Companies Act by bringing this application;

44.4 the IDC has failed to discharge its burden of demonstrating that a reasonable prospect of rescue exists within the meaning of Section 128(1)(h) of the Act;

44.5 the IDC contentions that we have failed to -

44.5.1 explain why the funding challenges cannot be addressed within the chapter 6 restructuring scheme; and

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44.5.2 recognise the assessment of management that THL can operate within the confines of the existing PCF facility and its available and projected cash flow until June 2026

are denied for the reasons which follow;

44.6 the IDC has not taken this Honourable Court into its confidence by disclosing that it has frozen the PCF Facility and THL's bankers have frozen THL's transactional accounts. We have managed to have certain accounts unfrozen, but IDC has not yet committed to the reinstatement and continued utilisation of PCF to allow for the business to operate as close to normal as possible under the circumstances. The freezing of the PCF Facility and the refusal by the IDC to allow payments / draws in terms of the PCF Facility occurred prior to the institution of this application by the BRPs, and was exacerbated after the filing of the application.

45 For at least the reasons set out in paragraph 44 and its sub paragraphs above, we respectfully submit that this Honourable Court should grant the order sought, discontinuing business rescue proceedings and placing THL into liquidation. The BRPs persist with the relief sought in this application, despite all the opposition which advance no factual or legal basis upon which the BRPs should change their stance.

CHRONOLOGY OF THE EVENTS THAT CULMINATED IN THE LAUNCHING OF THIS APPLICATION

46 An understanding of the events that took place over the period September 2025 to February 2026 is crucial to the reasons why the BRPs concluded that no reasonable prospect of rescue remains and why this matter was instituted on an urgent basis. There is a full account of these events in the founding affidavit. I set out below a summary of the most significant events that resulted in section 141(2) of the Companies Act being triggered.

47 In late September 2025, THL's liquidity position deteriorated significantly. Projections indicated a cash shortfall of approximately R500 million by the end of October 2025, with imminent payment obligations to cane growers and SASA totalling R800–900 million. The BRPs commenced engagement with the IDC regarding urgent funding requirements. It was not the restructuring of the PCF that was required, it was the IDC agreeing to the refinancing of it into VSSA.

48 Thereafter, a workshop was held with the IDC and Vision on 6 October 2025. The BRPs made it clear that THL's funding requirement had increased to R600 million, and this funding was urgent.

49 By the end of October 2025, THL's liquidity position had deteriorated to its tightest level since entering business rescue. THL was fully drawn on its R2.3 billion PCF facility with approximately R300 million cash available to cover approximately R750 million in payments due and/or falling due. In the circumstances, Mr Murgatroyd (on behalf of the BRPs) addressed correspondence to the IDC on 31 October 2025 formally requesting R300 million by 21 November 2025 and a

further R300 million by 12 December 2025 (see annexure FA14 to the founding affidavit).

50 Despite the events traversed in paragraphs 78 to 83 of the founding affidavit, no funding was received on 21 November 2025 and no funding from the IDC was forthcoming, which resulted in that deadline being extended to 28 November 2025 - but again the coffers remained bare.

51 On 29 November 2025, the BRPs were advised that the IDC's Executive Credit and Investment Committee ("**ECIC**") had approved the funding request of R600 million—the full amount requested by the BRPs but this was subject to the IDC's Board Investment Committee's ("**BIC**") approval.

52 On 17 December 2025, the BRPs received an email from Mr Miya (see FA30 to the founding affidavit). The purpose of Mr Miya's e-mail was to update the BRPs in respect of the IDC's process to assist the BRPs in addressing Tongaat's liquidity challenges. The BRPS were informed by Mr Miya that the BIC had not approved the R600 million funding as requested. Instead, *inter alia,* the BIC approved only R200 million, conditional upon Vision matching the contribution. Later that day Vision declined the IDC's matching proposal, advising that "*funding the PCF was not a proposal to which Vision could agree.*"

53 Over the period 2 January 2026 to 12 January 2026, the BRPs addressed further correspondence to the IDC (annexures FA33, FA34, FA35, FA36) reiterating the urgent funding requirement of R600 million.

54 As a consequence of the fact that the urgent funding requirement of R600 million was not met, the BRPs addressed correspondence to the IDC on 22 January 2026 requesting formal written advice of any events and circumstances which may result in the BRPs reasonably concluding that a reasonable prospect of rescue remains. The IDC did not respond to that correspondence.

55 On 29 January 2026, the IDC Board again approved R200 million, conditional upon, *inter alia*, (i) Standard Bank matching the increase (despite Standard Bank not having previously agreed thereto), and (ii) Vision extending the Sale Agreements beyond 31 January 2026. Standard Bank declined to match. The approval of the granting of funding conditionally on the occurrence of events or reliant upon the conduct of others is not funding. As a fact, no funds were provided by the IDC then or at any time thereafter.

56 Thereafter, Vision addressed correspondence to the BRPs (annexure FA48) refusing to extend the Sale Agreements beyond 7 February 2026 and characterising the BRPs' conduct in terms the BRPs describe as *"a self-serving narrative"* containing *"factual inaccuracies"*.

57 Devastatingly to the BRPs, the time for the fulfilment of the conditions precedent under the Sale Agreements lapsed on 7 February 2026 with the consequence that the Sale Agreements thereby lapsed.

58 To make matters worse, on 8 February 2026, Vision, as facility agent and successor-in-title to the Lender Group, notwithstanding the moratorium, issued a formal demand declaring all Senior Facility Outstandings immediately due and payable in the amount of R11,738,406,991.00, citing Events of Default including the BRPs' conclusion that no reasonable prospect of rescue remains and the lapsing of conditions precedent on 7 February 2026. The IDC asserts that -

> "31.2.1 *… [the BRPs] reliance for the urgency of this application is placed on a recent demand made by Vision Investments 155 Proprietary Limited (**V155**), as facility agent on the instructions of Vision (as lender and successor-in-title of the Lender Group), a secured pre- commencement creditor, against THL,*

but that is not correct. This matter requires urgent redress because the Adopted Plan is no longer implementable, and liquidity is highly constrained. The demand merely amplifies the extent to which THL is insolvent.

59 Four days later this application was instituted pursuant to Section 141(2)(a)(ii) of the Companies Act.

60 As set out above, once the BRPs concluded that no reasonable prospect of rescue existed, they were statutorily obligated to apply for liquidation. Section 141(2) is peremptory: the word *"must"* affords no discretion. The BRPs

had no lawful option to continue with business rescue proceedings having reached this conclusion.

61 The IDC's criticism of the BRPs for bringing this application is therefore misdirected. Despite all the support provided by the IDC, the BRPs were not exercising a discretion that the IDC can legitimately criticise. The BRPs have taken steps to discharge a mandatory statutory duty. A practitioner who concludes that no reasonable prospect of rescue exists but fails to bring an application under Section 141(2) will be in breach of their statutory duty and will be exposed to personal liability, regulatory sanction and removal from office.

62 Furthermore and fundamental to the exercise of the BRPs duties is that in the absence of funds and an inability to make payment of critical expenses, a BRP (as would be the case with a director of a company) cannot continue to trade in reckless disregard for the company's creditors well knowing that he has no means of making payment to them.

63 The BRPs are experienced practitioners and officers of this Honourable Court who are bound by statute. Were the BRPs to recklessly continue to trade in THL well knowing it is factually and commercially insolvent with no prospect of immediate and urgently required funding being provided and then failing to act in accordance with section 141(2) of the Companies Act, we could potentially become personally liable for debts incurred by THL in business rescue.

64 The IDC apparently expects the BRPs to breach their statutory duty by continuing with business rescue notwithstanding their conclusion and in the face of a consideration of conditional funding being promised by the IDC when nothing has been forthcoming despite months of requests by the BRPs. The BRPs cannot accept this invitation. The BRPs are statutorily precluded from doing so. They have discharged their statutory obligation by bringing this application and the BRPs respectfully submit that the court should grant the relief sought.

65 It is clear that the IDC portraying itself as the proverbial "*white knight*" is nothing more than smoke and mirrors designed to persuade this Court that funding is imminent. The declaration of financial assistance in the face of public scrutiny and criticism, where no assistance has been provided, is of no use to the BRPs or THL. At the time of deposing to this affidavit, there is no funding that will enable THL to conduct business (even in business rescue) beyond the end of this month. The IDC's opposition to this application is accordingly, inappropriate, completely self-serving and in part disingenuous.

66 As appears from the founding affidavit[2], the BRPs' conclusion was informed and precipitated by -

66.1 five months of engagement with, *inter alios*, the IDC and Vision without resolution to the imminent funding requirements of THL;

[2] paragraphs 15, 187, 247, 251, 253–256

66.2 Vision's refusal to extend the deadline for the fulfilment of the suspensive conditions beyond 7 February 2026 resulting in the failure of conditions precedent, which was a material event;

66.3 the IDC's failure to respond to the BRPs' letter of 22 January 2026; and

66.4 Vision's demand dated 8 February 2026.

67 Our conclusions are not capricious. They are the product of careful, well considered, and informed professional judgment.

SOCIO-ECONOMIC CONSEQUENCES CANNOT OVERRIDE THE STATUTORY REGIME SET OUT IN CHAPTER 6 OF THE COMPANIES ACT

68 The BRPs have considered the serious socio-economic effects of their conclusions, and the heavy reliance of the IDC (and SACGA) upon the socio-economic consequences of liquidation, which include, *inter alia* -

68.1 wide scale job losses;

68.2 damage to cane growers;

68.3 destabilisation of rural communities; and

68.4 the potential loss of South Africa's largest standalone sugar refinery.

69 The BRPs do not dispute that devastating horrific consequences will occur if the relief sought in this application is granted.

70 On the contrary, the BRPs are acutely conscious of them.

71 These undeniable realities have been at the forefront of the BRPs' minds throughout the three years of the attempt to rescue THL from severe financial distress, with the assistance of the IDC and for which the BRPs have expressed their gratitude to the IDC.

72 Despite the efforts of the IDC, the statutory test contemplated in the Companies Act is not whether liquidation is desirable. The test under Section 141(2) is whether there remains a reasonable prospect of rescue. If there is no reasonable prospect of rescue, the BRPs are statutorily obligated, with no discretion, to apply for liquidation regardless of the consequences.

73 The Companies Act prescribes that where rescue is not reasonably achievable, liquidation must follow. Respectfully, this Honourable Court is enjoined to refuse an indefinite continuation of business rescue in the hope that rescue might eventually become achievable. Ultimately, *"hope is not a strategy"*.

74 Moreover, section 141(2) of the Companies Act would be rendered nebulous and nugatory if practitioners were required to continue with business rescue proceedings indefinitely because the consequences of a provisional liquidation may be severe, with adverse socio-economic effects. Business rescue is, by

definition, concerned with financially distressed companies. The consequences of liquidating a financially distressed company are always severe. If the severity of consequences were a bar to liquidation, no company in business rescue would ever be liquidated—even when rescue is manifestly impossible. This is the reality for THL.

75 In summary, we submit that whilst indeed the socio-economic consequences of liquidation are relevant to the court's exercise of a discretion under section 141(3) of the Companies Act, these cannot override the statutory provisions prescribed in Chapter 6 of the Companies Act. The facts demonstrate that no reasonable prospect of rescue exists. Whilst this decision is burdensome, it is with very heavy hearts that we submit that this Honourable Court should grant the relief sought.

THE IDC INVITATION TO THE BRPS TO EMBARK UPON A FRESH SEP PROCESS

76 The IDC's invitation to the BRPs to embark upon a fresh SEP process, to consider revised business rescue plans, and to continue engaging with stakeholders in the hope that rescue might eventually become achievable is both mischievous and unbelievable. The BRPs cannot responsibly accept this invitation.

77 Section 128(1)(h) of the Companies Act requires a *"reasonable prospect"* of achieving the objectives of business rescue. This requires more than a theoretical possibility; there must be a concrete, cogent, and objectively reasonable basis for concluding that rescue can be achieved.

78 The IDC's proposals fall hopelessly short of a binding funding commitment. The IDC offers only *"consideration"* of future funding requests, subject to unspecified criteria and governance processes that have already proven incapable of meeting THL's urgent requirements. *"Consideration"* is not a commitment. The IDC's track record shows that there is no guarantee that the IDC will approve the urgently needed funding to keep the operations going and demonstrates the futility of continuing to rely upon its exhaustive ongoing governance processes which have, despite good intentions and the passing of many months, failed to yield a positive outcome.

79 The IDC has not even so much as identified a tangible alternative to the failed Adopted Plan. It completely ignores that the Adopted Plan was the product of an extensive 14-month SEP process and that at the end of that process, despite how it came about, Vision was the only credible bidder. It is unfortunate that Vision has allowed the sale agreements to lapse and refused to proceed.

80 The IDC has not identified any alternative bidder, any alternative transaction structure, or any concrete pathway to achieving the objectives of Section 128(1)(b)(iii). Hope that a fresh SEP process *"could"* identify a willing purchaser is speculative, not reasonable and does not take account of the fact that creditors need to vote thereon.

81 Moreover, Vision has refused to extend the Sale Agreements, has imposed conditions not contained in the Adopted Plan, and has issued a demand for

R11.7 billion. No restructuring can succeed without the cooperation of the majority secured creditor and promoter of the Plan. Vision's conduct unfortunately and unequivocally demonstrates that such cooperation and support is a chimera and will not be forthcoming.

82 THL faces a milling season commencing in April/May 2026 which will require substantial working capital. The IDC's assertion that THL can operate until June 2026 conveniently addresses only the off-crop period, not the capital-intensive milling season. There is no funding certainty for the costly milling season and consequently THL must be placed in liquidation.

83 We have tirelessly engaged with THL's management, creditors, stakeholders, financial experts and contractors, cane growers, small scale farmers, SASA and its members and experienced, highly regarded commercial attorneys and counsel and analysed financial data on an ongoing basis since October 2022. Our conclusion that no reasonable prospect of rescue exists was not capricious, hasty, or ill-considered. It was the product of -

83.1 five months of intensive engagement with the IDC and Vision without resolution;

83.2 Vision's unilateral refusal to extend the Sale Agreements beyond 7 February 2026;

83.3 the failure of the conditions precedent to the Adopted Plan;

83.4 the IDC's failure to respond to the BRPs' letter of 22 January 2026;

83.5 refusal of Vision to extend;

83.6 Vision's demand dated 8 February 2026 declaring R11.7 billion due and payable;

83.7 the outcome of comprehensive financial analysis demonstrating THL's inability to sustain operations through the forthcoming milling season; and

83.8 over three years of engagement with THL's business, creditors, stakeholders, financial experts and contractors, cane growers, small scale farmers, SASA and its members and experienced and highly regarded commercial attorneys and counsel.

84 Substantial weight must be given by this Honourable Court to the BRPs' professional judgment particularly after considering the socio-economic impact and then in relation the discretion it enjoys in terms of section 141(3) of the Companies Act. The IDC offers in support of this invitation only speculative optimism: hope that funding *"will be considered"*, hope that a fresh SEP process *"could"* identify a willing purchaser, hope that management's revised cash flow projections will prove accurate notwithstanding the contemporaneous record that contradicts them.

85 Chapter 6 of the Companies Act entrusts the initial assessment to the practitioner. The court's role is to assess whether the practitioner's conclusion is objectively justified. On the facts before this Honourable Court, the BRPs respectfully submit that a conversion of the business rescue process to liquidation is, despite the dire socio-economic effects (which they recognise and acknowledge), not merely justified, it is an inescapable and inevitable conclusion.

86 For the IDC to suggest that we restart the SEP process *de novo* in defiance of our statutory obligations by embarking upon a speculative process with no identified concrete funding; no identified purchaser; no stakeholder commitment; no realistic timeframe; and no concrete basis for reasonably concluding that rescue can be achieved, is untenable.

87 The IDC's invitation to continue business rescue in these circumstances is an invitation to breach a statutory duty.

88 The BRPs decline that invitation.

89 We have responsibly and reasonably concluded, pursuant to over three years of engagement with THL's business, years of litigation to stave off the attempts by the disgruntled losing bidder (RGS) and at least five months of intensive negotiations with the IDC and Vision, that no reasonable prospect of rescue exists. We have discharged our statutory duty by bringing this application as we are enjoined to do.

39 G-C

90 In respect of the TERS application, that application was pursued post haste, but as of the date of deposing to this affidavit, the CCMA is refusing to progress matters due to the non-availability of audited financial statements.

THE ADOPTED PLAN HAS FAILED AND CANNOT BE IMPLEMENTED

91 The Adopted Plan was the product of an extensive SEP process conducted over 14 months, approved by an overwhelming majority of creditors in January 2024. The Adopted Plan was the only viable restructuring solution identified through a comprehensive marketing process. Following approval and adoption of the business rescue plan by the creditors, including the Lender Group, now Vision, Vision was the only credible bidder with an approved business rescue plan.

92 I reiterate that the Adopted Plan was extensively considered by the IDC prior to its adoption in January 2024. Input was provided by the IDC and conditions inserted into the Adopted Plan at the insistence of the IDC. Whilst the IDC cast no vote when the plan was adopted, it satisfied itself with and accepted the contents of the plan prior to its adoption.

93 The Adopted Plan has now failed. The failure is attributable not to any act or omission of the BRPs, but to the following circumstances -

93.1 the conditions precedent to the South African Sale of Business Agreement and other sale agreements cannot be fulfilled;

40 G.C

93.2 the Adopted Plan contemplated mainly two critical conditions precedent: (i) the refinancing of the IDC PCF, and (ii) the payment of R517 million to SASA into escrow. Neither condition has been fulfilled. In amplification, the -

93.2.1 IDC has not approved the PCF refinancing on unconditional terms. The IDC's approval of additional PCF of R200 million was conditional upon Vision or SBSA matching the contribution; both Vision and SBSA declined. It bears mention that SBSA was not consulted on this. In fact, SBSA was surprised that the IDC had committed SBSA to an exposure that SBSA had not agreed to nor did SBSA have sight of the terms and/or security available; and

93.2.2 the SASA escrow has not been funded. This is a consequence of the failure to secure unconditional funding from the IDC and the breakdown in negotiations with Vision;

93.3 Vision has refused to extend the Sale Agreements beyond 7 February 2026. In this regard, Vision—the party that proposed and approved the Adopted Plan—unilaterally refused to extend the Sale Agreements to permit fulfilment of the conditions precedent. This refusal was definitive. Vision's letter of 6 February 2026 (annexure FA48) confirmed that Vision would not agree to any further extension. The Sale Agreements accordingly lapsed on 7 February 2026;

41 G.C

93.4 Vision imposed conditions not contained in the Adopted Plan. In amplification, Vision has demanded "*an in principle reform to the sugar industry and its legislative framework*"—a requirement that was not contained in the Adopted Plan, was outside the control of the BRPs, and (as stated in the founding affidavit) caused nothing but further complications and delays. Moreover, Vision required, not a mere refinancing of the PCF Facility, but a much larger IDC Facility which contained an onerous debt to equity conversion and right-off features which were unacceptable to the IDC and which led to the breakdown in negotiations. Vision's imposition of conditions not contemplated by the Adopted Plan is conduct inconsistent with the binding terms of the Adopted Plan that Vision itself proposed;

93.5 having frustrated the Adopted Plan through its own conduct, Vision then issued a formal demand on 8 February 2026 declaring all Senior Facility Outstandings immediately due and payable in the amount of R11,738,406,991.00. This is not the conduct of a party committed to the success of business rescue; it is the conduct of a party that has concluded that rescue is no longer achievable.

94 The IDC contends that the failure of the Adopted Plan does not terminate business rescue, and that a fresh SEP process can be undertaken. This contention is legally correct as a matter of principle and in a vacuum but factually untenable in the circumstances of this case.

95 The Adopted Plan was the only viable restructuring solution identified through a comprehensive 14-month market process which was approved overwhelmingly by creditors. Vision was the only credible bidder. Vision has now refused to proceed. The IDC has not identified any alternative bidder, any alternative transaction structure, or any concrete pathway to achieving the objectives of Section 128(1)(b)(iii). The contention that a fresh SEP process *"could"* identify a willing purchaser is speculative optimism, not a "*reasonable prospect*" within the statutory meaning of that term.

NO BINDING FUNDING COMMITMENT FROM THE IDC HAS BEEN FORTHCOMING

96 Despite various alternative scenarios and conjecture, the facts advanced by the BRPs' demonstrate that THL requires R600 million in urgent funding to sustain operations to preserve the business and assets. This requirement was identified through rigorous financial analysis, communicated repeatedly to the IDC over five months, and initially approved by the IDC's own ECIC on 29 November 2025.

97 Despite five months of engagement, multiple meetings, extensive correspondence, and numerous deadlines, no unconditional funding was forthcoming.

98 The IDC now (self-servingly) contends that THL can operate within the existing R2.3 billion PCF facility until June 2026 without additional funding. The IDC's contention is contradicted by the contemporaneous documentary record that is traversed in the founding affidavit. To the extent that it has not already been made

clear, the IDC is factually incorrect. THL cannot continue trading until June 2026 without further and immediate funding. Moreover, the IDC states that -

> "*Since October 2025, management of THL has taken various steps to recalibrate cash flow assumptions and strengthen the liquidity across the business of THL. These measures were aimed at bringing the cash flow position of THL within the limit off the existing PCF facility of R2.3 billion - and therefore not requiring any additional financing or PCF to be advanced to by IDC. Original forecasted borrowings by THL required additional financing or PCF of R600 million (thereby increasing the limit of the existing PCF facility from R2.3 billion to R2.9 billion). The revision brought about by the implementation of various measures resulted in an improved cash flow utilization within the existing R2.3 billion facility advanced by IDC*",

but the IDC ignores that fact that a large portion of the adjustments related to deferral of expenditure and not to the elimination thereof.

99 The same THL management representatives upon whom the IDC relies, are the same representatives who provided the BRPs with the data underpinning the R600 million funding request. The IDC cannot cherry-pick management representations that suit its case whilst ignoring the extensive correspondence in which management consistently identified an acute funding shortfall.

100 Moreover, the IDC's own concession is fatal to its case. The IDC acknowledges that "*this revised cash flow position could be adversely prejudiced by the negativity and impact caused by this application*." This is not a minor qualification; it is a fatal admission. The IDC effectively concedes that any projected runway is contingent, fragile, and subject to adverse market sentiment—sentiment that has already materialised through suppliers removing credit terms and insisting on

advance payments or cash on delivery, the CCBSA transaction not proceeding, and the loss of the Illovo order for 20,000 tons of sugar.

101 The IDC's proposal amounts to -

101.1 continued PCF until only 31 March 2026;

101.2 consideration of future funding requests without binding commitment; and

101.3 hope that a fresh SEP process will identify a willing purchaser.

102 This is not a *"reasonable prospect"* of rescue. It is speculative optimism unsupported by concrete commitments.

VISION'S CONDUCT RENDERS CONTINUED BUSINESS RESCUE IMPOSSIBLE

103 Vision is not a peripheral stakeholder. Vision is the majority secured creditor, having acquired claims of approximately R8.1 billion from the Lender Group. Vision is the party that proposed and approved the Adopted Plan. Vision's cooperation is not merely desirable for the success of any restructuring; it is essential. No restructuring of THL can succeed without the participation and consent of its principal secured creditor.

104 Vision's conduct has systematically undermined the Adopted Plan because it *inter alia*-

104.1 imposed conditions not contained in the Adopted Plan, including requirements for sugar industry reform and legislative changes that were quite obviously outside the BRPs' control;

104.2 refused to extend the Sale Agreements beyond 7 February 2026 notwithstanding that the conditions precedent had not been fulfilled;

104.3 demanded immediate implementation of the Offshore Agreements prior to fulfilment of the PCF refinancing conditions and the SASA escrow payment, a demand the BRPs correctly characterised as "*ludicrous and untenable*.";

104.4 refused to match the IDC's R200 million PCF contribution, stating that "*funding the PCF was not a proposal to which Vision could agree*.";

104.5 sought additional funding from the IDC totalling R5.3 billion— almost R2.4 billion above the original approval, which was not a condition of the Adopted Plan; and

104.6 issued a demand for R11.7 billion on 8 February 2026, declaring all Senior Facility Outstandings immediately due and payable.

105 The IDC's contention that Vision's demand is legally ineffective due to the Section 133 moratorium is legally correct but misses the point entirely.

106 The BRPs do not contend that Vision can enforce the demand during business rescue.

107 The relevance of the demand is not that it is enforceable; it is that it demonstrates, objectively and unambiguously, that the principal stakeholder whose cooperation is essential to any restructuring has concluded that rescue is no longer achievable. The demand is probative evidence of the breakdown in stakeholder relationships, not a basis for immediate enforcement.

108 The IDC's contention that a fresh SEP process can be undertaken ignores the practical reality that Vision remains the dominant creditor. Vision has demonstrated, through its conduct, that it is unwilling to cooperate on terms consistent with the Adopted Plan—or indeed on any terms that do not involve substantial additional funding and write-offs from the IDC. A fresh SEP process conducted in the shadow of Vision's dominance and demonstrated unwillingness would have no reasonable prospect of success. It is estimated that Vision has close to 75% of the total voting interests. Therefore, any vote on an amendment or a new plan will be decided on by the manner in which Vison votes.

109 Only a few hours prior to me deposing to this affidavit and after Vision delivered its answering affidavit in response to RGS's counter application, Vision continues to frustrate genuine ongoing efforts by the BRPs to responsibly manage THL's

affairs. The attached email from Rute Moyo, the deponent to Vision's answering affidavit, received on 6 March 2026, attached marked "**THL3**' is evidence of the aforegoing.'

THE INCOMPATIBILITY AS BETWEEN THE IDC'S GOVERNANCE PROCESSES AND FUNDAMENTALLY FLAWED PROPOSALS (ON THE ONE HAND) AND THL'S URGENT NEED FOR FUNDING (ON THE OTHER HAND)

110 It is paramount to make it clear that we (the BRPs) do not suggest that the IDC acted in breach of its statutory obligations under the Public Finance Management Act (PFMA) 1 of 1999 or the The Industrial Development Act (IDC Act) 22 of 1940.

111 The BRPs' submission is much narrower.

112 We submit that the IDC's governance processes which produced an outcome of no unconditional funding over a period of at least five months is incompatible with the contention that THL has a reasonable prospect of rescue.

113 The chronology set out above is telling because it highlights the following -

113.1 the first request for funding was made in late September 2025;

113.2 in October 2025, the ECIC requested further due diligence;

113.3 a month later ECIC approved R600 million;

113.4 but in 2025, the BIC reduced the R600 million to R200 million **on a conditional basis**;

113.5 at the end of January 2026, the IDC Board approved R200 million conditional on the co-operation of and further funding by SBSA and Vision similarly funding; and

113.6 these conditions were not agreed to beforehand with either Vision or SBSA and therefore were not met and despite the IDC having been forewarned of the urgently needed funding, that funding was never disbursed.

114 The aforegoing demonstrates the futility of relying upon the IDC's processes for timely, unconditional funding in circumstances of acute liquidity distress. Moreover, the assertions contained in paragraph 90 of the IDC's answering affidavit have never been made known to the BRPs (i.e. prior to receipt of the IDC's answering affidavit.).

115 The IDC's failure to respond to the BRPs' letter of 22 January 2026 is particularly significant. On that date, the BRPs requested formal written advice from the IDC of any events and circumstances which may result in the BRPs reasonably concluding that a reasonable prospect of rescue remains. This was a direct request for the IDC to articulate, in writing, the basis upon which the BRPs could conclude that rescue remained achievable. The IDC did not respond to that letter.

116 The IDC's silence is itself probative. If the IDC had been able to identify a concrete basis for concluding that rescue remained achievable, it would have said so. Its *ex post facto* proposals traversed in the IDC's answering affidavit clearly reveal that the IDC cannot demonstrate that there is a reasonable basis of rescue.

117 The availability of funding is directly relevant to whether THL can achieve the primary goal of business rescue, namely continuing in existence on a commercially solvent basis. The BRPs have demonstrated that no funding has been provided nor is it immediately available whether from the IDC or any other party.

CONTINUING BUSINESS RESCUE WOULD BE VALUE DESTRUCTIVE

118 The IDC characterises liquidation as "*value destructive*." The BRPs submit that continuing business rescue in the present circumstances would itself be value destructive—and more so than an orderly provisional liquidation.

119 Continuing business rescue would expose THL to continued erosion of its asset base. THL faces adverse market conditions: increased volumes of imported sugar, declining global sugar prices, a stronger exchange rate reducing duty protection and delays in implementing tariff adjustments. These conditions have eroded THL's sales volumes and margins. Continued trading under these conditions without funding certainty, would accelerate the erosion of THL's asset base.

120 Continuing business rescue would expose creditors to the risk of impeachable transactions. As THL's financial position deteriorates, the BRPs, in the discharge of their duties and responsibilities, may have no alternative but to make payments that could later be impugned as voidable preferences or dispositions without value. The BRPs have stated in the founding affidavit that they *"cannot continue to do so at the risk of compromising any creditors' position in a liquidation scenario through impeachable transactions proceeding"*.

121 Finally, continuing business rescue would prolong uncertainty. THL's employees, cane growers, suppliers, and other stakeholders are entitled to know whether THL will survive or be liquidated. Indefinite continuation of business rescue—without a viable plan, without funding certainty, without stakeholder commitment—serves no one's interests. It merely prolongs uncertainty whilst the asset base erodes. The BRPs do not have the luxury of putting their heads in the sand and hoping for the best. They have a statutory duty to do what they have done – it is this Honourable Court that has the discretion about what to order.

IDC'S POSITION REGARDING THE BUSINESS RESCUE PRACTITIONERS' REMUNERATION

122 The submissions advanced by the IDC in relation to the remuneration and expenses of the Business Rescue Practitioners ("the BRPs") are entirely without merit and are fundamentally at odds with the statutory framework established by the Companies Act. The IDC's suggestions that the BRPs' fees should be subjected to independent audit and confined to the statutory tariff misrepresent a the legal position under sections 143(2) and 143(3) of the Companies Act..

123 Section 143 of the Companies Act governs the remuneration of business rescue practitioners. Whilst section 143(1) entitles practitioners to charge remuneration in accordance with the prescribed tariff, Section 143(2) expressly permits practitioners to propose agreements for further remuneration based on contingencies related to the adoption of a business rescue plan, the attainment of particular results, or other outcomes - recognising that complex proceedings may warrant arrangements exceeding the basic tariff.

124 Critically, section 143(3) renders such agreements final and binding upon approval by the requisite majorities of creditors and shareholders. The statutory scheme is unambiguous: where creditors have approved additional remuneration in accordance with section 143(3), that agreement is final and binding, and neither the IDC nor any other party may re-open or impugn it merely because it exceeds the basic tariff.

125 THL has been in business rescue for over three years, during which the BRPs conducted an extensive 14-month Sale and Equity Process representing the only viable restructuring solution. Since October 2022, the BRPs have engaged continuously with THL's management, creditors, stakeholders, financial experts, cane growers, SASA, and legal counsel.

126 With the assistance of the IDC post-commencement finance facility, the BRPs have maintained THL's operations throughout this extraordinarily difficult period, navigating significant industry changes and adverse trading conditions whilst

preserving the business as a going concern. The scale and complexity of THL's operations, the multiplicity of stakeholders, the extensive litigation required to defend the proceedings, and the protracted negotiations with the IDC and Vision all speak to the exceptional nature of this mandate.

127 To suggest that practitioners who have undertaken work of this magnitude and duration should be remunerated solely in accordance with the basic statutory tariff is to fundamentally misunderstand the purpose and operation of sections 143(2) and 143(3). Those provisions exist precisely to address circumstances where the basic tariff would be inadequate to compensate practitioners for extraordinary work, and the creditors approved these arrangements with full knowledge of the work being performed.

128 The remuneration arrangements were concluded in accordance with sections 143(2) and 143(3) of the Companies Act, approved by the creditors, and are accordingly final and binding.

COSTS

129 The BRPs respectfully submit that the IDC's opposition to this application warrants an order for costs.

130 The IDC's opposition is founded upon speculative optimism rather than concrete facts. It does not seriously engage with the factual record as traversed in the founding affidavit. Instead, the IDC advances speculative contentions unsupported by concrete evidence. In this regard, the IDC asserts that -

130.1 THL *"could"* operate within the existing PCF facility—but offers no binding commitment to provide the funding certainty required;

130.2 a fresh SEP process *"could"* identify a willing purchaser—but identifies no alternative bidder and offers no explanation of why such a process would succeed where the previous 14-month process produced only one credible bidder who has now refused to proceed;

130.3 it will *"consider"* additional funding requests—but *"consideration"* is not a commitment, and the IDC's track record demonstrates the futility of relying upon its processes; and

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

130.4 THL is *"not a failing business"*—but this rhetorical flourish does not address the statutory test, which is whether there is a reasonable prospect of achieving the objectives of Section 128(1)(b)(iii) of the Companies Act;

131 The IDC's opposition amounts to little more than wishful thinking in the guise of legal argument. The IDC has not identified a concrete, cogent, and objectively reasonable basis for concluding that rescue can be achieved. It has merely expressed hope that circumstances might change. This is not a basis for opposition; it is a reason for the award of costs.

132 The IDC's opposition has caused unnecessary legal costs to be incurred by THL in circumstances where, to the IDC's specific knowledge, THL is hopelessly insolvent.

133 The BRPs have been compelled to address the IDC's opposition at length. The replying affidavit and the preparation for argument have all required substantial legal resources. These costs have been incurred because the IDC chose to oppose an application that the BRPs were statutorily obligated to bring on grounds that are contradicted by the documentary record, in circumstances where the IDC's own conduct contributed to the necessity for the application.

134 The BRPs submit that costs should be awarded in favour of the BRPs against the IDC including the costs of two senior counsel, as employed on Scale C.

VISION

ASSERTIONS CONTAINED IN VISION'S ANSWERING AFFIDAVIT DELIVERED ONLY IN RESPONSE TO RGS'S COUNTER APPLICATION

135 In Vision's answering affidavit, Vision makes it clear that it does not oppose or support this application and the affidavit delivered by it was only in response to RGS's founding affidavit.

136 Despite Vision's alleged neutrality *vis-a-vis* this application, it has cast unfounded aspersions at the BRPs. In consequence, it is necessary for us (the BRPs) to deal decisively with these allegations. The paragraphs that the BRPs cannot allow to

remain unanswered appear in paragraphs 15 to 18, 52 to 54 and 80 to 82 of Vision's answering affidavit ("**the offensive paragraphs**").

137 In this section of this affidavit, I address the offensive paragraphs by identifying the reasons why Vision and not just the IDC cause the adopted Plan to fail, and in turn, I set out why Vision's version is false. Moreover, I demonstrate why the aspersions cast by Vision at the BRPs are unfounded.

138 I do not address the offensive paragraphs *ad seriatim*. Rather, I deal with the offensive paragraphs in a thematic and summarised manner. This is to avoid undue prolixity.

139 Vision contends that the failure of the adopted Plan is attributable to THL's requirement for an additional R600 million in post-commencement finance ("**PCF**"), and that Vision bears no responsibility for THL's financial disaster that resulted in the launch of these proceedings.

140 The BRPs submit that this Honourable Court must accept the BRPs' version of events demonstrating that Vision's conduct specifically its introduction of conditions extraneous to the Adopted Plan, its refusal to extend critical deadlines, its refusal to contribute to interim funding solutions, and its issuance of default notices during business rescue proceedings was the major cause of the Adopted Plan's failure.

141 We submit this Honourable Court is enjoined to apply the *Plascon-Evans* rule where facts of the nature set out below are in dispute.

142 The BRPs submit that the contemporaneous correspondence attached to the founding affidavit overwhelmingly supports the BRPs' version that Vision's conduct caused the failure of the Adopted Plan, and that Vision's denials are contradicted by the documentary record.

(i) The Adopted Plan and its critical conditions

143 The Adopted Plan, as proposed by Vision and adopted by THL's creditors, contained specific critical conditions. These include, *inter alia*, -

143.1 confirmation of the refinancing of the IDC PCF, to be assumed by Vision;

143.2 discharge of SASA's indebtedness of R517 million; and

143.3 the provision of R75 million for concurrent creditors.

144 Critically, the Adopted Plan does not prescribe any condition relating to Vision raising additional funding from the IDC or anybody else beyond the PCF refinancing, nor any condition requiring sugar industry reform or other extraneous matters.

(ii) Vision's introduction of extraneous conditions

145 Despite the clear terms of the Adopted Plan, Vision introduced demands never contemplated in the Adopted Plan, causing significant delays and ultimately contributing to its failure.

146 In October 2025, Vision's representatives informed the BRPs that Vision was finalising correspondence to the IDC outlining Vision's requirements for contributions to a "*long-term solution,*" and that a paper was being submitted to Government regarding industry amendments required by Vision.

147 These demands for sugar industry reform - including changes to the Sugar Industry Agreement, tariffs, and anti-dumping measures - were not referred to in, nor were they a condition of, the Adopted Plan.

148 In November 2025, Vision made clear that it required the Department of Trade, Industry and Competition ("**DTIC**") to commit to industry reform as a condition of proceeding with implementation. The BRPs recorded that these demands were "*of concern as the required reform was never a condition of the adopted Plan.*" The introduction of these extraneous conditions caused nothing but further complications and delays. The BRPs are also not the Legislature or the Executive, who notionally could deliver on this belated demand.

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(iii) *Vision's* refusal to contribute to interim funding.

149 As Tongaat's liquidity position deteriorated during late 2025, the IDC proposed providing R200 million in interim funding, conditional upon Vision contributing a matching amount.

150 Vision refused.

151 On 17 December 2025, Vision addressed correspondence to the IDC advising that the proposal that Vision contribute to Tongaat's liquidity requirements was "*not something on which Vision had been consulted*" and that "*funding the PCF was not a proposal to which Vision could agree*." Vision further refused to share security with the IDC, expressing its view that Government ought to assist the IDC in relation to Tongaat's funding needs.

152 Vision's refusal to contribute any funding towards Tongaat's urgent liquidity requirements—whilst simultaneously demanding additional funding from the IDC beyond the PCF refinance contemplated in the Adopted Plan was unreasonable and directly contributed to the Adopted Plan's failure.

(iv) Vision's *refusal* to extend the closing date.

153 The IDC advised that its internal governance processes required approximately six to eight weeks to finalise its assessment and obtain the necessary approvals. Despite this, Vision categorically refused to extend the closing date under the

Sale of Business Agreements and the other sale agreements beyond 7 February 2026.

154 On 30 January 2026, Vision insisted that any extension would only be granted on condition that the sale of shares in Tongaat's subsidiaries in Zimbabwe, Botswana, and Mozambique (**"the Offshore Agreements")** be given effect to before the South African Sale of Business Agreement. The BRPs could not accept this as certainty was required regarding the South African transaction, the PCF refinancing and the R517 million SASA funds in accordance with the Adopted Plan.

155 On 5 February 2026, Vision's attorneys set out Vision's "*Proposed Way Forward*," stating that Vision could not agree to further extensions without certainty of implementation in respect of the Offshore Agreements first and without a firm commitment. The demand that the Offshore Agreements be immediately implemented prior to fulfilment of the critical conditions (PCF refinancing and SASA Escrow) was described by the BRPs as "*ludicrous and untenable*."

156 During the meeting on 6 February 2026, Vision demanded an immediate response to its proposals. The BRPs offered to consider the request, provided Vision agreed to a one-week extension. Vision refused.

157 The BRPs reiterate that the conditions sought to be imposed by Vision are not reflected in the Adopted Plan.

(v) Response to Vision's aspersions cast against the BRPs.

158 Vision's aspersions against the BRPs are entirely inappropriate for at least the following reasons -

158.1 the BRPs have at all material times discharged their statutory obligations under Chapter 6 of the Companies Act with diligence, transparency, and in good faith. The BRPs' conclusion that there is no longer a reasonable prospect of rescuing Tongaat is the direct and inevitable consequence of Vision's conduct. For Vision to now cast aspersions upon the BRPs is hypocritical, self-serving, and deserving of this Honourable Court's censure;

158.2 the BRPs repeatedly deferred the institution of liquidation proceedings in reliance upon assurances from Vision and the IDC. On multiple occasions—including in late November 2025, early December 2025, and throughout January 2026, in view of, *inter alia*, the potential socio-economic impact, the BRPs delayed taking action because of positive communications and commitments from Vision that the transaction remained viable; and

158.3 the BRPs actively facilitated discussions between Vision and the IDC, including Mr Murgatroyd's proposal on 13 November 2025 for a security sharing arrangement. Vision rejected all such accommodations.

159 Vision's accusations must be viewed in the light of its own conduct, described above.

160 The BRPs' response letter dated 9 February 2026 appropriately characterised Vision's conduct: "*the veiled threats contained in your letter of 6 February are contemptuous, legally unsound and are rejected*." The BRPs further recorded that Vision's "*intransigent and unreasonable, take it or leave it approach*" left the BRPs with no alternative but to proceed with liquidation.

161 Vision's accusations are meretricious. The BRPs are officers of the court appointed to discharge statutory duties in the collective interests of all creditors—we are not agents of Vision. Vision's expectation that the BRPs should prioritise its commercial interests over the collective interests of creditors is inconsistent with Chapter 6 of the Companies Act. The failure of the Adopted Plan is attributable to Vision's conduct, not to any failing on the part of the BRPs.

(vi) Vision's issuance of default notices

162 As set out above, on 8 February 2026, following the lapse of the Sale of Business Agreements, Vision addressed correspondence to the BRPs asserting that events of default had occurred and they (Vision) were continuing under the Common Terms Agreement.

163 These default notices were issued in circumstances where Vision had itself precipitated the lapse of the Sale Agreements through its refusal to grant the extension required by the IDC. The issuance of such notices, despite the application of the moratorium in business rescue was symptomatic of Vision's

approach throughout—prioritising its own commercial interests over the rescue of THL.

(vii) Conclusion

164 For the reasons set out above, this Honourable Court is respectfully requested to accept -

164.1 the BRPs' version of the disputed facts in preference to Vision's version, which is contradicted by the objective contemporaneous documents and is highly improbable;

164.2 that Vision's conduct was the proximate cause of the Adopted Plan's failure;

164.3 the rejection of Vision's aspersions against the BRPs as mischievous, improper, and wholly without merit, and find that the BRPs have at all material times discharged their statutory obligations with diligence, transparency, and in good faith aimed at rescuing the business, despite Visions aspersions;

164.4 that the failure of the Adopted Plan arises from Vision's inability or unwillingness to inject its own cash or conclude binding funding arrangements with the IDC notwithstanding prior confirmations that Vision had sufficient funds available to conclude the transaction, coupled with Vision's opposition to interim funding alternatives and its continued pursuit

of the Adopted Plan by refusing to accept any of the IDC's conditions (as they applied to Vision) prevented final IDC approval; and

164.5 that Vision's refusal to extend the closing date in respect of the various Sale Agreements means that those agreements have lapsed and the BRPs are unable to continue to implement the Adopted Plan. .

165 The BRPs accordingly persist with the relief sought in the main application, in discharge of their statutory obligations under Section 141(2) of the Companies Act.

SACGA's ANSWERING AFFIDAVIT

166 I now turn to deal with the assertions and allegations contained in SACGA's answering affidavit. Again, the time period available to prepare this affidavit has not been sufficient so as to enable me to address each and every assertion contained in SACGA's answering affidavit. I therefore deal with SACGA's key contentions on thematical basis.

167 .The BRPs will demonstrate to this Honourable Court that -

167.1 the BRPs have acted in strict compliance with their statutory obligations under Chapter 6 of the Companies Act, and that this application is mandated by Section 141(2)(a)(ii) of the Companies Act following the BRPs' objective conclusion that there is no longer a reasonable prospect of rescuing THL;

167.2 the arguments advanced by SACGA are, in material respects, either factually misconceived, legally irrelevant to the relief sought, or incapable of establishing any proper basis for the Court to refuse the relief sought by the BRPs in this application; and

167.3 Despite the BRPs having sympathy for SACGA's plight, SACGA's opposition to these proceedings is without legal merit and its answering affidavit, replete with matter irrelevant to a determination of an application of the present nature, justifies the BRPs request for an order for costs against SACGA.

SACGA'S STANDING AND THE NATURE OF ITS OPPOSITION

168 SACGA acknowledges in its opposing affidavit that it is not a creditor nor an Affected Person in the THL business rescue proceedings and accordingly required leave to intervene in this application.

169 SACGA's position as a non-creditor and non-affected person is of considerable significance. SACGA does not have a direct financial interest in the outcome of these proceedings in the manner contemplated by Chapter 6 of the Companies Act. SACGA's interest is, at best, a general industry interest derived from its role as a representative organisation for cane growers in South Africa.

170 The BRPs acknowledge that the sugar industry is of national importance and that the welfare of the approximately 28,000 registered sugar cane growers whom SACGA represents is a matter of concern. However, SACGA's understandable

concern for the industry does not, and cannot, alter the legal framework within which the BRPs are required to discharge their statutory obligations, nor does it furnish a proper legal basis for the Court to refuse the relief sought by the BRPs.

171 I refer to the legal framework which governs this application as set out in my founding affidavit and above, as it underpins the entirety of the BRPs' case. Section 141(2)(a) of the Companies Act places an unequivocal mandatory obligation upon business rescue practitioners.

172 The BRPs cannot, in law, decline to bring this application merely because certain parties, however well-intentioned, oppose it. The obligations imposed on business rescue practitioners in terms of the Companies Act coupled with the fact that THL is commercially and factually insolvent means that the narrow discretion afforded to a Court in an application for the liquidation of a company, must be exercised with greater circumspection.

173 The BRPs' paramount duty is to act in accordance with the law, and the law compels this application in the circumstances which now prevail. All subsequent references in this affidavit to the BRPs' statutory obligations should be understood in light of this peremptory duty in terms of the section 141(2)(a) of the Companies Act.

66 G.C

RESPONSE TO SACGA'S ARGUMENTS REGARDING THE STATUS QUO AND IDC FUNDING

174 SACGA contends that the status quo should remain in place with the IDC securing funding to continue the business of THL as a going concern, including the completion of the off-crop maintenance programme and the commencement of sugar cane crushing.

175 That contention is, with respect, based upon a fundamental misunderstanding of the factual circumstances and ignores the extensive and exhaustive efforts undertaken by the BRPs over many months to precisely secure such an outcome.

176 The factual record as set out in the founding affidavit clearly demonstrates beyond reasonable dispute that the BRPs have, since October 2025, engaged continuously, persistently, and in good faith with the IDC, Vision, the DTIC and other stakeholders in an effort to secure the urgent funding required by THL to facilitate the closing of the Sale of Business Agreements contemplated under the Adopted Plan.

177 The BRPs reiterate the following -

177.1 in late September 2025, the BRPs made an urgent funding request to the IDC in the amount of R600 million to address THL's severe liquidity constraints;

67 G.C

177.2 despite numerous meetings, letters, and assurances from the IDC, the requested funding was not forthcoming within the timeframes required by THL's critical operational and financial needs;

177.3 on 29 November 2025, the BRPs were advised that the IDC ECIC had approved THL's R600 million funding request. However, this approval was not implemented and subsequent events demonstrated that IDC Board approval which was required was not forthcoming;

177.4 on 11 December 2025, the IDC BIC did not approve the full R600 million funding request but indicated that it would only be agreeable to providing funding in a lesser amount of R200 million, conditional upon Vision matching the IDC's contribution rand for rand. Vision declined this proposal;

177.5 despite continued engagement through December 2025 and January 2026, including meetings between the BRPs, IDC, Vision, and SBSA, no resolution was achieved regarding either the urgent funding or the conditions precedent to the closing of the South African Sale of Business Agreement; and

177.6 on 7 February 2026, following the failure of the meeting between the BRPs and Vision on 6 February 2026, and Vision's refusal to grant any further extension, the Sale of Business Agreements lapsed. The critical conditions precedent, being the refinancing of the PCF and the payment of the R517 million SASA escrow amount, could not be fulfilled, and the Adopted Plan could no longer be implemented.

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178 In the light of what is set out above, it is therefore factually incorrect to suggest, as SACGA does, that the BRPs have prematurely abandoned the business rescue or that the status quo can be maintained. The BRPs have done everything within their power to maintain the business rescue. The failure to implement the Plan is the direct consequence of the failure of the IDC and Vision to reach agreement on the terms of the Vision funding, despite months of intensive engagement.

179 SACGA's suggestion that the IDC can simply secure funding to continue THL's business ignores the reality that -

179.1 THL's existing PCF facility of R2.3 billion has been fully drawn and THL had no access to further working capital;

179.2 THL is commercially insolvent and unable to pay its debts in the ordinary course; and

179.3 the outstanding draws of approximately R50 million approved by the IDC have not been paid;

180 No concrete or binding commitment to provide further funding has been received from the IDC (or any other party) and no agreement has been reached between the IDC and Vision regarding the refinancing of the PCF, which is a critical condition to the implementation of the Adopted Plan. In these circumstances, the

BRPs have been left with no alternative but to comply with their statutorily imposed obligations in terms of section 141 of the Companies Act.

181 For ease of reference, the matters set out above are hereinafter collectively referred to as "**THL's Liquidity Constraints**".

SACGA'S ASSERTIONS VIS-À-VIS ALTERNATIVE DISPOSAL METHODS

182 SACGA contends that there are alternative methods available to the BRPs for the disposal of THL's assets which do not require liquidation, including -

182.1 amending the existing Business Rescue Plan in terms of clause 18.2 of the Adopted Plan;

182.2 disposing of the SA Sugar operation assets in terms of Section 134(1)(a)(ii) of the Companies Act; and

182.3 submitting a revised Business Rescue Plan.

183 These submissions fundamentally misunderstand the nature of business rescue and the circumstances in which the BRPs find themselves for the following reasons -

183.1 first, and most fundamentally, Section 141(1) of the Companies Act requires the practitioner to investigate the company's affairs and consider whether there is any reasonable prospect of the company being rescued. "*Rescuing*

the company" is defined in Section 128(1)(h) as achieving the goals set out in the definition of "*business rescue*" in Section 128(1)(b), which means developing and implementing a plan to rescue 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 or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company; and

183.2 second, when a practitioner concludes that there is no reasonable prospect of achieving these goals, the obligation imposed in terms of section 141(2)(a) of the Companies Act is triggered.

184 Despite the dire socio-economic consequences, the BRPs have concluded, on objective legal grounds, that there is no longer any reasonable prospect of rescuing THL. This conclusion is not based upon a failure to consider alternatives; it is based upon the exhaustive efforts over many months which have failed to produce the essential prerequisites for the continued implementation of the Adopted Plan, namely -

184.1 access to required immediate further funding;

184.2 certainty regarding the refinancing or restructuring of the existing PCF facility; and

71 GC GA

184.3 the closing of the South African Sale of Business Agreement, other agreements, and the fulfilment of their conditions precedent.

SACGA'S ALLEGATION REGARDING AMENDMENT OF THE BUSINESS RESCUE PLAN

185 SACGA suggests that the BRPs could amend the existing Adopted Plan in terms of clause 18.2 thereof. This suggestion ignores the following -

185.1 an amendment to the Adopted Plan would require the BRPs to consult with affected persons and propose an amendment for consideration and voting at a meeting conducted in terms of Section 151 of the Companies Act, with such amendment only being effective if adopted in the same manner as provided for in Section 152 of the Companies Act;

185.2 an amendment process will take considerable time and there is no reasonable basis to believe that any amended plan will address the fundamental obstacles which have prevented the implementation of the Adopted Plan, namely the failure of Vision and the IDC to reach agreement on the terms of the Vision funding and the refinancing of the PCF;

185.3 because of THL's Liquidity Constraints, THL does not have the liquidity to sustain its operations during such an extended process; and

185.4 any reference to section 153 of the Companies Act is misdirected. That would apply only to the meeting where the plan is to be voted on and not the subsequent failure of a plan.

DISPOSAL IN TERMS OF SECTION 134 OF THE COMPANIES ACT

186 SACGA suggests that the BRPs could dispose of assets under Section 134(1)(a)(ii) read with Section 134(3)(a) of the Companies Act.

187 This submission, whilst correct as a statement of the legal framework and as a theory, ignores the practical reality that -

187.1 any sale under Section 134(3) requires the prior consent of secured creditors, including Vision, which now holds the claims and security previously held by the Lender Group. The Lender Group obtained a court order from the High Court of South Africa, Kwa-Zulu Natal Division, Pietermaritzburg relating to the perfection of the General Notarial Bond.;

187.2 Vision has made clear that it will not cooperate with further extensions or alternative processes without its demands being met, including demands relating to industry reform which were never a condition of the Adopted Plan;

187.3 the PCF Agreement with the IDC contains undertakings by the BRPs not to dispose of assets other than in the ordinary course of business, particularly capital assets, equipment, or machinery. Any disposal would require IDC consent; and

187.4 for the reasons already stated, THL lacks the liquidity which will be required to sustain a further disposal process.

REVISED BUSINESS RESCUE PLAN.

188 SACGA contends that the BRPs could submit a revised Business Rescue Plan.

189 A revised plan would require the BRPs to prepare and publish a new plan, convene meetings in terms of Section 151, and obtain the approval of creditors.

190 There is no reasonable basis to believe that a revised plan will be capable of adoption or implementation in circumstances where -

190.1 the primary obstacle to the implementation of the Adopted Plan is the failure of Vision and the IDC to reach agreement on funding terms, a matter which is entirely outside the control of the BRPs;

190.2 as stated above, Vision has demonstrated an unwillingness to cooperate with further processes absent its own demands being met;

190.3 as set out above, THL lacks the liquidity to sustain such a process as it is commercially insolvent; and

190.4 there are no new funders or investors who have committed to providing or who can and have provided the funding required for a revised plan.

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191 Whilst the BRPs acknowledge that the alternatives suggested by SACGA are, in the abstract, recognised mechanisms under Chapter 6 of the Companies Act, none of them is practically achievable in the present circumstances. The BRPs have concluded that there is no reasonable prospect of rescuing THL and their obligations arising from section 141(2)(a) of the Companies Act applies. Furthermore, much has been said about applying to court to set aside any vote of Vision, but that will take time and will require funding.

COMPETING BIDS

192 SACGA contends that there are at least three parties who will submit bids for the acquisition of THL's assets, namely: (i) a Grower-led Consortium; (ii) the RGS Group; and (iii) the Vision Group. SACGA suggests that the BRPs should remain in business rescue to consider these competing bids.

193 This submission ignores the fundamental constraint facing the BRPs, namely that THL has no access to the liquidity required to sustain its operations while competing bids are considered and evaluated.

194 By reason of THL's Liquidity Constraints, THL does not have access to further working capital. THL will not be in a position to operate sustainably or access the working capital facilities required for the forthcoming milling season.

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195 Furthermore, the suggestion that competing bids can be considered and evaluated ignores the timeline required for such a process for at least the following reasons -

195.1 any new bidder would need to conduct a due diligence on THL's business and assets;

195.2 any proposal would need to address the existing obligations, including the R2.3 billion PCF facility and other secured and unsecured creditor claims;

195.3 any transaction would require regulatory approvals and compliance with applicable laws; and

195.4 in the case of proposals requiring amendments to the Adopted Plan or a revised plan, the statutory procedures under Sections 150 to 153 of the Companies Act will need to be followed.

196 Respectfully, SACGA's proposal does not address THL's immediate liquidity crisis nor does it provide a basis for the BRPs to conclude that a reasonable prospect of rescue exists.

197 The BRPs cannot, consistent with their statutory duties, decline to bring this application on the basis of speculative or indicative expressions of interest which have not crystallised into binding proposals capable of implementation.

THE IMPACT OF LIQUIDATION

198 SACGA contends that liquidation will cause enormous destruction and lead to further litigation, that the Master will need to appoint liquidators, and that liquidators will have to apply to Court for powers to continue to trade. SACGA suggests that this uncertainty is a reason to refuse the granting of a provisional liquidation order.

199 Whilst the BRPs are acutely aware of the significant impact that liquidation will have on all stakeholders, including employees, cane growers, creditors, and the broader sugar industry, this is not a competent legal basis for the Court to refuse the relief sought. Certainly not in circumstances where THL is factually and commercially hopelessly insolvent.

200 The purpose of business rescue, as defined in Section 128(1)(b), is to facilitate the rehabilitation of a company that is financially distressed. Where rescue is not possible, the alternative limb of the definition makes clear that the objective is to achieve a better return for creditors or shareholders than would result from immediate liquidation.

201 In the present circumstances -

201.1 there is no reasonable prospect of THL continuing in existence on a solvent basis;

201.2 the Adopted Plan can no longer be implemented due to the lapsing of the Sale of Business Agreements and the other agreement and the failure to fulfil the critical conditions precedent;

201.3 THL is commercially insolvent; and

201.4 permitting THL to continue trading is likely to worsen its already precarious financial position, to the detriment of creditors. It is also reckless for business to be conducted in such circumstances;

201.5 the establishment of a *concursus creditorum* through liquidation is necessary to protect the interests of the general body of creditors; and

201.6 the impact of a provisional liquidation, whilst regrettable, does not furnish a legal basis for refusing to grant the relief sought.

SACGA'S FLAWED RELIANCE ON SECTION 153 OF THE COMPANIES ACT

202 SACGA asserts that if Vision, as the person or persons controlling the Lender Group claims, endeavours to impose its will on the BRPs unreasonably, then the provisions of Section 153 of the Companies Act relating to an inappropriate vote can be resorted to.

203 This submission is misconceived and is incorrect. It further reveals a fundamental misunderstanding of the circumstances of this matter. In amplification -

78 G.C

203.1 section 153 of the Companies Act deals with the failure to adopt a business rescue plan. It provides that if a business rescue plan has been rejected, affected persons may seek a vote of approval to prepare a revised plan, apply to Court to set aside an inappropriate vote, or make a binding offer to purchase the voting interests of persons who opposed adoption of the plan;

203.2 section 153 is not applicable to the present circumstances because -

203.2.1 the Adopted Plan was adopted by an overwhelming majority of creditors on 11 January 2024 and is binding on all creditors under Section 152(4);

203.2.2 the issue is not the rejection of a plan by way of a vote; the issue is that the Adopted Plan can no longer be implemented for the reasons set out in paragraphs 12.7 and 21 above; and

203.2.3 Vision's conduct in refusing to extend the Sale of Business Agreements is not a "vote" which can be set aside under Section 153: it is a commercial decision by a secured creditor which, whilst frustrating to the BRPs and other stakeholders, is not justiciable under Section 153.

204 SACGA's suggestion that Section 153 provides a remedy for the present circumstances is therefore legally incorrect and provides no basis for opposing this application.

IRRELEVANCE OF CERTAIN MATTERS RAISED BY SACGA

205 SACGA has raised various matters in its opposing affidavit which, whilst of general interest, are irrelevant to the relief sought by the BRPs and ought not to be taken into account by the Court in adjudicating this application. I address certain of these matters below -

(i) The Sugar Industry Agreement

206 SACGA refers to the Sugar Industry Agreement published in terms of the South African Sugar Act and the importance of the sugar industry to the economy of KwaZulu-Natal and Mpumalanga.

207 Whilst the BRPs acknowledge the importance of the sugar industry, the terms of the Sugar Industry Agreement and the broader economic significance of the industry are not relevant to the relief sought.

208 The statutory test which the BRPs are required to apply is whether there is a reasonable prospect of rescuing the company. The BRPs have concluded, on objective grounds, that there is no such prospect. The economic importance of the sugar industry cannot alter this conclusion.

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(ii) The R517 Million SASA Claim

209 SACGA suggests that, in the event of liquidation, the Vision Group will avoid its liability to pay SASA what is referred to as the R517 million claim, and that this amount would inure to the benefit of the Growers and Millers.

210 The discharge of the SASA indebtedness in the amount of R517 million was one of the critical conditions precedent in the Adopted Plan. This condition has not been fulfilled and despite the signing of the SASA Escrow Agreement, the Adopted Plan cannot be implemented.

211 SACGA's submission regarding the R517 million claim is, in effect, a submission that the BRPs should refuse to comply with their statutory obligations in order to preserve a contingent claim which may arise under the Adopted Plan. This submission is legally untenable.

(iii) Industry Reform

212 SACGA and Vision have referred to the need for industry reform as a condition to the successful implementation of any rescue of THL.

213 As stated above, the demands for industry reform were never a condition of the Adopted Plan but were introduced by Vision during negotiations in late 2025. The BRPs cannot effect legislative or regulatory reform to the sugar industry, and the absence of such reform is not a matter within the BRPs' control.

THE BRPS' ENTITLEMENT TO COSTS

214 In the founding affidavit, the BRPs submitted that the costs of this application should be costs in the winding-up of THL, save in the event of any opposition, in which case the BRPs would request that the party opposing the application be liable for costs.

215 SACGA has opposed this application. I submit that the opposition has been wholly unnecessary and without merit for the following reasons -

215.1 as set out above, SACGA is not a creditor or Affected Person. Its interest is a general industry interest rather than a direct financial interest of the kind which would ordinarily entitle a party to oppose an application of this nature;

215.2 the arguments advanced by SACGA do not disclose any legal basis upon which the Court could, or should, refuse the relief sought by the BRPs;

215.3 SACGA's suggestions regarding alternative disposal methods and competing bids are speculative and do not address the fundamental constraints facing the BRPs, namely the absence of liquidity, the failure of the Adopted Plan, and the obligation placed upon the BRPs in terms of section 141(2)(a) of the Companies Act; and

215.4 the BRPs have at all times acted in good faith and in compliance with their statutory obligations. This application is not discretionary; it is mandated by law.

216 In these circumstances, I respectfully submit that SACGA should be ordered to pay the costs of its opposition to this application, including the costs of this replying affidavit.

217 I further submit that the costs should be awarded on Scale C including the cost of two senior counsel where two counsel have been employed.

CONCLUSION IN RESPECT OF SACGA'S ANSWERING AFFIDAVIT

218 I respectfully submit that the BRPs have demonstrated that -

218.1 they have concluded, on objective grounds, that there is no reasonable prospect for THL to be rescued within the meaning of Section 128(1)(b) of the Companies Act;

218.2 the BRPs are accordingly obliged, pursuant to section 141(2)(a) of the Companies Act to apply to this Honourable Court for an order discontinuing the business rescue proceedings of THL and placing the company into provisional liquidation;

218.3 the arguments advanced by SACGA in opposition to this application are factually misconceived, legally irrelevant, or otherwise without merit;

218.4 SACGA's opposition has been wholly unnecessary, and the BRPs are entitled to an order for costs against SACGA;

218.5 socio-economic considerations, including the impact of liquidation upon small-scale farmers and cane growers, cannot override the obligation imposed on the BRPs in terms of section 141(2)(a) of the Companies Act; and

218.6 had the BRPs not brought this application, they would have been in defiance of their statutory obligations and exposed to personal liability and professional sanction.

219 I accordingly request that -

219.1 the application for the discontinuation of THL's business rescue proceedings and its provisional winding-up be granted in terms of the Notice of Motion; and

219.2 SACGA be ordered to pay the costs occasioned by its opposition to these proceedings, including the costs of this replying affidavit.

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ABRINA'S ANSWERING AFFIDAVIT

220 The BRPs turn to deal with the allegations in Abrina's Answering Affidavit.

221 Any allegations not admitted should be taken to be denied.

222 I will not repeat any of the allegations already contained in this Reply that deal with the motivation for instituting and the merit in the liquidation application.

223 The BRPs have demonstrated that THL is commercially insolvent.

224 The BRPs do not accept that Abrina is a creditor of THL or that it has standing to intervene in the application.

225 I will not deal with Abrina's overblown complaints about the manner in which the hearing proceeded on 27 February 2026 - the hearing at which its counsel was present and was permitted to make submissions.

226 Despite Abrina's allegations to the contrary, the signed confirmatory affidavits of the other BRPs have been filed of record.

227 The BRPs do not agree that the founding affidavit was drafted in a "*wholly unsatisfactory manner*" and do not understand the relevance of this complaint given that a series of other respondents have been able to deliver comprehensible answering affidavits.

228 The gravamen of Abrina's answering affidavit appears to be a justification for why it persists in seeking a series of documents from the BRPs.

229 The BRPs have nothing to add to the response filed by our attorneys to Abrina's Rule 35 Notices. The Notices are irregular, an abuse of process, overbroad and seek irrelevant information.

230 I do not understand what the phrase "*It is incredulous that the BRP demonstrate a clear lack of transparency*" in paragraph 10.8 means but I deny that the conduct of the BRPs merits any censure, for the reasons set out both in the founding papers and in this reply.

231 The complaints in paragraphs 10, 12 and 13 of Abrina's answering affidavit are ultimately irrelevant: Abrina has delivered an answering affidavit in the main application and has not sought to enforce any of its alleged but non-existent rights under Rule 35.

232 There are no anomalies within the BRPs' case: we have explained what led to the institution of the liquidation application, notwithstanding what appears in the monthly reports that were annexed to the founding papers.

233 The BRPs have already dealt with the use and exhaustion of the PCF facility and have explained at length why, in the BRPs' opinion, THL cannot be saved, and business rescue cannot just be extended.

234 Quite how legal action against Standard Bank would have assisted in saving THL is not understood, or how (without any admission about the merit of such a claim) a notional damages claim that will be determined years from now can stave off the liquidation of THL.

235 The BRPs' response to the RGS counter-application is set out in our answering affidavit, and the court is respectfully referred to what appears therein.

236 Unsurprisingly, Abrina does not explain how the setting aside of the business rescue plan would actually help THL given the circumstances in which it operates or how the collapse of THL would be avoided.

237 In light of what is stated above and due to the contents of Abrina's misguided, ill-conceived and rather dishonest answering affidavit, the BRPs seek orders directing Abrina to pay our costs including the costs consequent upon the employment of two senior counsel, where employed, on Scale C.

THE MINISTER'S ANSWERING AFFIDAVIT

238 I refer to what I stated above when dealing with the allegations contained in the IDC's Answering Affidavit and why the "*viable rescue options*" solution advanced by the IDC is a chimera.

239 The intentions of the Minister are acknowledged, but the Minister's intervention would have been more constructive and certainly welcome prior to the launching

87 G.C

of the liquidation application, when the BRPs were doing everything possible both to permit THL to continue trading and to rehabilitate the Vision transactions.

240 If the Minister has *"mandated"* the IDC's continued support of THL, it is frankly totally misunderstood how the IDC has subsequently refused to advance the necessary funding when confronted with the reality that THL required R600 million to continue trading.

241 I have already explained at length why the BRPs were duty bound to bring this application, and I deny that the BRPs had acted in bad faith or contrary to the Companies Act's purpose.

242 The Minister's affidavit, which relies entirely on the answering affidavit of the IDC is entirely unhelpful. The DTIC has been engaged in the interactions between IDC, the BRPs and only now, after the institution of the application and in the face of public scrutiny does the DTIC see fit to engage. Even then, it does so with the same rhetoric and posturing as has been experienced by the BRPs over the past few months.

243 Despite assurances of financial assistance and promises to the public, the DTIC has done nothing to assist the BRPs and THL in rescue. Notwithstanding the institution of this application weeks ago, the DTIC and the IDC have still not provided funds which they are aware are urgently required. In this regard I refer the court to the content of my founding affidavit and the extensive communications with the IDC which prior to the institution of the application

included the DTIC. The insouciant attitude adopted by the DTIC has not been cured by anything stated either in the IDC's answering affidavit or its own.

244 In so far as the matters of the "*public interest considerations*" are concerned and upon which so many of the opposing parties rely. I have nothing more to add in this regard.

245 Due to the content of the Minister's affidavit, which is reliant on the answering affidavit of the IDC, its opposition to this application, in the absence of any solution or intervention by Government to actually assist with funding, is both inappropriate and misguided. Accordingly, the BRPs seek an order directing the Minister to pay our costs including the costs consequent upon the employment of two senior counsel, where employed, on Scale C.

CONCLUSION

246 I reiterate that this reply has been prepared under extreme time constraints. Accordingly, to the extent that any allegation in the above-named affidavits has not been addressed, it is denied.

247 Notwithstanding what is alleged by the opposing parties to the application, not one of them has provided this Honourable Court with a single objective or factually tenable basis as to why this Court should exercise its discretion in refusing the relief sought by the BRPs.

89 G.C

248 The facts set out in the BRP's founding affidavit, which are not seriously or genuinely disputed, overwhelmingly support the BRPs request for the relief as set out in their notice of motion to which my founding affidavit is attached and I request this Honourable Court to grant the relief as prayed for in the aforesaid notice of motion.

GERHARD CONRAD ALBERTYN N.O.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN
Private Bag X54844, Durban, 4000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

GRA G.C

I certify that this affidavit was signed and sworn to before me at SANDTON on 6 MARCH 2025 by **GERHARD CONRAD ALBERTYN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS
Name
Address
Capacity

GEORGE CHRISTODOULOU
2nd FLOOR SALA HOUSE, 12 FREDMAN DRIVE
SANDTON, JOHANNESBURG
COMMISSIONER OF OATHS EX OFFICIO
PRACTISING ATTORNEY R.S.A

COURT ONLINE COVER PAGE

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

CASE NO: **2026-031780**

In the matter between:

Gerhard Conrad Albertyn NO ,Trevor John Murgatroyd NO ,Petrus Francois Van Den Steen NO	Plaintiff / Applicant / Appellant

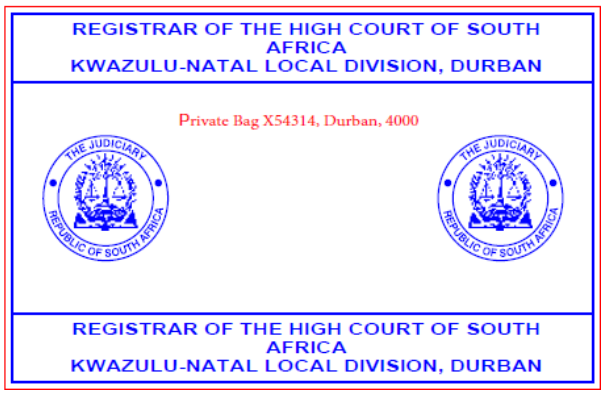
and

Tongaat Hulett Limited,The Affected Persons	Defendant / Respondent

---

Annexure 01

NOTE: **This document was filed electronically by the Registrar on 6/3/2026 at 4:04:05 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

Registrar of The High Court, KwaZulu-Natal, Durban.

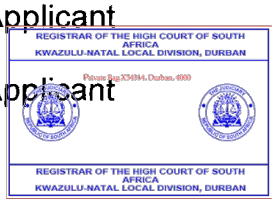
"THL1"

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

CASE NUMBER: 2026-031780

In the matter between:

GERHARD CONRAD ALBERTYN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Applicant



and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents

and

ABRINA 9422 (PTY) LIMITED	Intervening Party
RGS HOLDINGS (PROPRIETARY) LIMITED	Intervening Party

CONFIRMATORY AFFIDAVIT - TREVOR JOHN MURGATROYD

I, the undersigned,

TREVOR JOHN MURGATROYD

do hereby make oath and state that -

1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge.

3 I have read the replying affidavit deposed to by GERHARD CONRAD ALBERTYN in response to: -

3.1 the Industrial Development Corporation of South Africa Limited's Answering Affidavit dated 4 March 2026;

3.2 Vision's Answering Affidavit delivered in response to RGS Group Holdings Limited's Counter Application;

3.3 the Answering Affidavit of the South African Cane Growers Association;

3.4 the Answering Affidavit delivered by Abrina 9422 (Proprietary) Limited; and

3.5 the Answering Affidavit delivered by the Minister of Trade, Industry and Competition.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit insofar as the contents thereof relate to me and the applicants.

TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at _____ on ___ MARCH 2026 by **TREVOR JOHN MURGATROYD** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS
Name
Address
Capacity

"THL1"

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

CASE NUMBER: 2026-031780

In the matter between:

GERHARD CONRAD ALBERTYN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents
and	
ABRINA 9422 (PTY) LIMITED	Intervening Party
RGS HOLDINGS (PROPRIETARY) LIMITED	Intervening Party

CONFIRMATORY AFFIDAVIT - TREVOR JOHN MURGATROYD

I, the undersigned,

TREVOR JOHN MURGATROYD

do hereby make oath and state that -

1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

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3.5 the Answering Affidavit delivered by the Minister of Trade, Industry and Competition.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit insofar as the contents thereof relate to me and the applicants.

TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at Bath on 6 MARCH 2026 by **TREVOR JOHN MURGATROYD** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN
Private Bag X54844, Durban, 4000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

COMMISSIONER OF OATHS
Name
Address
Capacity

Anthony Brown
Notary Public
May Cottage
Henley Lane
Box
SN13 8DB
(0044)1225 740097
www.tonybrownnotarypublic.co.uk

COURT ONLINE COVER PAGE

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

CASE NO: **2026-031780**

In the matter between:

Gerhard Conrad Albertyn NO ,Trevor John Murgatroyd NO ,Petrus Francois Van Den Steen NO	Plaintiff / Applicant / Appellant

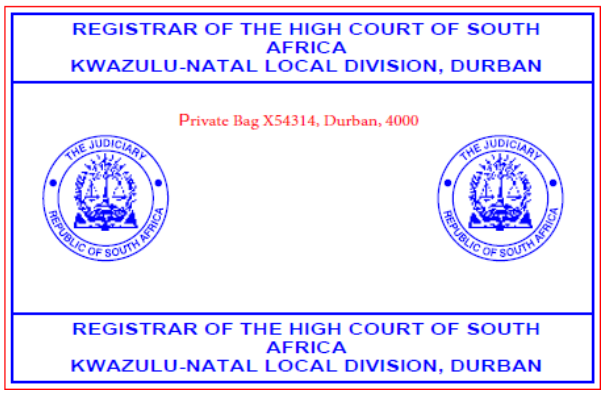
and

Tongaat Hulett Limited,The Affected Persons	Defendant / Respondent

---

Annexure 02

NOTE: **This document was filed electronically by the Registrar on 6/3/2026 at 4:04:30 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

Registrar of The High Court, KwaZulu-Natal, Durban.

"THL2"

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

CASE NUMBER: 2026-031780

In the matter between:

GERHARD CONRAD ALBERTYN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents
and	
ABRINA 9422 (PTY) LIMITED	Intervening Party
RGS HOLDINGS (PROPRIETARY) LIMITED	Intervening Party

CONFIRMATORY AFFIDAVIT - PETRUS FRANCOIS VAN DEN STEEN

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that -

1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge.

3 I have read the replying affidavit deposed to by GERHARD CONRAD ALBERTYN in response to: -

3.1 the Industrial Development Corporation of South Africa Limited's Answering Affidavit dated 4 March 2026;

3.2 Vision's Answering Affidavit delivered in response to RGS Group Holdings Limited's Counter Application;

3.3 the Answering Affidavit of the South African Cane Growers Association;

3.4 the Answering Affidavit delivered by Abrina 9422 (Proprietary) Limited; and

3.5 the Answering Affidavit delivered by the Minister of Trade, Industry and Competition.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit insofar as the contents thereof relate to me and the applicants.

PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at _____ on ___ MARCH 2026 by **PETRUS FRANCOIS VAN DEN STEEN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS
Name
Address
Capacity

"THL2"

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

CASE NUMBER: 2026-031780

In the matter between:

GERHARD CONRAD ALBERTYN N.O.	First Applicant
TREVOR JOHN MURGATROYD N.O.	Second Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents
and	
ABRINA 9422 (PTY) LIMITED	Intervening Party
RGS HOLDINGS (PROPRIETARY) LIMITED	Intervening Party

CONFIRMATORY AFFIDAVIT - PETRUS FRANCOIS VAN DEN STEEN

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that -

1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.

2 The matters I traverse in this affidavit are both true and correct. They are also within my personal knowledge.

3 I have read the replying affidavit deposed to by GERHARD CONRAD ALBERTYN in response to: -

3.1 the Industrial Development Corporation of South Africa Limited's Answering Affidavit dated 4 March 2026;

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3.3 the Answering Affidavit of the South African Cane Growers Association;

3.4 the Answering Affidavit delivered by Abrina 9422 (Proprietary) Limited; and

3.5 the Answering Affidavit delivered by the Minister of Trade, Industry and Competition.

4 I hereby confirm the truth and correctness of the contents of the replying affidavit insofar as the contents thereof relate to me and the applicants.

PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at Cape Town on 6 MARCH 2026 by **PETRUS FRANCOIS VAN DEN STEEN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN
Private Bag X54844, Durban, 4000
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

COMMISSIONER OF OATHS
Name
Address
Capacity

CATHERINE ANNE CONWAY
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
C & A FRIEDLANDER Inc.
15 CARLTON CLOSE, LONGBEACH
BUSINESS VILLAGE, NOORDHOEK

COURT ONLINE COVER PAGE

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

CASE NO: **2026-031780**

In the matter between:

Gerhard Conrad Albertyn NO ,Trevor John Murgatroyd NO ,Petrus Francois Van Den Steen NO	Plaintiff / Applicant / Appellant

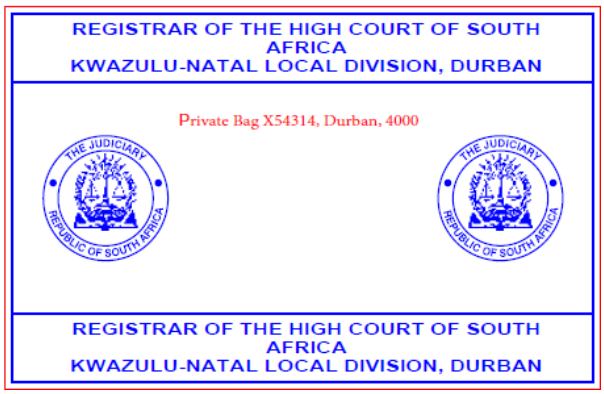
and

Tongaat Hulett Limited,The Affected Persons	Defendant / Respondent

---

Annexure 03

NOTE: **This document was filed electronically by the Registrar on 6/3/2026 at 4:04:55 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

Registrar of The High Court, KwaZulu-Natal, Durban.

From: Rute Moyo <rute@remoggo.com>
Sent: 06 March 2026 08:06 AM
To: Trevor Murgatroyd <trevor@metis.co.za>; David Jarvis <davidj@idc.co.za>; Bongani Miya <BonganiM@idc.co.za>; David Johnson <David@alwynepartners.com>; Amre Youness <amre@terrisfund.com>; Hans Klopper <hklopper@bdo.co.za>; Gerhard Albertyn <gerhard@metis.co.za>; Danny Andropoulos <dandropoulos@werksmans.com>; Casper Badenhorst <casper@steinscop.com>
Cc: David Hertz <DHertz@werksmans.com>; Lisa Silberman <LSilberman@werksmans.com>
Subject: Re: Meeting Held 26 February 2026

Dear Gerhard

I refer to recent exchanges regarding interim funding arrangements for THL. As you know, IDC have not yet reverted to Vision regarding costs.

However, the IDC's affidavit filed yesterday morning states:

"The continuation of PCF, and the commitment to consider providing additional PCF during an ongoing business rescue, provides certainty in relation to the operational requirements of THL"; and

"that THL can operate within the confines of the existing PCF facility and its available and projected cash flow until June 2026".

That is - IDC under oath states that THL remains in BR, that IDC is the exclusive PCF funder and further commits that between the PCF (available or requested) and THL management actions, THL will be fully funded until a solution is found.

Therefore BRPs should limit THL's use of funds to only the PCF as per above with cash generated from sales - stock and trade receivables (**Available Sources**) (which, as you know, Vision have a competing claim on outside BR). In this regard, Vision's stance in respect of the utilisation of funds from THL's "ring-fenced" funds including funds due to THD, rather than available PCF and cash generated from sales, to make payment of salaries and other costs in the normal course of business no longer applies until further notice.

Accordingly, Vision withdraws any prior consent and until otherwise confirmed in writing, does not consent to the use of any other sources of funds by THL for uses otherwise clarified for PCF use under the IDC affidavit which was further fortified by the Minister's affidavit as well. Should funds be utilised from sources which deplete Vision's security and without the prior written consent from Vision, Vision reserves its rights to take such legal steps as may be necessary to recover any damages it may suffer against those responsible.

Kind regards