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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

Answering Affidavit

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

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

CASE NO: 2026/031780

In the matter between:

**GERHARD CONRAD ALBERTYN N.O.
TREVOR JOHN MURGATROYD N.O.
PETRUS FRANCOIS VAN DEN STEEN N.O.**
and

First Applicant
Second Applicant
Third Applicant



TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

First Respondent

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

Further Respondents

**ANSWERING AFFIDAVIT – THE INDUSTRIAL DEVELOPMENT CORPORATION
OF SOUTH AFRICA LIMITED**

I, the undersigned

BONGANI WINSTON TUTU MIYA

do hereby state under oath as follows—

1. I am an employee of The Industrial Development Corporation of South Africa Limited with registration number 1940/014201/06 (IDC) in the capacity as Divisional Executive: Agro-Industries and Services Sector.

2. IDC:
- 2.1 is a corporation established under section 2 of the Industrial Development Corporation Act, 1940 (IDC Act) under registration number 1940/014201/06;
- 2.2 is a public entity listed in schedule 2 of the Public Finance Management Act, 1999 (PFMA);
- 2.3 is a state-owned national development finance institution mandated under the IDC Act to (among other things)—
- 2.3.1 provide funding for the development of various industries in South Africa; and/or
- 2.3.2 promote economic growth and industrial development and develop domestic industrial capacity in South Africa;
- 2.4 has its registered address at 19 Fredman Drive, Sandown, Gauteng; and
- 2.5 is an affected person in terms of chapter 6 of the Companies Act, 2008, with a substantial claim against Tongaat Hulett Limited (in business rescue) (THL), as will be set out in more detail later in this affidavit.
3. In terms of section 3 of the IDC Act, IDC's objects include:
- 3.1 to facilitate, promote, guide and assist in the financing of: (a) new industries and industrial, or ancillary or related economic, undertakings; and; (b) schemes for the expansion, better organisation and modernisation of and the more efficient carrying out of operations in



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existing industries and industrial, or ancillary or related economic, undertakings, to the end that the economic requirements of the Republic may be met and industrial development within the Republic, the Southern African region and the rest of Africa may be planned, expedited and conducted on sound business principles;

3.2 to foster the development of small and medium enterprises and co-operatives; and

3.3 to promote employment-creating activities, particularly in underdeveloped areas.



4. Section 4 of the IDC Act provides that IDC enjoys the following powers for the purpose of attaining its objects:

4.1 to promote or assist in the promotion of companies for conducting industrial operations in, among others, South Africa;

4.2 to lend or advance money to any company or other person engaged in or proposing to establish or to expand or modernise any activity referred to in section 3; and generally

4.3 to enter into any contract and perform any act, whether within the country or elsewhere, which may be necessary for or incidental or conducive to the attainment of any of its objects, or which are calculated directly or indirectly to enhance the value of the services which the applicant can render towards industrial development or ancillary or related economic activities within, among others, South Africa.

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5. The IDC has a mandate to drive industrial development, job creation and economic growth in the country. Despite its developmental role, it has a responsibility to manage its financial resources, made up of public funds entrusted to it by the government, prudently, ensuring that it can continue to operate and reinvest in the economy. The investment of its funds must be made on good and rational commercial grounds as any other lender would do. Like any other lender, the IDC is required to discharge that mandate within a framework of good corporate governance. Ultimately, any investment must show economic viability and financial sustainability to foster job growth and long-term growth.
6. By virtue of my position within IDC, I am authorized to depose to this affidavit on behalf of IDC and to represent IDC in its opposition of the relief sought in this application.
7. In addition to the foregoing, I confirm that my colleague – Mr David Anthony Jarvis (**Mr. Jarvis**) who is the acting chief operations officer within IDC – and I have been intimately involved with matters relating to the business rescue of THL and that we are best placed to depose to an answering affidavit on behalf of IDC. In support of this, I attach an affidavit by Mr. Jarvis, marked as **IDC1**, in which he confirms all the statements made in this affidavit as being true and correct.
8. Save where the contrary is stated or appears from the context in this affidavit, the facts to which I depose in this affidavit are within my personal knowledge (or are apparent from documentation under my control or to which I have free access) and are to the best of my belief, both true and correct. Where I refer to



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information conveyed to me by others, I believe such information to be true. I indicate clearly where information is so conveyed by others.

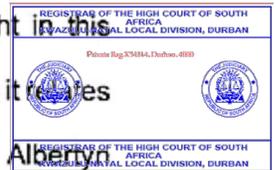
9. Where I make legal submissions, I do so on the advice received from IDC's instructing attorneys of record in this application and in the belief that such advice is well-grounded. I, of course, make such submissions without any waiver of legal professional privilege.
10. Unless otherwise defined in this affidavit, terms and expressions defined in the founding affidavit filed in this applications will have the same meanings when used in this affidavit.



STRUCTURE OF THIS AFFIDAVIT

11. The applicants (as the BRPs of THL) seek an order to bring about the end of the business rescue proceedings of THL and convert those proceedings to liquidation proceedings as envisaged in terms of section 141(2)(a)(ii) of the Companies Act. This affidavit is filed in respect of that relief and in opposition to THL being placed under provisional winding-up.
12. This affidavit is structured as follows:
- 12.1 Part A – Introduction;
- 12.2 Part B – Urgency;
- 12.3 Part C - Participation of IDC as a secured post-commencement finance lender, and creditor, in the business rescue proceedings of THL;
- 12.4 Part D – The Adopted Business Rescue Plan;

- 12.5 Part E – Funding initiatives since September 2025;
- 12.6 Part F – Correspondence;
- 12.7 Part G – Submissions and Concluding remarks.
13. Given that this application was launched on severely truncated timelines and the fluidity of developments and engagements to avoid a liquidation of THL, IDC at this stage only deals with the issue of urgency and the relief sought in this application. IDC does not deal with each and every averment, insofar as it relates to IDC, made in the founding affidavit deposed to by Gerhard Conrad Albertyn (Albertyn), one of the BRPs. Accordingly, IDC reserves the right to file a supplement affidavit dealing with such averments.



PART A – INTRODUCTION

14. In this part of my affidavit, I will introduce the business rescue proceedings of THL and outline relevant statutory provisions in so far as they are relevant to this application.
15. THL voluntarily commenced business rescue supervision, seeking protection from the value destructive process of liquidation, with effect from 27 October 2022 when its board of directors resolved to place it under business rescue in

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accordance with chapter 6 of the Companies Act, 2008 (the **chapter 6 restructuring scheme**).

16. The BRPs were appointed to administer and supervise the business rescue proceedings of THL on 27 October 2022.
17. To state the obvious, business rescue is primarily aimed at resuscitating a financially distressed business. This objective is geared towards ensuring the financial sustainability rather than the collapse of a financially distressed business where this can be avoided. The chapter 6 restructuring scheme is largely self-administered by the financially distressed company under independent supervision of a business rescue practitioner. Invariably, the rescue strategy deployed will be concerned with the longevity of the company and its business. Business rescue provides an alternative to liquidation, with the aim to prevent the death of an otherwise viable business.
18. The chapter 6 restructuring scheme is tailored in such a manner so as to attain one of the stated objectives of the Companies Act, 2008, namely *"to provide for the efficient rescue and recovery of financially distressed companies, in a manner that **balances the rights and interests of all relevant stakeholders**"*¹ [emphasis added].
19. In doing so, the chapter 6 restructuring scheme acknowledges that the failure of a business does not only affect its shareholders and creditors – it also affects its employees, customers, suppliers and, more importantly in the South African



¹ Section 7(k) of the Companies Act, 2008.

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context, the community of interests served by a business as large and with a socio-economic impact across the spectrum as THL. This lies at the core of the rescue of THL.

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20.1 This wider community of interests will be severely affected by the collapse and liquidation of THL (and its consequent destruction of value)

Not only will a liquidation result in the loss of direct jobs, some permanently, it will also have a severe impact on small-scale farmers and canegrowers and families reliant on the employment of people by THL.



20.2 For instance, and by way of illustration, over 15 000 small-scale growers (and their families) fall within the THL catchment area. These small-scale growers rely on THL for the supply of sugar cane. They delivered 835 287 tons of cane into THL's facilities in the 2024/2025 season, representing 40% of the total cane delivered by small-scale growers. In terms of the total registered small-scale growers who delivered cane in the 2024/2025 season, small-scale growers in the THL catchment accounted for 60.2%. These small-scale growers are a key stakeholder in the business rescue of THL.

20.3 THL is one of the largest employers in South Africa. THL, at the peak of its operations, directly employs approximately 2 550 people.

20.4 There are also 435 commercial growers, 11 772 small-scale farmers and growers and their families that are reliant on THL for the supply of sugar

cane. This renders small-scale farmers and commercial growers, employees of THL, truckers that transport cane and other products, owners of small businesses, suppliers and the wider community of the Tongaat region and surrounding areas in KwaZulu–Natal as key stakeholders whose interests must be included and considered in the balancing act required to ensure the efficient recovery or rehabilitation of a financially distressed business.

20.5 It follows that, within the chapter 6 restructuring regime, the interests of one stakeholder cannot outweigh and effectively emasculate those of all other stakeholders in respect of the business rescue proceedings of THL.

21. In addition to South Africa, THL has operations which it owns in Botswana, Zimbabwe (sugar growing and processing plus ethanol production) and Mozambique (sugar growing and processing).
22. THL also owns a large property development portfolio through a subsidiary, THL Hulett Developments Proprietary Limited (THD), which is also under business rescue proceedings. The business rescue proceedings of THD are separate with no overlap in the business rescue proceedings of THL.
23. The commencement of business rescue triggers an automatic stay or moratorium which, with certain exceptions (none of which are applicable in the business rescue of THL), operates as a prohibition against all legal proceedings and enforcement actions affecting the distressed company and its property. This moratorium provides respite and breathing space for the distressed company to



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navigate and craft a restructuring solution. It also protects the creditor body as a whole by bringing to a halt all actions by individual creditors to obtain satisfaction of their claims using ordinary legal remedies available under our law. This moratorium is without doubt a key building block towards achieving a successful and balanced restructuring outcome that benefits all stakeholders.

24.

24.1 Another key element or building block of the chapter 6 restructuring scheme is the availability of post-commencement finance (PCF) – “oxygen” to sustain the business operations during business rescue.



24.2 Sometimes (on rare occasions), this oxygen is available from the existing liquidity and cash flow of the distressed company. In most instances, the liquidity has dried up, cash is very tight (bank and credit facilities are overdrawn and exhausted) and finance is sourced as PCF from existing or third-party lenders.

24.3 PCF may be advanced on a secured or unsecured basis, and is usually – for obvious commercial reasons – secured by property of the distressed company not already encumbered to an existing lender. It is safe to say that the majority of restructuring efforts fail due to the unavailability of PCF.

24.4 I will deal with this issue in more detail under Part C of this affidavit when I outline the circumstances under which IDC agreed to extend substantial PCF, on a secured basis, to THL.

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25. In the final analysis, the business rescue plan will be adopted, on a preliminary basis, and be binding on the creditor body in respect of all claims against the distressed company, pre- and post-business rescue, if it is supported by 75% of the voting creditors, which must include 50% of its independent voting creditors.
26. If a business rescue plan does not alter the rights of shareholders, the achievement of the two thresholds in a creditor vote will result in the business rescue plan being finally adopted. Should a business rescue plan alter the rights of shareholders, it will require the support of a majority of shareholders voting interests exercised at a separate meeting of the shareholders before it will be finally adopted and binding on the creditor and shareholder bodies.
27. If a business rescue plan is rejected by creditors, the chapter 6 restructuring framework allows a business rescue practitioner to entertain and conduct a vote on a motion, *inter alia*, to revise the business rescue plan for further consideration. This mechanism is far-reaching in its application. It is, I am advised, flexible to allow a business rescue practitioner an opportunity to go back to the drawing board, conduct necessary and appropriate engagements with relevant stakeholders and present an alternative to the rejected business rescue plan. Likewise, it is submitted, 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



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implementation. The failure of an adopted business rescue plan does not necessarily mean that the business rescue has failed.

28. In summary, the 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;

28.2 provides for a strict statutory moratorium, save for exceptions which are not applicable in this instance, so that the distressed company can operate and navigate to provide a restructuring solution – thereby providing a protective bubble for the business and the distressed company to conclude a restructure;

28.3 allows PCF or distressed funding to be provided on a secured or unsecured basis, as oxygen, for the liquidity and cash flow crunch and shortfall experienced by a distressed company;

28.4 requires the business rescue practitioner to publish a business rescue plan, as a product of engagement between the business rescue practitioner and the creditors, and voted on at a statutory meeting of creditors – and as remarked in the judgment in *Booyesen v Jonkheer Boerewynmakery (Pty) Ltd* [2016] ZAWCHC 192; [2017] 1 All SA 862 (WCC); 2017 (4) SA 51 (WCC) at para 67 “control over the rescue



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proceedings is to be exercised by democratic majority vote of creditors and affected parties"; and

28.5 provides a degree of flexibility that can be exercised in favour of securing a restructuring solution as opposed to liquidation, provided that there is a viable business to be rescued and there remains a reasonable prospect of rescuing the financially distressed business.

29. Equally apparent from the chapter 6 restructuring scheme are these realities:

- 29.1 a fundamental element of the business rescue process is that independent professionals become involved. Therefore, business rescue is a far more nuanced process than liquidation where the only interests are essentially those of the creditors in accordance with their statutory rights of priority. Employee protections are lost and operational disruption is rarely funded in a liquidation;
- 29.2 in business rescue a more holistic approach is adopted to assess not only the demands of creditors but whether the company can be saved and operate as a going concern into the future, and with that goes the issue of job losses and other important elements; and
- 29.3 the longevity and preservation of the core elements of a company's business must be preferred where it will benefit the greater majority of stakeholders, as opposed to a liquidation.



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PART B – URGENCY

30. As regards the urgency of this application, the BRPs contend that this application must be determined Urgently as "*substantial redress will not be obtained by a hearing in the ordinary course*". The BRPs state that this is because of the following:

- 30.1 the non-availability of funding To satisfy the operational requirements of THL and "*the absence of certainty regarding the refinancing or restructuring*" of the existing PCF facility made available by the IDC during the business rescue of THL;
- 30.2 a recent demand made by a secured pre-commencement creditor against THL;
- 30.3 the urgent need to appoint a provisional liquidator to take control of THL and "*to attend to urgent matters that require immediate attention, including but not limited to, the payment of critical expenses, the maintenance and preservation of [THL's] IT systems and continued communication with relevant stakeholders as well as taking control of the remaining assets of [THL] ... to preserve value for [THL's] creditors.*"²



² FA paras 17-18 at 001-18 and 001-19.

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31. I propose to address each of these grounds upon which this application is brought as a matter of urgency:

31.1

31.1.1 firstly, it is contended that there is no funding available for THL to continue with its operations. This is attributed to the lack of certainty around the existing PCF facility advanced by IDC to THL. This assertion is incorrect, both factually and legally, and fails to explain why the funding challenges cannot be addressed within the Chapter 6 restructuring scheme. It also fails to 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.

31.1.2 As will be demonstrated in more detail under Parts C, E and F of this affidavit, the IDC has proposed the continued provision of PCF to satisfy THL's solvency requirements in respect of ongoing operations provided that THL remains under business rescue. This remains the IDC position with regard to the PCF advanced and, in general, to its PCF commitment towards THL.

31.1.3 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 of 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



THL

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.

- 31.1.4 It is recognised that this revised cash flow position could be adversely prejudiced by the negativity and impact caused by this application (for instance, "market jittery" caused across all stakeholders by the liquidation step brought about by this application). To this end, the IDC (as will appear from Parts C, E and F of this affidavit) has left the door open for consideration of additional financing provided that THL remains under business rescue.



31.2

- 31.2.1 secondly, 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.
- 31.2.2 Vision succeeded to the rights of the Lender Group having closed a transaction for the acquisition of the Lender Group's claims and security against THL in June 2025, some 18 months after the adoption of the Plan. As such, Vision stepped into the shoes of the Lender Group as a pre-commencement creditor. Furthermore, Vision is bound by the Plan which was approved by the Lender Group,

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exercising its voting interest in favor of the approval and adoption of the Plan.

- 31.2.3 The assertion that the demand supports the urgency of this application ignores the statutory moratorium referred to in paragraphs 23 and 28.2 above, and which is contained in section 133 of the Companies Act, 2008. The demand, and enforcement of all rights under any security held by V155, remains suspended throughout the business rescue proceedings of THL. The mere existence of threatened litigation or enforcement of rights, in business rescue proceedings operating within the chapter 6 restructuring scheme, cannot constitute a ground for urgency.
- 31.2.4 The BRPs have been aware of the rights of the Lender Group, now advanced in the demand, throughout the business rescue proceedings of THL, and conducted the business rescue proceedings within that reality. The BRPs fail to advance a case why the demand has suddenly changed the reality of a pre-commencement claim and its operation within the scope of the statutory moratorium.
- 31.2.5 This assertion ignores the fact that the chapter 6 restructuring scheme entrusts a business rescue practitioner with the management of these risks as part of the business rescue proceedings. The risks, if any, attributed to the demand by the BRPs, to advance the urgency of this application, can be addressed in the same way that they have been hitherto addressed, without the need to place THL into liquidation.



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31.3

31.3.1 thirdly, it is suggested that this application is urgent because a provisional liquidator must be appointed to take control of and preserve the assets of THL, discharge payment of salaries and day-to-day operational expenses.

31.3.2 All these functions have hitherto been under the control of the BRPs who, in terms of section 140(1)(a) of the Companies Act, 2008 acquired full management control of THL in substitution for its Board and pre-existing management. All of these functions fall within the BRPs powers and mandate under the chapter 6 restructuring scheme and can be performed within the business rescue proceedings of THL.

31.3.3 As a matter of fact, the exercise of these functions within a liquidation will be value destructive given that liquidation has the potential of prejudicing the continued business operations of THL in many ways.

32. There is no basis for this application to be pursued on an urgent basis, seriously prejudicing the rights of all affected persons and stakeholders in the business rescue proceedings of THL. There is sufficient financial runway within which THL can operate whilst remaining in business rescue. The runway is supported by the continued availability of PCF under the existing PCF facility and a commitment by the IDC to consider advancing additional funding to ensure the sustained operations of the business, as a going concern, until the ultimate objectives of a restructuring solution for THL is achieved for THL. With working capital available through the continuation of the existing PCF Facility, and the commitment to

consider advancing additional funding required for maintenance, there is no basis for THL to be placed under liquidation on an urgent basis.

33. Furthermore, the urgency of this application is manufactured to involve functions which the chapter 6 restructuring scheme entrusts to the BRPs. The BRPs also do not articulate the factual or legal impediments, if any, to them continuing to perform these functions within the business rescue proceedings of THL. The exercise of these functions in a liquidation will be value destructive and work against the interests of all stakeholders of DHL.



34. It is also, I am advised, inherently undesirable that a matter of this magnitude, affecting such a wide range of stakeholder interests, and with profound and irreversible consequences which a liquidation entails (for instance, the loss of jobs, unsecured creditor claims being reduced to zero, cane growers losing the opportunity immediately available to sell harvested cane) should be heard urgently and on the basis of urgency asserted by the BRPs.
35. The level of opposition that this application has attracted is telling on the potential breadth of the liquidation repercussions, not only on Tongaat but on a number of interested parties. A multiplicity of parties, some with divergent and some with competing interests have sought to intervene specifically to avoid the consequences of liquidation. The nature and extent of the intervention underscores two important points, namely, firstly, issues go beyond the commercial interests of the parties and secondly, there remains a substantial

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body of parties that perceives that the continued business rescue is a viable and preferable route.

**PART C - PARTICIPATION OF IDC AS SECURED PCF LENDER, AND CREDITOR,
IN THE BUSINESS RESCUE PROCEEDINGS OF THL**

36. There is no doubt that THL, for a variety of reasons, experienced significant liquidity constraints placing its ongoing operations at risk and preventing it from releasing its financial statements for the 2022/2023 financial year.
37. This failure was a result of THL being unable to prove to its auditors that it was able to continue and operate as a going concern. As a result of this, the listing of THL on the Johannesburg Securities Exchange was suspended.
38. THL had been technically insolvent for a while. The value of its assets also declined, partly due to asset sales, and poor performance and lack of maintenance. Accessible cash balances also reduced dramatically in the years before 2023.
39. THL was in serious financial trouble when it entered business rescue. It was commercially insolvent and financially distressed within the chapter 6 restructuring scheme. However, it was, and remains, a business worth saving,



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and capable of being saved, for the benefit of a vast number of stakeholders. It is therefore suitable to be rescued within the chapter 6 restructuring scheme.

40. The commencement of business rescue by THL permitted it, within the chapter 6 restructuring scheme, to address the immediate and long-term causes of its financial distress.
41. A key factor identified was the restoration of production capacity and efficiency. THL's capacity and capability to produce competitively within the sugar market was seriously eroded over a long period of time by under-maintenance of its plant and equipment. For a start, a program of capital expenditure was required to bring about a successful turnaround. This required a long-term investment, in the form of debt or equity, termed as patient capital. However, that was not the purpose of PCF but rather the long-term outcome of a restructuring solution.



IDC, ITS PCF FUNDING AND THE PRESENT STATUS OF THE PCF FUNDING

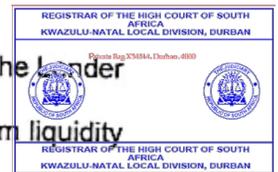
42. At the beginning, and after the commencement of THL's business rescue, PCF was provided by the THL legacy Lender Group, made up of a consortium of banks and financial institutions (**Lender Group**) that already had pre-business rescue claims of approximately R7.9bn against THL, secured over all of THL's assets including its shares in THD and operations in Mozambique, Botswana and Zimbabwe. The Lender Group withdrew its PCF and IDC was approached in November 2022 to consider the advance of PCF.

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THE PCF FACILITY AGREEMENT

43. The PCF Facility Agreement was a timely intervention to avoid THL collapsing into liquidation. The PCF advanced by IDC also enabled the BRPs to pivot from a liquidation wind-down to a turnaround. I must pause and mention here that the PCF was not used to support the operations in Botswana, Mozambique and Zimbabwe, which were all independently self-sustaining.
44. The intention of IDC was to step into the void left by the limitations of the Lender Group's PCF and support the business rescue process with short-term liquidity so that the BRPs could find a strategic equity partner (SEP) interested in acquiring the South African and other African operations within the THL group. Any proposal emanating from this process would require approval by creditors by way of the adoption of a business rescue plan.
45. Negotiations and discussions that ensued on an urgent basis resulted in the conclusion of a written PCF Facility Agreement between IDC, THL and the BRPs on or about 23 December 2022 ("PCF Facility Agreement") in terms of which IDC agreed to advance PCF, on a secured basis, to THL in the amount of R1.2 billion. This PCF funding enabled THL to:
- 45.1 repay in full the PCF of R900m advanced by the Lender Group in the early phase of THL's business rescue, to bring about short-term stability and enable THL to resume South African milling and refining operations;
- 45.2 fund its working capital requirements and off-crop maintenance programme to the end of March 2023, and thereafter extended until June



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- 2023 (as contained in an IDC approved budget provided by THL, updated and approved from time to time in the future); and
- 45.3 fund unforeseen amounts, costs and expenditure of THL as approved by IDC in its sole and absolute discretion.
46. A total of ten written addenda were concluded to the PCF Facility Agreement. These addenda addressed in the main an increase, from time to time, of the PCF facility limit, the scope and purpose of the PCF facility, the extension of the repayment dates of the PCF facility and security cover ratios that must be in force for the duration of the PCF facility. An eleventh written PCF addendum, as will be outlined later, was at an advanced stage of finalization when this application was precipitously launched by the BRPs.
47. In what follows in this part of this affidavit, I set out the salient terms of the PCF Facility Agreement incorporating the various amendments brought about by the ten written addenda, how the PCF facility evolved during the business rescue of THL, giving effect to the changing circumstances of THL and the requirements of the BRPs. This supports the imperative to make funding available within the scope of the IDC mandate and objectives outlined at the outset of this affidavit, and do so on sound and commercial grounds, acting as a catalyst to attract new investment and thereby maximising the impact of its funding. This is particularly relevant when it comes to the consideration of investments and funding within a financially distressed business.
48. As part of the terms of PCF that IDC agreed to advance to THL, the Lender Group agreed for THL, Voermol Feeds Proprietary Limited (Voermol) and THL Hulett



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South Africa Proprietary Limited (THSA), wholly-owned subsidiaries of THL, to grant to IDC, as PCF lender, a first-ranking security over certain of their assets (including rights), to the satisfaction of IDC. The Lender Group and the debt guarantor that held a first-ranking security over various assets (including rights) as part of the security package for the Lender Group debt, agreed to release security over certain of these assets so that they became unencumbered and available to IDC for it to take security over, so as to secure the PCF from inception to repayment in full, in a manner satisfactory to the IDC. The PCF advanced by IDC:



- 48.1 was completely a security-based facility - it was facilitated by way of the release by the Lender Group (through the Lender Group debt guarantor) of security held by it, in favour of IDC; and
- 48.2 comprises a revolving credit facility allowing drawdowns (advances) and repayments, including by way of cash sweeps to be made during the availability period of the PCF on a weekly basis.
49. The security held by IDC for the PCF was, *inter alia*, over the bank accounts, receivables and inventory of THL. This meant, in practical terms, that THL would dispose of inventory, create receivables and receive payment from its customers into its bank accounts. Through this chain of events, the PCF remained available

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for THL to withdraw and repay funds multiple times, subject always to the maximum fixed and agreed limit of the PCF facility.

50. The suite of security provided by the Borrower to the IDC, released by the Lender Group in the manner described above so that security could be granted to the IDC, included the following:

50.1 a cession *in securitatem debiti* –

50.1.1 over all bank accounts held by THL, Voermol and THSA;

50.1.2 over the net claims of THL, Voermol and THSA against a customer in terms of a contract concluded by them with the customer for the sale of inventory to the customer;

50.1.3 proceeds under a credit insurance policy issued by Credit Guarantee Insurance Corporation in respect of the receivables in 50.1.2 and any other policy of insurance in respect of such receivables;

50.1.4 all rights and revenues received or receivable by THL pursuant to a cession by THSA in favour of THL over all bank accounts held by THSA;

50.1.5 all proceeds of insurance over inventory of THL; and

50.1.6 all other revenues received or receivable by THL;

50.2 a South African law governed pledge agreement entered into between THL and IDC in terms of which THL pledges and cedes *in securitatem debiti* in favour of IDC all its rights, title and interest in and to the inventory, any documents of title issued in connection with the inventory



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and the right to segregate and delivery of the inventory and the right to segregation and delivery of inventory which is commixed and commingled, all upon the terms and conditions set out therein;

- 50.3 a "waiver of lien" letter issued in favour of the Lender by an owner of a storage facility, warehouse, silo, container and the like or by a storer and/or a lessor of an approved location or any landlord or any other person in possession of inventory or which may come into possession of the same, in connection with Inventory, waiving all and any liens, hypothec or other security rights in respect of the inventory in its custody or possession or which are located at any storage facility under the custody of the collateral manager,



(terms and expressions used in these paragraphs will have the meanings given to them in the PCF Facility Agreement).

51. At the beginning, the value of the security held by IDC pursuant to the PCF Facility Agreement was in the region of approximately R2bn. The value of this security fluctuates over the production and trading season of THL.
52. With the IDC commitment increasing, IDC required the level of security cover to at least satisfy its exposure, which THL was required to maintain at all times during the term and availability of the PCF. Any reduction in the security cover would constitute a breach by THL of the PCF Facility Agreement, granting IDC the right to demand repayment of the PCF facility outstandings and enforce its security rights. The security cover ratio reduces when production ceases during

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the period from December to March, and increases when milling and production, and the sale of inventory, resumes between March and November.

53. The PCF Facility Agreement contains details of the PCF facility advanced by IDC and of the conditions of utilization of the PCF facility during the PCF availability period, requirement for THL and the BRPs to carefully and tightly manage the cash flow (receipts and payments) of THL, provide reports on the receivables and inventory, ensure all receipts are deposited into the THL bank accounts, delivery of utilization requests, payment of interest, facility undertakings to remain in operation until the PCF facility outstandings are repaid, information and reporting undertakings, events of default and enforcement mechanisms flowing from an event of default. The point of such a comprehensive and detailed facility agreement was to protect and preserve all rights of IDC in connection with the PCF advanced to THL.



THE PCF FACILITY AND THE INCREASES OVER THE PERIOD OF TIME

- 53.1 IDC's commitment under the PCF Facility Agreement was originally available until 31 March 2023. IDC agreed to extend the availability of the PCF from 31 March 2023 to 30 June 2023, and then to 21 July 2023, and then over further periods ending with the last extension until 31 March 2026.
- 53.2 As at the date of the initiation of this application, the PCF has been increased and extended by way of various written addenda to the PCF Facility Agreement to R2.3 billion, where, under the most recent PCF

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Facility Agreement addendum, the availability period ends on 31 March 2026 and the final repayment date occurs on 31 March 2026.

- 53.3 IDC is the only PCF provider in the business rescue proceedings of THL, a fact recognized by the BRPs and all other stakeholders. The PCF provided stability to THL, addressed the fluctuating cash flow position of THL and provided THL with working capital, on a revolving basis, so that it's going concern status and overall enterprise value can be preserved. Most importantly, through this intervention IDC has protected the value of THL and preserved employment, directly and indirectly, which would be under threat in a liquidation.
- 53.4 IDC is a creditor with a claim of R2,274 billion as at the date of this affidavit. As a creditor it is an affected person in the business rescue proceedings of THL.
- 53.5 Not only as a result of its legal status as a creditor and affected person, but also because of its interests as outlined earlier in this affidavit, the IDC has a direct and substantial interest in the outcome of this application and the consequences if THL is to be placed under liquidation. There are severe risks directly associated with a liquidation for IDC, as PCF provider. Once a liquidation ensues it will have an enormous impact on the ability of THL to settle the PCF facility outstandings to IDC.
- 53.6 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



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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.

- 53.7 At all times, the increase and extension of the PCF commitment by IDC (achieved through the extension of the PCF availability period and repayment date) was commensurate with the progress being made by the BRPs in the business rescue proceedings of THL, including a SEP interested in acquiring the South African and other African operations within the THL group.



54. An SEP had the option of acquiring the SA operations without the other African operations or participate in a combined transaction inclusive of the other African operations. It is to be noted here that only the South African sugar and animal feed operations, housed in THL, were under business rescue. The SEP process included the other African operations because the Lender Group held security over the shares held in the independent corporate entities through which those operations were conducted in the respective countries.
55. Towards the end of 2023 there was a danger of the PCF commitment not being renewed. As a result of further engagements with the BRPs and the Lender Group, the PCF availability was extended until 28 February 2024 on condition, *inter alia*, that a business rescue plan was presented and approved by creditors, within the framework of the chapter 6 restructuring regime, before 15 January 2024. This meant that the PCF commitment would have become due and

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payable if a business rescue plan was not adopted by creditors before 15 January 2024.

56. A business rescue plan was adopted on 11 January 2024. This allowed THL and the BRPs to immediately work towards the following:
- 56.1 addressing the additional security required by IDC such that the recovery by IDC of its PCF, in the amount already committed or to be increased into the future, was secure and not placed at additional risk;
- 56.2 addressing THL's significant working capital requirements going into the next crushing season.
57. In simple terms, given the cyclical nature of THL's business operations, IDC security cover erodes with the selling down of stock by THL between December and March. This has a huge impact on the available security cover for the PCF advanced by IDC.
58. To illustrate the point, the security held by IDC over stock and debtors reduced from approximately R2.6 billion in December 2023 to approximately R2.256 billion (in January 2024), R1.722 billion (in February 2024) and then R1.142 billion (in March 2024). This level of reduction in the security value repeats itself annually. It is detrimental to the interests of IDC and caused primarily by ongoing funding required for capital expenditure and off-crop maintenance, operating losses sustained and business rescue-related costs and expenses.
59. It was partly for this reason that the business rescue plans (two of them), as published, were required to be voted on by creditors so that a determination is



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made on the SEP adopted by creditors to implement THL's vital debt and equity restructure. This would also enable IDC, THL and the BRPs to work together and swiftly find an outcome that will address the legitimate concerns of IDC around the erosion of its security, and avoid a situation of THL being unable to access the approved PCF and running out of cash to operate while the adopted business rescue plan was being implemented. It was contemplated that the entire funding arrangement would need to be repaid or restructured after a business rescue plan was adopted (at which point the creditors would have determined the future of THL) and well before the security value of IDC started to seriously diminish and in so doing, prejudice IDC.



60. I should point out at this juncture that, when entering into this PCF arrangement to save the future of THL for the benefit of all its stakeholders, IDC originally contemplated that a SEP process, confirmed through the adoption of a business rescue plan, would be concluded by no later than the third-quarter of 2023, well before the stock sell-off season between December and March.
61. IDC, given its interests and willingness to provide ongoing support to THL, accordingly required business rescue plans to be adopted on or before 15 January 2024 so that there was sufficient runway and time for IDC and THL to address the ongoing working capital requirements of THL before the PCF advanced by IDC ran down as against the available security.
62. If that did not occur, the IDC reserved its rights to withdraw its PCF commitment and demand – in line with the statutory dictates imposed on its officials and directors by the PFMA and the IDC Act – the immediate repayment of the

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substantial amounts advanced to and owing by THL.

PART D –THE ADOPTED BUSINESS RESCUE PLAN

63.

63.1 A business rescue plan, developed after consultation by the business rescue practitioners with affected persons (in practice, this involves key affected persons), is published and presented by the business rescue practitioners for consideration and a vote by creditors and, if required, shareholders. The separate meetings of creditors and shareholders convened and held for this purpose, in accordance with sections 151 and 152 of the Companies Act, is an important phase within the chapter 6 restructuring scheme.

63.2 The Companies Act contemplates two types of business rescue plans: a turnaround plan (returning the company to solvency) and a plan delivering a better return to creditors than in a liquidation (referred to as a controlled wind-down). The latter type of plan is the result of the failure to bring about a complete restructure of the distressed company, and invariably results in value destruction and loss of jobs.

64.

64.1 Two business rescue plans were published by the BRPs on 29 November 2023.

64.2 The plans published and presented for voting on 10 January 2024 were the result of a bidding process that involved multiple interested parties.



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In the end, the BRPs identified two credible options that, in the BRPs expert judgment, ought to be presented to creditors for consideration.

64.3 Both plans provided a turnaround solution through a complete debt and equity restructure, allowing THL to trade on a solvent basis into the future.

64.4 Litigation subsequently ensued to interdict a meeting of creditors convened by the BRPs to be held on Friday, 8 December 2023 for the consideration and vote on the published business rescue plans.

Following the conclusion of the urgent applications, the published business rescue plans were considered by creditors at a meeting of creditors held over two days on 10 and 11 January 2024. One of the published business rescue plans was withdrawn before the vote on 11 January 2024. The remaining published business rescue plan was adopted by creditors (the **Plan**).



65. The Plan includes a proposal for the treatment of pre-commencement and post-commencement payment obligations of THL to creditors, IDC and The South African Sugar Association (**SASA**). The Plan is binding on all its creditors.

THE MATERIAL TERMS OF THE PLAN AND ITS CURRENT STATUS

66.

66.1 The Plan envisages that Vision acquire the claims of the Lender Group (of cR8.1 billion at the time) against THL together with the security held by the Lender Group for those claims (but excluding the security released in favour of IDC for the PCF facility advanced by IDC to THL).

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- 66.2 The Plan includes a proposal for Vision to convert some R4.9 billion of the R8.1 billion debt it acquired from the Lender Group to equity in THL through the subscription of new shares in THL, which would result in Vision holding 97.3% of the shares in THL. The existing shareholders would dilute to 2.7%. The remaining R3.6 billion of the claims acquired from the Lender Group would remain owing by THL to Vision and will be restructured so as to render THL solvent and able to discharge its debts and liabilities after it exits business rescue. It would achieve an immediate improvement of the balance sheet of THL, strengthen its solvency and align creditor and shareholder interests. In substance, this option presented a debt-for-equity recapitalisation aimed at restoring the commercial sustainability of THL without its destruction. This option under the Plan can be described as the **"Equity Transaction"**.
- 66.3 The Plan proposed an alternative to the Equity Transaction. In other words, should the Equity Transaction not materialise, Vision would acquire THL's assets and business, as going concerns, inclusive of the shares held by THL in the foreign operations, and effectively leave behind THL as a shell, which will be delisted and possibly liquidated. Payment by Vision for the acquisition of the assets and businesses would be way of set-off of the purchase price against the claims owing by THL to Vision, consequent upon Vision having acquired the claims of the Lender Group against THL. This option under the Plan has been described as the **"Asset Transaction"**.



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66.4 Fundamental to both the Equity Transaction and the Asset Transaction is the acquisition by the Vision Parties of the Lender Group claims and the balance of the security held by the Lender Group for those claims. In addition, the landscape for the treatment of pre-commencement and post-commencement business rescue claims of creditors, IDC and SASA will not change in any respect whether the Equity Transaction or Asset Transaction is ultimately concluded for the restructure of THL.

67. The adopted business rescue plan provided, on an overall basis, a far better outcome for all stakeholders than a liquidation. Most importantly, jobs would be preserved. Creditors who would receive zero cents in a liquidation, stood to share *pro rata* on an amount of R75 million to be made available by Vision upon implementation of the Plan. This is a key aim of the chapter 6 restructuring scheme. With the rescue and fresh start, all direct and indirect interests, suppliers and other service providers, many of whom are reliant on THL's survival for their survival, would be preserved. The outcome of a failed business rescue for the regional economy in Kwazulu-Natal would be catastrophic. This is one of the main reasons and justifications for the intervention of IDC and its willingness to provide PCF to THL.

68.

68.1 Following the adoption by creditors of the Plan, THL, the BRPs and Vision embarked on a process to implement the Equity Transaction. One of the requirements of the Equity Transaction was the subscription by Vision for new shares in THL sufficient to render it the holder of 97.3% of the total issued shares in THL.



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- 68.2 To this end, THL convened a general meeting of shareholders on 8 August 2024 (the **Meeting**). The purpose of the Meeting was to seek approvals from shareholders of THL to enable THL to proceed with the issue of the additional shares to Vision to enable the Equity Transaction to be achieved.
- 68.3 The proposed resolutions required the approval of more than 75% of the shareholders of THL, in person or by proxy.
- 68.4 The resolutions proposed at the Meeting failed to achieve the required 75% majority vote for their approval. In effect, the shareholders at the Meeting rejected the Equity Transaction.
- 68.5 Consequently, the alternative Asset Transaction fell to be implemented by the BRPs.
69. Vision Sugar South Africa Proprietary Limited was the entity nominated by Vision to acquire the business and sale assets of THL pursuant to the Asset Transaction. The purchase price for the South African business and assets would be discharged by the assumption of liabilities of THL to its trade creditors at the commencement of its business rescue plus the amount of R525 million payable to SASA and R75 million payable as an unsecured dividend to unsecured creditors of THL at the commencement of its business rescue. Should the valuation of the South African business and assets by BDO South Africa exceed



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the aggregate of those amounts, the difference would be settled by way of set-off of the difference, to a maximum amount of R3 billion.

70. The acquisition of the shares held in the non-South African assets from THL would be for an amount of R3.5 billion or such value as independently determined by BDO South Africa. The purchase consideration will be set-off against approximately R3.5 billion of the Lender Group's debt acquired by Vision.
71. The remainder of the Lender Group's claims acquired by Vision, following the set-off as outlined above, will be unenforceable as THL will be rendered a shell company without any assets.
72. In April 2025, the IDC approved a R4.05 billion funding package for Vision, comprising four facilities: Facility A, a R643.8 million term loan with a 12-month capital and interest moratorium; Facility B, a R828.7 million term loan with a 12-month capital moratorium; Facility C, a R889.4 million Payment In Kind facility with repayments linked to liquidity events; and a R1.7 billion revolving working-capital facility. The funding package was to enable Vision to conclude its acquisition of the Lender Group claims, restructure the PCF and allow for



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investment into Capital Expenditure. No agreements were finalised and executed for any of these facilities.

73. To prevent delays in Vision's acquisition of the Lender Claims, the IDC also issued a conditional R1.3 billion guarantee to Standard Bank, enabling Vision to secure bridging finance and complete the acquisition of the Lender Claims.
74. One of the suspensive conditions of the Asset Transaction was the execution of an agreement for the refinancing of the PCF facility outstandings.
75. This condition was not met before its expiry on 31 January 2026, because the loan agreements between IDC and Vision were not finalised, although approval being granted in April 2025. Despite a short extension until 7 February 2026, the condition remained unfulfilled. As a consequence, the Asset Transaction failed and the BRPs were unable to implement the Plan.
76. During the course of negotiating the condition precedents of the approved funding, between IDC and Vision, the IDC received a request from the BRPs; Vision and management, which followed with the BRPs having issued multiple letters that they are intending to proceed with the application to file for liquidation, if the IDC does not provide a satisfactory response on the following items:
- 76.1 Liquidity Solution: securing the urgent funding required by THL (R600m) to continue trading in business rescue; and
- 76.2 Balance Sheet Restructure: finalising the implementation of the Vision transaction, including the refinancing of the PCF Facility made available by IDC to THL.



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77. The IDC approved a facility increase of the PCF by R200m, with a condonation of the security cover ratio. The approval was conditional upon 1) Standard Bank and or Vision matching the IDC's increase of the R200m and 2) Vision extending its sale of business agreements beyond the 31st of January 2026, by 6 to 8 weeks for IDC and Vision to negotiate a Balance Sheet Restructure, of its contemplated facilities. It is important to note, that through discussions with THL management, the R400m was deemed as sufficient to allow THL to continue trading,
78. It is important to note that Visions proposal of the Balance Sheet Restructure contemplated several concessions from IDC while indicating that Vision intends to remain a secured lender until THL is adequately funded. The requests included multiple write-offs, cost transfers, and funding reallocations totalling R5.3bn, R1.3bn above the original approval.
79. In the course of the negotiations for the refinancing of the PCF facility outstandings, Vision requested additional facilities from the IDC for working capital and maintenance requirements of THL after it exited business rescue. No agreement was reached with Vision on any of its proposals.
80. The failure of both the Equity and Asset Transactions under the Plan results in THL being restored to its original position at the date of commencement of its business rescue. The assets and business of THL, inclusive of its shares in and claims against the entities owning the foreign operations remain vested in THL under the control and management of the BRPs. This position can, it is submitted, provide the BRPs with an opportunity of developing and publishing a



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revised business rescue plan for THL. THL is a business which should be restructured and given a fresh start. The failure of the adopted business rescue plan does not of necessity mean the end of the business rescue of THL. The continuity of the business rescue depends on whether or not there remains a reasonable prospect of rescuing THL.

PART E – FUNDING INITIATIVES SINCE SEPTEMBER 2026

81. THL operated within the limit and availability of the PCF advanced by IDC from the first drawdown until the date on which this application was initiated by the BRPs.
82. In late September 2025 the BRPs raised a projected cash flow shortfall of approximately R500 million by the end of October 2025. The IDC was requested to consider additional interim funding, as an interim measure, to bridge the projected shortfall gap, and at the same time allow IDC and Vision to continue its engagements on the restructuring of the PCF facility. The restructuring of the PCF was a critical issue that needed to be solved to enable the BRPs to implement the Plan.
83. The request for additional funding was considered by the IDC through its various committees. The fact that any additional funding would be unsecured and at risk in the event of a liquidation of THL, meant that the proposal was scrutinised by the various governance committees of IDC. I can say that the urgency of the request was recognised, but the risk attached to the additional unsecured funding was a major concern for the governance committees and the board of IDC. This was communicated to the BRPs and Vision. Despite this, I explored various



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options with the BRPs including a TERS application and the introduction of urgent measures that would result in cost savings and free cash flow to meet forthcoming operational expenses. The cost saving measures, like re-phasing payments and deferring discretionary expenditure preserved liquidity in order to contain peak borrowings. These were largely successful and allowed THL to continue operating into the year-end vacation period and discharge all its obligations during that period.

84. Over the period September 2025 to January 2026 the IDC and BRPs emerged in extensive correspondence and negotiations concerning the additional funding requirements of THL. The BRPs required additional funding in an amount of R600 million (as set out in the correspondence dated 31 October 2025) (see para 77) where the BRPs indicate that they require an amount of R300 million by not later than 21 November 2025 and a further amount of R300 million by 12 December 2025.
85. The correspondence exchanged between the BRPs and IDC over the period in question reflects a sustained and ongoing engagement regarding THL's additional funding requirements and critically the terms upon which the IDC would be prepared to make further funding available to the BRPs. Each request for additional funding was, as set out in the correspondence, carefully considered. That consideration was necessarily undertaken within the framework of IDC's statutory mandate, internal guidelines and the prudential conditions that



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had to be satisfied before any further funding could be approved and made available to THL and all the BRPs.

86. The scale of funding sought, running into many of millions of rands, required careful consideration and evaluation and any suggestion that the IDC was tardy or dilatory in responding to the requests of the BRPs is unfounded. To reiterate, the magnitude of the sums involved and the conditional nature of the proposed funding required IDC to engage in careful evaluation and consideration.

87. The issue of additional funding was revisited after the year-end vacation period. It was again reviewed and considered by the governance committees of IDC, before being deliberated by its board of directors. Following these actions, and with approval of the board of directors, IDC addressed a letter to the BRPs on 29 January 2026, a copy of which is IDC2. In this correspondence, IDC proposed an increase in the PCF facility limit by R200 million on condition that Standard Bank matched that increase by the same amount and Vision agreed to extend the date for fulfilment of the suspensive conditions to its acquisition under the Asset Transaction beyond 31 January 2026.

88. The same proposal was made in correspondence addressed by IDC to Vision dated 30 January 2026, a copy of which is attached as IDC3. This correspondence also addressed an issue relating to the restructuring of the PCF facility outstandings. Vision agreed to extend the suspensive conditions fulfilment date until 7 February 2026. This was done to provide a week, as Vision suggested, to secure alignment on the proposed arrangements between IDC and



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THL. In confirmation hereof, I attach as IDC4 correspondence addressed by Rute Moyo, on behalf of Vision, to IDC dated 1 February 2026.

89. I must point out that Vision had, prior to this correspondence, rejected the idea of injecting PCF on a similar matching principle as that proposed to Standard Bank. Standard Bank also rejected the notion of matching the IDC additional funding of R200 million.
90. As a consequence of these actions, the board of IDC, after further deliberation, and in order to avoid a liquidation of THL, agreed to propose additional funding of R200 million on condition, *inter alia*, that Vision agreed to extend the date of fulfilment of the suspensive conditions to complete the Asset Transaction and THL agrees to appoint an:
- 90.1 independent auditor to audit the amounts charged by the BRPs for remuneration and expenses during the business rescue proceedings of THL;
- 90.2 independent consultant to render advisory services regarding the restructure of the balance sheet of THL and provide weekly reports that small scale farmers and employees are being supported through drawdowns made against the PCF and that business rescue remuneration of the BRPs is limited to the statutory tariff applicable to them; and
- 90.3 independent advisor to review the off-crop maintenance spend.
91. A draft eleventh addendum to the PCF Facility Agreement was prepared and in circulation within the IDC for approval before circulation to the BRPs for review.



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A few days later, this application was launched by the BRPs. A copy of the eleventh addendum is annexed hereto marked annexure "IDC5".

PART F - CORRESPONDENCE

92. Following the launch of the Conversion Application, the banks of THL froze the transactional bank accounts of THL. This step prevented THL from using the cash in those bank accounts, ceded as security in favour of IDC, until the Conversion Application is determined.
93. The BRPs, on Saturday, 14 February 2026, addressed an urgent request for the consent of IDC to allow the bank accounts to be unfrozen. This, the BRPs say is imperative for a smooth transition between business rescue and provisional liquidation. It will, according to the BRPs, allow business operations to continue in the interim pending the determination of the Conversion Application, and thereby preserve the value of the business. In essence, the request from the BRPs is to facilitate payments to be made, inventory to be sold, debtors to be collected and payments are made to critical suppliers like canegrowers – all having an impact of the security held by IDC and placing such security at risk of dilution while the Conversion Application is determined. According to the BRPs, the blocking of the bank account will be value destructive, a view not shared by IDC.
94. The request from the BRPs is for the IDC to provide liquidation support to preserve the value of THL for the benefit of IDC and other creditors. It ignores the legal consequences of any payments deemed to have been made after the commencement of liquidation and the erosion of IDC's security with the release



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of inventory and funds from bank accounts over which IDC hold security for the PCF.

95. In this context, and after deliberation of the request, Fasken attorneys, on behalf of the IDC addressed correspondence to Werksmans, the BRPs attorneys of record in this application on 22 February 2026. This correspondence is attached as IDC6, In this correspondence:

95.1 IDC reiterates its commitment to the business rescue proceedings of THL and a balanced restructuring solution in the balanced interests of all its stakeholders;

95.2 IDC commits its PCF until its expiry on 31 March 2026 and will consider additional PCF funding required by THL on condition the BRPs withdraw this application by 12h00 on Tuesday, 24 February 2026;

95.3 IDC noted the availability of funding and cashflow, within the scope of the existing PCF facility, to enable THL to continue operations until the end of June;

95.4 IDC concludes as follows:

“Finally, it remains for our client to reiterate that liquidation is not in the best interests of all stakeholders. Substantial job losses will ensue. Irreversible damage could result for thousands of cane growers. South Africa’s largest standalone refinery producing white sugar could disappear from the South African economic landscape with huge implications for the region. The failure of the business rescue plan does not mean the end of the business rescue proceedings of THL. With the availability of PCF, the foundation exists for the



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BRPs to embark on a process leading to the preparation and submission of a revised business rescue plan that balances the rights and interests of all stakeholders. In our client's view, there is therefore, based on the IDC proposal in this letter, a reasonable prospect of rescuing THL.

96. The proposal was intended to pave the way for the continued business rescue of THL and, most importantly, provide financial stability for THL enabling the BRPs to discharge debts and obligations incurred during the business rescue proceedings of THL. As stated in the correspondence from Fasken attorneys:



"It will ensure operational continuity, remove jitters caused by the Conversion Application within the market, and signify a "business as usual" message from THL to all its stakeholders."

97. I state that this proposal provided the legal basis for the BRPs to conclude that there is a reasonable prospect of rescuing THL. It provides a financial runway and certainty for the BRPs to meet debts and obligations incurred during business rescue and opens the way for the BRPs to engage in a new disposal process involving interested parties culminating in the development and publication of revised business rescue plans for consideration and vote by creditors. This, it is submitted, falls within the scope and objectives of the chapter 6 restructuring regime.
98. Should a new business rescue plan be adopted by creditors, the IDC will consider a request for additional funding to enable the financial runway to be supported while the BRPs proceed to implement the adopted business rescue plan. Any such request must be motivated and supported by a cashflow projection and

analysis setting out the purpose for the additional funding. The request for additional funding will, as it has always been in respect of the PCF and the increases in the PCF limits, be subject to IDC's credit criteria. A critical factor in the consideration of any request for additional funding will be the progress made towards the development and implementation, as the case may be, of a revised business rescue plan.

99. On 23 February 2026 Werksmans responded to Fasken attorneys. This correspondence is attached as IDC7. In this correspondence the BRPs:



- 99.1 point to the preference of numerous stakeholders for business rescue to avoid the "*dire consequences*" of liquidation;
- 99.2 express their sincere appreciation for the IDC proposal which they term as "*a welcome and meaningful development*" favouring the continuation of the business rescue of THL and the preservation of its business as a going concern;
- 99.3 express that they are unable to accede to the IDC request to withdraw this application "*based on the current surrounding circumstances*";
- 99.4 require a withdrawal of this application to be accompanied by a "*formalised and legally certain framework providing a clear and viable pathway towards a revised business rescue plan*" as otherwise they would be exposed to significant legal risk and not serve the best interests of all stakeholders.

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PART G – SUBMISSIONS AND CONCLUDING REMARKS

100. In this part of my affidavit, I will make certain submissions in support of the dismissal of this application and why this court should exercise the discretion vested in it and order the continuation of the business rescue.
101. Before doing so, it is pertinent that I make the following critical points and remarks regarding THL and the interests of a variety of stakeholders that will be impacted through a liquidation of the company.
102. A liquidation of THL will result in a path to winding-up and interruption and possible cessation, of the business of THL. The rights of secured creditors, and the value of all security held by them, will also erode. The rights of employees will be determined in accordance with the statutory preferences accorded to them in terms of the Insolvency Act, 1936. It is unlikely that liquidation funding will be available and this will result in a forced sale of assets, at huge discount to market value. Most importantly, a liquidation will result in the loss of the capability inherent in the assets of THL reducing agricultural and industrial capacity with no guarantee of a recovery.
103. In a liquidation, inventory will fall to be realised under forced-sale circumstances. Debtor recovery will be severely impacted. Market confidence will erode. The benefits of ongoing trading will be lost. Mills will cease operations, and the likelihood of the mills being able to restart will worsen over time.
104. A liquidation will have a significant impact on the supply ecosystem. Approximately 100,000 hectares of agricultural land supply the mills operated by



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THL. The value of these properties is derived from their productive capacity as dryland cane farms. In the absence of a functioning mill and a viable cane market, the value of these properties will erode. This will destabilise rural farming communities who are dependent on operating mills. The livelihoods of farmers will be threatened with many being unable to operate, pay salaries to their staff and discharge financing obligations obtained for farming operations.

105. A business rescue will, with the support of ongoing PCF by the IDC, provide operational continuity and preservation of jobs. The business relationships with suppliers and key stakeholders will be preserved. Most importantly, it will be a lot easier to continue trading and preserve the going concern status of THL through a funded business rescue as opposed to a liquidation process. A funded liquidation process will not be able to instil any level of confidence within the market and with all THL's stakeholders.

106. There is a lot at stake in relation to THL. The mills operated by THL support the livelihoods of thousands of cane growers, small and large. A liquidation will have a huge impact on food producers who rely on sugar in their production process. If a constant volume of sugar is not available, producers will seek alternatives resulting in the death of THL as player producing sugar for the South African market. The impact of the collapse of THL will also have a financial impact on other millers and the levies payable by them in terms of the Sugar Industry



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Agreement. Growers could end up earning less for their cane, and mills could end up paying more as levies under the Sugar Industry Agreement.

107. The continued availability of PCF as proposed by IDC, together with the available cashflow forecasted by THL until June 2026, means that there is a reasonable prospect of rescuing THL. The business is forecasted by management to trade without any increase to the PCF limit or any additional liquidity support until the end of June 2026. The IDC accepts that this is subject to any adverse impact on the business caused by the launch of this application. It will permit the continuation of the business without placing the BRPs under any risk of liability in respect of debts and obligations incurred during the continued business rescue.
108. During the period until the end of June 2026, THL will be able to complete its off-crop maintenance programme (which could be threatened under a liquidation process, resulting in value erosion for the business), reassemble mill assets (without capital deployed for this as is likely to happen in a liquidation, the future operation of these assets will be threatened), capture the refining uplift on raw sugar, realise inventory, collect debtors (which is something that could be destabilised in a liquidation) and reduce the utilisation of PCF ahead of peak seasonal funding required from July 2026 onwards. In other words, THL can maintain operational and financial stability in business rescue within the cashflow forecasted by management. It will, according to management, be able to operate within the existing R2.3 billion PCF limit. Importantly, if THL remains under business rescue and permitted to operate within this forecasted cashflow



framework, it will avoid severe value erosion that is associated with liquidation. All stakeholder interests will be protected.

109. Furthermore, the BRPs will be equipped in terms of the chapter 6 restructuring scheme to embark upon a fresh disposal process involving suitable bidders (including those that have expressed an interest in proposing a transaction with THL since the initiation of this application). The conclusion of the disposal process will pave the way for the BRPs to publish one or more business rescue plans incorporating transactions they believe are credible and which may be considered by creditors, and voted on.



110. THL retains ownership of all its assets required to operate while it remains a viable and sustainable business, supported by PCF from the IDC. In these circumstances, and there being a reasonable prospect of THL being rescued, a precipitate conversion of the business rescue of THL to liquidation would defeat the very objectives of the chapter 6 restructuring scheme and extinguish the restructuring value and seriously undermine the secure positions of Vision and IDC, as a PCF creditor.
111. I am advised that it is a general principle of company law that courts generally decline to interfere in the running and management of companies unless there is lack of fair dealing or probity. This is an instance which cries out for the application of that basic company law principle.
112. THL, as I have already mentioned, is worthy of saving. It is a viable business capable of being rescued. It is not a business that is not suitable to be rescued or that is hopelessly insolvent and irredeemably broken such that it should be

THL

allowed to fail. The business is critical to the South African economy, and the regional economy of Kwazulu-Natal, and the ecosystem of the region. If it fails, it will not easily be replaced and neither will all the lost direct and indirect jobs be replaced.

113. The continued provision of PCF, as proposed by IDC, is sufficient to satisfy THL's solvency requirements in respect of its trading and permit a restructuring solution to be implemented in the best, and balanced, interests of all stakeholders. I may add that the operational outcomes from trading over 2024 and 2025 have been positive. If THL is adequately capitalised, a credible long-term turnaround could be within reach for the benefit of all stakeholders. Business rescue provides that opportunity, whereas liquidation destroys any hope for the realisation of a restructuring opportunity.
114. Management of THL favour a going concern solution within the chapter 6 restructuring scheme. Liquidation for them is not a tolerable fallback. For management, all the issues highlighted in this part of my affidavit, including forced disposals, liquidation process delays, the inevitable loss of critical skills in a liquidation scenario and operational and security risks, all serve to erode value quickly.
115. I respectfully submit that, for the reasons outlined in this affidavit, this court's discretion under section 141(3) of the Companies Act, 2008 must be exercised with due regard to the continuation of PCF, the ability of THL to operate without any additional funding until June 2026, the other material stakeholders whose positions are clearly articulated in this affidavit, the restoration of the asset base



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arising from the fact that the Plan can no longer be implemented by the BRPs. All of these factors favour the continuation of the business rescue of THL so that it can be restored to solvency through a revised business rescue plan *alternatively* provide a better outcome for all stakeholders than liquidation.

116. I further submit that section 135 of the Companies Act, 2008, within the chapter 6 restructuring scheme, favours PCF providers or lenders as a protected and prioritised class of creditors. This reflects a deliberate legislative policy aligned with the objective in section 7(k) of the Companies Act, 2008 in favour of business rescue, which is the *a priori* purpose in the case of THL.



117. The IDC proposal provides the building blocks for a corporate rescue. The success of a rescue of THL will be dependent on several factors:

- 117.1 what are the available rescue options - these involve the steps to ensure the preservation of the goodwill and value of THL – which can be achieved through the continuation of PCF by IDC - and disposal of the THL assets and operations as a whole inclusive of the other regional operations in Botswana, Mozambique and Zimbabwe through a fresh SEP process;
- 117.2 what can be achieved through the continuation of the business rescue of THL – an invitation can be extended to all interested parties to participate in a disposal process that is aimed at incorporating the most viable and bankable proposal to creditors for consideration and implementation if approved by the requisite majority of creditors' voting interests. During this process, the continued availability of PCF and operations will

preserves the goodwill and operations of THL for the benefit of all stakeholders into the future; and

117.3 most importantly, who are the winners and losers in the business rescue of THL - it is, I respectfully submit, correct to say that all stakeholders affected by THL will come out as winners on any revised business rescue plan approved by creditors.

118. The final point to be made is that the inherent value in THL, in the form of its brand, goodwill, socio-economic contribution, staff, assets and so on, have remained constant through the rescue process and they justify a rescue and not the "death" of THL.



119. Given the sheer scale of value destruction and the commensurate socio-economic upheaval that would ensue if THL is allowed to collapse into liquidation, I respectfully submit that this Honourable Court ought to dismiss this application in the best interests of all stakeholders.

120. There are few things more important for the business rescue industry than certainty and clarity. 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. This enable the BRPs to work towards the presentation of a revised plan. all together, it will avoid stakeholders suffering huge irreparable prejudice like the permanent loss of jobs and loss of

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indirect jobs reliant on the continuation of the business of THL (in the form of service providers and suppliers).

121. Given everything outlined in this affidavit, and in particular the continued availability of PCF under the PCF Facility Agreement and the cash flow waterfall until the end of June 2026 enabling THL to operate within the PCF facility, the IDC respectfully submits that a conversion of the business rescue of THL to liquidation will not advance the chapter 6 restructuring scheme and the interests of all the stakeholders of THL.



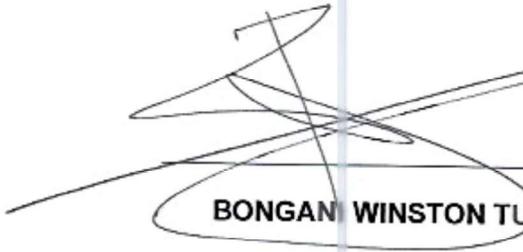
122.

- 122.1 The Plan is not business rescue. The fact that the Plan cannot be implemented by the BRPs does not, *a fortiori*, mean that the business rescue of THL must be terminated. Another restructuring solution should be investigated by the BRPs within the fluid and flexible approach of business rescue to achieve the desired objective outlined in section 7(k), and one which will balance the rights and interests of all the stakeholders of THL.
- 122.2 In the final analysis, THL is not a failing business. It is capable of being restructured within the chapter 6 restructuring scheme for the benefit of all its stakeholders. Liquidation would not simply close a chapter – it would dismantle what is a viable business and what can, with the right level of financial support and "oxygen", return to better days. The law asks only whether there is a reasonable prospect of rescuing a financially distressed business, and here I have demonstrated that the prospect is

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not theoretical: it is real, funded, alive and in motion. THL should be rescued, and not written-off.

123. In the circumstances, IDC respectfully asks the Honourable Court to dismiss this application with costs including the costs of counsel as employed by the IDC.


BONGANI WINSTON TUTU MIYA

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

Private Reg. 25884, Durban-689




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

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at JOHANNESBURG on this the 4th day of **MARCH** 2026, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

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