

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

Case No.: 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 First Respondent
(in business rescue)

THE AFFECTED PERSONS Further Respondents

And

ABRINA 9422 (PTY) LTD First Intervening party

RGS HOLDINGS (PTY) LTD Second Intervening party

VISION'S EXPLANATORY AFFIDAVIT IN THE LIQUIDATION APPLICATION

I, the undersigned,

RUTENHURO MOYO

do hereby make oath and say:

1. I am an adult male and director of Vision Investments 155 (Pty) Ltd with business address at 107a Forrest Road, Atholl, Sandton, 2196 (**Vision**). Vision is an affected party in this matter, being the largest creditor of the First Respondent, Tongaat Hullet Limited (**THL**).
2. I am duly authorised to depose to this affidavit on behalf of Vision.
3. The contents of this affidavit are within my personal knowledge, unless the context indicates otherwise, and are to the best of my belief both true and correct. Where I make legal submissions, I do so on the advice of Vision's legal representatives.

INTRODUCTION

4. In this affidavit, Vision shares with this Honourable Court the efforts Vision has gone to, to bring about a resolution of the current stalemate between the IDC, itself and the BRP's in order to save THL. Vision's focus, since the BRPs launched the Liquidation Application in February 2026, has been to engage with, *inter alia*, His Majesty King Misuzulu kaZwelithini, the small-scale cane growers, all of the affected unions, stakeholders, the DTI and IDC, in order to find a lasting solution that will lead to the withdrawal of the liquidation application. Unfortunately, the engagements with the IDC have not yielded results and Vision is now forced to dispel the notion that it is the cause of the demise of THL. In fact, immediately after receipt of the Liquidation Application, Vision, together with

Standard Bank engaged with the IDC to consider a revised proposal which would cater for the rescue of THL. To date, no definitive response has been received from IDC on the proposal which was followed up on by Vision on 2 March and 11 March 2026 respectively.

5. Vision filed an affidavit in the counter application instated by RGS Group Holdings Limited (“**RGS**”). Vision has, to date, remained neutral on the application brought by the business rescue practitioners (“**the BRPs**”) which is aimed at the discontinuation of Tongaat Hulett Limited’s (“**THL**”) business rescue proceedings and THL’s placement under provisional liquidation.
6. Vision’s position is that the appropriate remedy by this Court ultimately depends on whether there exists a viable and implementable restructuring solution capable of stabilising THL’s operations, addressing its immediate liquidity constraints and restoring the long-term sustainability of the business.
7. Vision is the holder of the majority of THL’s secured debt, now exceeding R11 billion. It therefore has both a substantial financial exposure and a direct commercial interest in ensuring that the company emerges from business rescue as a viable and sustainable enterprise.
8. Throughout the business rescue process Vision has consistently sought to identify and develop a restructuring solution capable of achieving that outcome. Vision’s objective has been to find a pathway through which THL could exit

business rescue, stabilise its financial position and continue operating as a going concern.

9. Vision's efforts in this regard have been directed not only at addressing THL's immediate financial position but also at ensuring the sustainability of the broader sugar ecosystem within which the company operates. THL is a central participant in that ecosystem, which includes thousands of employees, small-scale and commercial cane growers, milling operations and numerous communities whose livelihoods depend on the continued functioning of the sugar industry.
10. THL is one of the oldest milling and refining enterprises in the South African sugar industry and has historically played a central role in that sector. Today, it operates across several jurisdictions in Southern Africa, including South Africa, Zimbabwe, Mozambique and Botswana. Within South Africa, THL's milling and refining operations account for approximately 24–27% of the domestic sugar market, making it one of the largest participants in the industry.
11. Over the past five years, THL has sourced more than 40% of its sugarcane from approximately 15 000 black small-scale and community cane growers. The sugar industry in South Africa sustains approximately 65 000 direct jobs and approximately 270 000 indirect jobs, and is a significant economic contributor to the provincial economies of KwaZulu-Natal and Mpumalanga, where many rural communities depend directly on sugar production.

12. THL's continued operation is therefore closely intertwined with the stability of the broader sugar ecosystem. The failure of THL's business rescue process would not only affect the company and its creditors, but would also have wider consequences for growers, employees and the regional agricultural economy, including the increased importation of sugar into South Africa and the potential destabilisation of the domestic sugar industry.
13. The continued operation of THL therefore has implications that extend well beyond the interests of its immediate creditors. The preservation of THL, together with the employment and economic activity it sustains, is plainly a matter of considerable public interest.
14. It is against that background that Vision has sought to engage constructively with all relevant stakeholders, including the BRPs, the Industrial Development Corporation of South Africa Limited ("**the IDC**") and the Department of Trade, Industry and Competition ("**the DTIC**"), in order to develop a workable restructuring solution. That engagement has included proposals aimed at enabling THL to exit business rescue while allowing a broad group of stakeholders to participate in the future ownership and sustainability of the business alongside Vision.
15. As part of these efforts, Vision has also raised with the relevant authorities a number of structural challenges affecting the South African sugar industry, including regulatory and policy issues that materially affect the financial sustainability of industry participants. Vision has addressed these issues with the

relevant authorities and has sought engagement concerning industry reforms capable of addressing those underlying challenges.

16. In the answering affidavits filed by the IDC and the Minister of Trade, Industry and Competition (“**the Minister**”), as well as in the BRPs’ consolidated replying affidavit, allegations have nevertheless been made suggesting that the failure of the rescue process is attributable to Vision’s conduct and that Vision frustrated the implementation of the adopted business rescue plan.
17. These are serious allegations but they are incorrect.
18. One of the main purposes of this explanatory affidavit is therefore to address the allegations made against it in the answering affidavits filed by the IDC and the Minister, as well as the BRPs’ consolidated replying affidavit.
19. Given that these allegations concern material issues, Vision requested leave to file this explanatory affidavit to assist this Honourable Court in clarifying the issues, as well as to resolve any ambiguity regarding Vision’s role and conduct throughout the business rescue process and address the unfounded allegations against Vision.
20. As will appear from the chronology set out below, the breakdown of the rescue process did not occur in the manner suggested by the IDC and the Minister. The decisive turning point was the emergence, at a late stage in the implementation of the adopted plan, of an additional and urgent post-commencement funding

requirement of approximately R600 million. That development fundamentally altered the financial landscape within which the rescue process was operating and rendered the continued implementation of the plan dependent on whether a solution could be found to the resulting liquidity crisis.

21. The continuation of the rescue process thereafter depended on whether a workable funding solution could be developed to address that additional liquidity requirement and to place the company on a sustainable financial footing. Vision has continued to engage with the BRPs, the IDC and the relevant authorities in an effort to develop such a solution.
22. Against that background, the suggestion that the collapse of the rescue process was caused by Vision's conduct is without merit and baseless.
23. This affidavit also addresses the position adopted by the IDC and the Minister that business rescue remains viable and that the Court should refuse liquidation in order to preserve the possibility of a restructuring. While those submissions emphasise the significant economic and social consequences that may follow from the liquidation of THL—consequences which Vision fully recognises—they are not accompanied by a concrete funding framework capable of addressing the company's immediate working-capital requirements.
24. Vision remains committed to supporting a sustainable and commercially viable restructuring of THL and does not seek the company's liquidation and believes that a workable solution is achievable. Given the magnitude of the public interest

implicated by THL's continued operation — including the livelihoods of employees, growers and other participants in the sugar value chain — Vision respectfully submits that the appropriate focus should be on identifying and implementing a concrete and workable restructuring framework capable of enabling the company to exit business rescue and continue operating on a sustainable basis.

25. This affidavit proceeds as follows:

25.1. First, I describe Vision's role in the business rescue process and the steps taken by Vision to implement the adopted plan, including the acquisition of claims and security from a consortium of 13 banks and financial institutions ("**the Lender Group**") and the conclusion of the agreements contemplated by the plan. The security Vision has acquired over THL's assets is substantial and is over THL's immovable and moveable assets, inclusive of, *inter alia*, its shares in its various subsidiaries, intellectual property and equipment.

25.2. Second, I explain the broader industry and regulatory context within which those events occurred, including systemic challenges affecting the South African sugar industry and the structural issues that materially affected THL's financial position.

25.3. Third, I set out the events that occurred during the latter stages of the business rescue process, including the emergence of the additional post-

commencement funding requirement of approximately R600 million and the ensuing engagement between Vision, the IDC and the business rescue practitioners in relation to that funding requirement.

25.4. Fourth, I address the statutory framework governing the sugar industry and the mandate of the IDC, and explain the responsibilities of the Minister of Trade, Industry and Competition and the IDC in circumstances where the financial distress of a major industry participant threatens the stability of the sector.

25.5. Fifth, I address the allegations made in the affidavits of the IDC, the Minister and the BRPs suggesting that Vision frustrated the implementation of the adopted rescue plan.

25.6. Finally, I address the position adopted by the IDC and the Minister that business rescue should continue and explain why, given the public interest implications of THL's continued operation, it is necessary that a concrete and implementable restructuring framework be developed through constructive engagement between the relevant stakeholders.

VISION'S ROLE IN IMPLEMENTING THE ADOPTED PLAN

26. Vision has already deposed to an answering affidavit in the RGS counter-application in which it sets out the broader history of the business rescue proceedings and its role in those events. In order to avoid unnecessary repetition,

I summarise below only those aspects of the rescue process that are material to the issues presently before the Court.

27. Following the adoption of the Plan in January 2024, the first substantive step required for its implementation was the acquisition by Vision of the claims and security held by the Lender Group.
28. The acquisition of those claims was a central feature of the Plan. It ensured that the majority of THL's secured debt would be held by a single creditor capable of implementing the restructuring contemplated in the Plan.
29. Vision finalised the transaction with the historic Lender Group on 9 May 2025 when Vision paid the balance of the purchase price for the Lender Group's claims and security and those claims and security were transferred to Vision.
30. Through that transaction Vision assumed the position previously held by the Lender Group and became the largest secured creditor of THL, holding secured claims exceeding R11 billion against THL and certain of its subsidiaries.
31. The acquisition represented a milestone in the implementation of the Plan.

Negotiation of the asset transaction

32. After the shareholders of THL declined to approve the proposed debt-for-equity transaction in August 2024, the restructuring proceeded on the basis of the asset transaction contemplated in the Plan.
33. Following the acquisition of the Lender Group's claims, Vision engaged with the BRPs and the IDC to negotiate and conclude the agreements required for that transaction.
34. The transaction was structured through a series of agreements relating to THL's South African operations and its foreign businesses in Botswana, Mozambique and Zimbabwe.
35. Those agreements were negotiated between September 2024 and February 2025 and provided the contractual framework for the implementation of the restructuring contemplated in the Plan.

Progress towards implementation

36. At the time those agreements were concluded it was anticipated that the restructuring transaction would close during the course of 2025 once the relevant conditions precedent had been satisfied.

37. A central condition precedent to the closing of the transaction was the refinancing of the IDC PCF facility, which was intended to provide the working capital required for the continued operation of the business following the completion of the transaction.
38. During the first half of 2025, Vision and the IDC engaged in negotiations concerning the refinancing of the IDC PCF facility in order to enable the implementation of the asset transaction.
39. By April 2025 those negotiations had reached an advanced stage and it was anticipated that the remaining steps required for the implementation of the Plan would shortly be completed.

The rescue process before the funding crisis

40. Accordingly, by the latter part of 2025 the implementation of the adopted Plan had progressed significantly. Vision had completed the acquisition of the Lender Group's claims and security, the sale agreements required for the asset transaction had been concluded, regulatory approvals (Competition and Exchange Control) had been obtained in the various jurisdictions and the remaining steps required to implement the restructuring were focused primarily on the refinancing of the IDC PCF facility.
41. It was at this stage that the rescue process encountered the development that ultimately disrupted the implementation of the Plan.

THE REGULATORY STRUCTURE OF THE SUGAR INDUSTRY AND ITS EFFECTS ON THL

42. The deterioration in THL's financial position must also be understood in the context of the regulatory framework governing the South African sugar industry.
43. The industry operates within a structured regulatory regime administered through the South African Sugar Association ("**SASA**") and governed, inter alia, by the Sugar Act 9 of 1978 and Sugar Industry Agreement ("**SIA**"), promulgated in terms of section 4 of that Act. That regulatory framework regulates the allocation of domestic market share among millers and refiners and provides mechanisms intended to stabilise the domestic market.
44. One of the central mechanisms within that framework is contained in clause 188 of the SIA. In broad terms, that provision regulates the quantity of sugar that each miller may supply into the South African domestic market.
45. Under this mechanism, each miller is allocated a proportion of the domestic market based on its share of national production. Where a miller supplies sugar into the domestic market in excess of that allocated share, it is required to make compensation payments to SASA calculated with reference to the quantity of sugar supplied above its allocation and a notional domestic price.

46. The intended purpose of this mechanism was to regulate supply within the domestic market and support price stability. In practice, however, the operation of the provision has created significant distortions within the industry.
47. In particular, the mechanism has the effect of penalising producers that supply larger volumes of sugar to the domestic market while effectively redistributing revenue to producers that supply less. This has created incentives that discourage domestic production and have had the unintended consequence of, *inter alia*, shifting value away from producers that supply the domestic market at scale.
48. At the same time, imported sugar entering the South African market does not trigger the same regulatory consequences. The result has been a structural distortion in which imported sugar is able to enter the market without attracting the same regulatory burdens imposed on domestic producers.
49. These distortions have been compounded by delays in the implementation of tariff adjustments intended to protect the domestic industry. As explained below, tariff adjustments submitted to the DTIC during October 2024 were not implemented within the timeframe that industry participants reasonably expected.
50. The consequence was a significant surge in imported sugar entering the South African market during 2025. Imports during this period were estimated at

approximately 200 000 tons, compared with a normal expectation of approximately 48 000 tons. That is a 400% increase in imports.

51. The influx of lower-priced imported sugar materially affected the profitability of domestic producers, including THL, and significantly altered the financial projections upon which THL's working-capital requirements had previously been calculated.
52. In simple terms, the regulatory framework ended up placing additional financial burdens on domestic producers while allowing increasing volumes of imported sugar to enter the local market. The combined effect was that THL's expected revenues declined sharply during the course of 2025.
53. When THL's updated financial projections were prepared in September 2025, it became apparent that the company's projected profitability had collapsed. Instead of the previously anticipated profit, THL faced a significant loss for the financial period.
54. That collapse in projected revenue translated directly into a working-capital shortfall and gave rise to the additional funding requirement of approximately R600 million referred to below.

THE EMERGENCE OF THE ADDITIONAL POST-COMMENCEMENT FUNDING REQUIREMENT AND THE UNDERLYING SUGAR INDUSTRY CONTEXT

55. During September 2025 THL Management and the BRPs advised Vision and the IDC that it had recently become apparent that THL urgently required additional post-commencement funding of approximately R1 billion, later revised to R600 million, in order to meet its obligations as they fell due.
56. This additional funding requirement had not been contemplated in the adopted Plan. It arose at a late stage in the implementation of the Plan and reflected a sudden deterioration in THL's projected cash-flow position.
57. The deterioration in THL's financial position did not occur in isolation. It arose amid the systemic pressures affecting the South African sugar industry described above.
58. In particular, THL's financial projections had been based on certain reasonable assumptions concerning the regulatory environment within which the industry operates. Those assumptions included the timely processing of tariff adjustments submitted to the Department of Trade, Industry and Competition during October 2024.
59. Those assumptions did not materialise. The tariff adjustments were not implemented within the expected timeframe, which resulted in a significant increase in imported sugar entering the South African market.

60. The influx of low-priced imported sugar had a material impact on the profitability of domestic producers, including THL, and significantly affected the company's projected revenue during the 2025 financial year.
61. These pressures, together with the structural distortions in the industry framework referred to above, resulted in a sharp deterioration in THL's projected financial performance.
62. The failure by the DTIC to address the necessary industry reforms resulted in the deterioration in profitability, which translated directly into a working-capital shortfall. THL therefore advised the BRPs that an additional funding requirement of approximately R600 million had arisen in order to sustain operations and enable the company to continue trading while the restructuring contemplated in the Plan was implemented.
63. The emergence of this additional funding requirement fundamentally altered the financial landscape within which the rescue process was operating. At the time this requirement was disclosed, Vision and the IDC were already engaged in negotiations concerning the refinancing of the IDC's PCF facility, which was a key condition precedent to the implementation of the restructuring transaction contemplated in the Plan.

64. The immediate focus of the relevant stakeholders therefore shifted from the refinancing process to the urgent question of how the additional working-capital requirement would be funded.
65. From that point onward, the continued implementation of the Plan became dependent on whether a solution could be found to address the additional liquidity requirement.

Consideration of the additional funding request

66. Following the disclosure of the additional funding requirement, the request for additional PCF was referred to the IDC for consideration.
67. The IDC's consideration of the request became subject to its internal governance processes, including the involvement of its Credit and Investment Committee and the Board Investment Committee.
68. During this period the request for funding was subjected to further due diligence and internal review processes.
69. The effect of these processes was that the request for additional funding remained unresolved for a prolonged period while THL continued to operate under increasing liquidity pressure.

70. During this time, Vision highlighted to the IDC that its PCF had increased from R1.4 billion to the current amount of R2.3 billion, of which Vision could only determine that at least R1.2 billion can be considered “dead capital”, which comprises of R600 million in interest paid to the IDC and R600 million incurred in restructuring fees and costs.
71. The request for additional funding was initially scheduled for consideration by the IDC’s Credit and Investment Committee in October 2025.
72. However, that committee did not take a final decision on the request and further internal review processes were required before the matter could be placed before the IDC’s Board Investment Committee.
73. By November 2025 the additional funding request had still not been approved and the question of how the required liquidity would be provided remained unresolved.
74. During this period the implementation of the restructuring transaction remained dependent on whether a funding solution could be secured.
75. During the course of its internal consideration of the funding request the IDC raised concerns regarding the financial sustainability of THL’s operations in light of broader challenges facing the sugar industry.

76. In correspondence addressed to the BRPs in December 2025 the IDC recorded that the systemic challenges affecting the industry went to the “real essence”¹ of whether THL could be restructured in a financially sustainable manner.
77. Those concerns formed part of the context within which the IDC considered whether further funding should be advanced.
78. By mid-December 2025 the IDC indicated that it was not prepared to approve the full funding request of approximately R600 million.
79. Instead, it indicated that it would be prepared to consider the provision of R200 million, subject to further conditions, including a requirement that Vision and the Standard Bank of South Africa Limited match the IDC’s contribution.
80. Vision was already the holder of secured claims against THL exceeding R11 billion and was not prepared to assume that additional exposure. Vision (and apparently SBSA) had also not been consulted by IDC on this imposed condition. As a result, the additional funding required by the BRPs remained unresolved.

¹ 4 December 2025 letter from the IDC. See Annexure FA26 in the Main Application, CL 001-1251.

Continued uncertainty regarding funding

81. The issue of the additional funding requirement continued to be the subject of engagement between Vision, the IDC and the BRPs during the early months of 2026.
82. However, no final agreement was reached regarding the provision of the additional PCF required for the continued implementation of the Plan.
83. In the absence of a funding solution, the sale agreements contemplated under the Plan could not be implemented and ultimately lapsed when the relevant conditions precedent were not fulfilled.
84. By early 2026 THL continued to face significant liquidity constraints and the restructuring transaction contemplated under the Plan had not been implemented.

THE STATUTORY OBLIGATIONS OF THE MINISTER AND IDC

85. The issues before this Court cannot be understood solely as a dispute between private commercial parties. The financial distress of THL arises within a heavily regulated industry that falls under the statutory oversight of the State.
86. The sugar industry is governed by the Sugar Act 9 of 1978. In terms of section 4(1)(a) of that Act, the Minister of Trade, Industry and Competition is required,

after consultation with the South African Sugar Association, to determine the terms of the SIA so as to provide for matters relating to the sugar industry “in the interests of that industry but not detrimental to the public interest.”

87. The Act further empowers the Minister, in terms of section 4(1)(b), to amend the SIA where the Minister is satisfied that such amendment is in the interests of the sugar industry and not detrimental to the public interest.
88. These provisions confer upon the Minister a continuing regulatory responsibility to ensure that the framework governing the sugar industry operates in a manner that serves both the interests of the industry and the broader public interest.
89. That responsibility assumes particular importance where a major participant in the industry faces financial distress. THL is one of the principal milling and refining participants in the South African sugar industry and its continued operation directly affects thousands of employees, small-scale growers and rural communities that form part of the sugar value chain.
90. That statutory responsibility must be read together with the objectives of the business rescue regime established by Chapter 6 of the Companies Act 71 of 2008.
91. In terms of section 128(1)(b) of the Companies Act, business rescue proceedings are designed to facilitate the rehabilitation of a financially distressed company by

restructuring its affairs, business, property and debt so as to maximise the likelihood of the company continuing in existence on a solvent basis.

92. The legislative purpose of business rescue is therefore the preservation of viable enterprises and the avoidance of unnecessary liquidation where a restructuring solution can reasonably be achieved.
93. The role of the IDC must likewise be understood in light of its statutory mandate under the Industrial Development Corporation Act 22 of 1940.
94. In terms of section 3(b) of the IDC Act, one of the objects of the IDC is to facilitate, promote, guide and assist in the financing of new industries and of schemes for the expansion, better organisation and modernisation of existing industries and industrial undertakings in order to ensure that the economic requirements of the Republic are met.
95. Section 3(e) of the IDC Act further provides that the IDC must promote employment-creating activities, particularly in underdeveloped areas.
96. To achieve those statutory objects, section 4(b) of the IDC Act expressly empowers the IDC to lend or advance money to companies engaged in industrial activities and to acquire interests in such companies in order to support the development or restructuring of industrial undertakings.

97. The statutory mandate of the IDC therefore extends beyond that of an ordinary commercial lender. The IDC is a development finance institution whose functions include supporting the expansion, restructuring and sustainability of industrial undertakings within the Republic.
98. When this framework is read holistically — namely section 4 of the Sugar Act, section 128(1)(b) of the Companies Act, and sections 3 and 4 of the IDC Act — it is apparent that the Minister and the IDC occupy a position that differs materially from that of ordinary commercial litigants in proceedings of this nature. Nothing threatens the viability of a company more than a liquidation application, which is a signal of its death.
99. In circumstances where the financial distress of a major industrial participant threatens the stability of a regulated industry, the statutory responsibilities of the Minister and the IDC require them to exercise their regulatory and financial powers in a manner directed towards facilitating a sustainable restructuring of that enterprise where such a restructuring is reasonably achievable. That responsibility, as I explain below, necessarily requires meaningful engagement with the stakeholders capable of implementing such a restructuring.

THE DUTY TO PLACE FULL FACTS BEFORE A COURT

100. I am advised that where organs of state adopt that position in litigation of this nature, they bear a particular responsibility to place before the Court a full and

candid account of the basis upon which they say that the rescue of the company remains viable.

101. Section 165(4) of the Constitution provides that organs of state must assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness.

102. In *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) the Court held that the constitutional commitment to accountable, responsive and open government requires candour from government officials when they are before the courts, and that this duty is consistent with the obligation in section 165 that organs of state must assist and protect the courts.

103. It is well established that organs of state litigating in the courts are not ordinary commercial litigants. They act in the public interest and are required to assist the Court by placing before it all material facts necessary for the proper determination of the issues.

104. In this matter the stakes could not be higher. A liquidation application which will have devastating consequences not only for the region but for the country as a whole has been brought. It is opposed by the Government. Yet the Government is coy about what it is offering to make good on its opposition. The Court should not allow the State to take such view. The State knows of all the approaches and strides made by Vision to ensure that the company avoids liquidation. Yet it has not demonstrated any desire to assist Vision to fulfil those. In these

circumstances it is submitted that where an organ of state asks a court to refuse liquidation on the basis that a company can be rescued, the Court is entitled to expect a clear and detailed explanation of the mechanism by which that rescue is said to remain achievable. In this case there is a straight forward answer which is provided in the amended business rescue plan of Vision.

105. In the present case, both the IDC and the Minister oppose liquidation on the footing that business rescue remains viable and that a restructuring solution can still be achieved. However, the papers do not place before the Court any concrete funding framework capable of addressing the immediate liquidity constraints identified by the BRPs.

106. The IDC refers in general terms to the possibility of continued engagement and restructuring discussions. The Minister similarly refers to restructuring options that are said to be under consideration.

107. What is absent from the record is a detailed explanation of:

107.1. the quantum of funding that will be made available to address THL's working-capital requirements including the vital off-crop maintenance funding program which according to the BRP's papers has stalled and puts both the season's early startup and Vision's security at risk;

107.2. the timing within which such funding will be provided;

- 107.3. the conditions upon which it will be advanced; and
- 107.4. the manner in which such funding would allow the continued implementation of a viable restructuring plan.
108. Business rescue cannot realistically be sustained on the basis of generalised assurances that a solution may yet emerge.
109. If the Court is to be asked to preserve a financially distressed company within business rescue, it must be placed in a position to evaluate whether there is a realistic and implementable pathway to rescue. Absent such information, the Court is left with little more than an expression of optimism that a solution may yet be found.
110. This difficulty is especially acute in circumstances where the Minister and the IDC bear a clear statutory to intervene to save the sugar industry, and the BRPs have identified the company's liquidity position and the absence of additional working capital as the central constraint on the continued implementation of the rescue plan.
111. In circumstances such as the present, where organs of state oppose the discontinuation of business rescue on the basis of the significant economic and social consequences that may follow from the liquidation of THL — including the potential impact on thousands of employees, small-scale growers and the

broader sugar industry — their obligation goes beyond merely expressing a preference that the company remain in business rescue. It is not sufficient simply to invoke the public interest or to assert, in general terms, that rescue remains possible.

112. Where the continued viability of the rescue process turns on the availability of working capital, the cooperation of state-owned institutions and the formulation of an urgent restructuring framework, the Court is entitled to expect more than expressions of support, ongoing engagements or in-principle assurances. In such circumstances, the organs of state concerned are required to place before the Court a concrete and implementable proposal that addresses the company's immediate liquidity constraints, identifies the source and terms of the required funding, and explains the mechanism by which the rescue is realistically to be achieved.

113. That expectation is particularly compelling where those same organs of state seek to persuade the Court that liquidation should be refused because a viable alternative exists. In such a case, the Court is entitled to expect that they will not merely resist liquidation, but will formulate, support and disclose the practical framework said to justify the continuation of business rescue.

THE DUTY TO MEANINGFULLY ENGAGE

114. In the present matter, Vision has sought to place before the relevant stakeholders a concrete restructuring framework capable of addressing the very constraints

identified by the BRPs, including the company's liquidity position and the structural issues affecting the sugar industry.

115. Vision has conveyed a restructuring proposal which it believes provides a viable pathway for THL to exit business rescue and continue operating as part of a stable and sustainable industry framework. That proposal has been made available to the relevant stakeholders, including the BRPs, the IDC and the DTIC. Vision's objective in doing so has been to facilitate the development of a workable restructuring solution that would bring the business rescue proceedings to an orderly conclusion while preserving the economic value represented by THL and the broader sugar value chain.

116. In circumstances where the Minister and the IDC contend that THL can still be rescued, the proper discharge of their statutory responsibilities and their duty of candour to this Court requires that they engage meaningfully with such proposals and place before the Court a clear explanation of the restructuring framework that they contend will enable the company to emerge from business rescue.

117. In the present matter Vision is the largest secured creditor of THL and the party that advanced the restructuring proposal adopted by the creditors.

118. Meaningful engagement between the Minister, the IDC and Vision is therefore a necessary component of any realistic restructuring process. The Minister is under a duty to meaningfully engage with Vision. Vision has laid out substantial commitments towards the survival of THL. The Minister says he shares the same

goals as THL. If that is so, public interest obligations borne by the Minister under the law compel him to engage meaningfully with Vision and other stakeholders to ensure the survival of the company. At this stage, only Vision has produced a plan, even in amended form, to save the company from liquidation. The Minister cannot therefore brush aside Vision. He is by law obliged to engage with it meaningfully to avoid what everybody agrees is nothing short of a calamity.

119. Such engagement must be directed at the development of a clear and workable restructuring framework capable of addressing the company's immediate liquidity constraints and enabling the implementation of a sustainable rescue plan.

120. The statutory responsibilities of the Minister and the IDC therefore extend beyond merely opposing liquidation in litigation. They require meaningful engagement through the statutory mechanisms prescribed by the Companies Act to achieve that very goal they speak about. The IDC cannot become an idle observer in business rescue proceedings where it has already made substantial financial commitments to the parties. It is under a legal duty to make the necessary practical commitments to turn its proclamations into reality. There is a path towards this goal, which has been proposed by Vision, through an amended business rescue plan. The IDC is under a duty to engage meaningfully with the only plan on the table, as put by Vision. It cannot ignore that plan and avoid dealing with Vision while asserting that THL can be saved. Adopting that approach would be a breach of the legislative obligations imposed on the IDC as well as undertakings given to the parties.

THE MINISTER'S ALLEGATION THAT VISION FRUSTRATED THE PROCESS

121. The Minister asserts that the failure of the business rescue process lies “not in THL’s viability but in Vision’s unwillingness to honour its commitments”, and that Vision frustrated the implementation of the adopted plan.
122. The chronology set out above demonstrates that the breakdown of the rescue process occurred in circumstances fundamentally different from those suggested by the Minister. The Minister also fails to explain what Vision’s “commitments” are that it has allegedly been unwilling to honour. The Plan does not contemplate any obligation on Vision to expose itself to any funding risks that only arose after the adoption of the Plan. Vision’s continued commitment to seeking resolution in respect of THL is a sign of Vision’s commitment that it has explored and continues to explore a concrete pathway to rescue.
123. First, as appears from the events described in the preceding section, the decisive turning point in the rescue process was the emergence in September 2025 of an additional and urgent post-commencement funding requirement of approximately R600 million.
124. This requirement had not been contemplated in the adopted plan and arose amid broader systemic pressures affecting the sugar industry and THL’s financial sustainability.

125. The implementation of the Plan thereafter became dependent on whether a funding solution could be secured to address that additional working-capital requirement.
126. The facts demonstrates that the IDC and Vision were unable to reach agreement on such a solution.
127. In those circumstances the suggestion that the rescue process failed because Vision was unwilling to honour its commitments is baseless.
128. Second, the Minister’s assertion that the failure of the rescue lies “not in THL’s viability” is also difficult to reconcile with the IDC’s own position.
129. In December 2025 the IDC recorded that the systemic challenges facing the sugar industry went to the “real essence”² of whether THL could be restructured in a financially sustainable manner. Those concerns formed part of the context in which the IDC considered whether additional funding should be advanced.
130. The Minister’s suggestion that the collapse of the rescue cannot be attributed to THL’s viability therefore does not engage with the position adopted by the IDC itself.

² 4 December 2025 letter from the IDC. See Annexure FA26 in the Main Application, CL 001-1251.

131. Third, the Minister's allegation also overlooks the circumstances in which the sale agreements contemplated under the Plan ultimately lapsed.
132. Those agreements were subject to conditions precedent, including the refinancing of the IDC PCF facility.
133. In the absence of a solution to the additional funding requirement identified by the BRPs, those conditions were not fulfilled.
134. The lapse of the sale agreements therefore occurred in circumstances where the additional liquidity required for the continued implementation of the Plan had not been secured.
135. It was not the result of any unilateral act by Vision.
136. Fourth, the Minister's allegation also appears to proceed on the basis that Vision's delivery of a notice of default in February 2026 somehow precipitated the present application. That is incorrect.
137. Vision issued the notice following the lapse of the sale agreements and the breakdown of negotiations in order to protect its position in the event that THL were placed into liquidation.

138. As the IDC itself correctly observes, the notice did not alter THL's legal position during business rescue because the enforcement of such claims remains subject to the statutory moratorium.

139. The notice was therefore not the catalyst for the liquidation application.

140. Fifth, the BRPs' own explanation for bringing the present application makes clear that their concern was that THL no longer had access to the liquidity required to continue operating and that there was no certainty regarding the refinancing or restructuring of the IDC PCF facility.

141. In those circumstances the BRPs concluded that there were no longer reasonable prospects of rescuing the company.

142. That conclusion was therefore driven by the absence of a solution to the working-capital crisis, not by any conduct on the part of Vision.

143. Sixth, and finally, when the chronology is considered in its entirety, the Minister's allegation that Vision frustrated the rescue process is without merit.

144. The evidence demonstrates that:

144.1. the rescue process was materially disrupted by the emergence of an additional R600 million funding requirement;

144.2. the continuation of the rescue thereafter depended on whether a funding solution could be secured;

144.3. that funding solution was not achieved; and

144.4. the BRPs ultimately concluded that the company could no longer be rescued in the absence of that funding.

145. Against that background, the suggestion that the failure of the rescue process was caused by Vision's unwillingness to honour its commitments is baseless and without merit.

THE IDC'S POSITION THAT BUSINESS RESCUE REMAINS VIABLE IS CONTRADICTED BY ITS OWN CONDUCT

146. The IDC opposes the liquidation application on the basis that business rescue remains viable and that the company should continue operating while a restructuring solution is developed.

147. That position is difficult to reconcile with the manner in which the IDC has in practice treated the company's liquidity during the latter stages of the rescue process.

Business rescue presupposes the availability of operating liquidity

148. The business rescue regime established by the Companies Act presupposes that a financially distressed company will continue trading while a restructuring solution is pursued.

149. That objective is ordinarily achieved through the provision of post-commencement finance, which allows the company to meet its working-capital requirements and continue operating while the restructuring is implemented.

150. Absent such liquidity, the business rescue process cannot function in practice. A company cannot continue trading if it lacks access to the funds required to meet its operational expenses.

The IDC's approach did not operate as a true PCF regime

151. During the period in which the additional funding request was under consideration, THL did not operate under what could fairly be described as a conventional post-commencement funding regime.

152. Instead, access to liquidity was constrained and expenditures were subject to selective approval while the request for additional funding proceeded through the IDC's internal governance processes.

153. The operational consequence of those arrangements was that THL was required to function under significant liquidity constraints at precisely the moment when the business rescue process depended on the availability of working capital.

154. The consequence of those constraints was that the business rescue process operated without the liquidity that such proceedings ordinarily require.

155. In practical terms, the company was unable to access working capital in the ordinary course and instead depended on piecemeal decisions regarding the approval of particular expenditures.

156. In those circumstances, the absence of liquidity became the central constraint on the continued implementation of the rescue plan.

The IDC's position in the present application

157. The IDC nevertheless contends that the rescue process remains viable and that the Court should refuse liquidation in order to preserve the possibility of a restructuring. That submission sits uneasily with the operational position that prevailed during the latter stages of the business rescue.

158. A business rescue cannot realistically continue where the company is deprived of the liquidity required to operate while the restructuring is pursued.

159. If the IDC's position is that the company should continue trading under business rescue, the Court would ordinarily expect that position to be accompanied by a clear and workable funding framework that addresses the company's immediate working-capital requirements.
160. Instead, the IDC's papers do not place before the Court a concrete funding solution that resolves the working-capital shortfall identified by the BRPs. What emerges from the record is a process in which the provision of additional funding remained uncertain, conditional and subject to further internal approvals.
161. If the IDC's position is that the company should remain under business rescue, one would ordinarily expect that position to be accompanied by a clear and workable funding structure capable of addressing the liquidity constraints identified by the BRPs. That has not occurred in the present case.
162. There is a further difficulty with the IDC's presentation of the company's liquidity position.
- 162.1. In one part of its answering affidavit, the IDC states that the post-commencement finance facility currently in place will expire on 31 March 2026. Elsewhere in its papers, however, the IDC suggests that THL has operational "runway" extending to June 2026. The relationship between those two dates is not clearly explained in the IDC's papers.

162.2. If the IDC's position is that the existing PCF facility expires on 31 March 2026, then the obvious question is what funding mechanism would sustain THL beyond that date. The IDC's papers do not identify a facility that would replace the existing PCF, nor do they explain how the company would continue to meet its working-capital requirements after the expiry of that facility.

162.3. To the extent that the IDC suggests that THL could continue operating until June 2026, the Court has not been provided with a clear explanation of the source of the liquidity that would make that possible. The suggestion of an extended operational runway is therefore difficult to evaluate in the absence of a clearly articulated funding framework capable of sustaining the company's operations beyond the maturity of the existing PCF facility.

163. That said, Vision remains committed to working with the IDC and the BRPs to identify and implement a solution that will secure the long-term viability of THL. Vision accordingly remains willing to engage constructively and in good faith with the IDC and other stakeholders in order to develop a workable and sustainable restructuring framework.

CONCLUSION

164. Vision has consistently worked towards the implementation of the adopted Plan and towards the achievement of a restructuring outcome that would enable THL to emerge from business rescue as a viable and sustainable participant in the South African sugar industry.
165. Vision remains committed to a regulated and orderly restructuring process that avoids the liquidation of THL where a sustainable rescue solution can reasonably be achieved. Consistent with that objective, on 10 March 2026 Vision delivered to the BRPs, the DTIC and the IDC an amended restructuring proposal which addresses the central constraints affecting THL's continued operation, including its solvency and liquidity position and the resolution of its indebtedness to the South African Sugar Association.
166. That proposal has been made to the relevant stakeholders in circumstances where the Minister and the IDC contend in these proceedings that a restructuring of THL remains possible. In light of the statutory framework described above — including section 4 of the Sugar Act 9 of 1978, section 128(1)(b) of the Companies Act 71 of 2008, and sections 3 and 4 of the Industrial Development Corporation Act 22 of 1940 — the proper discharge of the statutory responsibilities of the Minister and the IDC requires that they engage constructively with such proposals and indicate the framework through which they contend that a viable restructuring of THL can be achieved.

167. Vision's continued objective is therefore to arrive, together with the relevant stakeholders, at a clear and workable restructuring framework that enables THL to exit business rescue while preserving the substantial economic and social value represented by the business and the broader sugar value chain. It invites the Minister and the IDC to come to the party.

DEPONENT

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at **JOHANNESBURG** on this the ___ day of **MARCH 2026**, the Regulations contained in Government Notice No. R. 1258 dated 21 July 1972 (as amended), Government Notice No. R. 1648 dated 19 August 1977 (as amended), Government Gazette No. R. 1428 dated 11 July 1980 (as amended), and Government Notice No. R. 774 dated 23 April 1982 (as amended) having been complied with.

COMMISSIONER OF OATHS