

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

CASE NO: 2026-031780

In the counter application of:

RGS GROUP HOLDINGS LIMITED	Applicant

and

GERHARD CONRAD ALBERTYN N.O.	1st Respondent

TREVOR JOHN MURGATROYD N.O.	2nd Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.	3rd Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	4th Respondent

THE AFFECTED PERSONS IN THE BUSINESS RESCUE OF THE FOURTH RESPONDENT	5th Respondent

VISION INVESTMENTS 155 PROPRIETARY LIMITED	6th Respondent

TERRIS AGRIPRO (MAURITIUS)	7th Respondent

REMOGGO (MAURITIUS) PCC	8th Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	9th Respondent

ALMOIZ NA HOLDINGS LTD (UNITED ARAB EMIRATES)	10th Respondent

STANDARD BANK OF SOUTH AFRICA LTD	11th Respondent

In re the matter between:

GERHARD CONRAD ALBERTYN N.O.	1st Applicant

TREVOR JOHN MURGATROYD N.O.	2nd Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O.	3rd Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	1st Respondent

THE AFFECTED PERSONS	Further Respondents

SIXTH TO TENTH RESPONDENTS' ANSWERING AFFIDAVIT

I,

RUTENHURO MOYO

state under oath that:

1. I am an adult male and director of the sixth respondent, Vision Investments 155 (Pty) Ltd, with its business address situated at 107a Forrest Road, Atholl, Sandton, 2196.
2. I am duly authorised to bring these proceedings and to depose to this affidavit on behalf of the sixth respondent as well as the seventh to tenth respondents, whom I also refer to as "**Vision**".
3. Save where expressly stated or where the context indicates to the contrary, the facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, both true and correct.
4. Unless indicated otherwise, I adopt the same defined terms as used in RGS's answering affidavit in the main application.

THE PURPOSE OF THIS AFFIDAVIT

5. On 13 February 2026, the first to third respondents (**the BRPs**) launched an urgent application under the above case number in which they seek an order that the business rescue in respect of the fourth respondent (**THL**) be discontinued and that THL be placed under provisional winding up, pending a return date when affected persons may show cause why the liquidation should not be finally wound up (**the main application**).
6. On 16 February 2026, RGS filed a notice of intention to oppose the main application. On 24 February 2026, RGS filed its answering affidavit in respect of the main application and a counter-application with a separate founding

affidavit. RGS's founding affidavit in the counter-application incorporates its entire answering affidavit.

7. In RGS's counter-application, in addition to seeking that the main application be dismissed and the Vision Plan be declared unlawful and set aside, RGS seeks wide-ranging urgent relief against Vision, which is not a party to the main application.
8. The main application and RGS's counter-application were set down for 27 February 2026. By that stage, the main application had, in addition to RGS, also been opposed by various other parties, including the Industrial Development Corporation of South Africa Limited (**the IDC**) and the Department of Trade, Industry and Competition (**the DTIC**). Justice Hlatshwayo ordered, among other things, that the main application and counter-application be heard together on a date to be arranged with the Judge President (an urgent hearing still being envisaged). All parties were directed to deliver any answering affidavits by 17h00 on 4 March 2026.
9. This answering affidavit is in response only to RGS's counter-application.
10. It is necessary in this affidavit to distinguish between:
 - 10.1. the BRPs' founding affidavit in the main application, which I refer to as "BRPs FA"; and
 - 10.2. RGS's founding affidavit in the counter-application, which I refer to as "RGS FA", and answering affidavit in the main application, which I refer to as "RGS AA".
11. As will appear below, RGS's counter-application is entirely distinct and separate from the main application. RGS states as much in its founding affidavit regarding joinder.¹ RGS's counter-application provides no answer to the urgent

¹ RGS FA ¶ 11.2 – *"the relief sought in this counter application against them [Vision] is separate and distinct from the relief sought in the underlying liquidation application"*.

issues that arise in the main application. RGS seeking this relief in a counter-application in the main application is an abuse of process, as will appear below.

12. Vision has neither opposed nor supported the main application, which seeks the discontinuation of THL's business rescue and its provisional winding-up. Vision acknowledges THL's cash-flow crisis and the breakdown in negotiations that necessitated the BRPs bringing the main application. Vision, however, remains committed to addressing the true causes that necessitated the main application. Vision has been in constant negotiations with, among others, the IDC, the BRPs to seek a means of salvaging the stalled Vision Plan.
13. I say "true" causes because Vision disagrees that its actions resulted in the stalling of the Vision Plan and the BRPs forming the conclusion that there are presently no reasonable prospects of rescuing THL. I am advised that, in the main application, it is unnecessary to determine who or what caused the situation that led the BRPs to this conclusion.
14. The court needs only to be satisfied that the BRPs' conclusion is justified. On this basis, Vision does not intend to deal in detail with the causes, other than to state that the true and proximate cause of the failure was the BRPs' revelation during October 2025 that THL required an additional R600 million in PCF to be in a position to pay its debts as they fell due, and that the cause of this additional R600 million requirement was owing to, among other things, systemic issues in the South African sugar industry that called into question THL's viability.
15. This revelation occurred at a time when Vision and the IDC were at an advanced stage of negotiating the conclusion of the relevant agreements to convert the IDC's PCF into a revolving credit facility (**RCF**) that Vision would utilise upon the acquisition of THL's business. This was one of the final steps in implementing the Vision Plan.
16. Suddenly, an additional R600 million had to be urgently provided, amid questions about the viability of THL's business. The R600 million represents a 26% increase in the PCF catered for in the Vision Plan (which, under the Vision

Plan as it stands, Vision would be expected to absorb on conversion or settlement of the PCF). This resulted in an inability to progress the implementation of the Vision Plan until this additional issue had been resolved.

17. Vision has tirelessly sought to resolve these issues to avoid THL's liquidation. Unfortunately, as of the date of this affidavit, the relevant stakeholders have been unable to reach an agreement. Vision nonetheless remains hopeful that a resolution will be achieved before the hearing of the liquidation application. If resolution is achieved, Vision reserves the right to file a supplementary affidavit addressing this issue.
18. Given the limited time to prepare this affidavit, to the extent that I do not address all the allegations in RGS's affidavits, I reserve Vision's right to do so in future. Any allegation not specifically traversed is to be regarded as in dispute. Where I refer to RGS's allegations, I have included footnotes to the relevant affidavits for expedience.

RGS IS NOT THL'S "WHITE KNIGHT"

19. RGS attempts to cast itself as THL's white knight on a quest to save THL's business.
20. RGS is anything but a white knight. As will appear below:
 - 20.1. After THL's business rescue proceedings commenced, RGS acquired a claim by cession of another creditor of R5,744 (an infinitesimally small **0.00439862%** of the total voting rights of creditors).
 - 20.2. RGS had every opportunity to present its own plan and, in fact, did so before the Vision Plan was voted on. The RGS Plan was to be tabled and considered at the same meeting of creditors as the Vision Plan. But RGS formally withdrew its plan on 9 January 2024, the day before the meeting, citing distrust in the BRPs, coincidentally after it was discovered that RGS had materially misrepresented its ability to fund that plan and its provision of a fraudulent confirmation of funds (in respect of which criminal proceedings are underway).

RGS attempts to pre-empt this issue by contending that RGS's senior management were not involved and that an unnamed junior employee in conjunction with an unnamed Absa, Mozambique official were responsible. This explanation is entirely far-fetched and improbable, as I explain in paragraph 129 below.

20.3. RGS has since used its acquired status as a creditor of THL to interfere in the adopted Vision Plan at every turn. RGS's counter-application comprises:

20.3.1. the sixth time that RGS (directly or through a proxy) has sought to declare the Vision Plan unlawful and set it aside – at present, there are three pending applications seeking to set aside the Vision Plan on the same or substantially the same grounds by RGS or at RGS's instance;² and

20.3.2. the fourth time that RGS has sought disclosure relief of the same or substantially the same nature.³

21. Fundamentally, however, RGS offers no real solution to THL's issues. In response to the BRPs' conclusion that THL cannot be rescued, RGS notably does not bring a counter-application for a new business rescue or even propose a new plan, setting out why RGS contends that there remain reasonable prospects for rescuing THL under an RGS Plan and, critically, committing to secure additional post-commencement finance (**PCF**) and setting out how RGS intends to deal with Vision's secured claims.

22. Instead, RGS brings a convoluted and unprecedented counter-application to set aside the Vision Plan and acquire various categories of documents and disclosures (**the disclosure relief**).

² the second Powertrans application, the Pending Application, and the Second Disclosure Application.

³ the Pending Application, the First Disclosure Application, the Second Disclosure Application and this application.

23. RGS makes it plain that, on its version, the disclosure relief is necessary for it even to consider proposing a plan.⁴ RGS says that the purpose of acquiring this disclosure relief is to “investigate” Vision’s demand based on its claims and security.⁵ RGS has long asserted a conspiracy under which, among other things, Vision has not acquired the Lender Group’s claims and security. In its counter-application, RGS adds to this conspiracy its doubts about whether security even exists over THL’s assets.⁶
24. Vision undoubtedly now holds the Lender Group’s secured claims. I attach as “**RM**Error! Reference source not found.” an affidavit deposed to on Standard Bank’s behalf in previous proceedings confirming Vision’s acquisition of such secured claims. Standard Bank was the “Facility Agent” under the relevant financing agreements and the authorised representative of the Lender Group. Vision has also already provided RGS with much of the disclosure relief it seeks, including proofs of payment, confirmation of Vision’s acquisition of the Lender Group’s claims, and confirmations regarding the encumbrance of property. But RGS is not (and never will be) satisfied. Of note, it is only RGS that challenges Vision’s status as a secured creditor, and RGS does so on entirely spurious and speculative grounds.
25. At present, Vision’s claims against THL (and, among others, its subsidiaries) exceed R11 billion. At the time of the adoption of the Vision Plan, these secured claims were quantified at some R8 billion.⁷ The Lender Group put in place extensive security arrangements such that these claims are secured by effectively all THL’s material assets. This security is explicitly acknowledged in the Vision Plan.
26. It is critical to appreciate that RGS does not propose a plan in its affidavits and does not seek to make out a case that THL has continued reasonable prospects

⁴ RGS AA ¶ 21.

⁵ RGS AA ¶ 343.2, 359, and 362.2.

⁶ RGS AA ¶ 70-72 and 343.2.

⁷ BRPs FA, **FA11**: Vision Plan ¶ 5.3.7.3, Table 2 (**001-1063—4**).

under an RGS proposal. RGS's case on THL having continued reasonable prospects is limited to its contention that the BRPs did not consider RGS as an alternative to Vision. Despite this being legally untenable, RGS had its chance to present a plan and elected to withdraw it. RGS does not commit to a plan or provide any details of what such a plan would entail or why it would be likely to succeed. Any RGS-backed plan has insurmountable obstacles, as I deal with below.

27. From RGS's affidavits, it appears that any plan that it may propose would involve the following:

27.1. First, RGS seeks the unprecedented step of setting aside the Vision Plan and dismissing the BRPs' main application (notwithstanding the BRPs' conclusion that there is presently no reasonable prospect of rescuing THL and RGS's acknowledgement of THL's imminent financial distress). RGS seeks this relief to retain THL's existing business rescue proceedings for what follows.

27.2. Second, RGS seeks to acquire the disclosure relief, seemingly in the hope of proving its conspiracy that Vision does not hold the secured claims in THL, or that no security over THL's assets even exists.

27.3. Third, RGS seeks to conduct a due diligence of THL.

27.4. Fourth, if RGS concludes that it wishes to propose a plan, RGS (a creditor for **R5,744** and a **0.004%** voting interest) would then seek that a meeting of creditors be held to "*call for a vote of approval from [creditors] requiring the practitioner to prepare and publish a revised plan*" under section 153(1)(b)(i)(aa) of the Companies Act, 2008 (**the Act**).⁸

27.4.1. As appears below, this section expressly only applies where a plan has been considered by a meeting but "rejected". It does not apply

⁸ Only creditors voted on the Vision Plan as it did not alter the rights of any class of holders of THL's securities.

RGS AA ¶ 26.5-26.7.

where a plan has been adopted, but subsequently fails. This course is, therefore, legally untenable.

27.4.2. But, even if this section hypothetically did apply in these circumstances (which I deny), RGS does not explain how it will convince Vision, which holds the vast majority of the claims, to vote in favour of requiring the BRPs to prepare and publish an RGS Plan (requiring a majority vote to pass). Indeed, it appears to accept that Vision will not do so.

27.4.3. Vision will not vote in favour of a motion to consider an RGS plan for at least the following reasons:

27.4.3.1. RGS has not laid out its plan or explained how it would have a reasonable prospect of rescuing THL. RGS has stated that it has “Tier 1” approval for a facility of some R4.5 billion,⁹ but does not say how it intends to deal with the Vision’s secured claims of some R11 billion (other than to subject such claims and security to spurious “investigations”).

27.4.3.2. RGS submitted a fraudulent proof of funds in support of its prior business rescue plan. This is the subject of a criminal investigation.

27.4.3.3. There has been a long history of acrimonious litigation with RGS concerning the Vision Plan, which, to put it mildly, has resulted in a complete lack of trust.

27.4.4. On the basis of Vision not supporting this resolution, the result would be that the BRPs would have to “*promptly file a notice of termination of the business rescue proceedings*” under section 153(5) of the Act.

⁹ RGS AA ¶ 22.

27.4.5. Of note, there is no provision in the Act to set aside a vote against the preparation and publication of a revised plan under section 153(1)(b)(i)(aa).¹⁰ The right of an affected person to apply to set aside a vote applies only to a vote against a plan (not the prior vote on whether to prepare and publish a revised plan).

27.5. Fifth, assuming RGS hypothetically can carry a majority vote in favour of preparing and publishing a revised RGS Plan (which is impossible for the above reasons), RGS would seek to develop and, thereafter, vote on the adoption of this plan. RGS would meet a further insurmountable obstacle – such a plan would require the support of at least 75% of creditors' voting interests. RGS would obviously cast its 0.004% vote in favour of its plan, but would be met with Vision (which is the largest secured creditor) casting its vote against it. RGS has not indicated that it has the support of any creditor of any substance, such as the IDC, let alone Vision. RGS is invited to demonstrate any such support.

27.6. Sixth, and perceiving the problem, RGS states that if Vision votes against its plan, such a vote would be “inappropriate” and may be set aside under section 153(1)(a)(ii) and 153(7) of the Act.¹¹

27.6.1. This would require RGS to bring a substantive application to set aside this vote (which would naturally be opposed by Vision and possibly other creditors and the BRPs).

27.6.2. I am advised that RGS makes out no case for such an application having realistic prospects of success.

28. RGS's pursuit of this desperate quest, involving as it does contested litigation, is thus premised on uncertainty and significant delay. This notwithstanding, RGS expects the court to retain THL in business rescue without a clear (or even *prima facie*) plan to address THL's immediate funding requirements. RGS's

¹⁰ Or under section 153(1)(a)(i).

¹¹ RGS AA ¶ 75-77.

solution to THL's most significant problem is captured in paragraph 89 of the RGS AA:

"RGS proposes in this regard, subject to the IDC's agreement, to issue bank guarantee(s) in the IDC's favour in a quantum to be determined, in consultation with THL and the IDC, with reference to the working capital requirement of R600 million."

29. In support of this proposal, RGS records that it has concluded a term sheet with Afreximbank in relation to a facility of USD\$ 280 million, which contemplates provision for working capital of US\$100 million. Pertinently, RGS records that this facility has not yet been granted and that the approval will "take time".
30. But RGS makes no firm commitment, and this guarantee (like its possible plan) appears also to be conditional on the court granting RGS's incompetent disclosure relief. RGS would obviously require security for any working capital of such proportions, yet fails to appreciate that THL has no available assets to secure such debt. This reality has been a major obstacle to negotiations between the IDC and Vision regarding the additional R600 million. RGS flippantly provides a solution in a single short paragraph devoid of commitment or detail. Nor does RGS address what "consultation" would be required, the prospects of securing the IDC's "agreement", or how long that process would take. RGS doesn't suggest that it has made any proposals (even conditional ones) to the BRPs about any of these issues.
31. Any attempt to bolster these, and other obvious deficiencies in reply, should not be countenanced. The stark reality is that unless a concrete solution is found to THL's working capital requirements urgently, the liquidation of THL (at least provisionally) is unavoidable. At present, the only realistic prospect of a solution is if all relevant actors involved in the Vision Plan, in particular Vision and the IDC, can salvage it.

RGS'S RELIEF IN THE COUNTER-APPLICATION

32. RGS seeks that this court grant the following urgent relief.

DISMISSAL OF THE MAIN APPLICATION & SETTING ASIDE THE VISION PLAN

Competence of relief

33. RGS seeks the following relief, which is intertwined:

"3. *That the application brought by the first to third respondents under the above case number for the termination of the fourth respondent's business rescue proceedings and the granting of a provisional liquidation order against it be dismissed.*

4. *That the business rescue plan adopted in the fourth respondent's business rescue proceedings on 11 January 2024 be declared unlawful and set aside."*

34. I will refer to this relief as **"the dismissal relief"** and the **"setting-aside relief"** respectively.

35. RGS does not merely oppose the main application to seek a dismissal. RGS seeks dismissal, coupled with an order declaring the Vision Plan unlawful and setting it aside. RGS considers this relief intertwined (i.e. one cannot exist without the other) and seeks this relief under section 141(3) of Act which enables a court faced with an application like the main application in which the BRPs seek *"an order discontinuing business rescue proceedings and placing the company into liquidation"* to *"make the order applied for, or any other order that the court considers appropriate"*.¹²

36. RGS then contends that, at some future date, either the BRPs (who would remain in office) or RGS, as an affected person, can exercise the right under sections 153(1)(a)(i) or (b)(i)(aa) (respectively) to seek a *"vote of approval from the holders of voting interests requiring the practitioner to prepare and publish*

¹² RGS AA ¶ 26.1-26.3, 109-110, 114 ("of legal necessity"), 125.

a revised plan".¹³ I have set out above how, even accepting RGS's argument, Vision holding the secured claims presents an insurmountable obstacle.

37. Even so, I am advised that the right to seek a vote on a revised plan only arises under section 153(1)(a) if "*a business rescue plan has been rejected as contemplated in section 152(3)*".
38. I am advised that the relief RGS seeks is wholly unprecedented. The scheme of the Act does not provide for successive plans after an adopted plan is no longer capable of implementation.
39. The scheme of the Act is such that, once a reasonable prospect of rescue is established, a business rescue process commences to develop, adopt, and implement a single plan. A "*business rescue*" is defined as such.¹⁴ Section 141(3) of the Act does not give the court the power to "set aside" an adopted plan so that creditors may direct the BRPs to prepare and publish an entirely new plan.
40. I am also advised that, to the extent a new business rescue plan can be considered, this would at a minimum require an application under section 131(1) under which, among other things, the court must be satisfied that, notwithstanding the failure of a prior business rescue process, "*there is a reasonable prospect for rescuing the company*", and in which business rescue practitioners are proposed and consent to their appointment.

¹³ RGS AA ¶ 26.6 and 26.7.

¹⁴ Section 128(b) – "*'business rescue' means **proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for** - (i) the temporary supervision of the company, and of the management of its affairs, business and property; (ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and (iii) **the development and implementation, if approved, of a plan to rescue the company** by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company; (c) 'business rescue plan' means a plan contemplated in section*". Emphasis added.

41. As an aside, it is unclear how RGS intends to work with the present BRPs to develop a further plan, given RGS's allegations against them (and the BRPs' allegations against RGS, in turn). When RGS withdrew its plan on 9 January 2024, it recorded the following:¹⁵

“The Board simply does not trust that the BRPs are honest independent professionals in this process as they should be and believes that the BRPs will continue to work against RGS even if the RGS BR Plan were to be adopted.”

Relations between RGS and the BRPs have only significantly worsened since then.

42. An application under section 131(6) can be sought “*at any time*”. I am advised that the SCA has interpreted this to mean that such an application can be brought even after a final liquidation order is in place.
43. In addition, I am advised that, under section 131(6), a business rescue application suspends liquidation proceedings until that application has been adjudicated or the further business rescue proceedings initiated by that application end.
44. As such, if the Vision Plan cannot be implemented and if reasonable prospects of rescue do exist under an entirely different business plan under a new business rescue process (notwithstanding the failure of the present business rescue proceedings), any affected person may apply to place THL under a fresh business rescue process.
45. RGS’s proposal does not include such a plan, and at present, no other plan is in contention. However, the point remains that a provisional liquidation would not prevent an affected person from presenting such a proposal to the court, and, if reasonable prospects of THL’s rescue can be established, the court could grant that application.

¹⁵ RGS’s letter to the BRPs dated 9 January 2024, attached as MAR37 to the RGS AA.

46. However, the commencement of an entirely new business rescue process clearly requires that the present proceedings be brought to an end through a discontinuation and liquidation order under section 141(2)(a)(ii). This is the reality of the legislative regime.
47. An affected person can apply for an urgent order to commence fresh business rescue proceedings. If a case is made out and reasonable prospects of rescue are renewed, fresh business rescue proceedings can be commenced shortly after liquidation, thereby limiting any harm while under provisional liquidation (as referenced by THL's management).¹⁶
48. RGS has failed to bring such an application and to demonstrate a reasonable prospect of rescuing THL under an entirely new and different RGS-backed plan. No such application is before the court. I have highlighted the numerous insurmountable obstacles to any RGS Plan above.
49. To be clear, Vision supports a process under which THL remains in business rescue. Vision, however, opposes the incompetent relief sought against it in RGS's counter-application.

Alleged unlawfulness of the Vision Plan

50. RGS sets out the alleged grounds of unlawfulness of the Vision Plan in paragraph 13 of its answering affidavit.
51. I am advised that an adopted business rescue plan can only be set aside by a court in very limited instances, such as where it was actuated by fraud or was a sham. Section 141(3) of the Act does not provide the court with such a power, as dealt with above.

¹⁶ RGS AA ¶ 97-107.

52. While I dispute the factual premises, it is *legally* unsustainable for RGS to contend that the Vision Plan must be declared unlawful and set aside on the basis that:

52.1. the plan has failed owing to Vision's fault;¹⁷

52.2. Vision has conducted itself contrary to the terms of the plan by (i) insisting on extraneous conditions,¹⁸ (ii) seeking to enforce its claims during the currency of the Vision Plan.¹⁹

53. Vision denies these allegations and will address them further below. For present purposes, I emphasise that it was the revelation of THL's need for additional PCF of R600 million and the systemic issues that resulted in the breakdown in the implementation of the Vision Plan. I also emphasise that Vision has done everything in its power to implement the Vision Plan despite enormous challenges and continues to do so even as this affidavit is being prepared.

54. The remaining allegations concerning the unlawfulness of the Vision Plan in paragraphs 113.1 to 113.5 are precisely the same grounds relied on by RGS to seek the same relief against Vision to declare the Vision Plan unlawful and set it aside in Part B of the application under case number D 13702/2024, which remains pending (**the Pending Application**). The determination of that relief, on those grounds, between the same parties is, therefore, pending. RGS is prevented by *lis pendens* from pursuing the same relief on the same grounds as a counter-application to the main application.

¹⁷ RGS AA ¶ 111.

¹⁸ RGS AA ¶ 113.6.

¹⁹ RGS AA ¶ 113.9.

55. I refer to the notice of motion in the Pending Application (“**RM2**”) and attach as “**RM3**” a table comparing the allegations of unlawfulness:
- 55.1. in RGS’s founding affidavit in Part A (dated 6 November 2024) and supplementary affidavit in Part B (dated 30 March 2025);
- 55.2. with those in RGS’s answering affidavit in support of the counter-application.
56. So as not to overburden what is already a substantial affidavit, I do not attach the extracts from RGS’s affidavits in the Pending Application. Copies of these affidavits will be made available to the court at the hearing.
57. The table reveals that all the material allegations relied on by RGS in the counter-application concerning the alleged unlawfulness of the Vision Plan in support of setting it aside are advanced by RGS in the Pending Application to secure the same relief against Vision. The only “new” allegations are those numbered 14 to 16, 18, 20 and 21. However:
- 57.1. items 14 and 15 relate to Vision’s alleged imposition of conditions extraneous to the Vision Plan, and item 16 relates to the delivery of the default notices, which, as stated above, can only support an allegation that Vision is not complying with the Vision Plan (and not that the Vision Plan is unlawful);
- 57.2. item 18 relates to the BRPs’ alleged failure to consider an alternative RGS plan before reaching the conclusion that there is no longer a reasonable prospect of THL’s rescue, which cannot render the Vision Plan unlawful;
- 57.3. item 20 relates to the findings in the First Disclosure Application, which do not include any explicit finding of unlawfulness of the Vision Plan and which findings were, in any event, based on the same allegations of unlawfulness in the Pending Application, and which findings are the subject of leave to appeal proceedings;
- 57.4. item 21 relates to RGS’s speculation concerning whether security exists in respect of Vision’s claims (previously held by the Lender Group), which is

irrelevant to whether the Vision Plan is lawful and, in any event, is so far-fetched that the court should not entertain this allegation.

58. Vision (and the BRPs) have answered RGS's allegations thoroughly in their answering and supplementary answering affidavits in the Pending Application, and these issues and the setting-aside relief must be determined in that application.

PRODUCTION OF "AGENCY AGREEMENTS"

59. RGS seeks that the BRPs and THL produce "Agency Agreements" referred to in the Vision Plan.²⁰ I will refer to this as the "Agency Agreements relief".

60. Vision will limit itself to the following concerning this relief, as it is sought against the BRPs and THL, but has some overlap with the relief dealt with below:

- 60.1. The relevant agreements are referenced in the Vision Plan, adopted on 11 January 2024. RGS seeks this urgent relief for the first time, over two years after becoming aware of these agreements. The relief is clearly not urgent.

- 60.2. RGS acknowledges that it does not have a legal right to these documents.²¹ RGS nonetheless contends that, given *"the extraordinary and unique circumstances of this case"*, it should nonetheless be granted such relief.²² Such circumstances cannot create a right where none existed before. I am advised that RGS's relief is unprecedented and incompetent.

- 60.3. RGS states that it requires this relief to *"enable an investigation into the validity of the payment demand of R11.73 billion made by Vision against THL"*.²³ RGS has no legal right to this relief. Also, Vision's demand has no bearing on the main application, as it is not the cause of the BRPs concluding as they have

²⁰ CA prayer 5.

²¹ RGS AA ¶ 341.

²² RGS AA ¶ 342.

²³ RGS AA ¶ 343.2.

regarding THL's prospects of rescue. Vision delivered notices of default to protect its position in the event of liquidation, given the breakdown in negotiations and the BRPs' various threats to bring this application. However, Vision continues its attempts to avoid liquidation. THL remains in business rescue and is protected against any enforcement of such claims under the moratorium in sections 133(1) and 134(1)(c) of the Act. It is incorrect to frame these notices as the "catalyst" for the main application. The notices raised THL's default under the relevant funding agreements, which has long been established and accepted by everyone. This "investigation" based on far-fetched speculation is irrelevant to the question of whether the main application should succeed.

PRODUCTION OF PROOF OF SECURITY

61. RGS seeks that Vision produce all agreements and other documents relied on to assert security over THL's assets and those of its subsidiaries.²⁴ I will refer to this as the **"security agreements relief"**.
62. Even before Vision acquired the secured claims, RGS had been aware that the Lender Group asserted security over all of THL's material assets. The Vision Plan frequently mentions this security. For example:
 - 62.1. Paragraph 2.15: Confirms that before publication, the Lender Group held security over all material assets of the Company, including a reversionary cession over assets held as security by the IDC.²⁵
 - 62.2. Paragraph 5.3.6.3: States that movable assets, bank accounts, insurances, IP, shares in subsidiaries, investments, claims, and properties are all encumbered in favour of the Lender Group (save for IDC security).²⁶

²⁴ CA prayer 7.

²⁵ BRP's FA, FA11 ¶ 2.15 (001-1011).

²⁶ BRP's FA, FA11 ¶ 5.3.6.3 (001-1059).

62.3. Paragraph 5.3.6.5: Provides a detailed list of security held, including:²⁷

62.3.1. Cession of shares and claims against subsidiaries (Zimbabwe, Botswana, Mozambique).

62.3.2. Cession of bank accounts and monies.

62.3.3. Cession of intellectual property rights.

62.3.4. Cession of insurance claims.

62.3.5. General Notarial Bonds over movable assets.

62.3.6. Mortgage Bonds over immovable properties (referencing Annexure E).

62.3.7. Cross guarantees and indemnities from subsidiaries (THD, Voermol, THSSA, etc.).

62.3.8. Paragraph 6.3.3.2 - 6.3.3.5: Confirms that because of the Lender Group security (to be acquired by Vision), there are no material unencumbered assets available to pay other creditors. The Vision Plan specifically mentions a review of such security by the BRPs.²⁸

63. Similar disclosures would have featured in the RGS Plan. Indeed, it appears that RGS had approached the Lender Group to acquire the secured claims.

64. RGS urgently seeks this disclosure relief, more than two years after the publication of the Vision Plan. Vision acquired the same security held by the Lender Group. RGS has been aware since May 2025 (some nine months) that

²⁷ BRP's FA, FA11 ¶ 5.3.6.5 (001-1060—1).

²⁸ BRP's FA, FA11 ¶ 6.3.3.2--5 (001-1103—4).

Vision contends it acquired the claims and security. This is indicative of RGS's abuse of process.

65. RGS asserts no cognisable legal right to this disclosure from Vision. RGS's stated purpose in acquiring these documents is also to "*enable an investigation into the validity of the payment demand of R11.73 billion*".²⁹ I refer to paragraph 60.3 above. In short, an investigation into the demand has no bearing on the main application.
66. It is also incorrect that the BRPs have not "independently verified" the security. RGS relies on some vague recollection of the contents of an earlier proposed plan without supporting evidence.³⁰ The Vision Plan (and previous RGS Plan) reference a security review.
67. The security is not referred to in "*vague and mysterious terms*" in the Vision Plan.³¹ As appears above, the Vision Plan lists all the relevant security. RGS is conflating the Agency Agreement with the separate security held. Having made a positive statement about the existence of this security and referred to a security review in the Vision Plan, the BRPs clearly verified the existence of the security.

EXECUTION PENDING APPEAL

68. RGS seeks an urgent order under section 18(1) of the Superior Courts Act, executing an order granted in its favour by Zwane AJ on **4 July 2025** (RGS AA, **MAR16**) that is presently subject to an application for leave to appeal to the SCA.³²
69. I will refer to this as the "**execution relief**".

²⁹ RGS AA ¶ 362.2.

³⁰ RGS AA ¶ 69.

³¹ RGS AA ¶ 67.

³² CA prayer 7.

70. Again, RGS makes out no case why this execution relief is sought urgently. RGS has had the right to seek execution of the Zwane AJ order since 4 July 2025, when Vision delivered its application for leave to appeal to the High Court. RGS provides no explanation why it seeks this relief urgently now, almost eight months later, after its failed urgent application to compel the BRPs to obtain the same disclosure relief. I am advised that it is competent and best practice to seek execution as a counter-application to the application for leave to appeal (as both applications would then be determined simultaneously by the judge who delivered the judgment). RGS chose not to do so. In these circumstances, it is wholly inappropriate, if not irregular, to bring such an application as a counter-application to an entirely unrelated application before the urgent court, where it is unlikely that the judge who delivered the judgment (Zwane AJ) will hear the matter. Zwane AJ, who gave the order, is the judge who should determine this application. It is an abuse to seek that the urgent court consider this issue, given that it requires consideration of what was before Zwane AJ, including the papers in the First Disclosure Application, the judgment, the judgment refusing leave to appeal, and the application for leave to appeal to the SCA.
71. Vision would clearly suffer irreparable harm if Zwane AJ's order is executed notwithstanding the appeal processes. Once disclosure is made, the position is irreversible and would expose Vision to a contention that its appeal is moot. The documents and information sought cannot be "undisclosed" if Vision succeeds in appealing the order. In any event, an assessment of "exceptional circumstances" and "irreparable harm" cannot be decided in a vacuum without the record in the First Disclosure Application.
72. I am advised that Vision's prospects of success on appeal are also relevant to a determination of an execution application. In the limited time available to prepare this affidavit, and given that the record of the First Disclosure Application will not be before this court, I can do no better than to raise the following:

- 72.1. A critical issue in the appeal is whether RGS has a legal right against Vision to the disclosure relief. It is Vision's case that no such right exists, but, to the extent it does, it can only be enforced by RGS (as a creditor in the business rescue) against the BRPs.
- 72.2. After Vision brought its application for leave to appeal against this judgment, RGS did not seek to execute the Zwane AJ order. Instead, on 12 August 2025, it launched an application seeking precisely the same disclosure relief against the BRPs (**the Second Disclosure Application**). This application was struck from the roll on 16 September 2025.
- 72.3. Still, RGS failed to bring this execution application. RGS has instead sought an expedited hearing of the Second Disclosure Application to secure such disclosure relief against the BRPs.
- 72.4. RGS's failure to bring this execution application timeously, and its focus on the Second Disclosure Application, demonstrate that RGS has subsequently formed the view that any rights it may have are enforceable against the BRPs, not Vision.
- 72.5. RGS seeks the execution of the Zwane AJ order urgently, out of desperation, as the Second Disclosure Application was struck from the roll and remains pending.
73. Finally, RGS states that the disclosure relief is also relevant to the validity and enforceability of Vision's demand, which it contends is the "catalyst" for the main application.³³ I have dealt with this contention above.
74. RGS goes further to state that the information "*will play a critical role if liquidation is to be avoided*"³⁴ and is necessary for "*RGS's attempts to rescue THL to have good prospects of success*".³⁵ I have difficulty in understanding

³³ RGS AA ¶ 19.

³⁴ RGS AA ¶ 21.

³⁵ RGS AA ¶ 26.8.

this statement, but it appears to be linked to the various “investigations” that RGS wishes to undertake as a condition to proposing a plan.³⁶ It is unclear what RGS hopes to achieve from these investigations into Vision’s acquisition of the secured claims, the validity of the security itself, and Vision’s funding arrangements. I can only speculate that RGS hope to “uncover” facts that demonstrate that:

- 74.1. **Vision did not acquire the claims or security, such that Vision is not the majority creditor whose support is necessary for any future business rescue plan.** For example, RGS alludes to the precarious status of Vision's claims given Standard Bank's involvement.³⁷ But Standard Bank has unequivocally confirmed under oath in the First Disclosure Application that Vision holds these claims and security. I refer to “**RM1**”. Even RGS accepts this in its affidavit elsewhere.³⁸ Hypothetically, if Vision does not hold the claims and security, they would remain with the Lender Group, and RGS has not made out a case that the Lender Group would support an RGS-backed plan.
- 74.2. **The security does not exist, such that Vision’s claims are unsecured and need not be a key feature of any plan.** This would imply that the Lender Group – a consortium comprising most of South Africa’s banks – lent billions to THL without any security. The BRPs investigated THL’s affairs and were satisfied that these claims were secured. The entire business rescue process (including the withdrawn RGS Plan) has been based on these claims being secured.
75. These issues to be “investigated” by RGS amount to wild speculation that has no bearing on the main application and should not be entertained by this court.

³⁶ RGS AA ¶ 359.

³⁷ RGS AA ¶ 60.

³⁸ RGS AA ¶ 354 – “*The Lender Group (which no longer exists pursuant to the completion of the LG Claims Acquisition Agreement) previously confirmed that it had no objection to the disclosure of the information sought in the Disclosure Order.*”

JOINDER

76. RGS seeks Vision's joinder to the counter application “[t]o the extent necessary”.
77. Vision's joinder is clearly necessary in this matter, and Vision consents to its joinder.

CONCLUSION ON RELIEF

78. RGS has made absolutely no case for the relief it seeks in its counter-application. Vision, therefore, seeks that the counter application be dismissed or struck from the roll for lack of urgency for the reasons advanced above.
79. I turn now to deal with:
- 79.1. the additional R600 million PCF, and to expand on my contention that it is the root cause of the BRPs' conclusion concerning THL's prospects of rescue;
- 79.2. the pertinent background facts – which are necessary for the court to have a full appreciation of why RGS's counter-application constitutes an abuse and is without merit;
- 79.3. Vision's *ad seriatim* response to RGS's affidavits.

THE ADDITIONAL R600 MILLION PCF

80. There have been extensive engagements between the BRPs, Vision, and the IDC from September 2025 to date regarding THL's urgent and outstanding need for additional PCF totalling R600 million. The BRPs have set out most of these events in their founding affidavit in the main application.
81. As already stated, the court in the main application need not determine who or what caused the situation that led the BRPs to conclude there is no reasonable prospect of THL's rescue. In the prevailing circumstances, where THL urgently

requires PCF of some R600 million and the relevant stakeholders have yet been unable to agree on a solution, Vision agrees that the BRPs' conclusion on THL's prospects of rescue is presently justified. RGS accepts this as well. However, Vision and the relevant stakeholders are working towards a solution that Vision hopes will address THL's urgent PCF requirements and avert liquidation.

82. This said, Vision denies that it caused this situation to materialise, as suggested by RGS.³⁹ For present purposes, Vision highlights the following:

82.1. The relevant sale of business agreements were concluded between 15 December 2024 and 10 February 2025 and provided for various conditions precedent to be met. One such material condition was the conversion of the IDC's PCF into a working capital facility.

82.2. On 7 May 2025, the IDC provided its approval for the refinancing of the IDC PCF and the advance of various facilities amounting to approximately R4.05 billion – which amount Vision had deemed necessary to, among other things, settle the IDC PCF of R2.3 billion, fund certain of Vision's obligations under the Vision Plan, and provide sufficient working capital for the business going forward. I will refer to this as “**the refinancing**”.

82.3. On 9 May 2025, Vision acquired the complete Lender Group claims and security.

82.4. The closing of the sale of business agreements under which Vision would acquire THL's business was initially anticipated by June/July 2025 and, subsequently, by no later than 1 October 2025, shortly after which it was expected that the Vision plan would have been substantially implemented, such that THL's business rescue process would come to an end. The key outstanding issue was then (and remains) the refinancing. Despite the IDC's initial approval, delays in its internal processes (which required terms to be

³⁹ RGS AA ¶ 208.

negotiated and approved at various levels) meant the refinancing had not been finalised.

- 82.5. By 25 September 2025, the IDC PCF refinancing had not yet been finalised. Of the few conditions precedent that remained outstanding at that time, the refinancing was the primary one.
- 82.6. During September 2025, Murgatroyd advised the IDC and Vision that it had very recently (on 22 September 2025) come to light that owing to systemic issues in the sugar industry, including SASA manufacturing allowances, the depressed global sugar price and increased dumping in South Africa, THL urgently required further PCF. This advice effectively derailed the engagements surrounding the refinancing.
- 82.7. At that time, a further R500 million was sought by October 2025. The extent of the PCF required, the tranches, and the dates by which it was needed have fluctuated over the months. However, the BRPs have confirmed in their founding affidavit that THL requires R600 million urgently.
- 82.8. These systemic issues cast doubt on the general viability of THL's business (and, as such, its debt-carrying capacity), and this revelation was accompanied by a request for a further R600 million while Vision and the IDC were finalising the R4.05 billion facility agreements to be advanced to Vision.
- 82.9. Focus shifted from finalising the refinancing to finding long-term solutions to these systemic issues.
- 82.10. Various urgent attempts were made to address these systemic issues, limit THL's expenses, and secure funding from additional sources. THL submitted a Temporary Employee/ Employer Relief Scheme (**TERS**) application to the Unemployment Insurance Fund to assist in paying THL's employees. The parties engaged with the Minister and the Director General of the DTIC and SASA, seeking urgent assistance and a commitment to resolving these systemic issues, including by addressing the structure of the sugar industry,

particularly concerning the Sugar Industry Agreement, tariffs, and anti-dumping measures. These issues are impossible to resolve in the short term, and no firm commitment has yet been received to address them urgently.

82.11. On 4 December 2025, the IDC, among other things, raised serious concerns about the advancing of additional PCF in circumstances where the systemic issues “*go to the real essence of whether or not THL can be restructured in a financially sustainable and viable manner*” and the impression “*that these systemic challenges and headwinds faced by the business were being left to be ironed out and address [sic] after the acquisition of ownership of the THL business and assets*”. The IDC stated that it would be reckless to provide additional funding when THL’s “*future financial viability and sustainability*” were uncertain.⁴⁰

82.12. Despite this, Vision and the IDC made further attempts in early December 2025 to reach a solution and avoid liquidation. Based on these renewed engagements, the BRPs then again formed the view that there was a reasonable prospect of rescue.

82.13. The IDC’s own internal processes take significant time. At present, the parties have been unable to agree on a manner of addressing the R600 million additional PCF to advance the continued implementation of the Vision Plan. The issue is not simply who will advance the additional R600 million PCF, but also the R600 million increased debt burden that Vision would be expected to assume (reflecting a 26% increase over what was envisaged in the Vision Plan). The criticisms that Vision has not released additional security to the IDC or agreed to itself advance part of the additional PCF are unfounded and reflect a failure to understand the commercial reality. The R600 million PCF reflects a substantial and unforeseen additional debt burden that Vision would be expected to assume.

⁴⁰ BRPs FA, FA26 (001-1251) ¶ 8-10 (001-1252—3),

82.14. It is the lack of this urgent PCF funding that is the root cause of the BRPs forming the opinion that there are no longer reasonable prospects of THL's rescue. For example, on 20 January, the BRPs' attorneys (Werksmans) recorded, among other things, the following:⁴¹

*"based on past history and experience in dealing with both the IDC and Vision in relation to this matter, and given (a) the frequently communicated and time consuming internal governance structures of the IDC required to be followed in order for the IDC to arrive at decisions pertaining to the imperative recorded in 2.15(i) above and (b) the time consuming process of negotiating, agreeing on and documenting the arrangements required to conclude the imperative recorded in 2.15(ii) above, **the BRPs have concluded that based on THL's current liquidity profile there no longer exists any reasonable prospect of the timeous rescue of THL.** Accordingly, subject to what is set out in 2.19 below, it is regrettable, but **the BRPs intend to proceed on an urgent basis with an application to Court for the provisional liquidation of THL** in discharge of their statutory obligations as prescribed in section 141(2)(a)(ii) of the Companies Act 71 of 2008"*

(Emphasis added)

82.15. The inability of the relevant stakeholders to agree on a means of addressing the increased PCF then spawned, among other things:

- 82.15.1. proposals to resequence the implementation of the Vision Plan to protect the foreign businesses and assets;
- 82.15.2. when negotiations stalled, the refusal to extend the closing date under the sale of business agreements, leading to their lapse on 7 February 2026; and
- 82.15.3. given the BRPs' threat of liquidation, the issuing of default notices under the relevant finance and security agreements on 8 February 2026.

⁴¹ BRPs FA, FA39 (001-1296) ¶ 2.18 (001-1300).

82.16. This was all symptomatic of THL's failure to acquire the additional R600 million PCF, being the root cause of THL's present lack of reasonable prospects of rescue.

82.17. RGS places significant emphasis on the default notices. RGS states that it requires the disclosure relief as "*it relates to the validity and enforceability of the egregious demands made by Vision*".⁴² Again, I reiterate that these default notices were symptomatic of the root cause. They also had no real impact on THL, given the business rescue protections I have already referred to. The default notices were addressed only to protect Vision's position in the threatened liquidation.

PERTINENT BACKGROUND FACTS

83. RGS has repeated large swathes of its affidavits in previous applications in support of its counter-application. Unfortunately, this has necessitated Vision repeating its answers to RGS's allegations in this affidavit so as not to leave RGS's version unchallenged.

84. However, Vision's primary position is the following:

84.1. Regarding the dismissal and setting aside relief:

84.1.1. the relief and grounds advanced by RGS seeking to declare the Vision Plan unlawful and set it aside, is not, urgent and is the subject of the Pending Application, subject to *lis pendens*, and, therefore, it is for the court seized with the Pending Application in due course to determine that relief on the grounds advanced – it is not for the court seized with the main application and counter-application to resolve;

⁴² AA ¶ 19.

84.1.2. in any event, this relief is legally incompetent, for the reasons already stated.

84.2. Regarding the execution relief:

84.2.1. such an application should be determined by the judge who made the order (Zwane AJ) and, in any event, can only be determined by a court having the full record of the First Disclosure Application (which RGS has not even sought to place before this court) – again, it is not for the court seized with the main application and counter-application to resolve;

84.2.2. the relief is clearly not urgent as RGS has failed to seek to execute on this judgment since July 2025, some eight months.

84.3. Regarding the Agency Agreements relief and security agreements relief:

84.3.1. this relief is entirely irrelevant and incompetent;

84.3.2. the relief is clearly not urgent, as RGS has been aware of the “Agency Agreements” and security since no later than the adoption of the Vision Plan on 11 January 2024 (over two years) and has been aware that Vision acquired the secured claims of the Lender Group on 9 May 2025 (some ten months ago).

85. Therefore, all of RGS’s relief in its counter-application can be disposed of without having to engage in the detailed history of this matter set out below.

86. This said, Vision sets out its version of the relevant detailed chronology against which RGS’s counter-application must be assessed.

COMMENCEMENT OF BUSINESS RESCUE AND PCF

87. Business rescue proceedings in respect of THL commenced on 27 October 2022, following a resolution of THL's board. Business rescue proceedings commenced voluntarily under section 129 of the Act.

PUBLICATION OF VISION AND RGS PLANS, PROOF OF FUNDING, AND AMENDMENTS TO PLANS

88. RGS first expressed interest in acquiring THL in April 2023.
89. At that time, the BRPs had favoured a transaction with Kagera Sugar Limited (**Kagera**).
90. RGS, directly and through its attorneys at the time (Mabuza Attorneys), addressed various demands to THL and its attorneys (**Werksmans Attorneys**), ultimately seeking that RGS be placed in a position to propose a business rescue plan for THL.
91. RGS was afforded the opportunity to make a Binding Offer to the BRPs, which it did on or about 20 October 2023 (attached as "**RM4**"). RGS represented that it would fund the "*transaction from its own cash resources*" and that its bankers were Millennium, ABSA Mozambique, BIM and BCI.
92. Around this time, Vision had also made a Binding Offer to the BRPs.
93. In November 2023, Vision and the Lender Group reached an initial agreement under which Vision would acquire the Lender Group's claims and security in THL.
94. The Lender Group held security over all THL's material assets at the time. The Lender Group was THL's largest creditor, with claims in excess of R8 billion, comprising the vast majority of the total voting interest. As such, the Lender Group's support was essential for any business rescue plan to be approved and adopted (just as Vision's support is essential to any further business rescue

plan). Such support would now be required from Vision (as the holder of such claims).

95. On 10 November 2023, RGS addressed a letter to the BRPs (attached as “RM5”). RGS stated, among other things, as follows:

*“We would reiterate that we have repeatedly advised you and your advisers that the RGS Business Rescue Plan is not subject to any conditions relating to third party financing. **RGS has sufficient available cash resources to fund the implementation of the RGS Business Rescue Plan. We would further point out that the Joint BRPs have previously been provided with evidence of the RGS Group's funding capacity by its bankers and are well aware of the RGS Group's ability to fund the RGS Business Rescue Plan. ...**”*

(Paragraph 2.4, emphasis added)

96. Of note, RGS’s present offer is envisaged to be funded entirely by an Afrexim facility.
97. RGS emphasised its alleged availability of funding to persuade the BRPs that its plan was superior to Vision’s. RGS recorded that:⁴³

“It is clear that the Terris Transaction is not unconditional. Our understanding is that the Terris Sugar Consortium requires third party financing to fund the payment in full of the purchase price for the Secured Lender Claims.”

(Emphasis added)

98. The “Terris Transaction” and the “Terris Sugar Consortium” are previous names for Vision and the Vision Transaction. As early as November 2023, RGS was therefore aware that Vision would fund the acquisition of the Lender Group’s claims and security.
99. RGS also did so to compare its “fully funded” plan with that of Kagera, which was revealed to be based on “bogus” funding.⁴⁴

⁴³ ¶ 3.3.

⁴⁴ ¶ 4.1—4.4.

100. On 15 November 2023, the BRPs (through Werksmans) wrote to RGS (attached as “**RM6**”) denying RGS’s various allegations of impropriety, which are not presently relevant. Werksmans recorded the following concerning RGS’s allegation that the Vision transaction was not “*unconditional*”:⁴⁵

*“Our clients’ 8 November 2023 letter makes it clear that the Terris Transaction is unconditional (ie it either contains no conditions, or any conditions that may have been contained in the transaction documents have been fulfilled) which means that the agreements that constitute the Terris Transaction are binding and enforceable. **The fact that the Terris Transaction remains subject to payment means that the payment of the relevant purchase consideration is still to occur on a future, stipulated date.**”*

The BRPs challenged RGS’s contention that Vision’s acquisition of the Lender Group’s claims and security was not “unconditional” by pointing out that the agreements contained no conditions, even though payment would still have to be made in future. Put differently, Vision’s payment to the Lender Group was a term of the agreements, not a condition. What is presently important is that the BRPs did not challenge RGS as far as Vision requiring funding for this purchase price. The BRPs also insisted that RGS provide “*reasonable acceptable proof of funding and/or an ability to meet payment obligations under the RGS business rescue proposal*”.⁴⁶

101. Ultimately, however, the BRPs elected to put both the Vision Plan and the RGS Plan to creditors for a vote.
102. On 16 November 2023, the BRPs wrote to RGS (attached as “**RM7**”) seeking that RGS provide “*substantiated proof of an ability of each potential investor ..., which includes RGS Group, to meet funding and/or payment obligations in relation to their respective proposals to the satisfaction of the BRPs ...*” (paragraph 2).

⁴⁵ ¶ 22. Emphasis added.

⁴⁶ ¶ 26.

103. On 22 November 2023, RGS emailed Patrick Birkett and the BRPs “*proof of funds*” (attached as “**RM8**”). Birkett is of Birkett Stewart McHendrie (**BSM**), the BRPs’ corporate advisors. Attached to RGS’s email was the following:
- 103.1. A letter dated 20 September 2023 from Banco Comercial e de Investimentos SA (**BCI**), a Mozambican bank, headed “Proof of Funds” (attached as “**RM9**”). In this letter, BCI confirmed that “*RG Industries, SA, subsidiary of ... RGS Group*” holds available cash funds in Mozambican Metical, totalling some R2.23 billion at the then prevailing exchange rate.
- 103.2. A letter dated 18 September 2023 from the International Bank of Mozambique, SA (**BIM**), a Mozambican bank, headed “*Confirmation of Funds*” (attached as “**RM10**”). In this letter, BIM confirmed that “*RG INDUSTRIES SA, one of RGS Group’s company*”, holds available cash funds in Mozambican Metical totalling some R2.6 billion at the then prevailing exchange rate.
104. Birkett responded by email on 23 November 2023 (attached as “**RM11**”), requesting letters dated the same day or bank statements, and verification of the letters directly with the banks.
105. On 29 November 2023, the BRPs published the proposed business rescue plans of both the Vision and RGS (the “**Vision Plan**” and the “**RGS Plan**”, respectively). Both plans were to be considered by creditors for adoption on 8 December 2023.
106. Both the Vision and RGS Plans were challenged by the South African Sugar Association (**SASA**) and RCL Foods Sugar & Milling (Pty) Ltd (**RCL**) on the basis that neither plan provided for the payment of THL’s obligations to SASA under the Sugar Industry Agreement and treated such claims as unsecured concurrent claims. These applications were opposed by, among others, the BRPs.
107. In RGS’s answering affidavit in the RCL application delivered on 6 December 2023, it stated as follows (relevant extract attached as “**RM12**”):

*“Negotiations between RGS and RCL are ongoing. It is expected that RGS, RCL and SASA will come to a commercial agreement prior to the Meeting on 8 December 2023. It would then be possible to table a motion at the Meeting for the aforesaid agreement to be incorporated into the RGS Plan as an amendment thereto, and once such an amendment has been made the RGS Plan can be tabled for adoption at the Meeting. **In this regard I should stress that the RGS Plan is fully funded by RGS and entirely capable of adoption at the Meeting.**”*

108. RGS made the same representations as to its plan being fully funded on various other occasions during this time, including in a letter of its then attorneys dated 11 December 2023 (attached as “**RM13**”) and in a further affidavit deposed to on 11 December 2023 (extract attached as “**RM14**”).
109. Ultimately, the court postponed the meeting from 8 December 2023 to 14 December 2023, and the SASA and RCL urgent applications were adjourned to 13 December 2023.
110. On 11 December 2023, RGS brought an urgent application directing the BRPs to convene the meeting to vote on the published plans on 14 December 2023.
111. On 13 December 2023, the court ordered that the meeting to vote on the plans be reconvened no later than 11 January 2024 and that both the published plans could not be voted on in their unamended form.
112. On 2 January 2024, the BRPs published amended business rescue plans concerning both Vision and RGS for consideration at a meeting on 10 January 2024.
113. The RGS Plan (as amended) is attached as “**RM15**”.
114. The following aspects of the RGS Plan (as amended) are important:
 - 114.1. As with the Vision Plan, the “key feature” involved acquiring the Lenders’ claims and security in THL.⁴⁷

⁴⁷ Para 2.2 pg 6 of the RGS plan.

114.2. The primary transaction envisaged was a debt-to-equity conversion under which the acquired Lender Group's claims and security would be converted into equity (albeit that 100% of the Lenders' claims, rather than a portion would be converted to equity).⁴⁸

114.3. PCF lenders would receive payment in full, and the Lender Group would receive R3.6 billion.⁴⁹

114.4. Unsecured creditors with claims (i.) under R75,000 would receive payment in full within 15 business days of the adoption of the plan,⁵⁰ and (ii.) above R75,000 would receive payment in full of the first R75,000 as aforesaid and 65% on the balance of their claims, seemingly over four years.⁵¹ These payments are subject to the total of such payments not exceeding some R425 million.⁵²

114.5. SASA would receive payment in full.⁵³

114.6. Employees would receive payment in full.⁵⁴

114.7. Shareholders would retain 5% of the issued shares in THL.⁵⁵

114.8. The RGS Plan did not provide for an alternative asset disposal.⁵⁶

114.9. RGS would pay R3.6 billion to the Lender Group as follows:⁵⁷

114.9.1. R2 billion within ten business days of the adoption of the plan (thereby acquiring 55.55% of the Lender Group's claims);

⁴⁸ Para 2.2 pg 6 of the RGS plan.

⁴⁹ Para 2.3.3 pg 8 of the RGS plan.

⁵⁰ Para 2.3.4.1 pg 8 of the RGS plan.

⁵¹ Para 2.3.4.2 pg 9 of the RGS plan.

⁵² Para 2.4.6.4 pg 13 of the RGS plan.

⁵³ Para 2.3.5 pg 9 of the RGS plan.

⁵⁴ Para 2.3.6 pg 9 of the RGS plan.

⁵⁵ Para 2.3.7 pg 10 of the RGS plan.

⁵⁶ Para 2.6 (struck-through) pg 20 of the RGS plan. Para 6.17 (struck-through) pg 122-4 of the RGS plan.

⁵⁷ Para 6.1.3.1 pg 108-9 of the RGS plan.

- 114.9.2. R1 billion on the business day after the Merger Filing Date (thereby acquiring a further 27.78% of the Lender Group's claims); and
- 114.9.3. R600 million on the earlier of the Closing Date or five business days after all South African regulatory approvals have been granted (thereby acquiring the last 16.67% of the Lender Group's claims).
- 114.10. RGS would pay an amount of at least R2 billion *"on deposit in a bank account opened with Absa Mozambique, FNB Mozambique or Nedbank Mozambique by no later than the Business Day before the date of the Meeting to secure the payment of the First Payment on the First Payment Date"*.⁵⁸
- 114.11. The dates for payment to the Lender Group could only be extended with the Lender Group's consent.⁵⁹
- 114.12. It was acknowledged that the successful implementation of the plan is subject to the necessary PCF being in place and that *"any extension of the IDC PCF Facility by IDC ... will at all times be required to satisfy the credit criteria of IDC, **with IDC under no obligation to extend its PCF**, the security provided is at all times sufficient to discharge the PCF obligation in full and without any shortfall"*.⁶⁰
115. It must be noted that RGS's amended plan did not provide for full payment to the Lender Group and full acquisition of the Lender Group's claims and security immediately on adoption of the plan (even though RGS contended that its plan was "fully funded"). The plan envisaged RGS making staggered payments to the Lender Group and acquiring pro rata portions of the Lender Group's claims. RGS's proposed final payment of R600 million (and full acquisition of the Lender Group claims and security) is only provided for on the "Closing Date" or five business days after all South African regulatory approvals have been

⁵⁸ Para 6.1.3.2 pg 109-10 of the RGS plan.

⁵⁹ Para 6.1.3.3 pg 110 of the Vision plan.

⁶⁰ Para 11.1.1 and 11.1.2 pg 153-4 of the plan. Emphasis added.

granted. The “Closing Date” is the date on which all conditions precedent under the definitive agreements have been fulfilled.⁶¹

116. This is significant as RGS levels significant criticism at Vision for not having paid the Lender Group in full immediately on, or shortly after, the adoption of the Vision Plan. Yet, Vision has now paid the Lender Group in full, before the “Closing Date” under the Vision Plan and before Vision has acquired THL’s assets and business. RGS’s plan provided that RGS would pay the Lender Group the final R600 million instalment only once the Equity Transaction was unconditional, i.e., once RGS had already acquired THL’s shares. This demonstrates the hypocrisy in RGS’s complaints.

STANDARD BANK CONFIRMATION

117. I am advised that the issue is not legally relevant. Not a single person, including RGS, sought to interdict the holding of the meeting. Only RGS sought to interdict its implementation, with no success, much later.
118. As to the facts, on 21 December 2023, Standard Bank provided a letter confirming Vision’s access to funds (RGS AA, **MAR15**). RGS places significant reliance on this letter in its answering affidavit in this application and in the Pending Application (referred to below) to contend for some form of “misrepresentation” made to creditors, which results in the Vision Plan being unlawful, such that the court is (again) asked to declare the plan unlawful and set it aside. The following appears from this letter:
- 118.1. Standard Bank records that the letter was provided at the BRPs’ request.
- 118.2. Standard Bank records that Vision holds an account with it that *“has sufficient cash to execute the contemplated transaction as per the amended Vision*

⁶¹ ¶ 3.1.20 pg 27 of the RGS plan.

business rescue plan dated 20 December 2023” and the proposed payment to unsecured creditors of R75 million.

118.3. Even at this stage, and before the further amendments on 11 January 2024, the plan provided the following:

*“The Lender Group has security over all material assets of THL ... These security rights are **in the process of being acquired by the Vision Parties** in terms of the Vision Transactions. The Vision Parties will upon the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, **if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group’s Claims ...**”*

This earlier version of the plan, as referred to by Standard Bank, already envisaged “finalisation” of the acquisition of the Lender Group claims sometime after the plan is approved. The further amendments made this absolutely clear before creditors voted on the Vision Plan.

118.4. At this stage, both Vision and RGS were in negotiations with the Lender Group concerning the acquisition of the claims and security which underpinned both plans.

118.5. The Lender Group was insistent on payment of a substantial initial (non-refundable) deposit or first instalment on adoption of either plan. This is apparent from RGS’s letter, which I address below.

118.6. Between the Lender Group and RGS, a first instalment of R2 billion had been negotiated. Between the Lender Group and Vision, a first instalment of R1.51 billion had been negotiated.

118.7. Standard Bank’s confirmation of funds must be seen in this context. Standard Bank is confirming the availability of the R1.51 billion first instalment and the R75 million for unsecured creditors, not of the full amount to acquire the Lender Group’s claims.

RGS'S WITHDRAWAL OF THE RGS PLAN AND FRAUDULENT PROOF OF FUNDS

119. After some six months of RGS insisting that its plan be put to THL's creditors to vote on, on 9 January 2024 – on the eve of the meeting to consider and adopt a business rescue plan – RGS formally withdrew its plan.
120. RGS did so in a letter addressed to the BRPs (RGS AA, **MAR37**) dated 9 January 2024.
121. RGS records that its board of directors *"has unanimously resolved to withdraw RGS' proposal for the acquisition of THL through the implementation of the RGS BR Plan"* and that *"Consequently, it will no longer be necessary for the proposed amendments to the RGS BR Plan to be tabled for consideration or for the RGS BR Plan (as amended) to be placed before the Meeting for a vote"* (paragraph 2).
122. RGS explains its last-minute withdrawal of the plan as being attributable to its lack of trust in the BRPs, who RGS believed would *"continue to work against RGS even if the RGS BR Plan were to be adopted"* and who RGS describes as *"not independent and ... hostile to RGS"*.⁶²
123. Based on this lack of trust, RGS states as follows:⁶³

"In such circumstances the Board cannot justify the risk of paying away ZAR2 billion to the Lender Group prior to the closing of the transaction. In a normal course M&A transaction for the acquisition of a business payment would only occur at or shortly after closing of the transaction. This is the only basis on which the Board would be willing to proceed but we understand this will not be acceptable to the Lender Group who require upfront payments to be made to them. Given the risks ... the Board is not able to authorise paying the consideration for the acquisition of THL until the closing date of the transaction occurs. However, since this structure of transaction will not be successful, the Board considers it more appropriate to withdraw RGS' proposal at this time."

⁶² ¶ 3 and 4 respectively.

⁶³ ¶ 5. Emphasis added.

124. RGS records that its plan remains “*the most advantageous*” but then concludes as follows.⁶⁴

“We hope the business rescue process of THL will conclude successfully and that THL will be rescued. We have no desire to see THL fail and wish THL every success in the future.”

125. Notwithstanding RGS having fought hard to have its plan placed before the meeting, on the eve of that meeting, RGS withdrew its plan, washed its hands of the matter, and wished the business rescue process well. This is the first of many complete about-turns by RGS concerning the business rescue of THL.
126. RGS’s statement that it would only be prepared to pay any amount to the Lender Group on or after closing is again significant, given RGS’s criticisms of Vision, which has paid the full amount due to the Lender Group before closing.
127. RGS’s withdrawal of its plan was, in truth, the result of RGS being unable to perform under the RGS Plan, particularly in paying R2 billion upfront. By this stage, RGS had made numerous representations – both in correspondence and under oath – that its plan was “fully funded” and that it could perform under the RGS Plan. These numerous representations were clearly false.
128. RGS, in fact, submitted a fraudulent proof of funding from Absa Mozambique, indicating that RGS held R2 billion. This fraudulent proof of funding was furnished to the Lender Group and the BRPs to cause them to rely on the availability of such funds. The confirmation of funds from BMI and BCI was unsatisfactory, as both banks were foreign and had no ties to South Africa. Meanwhile, Absa operates in South Africa, providing further assurance.
129. RGS has subsequently, and unsuccessfully, attempted to explain and distance itself from the fraudulent proof of funds, including in its answering affidavit.⁶⁵

⁶⁴ ¶ 6.

⁶⁵ RGS AA ¶ 323-339.

129.1. To satisfy the Lender Group that RGS had sufficient funding, RGS produced a letter from Absa Mozambique stating that Absa Mozambique held R2 billion to make the first payment to the Lender Group.

129.2. However, upon enquiries to Absa Mozambique, it was confirmed that no such funds were held by it and that the letter was fraudulent.

129.3. RGS admits that it procured this letter and provided it to members of the Lender Group.⁶⁶

129.4. RGS states that a “junior manager of RGS” – whose name is not provided – was instructed to deposit the R2 billion into an Absa Mozambique account, but had reservations about doing so, given the interest that would be foregone.⁶⁷

129.5. RGS then states as follows:

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

335.3. Senior management of RGS only became aware of the issue for the first time when the genuineness of the Absa Bank Mozambique Letter was called into question by ABSA South Africa on 15 December 2023 (i.e. when the information set out in paragraph 333 was provided the more senior RGS official who provided it was unaware that the Absa Bank Mozambique Letter was untruthful.)”

129.6. RGS’s explanation is entirely improbable. A “junior manager” could not alone be responsible for transferring R2 billion. RGS senior management must have been aware that the R2 billion had not been transferred, as senior management (such as RGS’s chief financial officer) should certainly have been involved in a transfer of that amount. RGS provides no details of who the Absa Mozambique

⁶⁶ RGS AA ¶ 329.

⁶⁷ RGS AA ¶ 335.1.

official is, or why such an official would ever issue a fraudulent letter for RGS's use. No confirmatory affidavits by the "junior manager" or Absa official have ever been provided.

129.7. It is far more probable that RGS – in an effort to satisfy the Lender Group and the BRPs that RGS had the means to proceed with a business rescue plan – produced and provided the fraudulent letter knowing it was false.

129.8. Despite various invitations to do so, RGS has never put up the relevant Absa Mozambique. I am not in possession of this letter. RGS is (again) invited to do so.

130. Criminal proceedings are ongoing relating to the fraudulent proof of funds. On Monday, 25 August 2025, the Star published an article titled "*Hawks and NPA near conclusion of investigation into Tongaat Hulett fraud*" (attached as "**RM16**"). The Star reports, among other things, the following:

130.1. The Hawks and the NPA:

"are in the final stages of completing their investigation into an alleged fraud that was committed by one of the unsuccessful bidders for Tongaat Hulett, RGS Group Holdings".

130.2. The NPA has instructed the Hawks:

"to obtain warning statements from the directors of RGS, including the executive chairman Acquil Rajahusssen to explain their knowledge and participation in a fraudulent letter of funding that RGS admitted they provided to the Lender Group and Business Rescue Practitioners of Tongaat in November 2023 during the bidding process for Tongaat Hulett."

130.3. That "[t]he charging of the company seem to be a foregone conclusion and the focus has now moved to the directors personally".

130.4. RGS's explanation regarding the Absa Mozambique letter, which tracks what is stated in its answering affidavit.

131. A warning statement is a formal statement, typically made before a suspect is charged. I have been advised that the investigation, which is prosecution-driven, has been finalised and that a decision to prosecute is imminent.
132. One thing, however, is certain: RGS is in no position to present its theoretical alternative plan in the prevailing circumstances, and it could never be considered “inappropriate” to vote against an RGS-backed plan in those circumstances.

RGS’S LETTER TO THE IDC

133. On 11 January 2024, RGS addressed a letter to the IDC (RGS AA, **MAR38**).
134. Despite RGS having withdrawn its plan only two days prior, RGS engages with the IDC on RGS presenting another plan. RGS appears to have sent this letter after the first day of the section 151 meeting and before the meeting resumed on 11 January.
135. RGS records that if the IDC *“takes the lead in the process”*, it would *“agree to bring the RGS BR Plan back to the table”*. RGS states that the plan would be precisely the same except that (i.) it would pay the Lender Group a non-refundable deposit of R500 million before a vote on the new RGS Plan and *“subject to the Lender Group signing the necessary agreement for the purchase of the Lender Group Claims”*, and (ii.) the remaining R1.5 billion would be paid within five business days of RGS receiving approval from the Central Bank of Mozambique or within 30 days after the agreement with the Lender Group (paragraph 9). RGS states that *“other than changing the basis upon which the initial ZAR2 billion payment is made to the Lender Group, all other terms of the amended RGS BR Plan as circulated on 2 January 2024 would remain unchanged”*.
136. This demonstrates RGS’s inconsistency and, at best, unreliability. RGS stated to the BRPs that the reason for its withdrawal of the plan was their alleged hostility towards RGS and RGS’s unwillingness to pay the Lender Group any

sooner than on or after the conclusion of the relevant agreements. RGS then states to the IDC, two days after withdrawing its plan, that it would be willing to submit a further plan in which it would pay the first instalment of R2 billion at some point after a successful vote on its plan.

137. The purpose of RGS's letter was to secure the support of the IDC and SASA to vote against the Vision Plan and to seek an adjournment of the section 151 meeting for RGS to put its plan to a vote.
138. As stated above, RGS has failed to establish that, aside from its 0.004% voting interest, any other significant creditors support it. Even so, no business rescue plan can be adopted without Vision's support. Nor does RGS have IDC support, let alone that of the BRPs.

LAWFUL ADOPTION OF THE VISION PLAN

139. The meeting of creditors under section 151 of the Act considered the only remaining plan, the Vision Plan, on 10 and 11 January 2024.
140. The Vision Plan was approved by 98.51% of independent creditors who voted. Only 1.49% of votes were against the Vision Plan. I attach as "**RM17**" the BRPs' notice to affected parties of the result of the meeting.
141. Despite RGS's attempts to have the IDC and SASA vote against the Vision Plan, both the IDC and SASA abstained, allowing for the plan's adoption.
142. Under the Vision Plan (as amended) (BRPs FA, **FA11**), the following aspects are pertinent to this application:
- 142.1. It was recorded as follows:

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

approved the Vision Parties will finalise the acquisition of the Lender Group's Claims. The Lender Group and the BRPs have received proof that the substantial cash deposit referred to above is held in a bank account in South Africa. Vision Parties have sufficient cash to execute the contemplated transaction as per the Business Rescue Plan."

(underlying reflecting additions and strike-through reflecting removals)

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

142.2. While the above aspects of the Vision plan (among others) captured the essence of the envisaged primary transaction – being the Equity Transaction involving the debt-to-equity conversion – the plan was explicit about the alternative asset disposal ("**the Asset Transaction**") and its effect:

- "2.6. *Subsequent to the Adoption of this Business Rescue Plan, in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of new THL shares to the Vision Parties to be effected, this Business Rescue Plan contemplates in substitution that the currently proposed Vision Transactions **will be switched from transactions contemplating a new issue of THL shares to transactions contemplating the acquisition by the Vision Parties of all of THL's assets and businesses (as going concerns)** (see paragraph 6.1.7 below).*

- 2.6.1. *Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by such a change, once it has sold its assets and businesses (leaving THL as an empty shell), **THL will be delisted from the JSE and liquidated**, resulting in its shares (those held by existing Shareholders) having nil value.*

(Emphasis added)

142.3. The alternative Asset Transaction was expanded on in paragraph 6.1.7 of the plan, headed “*Alternative transactions in the event of a failure to secure approval for the issue of new THL shares to the vision Parties by way of a debt/equity swap*”:

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

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

delisting/liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated Vision Transactions been implemented.”

(Emphasis added)

143. Vision denies that any misrepresentations were made during the meeting. In any event, what is important is what the Vision Plan states regarding payment to the Lender Group.

143.1. The plan records that Vision has a “*substantial cash deposit available for payment to the Lender Group and if the Business Rescue Plan is approved the Vision Parties will finalise the acquisition of the Lender Group’s Claims*”.⁶⁸

143.2. This clearly means that Vision has a cash deposit for a portion of the purchase price and, if the plan is approved, would pay the balance.

143.3. No party can conclude that this statement means Vision had immediately available cash to fund the entire acquisition. Just as with the amended RGS plan, the Lender Group expected Vision to pay an initial substantial non-refundable first instalment to the Lender Group. In Vision’s case, this was an amount of R1.51 billion.

143.4. The difference is that Vision was willing to agree to pay this deposit immediately on adoption of the Vision Plan and, as appears below, did pay this amount on the date of adoption (11 January 2024). RGS, meanwhile, had withdrawn its plan because it was unwilling to pay any amount (certainly not R2 billion) until the transaction had closed.

PAYMENT OF THE FIRST INSTALMENT AND THE ACQUISITION AGREEMENT

144. Also, on 11 January 2024, the Lender Group and Vision revised the terms of Vision’s acquisition of the Lender Group’s claims and security.

⁶⁸

¶ 2.2.

145. Under that agreement, Vision agreed to acquire the Lender Group's claims and security in THL. Vision paid the Lender Group a non-refundable first instalment of R1.51 billion on 11 January 2024 and agreed to pay the balance by 31 December 2024.
146. As appears from "**RM18**", Vision paid R1.51 billion to the Lender Group. RGS challenged the legitimacy of this proof of payment in the Second Disclosure Application. Therefore, Vision went to the lengths of obtaining an affidavit from Standard Bank confirming the legitimacy of the proof of payment (attached as "**RM19**").
147. After Vision paid the first instalment, Vision had the right to apply R4.1 billion of the Lender Group's claims to convert such debt into equity in THL to be issued to Vision.

RGS CREDIT GUARANTEE

148. On 24 January 2024, RGS was issued a guarantee by Empresa Moçambicana De Seguros SA (**Emose**) (attached as "**RM20**").
- 148.1. The guarantee is headed "Tongaat Hulett Limited ("THL") (In Business Rescue): Proposed Acquisition by RGS Group Holdings Ltd ("RGS") of THL – Confirmation of Availability of Guarantees".
- 148.2. Emose records that RGS seeks certain credit guarantees from it *"in connection with the Acquisition"* (paragraph 2).
- 148.3. Emose consents to the letter being provided to the Lender Group, the IDC, the BRPs, *"and any court in [South Africa] in connection with any proceedings relating to the Acquisition and/or the business rescue proceedings of THL"* (paragraph 4).
149. RGS's acquisition of the guarantee, some two weeks after the Vision Plan had been adopted, is telling for two reasons.

149.1. First, this is the guarantee that RGS alludes to in its letter to the IDC. The IDC was clearly unwilling to lead an attack on the Vision Plan (which RGS states was the only basis it would consider readvancing its plan). The IDC abstained from voting. RGS clearly goes against its self-imposed condition.

149.2. Second, the guarantee itself alludes to court proceedings that, at that stage, had yet to be brought, but which RGS clearly envisaged and was orchestrating.

POWERTRANS URGENT APPLICATION AND RGS'S INTERVENTION

150. A day after the guarantee, on 25 January 2024, Mohini Singari Naidoo t/a Powertrans Sales and Services (**Powertrans**) launched an urgent application in this court under case number D1103/2024 (**the Powertrans urgent application**). I attach the notice of motion as “**RM21**”.

151. In that application, Powertrans sought an interdict against the implementation of the Vision Plan until the hearing of Part B, in which Powertrans sought to set aside the Vision Plan.

152. Powertrans set the application down for 2 February 2024, effectively a week later. Powertrans's founding papers alone comprised 2,874 pages.

153. Powertrans was represented by DMI Attorneys, who also previously represented RGS. DMI Attorneys remain on brief for Powertrans in the other litigation referred to below.

154. Powertrans is a concurrent creditor of THL with a claim totalling some R1.9 million. In the context of THL's business rescue, this claim represented only 0.02% of the voting interest.

155. A central theme in the Powertrans urgent application was that the Vision Plan was inferior to the RGS Plan. Powertrans engages in a tabular comparison of the main financials of each plan, and it also compares forecasted net assets, balance sheets, and income statements that an arms-length creditor would not be in a position to do.

156. In Vision's answering papers delivered on 31 January 2024, I alleged that only RGS could have had a sufficient incentive to expend the funds required to produce the Powertrans urgent application and be at risk for the opposing respondents' costs (which were taxed for some R710,000). Vision also alleged that, notwithstanding RGS's withdrawal of the RGS Plan, *"it has not chosen to walk away from its interest in acquiring the THL enterprise."*
157. In the BRPs' answering papers delivered on 31 January 2024, they challenged Powertrans *"to state under oath in its replying papers whether it has been encouraged, persuaded and/or induced by a third party to do so and if so, on what basis"*.
158. Powertrans's purported interest in the business rescue process only arose after the section 151 meeting to consider and adopt a business rescue plan. Powertrans did not attend this meeting or participate in the process at all until it launched the Powertrans urgent application seeking to set aside the Vision Plan. This demonstrates that Powertrans's professed interest in the business rescue arose only because of RGS.
159. Vision sought, among other things, that Powertrans disclose the source of the funding for the litigation.
160. Both the BRPs and Vision raised in their answering papers the fact that Powertrans had not indicated that RGS was willing to have its plan reinstated.
161. Powertrans did not file a replying affidavit in the urgent application.
162. On 1 February 2024, RGS launched an application to intervene in the Powertrans urgent application. I attach the notice of motion as "**RM22**".
163. RGS predictably sought to intervene to support Powertrans's relief in Part A and formally introduce what it referred to as "the New RGS Plan".
164. RGS stated as follows in the supporting affidavit:

“...RGS has resolved to propose a new business rescue plan pursuant to its right to do so in terms of section 145(1)(d) of the Companies Act in order to offer creditors an alternative to the Adopted Plan which is clearly unlawful and stands to be set aside (“the New RGS Plan). The New RGS Plan which will be submitted in written form in the coming weeks will offer the same economic returns as the Amended RGS Plan that was posted on the THL business rescue website on 2 January 2024 albeit on slightly amended terms in relation to the timing of payment. Should RGS be granted leave to intervene as an applicant it will demonstrate that the returns offered in terms of the New RGS Plan which as mentioned offer creditors the same economic value as the Amended RGS Plan are objectively more advantageous and generally superior to the terms of the Adopted Plan ...”

(FA para 8.3, emphasis added)

165. RGS referred to and attached the Emose guarantee. RGS stated that it obtained this letter *“to demonstrate its commitment to the New RGS Offer”*. The guarantee was obtained before Powertrans had even launched the Powertrans urgent application, yet it refers to envisaged proceedings. This clearly demonstrates that RGS was directing the Powertrans urgent application. This also shows that, after the fraudulent proof of funds, RGS no longer relied on its own “cash resources” to fund the acquisition of the Lender Group’s claims.
166. White & Case Inc. presented RGS in this intervention application.
167. RGS sought to use Powertrans to secure the interim interdict because RGS would (rightly so) be severely criticised, if not non-suited, for seeking to set aside the Vision Plan when it had unilaterally withdrawn its own plan and absent any genuine interest as an affected person. That same criticism applies to RGS in this application, notwithstanding the lapse of time.
168. The hearing of the Powertrans urgent application took place on 2 February 2024 before Mathenjwa J, who struck the matter from the roll for lack of urgency and awarded costs against Powertrans. The judgment was delivered on 6 February 2024.

WITHDRAWAL OF POWERTRANS'S URGENT APPLICATION AND RGS'S INTERVENTION

169. Notwithstanding that Part A of the Powertrans urgent application had been struck from the roll, Part B remained live.

170. On 7 February 2024, Powertrans, however, withdrew Part B without a tender for costs.

171. That same day, RGS's attorneys (White & Case) wrote to the attorneys for the BRPs and Vision, stating as follows (attached as "**RM23**"):

"3. *In light of the withdrawal of the Urgent Application, our client's application for leave to intervene is no longer capable of being advanced.*

4. *We are instructed by our client to advise you that we are not instructed to pursue any further relief against the Respondents cited in the Urgent Application, either in relation to the application as withdrawn, or independently in respect of any relief sought, whether in terms of our client's application for leave to intervene, or at all."*

(Emphasis added)

172. RGS, clearly directing this litigation, elected to withdraw the application and, further, to instruct its attorneys to record that it would not pursue any further relief against the respondents (including THL, the BRPs, and Vision).

173. This is RGS's third about-turn.

174. This comprised an undertaking (accepted by the BRPs and Vision) that RGS would not bring further proceedings seeking to interdict the Vision Plan or set it aside. RGS has continued to act in breach of this undertaking.

175. DMI Attorneys paid Vision's costs of the urgent application of R710,977.47 on 31 July 2024. I understand that the BRPs' costs were also paid in this manner and that Powertrans paid some R1.2 million in costs.

176. While DMI Attorneys paid these costs, this money clearly emanated from RGS or a related entity to RGS. It is probable that these costs are included in the R48 million RGS says it has spent regarding THL.⁶⁹

SECOND POWERTRANS APPLICATION

177. Notwithstanding Powertrans's withdrawal of the Powertrans urgent application and RGS's undertaking not to seek relief against Vision or the BRPs, on 5 April 2024, Powertrans launched a further application in this court under case number D3902/2024 (**the second Powertrans application**).

178. I attach the notice of motion in this application as "**RM24**".

179. Powertrans – again directed by RGS – brought this application in the ordinary course.

180. Powertrans sought orders, among other things:

180.1. declaring the Vision Plan unlawful and setting it aside; and

180.2. directing the BRPs to comply with their duties to, among other things, develop a business rescue plan for adoption (section 140(1)(d)), to investigate whether there is any reasonable prospect of the company being rescued and, if not, to apply to court to discontinue business rescue proceedings and for THL's liquidation (sections 141(1) and (2)(a)), to prepare a business rescue plan containing prescribed information (section 150), to convene a meeting to consider that plan (section 151), and to vote on that plan (section 152).

181. Both the BRPs and Vision delivered extensive answering affidavits in the second Powertrans application. The BRPs delivered their answering affidavit on 20 May 2024, and Vision delivered its answering affidavit on 29 May 2024. On 26 July 2024, Powertrans delivered its replying affidavit.

⁶⁹ RGS AA ¶ 15.

182. Powertrans, however, has failed to take any steps in this litigation since about August 2024.
183. I will not burden this affidavit by attaching the papers in the second Powertrans application. I will provide references to the relevant portions of the second Powertrans application, where necessary.
184. Both the BRPs and Vision alleged in their answering affidavits that RGS was behind the second Powertrans application.
185. In Vision's answering affidavit, it was alleged that Powertrans is a front for RGS, which is seeking to derail the business rescue process to revive its bid.⁷⁰
186. The BRPs' answering affidavit dedicated an entire section to demonstrating that Powertrans pursued the litigation for an ulterior purpose.⁷¹
- 186.1. The BRPs detailed interactions between Mr Ricky Naidoo – the brother of Mr Raven Naidoo, the founder of the Powertrans business and husband to the applicant in the Powertrans applications – and a general manager of THL. Ricky Naidoo advised that Powertrans had been approached by the deponent to RGS's affidavits (Rajahussen) seeking support for the "New RGS Plan".
- 186.2. It was alleged that RGS was instrumental in preparing and launching the prior applications and that RGS may have incentivised Powertrans to initiate such proceedings.
187. Powertrans denied these allegations in the replying affidavit, contending that (i.) Powertrans instructed DMI Attorneys, who took instructions from Powertrans, (ii.) Powertrans sought the relief in its own right, and

⁷⁰ Second Powertrans application: Vision AA pg 889 para 25.

⁷¹ Second Powertrans application: BRP AA pg 991 from para 114.

(iii.) *“Powertrans is not pursuing this litigation for reward or any ulterior, undisclosed purpose”*.⁷²

188. Vision denies this is the case, and the facts and surrounding circumstances clearly establish RGS’s control of this litigation. However, it is noteworthy that Powertrans does not say it is funding the litigation (including the costs awarded against it).
189. On 4 June 2024, Powertrans also sought that Vision produce various documents under rule 35(12) in the second Powertrans application. I have attached the notice delivered to Vision as “**RM25**”. In the notice, Powertrans sought much of the same documents that RGS subsequently sought in the First Disclosure Application (dealt with further below). This includes:
- 189.1. Proofs of payment by Vision to the Lender Group.
- 189.2. The Acquisition Agreement and all previous versions of it.
- 189.3. Proof that all of the Lender Group’s claims and security against THL have been transferred to Vision (paragraph 5).
190. Vision refused to provide such documents, and Powertrans ultimately elected to file its replying affidavit on 26 July 2024 without them, demonstrating that these documents were not essential to the relief sought in the second Powertrans application, which included the setting aside of the Vision Plan. Powertrans has taken no further steps on this application since then and has effectively abandoned it.

RGS FURTHER OFFER

191. On 8 July 2024, RGS sent a further letter to the BRPs containing a further offer (RGS AA, **MAR1**).

⁷² Second Powertrans application: RA pg 2027 paras 30-1.

192. By this stage, RGS had submitted and withdrawn the RGS Plan and recorded the terms of a “New RGS Plan” to the IDC on 11 January 2024. This would, therefore, be RGS’s third offer.

193. Of note, RGS acknowledges that the Lender Group’s security in this letter.⁷³

194. The BRPs correctly rejected this offer on 9 July 2024.

THE FAILED DEBT-TO-EQUITY CONVERSION AND INTERIM REPORT

195. On 8 August 2024, a general meeting of THL’s shareholders was convened to acquire shareholders’ consent to the dilution of shares that would follow the Equity Transaction. Under section 41(3) of the Act, approval by special resolution of shareholders is required for an issue of shares if the voting power of the issued shares would be in excess of 30% of the voting power of all shares of that class immediately before the transaction.

196. THL’s shareholders voted down the proposed dilution.

197. On 16 August 2024, the BRPs sent a detailed interim report, including to RGS (“**RM26**”). The BRPs advised that, among other things, given the failure of the debt-to-equity conversion, the Asset Transaction would be pursued.

198. The 16 August 2024 status update stressed that the Asset Transaction would be a lengthy process. It also confirmed (as was already made plain in the Vision Plan adopted on 11 January 2024) that it would result in the winding up and delisting of THL.

ENTER RGS (AGAIN)

199. On 5 September 2024, DMI Attorneys addressed a letter to the BRP’s attorneys (Werksmans) and Vision’s attorneys (Stein Scop) (“**RM27**”).

⁷³ ¶ 3 second bullet point.

200. While DMI Attorneys had previously only acted for Powertrans, for the first time, they stated that they:

*“confirm that **we act on behalf of RGS Group Holdings**”*

201. DMI Attorneys’ reference for this matter, however, remained “*Mr D Moodley/SG/Powertrans*”. DMI Attorneys did not explain the sudden change in legal representation, but this revelation puts beyond doubt RGS’s direction of the Powertrans litigation.

202. DMI referred to the 8 August 2024 shareholders’ meeting and the status report of 16 August 2024.

203. DMI recorded as follows:

*“RGS has taken legal advice pursuant to the rejection of the debt-to-equity conversion by shareholders. The advice obtained is to the effect that **the Adopted Plan has lapsed** and that the so-called **Asset Transaction is in any event incapable of lawful implementation.**”*

204. Powertrans also contended in their replying affidavit in the second Powertrans application that the Vision Plan had lapsed.

205. RGS demanded, by 10 September 2024, that it be provided with, among other things, the Acquisition Agreement and confirmation of whether Vision had discharged the purchase price under the Acquisition Agreement and the amount of any deposit paid.⁷⁴

206. DMI Attorneys recorded that, if RGS’s demands were not met by 10 September 2024, “*we hold instructions **to launch an urgent application** to compel the disclosure therefore forthwith*”.⁷⁵

⁷⁴ ¶ 42.

⁷⁵ ¶ 43.

RESPONSES TO RGS'S DEMANDS

207. On 10 September 2024, Vision (via Stein Scop) and the BRPs (via Werksmans) responded to RGS's demands.

208. In Stein Scop's letter to DMI Attorneys on 10 September 2024 ("**RM28**"):

208.1. It was recorded that DMI Attorneys coming out as also representing RGS made it clear *"that Powertrans has throughout the litigation launched by it against [THL] been a front for RGS to attack the business rescue plan"* (paragraph 2).

208.2. It was recorded that RGS's demands were nothing other than a further attempt by RGS to *"scupper the implementation of the business rescue plan and derails the entire business rescue process to advance its own commercial interest"* (paragraph 3).

208.3. It was recorded that the balance of the allegations and the requests for the Acquisition Agreement were the subject of the second Powertrans application and had been fully ventilated in those proceedings (paragraph 4). In addition, that the terms of the Acquisition Agreement were confidential between the Vision and the Lender Group (paragraph 5).

208.4. As far as RGS's threat of an urgent application, Vision advised that it would oppose it, seek punitive costs, and request security for costs from RGS (paragraph 9).

209. In Werksmans' letter to DMI Attorneys on 10 September 2024 ("**RM29**"):

209.1. Werksmans similarly recorded that it was now clear that RGS was directing and funding the Powertrans litigation (paragraph 3).

209.2. The BRPs also denied that the Vision Plan had lapsed and confirmed that it *"remains binding on THL, its creditors and shareholders in terms of section 152(4) of the [Act] and is being implemented"* (paragraph 6.2).

209.3. Werksmans recorded as follows:

- “6.4 To date, Vision has made partial payment in respect of the Acquisition. In this regard -*
- 6.4.1 Vision paid a deposit of R1.51 billion on or about 9 or 10 January 2024. This has been widely publicised;*
 - 6.4.2 the BRPs informed affected persons, at the meeting to vote on the adoption of the Plan on 10 January 2024, that Vision had already paid a substantial deposit to the Lender Group, which was sufficient to permit the debt-to-equity conversion provided for in the Plan, to proceed;*
 - 6.4.3 the BRPs also communicated that they had received verbal confirmation from Standard Bank that the content of the Standard Bank letter dated 20 December 2023 applied to the Plan presented to the creditors at the meeting convened for 10 January 2024. This is dealt with in our clients' answering affidavit in the Powertrans application.*
- 6.5 The BRPs have since been advised by both Vision and the Lender Group that*
- 6.5.1 Vision has acquired the Lender Group claims;*
 - 6.5.2 the balance of the purchase price - being R2 billion - has not yet fallen due for payment and must be paid before 31 December 2024.”*

209.4. Werksmans stated the BRPs had requested the Acquisition Agreement from the Lender Group and Vision to be provided to affected persons (paragraph 7.4).

209.5. Werksmans dealt with the alleged delays in implementing the Vision Plan, advising that the Vision transaction is complex and that the BRPs had done everything reasonably possible to progress the plan (paragraph 9).

209.6. Werksmans denied RGS's allegations that the alternative Asset Transaction was unlawful owing to non-compliance with section 150 (paragraph 10).

RGS FURTHER OFFER

210. On 17 September 2024, RGS advanced a further offer (RGS AA, **MAR2**).
211. RGS referred to the failed debt-to-equity conversion and contended that the alternative Asset Transaction was not “*a valid alternative business rescue plan*” (paragraph 7).
212. On this basis, RGS repeated the terms of its previous offer.
213. The failure of the Equity Transaction did not result in the Vision Plan failing. The Vision Plan contained within it the alternative of the Asset Transaction.
214. The Vision Plan is not defective as far as the Asset Transaction is concerned. All the requirements of section 150 are substantially complied with. In any event, any attack on the content of the Vision Plan should have been made before its adoption and before it became binding under section 152(4). RGS cannot challenge the Vision Plan based on its content after its lawful adoption. In any event, these issues are to be decided in Part B of the Pending Application.
215. Again, the BRPs correctly rejected RGS’s offer on 18 September 2024.

RGS’S FURTHER DEMAND AND RESPONSES

216. On 2 October 2024, DMI Attorneys sent a further demand on RGS’s behalf to both the BRPs and Vision (RGS AA, **MAR18**).
217. DMI Attorneys refer to RGS’s offer and its rejection (paragraphs 2-6).
218. DMI Attorneys effectively repeated the complaints and demands advanced on RGS’s behalf on 5 September 2024, including that:
- 218.1. RGS is unaware of the details of the implementation of the Asset Transaction (paragraphs 7-9);

218.2. the Asset Transaction in the Vision Plan does not meet the requirements of section 150 (paragraph 10) and is contingent on Vision acquiring the Lender Group claims (paragraphs 11-20);

218.3. the BRPs publish the Acquisition Agreement, proof of payment by Vision, proof of transfer of the Lender Group's claims to Vision, and details of the implementation of the Asset Transaction by 7 October 2024.

219. On 9 October 2024, Werksmans emailed DMI Attorneys ("**RM30**") to record, among other things, that Werksmans was not in possession of the information and documents sought, and to deny any urgency.

220. On 16 October 2024, Werksmans responded to DMI Attorneys ("**RM31**").

220.1. Werksmans repeated that the DMI Attorney's letter raised historical issues already addressed in prior correspondence and in the second Powertrans application (paragraph 4).

220.2. Werksmans referred to the failure to pass the necessary special resolution regarding the Equity Transaction. They provided details of the steps taken to implement the Asset Transaction and its complexities (paragraphs 5-11).

220.3. Werksmans recorded that (paragraph 12):

"The Lender Group, Vision, the IDC and the BRPs remain committed to the implementation of the Vision Sale of Asset transaction as expeditiously as circumstances permit."

220.4. Werksmans confirmed that Vision was not in breach of the agreement with the Lender Group, as the next payment was only due on 31 December 2024.

THE "PENDING APPLICATION"

221. On 6 November 2024, RGS, represented by DMI, launched the "Pending Application" (notice of motion attached as "**RM2**"), in terms of which it sought:

221.1. on an urgent basis (Part A), the following relief:

221.1.1. that pending the final determination of Part B, the BRPs and Vision be interdicted from proceeding with or in any way progressing or implementing the Asset Transaction;

221.1.2. that the BRPs and Vision be directed to disclose documents and information;

221.2. in the ordinary course (Part B), that the Vision Plan be set aside (based on RGS's allegations of unlawfulness).

222. Part A was eventually heard before M E Nkosi J on 29 January 2025.

223. On 18 February 2025, Nkosi J handed down judgment in respect of Part A, in terms of which Part A was dismissed for lack of urgency and for RGS's failure to satisfy the requirements of an interim interdict, and Part B was adjourned sine die (BRP AA, **MAR27**).

224. On 27 March 2025, DMI sent a letter to Werksmans ("**RM32**").

224.1. DMI set out Vision's alleged failure to fund the acquisition and lapsing or failure of the Vision Plan, including by reason of the alleged misrepresentations made concerning funding.⁷⁶

224.2. DMI stated that RGS had signed a facility term sheet with Afrexim, which contemplates funding RGS's further offer to the BRPs, and asked the BRPs to confirm whether Vision will discharge the purchase price due to the Lender Group by 31 March 2025 and, if not, how much longer the BRPs will entertain the Vision Plan.

⁷⁶

¶ 7.

224.3. RGS threatened to launch further interdictory proceedings against the continued implementation of the Vision Plan if the BRPs did not provide the requested confirmation.

225. On 30 March 2025, RGS filed its supplementary affidavit in respect of Part B of the Pending Application (“**RM33**”).

225.1. RGS dedicated a significant portion of the supplementary affidavit dealing with Part A and the “*perplexing*” nature of the judgment as it concerns the dismissal of the disclosure relief.

225.2. RGS refers to the “summary dismissal of the Disclosure Relief” as having left “RGS at a severe disadvantage in relation to the preparation of this supplementary affidavit and, by extension, its ability to advance a case for Part B relief” (paragraph 10).

225.3. RGS states that (paragraph 19, emphasis added):

“Due to the summary dismissal of the Disclosure Relief and the BRPs’ mala fide refusal to honour the tender of the Sale Agreements, RGS is constrained to proceed with Part B largely in ignorance of the true state of affairs regarding the current status of the Vision Plan.”

226. As already mentioned, RGS also states in this affidavit that it is concerned that “*Vision may, in desperation, conclude a funding agreement in terms of which it secures the funds necessary to complete the Acquisition by offering as security for such funding THL’s assets which it has yet to acquire*”.⁷⁷ RGS relies on Vision’s supplementary affidavit to “give credence” to this apprehension.⁷⁸

227. RGS acknowledges that the dismissal of the disclosure relief results in it having to proceed with Part B (notwithstanding its alleged prejudice and its apprehension of an unlawful funding arrangement). RGS then filed its supplementary affidavit in Part B and elected not to bring any further

⁷⁷ ¶ 74.

⁷⁸ ¶¶ 75-77.

proceedings concerning an interdict of the implementation of the Vision Plan or the disclosure relief at that stage.

228. RGS only much later (29 May 2025) sought the same disclosure relief against the Vision parties (in the First Disclosure Application) and then (on 12 August 2025) sought the same disclosure relief against the BRPs (who are to 'procure' such disclosure from Vision or the Lender Group) (the Second Disclosure Application).
229. On 2 May 2025, DMI sent a letter to Werksmans ("**RM34**") in almost identical terms to the 27 March 2025 letter and containing the same demands.
230. Werksmans responded to DMI on 6 May 2025 ("**RM35**") and noted that RGS was (yet again) attempting to create a basis to justify the launch of urgent proceedings. The BRPs continued to dispute the invalidity of the Vision Plan. Werksmans requested DMI to provide all relevant facts and documents that supported RGS's assertions.
231. DMI responded to this letter on 7 May 2025 ("**RM36**") and reiterated the demands set out in its letter of 2 May 2025. No response to Werksmans' requests was provided.

FINAL PAYMENT ON 9 MAY 2025 AND ACQUISITION OF THE LENDER GROUP'S CLAIMS AND SECURITY

232. On 9 May 2025, Vision paid the Lender Group the entire purchase price due to the Lender Group. On 9 and 10 May 2025, the BRPs and Vision, respectively, filed their supplementary answering affidavits in Part B of the Pending Application.
233. A clear copy of the proof or confirmation of payment on Friday, 9 May 2025, is attached as "**RM37**". Vision provided this payment confirmation to the BRPs, who, in turn, provided it to RGS on 24 July 2025, along with the accompanying explanation. This proof of payment and explanation was also provided to RGS in the Second Disclosure Application.

- 233.1. The confirmation of payment to the Lender Group comprises an email sent by “Agency SBSA”, the Facility Agent, to many recipients, including members of the Lender Group and their advisors. For example, the email is addressed to various individuals at Absa, Nedbank, Standard Bank, Rand Merchant Bank, Sanlam, Investec, Land Bank, and others.
- 233.2. The email is sent on Monday, 12 May 2025, but states that “*The Vision Transfer amount was received by the agent on the 09 May 2025 ... after our cut off times*”. The Facility Agent then extracts “*proof of payment today to lenders*”. In other words, the Facility Agent received Vision’s payment on Friday, 9 May 2025, but was only able to disburse this payment to the individual members of the Lender Group on the next business day (Monday, 12 May 2025). However, payment to the Facility Agent comprises payment to the Lender Group.
- 233.3. The schedule reflects each disbursement made by the Facility Agent to members of the Lender Group (17 in total). The schedule reflects the date and time of each payment, an “MT103 message” (where available), the beneficiary’s name, the amount paid, and details of the payee bank.⁷⁹ The MT103 messages are unique identifiers used to trace individual payments when the payment is between different banks.
- 233.4. The total amount disbursed by the Facility Agent to members of the Lender Group is R1.73 billion. It reflects the final agreed amount in settlement of the Lender Group’s claims and security.
- 233.5. The above, combined with the Facility Agent’s confirmation under oath that the Lender Group has been fully and finally settled, is clear evidence of this fact.
- 233.6. Vision and the Lender Group initially agreed that Vision would complete the acquisition of the Lender Group’s claims and security by 31 December 2024. Vision was unable to do so by 31 December 2024 for reasons which are

⁷⁹ Certain of the Lender Group members, like Santam, have bank accounts at different banks, like Standard Bank in Santam Investment Management’s case, and FNB in Santam Ltd’s case.

presently irrelevant. As RGS correctly records, the due date was thereafter extended to 31 March, then 30 April, and finally to 9 May 2025, on which date Vision completed the acquisition. These delays, however, do not render the Vision Plan unlawful, as RGS contends.

234. On 26 May 2025, RGS served its replying affidavit in respect of Part B of the Pending Application. Over nine months have lapsed, and RGS has failed to deliver its heads of argument to progress Part B.
235. If RGS had timeously brought its Part B relief to set aside the Vision Plan (instead of seeking incompetent urgent interdictory relief), it is highly probable that Part B could have been determined by now. While Vision contends that RGS should have sought this relief at far earlier dates, if RGS had brought its application to set aside in the ordinary course on 12 November 2024 (when it launched Part A), this application would very likely have been determined by now – over 15 months later. It is also likely that RGS could have had Part B determined in the nine months since its replying affidavit, especially if a special allocation was sought.
236. It is an abuse for RGS to seek the same relief on substantially the same grounds on an urgent basis, particularly as a counter-application to the main application.

LEAD UP TO THE FIRST DISCLOSURE APPLICATION

237. RGS was informed of this Vision's payment on 9 May 2025 in the supplementary affidavits filed by the BRPs and Vision in the Pending Application on 9 and 10 May 2025.
238. On 14 May 2025, DMI sent a further demand to the BRPs, Vision and the Lender Group (RGS AA, **MAR28**) in which it demanded the BRPs, Vision, the Lender group, and the IDC to provide it with, among other things, the documents comprising the disclosure relief that had previously been sought in (i.) the rule 35(12) in the second Powertrans application and (ii.) the Pending Application (including the rule 35(12) notices in that application. RGS asserts

the very same grounds in support of this disclosure that were raised in the prior proceedings (in particular Part A of the Pending Application). These grounds include the alleged unlawfulness attributable to the allegation that Vision was using THL's assets as collateral to raise the necessary funding.⁸⁰ DMI states that if the disclosure is not provided by 21 May 2025, RGS would *"have no choice but to approach the High Court on an urgent basis for orders inter alia directing that the information demanded be disclosed to affected persons"*.⁸¹

239. Werksmans responded to this letter on 21 May 2025 (RGS AA, **MAR29**). Werksmans disputed the content of DMI's letter and provided:

239.1. a copy of the email sent by Stein Scop to Werksmans on 9 May 2025 in which Stein Scop confirmed that *"Vision have made payment of the purchase consideration due to the Lender Group"* and that *"the transaction between Vision and the Lender group has been finalised"* (attached as "A"); and

239.2. a letter from ENS Africa (on behalf of the Lender Group) on 21 May 2025 in which it confirmed that Vision had *"fully discharged all of its payment obligations vis-à-vis the purchase consideration due by it to the Lender Group relating to the transfer of the claims and security of the Lender Group in respect of THL (and its subsidiaries)"*. ENS confirmed that the THL claims and security were *"unconditionally and irrevocably transferred to Vision on 9 May 2025"*.

240. Both the purchaser (Vision) and the seller (the Lender Group) had confirmed that the purchase price had been discharged in full and that Vision (as cessionary) holds the claims and securing of the Lender Group (as cedent). This is all the confirmation that THL (as the debtor) and the BRPs (being responsible for implementing the Vision Plan) required in law to recognise Vision as cessionary of the claims and security. Vision and the Lender Group have since gone far further in establishing this.

⁸⁰ ¶ 21-23.

⁸¹ ¶ 31.

241. On 23 May 2025, DMI attorneys withdrew as RGS's attorneys of record in the Pending Application, and Bobat was appointed as RGS's new attorneys.
242. RGS has previously been represented by Mabuza Attorneys, Edelstein Faber Grobler Attorneys, White & Case Inc., DMI Attorneys (which also represents Powertrans), and Bobat. On my count, Bobat is RGS's fifth attorney of record.
243. At the same time that Bobat served the notice of withdrawal and substitution (23 May 2025), Bobat sent a letter to Vision, the Lender Group, and the IDC ("**RM38**") in which RGS purported to grant Vision, the Lender Group and the IDC "an indulgence" to comply with the demands for information contained in DMI's letter of 14 May 2025. Bobat stated that should the parties not respond by 26 May 2025, RGS would have no choice but to approach the court for urgent relief.
244. On 28 May 2025, Fasken, on behalf of the IDC, responded to the letter from Bobat ("**RM39**"), essentially refusing to comply with RGS's demands and indicating that the IDC was committed to the business rescue process under the Vision Plan.
245. Also on 28 May 2025, The Standard Bank of South Africa Ltd (the Facility Agent for the Lender Group) wrote to Bobat ("**RM40**"), attaching a copy of the letter sent by ENS to Werksmans and advising and confirming the contents, and advising that Standard Bank had resigned as the Facility Agent and that the new Facility Agent was the first respondent.

THE FIRST DISCLOSURE APPLICATION

246. On 29 May 2025, RGS launched the First Disclosure Application. As appears from the notice of motion ("**RM41**"), RGS sought the disclosure relief only from Vision.⁸²

⁸² Prayer 2.

247. Given that RGS only sought relief from Vision, the BRPs did not participate in the application in any meaningful manner. The BRPs filed a short affidavit effectively stating that they did not intend to participate in the application.
248. On 11 June 2025, the First Disclosure Application was heard before Zwane AJ and judgment was reserved. On 4 July 2025, Zwane AJ delivered judgment (RGS AA, **MAR16**) and granted the disclosure relief sought against Vision. On 10 July 2025, Vision delivered its application for leave to appeal. On 10 July 2025, Vision delivered its application for leave to appeal ("**RM42**").

THE SECOND DISCLOSURE APPLICATION

249. After receipt of Vision's application for leave to appeal on 10 July 2025, RGS did not seek leave to execute that judgment. I am advised that the proper course for RGS to seek leave to execute under section 18(3) of the Superior Courts Act was for it to bring a counter-application to the application for leave to appeal seeking execution, and for both applications to be argued simultaneously before Zwane AJ (who delivered the judgment, who is familiar with the matter, and who would have the record before him).
250. As appears below, RGS elected not to pursue this relief and, instead, focused on acquiring the disclosure relief from the BRPs (consistent with Vision's contention, which it persists with on appeal) that such relief is incompetent against it.
251. On 11 July 2025, Bobat addressed a letter to Werksmans (RGS AA, **MAR31**). Bobat records, among other things, the following:

- "10. *RGS has taken legal advice and is of the view that the implementation of the Vision Plan cannot reasonably or lawfully proceed **before Vision has produced the information contemplated in the Zwane Order, regardless of whether or not Vision is granted leave to appeal the Zwane Judgment.***
11. *This is inter alia because Vision has no right or entitlement to take transfer of THL's assets if it has not fully and lawfully (i) discharged its payment obligations*

to the Lender Group, (ii) taken unconditional transfer of the Lender Group's claims, and (iii) done so in a manner that is consistent both with the Vision Plan and the Companies Act (i.e. without having leveraged THL's assets).

12. *The findings contained in the Zwane Judgment, at bare minimum, cast serious doubt over Vision's right and entitlement to take transfer of THL's assets."*

252. Bobat demanded that the BRPs “confirm how they intend to proceed” against this backdrop by 16 July 2025 and to confirm whether they have or would suspend the implementation of the Vision Plan.⁸³ RGS neither sought nor was granted an interdict under the Zwane judgment, and the BRPs had made their position clear on numerous occasions that they would implement the Vision Plan. RGS elected not to pursue relief against the BRPs in the First Disclosure Application.
253. On 16 July 2025, Werksmans responded to Bobat (RGS AA, **MAR32**). As RGS would have expected, the BRPs refused any such undertakings and, consistent with previous recordals, stated that the BRPs “confirm that they intend to continue to comply with their statutory obligations”.⁸⁴ Werksmans also recorded that under the Judgment of Nkosi J, RGS “was not entitled to the interdictory relief sought by [it]”.⁸⁵
254. On 22 July 2025, Bobat addressed a further “urgent” letter to Werksmans (“**RM43**”) purporting to provide the BRPs “one final opportunity” to comply with their duties by 25 July 2025, failing which “RGS will launch an urgent application” to compel the BRPs to act in accordance with RGS’s demands.⁸⁶
255. On 25 July 2025, Werksmans responded to Bobat (RGS AA, **MAR33**). Werksmans confirmed that the BRPs had sufficient proof of: (i.) Vision’s payment to the Lender Group; (ii.) the transfer of the Lender Group’s claims

⁸³ ¶ 14-15.

⁸⁴ ¶ 3.4 and 4.

⁸⁵ ¶ 5.2.

⁸⁶ ¶ 19-21.

and security to Vision; and (iii.) that THL's assets were not leveraged, encumbered, proffered as security, or employed in any other way to assist Vision to discharge its payment obligations to the Lender Group or under the Vision Plan. Werksmans nevertheless provided Bobat with Vision's proofs of payment and an explanatory letter, which I deal with below, as further proof of the above.⁸⁷ As appears from Stein Scop's letter attached to Werksmans' letter, Vision produced the proof of payments without an obligation to do so and in the hope of averting a further urgent application by RGS.

256. Vision's sincere hope was that providing the proofs of payment to RGS would avoid further litigation and even bring an end to Part B of the Pending Application. In the First Disclosure Application, RGS stated the following:⁸⁸

*"107. Since both Vision and the BRPs allege that the steps taken by Vision in discharging its payment obligations to the Lender Group is destructive of Part B of the Pending Application, RGS has a right to consider those steps and determine for itself how best to protect its interests (i.e. **whether or not to withdraw Part B of the Pending Application**).*

108. This would moreover prevent RGS, Vision and the BRPs from expending unnecessary time and expenses in relation to Part B of the Pending Application."

257. No level of proof will ever satisfy RGS. For each disclosure made to RGS, it invents further grounds of inadequacy. This is demonstrated clearly by RGS's approach to the proofs of payment furnished by Vision:

257.1. The proof of payment for the 11 January 2024 payment of R1.51 billion lists Moodley as a contact person for further information at +27 11 636 8917. This is an official Standard Bank telephone number.

257.2. It appears from RGS's founding affidavit in the Second Disclosure Application that, on 28 July 2025, RGS's attorney (Mr Bobat) contacted Moodley to enquiry about the validity of this proof of payment and then sent an email ("**RM44**")

⁸⁷ ¶ 5 read with ¶ 19.1.1 to 19.1.2 of Bobat's letter.

⁸⁸ Emphasis added.

raising the purported irregularities with the proof of payment and requesting that Moodley investigate and “confirm with us whether this [is] in fact an authentic and valid Standard Bank proof of payment”.⁸⁹ Mr Bobat sent this email to “jadon.moodley@standardbank.co.za”. This email address does not appear on the proof of payment and, as such, must have been obtained by Mr Bobat during their telephone conversation. After various engagements, Moodley responded by email on 29 July 2025, stating as follows (“**RM45**”).

“I can confirm that the document sent by yourself to me with the proof of payment is indeed valid and was created by myself.”

257.3. Despite RGS receiving the precise confirmation regarding the proof of payment that it sought, because it was detrimental to RGS’s case, it was not satisfied. RGS then called into question why Moodley would respond to them at all (after the persistent attempts to contact him), and questioned his position and employment, given the lack of an official Standard Bank footer. This necessitated Vision acquiring an affidavit from Moodley (RM19) confirming the proof of payment.

258. On 30 July 2025, Bobat addressed a further letter to Werksmans (“**RM46**”). Bobat recorded various purported issues with the proofs of payment, demanded yet further investigation by the BRPs, and sought that the BRPs respond by 1 August 2025, failing which RGS would launch an urgent application.

259. On 1 August 2025, Werksmans responded to Bobat (“**RM47**”). Werksmans declined RGS’s further demands and, among other things, recorded that Bobat’s letter:

“... self-servingly and disingenuously ignores the Lender Group's confirmation provided under oath under case number D13702/2024, that Vision has fully discharged all of its obligations vis-a-vis the purchase consideration, and their unequivocal confirmation that the Lender Groups' claims and security "were unconditionally and irrevocably transferred" to Vision on 9 May 2025”.

⁸⁹ FA ¶ 211-216,

260. On 12 August 2025, RGS launched the Second Disclosure Application under case number 2025-136677. A copy of the notice of motion is attached marked “**RM48**”.
261. In the Second Disclosure Application, brought as an urgent application set down on 3 September 2025, the primary relief that RGS seeks is to direct the BRPs under section 140(3)(a) of the Act to submit a report, including substantiating documents, effectively seeking the disclosure relief but under a different guise. RGS’s alternative relief is a mirror image of the disclosure relief, but now sought against the BRPs. In both cases, RGS sought that the implementation of the Vision Plan be ceased until such disclosure relief had satisfactorily been provided.
262. After various interlocutory disputes concerning security for costs, the Second Disclosure Application came before Sipunzi AJ on 16 September 2025, who struck the application from the roll for lack of urgency, with costs (order attached as “**RM49**”).⁹⁰
263. The Second Disclosure Application remains pending. RGS has sought a preferential allocation, and two dates have since been allocated. The matter did not proceed because the Second Disclosure Application is not yet ripe for hearing in the ordinary course.

THE APPLICATION FOR LEAVE TO APPEAL: THE FIRST DISCLOSURE APPLICATION

264. The application for leave to appeal in the First Disclosure Application was argued before Zwane AJ on 29 September 2025.
265. At no point before the hearing of the First Disclosure Application did RGS seek a counter-application to execute the order pending the appeal so that the application for leave to appeal and to execute could be heard together, as is

⁹⁰ The order incorrectly reflects the date of 19 September 2025.

normal practice. RGS had almost four months between Vision's application for leave to appeal and the hearing to bring an application to execute.

266. On 29 December 2025, Zwane AJ delivered judgment dismissing the application for leave to appeal. On 29 January 2026, Vision delivered its application for leave to appeal to the SCA ("**RM50**" (excluding annexures)). RGS delivered its answering affidavit on 23 February 2026, and any replying affidavit by Vision is due by 9 March 2026.

THE MAIN APPLICATION AND RGS'S COUNTER-APPLICATION

267. On 12 February 2026, the BRPs launched the main application seeking the urgent discontinuation of THL's business rescue and that it be placed under provisional winding-up.

268. RGS delivered its counter-application on 24 February 2026.

269. In its counter-application, RGS seeks, on an extremely urgent basis, among other things:

- 269.1. legally incompetent relief to dismiss the main application and set aside the Vision Plan (which issue is pending in Part B of the Pending Application);

- 269.2. leave to execute the disclosure relief under section 18(3), seven months after Vision first applied for leave to appeal and in an entirely irregular fashion, seeking that the urgent court (not Zwane AJ) determine this issue without even the record of the First Disclosure Application serving before it; and

- 269.3. the disclosure of new classes of documents relating to Vision's security without asserting any cognisable legal right to such documents, and having been aware of the existence of such documents since at least the adoption of the Vision Plan on 11 January 2024 (over two years ago).

RESPONSE AD SERIATIM

270. In the founding affidavit to the counter-application, RGS states that:⁹¹

“The facts that support the counter-application are set out in the answering affidavit ..., the contents of which should be read as though expressly incorporated herein.”

RGS, however, identifies specific paragraphs that “are particularly relevant” to relief seeking execution pending appeal under section 18(1) of the Superior Courts Act and the disclosure of the security documents.⁹²

271. Given the length of RGS’s affidavits (the answering affidavit alone is 114 pages without annexures), the limited time Vision has had to prepare this affidavit, and the uncertainty surrounding which allegations support the relief in the counter-application, Vision will only respond to those paragraphs requiring additional comment or elaboration. Vision denies RGS’s allegations that are inconsistent with what I have set out above.

RGS’S FOUNDING AFFIDAVIT IN THE COUNTER-APPLICATION

272. **Ad paragraph 1**

Other than to state that RGS is a creditor by cession of a claim of R5,744, and that it acquired this claim solely to provide it standing to interfere in the business rescue process, Vision admits the remaining allegations.

273. **Ad paragraph 2**

Vision denies that all the facts are true and correct or within the deponent’s personal knowledge as detailed in this affidavit.

⁹¹ RGS FA ¶ 13.

⁹² RGS FA ¶ 14.

274. Ad paragraphs 3 – 10

Vision admits the citation of the various parties.

275. Ad paragraphs 11 – 12

275.1. Vision is presently not a party to the main application, and it is insufficient to rely on the fact that it falls within the class of “affected persons” to avoid a formal joinder of Vision.

275.2. Vision admits that the relief sought against Vision “*is separate and distinct from the relief sought in the*” main application. As I have demonstrated above, this relief is no answer to the main application.

275.3. That said, Vision consents to its joinder and seeks to challenge the counter-application on its substantive merits (particularly, the lack thereof).

276. Ad paragraphs 13 and 14

276.1. Vision notes the incorporation of the entire answering affidavit to support the relief in the counter-application.

276.2. As RGS seeks to use the counter-application as a platform to air historical disputes, this has unfortunately necessitated a lengthy answer.

RGS’S ANSWERING AFFIDAVIT (IN SUPPORT OF THE COUNTER-APPLICATION)

277. Ad paragraphs 1 – 2

I have dealt with these allegations in response to the founding affidavit.

278. Ad paragraph 3

Vision notes the defined terms adopted by RGS.

279. Ad paragraph 7

279.1. Vision denies these allegations.

279.2. RGS is not in a position to step into THL's rescue proceedings. RGS is not THL's white knight, as I have dealt with above (from paragraph 19).

279.3. Vision denies these allegations.

280. Ad paragraphs 8 – 12

280.1. Vision admits that "RGS has persistently challenged the Vision Plan", has made offers that were (correctly) rejected by the BRPs, and has "been engaged in constant litigation with the BRPs and Vision".

280.2. Vision denies the remaining allegations.

280.3. I refer to what I have stated under the heading dealing with the dismissal and setting-aside relief (from paragraph 33 above) regarding this issue.

281. Ad paragraph 13

281.1. Vision admits that it is inappropriate in the main proceedings to "vent old grievances", but this is precisely what RGS does.

281.2. RGS's counter-application is duplicative of its prior litigation and seeks to use the main application as a platform to secure urgent relief that is either presently the subject of ongoing litigation (as with the setting-aside relief and execution relief) or new and entirely irrelevant to the main application (as with the relief for disclosure of the security documents).

281.3. RGS's counter-application provides no answer to the main application.

282. Ad paragraph 15

282.1. RGS's interest is not a "commitment to save THL". RGS is motivated by self-interest as a rival bidder, not as a legitimate affected person.

282.2. An arms-length creditor holding a claim of R5,744 and a voting interest of 0.004% would never spend R48 million.

283. Ad paragraph 16 and 18

283.1. Vision admits these allegations.

283.2. RGS has only been successful in securing the disclosure relief. Still, Vision contends that even this relief was erroneously granted and should be set aside on the ground set out in its pending application for leave to appeal to the SCA.

284. Ad paragraph 17

Vision denies these allegations.

285. Ad paragraphs 18 to 21

285.1. Vision denies these allegations.

285.2. The "validity and enforceability" of the default notices has no relevance to the main application, in which the primary issue is THL's financial distress arising from a lack of further PCF. It is inconceivable how access to the disclosure relief "*will play a critical role*" in avoiding liquidation. RGS has, in any event, already received much of the disclosure relief, although it remains unsatisfied.

285.3. Even so, the execution relief is incompetent. I refer to what have stated from paragraph 68 above when dealing with this relief.

286. Ad paragraphs 22 – 25

286.1. The term sheet provides no commitment by Afreximbank to provide anything. It is clearly marked as “a proposal of indicative terms,” the basis only for discussions.⁹³

286.2. RGS has not put forward even the semblance of a plan under which THL has reasonable prospects of rescue. Instead, RGS’s focus is to acquire irrelevant documents in the hope of proving its conspiracy that Vision does not hold the secured claims, or that the security does not exist.

286.3. RGS has not proposed any workable “interim solutions” to address the R600 million PCF. RGS has not stated how it intends to deal with Vision’s secured claims and how it intends to secure at least a 51% vote in favour

286.4. I refer to what I have stated when dealing with the dismissal and setting-aside relief from paragraph 33 above.

287. Ad paragraph 26

287.1. Vision denies these allegations and the grounds on which RGS relies in support of its counter-application. There is simply no merit to the relief sought by RGS in its counter-application – it is legally untenable and factually unworkable.

287.2. I refer to what I have stated:

287.2.1. in dealing with the dismissal and setting-aside relief from paragraph 33 above;

287.2.2. in dealing with the Agency Agreements relief from paragraph 59 above;

⁹³ Preamble.

287.2.3. in dealing with the security agreements relief from paragraph 61 above; and

287.2.4. in dealing with the execution relief from paragraph 68 above.

287.3. In summary, RGS's relief is entirely unprecedented. Section 141(3) does not provide the court with the discretion to set aside the Vision Plan (which issue is *lis pendens* in any event). The scheme of Chapter 6 does not envisage successive, entirely different business rescue plans within the same business rescue process. The ability of the business rescue practitioner or an affected person to call for a vote on the preparation and publication of a new plan under section 153(1)(a)(i) or (b)(i)(aa) arises only where a plan has been put to a meeting but "rejected" (not where a court sets aside a validly adopted plan). An application for leave to execute an order pending appeal under section 18(3) of the Superior Courts Act cannot be brought as a counter-application in these circumstances and without the record of those proceedings being before the court.

288. Ad paragraphs 27 – 29

RGS proposed a timetable under which, among other things, Vision was to deliver its answering affidavit to RGS's counter-application. This counter application is supported by RGS's "preliminary answering affidavit" and, as such, Vision would object to RGS filing a further answering affidavit.

289. Ad paragraphs 30

289.1. Vision admits these allegations.

289.2. This court need only be satisfied that the BRPs were justified in forming this opinion.

290. Ad paragraph 31

290.1. Vision admits that it was necessary for the BRPs to bring the main application. Vision is, however, committed to seeking a path towards implementing the Vision Plan with the hope of averting a liquidation.

290.2. Vision denies that it would have been appropriate to bring such an application before the root causes had arisen, namely the systemic issues within the sugar industry that have necessitated the further R600 million PCF.

291. Ad paragraph 32

291.1. Vision denies these allegations.

291.2. The systemic issues and the urgent need for an additional R600 million PCF are the root cause of the BRPs' conclusion that there are no longer reasonable prospects of THL's rescue.

292. Ad paragraphs 33 and 34

292.1. Vision denies these allegations.

292.2. RGS's allegations concerning the alleged unlawfulness of the Vision Plan, which are now years old, have no relevance to the main application.

293. Ad paragraphs 35 – 44

These allegations primarily concern the main application and, as such, I do not address them.

294. Ad paragraphs 44 and 45

Vision denies that RGS is able to implement a sustainable rescue for the reasons set out when dealing with the dismissal and setting aside relief from paragraph 33 above.

295. Ad paragraph 48

295.1. There is no basis on which Vision's ownership of the secured claims can be seriously challenged.

295.2. The fact that Vision holds these secured claims renders any RGS proposal, should it transpire, impracticable at best. I refer to what I have stated when dealing with the dismissal and setting aside relief from paragraph 33 above.

296. Ad paragraphs 49 –60

296.1. Vision denies these allegations.

296.2. Vision's financing of its obligations does not contravene the Vision Plan. I have dealt with this in detail in the chronology. This issue is to be resolved in Part B of the Pending Application.

296.3. It is notable that RGS criticises the use of funding in the Vision Plan, yet puts forward an Afrexim term sheet under which it hopes to acquire finance for any plan that it intends to submit.

296.4. While RGS speculates about Vision's secured claims reverting to Standard Bank, RGS says nothing about it.

297. Ad paragraphs 61 – 65

297.1. Vision denies these allegations.

297.2. I refer to what I have stated when dealing with the execution relief from paragraph 68 above.

298. Ad paragraphs 66 – 72

298.1. Vision denies these allegations.

298.2. RGS has no justifiable basis to doubt that Vision holds these secured claims and that the security exists. To contend otherwise is to descend into the realm of conspiracy theories. I refer in particular to Standard Bank's affidavit confirming that Vision holds the claims and security (RM1) and the Vision Plan and previous RGS Plan, which set out the security in detail.

298.3. I refer to what I have stated when dealing with the security agreements relief from paragraph 61 above.

299. Ad paragraphs 73 – 78

299.1. Vision denies these allegations.

299.2. I refer to what I have stated when dealing with the dismissal and setting aside relief from paragraph 33 above.

300. Ad paragraphs 79 – 83

300.1. Vision denies these allegations.

300.2. Vision has acquired the previous Lender Group's secured claims. Whether that acquisition took place in January 2024 or on payment in full in May 2025 is irrelevant to the counter-application. It is correct that Vision does not yet own any of THL's property. However, Vision holds real security rights over almost all of THL's assets.

301. Ad paragraphs 84 – 94

301.1. Vision denies that RGS has made any meaningful proposal in its answering affidavit that can inform a realistic assessment of THL's continued prospects of rescue.

301.2. I refer to what I have stated when dealing with the dismissal and setting aside relief from paragraph 33 above.

301.3. In particular, RGS provides no tangible solution to THL's urgent working capital requirements of R600 million.

302. Ad paragraphs 95 – 107

302.1. These allegations primarily concern the main application, and, as such, I do not address them other than to refer to what I have stated in relation to the dismissal and setting aside relief from paragraph 33 above, particularly regarding the scheme of Chapter 6.

302.2. Regarding paragraph 101, Vision denies that it intends to "embark on a corporate raid". Vision seeks to avoid THL's liquidation and is engaging with all relevant stakeholders in the hope of resolving all issues before this court determines the main application.

302.3. Regarding paragraphs 102 and 103, Vision denies that it is unable to run THL's businesses. Vision was on the verge of acquiring the necessary facilities to fully implement the plan and have sufficient working capital post-implementation before the issue of the additional 600 million PCF and systemic issues arose.

303. Ad paragraphs 108 – 114

303.1. Vision denies these allegations.

303.2. I refer to what I have stated when dealing with the dismissal and setting aside relief, particularly when dealing with the alleged and lawfulness of the Vision Plan from paragraph 50 above.

304. Ad paragraphs 115 – 125

304.1. Vision acknowledges the vital role that the IDC has played in the rescue of THL. Vision denies RGS's allegations that it has acted improperly.

304.2. The IDC can speak for itself, but it is noteworthy that RGS acknowledges the importance of the IDC to any plan that RGS may propose, yet does not say that RGS has the IDC's support. RGS is invited to prove otherwise.

304.3. The fact is that the IDC is engaging with Vision (not RGS).

305. **Ad paragraphs 126 – 159**

These allegations concern the main application and, as such, Vision does not address them.

306. **Ad paragraphs 160 – 316 (chronology generally)**

306.1. I have set out in detail above the pertinent background facts regarding the history of this matter.

306.2. Vision denies RGS's allegations to the extent that they conflict with what I have set out above.

306.3. These allegations are repetitive of the allegations that RGS relies on in its prior litigation, in particular in Part B of the Pending Application. I refer to what I have stated when dealing with the dismissal and setting aside relief from paragraph 33 above.

307. **Ad paragraphs 317 – 339**

I refer to what I have stated in the chronology concerning the fraudulent proof of funds, particularly paragraph 129 above in which I set out why RGS's explanation is entirely unsatisfactory and improbable.

308. **Ad paragraphs 340 – 351**

308.1. Vision denies that RGS has made out a case:

308.1.1. to dismiss the main application and set aside the Vision Plan under section 141(3) of the Act (I refer to what I have stated when dealing with the dismissal and setting aside relief from paragraph 33 above);

308.1.2. for the Agency Agreements relief (I refer to what I have stated when dealing with the Agency Agreements relief from paragraph 59 above).

309. Ad paragraphs 352 – 362

309.1. Vision denies these allegations and, in particular, that RGS has made out a case:

309.1.1. to dismiss the main application and set aside the Vision Plan under section 141(3) of the Act (I refer to what I have stated when dealing with the dismissal and setting aside relief from paragraph 33 above);

309.1.2. for the security agreement's relief (I refer to what I have stated when dealing with the security agreements relief from paragraph 61 above);
or

309.1.3. for the execution relief (I refer to what I have stated when dealing with the execution relief from paragraph 68 above).

309.2. Of note, RGS does not attempt to motivate for the urgency of its own counter-application, and it should be struck from the roll for this reason alone.

310. Ad paragraphs 363 – 367

310.1. RGS seeks costs against the BRPs, THL and Vision “on the scale as between attorney and client on scale C”. RGS does not separately motivate for a cost order against Vision under the counter-application.

310.2. As RGS's counter-application comprises a meritless abuse of process, Vision seeks that the counter-application be struck from the roll or dismissed, with

RGS to pay Vision's costs on a punitive scale, as between attorney and client, including the cost of two counsel.

RUTENHURO MOYO

THUS SIGNED AND SWORN TO at _____ on this ____ day of **MARCH 2026** the deponent having acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath, that the oath which the deponent has taken in respect thereof is binding on the deponent's conscience, and that the contents of this affidavit are both true and correct.

COMMISSIONER OF OATHS

FULL NAME:

DESIGNATION:

ADDRESS:

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

CASE NO: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

VISION INVESTMENTS 155 (PTY) LTD

First Respondent

TERRIS AGRIPRO (MAURITIUS)

Second Respondent

REMOGGO (MAURITIUS) PCC

Third Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Fourth Respondent

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

Fifth Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Sixth Respondent

TREVOR JOHN MURGATROYD N.O.

Seventh Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Eighth Respondent

GERHARD CONRAD ALBERTYN N.O.

Ninth Respondent

**THE LENDER GROUP OF TONGAAT HULETT
LIMITED**

Tenth Respondent

**THE INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA**

Eleventh Respondent

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

Twelfth Respondent

Handwritten signature and initials in the bottom right corner of the page.

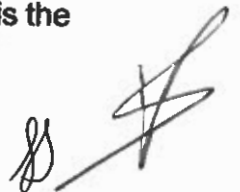
FORMER FACILITY AGENT CONFIRMATORY AFFIDAVIT

I,

VENASHAN SEERANGAM

state under oath that:

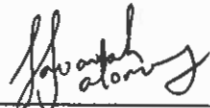
1. I am an adult male, employed by The Standard Bank of South Africa Limited as a Vice-President: Agency Front Office.
2. The facts in this affidavit are within my personal knowledge, unless appears otherwise, and are to the best of my belief correct.
3. On 28 May 2025, I wrote a letter to Bobat and Associates in my capacity as the representative of the former Facility Agent on behalf of the Lender Group. A copy of the letter is attached to Vision's answering affidavit as RM1.
4. I confirm the content of the letter and specifically that:
 - 4.1. The First Respondent has fully discharged all of its obligations *vis-à-vis* the purchase consideration due by it to the Lender Group relating to the transfer of the claims and security (**the THL Group Claims and Security**) of the Lender Group in respect of Tongaat Hulett Limited (in business rescue) (and its subsidiaries).
 - 4.2. I also confirm that the THL Group Claims and Security were unconditionally and irrevocably transferred to the First Respondent on 9 May 2025.
 - 4.3. That Standard Bank, accordingly, as the former Facility Agent in respect of the THL Group Claims and Security had resigned and the new Facility Agent is the First Respondent.





VENASHAN SEERANGAM

THUS SIGNED AND SWORN TO at CENTURION on this 8th day of **JUNE 2025** the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, that the oath which he has taken in respect thereof is binding on his conscience, and that the contents of this affidavit are both true and correct.



COMMISSIONER OF OATHS

FULL NAME: Savannah Solomons
DESIGNATION: Commissioner of Oaths (RSA)
ADDRESS: Attorney
34 Sable Avenue, Eldoraigine
Centurion 0171



To: Bobat and Associates

Attention: Imraan Bobat

28 May 2025

Dear Sirs,

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")

1. We refer to your letter dated 23 May 2025 addressed to the Standard Bank Agency.
2. Please find attached a letter addressed by ENS Attorneys on behalf of each Lender to Werksmans in their capacity as the legal advisers to THL. You will note from the attached letter:
 - 2.1 The Lender Group confirmed that Vision had fully discharged all of its payment obligations *vis-à-vis* the purchase consideration due by it to the Lender Group relating to the transfer of the claims and the security of the Lender Group in respect of THL (and its subsidiaries) ("THL Group Claims and Security").
 - 2.2 The Lender Group confirmed that the THL Group and Claims and Security were unconditionally and irrevocably transferred to Vision on 9 May 2025.
3. Standard Bank accordingly resigned as the Facility Agent in respect of the THL Group Claims and Security and the new Facility Agent is Vision Investments 155 Proprietary Limited ("Vision").
4. Accordingly, please communicate with Vision as the new Facility Agent and Lender, going forward.
5. Please note for the sake of good order, any failure to deal with any aspect of your letter must not be construed to be an admission thereof.

Yours faithfully,

For and on behalf of:

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment Banking division)
(in its capacity as former Facility Agent on behalf of the Syndicated Lenders)

Name: Venashan Seerangam
Capacity: Vice-President: Agency Front Office
Who warrants his/her authority hereto

3rd Floor, East Wing, 30 Baker Street Rosebank 2196
PO Box 6075 Johannesburg 2000 South Africa
Tel. Switchboard: +27 (0)11 721 9000
AgencySBSA@standardbank.co.za

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) Authorised financial services and registered credit provider (NCRCP15)

Directors: NMC Nyembezi (Chairman) SK Tshabalala* (Chief Executive Officer) LL Bam
PLH Cook A Daehnye* OA David-Borha1 GJ Fraser-Moleketi GMB Kennealy
BJ Kruger LJ L2 JH Maree NNA Matyumza ML Oduor-Otieno3 RN Ogega3
Fenglin Tian2

Company Secretary: K Froneman – 2025/04/08

* Executive Director 1 Nigerian 2 Chinese 3 Kenyan

Standard Bank

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

Case number: ⁰13702/24

In the matter between:

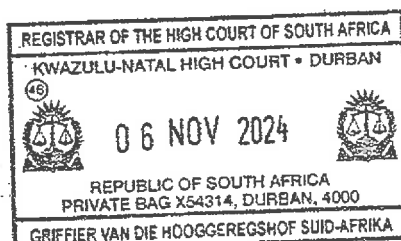
RGS GROUP HOLDINGS LIMITED

Applicant

and

TONGAAT HULETT LIMITED

(IN BUSINESS RESCUE)



First Respondent

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Fifth Respondent

TERRIS AGRIPRO (MAURITIUS)

Sixth Respondent

REMOGGO (MAURITIUS) PCC

Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Eighth Respondent

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

Ninth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED

Tenth Respondent

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

Eleventh Respondent

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

Twelfth Respondent

NOTICE OF MOTION

PART A

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

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

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

5.4. Confirmation under oath that they have not concluded and will not in future conclude any agreement(s) with the Lender Group in terms of which, whether directly or indirectly, any of the first respondent's assets (including any such assets which are intended to be transferred under the Vision Asset Transaction) will be sold upon or after the conclusion of the first respondent's business rescue in order to apply the proceeds of such sale(s) to settle any amount(s) due:

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

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

6. That the applicant be granted leave to supplement its founding affidavit prior to the hearing on Part B.
7. That the costs of Part A be paid by the first to ninth respondents, in addition to any party opposing the relief sought in Part A, on scale C including the costs of two counsel where so employed.
8. Further and/or alternative relief.

PART B

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

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

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

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

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

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

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

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

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



DMI ATTORNEYS

Applicant's Attorneys

1st Floor

94 Florida Road

Morningside

Tel: 031 301 8623

Ref: Mr D Moodley/DM/RGS

Email: devin@dmiaatt.co.za

shelin@dmiaatt.co.za

shreya@dmiaatt.co.za

Cell: Devin – 083 459 3311

Shelin – 082 888 9979

Shreya - 063 364 9079

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Durban, KwaZulu-Natal

AND TO: WERKSMANS ATTORNEYS
Attorneys for the First to Fourth Respondents
11th Floor, The Central
96 Rivonia Road
Sandton
Tel: 011 535 8248
Email: dandropoulos@werksmans.com / TBoswell@werksmans.com /
DHertz@werksmans.com / sgast@werksmans.com

AND TO: STEIN SCOP ATTORNEYS INC.
Attorneys for the Fifth to Ninth Respondents
2nd Floor, Capital Hill
6 Benmore Road, Morningside
Sandton
Tel: 011 380 8081

Mobile: 072 587 6361

Email: bradley@steinscop.com / alexandra@steinscop.com /

brookeb@steinscop.com

AND TO: EDWARD NATHAN SONNENBERGS INC.

Attorneys for the Tenth Respondent

Tower 1, The MARC

129 Rivonia Road

Sandton

Tel: 011 269 7600

Email: slederman@ensafrica.com / alombard@ensafrica.com /

goertel@ensafrica.com / jobasson@ensafrica.com

AND TO: POWERTRANS SALES AND SERVICES

14 – 16 Blue Street

Isithebe

KwaZulu-Natal

Email: info@powertrans.co.za

COMPARISON TABLE

Pending Application (Case No. 13702/2024, Part B) vs Counter-Application (Case No. 2026-031780)

Key:

FA = RGS Founding Affidavit, Part A (6 November 2024)

SA = RGS Supplementary Affidavit, Part B (30 March 2025)

AA = RGS Preliminary Answering Affidavit in Liquidation Application (24 February 2026) – substantive basis for counter-application (per counter-application FA paras 13–14)

NOM = Counter-Application Notice of Motion (24 February 2026)

Counter-application FA = Counter-Application Founding Affidavit of M.A. Rajahussen (24 February 2026)

No.	Category / Ground	Substance of Allegation	Pending Application (FA + SA Part B)	Counter-Application (AA + NOM)	Comment
A	RELIEF SOUGHT	Setting aside of the Vision Plan adopted on 11 January 2024	Part B, NOM prayer 1: That the business rescue plan adopted in relation to the first respondent on 11 January 2024 be set aside.	Counter-application NOM prayer 4: That the business rescue plan adopted in the fourth respondent's business rescue proceedings on 11 January 2024 be declared unlawful and set aside.	Identical substantive relief. Counter-application adds "declared unlawful" but the effect is the same: both seek setting aside the Vision Plan.
1	Material misrepresentation regarding Vision's funding	Vision induced creditors to adopt the Vision Plan by falsely representing at the Creditors Meeting (10–11 January 2024) that it had sufficient cash to implement the plan, supported by a Standard Bank Letter dated 21 December 2023. Vision never had the cash and subsequently used borrowed money.	FA paras 7, 10.4 - 10.7 39–40, 67.1, 120–158, 206, 238–242. SA paras 29–35, 79.	AA paras 49–50, 52.1–52.9, 113.1, 175–188.	Materially the same allegation. The AA provides additional detail (e.g., video timestamps of representations at para 175–188) and alleges Vision paid using Standard Bank loan, not cash (para 52.7).
2	Deletion of proof-of-funds statement at Creditors Meeting	On Day 2 of the Creditors Meeting, the Lender Group moved an amendment to delete para 2.2 of the Vision Plan confirming proof of funds, without informing creditors of the contradictory effect.	FA paras 67.1, 146–158, 238–242.	AA paras 185–186 (questions and answers at Creditors Meeting regarding funding proof).	Same factual substratum. The counter-application addresses this through a broader analysis of the questions asked and answers given at the Creditors Meeting.
3	Unlawful change of funding without creditor approval	Vision unilaterally changed the funding premise of the Vision Plan from cash to loan funding (Standard Bank / IDC) without creditor approval.	Not expressly pleaded in FA or SA (but implicit in funding misrepresentation grounds).	AA paras 49–50, 113.2.	The factual substratum (i.e., Vision's lack of cash and need for funding) is the same as that underlying the misrepresentation allegation in the Pending Application.

No.	Category / Ground	Substance of Allegation	Pending Application (FA + SA Part B)	Counter-Application (AA + NOM)	Comment
4	Failure to complete LG Claims Acquisition (condition precedent not met)	The full acquisition by Vision of all the LG Claims and Security is a condition precedent to both the Equity Conversion and the Asset Transaction. This condition was never timeously satisfied.	FA paras 11–25, 48–50.3, 165–172. SA paras 65–67.	AA paras 46–72, 113.4, 210–211, 213, 216, 219	Materially identical. Both proceedings rely on the same condition precedent analysis. The counter-application adds the Disclosure Judgment’s finding at [53] which confirmed this condition.
5	Vision Plan lapsed – failure to implement within reasonable time	The Vision Plan has lapsed because it could not be implemented within a reasonable time. The plan is premised on completion by 1 April 2024; Vision did not acquire LG Claims until 9 May 2025 (over 13 months late).	FA paras 49–49.3. SA paras 51–64.	AA para 113.3.	Materially the same. SA provides the most detailed treatment (including staleness of financial information and possible lapse of the Acquisition Agreement itself). Counter-application incorporates this by reference.
6	Unlawful proceeding with Equity Conversion before LG Claims Acquisition	The BRPs proceeded with the Equity Conversion in August 2024 despite knowing the LG Claims Acquisition had not been completed, in breach of the express terms of the Vision Plan.	FA paras 36–37, 165–173. SA paras 65.1, 68–72.	AA paras 113.4, 210–220.	Materially the same. Both proceedings allege the Equity Conversion was unlawful because the condition precedent (full LG Claims Acquisition) was not met. Counter-application adds detail regarding shareholders’ rejection.
7	Asset Transaction does not comply with section 150 of the Act	The Vision Asset Transaction does not constitute a self-standing business rescue plan compliant with section 150 of the Companies Act. It is contained in a single paragraph of the Vision Plan, was never discussed at the Creditors Meeting, and lacks essential prescribed information.	FA paras 50.1, 50.4, 67.3, 198–206, 213.3. SA paras 65.2, 69–72.	AA paras 113.5, 224–231.	Materially the same ground. All proceedings identify the same deficiencies: absence of conditions, no employee impact assessment, no financial projections, no BRP certificate per s 150(4).
8	Secrecy of Acquisition Agreement and failure to disclose essential information	Vision and the BRPs refused to disclose the LG Claims Acquisition Agreement and its status, despite statutory rights to disclosure under section 150(2)(c)(i) and	FA paras 15–20, 45.5, 48, 60–63, 94–97, 188, 212–232, 243–244. SA paras 11.4–11.5, 14–22, 39, 64.	AA paras 56–62, 273–285, 352–357.	Materially the same. Counter-application incorporates the Disclosure Application and Judgment (paras 273–285), which

No.	Category / Ground	Substance of Allegation	Pending Application (FA + SA Part B)	Counter-Application (AA + NOM)	Comment
		despite the BRPs' own "insistence" that Vision provide it.			was granted after the Pending Application was filed, and quotes the Court's findings.
9	Breach of section 132(3) – failure to report to affected persons	The BRPs failed to provide affected persons with real and meaningful information regarding the true status of the Vision Plan and its implementation, in breach of their obligations under section 132(3).	FA paras 60–63 (BRPs not in control / not informed). SA paras 20–21.	AA paras 113.8, 149, 212–213, 229.	Materially the same. Counter-application particularises the breach more fully (concealment of funding switch, non-disclosure of LG Claims Acquisition failure, minimal Asset Transaction information).
10	Breach of Adopted Plan – Circular to shareholders presented materially different terms	The Circular to shareholders presented materially different Equity Conversion terms than authorised by the Adopted Plan, specifically that the Lender Group (not Vision) would retain the R3.6 billion Vision Debt.	FA paras 165–173.	AA paras 210–220 (general treatment of unlawful Equity Conversion).	The specific allegation about the Circular discrepancy appears most fully in the FA. The counter-application addresses the Equity Conversion's unlawfulness more broadly but encompasses this ground.
11	False "Partial Acquisition Argument"	BRPs and Vision argued in the Powertrans Application that only a partial acquisition (R4.9 billion) was required, contradicting the express plan language requiring full acquisition of all LG Claims.	FA paras 38, 174–195.	AA para 211.	The specific "Partial Acquisition Argument" is addressed most fully in the FA. The counter-application relies on the Disclosure Judgment as well.
12	No creditor / shareholder approval for "switch" to Asset Transaction	Neither creditors nor shareholders were asked to vote to approve the BRPs' decision to switch from the Equity Conversion to the Asset Transaction.	FA paras 10.9, 42	AA paras 113.5, 223–231.	Materially the same. Both proceedings allege the switch required but did not receive creditor approval. Counter-application frames this as part of the section 150 non-compliance argument.
13	Vision's leveraging of THL's assets to raise funding	Vision sought to leverage THL's assets (which it does not own) to raise funds to acquire those very assets. This was not authorised by the	FA paras 186–195 (secret arrangement theory). SA paras 74–79.	AA paras 256–263.	Materially the same. Both rely on Vision's supplementary affidavit regarding the impact of Mozambican

No.	Category / Ground	Substance of Allegation	Pending Application (FA + SA Part B)	Counter-Application (AA + NOM)	Comment
		Vision Plan and contradicts the representation that Vision had cash.			political unrest on asset valuations and funding.
14	Vision's unilateral imposition of extraneous conditions	Vision unilaterally imposed material conditions extraneous to the Vision Plan: (a) wholesale structural reform of the sugar industry; (b) demands that the IDC fund Vision's obligations; (c) demands that the IDC refinance the PCF Facility.	Not expressly pleaded in FA or SA.	AA paras 113.6.1–113.6.3, 113.7.	New ground. This allegation appears only in the counter-application. It concerns events after the Pending Application.
15	BRPs' collaboration with Vision in pursuing extraneous conditions	The BRPs worked towards achieving these extraneous conditions by pressuring the IDC and others to comply with Vision's unlawful demands.	Not expressly pleaded.	AA para 113.7.	New ground. Appears only in the counter-application. It concerns events after the Pending Application.
16	Vision enforced LG Claims against THL during its own rescue plan	On 8 February 2026, Vision sought to enforce the LG Claims and Security against THL for R11.73 billion during the currency of its own purported "rescue" of THL.	Not pleaded (postdates Pending Application papers).	AA paras 52.9, 113.9.	New ground. Postdates the Pending Application.
17	Unreasonable refusal to consider RGS Offer / BRP bias	BRPs unreasonably refused RGS's superior offers (8 July 2024, 17 September 2024, 27 March 2025) on the mistaken basis that the Vision Plan remained binding, and showed bias in favour of Vision.	FA paras 43–46, 99–119.	AA paras 7–11, 43–45.	Materially the same. Both proceedings allege BRPs were duty-bound to consider alternatives, and unreasonably refused RGS's offers.
18	BRPs failed to consider alternatives upon Vision Plan failure	The BRPs concluded that the failure of the Vision Plan equated to failure of rescue proceedings without considering whether THL was otherwise capable of rescue or exploring alternative proposals.	Not expressly pleaded (context was different – at time of Pending Application, BRPs were still implementing the Vision Plan).	AA paras 43–45, 109–114.	New ground as articulated, but factual substratum (BRP refusal to consider alternatives) is common to both proceedings.
19	Bad faith reneging on disclosure tender	BRPs and Vision reneged on an undertaking given under oath to make Sale Agreements available for inspection, on the contrived basis that the tender was limited to Part A proceedings.	Not pleaded in FA. SA paras 14–18.	AA paras 56–62 (general treatment of BRP refusal to disclose).	SA contains the specific allegation of reneging on the oath-bound tender. Counter-application addresses disclosure refusal more broadly.
20	Disclosure Application and Court's findings	The Disclosure Application was granted on 4 July 2025.	Not in original papers (postdates FA and SA)	AA paras 18–21, 273–285, 352–357.	The Disclosure Application was filed after the

No.	Category / Ground	Substance of Allegation	Pending Application (FA + SA Part B)	Counter-Application (AA + NOM)	Comment
		The Court found Vision's refusal to produce documentary proof was "baffling" and that RGS has a right to information regarding plan implementation.			Pending Application. The counter-application relies extensively on the Court's findings (which Vision is seeking to appeal to the SCA).
21	Validity of Agency Agreements and security	The BRPs have not independently verified the validity, extent, or efficacy of the security attaching to the LG Claims. The agency relationship was "previously undisclosed" and revealed only after THL entered business rescue.	Not expressly pleaded in FA or SA.	AA paras 66–72. Counter-application NOM prayer 5 seeks production of Agency Agreements.	New ground. Appears only in the counter-application. The relief in prayer 5 of the counter-application NOM is also new.



RGS GROUP HOLDINGS LTD

20 October 2023

BY EMAIL

To
The Business Rescue Practitioner of Tongaat Hulett Limited (In Business Rescue)
Trevor Murgatroyd
Peter van den Steen

Dear Sirs

RE: Alternate Creditor Business Rescue Plan For Tongaat Hulett Limited Submitted by RGS

A. Introduction

1. Tongaat Hulett Limited ("**Tonga**at" or the "**Company**") has been a long standing pillar of the Southern African business landscape for nearly 130 years. With a workforce of over 23,000 direct and indirect employees it has been instrumental in sustaining the livelihoods of a multitude of people annually throughout parts of Southern Africa. Regrettably, Tongaat now faces potential fragmentation of this iconic business due to past mismanagement. RGS firmly believes that, notwithstanding its present challenges, Tongaat possesses exceptional potential and, with the right configuration and leadership it can once again become a cornerstone in Southern Africa's agri-business landscape.
2. Further to our non-binding offer of 14 June 2023, RGS has submitted a bid on 13 October 2023 that equates to an Enterprise Valuation of **R8,435,081,822**. We are writing this letter to you with the main purpose of highlighting salient points of our Alternative Creditor Business Rescue Plan and binding offer ("**Offer**") as submitted to you, the Business Rescue Practitioner ("**BRP**") on 13 October 2023.
3. RGS requests a meeting with you to present in person to introduce RGS and clarify any questions about RGS or our Offer. Our plan, as submitted, in our view, is well thought out and the best option available for all stakeholders. The RGS bid is premised on the fact that, the Acquiror will pay, cause to be paid and/or guarantee an aggregate amount of to creditors of all classes as well as the equity holders.
4. We confirm that we believe that provided the Business Rescue Practitioners facilitate a timely process, RGS is capable of closing the transaction as soon as is possible subject to the business rescue process and regulatory considerations.

5. This letter is further organized as follows:

- B. RGS Alternative Offer
- C. Key Commitments
- D. South Africa Turnaround Plan
- E. Conditions of the Offer
- F. About RGS
- G. RGS – The Ideal Partner
- H. Sources of Funding
 - Annual Financial Statement
 - ABSA Mozambique, BCI, Millennium BIM reference and funds letters
- I. Confidentiality
- J. Conclusion
- K. Appendix
 - RGS Group Profile
 - Alternative Business Rescue Plan

B. RGS Alternative Offer

6. The RGS Enterprise Valuation Offer is **R8,435,081,822** representing what we believe is a full and fair value offer under the given the circumstances. The Offer seeks to address the minimum creditor requirements whilst also aligning with RGS' business philosophy of fair business.
7. RGS is a Tongaat creditor, as such we have submitted the Offer as an Alternative Business Rescue Plan to the other creditors of Tongaat via the BRP as provided for by the Act. We attach to this letter a copy of our Business Rescue Plan. In order to expedite the reading of the report we have marked up the current approved Business Rescue Plan with our proposed amendments rather than draft a wholly new business plan whose reading might take up valuable time. Please note that where any contradiction may be interpreted between this letter and the Alternative Business Rescue Plan, the Alternative Business Rescue Plan will take precedence.
8. The Offer is summarised below;
9. **PCF Creditors** will receive 100 cents on the Rand to repay the PCF Creditors in full. It is estimated that the PCF will be c.R2,000,000,000 at the time of closing the transaction. This amount may be converted into a secured term loan as per our engagement with the IDC.
10. **Secured Creditors:** RGS will acquire the Secured Creditor claims for 55 cents on a Rand for up to a maximum of R4,000,000,000. Payment to Secured Creditors will be by way of a cash payment of R3,600,000,000 at closing and a R400,000,000 payment guaranteed by RGS and the Company – to be paid out over two equal annual installments by the Company. The cash payment of R3,600,000,000 will be paid by RGS into an escrow account as agreed between RGS and the Creditors prior.
11. **The South African Sugar Association ("SASA")** is offered a full settlement of their outstanding debt. We strongly believe that fostering good faith and citizenship between the

new shareholders of Tongaat and SASA is not only good for business but also essential for the long-term stability of an industry in turmoil. SASA will be paid 100 cents on the Rand through an immediate set-off against any amount due and payable by SASA to Tongaat and the remaining balance paid out over four equal installments over subsequent years.

12. **Unsecured Creditors:** While conventional wisdom may have suggested that unsecured creditors should not receive any compensation during the business rescue process, we recognize that many of these unsecured creditors are ongoing partners of Tongaat and are often small businesses or farmers. As such, we have resolved to embark on a new relationship through a gesture of goodwill and these unsecured creditors are offered 40 cents on a Rand for their claims, up to a maximum of R377,091,267, to settle and compromise THL's obligations to these unsecured creditors. Payments will be made in four equal installments over subsequent years. The balance of the relevant Unsecured Creditors' claims to the value of circa R565,637,549 will be compromised to R0.
13. **Non-Independent Creditors:** These creditors will be offered 100 cents on the Rand paid out in four equal installments over subsequent years.
14. **Shareholders** of Tongaat will retain 5% of the issued share capital. We estimate that at the readmission valuation, existing shareholders will receive a c. R545,800,000 uplift. A portion of the Secured Creditor Claims acquired by RGS will be converted into equity in Tongaat via a fresh issue of shares, thereby not impacting the existing rights of current shareholders (except for dilution as a result of the issuance of new shares as permitted by the Act). Such conversion will result in RGS holding 95% of the shares of the total issued shares in the Company on completion of the implementation of the transaction. The Company will remain listed on the JSE. It is the intention of RGS to sell down its position such that RGS retains 51% – 60% within a year after concluding the transaction thereby allowing a free float of between 40% -49%.
15. **Working Capital Facility** of R500,000,000 will be secured directly from RGS.
16. All other claims and liabilities will be compromised as set out in the Offer.

C. Key Commitments

17. Other considerations in RGS' Offer are discussed below;
18. **Keeping Tongaat Whole:** It is our intention to keep Tongaat whole as one group and every effort will be made to resist the pressures to split up the Tongaat group. RGS believes that keeping Tongaat whole allows stability in the regional industry as the sum of the parts will allow a protective moat around each constituent business since different country units go through different challenges at different times.
19. **Keeping Tongaat Listed:** It is our intention to keep Tongaat listed. Keeping the JSE listing will allow Tongaat to be transparent and accountable to its varied stakeholder bodies. Additionally, the listing will allow greater economic participation in Tongaat for South African investors and facilitate for existing shareholders to pare losses.

20. **Black Economic Empowerment:** Having had due consideration of the norms of South African business, RGS is pleased to incorporate BEE ownership into its structures at the opportune time. We value local partnerships, we believe in the necessity for racial transformation as a pathway to a more equitable society. As such, RGS is committed to implementing a BEE transaction as soon as practically possible. We believe it will probably take 2-3 years after the transaction has been completed before the company can sustain BEE financing; however the timeline of implementing a transaction is contingent upon the turning fortunes of Tongaat's South African operations such that any incoming BEE partner is not saddled with the need to fund any 'catch up' capex or suffer the losses that may arise during the turn around phase whilst concomitantly being put under pressure to service BEE loans from a business that is unlikely to pay dividends in the short term. Any Tongaat BEE administered by RGS will incorporate black farmers and Tongaat staff.
21. **No Major Retrenchments:** RGS acknowledges the socio-economic and political landscape that all of Tongaat's markets are currently operating in, we therefore, do not foresee nor intend retrenching workers.

D. South Africa Turnaround Plan

22. RGS' turnaround plan is not discussed in detail in the Offer. The Turnaround Plan, its intent, financing, and processes will be discussed and presented in person where RGS is able to meet.
23. Each Tongaat country unit has its own idiosyncrasies. However, from our observations the key issues facing South Africa are:
- 23.1. **Systems:** Integrity, accountability and risk management systems need to be bolstered through best practice frameworks and the paring of bad actors.
 - 23.2. **Management:** The whole industry is facing a decline in skills and a cooperative effort will need to be made by SASA to retain and grow a new crop of skills for the future. In the immediate short term, we have plans in place to augment the dearth of skills especially at factory floor levels.
 - 23.3. **Technical:** Annual and preventative maintenance regimes are currently being poorly executed as a result of poor skills and or funds. We believe that by injecting new funds into Tongaat and compliment existing skills the plants can be brought back to quality production.
 - 23.4. **Agriculture:** Poor and declining cane quality in Tongaat's catchment areas may be indicative of poor support being offered to Black Farmers and a lack / or reduced agronomy support being offered to commercial farmers. Both classes of farmers will need to receive additional assurances, agronomy and equipment support or investment from Tongaat in order to ensure that the partnerships remain mutually fruitful into future.
 - 23.5. **Other:** It is likely that the property business will be sold off or closed. Tongaat's poor climatic positioning vis-à-vis its South African competitors is a permanent handicap and it is necessary that Tongaat develops additional income streams to

ensure the viability of the South African business. We propose appending an ethanol plant on the relevant mills and a material expansion of the animal feed business. In addition, we are of the view that Tongaat's biggest asset is the Hulett brand, and we believe that the brand must be tested for suitability for brand extension into other consumer food categories of which RGS has vast experience. We believe that the Hulett brand coupled with Tongaat's supreme retail reach and complimented by RGS' FMCG experience at field, process and shop level will allow for new business units to be created with minimal risk.

E. Conditions of the Offer

24. RGS has positioned its offer with minimal conditions save for regulatory matters with the intention of ensuring the transaction is executed in a timely manner. It is naturally assumed that the BRP will continue judiciously managing Tongaat in good faith. In addition, RGS has proposed an interim management body between the passing of the Business Rescue Plan and the closing of the transaction. The said management body will be constituted by RGS nominees, the PCF lender nominees and the BRPs.

F. About RGS

25. The Gulamo family is a fourth-generation Indian-Mozambican immigrant family with a presence in Mozambique for over 100 years. RGS was founded by the Gulamo family in the early 1990s wherein the family seized upon the opportunity for entrepreneurship during Mozambique's transition from a state-controlled economy to a free market by importing goods from familial contacts in Asia into Mozambique and distributing them throughout the country. RGS has since grown to become one of the country's largest local owned FMCG industrial players and Agri business players in Mozambique. The RGS business units include:
26. **RGS Sugar Business:** RGS is the sole Mozambican-owned producer of sugar through its ownership in Sena Sugar. Sena Sugar oversees a 10,000-hectare dryland/irrigated sugarcane plantation, mill and refinery along the lower Zambezi. Sena also produces biomass electricity.
27. **Agriculture:** RGS controls over 80,000 ha of agriculture land and its investments include the largest tea plantation in Mozambique. RGS is also developing additional crop opportunities in animal feed and biofuel crops in partnership with the Italian oil major - ENI and the South African business - Unitrans for Middle East and European based off takes respectively. Row crops are for use in Mozambique in RGS' own mills and factories.
28. **FMCG:** RGS operates the largest Mozambican-owned edible oil production business and distribution network. RGS also manufactures a range of consumer goods including soaps, candles, detergents, cornmeal, rice, wheat flour, biscuits, margarines, pasta, carbonated soft drinks and bottled water.
29. **Other:** RGS is involved in plastics moulding and are proprietors of a steel fabrication plant. RGS also owns a lithium mine and a gravel quarry. RGS boasts one of the largest Mozambique-

owned logistical fleets and warehouse infrastructure, providing a decisive competitive advantage in the distribution of FMCG and consumer products.

G. RGS – The Ideal Partner

30. Through its varied experience, we believe that RGS is uniquely placed to support the turnaround and growth plans of Tongaat. We outline a few reasons why we believe that RGS should be considered as a suitable partner for Tongaat below:
31. **Unencumbered Skin in the Game:** RGS is investing its own unencumbered funds into the transaction, as such the RGS shares in Tongaat will be unencumbered thereby relieving pressure on Tongaat cashflows and allowing for guarantees from RGS to be unencumbered.
32. **Balance Sheet:** RGS has a sizeable balance sheet. In addition, the RGS Group currently has no net debt whilst holding material cash reserves from retained earnings. RGS is thus well placed to support further capital calls from its own balance sheet should Tongaat require further investment support.
33. **FMCG Experience:** RGS is an FMCG business, we understand the product set and we have been trading it for over two decades. We are thus well placed to compliment Tongaat in this asset class.
34. **Sugar Experience:** Through its investment in Sena RGS has 25 years of experience in the sugar industry.
35. **Agri-Industrial Experience:** RGS has over 20 years' experience in agro processing industries, particularly in FMCG. Consequent to the aforementioned we believe that the RGS Group will hit the ground running and introduce value accretive synergies immediately for the benefit of all Tongaat stakeholders.
36. **Turnaround Experience:** RGS bought Sena Sugar from the global sugar firm Tereos and within a year turned the business around to make its first profit in over a decade. We believe that our owner managed focus will eliminate several inefficiencies identified at Tongaat.
37. **Relevant Market Experience:** As a very successful regional FMCG and Sugar player, we believe that RGS is well positioned to understand and manage the idiosyncrasies of Tongaat's market. Having built what we believe is a formidable African business through politically and commercially trying times in Mozambique, RGS is relatively comfortable managing the volatile currencies and the changing political landscapes found in one way or another in all of Tongaat's markets.
38. **Distribution Synergy:** By utilizing RGS' Mozambiquan direct to client distribution model we believe that we can create synergies in Mozambique that will lift EBITDA by more than R500,000,000 in year 1. This estimate has been calculated utilizing the current observed numbers in RGS vis-à-vis what we have observed at Tongaat during our due diligence.
39. **Agriculture Synergies:** RGS Group controls 80,000 ha of irrigable land. The ability to partner RGS' land bank with Tongaat's animal feed business and brand could further enhance the

diversification of Tongaat's product lines. Moreover, RGS has agreements to supply animal feed to Middle Eastern dairies, RGS may transfer these contracts to Voermol to utilize its expertise in reaching a global market. RGS also has agreements to supply ethanol to European customers, by collapsing this interest into Tongaat, RGS would substantially enhance Tongaat's earnings and defensive moat.

40. **Beyond Sugar:** RGS sees Tongaat as more than a sugar manufacturer. Our broader vision for Tongaat is to further exploit the Hulett brand and Tongaat's customer distribution capabilities into product lines that are brand appropriate in categories where RGS already has vast experience. Lateral brand extensions to be considered after careful study and trials which could be launched off the back of RGS' manufacturing facilities are wheat flour, rice, biscuits, margarine, edible oils, fizzy drinks, water and pasta. RGS believes that it is vital that Tongaat expands its product portfolio as sugar is likely to be under pressure in the long term due to increased taxation on sugar and evolving lifestyles. Furthermore, should lateral extensions be successful, Tongaat has the unique factor against its potential new FMCG peers of being able to farm and process thereby increasing its ability to extract maximum margins.

H. Sources of Funding

41. RGS is funding this transaction from its own cash resources. Our bankers of reference for RGS and Sena are Millenium ABSA Mozambique, BIM and BCI. Additional meetings for reference may be arranged directly with these banks should the need arise.
42. RGS will sell down a minority portion to shareholders at the earliest opportune moment so as not to fall foul of JSE free float requirements. RGS may also consider optimizing the capital structure of the business at an opportune time.
43. Given that RGS is a private company and its data is not in the public domain, in order for us to release the information below, please sign the NDA and you will be further given access to the following;
- Confidential Proof of Funds / Last three Months Relevant Bank Statements or reference of RGS from RGS' Bankers, ABSA Mozambique, BCI and Millenium BIM;
 - Confidential RGS Annual Financial Statement.
 - Any further KYC information you may require.

I. Confidentiality

44. Unless legally obligated or directed by a regulatory authority, we kindly request that you refrain from sharing or revealing any details contained in this letter and the Offer with individuals beyond your organization's personnel or professional advisors who have a legitimate need to know in the regular performance of their responsibilities and which individuals are not involved in the advisory of competitors in this process. We note that the process of acquiring Tongaat is highly competitive and any disclosure of the terms and conditions of the Offer to third parties will likely prejudice RGS and its business.

J. Conclusion

45. RGS requests a meeting with you to personally introduce RGS and further expand on the Offer. We will also address any questions you may have. Please advise if you can meet in person or online in the week beginning 23 October 2023.
46. We look forward to working collaboratively with all stakeholders to ensure the successful execution of the Offer. We are committed to maintaining open communication and transparency with creditors, employees, and other stakeholders throughout the business rescue process.
47. If you have any questions or require additional information, please do not hesitate to reach out to us directly emailing simultaneously the two emails below. We appreciate your careful consideration of this proposal and look forward to your response.

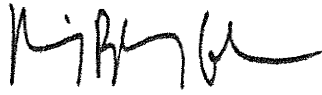
Position: Executive Chairman
Name: Aquil Rajahussen
Email: aquil@rgs-holdings.com
Whats App: +27 82 436 1331

and

Position: Transaction Legal
Name: Lionel Shawe
Email: lionel.shawe@whitecase.com
Whats App: +27 83 456 8930

48. In conclusion, we believe we have developed a comprehensive and well-thought-out Alternative Business Rescue Plan that, while addressing the financial challenges faced by Tongaat, also aims to preserve jobs, sustain trade creditors, and provide an equitable solution to a complex situation. RGS has backed its plans with its own balance sheet and will continue guaranteeing certain Tongaat obligations as listed in the Offer. Our Offer seeks to breathe new life into this iconic Southern African business and secure its future for the benefit of all stakeholders.
49. We appreciate your careful consideration of this proposal and look forward to your positive engagement.

Sincerely,



Hasnain Gulamo

RGS and Sena Sugar CEO



RGS GROUP HOLDINGS LTD



RGS GROUP HOLDINGS LTD

10 November 2023

BY EMAIL

To: Trevor Murgatroyd
Peter van den Steen
Gerhard Albertyn
Joint Business Rescue Practitioners
Tongaat Hulett Limited (in Business Rescue)
Amanzimnyama Hill Road
Tongaat
4400
KwaZulu-Natal

Dear Sirs,

RGS Group Holdings Ltd / Tongaat Hulett Limited (In Business Rescue) and its Subsidiaries

1. Introduction

1.1 We refer to:

- (a) your letter dated 8 November 2023 (the "**8 November Letter**") addressed to RGS Group Limited Holdings Limited ("**RGS**"); and
- (b) the SENS announcement released today (the "**9 November SENS**") providing an update regarding the status of the business rescue process for Tongaat Hulett Limited (in Business Rescue) ("**Tongaat**").

1.2 We note the contents of the letter and respond as set out below. Our failure to respond to, or address, any particular aspect of your letter is not to be construed as an admission by us of any assertions or matters set out in your letter or a waiver of any of our rights in this or any regard. We reserve our right to respond to any other aspects of your letter in our discretion.

2. The RGS Business Rescue Plan

2.1 We record that we submitted our proposed business rescue plan for Tongaat and its subsidiaries {including Tongaat Hulett Sugar South Africa Limited ("THSSA**") and Voermol Feeds Proprietary Limited ("**Voermol**")} (the "**Tongaat Group**") to the joint business rescue practitioners of Tongaat (the "**Joint BRPs**") on Friday, 13 October 2023 which was amended in minor respects by an amended proposed business rescue plan submitted by us on Monday, 16 October 2023 (the "**RGS Business Rescue Plan**").**

- 2.2 On Monday, 16 October 2023, Patrick Birkett ("**Birkett**") on behalf of Birkett Stewart McHendrie, an adviser to the Joint BRPs, acknowledged receipt of the RGS Business Rescue Plan and requested additional information from us. The request by Birkett included a request for a cover letter providing the context to the RGS Business Rescue Plan. Birkett in addition noted that the RGS Business Rescue Plan contained no proof of funding.
- 2.3 We responded to Birkett's request on Friday, 20 October 2023 providing a letter with a comprehensive explanation of our rationale for the RGS Business Rescue Plan (the "**RGS Cover Letter**"). In relation to the question relating to proof of funding we advised you in the RGS Cover Letter that since RGS is a private company and its data is not in the public domain we would require the Joint BRPs and Tongaat to sign a Non-Disclosure Agreement ("**NDA**") in order to be provided with the necessary information to demonstrate proof of resources to fund the RGS Business Rescue Plan. Due to your unreasonable requests on limiting the scope of the NDA we have not been able to agree a form of NDA for signature and hence have not shared the information we offered to share regarding our availability of resources. You will appreciate that this information is sensitive and constitutes confidential business information of RGS and cannot be shared without appropriate measures in place to ensure confidentiality. We have, however, provided this information to several of the Senior Lenders under the terms of an NDA acceptable to us.
- 2.4 We would reiterate that we have repeatedly advised you and your advisers that the RGS Business Rescue Plan is not subject to any conditions relating to third party financing. RGS has sufficient available cash resources to fund the implementation of the RGS Business Rescue Plan. We would further point out that the Joint BRPs have previously been provided with evidence of the RGS Group's funding capacity by its bankers and are well aware of the RGS Group's ability to fund the RGS Business Rescue Plan. While the RGS Business Rescue Plan does assume that the Industrial Development Corporation ("**IDC**") will roll its post-commencement financing (the "**IDC PCF**") into a term loan, we have received verbal confirmation from the IDC of its willingness to roll the IDC PCF to facilitate a successful business rescue of Tongaat.
- 2.5 Other than a short meeting held with certain of the Joint BRPs and your advisers on Thursday, 26 October 2023 there has been scant engagement with us on the RGS Business Rescue Plan. This is consistent with the Joint BRPs' prior conduct in relation to our approaches and expressions of interest to submit an offer for Tongaat or a business rescue plan. Our complaints in this regard are set out in detail in the letter addressed to the Joint BRPs by our attorneys on 24 July 2023 (the "**24 July Letter**"). It was only after the 24 July Letter was sent that we were given access to the Tongaat data room to conduct the due diligence that enable us to submit the RGS Business Rescue Plan. We note however that we were denied access to key information and that, unlike other bidders, were not afforded access to the management of the Tongaat Group.
- 2.6 We do not intend to restate the matters set out in the 24 July Letter but suffice to say that the conduct of the Joint BRPs in relation to the RGS Business Rescue Plan is a continuation of the unlawful and unfair treatment of the RGS Group (and other bidders for the business or assets of Tongaat) and the failure by the Joint BRPs to

exercise the proper degree of care in the performance of their functions and fiduciary responsibilities as business rescue practitioners of Tongaat.

2.7 In this regard it is noteworthy that the Joint BRPs failed to notify the creditors of Tongaat that you had received the RGS Business Rescue Plan. This is a direct contravention of your duties under section 145(1)(a) of the Companies Act, 2008 (the “**Companies Act**”) to give notice to the creditors of Tongaat of all relevant events concerning the business rescue proceedings of Tongaat and a frustration of the rights of creditors to be consulted and participate in Tongaat’s business rescue proceedings contained in section 145 and section 150 of the Companies Act (and other provisions of Chapter 6 of the Companies Act). It is not clear to us on what basis the Joint BRPs did not consider the receipt of the RGS Business Rescue Plan a “*relevant event*” concerning the business rescue proceedings of Tongaat and chose to withhold the fact of the receipt of the RGS Business Rescue Plan from Tongaat’s body of creditors. In particular, we understand that, at the date of receiving the RGS Business Plan, the Joint BRPs had received no other viable or funded business rescue proposals since the Kagera bid was at that stage incapable of implementation due to the IDC not approving Kagera’s request for financing.

2.8 To-date the Joint BRPs have yet to advise Tongaat’s creditors of:

(a) the fact that the Kagera bid is not capable of proceeding due to lack of funding; and,

(b) receipt of the RGS Business Rescue Plan,

and therefore the Joint BRPs are and remain in contravention of your duties under section 145(1)(a) of the Companies Act and your obligations to consult the general body of creditors of Tongaat and to balance the rights and interests of all stakeholders of Tongaat.

3. **The Terris Sugar Consortium’s Purported Purchase of the Lender Claims**

3.1 You have advised us in the 8 November Letter that:

(a) you have been informed by the Secured Lender Group of their formally having entered into such a transaction (the “**Terris Transaction**”) with the Terris Sugar Consortium, which when implemented will give rise to the transfer by the Tongaat secured lender group (the “**Secured Lenders**”) of their claims against Tongaat (the “**Secured Lender Claims**”) to the Terris Sugar Consortium; and,

(b) you are advised that the Terris Transaction is unconditional and is in the process of implementation but remains subject to payment of the purchase price for the Lender Claims, which you are informed will happen in the very near term.

3.2 These statements have been repeated almost *verbatim* in the 9 November SENS.

3.3 The statement that the Terris Transaction is unconditional is contradicted by the subsequent statement that the Terris Transaction is subject to the payment of the

purchase price. It is clear that the Terris Transaction is not unconditional. Our understanding is that the Terris Sugar Consortium requires third party financing to fund the payment in full of the purchase price for the Secured Lender Claims. We further understand that:

- (a) as at the date of the 8 November Letter and the 9 November SENS the Terris Sugar Consortium did not have approval for such financing; and,
- (b) the Terris Sugar Consortium's financing is not approved at the time of sending this letter.

3.4 The Joint BRPs, by stating that they are withdrawing access to the Tongaat data room, are therefore in essence saying that they are:

- (a) not considering the RGS Business Rescue Plan; and
- (b) favouring a business rescue plan to be proposed by the Terris Sugar Consortium (the "**Terris Business Rescue Plan**") on the basis that the Terris Sugar Consortium will at a future uncertain date own the Secured Lender Claims.

3.5 Furthermore, the Joint BRPs state in the 8 November Letter and the 9 November SENS that they are in the process of finalising the business rescue plan for Tongaat, presumably the Terris Business Rescue Plan, which is expected to be published shortly. We point out that section 150(1) of the Companies Act obliges the Joint BRPs to consult with the creditors, other affected persons, and the management of Tongaat before preparing a business rescue plan for consideration and possible adoption at a meeting to be held in terms of section 151. No such consultation has occurred and therefore the Joint BRPs are not entitled to finalise and publish the Terris Business Rescue Plan (or any other plan for that matter) without consulting with the creditors and the other affected person (including Tongaat's shareholders). We would note that consultation with the Secured Lenders does not count as consultation with the creditors.

3.6 It is clear to us that the Joint BRPs have failed to act in an independent manner and have actively favoured the Terris Transaction and the Terris Business Rescue Plan over a due and proper consideration of the RGS Business Rescue Plan. In particular, the Joint BRPs have not afforded the body of creditors of Tongaat the opportunity to evaluate the RGS Business Rescue Plan against the Terris Business Rescue Plan. Instead, the Joint BRPs have sought to facilitate the purchase of the of the Secured Lender Claims to the Terris Sugar Consortium by *inter alia*:

- (a) affording the Terris Sugar Consortium access to management for the purpose of conducting their due diligence and not affording the same access to RGS Group (notwithstanding that the Terris Sugar Consortium's was not funded and remains unfunded); and
- (b) delaying the date for the publication of a business rescue plan to afford the Terris Sugar Consortium the opportunity to negotiate the purchase of the Secured Lender Claims and seek approval for its financing. This in the face of a fully funded business rescue plan contained in the RGS Business Rescue Plan.

- 3.7 What is instructive is that the Joint BRPs having received notice (allegedly for the first time) that the Terris Sugar Consortium and the Secured Lenders have entered into the Terris Transaction chose to publish a SENS announcement but did not publish a SENS announcement when you received the fully funded business rescue proposal contained in the RGS Business Rescue Plan. The only inference that can be drawn from this conduct (and other conduct) is that the Joint BRPs have failed in their duty to act objectively and impartially in the conduct of the business rescue proceedings.

4. The IDC Investigation

- 4.1 It is common cause and in the public domain that the Industrial Development Corporation (“IDC”) conducted a forensic audit (the “IDC Audit”) of complaints lodged by bidders to acquire Tongaat or the assets of Tongaat in the business rescue proceedings. It is also common cause that Kagera was selected as a preferred bidder despite not having the required funding to implement their bid. This seems at odds with the Joint BRPs refusal to properly engage on the RGS Business Rescue Plan which is fully funded. Furthermore, the Joint BRPs are delaying the business rescue process in favour of another proposal (i.e., the Terris Business Rescue Plan and the Terris Transaction) that is unfunded.
- 4.2 It is public knowledge that the outcome of the IDC Audit resulted in the resignation of an IDC official over impropriety in relation to Kagera’s bid.
- 4.3 In accepting Kagera’s “*bogus*” bid and wilfully and unlawfully ignoring and discarding other funded bids and proposals that would have demonstrably resulted in better returns for Tongaat’s creditors as a body than the Kagera’s bid, the Joint BRPs have acted incompetently and have failed to exercise the proper degree of care in the performance of their functions as business rescue practitioners to the detriment of Tongaat’s creditors and other affected persons.
- 4.4 The Joint BRPs are yet again repeating this course of conduct by facilitating the Terris Transaction and the Terris Business Rescue Plan with no certainty of funding other than saying that you are informed that payment “*is expected to happen in the very near term*”.

5. The Secured Lender Claims

- 5.1 During the course of RGS Group’s due diligence investigation we were not granted access to the security documents that purport to secure the Secured Lender Claims as these were not placed in the Tongaat data room.
- 5.2 RGS Group has serious reason to doubt that Secured Lender Claims are in fact secured against the assets of any member of the Tongaat Group due to such security being potentially invalid and unenforceable. To what extent have the Joint BRPs investigated the validity and enforceability of the security that purported to secure the Secured Lender Claims and on what basis have the Joint BRPs concluded that the Secured Lender Claims are in fact secured? Please provide us, in our capacity as a creditor of Tongaat, with:

- (a) copies of all security documents relating to the Secured Lender Claims;

- (b) a copy of the Agency Agreements referenced in the Tongaat Business Rescue Plan published on 31 May 2023;
 - (c) copies of all corporate authorisations including board and shareholder resolutions approving the security granted for the Secured Lender Claims; and,
 - (d) the analysis conducted and the basis for your conclusion that the Secured Lender Claims should be properly treated as secured claims against Tongaat.
- 5.3 Pursuant to section 141 of the Companies Act the Joint BRPs are obliged to investigate the company's affairs, business, property, and financial situation which would include a determination of whether security purported to be granted for the claims of any creditor is validly granted.
- 5.4 The status of the Secured Lender Claims as secured claims has a material bearing on whether any business rescue plan in relation to Tongaat is appropriate in its treatment of the creditors of Tongaat.

6. Adviser Arrangements

We are concerned that the arrangements between the Joint BRPs and the corporate and debt advisers engaged by the Joint BRPs gives rise to a lack of independence and a conflict of interest on the part of the Joint BRPs.

7. Status of Business Rescue Process

- 7.1 Tongaat, THSSA and Voermol remain under business rescue notwithstanding the Terris Transaction.
- 7.2 This means that the RGS Business Rescue Plan remains a valid and viable business rescue proposal and in this regard:
- (a) the creditors and other affected persons must be notified of the RGS Business Rescue Plan;
 - (b) the Joint BRPs are obliged to consult with the creditors and other affected persons regarding the RGS Business Rescue Plan and the Terris Business Rescue Plan prior to publication; and
 - (c) the RGS Business Rescue Plan should be published either on its own or alongside any other business rescue plan (including the Terris Business Rescue Plan) on or before 24 November 2023 to be voted on at a creditor meeting which we understand is intended to occur on or before 30 November 2023.
- 7.3 Notwithstanding, the Terris Transaction the above-mentioned process and deadlines should be followed. The acquisition by the Terris Sugar Consortium of the Secured Lender Claims (assuming that acquisition proceeds) would simply mean that the Terris Sugar Consortium would become a creditor of Tongaat and would, together

with the other creditors of Tongaat, be entitled to vote on the proposed business rescue plans presented at the creditors' meeting.

- 7.4 When the RGS Group commenced its due diligence investigation, having first been forced to threaten litigation in this regard before being allowed access to the data room by the Joint BRPs, it was informed by the Joint BRPs that its access to the data room and intention to submit a business rescue plan would not benefit from any delays or postponements of the business rescue process. In particular, the RGS Group was informed by the Joint BRPs that the Kagera bid would be put to a vote as soon as it was ready having no regard for the process being followed by the RGS Group.
- 7.5 The fact that the Joint BRPs, in terms of the 8 November Letter and the 9 November SENS, have suspended the entire business rescue process simply to allow Terris to purchase the Senior Lender claims (which we repeat would only result in Terris becoming a creditor) is inconsistent with the Joint BRPs previous approach vis-à-vis the RGS Group and creates a clear perception of bias.
- 7.6 It bears reiterating that, to the best of our knowledge, the Terris Transaction requires third party funding which has not been secured. There is therefore no legal or logical basis on which to effectively suspend the business rescue process on account of the Terris Transaction.

8. Joint BRPs Statutory Duties and Responsibilities and Complaint

- 8.1 Our attorneys have previously drawn the attention of the Joint BRPs to your statutory duties and responsibilities in the 24 July Letter.
- 8.2 We do not propose to repeat the contents of paragraphs 39 to 51 of the 24 July Letter as regards the Joint BRPs' statutory duties and responsibilities which should be considered as though expressly incorporated into this letter. It is our contention that the Joint BRPs have not acted in compliance with their statutory duties and responsibilities in relation to the business rescue proceedings of Tongaat, THSSA and Voermol as outlined in this letter read with the 24 July Letter.

9. Remedies

- 9.1 In the RGS Group's view the Joint BRPs have not conducted themselves appropriately in accordance with their duties and obligations as business rescue practitioner nor in the interests of the Tongaat and its stakeholders. We would like to give the Joint BRPs an opportunity to respond to our concerns and the other matters highlighted in this letter.
- 9.2 Should we not receive a response, or a response that is satisfactory to us (in our discretion), within 3 (three) days of the date of this letter, it is our intention to approach the High Court of South Africa in order to:
- (a) seek the removal of the Joint BRPs in terms of section 139 of the Companies Act on the following grounds:
 - (i) incompetence and failure to perform the duties of a business rescue practitioner of Tongaat;

(ii) failure to exercise the proper degree of care in the performance of the practitioner's functions; and,

(iii) conflict of interest and lack of independence,

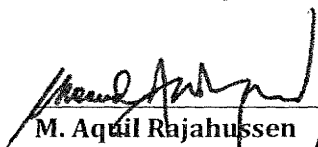
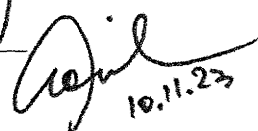
(reserving our rights to add any other grounds as we may consider appropriate) for the reasons set out in this letter and the 24 July Letter;

(b) interdict the publication of any business rescue plan in relation to Tongaat or the holding of any meeting to consider any business rescue plan in relation to Tongaat pending the outcome of our application for removal of the Joint BRPs from office; and,

(c) seek such other appropriate relief as we may consider necessary including seeking the cancellation of all corporate and debt advisory agreements entered into by the Joint BRPs on behalf of Tongaat.

9.3 All of our Rights are Reserved.

Yours sincerely,


M. Aquil Rajahussen
(Chairman)  10.11.23





DELIVERED BY EMAIL

RGS Holdings Limited

Email: aquil@rgs-holdings.com
mhanisi@rgs-holdings.com

Attention: Mr M. Aquil Rajahussen

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr D Hertz/Mr D Andropoulos/Mr T Boswell/Ms S Gast/tjb/TONG7430.13/#9803931v8

DIRECT PHONE: +27 11 535 8283/+27 11 535 8248/+27 535 8459/+27 11 535 8131

EMAIL ADDRESS: dhertz@werksmans.com / dandropoulos@werksmans.com /
tboswell@werksmans.com / sgast@werksmans.com

15 November 2023

Dear Sirs

RGS GROUP HOLDINGS (PROPRIETARY) LIMITED // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE), MESSRS TREVOR MURGATROYD N.O., PETER VAN DEN STEEN N.O. AND GERHARD ALBERTYN N.O.

- 1 We represent Tongaat Hulett Limited (in business rescue) ("THL"), and Messrs Trevor Murgatroyd N.O., Peter van den Steen N.O. and Gerhard Albertyn N.O. (collectively, "the BRPs") in their capacities as the appointed business rescue practitioners of THL. THL and the BRPs are collectively referred to in this letter as "our clients".
- 2 The BRPs have furnished us with a copy of your letter addressed to them dated 10 November 2023 ("your letter") and have instructed us to respond to your letter as set out below.
- 3 We do not intend to respond to each of the assertions and/or allegations contained in your letter in this letter. Our failure to do so should not be construed as an admission as to the correctness of any unanswered assertion and/or allegation in your letter, or as a waiver of our clients' rights to do so in due course and in the appropriate forum, should it become necessary to do so. Such rights are fully reserved.
- 4 Any assertion and/or allegation contained in your letter that is not dealt with by us in our letter addressed to Mabuza Attorneys dated 2 August 2023 (that was addressed in response to Mabuza Attorneys' letter dated 24 July 2023 ("Mabuza's letter")), or in this letter, is denied.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagattjee NMN Bhengu AL Bilaty RE Bonnet HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel N Harduth NA Hlatshwayo J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso AQ Magerman DD Magidson MPC Manaka JE Mardon PD Mashalane NT Matshebela JE Meiring H Michael SM Moerane R Moltse C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanfi T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle SA Tom JJ Truter KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin



- 5 Without detracting from what is stated in paragraphs 3 and 4 above, our clients -
- 5.1 dispute that the BRPs have conducted themselves inappropriately or unlawfully;
- 5.2 dispute that they have failed to discharge their duties and obligations as business rescue practitioners, whether in the interests of THL and its stakeholders, or at all;
- 5.3 have instructed us that the self-serving concerns detailed in your letter are both factually and legally untenable; and
- 5.4 reject each and every assertion and/or allegation of impropriety advanced against them in your letter. Our clients' rights arising from the spurious and defamatory assertions and/or allegations in your letter, are expressly reserved.
- 6 Subject to what is set out in paragraphs 3 and 4 above, we address the matters traversed in your letter thematically below.

Terris SENS announcement 9 November 2023

- 7 On 6 November 2023, the *Daily Investor* published an article ("**the article**") titled '*Robert Gumede consortium set to take over Tongaat Hulett – report*'.
- 8 Without conceding the accuracy of the statements attributed to our clients in the article, the article records, *inter alia*, -

"The BRPs are considering the potential impact on the business rescue process. Our initial views are that this development is likely to be positive for both affected persons and the company..."

The BRPs are awaiting formal confirmation of the completion of the transaction and will communicate the way forward in due course and through the correct forums."

- 9 Following the publication of the article, the JSE communicated with THL through its sponsors and enquired whether a SENS announcement would be published (suggesting that the article appeared to contain price sensitive information).
- 10 The JSE Listings Requirements stipulate the following -

"General obligation of disclosure

3.4(a) *The following provisions apply in respect of price sensitive information:*

*With the exception of trading statements, an issuer must, without delay, unless the information is kept confidential for a limited period of time, release an announcement providing details relating, directly or indirectly, to such issuer that constitutes **price sensitive information**." (our emphasis)*

- 11 'Price sensitive information' is defined as "*unpublished information that is specific or precise, which if it were made public, would have a material effect on the price of the issuer's securities*".
- 12 Following the enquiry by the JSE referred to in paragraph 9 above, the BRPs were advised that because the information contained in the article relates to the potential disposal of the Lender Claims, such information might constitute price sensitive information. Accordingly, the BRPs caused the SENS announcement to be published.



- 13 The content of paragraphs 7 to 12 above clearly demonstrates that the -
- 13.1 SENS announcement was not published consequent upon the Terris Sugar Consortium and the Secured Lenders having entered into the Terris Transaction, or the BRPs having received a proposed business rescue plan from the Terris Sugar Consortium;
- 13.2 SENS announcement was published pursuant to advice received by the BRPs from their advisors that information contained in the article *vis-à-vis* the Terris Transaction may constitute price sensitive information, and therefore publication was required to comply with the JSE Listings Requirements; and
- 13.3 assertion in paragraph 3.7 of your letter is untenable and factually incorrect.
- 14 An announcement of the acquisition of Lender Claims is poles apart from announcing that a business rescue proposal has been received by the BRPs. The mere fact that a business rescue proposal was received (particularly where no satisfactory proof of requisite funding has been provided by the proposer) is not *ipso facto* information that constitutes price sensitive information as defined in the JSE Listings Requirements that would require a SENS announcement to be published.
- 15 It is therefore untenable to have drawn the conclusion in paragraph 3.7 of your letter that the "*only inference*" to be drawn from the publication of the SENS announcement is that the BRPs "*failed in their duty to act objectively and impartially in the conduct of the business rescue proceedings*" and our clients dispute that the BRPs have done so.
- 16 Moreover, in paragraph 44 of the covering letter that accompanied RGS's business rescue proposal dated 20 October 2023, RGS expressly imposed the following requirement on the BRPs -
- "44. Unless legally obligated or directed by a regulatory authority, we kindly request that you refrain from sharing or revealing any details contained in this letter and the Offer with individuals beyond your organization's personnel or professional advisors who have a legitimate need to know in the regular performance of their responsibilities and which individuals are not involved in the advisory of competitors in this process. **We note that the process of acquiring Tongaat is highly competitive and any disclosure of the terms and conditions of the Offer to third parties will likely prejudice RGS and its business.**" (our emphasis)*
- 17 Had a SENS announcement been published that the RGS business rescue proposal had been received by the BRPs, the BRPs would have acted in a manner that would have been contrary to RGS's express requirement. As at the date of your letter, you have not notified the BRPs that they are entitled to communicate the fact of receipt, or the content, of RGS's business rescue proposal to parties other than those expressly referenced in the above quoted extract.
- 18 Furthermore, no proof reasonably acceptable to the BRPs of RGS's ability to fund its obligations as contemplated in RGS's aforementioned business rescue proposal has been provided by RGS to the BRPs. This is dealt with more fully below.
- 19 Having regard to what is set out in paragraphs 16 to 18 above, your complaint that no SENS announcement was published advising stakeholders that the BRPs had received RGS's business rescue proposal is disingenuous.



Our clients' 8 November 2023 letter

- 20 The statements as contained in our clients' letter dated 8 November 2023 to which you refer in paragraph 3.1 of your letter are not contradictory, whether for the reasons set out in paragraph 3.3 of your letter, or at all. Your assertion in this regard remarkably fails to take into account the distinction between the term of a contract (on the one hand) and a condition contained in a contract (on the other hand).
- 21 In amplification of paragraph 20 above, -
- 21.1 the terms of an agreement are the provisions that parties agree will bind them once an agreement becomes of full force and effect. 'Terms' include the parties' rights and obligations including, *inter alia*, payment terms in the case of a sale agreement. If a purchaser fails to effect payment of the purchase price payable in terms of that sale agreement on the due date, such failure or breach will not have an impact on the binding nature of the agreement, but instead gives rise to remedies under such agreement and in law; and
- 21.2 a condition, on the other hand, can -
- 21.2.1 suspend the operation of some or all of the terms and obligations of an agreement until such conditions have been fulfilled. If such conditions are not fulfilled, then the agreement does not come into full force and effect (in the instance of a suspensive condition). An agreement subject to true suspensive condition(s) cannot be regarded as an enforceable agreement, and is not of full force and effect, until the fulfilment or waiver of all suspensive conditions. If a party fails to fulfil a suspensive condition of an agreement, then the agreement will not come into being (ie the agreement will not be legally binding and enforceable); and
- 21.2.2 terminate some or all of the obligations contained in the contract upon the occurrence of a future uncertain event (in the instance of a resolutive condition).
- 22 Our clients' 8 November 2023 letter makes it clear that the Terris Transaction is unconditional (ie it either contains no conditions, or any conditions that may have been contained in the transaction documents have been fulfilled) which means that the agreements that constitute the Terris Transaction are binding and enforceable. The fact that the Terris Transaction remains subject to payment means that the payment of the relevant purchase consideration is still to occur on a future stipulated date.

Allegations of favouring the Terris Sugar Consortium

- 23 Our clients dispute your allegation that the BRPs have failed to act independently, and/or that they have favoured the Terris Transaction and the Terris Business Rescue Plan over the RGS Business Rescue Plan, or any other plan. This derisory allegation is completely without foundation or merit. Quite notably, you have attempted to support this allegation by relying on speculation and assumption and drawing conclusions that are demonstrably false and self-serving.
- 24 Our clients have instructed us that -
- 24.1 the general body of creditors have not as yet been provided with any of the Business Rescue Plan proposals received to date;



- 24.2 none of the potential proposers that have submitted such proposals (including RGS) have provided the BRPs with reasonably acceptable proof of an ability to meet the funding and/or payment obligations contemplated in such proposals;
- 24.3 the BRPs have resolved not to present creditors and other affected persons with immature proposals which do not contain all reasonably required and corroborated information, particularly in relation to funding and/or payment. To do so would likely result in a rejection of the relevant proposals, given the composition of the creditor body; and
- 24.4 following receipt by the BRPs' of reasonably acceptable proof of funding from any proposer, the requisite consultations with creditors and other affected persons will occur.
- 25 It must be appreciated that THL has a vast body of creditors. Practically, it will not be possible to consult with all creditors on an individual basis. Following best practice, a Creditors' Committee has been established to facilitate meaningful consultation with dispersed creditors in compliance with section 150(1) of the Companies Act 71 of 2008 ("**the Companies Act**"). In this regard -
- 25.1 institutional lenders constituting creditors are consulted on an ongoing basis as there are contractual obligations imposed on the BRPs in terms of both pre- and post- business rescue finance documents, to so consult; and
- 25.2 communication with the broader creditor body occurs either at the intervals required in terms of the Companies Act or on the occurrence of events which the BRPs consider to be of a milestone or key nature. Typically, such communications occur through SENS and/or on the dedicated business rescue website of THL, and through the aforementioned Creditors' Committee.
- 26 In the absence of receipt from RGS of reasonably acceptable proof of funding and/or an ability to meet payment obligations under the RGS business rescue proposal, our clients dispute that -
- 26.1 the RGS Business Rescue Plan is a "*valid and viable business rescue proposal*"; and
- 26.2 a 'relevant event' for the purposes of section 150 of the Companies Act has occurred.
- 27 For at least the reasons set out in paragraphs 24 to 26 above, it is denied that the BRPs have not complied with their duties as set out in section 145 and 150 of the Companies Act.
- 28 Your explanation that our clients have not been provided with proof of funding in respect of the RGS Business Rescue Plan because the terms of a Non-Disclosure Agreement ("**the NDA**") referred to in paragraph 2.3 of your letter could not be agreed between RGS and our clients, is demonstrably false as appears from what is set out below.
- 29 Whilst you requested our clients to conclude the NDA prior to providing them with information to demonstrate proof of resources to fund the RGS Business Rescue Plan proposal -
- 29.1 the terms of the NDA (prior to being finalised) were initially widened in an endeavour to cover substantially more than merely the evidence of funding and was therefore subject to extensive negotiation; and
- 29.2 such negotiations, limiting the NDA to what it was intended to cover, were finalised on 30 October 2023 when RGS's legal advisors informed, *inter alios*, our Mr Andropoulos that the final form of the NDA had been sent to RGS for signature.



- 30 By 2 November 2023, our clients had still not received a signed version of the NDA from your legal advisors, and accordingly, Mr Patrick Birkett followed up with RGS's legal representatives, and was advised by such legal representatives that -

"The NDA is currently with RGS for execution. We will send you the signed version as soon as possible."

- 31 The fact that the NDA has not been concluded is accordingly not of our clients' making.
- 32 Without detracting from what is set out in paragraphs 23 to 30 above, we are instructed that -
- 32.1 the BRPs intend to consult with THL's creditors and other affected persons regarding *inter alia* RGS's Business Rescue Proposal on the basis set out in paragraph 25 above;
- 32.2 provided that RGS furnishes the BRPs with written confirmation that notwithstanding the content of paragraph 44 of the covering letter that accompanied the RGS's business rescue proposal dated 20 October 2023, same may be attached to THL's Business Rescue Plan, the BRPs will, without conceding that they are obliged to do so, whether in terms of the Companies Act, or at all, RGS's business rescue proposal will be brought to the attention of creditors in THL's Business Rescue Plan when published; and
- 32.3 Kagera's Business Rescue Plan and the Terris Consortium's Business Rescue Plan will similarly brought to the attention of creditors in THL's Business Rescue Plan when published.

Access to Management

- 33 Access to management was afforded to the Terris Sugar Consortium because such access was requested by the Terris Sugar Consortium. To date, RGS has not requested access to management from the BRPs. Had RGS made such a request, such access would have been provided.
- 34 Therefore, we are instructed that the complaint in paragraph 3.6(a) of your letter is contrived.

Delaying the date of publication of THL's Business Rescue Plan

- 35 We have already set out above that as at the date of this letter, none of the proposers who have made proposals in relation to the business rescue of THL have furnished the BRPs with reasonably acceptable proof of an ability to fund and/or meet payment obligations under the relevant proposals.
- 36 Our instructions are that the BRPs are loathe to publish a business rescue plan without such reasonably acceptable proof of funding being to hand, as in their experience and given the composition of the creditor body, such proposals are likely to be rejected, with the inevitable adverse consequences for THL and affected persons that will flow from such rejection.
- 37 Publication has consequently been delayed to date, in order to afford proposers (including RGS) the greatest possible opportunity to provide such reasonably acceptable proof of funding.

The Secured Lender Claims

- 38 RGS is not entitled, in its capacity as a creditor of THL, to any of the documents and/or information referred to in paragraphs 5.2(a) to (c) of your letter.



- 39 Without detracting from paragraph 38 above, our clients have instructed us that -
- 39.1 the security documents relating to the Secured Lender Claims (paragraph 5.2(a) of your letter) were contained in the Virtual Data Room and were accessed by representatives of RGS more than 30 times; and
- 39.2 whilst the Agency Agreements referred to in THL's business rescue plan that was published on 31 May 2023 (paragraph 5.2(b) of your letter) and the authorising resolutions (paragraph 5.2(c) of your letter) were not contained in the Virtual Data Room, these were never requested by any of RGS's representatives.
- 40 Insofar as section 141 of the Companies Act is concerned, the BRPs do not have a statutory obligation to prepare and make available written analyses of the validity and enforceability of the company's security. Amongst other things, we are instructed that the BRPs' investigations revealed that the security documents had been drafted and heavily negotiated between Bowmans Attorneys (representing THL) and ENSAfrica (representing the Secured Lenders). Our clients therefore dispute that the BRPs have not complied fully with their obligations contained in section 141 of the Companies Act.
- 41 The BRPs dispute that the status of the security underlying the Secured Lender Claims have a material bearing on whether any business rescue plan in relation to THL is appropriate in its treatment of the creditors of THL, however, once you have had an opportunity to consider the documents referred to above, you are invited to amplify your contention as to the invalidity and unenforceability of the security underlying the Secured Claims.

Other matters

- 42 It is not understood what additional engagement RGS required with the BRPs regarding RGS's Business Rescue Plan, particularly since this Plan was only received on 20 October 2023. RGS has not requested an additional engagement since this date. The complaint in paragraph 2.5 of your letter is therefore not understood.
- 43 In paragraph 2.8 of your letter, you complain that creditors have not been advised that the Kagera transaction cannot proceed due to lack of funding. All indications received to date by the BRPs are to the effect that such funding is available to Kagera. However, such indications are for the reasons already articulated above, not of themselves satisfactory to the BRPs who have requested Kagera to provide additional reasonably acceptable proof of such funding. This process is ongoing. To consequently suggest that the Kagera transaction is not capable of proceeding is inaccurate, and premature.
- 44 Your suggestion that the BRPs withdrawal of RGS's access to the THL data room demonstrates that the BRPs will not consider RGS offer, or that they will favour the Terris Sugar Consortium's Business Rescue Plan on the basis that the Terris Sugar Consortium will at a future uncertain date own the Secured Lender Claims, is again one disingenuously advanced.
- 45 As you are aware, such access was withdrawn subsequent to RGS having submitted its Offer and Business Rescue Plan. It is not understood why RGS requires ongoing access to the data room having regard to the fact that such access was sought by RGS to -

"(i) formulate a binding offer to purchase all THL assets out of business rescue, and (ii) obtain the necessary financial guarantees from its financiers which the BRPs require in order to put any offer to the creditors" (paragraph 3 of Mabuza Attorneys' letter addressed to Werksmans dated 6 August 2023).



- 46 Having regard to paragraphs 44 and 45 above, the contents of paragraph 3.4 and 7.4 of your letter are denied by our clients.
- 47 You have referenced the letter addressed by Mabuza Attorneys to the BRPs dated 24 July 2023 in your letter. As you are aware, that letter has been substantively responded to by us in our 2 August letter.
- 48 We do not intend to deal with the matters raised by you in paragraphs 4, 6 and 8 of your letter, save to -
- 48.1 dispute that the BRPs have accepted Kagera's bid and/or discarded other offers and Business Rescue proposals;
- 48.2 dispute that the BRPs have acted incompetently and/or have failed to exercise the proper duty of care in the performance of their functions as business rescue practitioners, whether to the detriment of THL's creditors and/or any other affected persons;
- 48.3 state that your concerns as detailed in paragraph 6 of your letter are legally and factually untenable; and;
- 48.4 dispute that the BRPs have failed to comply with their statutory duties, whether on the basis alleged in your letter, or at all.
- 49 We are instructed that your allegations of misconduct on the part of the BRPs are designed to denigrate the BRPs' reputation. The BRPs' rights to institute proceedings against you arising from any prejudice that they may suffer in consequence of the demonstrably false allegations in your letter which are injurious to their reputation, are reserved.
- 50 We hold instructions to oppose the proceedings foreshadowed by you in paragraph 9.2 of your letter. In this regard, we are authorised to accept service of your application on behalf of our clients.
- 51 Lastly, it is necessary to reiterate that the content of this letter is not exhaustive of our clients' contentions and should not be construed as having dealt with all matters affecting the issues traversed in the correspondence received from you to date, including your letter. Our clients' right to deal with any such matters in greater detail in due course and in the appropriate forum are reserved.

Yours faithfully

A handwritten signature in black ink, appearing to be 'C. J. J. J.', written over a horizontal line.

Werksmans Inc



TongaatHulett®

STRICTLY PRIVATE AND CONFIDENTIAL

Thursday, 16 November 2023

Hasnain Gulamo, Chief Executive Officer
RGS Group Holdings Limited

via email: hasnain@rgs-holdings.com

Dear Sir,

RE: FURTHER UPDATE FOLLOWING RECENT MEDIA AND SENS ANNOUNCEMENTS

1. The Business Rescue Practitioners ("**BRPs**") of Tongaat Hulett Limited (in business rescue) ("**Tongaat**") have been notified that the transaction between Terris Sugar, Guma, Remoggo and Almoiz ("**the Bidding Parties**") and Tongaat's secured lender group ("**Secured Lender Group**") ("**Transaction**") has not been implemented. It is the understanding of the BRPs that nevertheless, discussions between the Bidding Parties and the Lender Group are ongoing.
2. The BRPs require substantiated proof of an ability of each potential investor ("**Investor**"), which includes RGS Group, to meet funding and/or payment obligations in relation to their respective proposals to the satisfaction of the BRPs in their sole and absolute discretion.
3. The BRPs have determined that they would afford each Investor an opportunity until 17h00 on Monday, 20 November 2023, to provide the BRPs with such substantiated proof of ability to meet such funding and/or payment obligations ("**Proof of Funding**"), as best they could and to provide the BRPs (to the extent wished to do so), with a revised proposal ("**Revised Proposal**").
4. The BRPs intend to analyse whatever additional data/information is delivered to them from each Investor, and to prepare an appropriate Business Rescue Plan, taking into account the required Proof of Funding. All proposals or Revised Proposals will be referenced in the Business Rescue Plan and conveyed to creditors as part of the Business Rescue Plan.

5. RGS, as a creditor having submitted a proposal, is invited, as an Investor, to participate in the process referred to in the preceding paragraph 3 and requested to provide the substantiated Proof of Funding backing its proposal and to provide a Revised Proposal (should it elect to do so) within the time parameters referred to above.
6. Accordingly, access to the Tongaat data room has been re-instated should you require information to further your funding process or revised proposal (should it elect to do so).

Yours sincerely,

Unsigned as transmitted electronically

Trevor Murgatroyd
Joint Business Rescue Practitioner
Tongaat Hulett Limited (in business rescue)

From: mhanisi@rgs-holdings.com <mhanisi@rgs-holdings.com>
Sent: 22 November 2023 10:44
To: 'Patrick Birkett' <patrick@bsm.africa>; 'Trevor Murgatroyd' <trevor@metis.co.za>; 'Peter van den Steen' <peter@metis.co.za>
Cc: 'Dave Lake' <dave@metis.co.za>; 'Gerhard Albertyn' <gerhard@metis.co.za>; 'Shaun Stewart' <shaun@bsm.africa>; 'Danny Andropoulos' <dandropoulos@werksmans.com>; hasnain@rgs-holdings.com; aquil@rgs-holdings.com; 'Ron Goldstein' <ron@goldstein.co.za>; Shawe, Lionel <lionel.shawe@whitecase.com>; chris@rgs-holdings.com; 'Ashleigh Cohen' <ashleigh@metis.co.za>; 'Pedro Marta' <pedro@rgs-holdings.com>
Subject: RE: RGS - Offer for Tongaat

Alert: This message is from an external sender. Use caution when opening attachments and clicking on links.

Hi Patrick

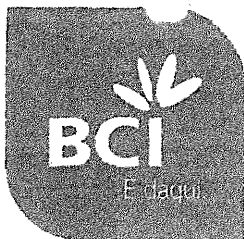
Please see the proof of funds as previously shared with the banks at the time of lodging our papers.
Please advise if we can do tomorrow after 3pm or
Friday before 1pm

As a result of the likely extensions and to accommodate some of the comments you made in your letter we are in the process of reducing our offer to better match the direction that appears acceptable to you. This is part of what we want to discuss.

Regarding the reading of our letter, please be free to share our BR plan with all creditors in the process of your statutory consultations, noting of course that it may be reduced subject to our talks with you.

We look forward to your availability.

Kind Regards
Mhanisi Malaba



"RM9"

Dear Sirs,

RGS GROUP HOLDINGS LTD.

Nampula

SUBJECT: PROOF OF FUNDS

We, BCI – Banco Comercial e de Investimentos, S.A., based in Maputo, in the Avenue 25 Setembro, Nº 4, enrolled in the Conservatory of the Registry of the legal Entities under the number 8.571, sheet 168 of the C-22 Book, with the capital of 10.000.000.000,00 Mt (Ten thousand million meticaís) and NUIT 400001391, hereby confirm that RG Industries, SA, subsidiary of RGS RGS Group, is customer of this institution with banking details below:

- Account Number: 19819672610001
- IBAN: MZ59000800009819672610195
- SWIFT Code: CGDIMZMA
- Account Name: RG INDUSTRIES, SA

We confirm that your account, with the name of RG INDUSTRIES SA, currently holds available cash funds deposited with our institution in the amount of 7.579.492.562,65 MZN (Seven thousand five hundred seventy-nine million, four hundred and ninety-two thousand, five hundred and sixty-two meticaís and sixty-five cents), corresponding to USD 117,493,296.58 (One hundred and seventeen million, four hundred and ninety-three thousand, two hundred and ninety-six United State dollars and fifty-eight cents), with the exchange rate of the day of 64,51 MZN, and ZAR 2.229.262.518,43 (Two thousand two hundred and twenty-nine million, two hundred and sixty-two thousand, five hundred and eighteen South African Rands and forty-three cents), with the exchange rate of the day of 3,40 MZN.

In fact, we affirm that these funds are legally acquired, legitimate and have no association with criminal activities.

Maputo, 20th September 2023

[Signature]

Banco Comercial e de Investimentos, S.A.

Maputo, September 18th, 2023

To: The Directors
RGS Group Holdings Ltd.

Attn: Mr. M. Aquil Rajahussen and Mr. M. Arif R. Gulamo

Re: Confirmation of Funds

Dear Sirs,

We, BIM – International Bank of Mozambique, S.A., based in Maputo, in the Rua de Desportistas, Nº 873/879, hereby provide official confirmation of your account details:

Account Number: 342808768

IBAN: MZ59000100000034280876857

SWIFT Code: BIMOMZMX

Account Name: RG INDUSTRIES SA

Account Signatories: M. ARIF R. GULAMO

We wish to confirm that your account, held under the name of RG INDUSTRIES SA, one of RGS Group's company, currently holds available cash funds in the amount of MZN 8.954.283.048,00 (Eight thousand nine hundred fifty-four million, two hundred eighty-three thousand and forty-eight Meticals), equivalent to USD 138.783.060.26 (One hundred and thirty-eight million, seven hundred and eighty-three thousand sixty United State Dollars and twenty-six cents), and ZAR 2.610.578.148,10 (Two billion six hundred and ten million, five hundred and seventy-eight thousand, one hundred and forty-eight South African Rands and ten cents), by the exchange rate of the day being 1 USD = 64.52 MZN and 1 ZAR = 3.43 MZN respectively, deposited under Account Number MZN 342808768.

To the best of our knowledge, these funds are legally acquired, legitimate, and have no associations with criminal activities. They are free from any liens or encumbrances and are immediately accessible for transfers.

We stand ready to facilitate the reservation and blocking of these funds via SWIFT MT760 according to your specified instructions for the intended beneficiary pursuant to your proposed acquisition of shares and claims in Tongaat Hulett Limited. Upon receiving your directive, we will initiate the SWIFT MT760 within two (2) business days from the day of BAP approval by Banco de Moçambique (Central

Bank of Mozambique) and will promptly provide you with a confirmation copy of the SWIFT Transmission Report via your secure email/fax.

We are also committed to communicating and confirming the availability of these deposited funds and our willingness to reserve and block them through telephone, SWIFT, fax, and email, using the coordinates designated by you.

These cash funds can be verified through responsible bank inquiry via telephone, fax, email, and/or SWIFT communication.

This document is issued and legalized by:

BIM – International Bank of Mozambique, S.A

Sincerely,

Samuel Egidio Paulo

Commercial Director

International Bank of Mozambique, S.A.

From: Patrick Birkett <patrick@bsm.africa>

Sent: 23 November 2023 19:33

To: mhanisi@rgs-holdings.com; 'Trevor Murgatroyd' <trevor@metis.co.za>; 'Peter van den Steen' <peter@metis.co.za>

Cc: 'Dave Lake' <dave@metis.co.za>; 'Gerhard Albertyn' <gerhard@metis.co.za>; Shaun Stewart <shaun@bsm.africa>; 'Danny Andropoulos' <dandropoulos@werksmans.com>; hasnain@rgs-holdings.com; aquil@rgs-holdings.com; 'Ron Goldstein' <ron@goldstein.co.za>; Shawe, Lionel <lionel.shawe@whitecase.com>; chris@rgs-holdings.com; 'Ashleigh Cohen' <ashleigh@metis.co.za>; 'Pedro Marta' <pedro@rgs-holdings.com>

Subject: RE: RGS - Offer for Tongaat

Alert: This message is from an external sender. Use caution when opening attachments and clicking on links.

Dear Mhanisi,

Many thanks for the letters received from RGS's bankers.

We have received two internal requests:

1. As the letters are dated differently, we require either of the following:
 - a. Letters of the same date confirming funds available at opening on the same day or close the previous day; or
 - b. Bank statements for the BCI letter (similar to that attached by Millenium BIM).
2. Verification of the letters directly with your bankers.

Kind regards,
Patrick

29. Negotiations between RGS and RCL are ongoing. It is expected that RGS, RCL and SASA will come to a commercial agreement prior to the Meeting on 8 December 2023. It would then be possible to table a motion at the Meeting for the aforesaid agreement to be incorporated into the RGS Plan as an amendment thereto, and once such an amendment has been made the RGS Plan can be tabled for adoption at the Meeting. In this regard I should stress that the RGS Plan is fully funded by RGS and entirely capable of adoption at the Meeting.
30. The central premise on which RCL's founding affidavit depends both in substance and in relation to urgency is therefore devoid of any merit: a compliant business rescue plan which takes SASA's preference into account is in the process of being finalised and it is moreover capable of saving THL from almost certain liquidation.
31. THL's liquidation would likely follow should this Court grant RCL the relief it seeks in Part A of this application *inter alia* because the post commencement financing provided by the Industrial Development Corporation on which THL's continued business rescue depends expires on 8 December 2023.
32. THL employs tens of thousands of people and occupies a central role in the South African sugar industry. The calamitous consequences that will ensue should THL be liquidated have been recognised by SASA as being "catastrophic" and as having "far reaching implications and a domino effect on other industry players and reverberate [sic] throughout the whole value chain". SASA has moreover pledged to support the development of a sustainable



Mr H Stephenson
Garlicke & Bousfield
howard.stephenson@gb.co.za

Ms L Kahn
Webber Wentzel
Lara.Kahn@webberwentzel.com

Mr H Laher
Faskin Inc
hlaher@faskin.com

11 December 2023

URGENT

Dear Sirs

**RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN
BUSINESS RESCUE)**

1. We refer to the above matter and to your letter of 6 December 2023.
2. The purpose of this letter is to:
 - 2.1. provide an update regarding the ongoing negotiations between RGS and RCL / SASA;
 - 2.2. convey RGS' position that the section 151 meeting (the "Meeting") must (unless interdicted by the High Court) proceed on Thursday, 14 December 2023;
 - 2.3. address the status of the Terris / Vision Transaction as it relates the timing of the holding of the Meeting.

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JENFAPRIAT INCORPORATED

Reg: 2014/005637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT
ASSISTED BY: J. GORREIA | CONSULTANT: O. DE SOUSA
Ground Floor, 27 Fricker Rd., Illovo, Jhb | P.O. Box 412042, Craighall, Jhb, 2024
Docex 261 Randburg | T: 011 341 0510/29
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ronel@efglaw.co.za
www.efglaw.co.za



ATTORNEYS
NOTARIES
CONVEYANCERS

RCL and SASA

3. On Wednesday, 6 December 2023 RGS and RCL reached an agreement in principle regarding the amendment of the RGS BR Plan to recognise SASA's claims in the THL business rescue in a manner that is acceptable to RCL and SASA and is consistent with the judgment handed-down by Mr Justice Vahed on 29 November 2023. RCL conveyed to RGS that the proposal should be transmitted to SASA as RCL could not bind SASA. On the same day the RGS proposal regarding the SASA Claim (as agreed in principle with RCL) was transmitted in writing to Mary Ramkelawon, the Chief Financial Officer of SASA.
4. On Friday 8 December 2023, RGS met with SASA to discuss the aforesaid RGS proposal and the consequential amendments of the RGS BR Plan. The meeting was productive and resulted in confirmation that agreement had indeed been reached in principle with SASA. SASA conveyed to RGS that SASA had apprised the BRPs of the RGS proposal. SASA indicated that it would now await to see how the RGS proposal regarding the SASA Claims is included in the amended RGS BR Plan.
5. It should be noted that a key component of RGS' proposal to SASA is that the appeal of the judgment and order of Mr Justice Vahed will not be pursued even Vahed J were to grant leave to appeal following the hearing of the application for leave to appeal on Wednesday, 13 December 2023. There is no need in RGS' view to trammel the business rescue process of THL, Tongaat Hulett Sugar South Africa and Voermol (Pty) Ltd with an unnecessary and lengthy appeal process when a commercial settlement is available to the parties.

edelstein, father, grobler
INCORPORATED

Incorporating the practice of
JEEFARIAT INCORPORATED

Reg: 2016/CO5637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.L. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

Ground Floor, 27 Fricker Rd, Illovo, Jhb : P.O. Box 412049, Craighall, Jhb, 2024
Docex 261 Randburg | T: 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: rachel@efglaw.co.za

www.efglaw.co.za

6. The process of making the necessary SASA-related amendments to the RGS BR Plan is at an advanced stage of completion and a revised plan will be ready by Thursday, 14 December 2023 when the Section 151 meeting ("the Meeting") will proceed and at which time the amended RGS BR Plan can be introduced by way of a motion for the amendment of the published version of the RGS BR Plan as contemplated in section 152(1)(d)(i) of the Companies Act. The RGS BR Plan incorporating the SASA-related amendments will, however, be shared with SASA, RCL and the BRPs ahead of the Meeting and before the hearing of the interdict proceedings in the High Court on Wednesday. The upshot of the SASA-related amendments is that it will no longer be necessary for SASA to interdict the holding of the Meeting at least insofar as it relates to the RGS BR Plan. This will clear a hurdle for the Meeting to proceed on Thursday, 14 December 2023.
7. Given the fact that the RGS offer is fully funded and SASA's and RCL's objections to the RGS BR Plan were the only impediments to the RGS BR Plan being tabled for adoption at the Meeting on Thursday, 14 December 2023, RGS reiterates that it fully expects the BRPs to use their best endeavours to support RGS in doing all things necessary to ensure that the RGS BR Plan, as amended, is tabled for adoption at the Meeting.
8. Any conduct to the contrary on the part of the BRPs would be in breach of the BRPs' statutory duties to act in THL's best interests and would moreover be antithetical to the contents of the answering affidavit deposed to by Mr Albertyn on 6 December 2023 on behalf of the BRPs in the urgent applications brought by RCL and SASA.

The BRPs' proposal to adjourn the Meeting

edelman fischer grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED

Reg. 2014/CO5637/21

DIRECTORS: G.A. EDELSTEIN | R. GRÖBLER | J.J. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA
Ground floor, 27 Frickier Rd., Illovo, Jhb. | P.O. Box 412049, Craighall, Jhb., 2024
Dorcas 261 Randburg | T: 011 341 0510/29
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ronal@efglaw.co.za
www.efglaw.co.za

9. RGS notes with concern the suggestion by the BRPs contain in paragraph 10 of Gerhard Albertyn's Answering Affidavit dated 10 December 2023 (the "BRP Answering Affidavit") filed in the interdict proceedings that the BRPs *"support the adjournment of the section 151 meeting currently scheduled for 14 December 2023 to no earlier than Monday, 8 January 2024, but no later than Thursday, 11 January 2024"* ostensibly to permit the proposed business rescue plans to be amended and to afford all affected persons time to consider the revisions.
10. As indicated above the RGS proposal in relation to SASA is agreed in principle with SASA given that a detailed proposal was submitted to RCL and SASA. As these amendments to the RGS BR Plan affect only SASA no other affected person would be prejudiced by the amendments. We fully expect SASA and RCL to support these amendments. There should also be no reason for the BRPs to object to the SASA-related amendments to the RGS BR Plan.
11. If the Terris / Vision Parties are not able to finalise their discussions with SASA prior to the Meeting that in and of itself should not preclude the Meeting going ahead to consider and if thought fit adopt the RGS BR Plan. If RGS is able to agree a proposal with SASA in the short time available, then there is no reason why the Terris / Vision Parties should not be able to do so. If it comes down to a lack of financial resources on the part of the Terris / Vision Parties, or a need on the part of the Terris / Vision Parties to raise finance before or after the Meeting, to make an offer to SASA sufficient to satisfy SASA that it would be able to accept such a proposal, that fact should not cause a delay to the Meeting. It is not up to the BRPs to facilitate adjournments of the Meeting to allow the Terris /

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED

Reg. 2014/005632/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT

ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

Ground Floor, 27 Fricker Rd., Illovo, Jhb. | P.O. Box 412049, Craighall, Jhb, 2024

Docex 261 Randburg | T. 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za

Conveyancing: ronel@efglaw.co.za

www.efglaw.co.za



Vision parties to get their funding in order especially not when the RGS BR Plan does not require, nor is dependent on, any third party funding being raised.

12. RGS is in discussions with the Lender Group regarding amendments to the RGS BR Plan following comments received from the Lender Group's attorneys, ENSAfrica. These Lender Group-related amendments are being progressed and RGS sees no reason why these discussions cannot be finalised with the Lender Group ahead of the Meeting. As with the SASA-related amendments to the RGS BR Plan, the Lender Group-related amendments will be introduced by way of a motion for the amendment of the published version of the RGS BR Plan as contemplated in section 152(1)(d)(i) of the Companies Act. This is the correct procedure for the adoption of amendments to a published business rescue plan.
13. It is stated in paragraph 9.3 of the BRP Answering Affidavit that the Terris / Vision Parties are in discussions with the Lender Group regarding their proposal. The Terris / Vision Parties' BR Plan relies on the Lender Group Claims being purchased ahead of the Meeting. RGS is aware that the Terris / Vision Parties have not on two occasions been in a position to raising the necessary funding to pay the Lender Group for the Lender Group Claims resulting both agreements for the purchase of the Lender Group Claims having lapsed. The discussions between the Terris / Vision Parties and the Lender Group can therefore only relate to affording the Terris / Vision Parties additional time to come up with the funding to pay the purchase price for the Lender Group Claims. It is not the task of the BRPs to facilitate extensions of time during the THL business rescue process to allow a proposing party to raise financing. This is particularly the case in the circumstances of the Terris / Vision BR Plan which envisages a purchase of the Lender Group Claims and is

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRAT INCORPORATED

Reg: 2016/03563/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.J. AFRAT

ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

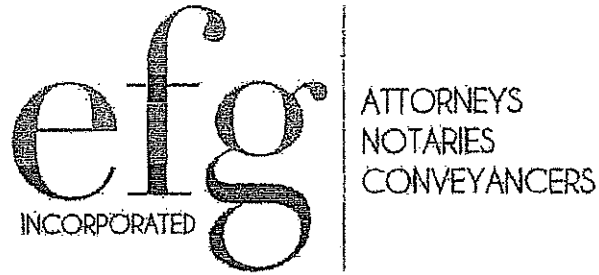
Ground Floor, 27 Fricker Rd., Illovo, Jhb. | P.O. Box 412049, Craighall, Jhb, 2024

Docex 261 Randburg : T: 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za

Conveyancing: rhnel@efglaw.co.za

www.efglaw.co.za



therefore predicated on a private deal being done between the Terris / Vision Parties and the Lender Group.

14. Although the BRPs have refused to comment on the status of the Terris / Vision BR Plan or confirm whether the Terris / Vision Parties procured the funding which was a condition to their agreement with the Lender Group by the contractual deadline of 6 December 2023, RGS's own enquiries have revealed that this has not in fact occurred and that the agreement reached between the Vision Parties and the Lender Group therefore lapsed on 6 December 2023. This much was confirmed to RGS during a meeting with the Lender Group on Thursday, 7 December 2023. One would have expected the BRPs to have made similar enquiries. To say, as Patrick Birkett stated in his response to White & Case's email of 8 December 2023 enquiring as to the status of the Terris / Vision BR Plan as it relates to the purchase the Lender Group Claims, that the BRPs *"are not privy to any of the detail of the discussions between the Terris Consortium and the Lender Group"* is a significant dereliction of duty on the part of the BRPs who are responsible for ensuring the publication of a compliant business rescue plan. Given the experience of the BRPs involved in this matter this conduct is somewhat remarkable.
15. Suffice to say, if the Terris / Vision Parties have not procured their funding or purchased the Lender Group Claims prior to the Meeting, the correct procedure is to withdraw the Terris / Vision BR Plan due to its inability to be implemented at the date of the Meeting. It cannot seriously be suggested that the Terris / Vision BR Plan complies with the applicable statutory requirements in circumstances where the bidder in question has neither the necessary funding nor the necessary agreement with the Lender Group on which the offer is

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRAT INCORPORATED

Reg: 2014/635637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA
Ground Floor, 27 Fricker Rd, Illovo, Jhb | P.O. Box 412042, Craighall, Jhb, 2024
Docex 261 Randburg | T: 011 341 0510/29
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ron@efglaw.co.za
www.efglaw.co.za



ATTORNEYS
NOTARIES
CONVEYANCERS

premised. However, the withdrawal the Terris / Vision BR Plan should not result in the adjournment of the Meeting insofar as it relates to consideration of, amendment to and voting on the RGS BR Plan. At such point there can be no doubt that the RGS BR Plan is the only valid business rescue plan for THL in existence.

16. In the IDC's Supporting Affidavit for Application to Intervene and Answering Affidavit in the Interdict Applications (the "IDC Affidavit") the IDC, in its capacity as PCF Lender, clearly states that the Meeting must proceed on Thursday, 14 December 2023 despite the arrangements for the extension of the PCF not yet being in place. See paragraphs 57 and 62 of the IDC Affidavit. The IDC Affidavit therefore does not support the position in the BRP Answering Affidavit that the extension of the PCF facility means that the Meeting should be adjourned.
17. Consequently, RGS once again finds itself in a position where it has no option but to seek urgent assurances from the BRPs that they will not facilitate a further adjournment of the Meeting under any circumstances or otherwise act to afford an advantage or undue benefit to the Terris / Vision Parties in breach of their duties as business rescue practitioners.

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED

Reg: 2014/035637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.L. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA
Ground Floor, 27 Fricker Rd, Illovo, Jhb | P.O. Box 412049, Craighall, Jhb, 2024
Docex 261 Randburg | T: 011 341 0510/29
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ronei@efglaw.co.za
www.efglaw.co.za



ATTORNEYS
NOTARIES
CONVEYANCERS

Our Ref: G Edelstein/nf
Your Ref: Mr D Hertz/Mr D Andropoulos/Mr
T Boswell/Ms S
Gast/tjb/TONG7430.13/#9803931v8

Werksmans Attorneys

Dear Sirs

**RGS GROUP HOLDINGS LIMITED // TONGAAT HULETT LIMITED (IN
BUSINESS RESCUE)**

Mr D Hertz
dhertz@werksmans.com

Mr D Andropoulos
dandropoulos@werksmans.com

Mr T Boswell
tboswell@werksmans.com

Ms S Gast
sgast@werksmans.com

Copy to:

Mr Ven Seerangam
The Standard Bank of South Africa Limited
As Facility Agent on behalf of The Senior Lenders of Tongaat Hulett Limited
AgencySBSA@standardbank.co.za

Mr G Oertel
ENSAfrica
goertel@ensafrika.com

edelstein.farber.grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED

Reg: 2016/05637/21

DIRECTORS: G.A. EDELSTEIN | R. GRÖBLER | J.I. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA
Ground Floor, 27 Fricker Rd., Illovo, JHB | P.O. Box 412049, Craighall, Jhb, 2024
Docex 261 Randburg | T: 011 341 0510/29
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ronel@efglaw.co.za
www.efglaw.co.za



The lawfulness of the Terris / Vision BR Plan

18. Taking account of the definition of “business rescue” in section 128(1) of the Companies Act read with sections 5 and 7(k) of the Companies Act, it is trite that a business rescue plan cannot be:
- 18.1. designed to be in, or further, the interests of some stakeholders to the exclusion of others; nor
- 18.2. a private transaction between certain stakeholders dressed up as a business rescue plan.
19. It is manifest that the Terris / Vision BR Plan fails on both of these respects. The BRPs are simply trying to facilitate the Lender Group’s desire to exit their exposures to THL so as to remove the risk of the Lender Group in relation the business rescue process and the regulatory approvals that will be required to implement any business rescue plan. Therefore, only the interests of the Lender Group are being considered to the detriment of all other stakeholders. While it is clear that the Lender Group are not precluded from selling their claims, what they and the BRPs cannot do is hold up or “hijack” a business rescue process to allow for the private deal between the Lender Group and the Terris / Vision Parties to be done. This is contrary to the requirement of Chapter 6 that business rescue processes must be completed expeditiously and the requirement that the interests of all stakeholders must be balanced.
20. The Terris / Vision BR Plan contains a substantial uncertainty that the purchase of the Lender Group Claims can ever be completed – which eventuality has twice played out. The BRPs have repeatedly said that the process is “creditor

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JENY AFRIAT INCORPORATED

REG: 2014/005437/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.J. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

Ground Floor, 27 Eriker Rd., Illovo, Jhb. P.O. Box 412042, Craighall, Jhb., 2024

Docex 241 Randburg : T: 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za

Conveyancing: roni@efglaw.co.za

www.efglaw.co.za

lead” but what they really mean is “*Lender Group lead*” because they have not taken the views or interests of any other creditors into account and have ostensibly done the bidding of the Lender Group to assist the Lender Group in furthering its own aims rather than the aims of rescuing THL, THSSA, Voermol and THD.

21. Furthermore, at a basic level therefore the Terris / Vision BR Plan does not comply with the definition of “*business rescue*” in that it patently does not maximise the likelihood of the company continuing in existence on a solvent basis.
22. RGS reserves the right to address the lawfulness of the Terris / Vision BR Plan in the appropriate forum should it deem it necessary to do so.

The Status of the Pre-Meeting Proxy Vote Proposed by the BRPs

23. In circumstances where two business rescue plans are published for consideration by affected persons, the only correct procedure is for both business rescue plans to be deliberated on, amended if required pursuant to a motion to amend and voted on at the Meeting.
24. It is not appropriate nor lawful to ask the creditors to determine the sequence in which the voting on the plans should take place. This is especially the case where the interests of the Lender Group or the Terris / Vision Parties, depending on who owns the Lender Group Claims at the relevant time, diverge from the interests of RGS and it would appear to be a foregone conclusion what the outcome of a pre-vote would be.

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED
Reg. 2016/035637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA
Ground Floor, 27 Fricker Rd., Illovo, Jhb. P.O. Box 412049 Croighall, Jhb, 2024
Docex 261 Randburg T: 011 341 0510/29
litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ron@efglaw.co.za
www.efglaw.co.za



ATTORNEYS
NOTARIES
CONVEYANCERS

25. The sequence of voting is irrelevant. The plans can be voted on in any sequence. The important point is that both plans must be voted on so that an outcome for each plan is determined i.e., one may be approved and the other rejected or both may be rejected (it is not possible that both plans are approved). The outcome of the vote on the plans should, however, remain unannounced until both votes have occurred after deliberations on and (if required) amendments to both plans have taken place. Both plans would therefore fall to be dealt with in terms of the provisions of sections 152 and 153 of the Companies Act. If the Meeting is adjourned for any reason, it should be adjourned for both plans without a vote on either occurring. The procedural matters relating to amendments and adjournments for both plans should occur before the vote on the plans.
26. RGS requires an undertaking from the BRPs that the Pre-Meeting Proxy Vote will be cancelled and that the RGS BR Plan and the Terris / Vision BR Plan will be dealt with in accordance with the procedure set out above and in particular that:
- 26.1. both plans will be voted on (as amended if amendments are adopted at the Meeting); and
- 26.2. the results of the votes will be announced by the BRPs only after both votes have occurred.

This process will respect the status of both plans as published business rescue plans.

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFFARIAT INCORPORATED

Reg: 2016/03563/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.I. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

Ground Floor, 27 Fricker Rd, Midrand, Jhb | P.O. Box 412049, Craighall, Jhb, 2024
Docex 261 Randburg | T: 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za

Conveyancing: ron@efglaw.co.za

www.efglaw.co.za

27. Of course, if the Terris / Vision BR Plan is withdrawn as contemplated in paragraph 15 only the RGS BR Plan must be considered at the Meeting in terms of section 152 of the Companies Act.

Republication of the Business Rescue Plans

28. We understand the BRPs are suggesting that they will republish the business rescue plans on Tuesday, 12 December 2023 due to amendments being made to both business rescue plans.
29. We point out that there is no procedure in Chapter 6 of the Companies Act for the republication of a business rescue plan that has already been published. If a business rescue plan is to be amended sections 152(1)(d)(i) and (ii) of the Companies Act provide for a procedure to amend the plan at the relevant meeting or to direct the business rescue practitioner to adjourn the meeting to revise the plan for further consideration.
30. RGS therefore does not agree to the republication of the business rescue plans ahead of the Meeting. Amendments to the plans should be dealt with at the Meeting in accordance the set procedure. This does not mean that parties affected by the amendments will not be consulted and that such amendments will not be subject to negotiation between the parties affected by those amendments.

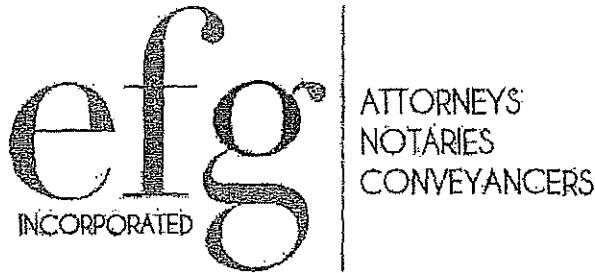
Conclusion

edelstein farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED

Reg: 2014/005637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.J. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA
Ground Floor, 27 Enkeldoorn Rd., Illovo, Jhb. P.O. Box 412049, Craighall, Jhb, 2024
Dorcas 261 Randburg : T: 011 341 0510/29
Litigation: greg@efglaw.co.za | jeff@efglaw.co.za
Conveyancing: ron@efglaw.co.za
www.efglaw.co.za



31. RGS therefore, once again, requires a written undertaking from the BRPs urgently but by no later than 09h00 on Tuesday, 12 December 2023 to the effect that they will:
- 31.1. Use their best endeavours to support the amendment of the RGS BR Plan at the Meeting; and
- 31.2. Proceed to table the RGS BR Plan for adoption at the Meeting.
32. These undertakings amount to no more than a statement of the BRPs statutory obligations. Should the BRPs act contrary to the terms of the abovementioned undertakings, regardless of whether they are confirmed in written format or not, RGS will have no choice but to approach the High Court for urgent relief to compel the BRPs to (i) convene the Meeting on 14 December 2023, and/or (ii) entertain a motion for the amendment of the RGS BR Plan at the Meeting, and/or (iii) call a vote for the adoption of the RGS BR Plan at the Meeting.
33. In the meantime, RGS's rights, including its right to place this correspondence before a judge in due course, if necessary, remain strictly reserved.

Yours sincerely,

EFG INC

edelman farber grobler
INCORPORATED

Incorporating the practice of
JEFF AFRIAT INCORPORATED

Reg: 2016/005637/21

DIRECTORS: G.A. EDELSTEIN | R. GROBLER | J.F. AFRIAT
ASSISTED BY: J. CORREIA | CONSULTANT: O. DE SOUSA

Ground Floor, 27 Fricker Rd., Illovo, Jhb 1 P.O. Box 412049 Croighall, Jhb, 2024

Pocex 261 Randburg | T: 011 341 0510/29

Litigation: greg@efglaw.co.za | jeff@efglaw.co.za

Conveyancing: ron@efglaw.co.za

www.efglaw.co.za

15. The BRP's support of yet another adjournment of the Meeting is bizarre in circumstances where the RGS Plan is fully funded and capable of (i) adoption at the Meeting on 14 December 2023, and (ii) immediate implementation.
16. RGS has informed the BRPs in terms *inter alia* of a letter sent to the BRPs on 6 December 2023 that it is in productive negotiations with SASA and RCL and that it expects to reach a settlement with those parties imminently. A copy of this letter is annexed, marked "SM2".
17. The BRPs acknowledge that RGS has offered SASA 100 cents in the rand on SASA's claim against THL at paragraph 9.1 of the BRP Supplementary AA.
18. On Wednesday, 6 December 2023 RGS and RCL reached an agreement in principle regarding the amendment of the RGS Plan to recognise SASA's claims in the THL business rescue in a manner that is acceptable to RCL and SASA and is consistent with the judgment handed down by Mr Justice Vahed on 29 November 2023. RCL conveyed to RGS that the proposal should be transmitted to SASA as RCL could act on SASA's behalf in this regard. On the same day the RGS proposal regarding the SASA Claim (as agreed in principle with RCL) was transmitted in writing to Ms Mary Ramkelawon, the Chief Financial Officer of SASA.
19. On Friday 8 December 2023, RGS met with SASA – which was represented by its independent chairperson Advocate Fay Mukaddam and Ms Ramkelawon – to discuss the aforesaid RGS proposal and the consequential amendments of the RGS Plan. The meeting was productive and resulted in confirmation that agreement had indeed been reached in principle with SASA. SASA conveyed to RGS that SASA had apprised the BRPs of the RGS proposal. SASA indicated



AMENDED BUSINESS RESCUE PLAN
(AMENDMENTS TO BE PROPOSED AT MEETING OF CREDITORS)
(RGS TRANSACTIONS)

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

in relation to

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE)

prepared by the Joint Business Rescue Practitioners

As originally published on 29 November 2023 and to be considered for
amendment on 10 January 2024

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

1.4. Chapter 4 – Conclusion and BRPs Certificates

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

2. Executive Summary and RGS Rationale for the Structure of this Business Rescue Plan

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

2.2. The key feature of this Business Rescue Plan is, pursuant to the Adoption and implementation of this Business Rescue Plan, the acquisition by RGS (through a South African incorporated indirect subsidiary of RGS, "RGS Bidco") of all of the substantial Lender Group Claims and security held by the Lender Group, under the Senior Finance Documents, in the amount of c.R7.7bn plus R8.0bn, and the subsequent conversion by RGS Bidco of 100% of such the Lender Group Claims into equity in THL ~~("the RGS Transactions")~~. This, together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):

2.2.1. the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan; the THD Business Rescue Plan (to be amended as contemplated in paragraph 6.1.5 below and as amended from time to time (if necessary) prior to the Substantial Implementation Date);

2.2.2. the recapitalisation of the THL balance sheet through the Proposals put forward in this Business Rescue Plan, in particular the

~~conversion~~Conversion of the ~~e.R7.7bn former~~ Lender Group Claims into equity in THL; and

- 2.2.3. the continued listing of THL on the JSE, albeit with current Shareholders becoming minority shareholders and RGS Bidco (or a South African incorporated holding company of RGS Bidco ("RGS Holdco")) holding 95% of the then issued and listed shares in the Company immediately following the abovementioned ~~debt to equity conversion~~Conversion (noting that RGS has stated its intention, subject to market conditions, to subsequently sell down RGS Bidco's or RGS Holdco's (as applicable) position such that RGS Bidco or RGS Holdco (as applicable) will retain a 51% - 60% shareholding within a year of ~~concluding~~ the RGS Transactions Closing Date, thereby providing for a free float of some 40% - 49% of the then listed shares in issue).

2.3. At the request of RGS, the BRPs set out below (unedited) RGS' rationale for the structure of this Business Rescue Plan as provided to the BRPs by RGS, without any obligations attaching to THL and/or the BRPs as this is merely a recordal by RGS:

2.3.1. "RGS have viewed the business of THL and the THL Group as a going concern and are seeking to offer to each and every stakeholder of THL and the THL Group what it believes to be the true value of their Claims and interests in THL and the THL Group.

2.3.2. RGS have not sought to differentiate Secured Creditors from other Creditors but have rather classified the RGS Proposals as proposals to address the Claims and interests of:

2.3.2.1. Lenders to the THL Group;

2.3.2.2. Creditors of THL (other than SASA and employees of the THL Group);

2.3.2.3. SASA;

2.3.2.4. Employees and former employees of the THL Group;
and

2.3.2.5. Shareholders of THL.

2.3.3. Lenders to the THL Group

2.3.3.1. Lenders to the THL Group are viewed by RGS as either
current lenders (i.e., PCF Lenders) and historic lenders
(i.e. the Lender Group).

2.3.3.2. Current Lenders (i.e., PCF Lenders) will receive 100c
in the Rand by either extending their PCF as term loans
from the Substantial Implementation Date or being
refinanced in full.

2.3.3.3. Historic lenders (i.e., the Lender Group) will receive
R3.6bn for the acquisition of the Lender Group Claims
and up to R150m for the PCF the Lender Group have
extended to THD resulting in a total recovery of
R3.75bn.

2.3.4. Creditors (other than SASA and employees of the THL Group)

2.3.4.1. Unsecured Creditors (other than SASA and employees
of the THL Group) with Claims of R75,000 or less will
receive 100c in the Rand and be paid within 15
Business Days of the date of Adoption of this Business
Rescue Plan.

2.3.4.2. Other Unsecured Creditors (other than SASA and employees of the THL Group) with Claims in excess of R75,000 will receive the first R75,000 of their Claims within 15 Business Days of the date of Adoption of this Business Rescue Plan and will receive up to 65c in the Rand on the balance of their Claims.

2.3.4.3. The Creditors (other than SASA and employees of the THL Group) are receiving a higher amount of cents in the Rand than the Lender Group to account for the fact that the Lender Group will be paid in full at or prior to the Substantial Implementation Date while such other Creditors are being paid in four instalments over 4 years.

2.3.5. SASA:

2.3.5.1. RGS views SASA as an important industry stakeholder that requires support to ensure the viability of the South African sugar industry.

2.3.5.2. Consequently, SASA will receive 100c in the Rand in respect of the SASA Claims on the basis set out in this Business Rescue Plan paid prior to the Substantial Implementation Date.

2.3.6. Employees and former employees of the THL Group

2.3.6.1. All current employees of the THL Group will be paid 100% of their Claims and benefits.

2.3.6.2. All retired or disabled former employees of the THL Group will be entitled to 100% of their benefits.

2.3.7. Shareholders of THL

2.3.7.1. Existing Shareholders of THL will retain 5% of the issued shares of THL with the intention of maintaining THL's listing on the JSE.

2.3.7.2. The 5% of THL retained by the existing Shareholders is expected to have the same value for shareholders of THL as the value of their shares in THL at the date on which the listing of THL's shares on the JSE was suspended.

2.3.8. RGS believes that its proposal fairly balances the interests of all stakeholders of THL and the THL Group. RGS will guarantee all deferred payments and will provide or guarantee R500m of new working capital for THL on the basis set out in this Business Rescue Plan.

2.3.9. RGS also believes it is the correct long-term owner of the THL business as it has experience in the sugar, agriculture and fast moving consumer goods sectors and is committed to growing a sustainable sugar business in the region including by assisting growers."

2.3.2.4. The strategy to be adopted by the BRPs in the execution of this Business Rescue Plan is, in summary, to:

2.3.1.2.4.1. _____ implement and complete the RGS Transactions comprising the acquisition by RGS Bidco of the Lender Group Claims and security and the conversion of such Claims into THL equity that are required to be implemented and completed prior to the Substantial Implementation Date;

2.3.2.2.4.2. continue to maintain ~~their~~management control ~~and oversight~~ of THL in accordance with, and in compliance with the operations requirements of Chapter 6 of the THL businesses Companies Act, until completion of Substantial Implementation Date subject to the proposed Management Agreement to be entered into between RGS Transactions and the completion of the parallel business rescues of THD, THL, THSSA and Voermol, THD and any other applicable subsidiaries of THL as contemplated in paragraph 6.1.4 below;

2.3.3.2.4.3. secure working capital facilities; in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company); ~~);~~ sufficient to fund the THL businesses for the duration of the Business Rescue process, in consultation with RGS and subject to the first right of refusal of RGS to provide such PCF which right of first refusal will be open for a period of 10 Business Days following receipt of written notice from the BRPs of any requirement for additional PCF;

2.3.4.2.4.4. RGS has confirmed to the BRPs its undertaking that it will not implement any retrenchments of any employees of THL (other than potentially senior management whose employment will be subject to the restructure of the senior management structure) for a period of at least two years from the date of substantial implementation of the Business Rescue Plan. RGS will assess the performance of the THL Group and the various businesses after the expiry of the two year period. It is the intention of RGS to limit job losses and, therefore, any job losses suffered would be a last resort and all affected employees will be entitled to their full retrenchment package;

2.3.5.2.4.5. oversee the parallel business rescues of THD, THSSA and Voermol; (subject to the terms of the Management Agreement) but subject to the intention that THD, THSSA and Voermol should exit

their respective business rescue proceedings on the Substantial Implementation Date;

2.3.6.2.4.6. _____ oversee payments (Distributions) made by THL to the various classes of THL Creditors as follows, noting specifically in this regard that:

- the balance sheet of THL will have been recapitalised by the ~~RGS Bidco c.R7.7bn debt conversion~~Conversion to equity in THL of the Lender Group Claims and the RGS PCF Facility;
- RGS will provide or guarantee R500m of new working capital for THL; from the Substantial Implementation Date provided that RGS may agree in its discretion to provide or guarantee this R500m of new working capital to THL as PCF prior to the Substantial Implementation Date which will count as the provision or guarantee of such working capital and will keep this working capital facility in place after the Substantial Implementation Date; and
- RGS has undertaken to guarantee all deferred payments to Creditors under this Business Rescue Plan.

2.3.6.1.2.4.6.1. _____ RGS Bidco will acquire the ~~R7.7bn of~~ Lender Group Claims by way of a cash purchase (made in three instalments as set out in paragraph 6.1.3.1 below) of ~~such Claims for~~the Lender Group Claims for R3.6bn and procure that the PCF provided by the Lender Group to THD is repaid up to R150m from the disposal of certain of THD's real estate assets resulting in the Lender Group receiving a total payment of up to R3.75bn and not less than R3.6bn;

2.3.6.2.2.4.6.2. _____ with the support of RGS the Company will extend or convert into alternative facilities, resulting in

100% payment to the satisfaction of the PCF Creditor holders thereof (primarily IDC), all Claims for outstanding PCF advanced to the Company as at the ~~Publication~~Substantial Implementation Date;

~~2.3.6.3.2.4.6.3.~~ 2.4.6.3. ~~Preferent~~ ~~Creditors~~ ~~(primarily employees)~~Employees for post-retirement benefits) will ~~be paid~~retain 100% of their ~~Claims~~benefits;

~~2.3.6.4.2.4.6.4.~~ 2.4.6.4. All Unsecured Creditors (other than Claims relating to SASA, post-retirement liabilities, employee leave pay and non-independent creditors) will receive Distributions of:

- up to the first ~~R75k~~R75,000 of such Creditors' Claims in full (in aggregate currently estimated to be payments of c.R47m) (the "De Minimis Payment"); plus
- up to ~~4065~~ cents in the Rand for any balance of any Claim which is in excess of the De Minimis Payment (in aggregate currently calculated to be payments of c.~~R330m~~R378.4m) (the "Pro Rata Payment"); ~~subject to~~
- subject to the aggregate of all De Minimis Payments and all Pro Rata Payments not exceeding ~~R377m; and further subject to:~~R425,451,350.

~~the aggregate~~The De Minimis Payment will be made by the Company within 15 Business Days after the Adoption Date subject to RGS Bidco funding the Company to make payment of the De Minimis Payment and the Payments in the form of an interest-free

unsecured PCF loan facility (but otherwise on substantially the same terms as the IDC PCF Facility) (the "RGS PCF Facility") which funding will be provided to the Company not later than 15 Business Days after the Adoption Date;

- the SASA Payment Amount will be paid by THL on the RGS Plan Settlement Date and RGS Bidco will fund the Company to make payment of the SASA Payment Amount which funding will be provided to the Company not later than 5 Business Days after the Closing Date;

~~• the~~ Pro Rata Payment Distributions will be made by the Company to each such Unsecured Creditor ~~being settled~~ entitled thereto in four equal instalments, the first instalment being paid no later than on the first anniversary of the Closing Date and the remaining three instalments being made annually (on or about the same date) thereafter; ~~noting that all deferred De Minimis Payments and Pro Rata Payments being guaranteed by RGS as noted above and~~

- the payment of the De Minimis Payment, the Pro Rata Payments and the SASA Payment Amount will be guaranteed by RGS.

~~2.3.6.5.2.4.6.5.~~ The ~~SASA's~~ SASA Claims against the Company will be settled in full by the Company -as follows:

- the Company will pay the SASA Payment Amount to SASA on the RGS Plan Settlement Date in discharge of the SASA Claims;

~~2.6. Subsequent to the Adoption of this Business Rescue Plan, in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed conversion of the Lender Group Claims into THL equity to be effected, or in the alternative for a debt to equity issue of new THL shares to RGS Bideo to be effected, this Business Rescue Plan contemplates in substitution that the currently proposed RGS Transactions (see above) will be switched from transactions contemplating the conversion of the Lender Group Claims into THL equity to transactions contemplating the acquisition by RGS Bideo of all of THL's assets and businesses (as going concerns) (see paragraph 6.1.7 below).~~

~~2.6.1. Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by any such a change if the latter alternative is utilised (the acquisition by RGS Bideo of all of THL's assets and businesses (as going concerns)), once it has sold its assets and businesses (leaving THL as an empty shell), THL will be delisted from the JSE and liquidated, resulting in its shares (those held by existing Shareholders) having nil value.~~

2.7. Once this Business Rescue Plan has been approved, Adopted and implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions and debt to equity ~~conversions~~Conversions as provided for, any residual ~~Creditors'~~Creditors' Claims will become Unenforceable, other than as ~~otherwise~~ specifically provided for in this Business Rescue Plan.

~~2.8. Affected Persons have been provided with two alternative business rescue plans (including this one) for their consideration. Affected Persons will receive a special notice in which Creditors will be invited to vote in the Pre-Meeting Proxy Vote. The purpose of the Pre-Meeting Proxy Vote will be the giving of direction by the Creditors to the BRPs (based on a simple majority of Independent Creditors voting on the issue) on the sequence in which the~~

subsequent ~~conversion~~Conversion of ~~such~~the
Lender Group Claims into equity in THL after the
Closing Date but prior to the Substantial
Implementation Date;

- RGS Bidco will pay R3.6bn to the Lender Group (the "Senior Secured Lender Payment"), in full settlement of the acquisition by RGS Bidco of the Lender ~~Groups~~Groups Claims and security, in three instalments as follows:

- R2.0bn (the "First Payment") to be paid on
any Business Day which is within 10 Business
Days of the Adoption Date (the "First
Payment Date");

- R1.0bn (the "Second Payment") to be paid on
the Business Day after the Merger Filing Date;
provided that if the Merger Filing Date has not
occurred by the date which is 90 days after the
Adoption Date due to a delay caused by RGS,
the Second Payment shall be made on the day
which is the 90th day after the Adoption Date
(the "Second Payment Date"); and

- R600m to be paid on the earlier of the Closing
Date and any date which is within 5 Business
Days of the date on which all South African
regulatory approvals required for the
implementation of this Business Rescue Plan
have been obtained or granted (the "Third
Payment Date");

- Pursuant to:

- the payment of the First Payment, RGS Bidco will acquire and take transfer (in accordance with the terms of the Common Terms Agreement for transfers of the Lender Group Claims and on other terms agreed between RGS Bidco and the Lender Group), 55.55% of the Lender Group Claims on the First Payment Date;
- the payment of the Second Payment, RGS Bidco will acquire and take transfer (in accordance with the terms of the Common Terms Agreement for transfers of the Lender Group Claims and on other terms agreed between RGS Bidco and the Lender Group), a further 27.78% of the Lender Group Claims on the Second Payment Date; and
- the payment of the Third Payment, RGS Bidco will acquire and take transfer (in accordance with the terms of the Common Terms Agreement for transfers of the Lender Group Claims and on other terms agreed between RGS Bidco and the Lender Group), the remaining share (c. 16.67%) of the Lender Group Claims on the Third Payment Date.

6.1.3.2. RGS will place an amount at least equal to the ZAR equivalent of the First Payment (i.e. R2.0bn) on deposit in a bank account opened with Absa Mozambique, FNB Mozambique or Nedbank Mozambique by no later than the Business Day before

the date of the Meeting to secure the payment of the First Payment on the First Payment Date.

6.1.3.3. The:

- First Payment Date may not be extended without the consent of the Lender Group representing at least 67% of the total Voting Interests of the Lender Group;
- Second Payment Date may not be extended without the consent of the Lender Group representing at least 67% of the total Voting Interests of the Lender Group; and
- Third Payment Date may not be extended without the consent of the Lender Group representing at least 67% of the total Voting Interests of the Lender Group.

6.1.3.4. After the Closing Date but prior to the Substantial Implementation Date, THL and RGS Bidco will put into effect the Conversion of the Lender Group Claims and the RGS PCF Facility into equity in THL.

- ~~— In R500m as a non-refundable deposit, to be paid within 10 business days of this Business Rescue Plan having been Adopted;~~
- ~~— R1.5bn to be paid on the earlier of: (a) the filing of the merger filing with the South African Competition Commission and the required JSE dispensations having being obtained to the~~

~~satisfaction of RGS; and (b) 90 days after the Adoption of this Business Rescue Plan; and~~

~~—R1.6bn to be paid on fulfilment or waiver of all conditions precedent to the RGS Transactions (the "Closing Date").~~

~~6.1.3.2. —Thereafter THL and RGS Bidco will put into effect the conversion of the acquired Claims into equity in THL.~~

~~6.1.3.3. —In return for the right to receive the Senior Secured Lender Payment and with effect from the Closing Date (and save as otherwise agreed in writing between RGS Bidco and the Lender Group and/or (as the case may be) the individual members of the Lender Group):~~

- ~~• each member of the Lender Group will be deemed to cede and assign all of its rights, title and interest in the Lender Group Claims (including its rights under the Security SPV Guarantee) to RGS Bidco on and with effect from the Closing Date but subject to payment of the Senior Secured Lender Payment and shall by such cession and assignment lose any rights against the Company or any of the Company's subsidiaries to enforce the Lender Group Claims (which rights shall vest in RGS Bidco) and shall be relieved of any of its obligations in connection with the Lender Group Claims (and the provisions of section 154(1) of the Companies Act will accordingly apply in relation to the Lender Group and its individual members); and~~

- ~~aside from the rights to claim payment of the Senior Secured Lender Payment from RGS Bidco, no member of the Lender Group shall have any Secured Claim against the Company or any of the Company's Subsidiaries.~~

6.1.3.5. addition to the acquisition of the Lender Group Claims as contemplated above, RGS will procure that THD repays the THD PCF to the Lender Group from the proceeds of the disposal of THD's real estate assets up to a maximum amount of R150m.

~~6.1.3.4.6.1.3.6.~~ The above transactions will result in RGS Bidco initially owning 95% of the total issued share capital of the Company, and existing Shareholders in the Company holding the balance of 5%-% (noting that RGS ~~have undertaken~~has stated its intention, subject to market conditions, to subsequently sell down the RGS Bidco's or RGS Holdco's (as applicable) position such that RGS Bidco ~~position to~~ or RGS Holdco (as applicable) will retain a 51% ~~to~~ 60% shareholding within a year, thus creating of the Closing Date, thereby providing for a free float of some 40~~to~~% - 49%-% of the then listed shares in issue).

~~6.1.3.5.6.1.3.7.~~ It is noted that in liquidation Shareholders would be anticipated to receive nil, and equally so in an alternatively structured transaction (the sale of the assets of THL to RGS Bidco), Shareholders would be anticipated to receive nil. Consequently, this proposal results in positive value accruing to Shareholders through the retention of their shareholdings and becoming minority shareholders in the still-listed, post-recapitalisation, RGS Bidco-controlled THL.

Other:

All other regulatory approvals in all relevant jurisdictions to be managed in parallel with JSE processes.

6.1.8.3. The intention of RGS and the BRPs is to work expeditiously to ensure that the Closing Date occurs by no later than 6 months after the Adoption Date. RGS and the BRPs will seek to achieve an earlier Closing date.

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

~~6.1.7. Alternative transactions in the event of a failure to secure the necessary consents and approvals required for the conversion of the acquired Lender Group Claims into THL equity~~

~~6.1.7.1. If so required, due to an inability to complete the anticipated conversion of the Lender Group Claims into THL equity as currently contemplated, the BRPs, THL and RGS as an integral part of the Proposals and this Business Rescue Plan will employ a straightforward THL debt to equity swap with new THL shares issued as an alternative methodology to achieve the same end result (i.e. the debt capitalised and RGS Bideo holding 95% of the then issue shares in THL).~~

~~6.1.7.2. In the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for~~

~~both the proposed conversion and for the debt to equity swap (as per the above paragraph) to be effected, the BRPs and RGS have agreed that, as an integral part of the Proposals and this Business Rescue Plan, the currently proposed RGS Transactions will be switched from contemplating share related methodologies to transactions contemplating the acquisition by RGS Bidco of THL's assets and businesses (as going concerns) on the basis that:~~

- ~~• payment for such assets will be effected by way of a set off against the Secured Claims then held by RGS Bidco;~~
- ~~• suitable arrangements being made for payment of the full balance outstanding in respect of the IDC PGF;~~
- ~~• the sale of THL's assets and businesses will be to RGS Bidco;~~
- ~~• Unsecured Creditors and Secured Creditors would otherwise be treated as contemplated in the currently contemplated RGS Transactions;~~
- ~~• RGS will ensure that THL has sufficient funds to enable it to implement this Business Rescue Plan;~~
- ~~• the sale of THL's assets will be subject to the requisite regulatory consents in each jurisdiction being obtained;~~
- ~~• once it has sold its assets and businesses (as going concerns), THL will be delisted from the JSE and liquidated (noting that its shares would have nil value); and~~
- ~~• to the fullest extent possible RGS and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders, other than Shareholders and the JSE as a result of the delisting/liquidation of THL, will be in~~

~~substantially the same position as they would have been had the originally contemplated RGS Transactions been implemented.~~

~~6.1.8.6.1.9.~~ Alternative transactions in the event of a failure to Adopt this Business Rescue Plan encompassing the RGS Transactions

~~6.1.8.1.6.1.9.1.~~ In the event of a failure of this Business Rescue Plan to be Adopted at the Section 151 Meeting, the following factors should be carefully considered in relation to any subsequent conclusion of an alternative transaction, noting in particular the required timing to achieve same.

- The SA Sugar business operates on a highly seasonal basis with materially variable working capital requirements (entailing annual additional peak funding estimated at around R1.7bn) – dependent on industry dynamics, production and sales cycles.
- A significant investment process is undertaken annually from December to March (referred to as off-crop capital expenditure and/or maintenance (“off-crop programme”)) to enable critical proactive maintenance work to be performed ahead of the next season. Spending commitment towards the off-crop programme is required from as early as September onwards. For the ensuing off-crop programme, THL will look to the investing parties for guidance and assistance in securing the required funding.

~~10.1.18.~~10.1.19. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.

~~10.1.19.~~10.1.20. JSE, financial reporting and transaction approval mechanisms proving problematic.

6.2.11. The macro-economic conditions in Zimbabwe remain a concern. The poor economic outlook is exacerbated by the suspension of duties on basic commodities including sugar, which resulted in lower cost imported sugar (which has unfair cost advantages) competing against locally produced sugar. This is slowing down sales significantly domestically, which is the preferred market, with the lost sales volumes being redirected into lower-priced export markets. Government interventions in respect of grower issues as well as the wage arbitration where minimum wages were increased to USD280 before the elections, had a significant impact on the cost base and cash flow of the business. The lack of security over land tenure due to the 99-year leases not signed creates further uncertainty.

11. PART C – Assumptions and Conditions of Proposal

11.1. PCF:

11.1.1. The successful implementation of the Business Rescue Plan and the Proposal is subject to receipt of the necessary PCF referred to in this Business Rescue Plan to the extent required and within the timing considered appropriate by the BRPs.

11.1.2. The BRPs remain in constant communication with the relevant PCF Lender(s) in this regard. It must be noted that any extension of the

IDC PCF Facility by IDC, as the sole PCF Lender, will at all times be required to satisfy the credit criteria of IDC, with IDC under no obligation to extend its PCF, the security provided is at all times sufficient to discharge the PCF obligation in full and without any shortfall.

- 11.1.3. The BRPs shall use their reasonable endeavours to procure the fulfilment of the required PCF drawdowns as soon as practically possible.
- 11.1.4. If the above-mentioned PCF is withdrawn without replacement, the BRPs may be faced with little alternative but to apply to the High Court to terminate Business Rescue and commence liquidation proceedings.

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

12.1. The Business Rescue will end:

- 12.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s or the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;
- 12.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;
- 12.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or

INSIDE:

MARIKANA AND THE SILENT VIOLENCE
IN A DEMOCRACY

ON AUGUST 16, 2012, 34 miners were
gunned down by the bullets of the South
African police while demanding nothing
more than a living wage.

SEE PAGE 6

The Star

FOUNDED 1887, JOHANNESBURG, SOUTH AFRICA [THESTAR.CO.ZA]

SPORT

Chaine outshines
Ronwen in thriller



BR

Godongwana warns of rising
unemployment and muted
growth

METRO

Court compels health officials to
prioritise cancer patients

LIFESTYLE

Mikayla and Jesse's
journey in 'Finding Optel'

JUSTICE REMAINS ELUSIVE FOR GBV SURVIVORS

Country holds the third-highest rape statistics globally

WENDY DONDOLO
wendy.dondolo@the-star.co.za

SOUTH African women continue to live
under the shadow of gender-based violence
(GBV) and femicide at levels likened
to war zones, despite government
promises and community interventions
aimed at tackling the crisis.

According to the Centre for the Study
of Violence and Reconciliation (CSV),
51% of women in the country have
experienced GBV, while 78% of men admit
to perpetrating violence against women.

"The country holds the third-highest
rape statistics globally, after Romania
and Lesotho," CSV says. "South Africa
remains a society profoundly
marked by violence and continues
to grapple with the enduring effects
of decades of institutionalised racism,
sexism, exclusion, structural violence, and
other factors that have persistently under-
mined human development and positive
social cohesion," said a Human Sciences
Research Council (HSRC) report.

For many women, these statistics are
not numbers but a lived reality.

One survivor, Lesona Ntshani,
shared her ordeal on Facebook after
being brutally attacked by her ex-boy-
friend, Phumani Songiso.

"He grabbed me forcefully and told
me that he would never break up with
me, and that I would stay in a relationship
with him no matter what he does
with anyone else, or else he would kill
me," she wrote.

"He beat me with a golf stick, hit me
with a hammer and a spade handle, and
also with the frame of a mirror from his
room. I apologised even though I had
done nothing wrong."

Her story echoes thousands of others.
The HSRC's baseline survey revealed that
33.1% of all women aged 18 and older
have experienced physical violence in
their lifetime, translating to an estimated
7.3 million women.

Women with disabilities face even
higher risks. Dr Ingrid van der Heijden,
a research consultant in inclusive sexual
and reproductive health, explained:

"Women with disabilities are one of
the poorest populations in the world.
The risk of lifetime GBV for women with
disabilities increases with the severity of
their disability."

Research shows that 29.3% of women



WOMEN in South Africa face a daily battle
against gender-based violence, with
statistics revealing a grim reality. 1 file

with disabilities experienced lifetime
physical abuse, compared to 21.7% of
those without disabilities.

Rates of sexual violence are nearly
double, with 14.6% of disabled women
affected compared to 7.2% of non-dis-
abled women. Van der Heijden empha-
sised the cycle of violence.

"Poverty, disability and GBV are
directional and cyclic. Poverty increases
the risk of GBV, and exposure to GBV
leads to poor health, which exacerbates
the disability."

The CSV found that most victims
do not trust the criminal justice system.
Survivors often face secondary victimi-
sation at police stations, corruption that
leads to missing dockets, and lengthy
backlogs in Legal Aid.

"Our work in communities revealed
bottlenecks in access to justice and the
fight against impunity on GBV," the
researcher said.

Community dialogues held in Gauteng
revealed widespread frustration: lack
of feedback on cases, limited knowledge
of procedures, and ongoing harassment.

South Africa has established 63
Trauma Care Centres (TCCs) to
assist survivors of sexual violence by
providing integrated medical, psychoso-
cial, legal and law enforcement services.

The National Prosecuting Authority
reported a 78% conviction rate in sex
crimes reported directly through TCCs,
with 221 life sentences handed down in
the last financial year.

But for many, justice remains elusive.
Survivors must still navigate intimidation,
bureaucratic red tape, and cultural
stigma.

The World Health Organization esti-
mates that 12.1 women in every 100 000
are killed by an intimate partner in South
Africa each year, a figure five times worse

than the global average of 2.6.
Intimate partner violence affects one
in five women nationally, rising to one
in three in poorer households.

Mental health consequences are
severe. Communities report that stigma
around mental health prevents survivors
from seeking support.

Many still attribute trauma to "witch-
craft" or a lack of spiritual faith, pushing
women to seek unqualified help instead
of professional services.

Justice and Constitutional Develop-
ment Minister Mmusilekoko Kabedi
admitted that "the stories of women
getting killed by their partners have
become so painful that we should not
we no longer get shocked or outraged,
we just read and move on."

"This is not acceptable, and we
should not accept as a society. Remain-
ing silent is not an option. We all have
a responsibility to speak out, to report
it wherever it tears its ugly head," she
added.

Kubayi confirmed that the Depart-
ment is expanding sexual offences
courts, upgrading 100 district courts
to handle domestic violence cases, and
planning to publish Africa's first Fem-
icide Watch to track GBV-related killings.

"Survivors of GBV desire not only
to see, but feel that justice was done,"
she said.

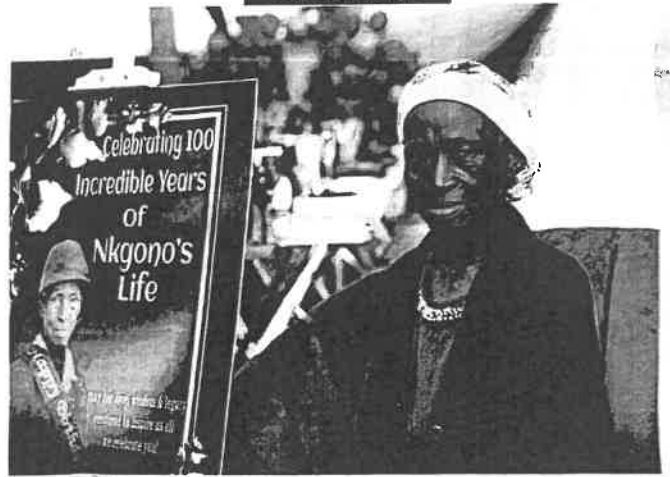
"Our country adopted the Gen-
der-Based Violence and Femicide
National Strategic Plan, which now
guides all efforts to fight GBV and femi-
cide in our country."

Despite frameworks and programmes,
the gap between policy and lived reality
remains wide. The CSV stresses that
without addressing social and cultural
norms, including patriarchal practices,
toxic masculinities, and childhood
trauma, GBV will remain entrenched.

"The solution to gender-based
violence lies in the whole of society
approach in which all stakeholders play
a role in building better communities,
healthy and safe households. We believe
that working together as a society we
can defeat the scourge of gender-based
violence," Kubayi said.

For now, South African women con-
tinue to navigate daily life in a country
where violence is not only widespread
but expected, a state of emergency hid-
den in plain sight. | IOL News

CELEBRATION



BORN in Lesotho and now making the residents of Soweto proud, Gogo Theresa Lekhoabe celebrated her 100th birthday yesterday. Her great-granddaughters, Leratso, wowed hard to organise a special party for her centenarian grandmother, marking the first celebration of its kind for Gogo. The community of Molekane in Soweto joined in to make this dream a reality, and other gogos from the area were invited to join in the celebration of this significant milestone for Gogo and her family. | TIMOTHY BERHARDT, kwana@the-star.co.za

CONDOLENCES

Fans, stars remember actress Nyembe

MYHOBIS NOZULELA
myhobis.nozele@the-star.co.za

THE Gauteng MEC for Education, Sport,
Arts, Culture and Recreation Mafane
Chilome is one of the latest people to
offer their heartfelt condolences following
passing of South Africa's legendary actress,
beloved actress Nandi Nyembe.

MEC Chilome said: "We are deeply
saddened by the passing of the legendary
Mam Nandi. She gave dignity to the
stories of our people and carried them with
authenticity and grace."

"Earlier this year, she spoke with rare
honesty about her wish to keep working
rather than being pitted. That humility
and strength deeply touched the nation,
reminding us of the resilience of our artists
and the importance of celebrating their
contributions while they are still with us. Mam
Nandi's name will forever stand among
the greats who shaped South African story-
telling."

"Our sincerest condolences go to the
Nyembe family, friends and the entire
creative community. May her soul rest in
eternal peace."

Nyembe, who became a household
name through her iconic roles in television
dramas like *Yizo Yizo* and *Zone 14*.

The veteran actress' death was con-
firmed by her family in a joint statement
with the Department of Sports, Arts and
Culture on Saturday.

Nyembe, aged 75, leaves behind a legacy
of unforgettable performances spanning
more than five decades.



TRIBUTES are pouring in across social media following the passing of beloved actress Mam Nandi Nyembe. | I X

Following her passing, ordinary South
Africans and industry mates have taken to
social media to express their sorrow and
celebrate her life.

Actress Zenande Mfene shared a
personal memory of Mam Nandi Nyembe's
care and concern during her pregnancy.

"I remember during my pregnancy how
she fondly held my hand and told me that I
shouldn't let just anyone stroke my belly. I
felt like I personally failed you, Mam Nandi,
and I'm sorry I didn't do more. RIP Nandi
Nyembe."

Minister of Arts and Culture Gayton
McKenzie also paid tribute to Mam Nandi,
describing her as one of South Africa's most
treasured icons of the arts.

"It is with profound sorrow that the
Nyembe family, together with the National

Department of Sport, Arts and Culture,
announce the passing of one of South Africa's
most treasured icons of the arts, Mam
Nandi Nyembe."

Meanwhile, X user @MafaneChilome
reflected on Mam Nandi Nyembe's
powerful performance in *Yizo Yizo*, recalling
how they had recently rewatched the series
and were struck by her portrayal of a char-
acter who stood firmly for justice and her
community.

"I was watching *Yizo Yizo* just two
weeks ago on Netflix. The way she owned
her role and how she fought for all those
tenants, and how she stood for the truth
within her community. It was wonderful
to see how far she had come in her acting
career. She was the best."

Another fan @eladymnyembe also paid
tribute to her enduring presence on South
African screens.

"You ran your race with such grace and
power. We grew up watching you light up
our screens in so many television and
shows - your presence was unforgettable.
A true legend, a mother to many through
your roles, and a pillar in our storytelling.
#RIPNandiNyembe"

X user Ulrich Janse van Vuuren hon-
oured her legacy as both an artist and cul-
tural voice.

"Rest peacefully, Mam Nandi Nyembe.
Actress, icon, and storyteller of our times.
The industry owed you far more than it
ever gave. Your voice and presence will be
deeply missed. A heartbreaking loss for
South Africa." | IOL

◆ Additional reporting by Staff Reporter

BIDDING

Hawks and NPA near conclusion of investigation into Tongaat Hulett fraud

SIFISO MAHLANGU
sifiso.mahlangu@the-star.co.za

THE Directorate for Priority Crimes
Investigations also known as the Hawks,
and the National Prosecuting Authority
are in the final stages of completing their
investigation into an alleged fraud that
was committed by one of the previous
unsuccessful bidders for Tongaat Hulett.
RGS Group Holdings.

In a document that The Star had
confidentially seen, the NPA instructed
the Hawks to obtain warning statements
from the directors of RGS, including the

executive chairman Aguil Rajahussain,
to explain their knowledge and participation
in a fraudulent letter of funding that RGS
admitted they provided to the Lender
Group and Business Rescue Practitioners
of Tongaat in November 2023 during the
bidding process for Tongaat Hulett.

The charging of the company seem
to be a forgone conclusion and the focus
has now moved to the directors personally.

The Star is in possession of an affi-
davit by Rajahussain, dated 31 January
2024, where Rajahussain admits that RGS
provided a fraudulent letter purporting to

emanate from ABSA Mozambique falsely
confirming that RGS held an amount
of approximately R3 billion with ABSA
which money could be used to acquire the
Lender Group claims.

Rajahussain further stated that a junior
manager at RGS, without the knowledge of
RGS senior management, conspired with
an ABSA Mozambique official to provide
the fraudulent letter.

He also said that the RGS senior man-
agement only became aware of the fraud
that was committed by the junior, on 15
December 2023.

He said that the law firm Dentons

has been briefed to investigate the matter.
The successful bidder for Tongaat, Vision
Investments, opened criminal charges
against RGS shortly after Rajahussain
admitted to the fraud, but blaming a junior
manager.

In Small-Smith, the attorney repre-
senting Vision in the criminal matter said
that Vision had a statutory duty to report
the fraud.

"RGS had a similar statutory duty to
report this fraud to the authorities and in
the event they haven't, they may be guilty
of an offence under the Prevention and
Combating of Corrupt Activities Act.

The Star has reached out to the legal
representative of RGS and to Rajahussain
and asked them to respond to the alle-
gations.

As part of the questions we wanted to
know who the junior manager is, what
happened to him after the fraud was dis-
covered, whether RGS reported the matter
to the authorities and what the outcome of
the Dentons investigations was.

Neither Rajahussain nor the lawyers for
RGS responded to our questions despite
being given sufficient time to respond.

According to a source at the IDC,
which has been a major funder of Tongaat,

Vision has committed extensive funding
and resources to the project and had made
significant inroads into implementing the
business rescue plan, together with its
financial and operational partners.

Earlier this month, the Business Report
reported that Tongaat Hulett was on the
commercial register, with one of its South
African sugar mills overperforming expecta-
tions.

Its CEO, Gavin Dingleish said: "We are
seeing strong, measurable improvements
across our milling operations thanks to
consistent investment in infrastructure,
skills and process optimisation."



16921

22000

Annual Subscriber R44.22
DEPO 226 282

JOBURG 11/27P
Partly cloudy,
DBN 16/27P CTN 10/18P



LETTERS | P5
OPINION | P1
CROSSWORDS | P13

THE ONLY PLACE SUCCESS COMES
BEFORE WORK IS IN THE DIGITAL
VINCE LOWBARDI

of violence, institutionalised racism, sexism, exclusion, structural violence, and other factors that have persistently undermined human development and positive social cohesion," said a Human Sciences Research Council (HSRC) report.

For many women, these statistics are not numbers but a lived reality.

One survivor, Leloma Nziwani, shared her ordeal on Facebook after being brutally attacked by her ex-boyfriend, Phumani Sengodishe.

"He grabbed me forcefully and told me that he would never break up with me, and that I would stay in a relationship with him no matter what he does with anyone else, or else he would kill me," she wrote.

"He beat me with a golf stick, hit me with a hammer and a spade handle, and also with the frame of a mirror from his room. I apologised even though I had done nothing wrong."

Her story echoes thousands of others. The HSRC's baseline survey revealed that 29.1% of all women aged 18 and older have experienced physical violence in their lifetime, translating to an estimated 7.3 million women.

Women with disabilities face even higher risks. Dr Ingrid van der Heijden, a research consultant in inclusive sexual and reproductive health, explained.

"Women with disabilities are one of the poorest populations in the world. The risk of intimate GBV for women with disabilities increases with the severity of their disability."

Research shows that 29.3% of women

bled women. Van der Heijden emphasised the cycle of violence.

"Poverty, disability and GBV are directional and cyclic. Poverty increases the risk of GBV, and exposure to GBV leads to poor health, which exacerbates the disability."

The CSVR found that most victims do not trust the criminal justice system. Survivors often face secondary victimisation at police stations, corruption that leads to missing dockets, and lengthy backlogs in legal aid.

"Our work in communities revealed bottlenecks in access to justice and the fight against impunity on GBV," the researchers said.

Community dialogues held in Gauteng revealed widespread frustration: lack of feedback on cases, limited knowledge of procedures and ongoing harassment.

South Africa has established 63 Thuthuzela Care Centres (TCCs) to assist survivors of sexual violence by providing integrated medical, psychosocial, legal and law enforcement services.

The National Prosecuting Authority reported a 78% conviction rate in sex crimes reported directly through TCCs, with 221 life sentences handed down in the last financial year.

But for many, justice remains elusive. Survivors must still navigate intimidation, bureaucratic red tape, and cultural stigma.

The World Health Organization estimates that 12.1 women in every 100 000 are killed by an intimate partner in South Africa each year, a figure five times worse

should not accept as a society. Remaining silent is not an option. We all have a responsibility to speak out, to report it wherever it rears its ugly head," She added.

Kubayi confirmed that the Department is expanding sexual offences courts, upgrading 100 district courts to handle domestic violence cases, and planning to publish Africa's first Femicide Watch to track GBV-related killings.

"Survivors of GBV deserve not only to see, but feel that justice was done," she said.

"Our country adopted the Gender-Based Violence and Femicide National Strategic Plan, which now guides all efforts to fight GBV and femicide in our country."

Despite frameworks and programmes, the gap between policy and lived reality remains wide. The CSVR stresses that without addressing social and cultural norms, including patriarchal practices, toxic masculinities, and childhood trauma, GBV will remain entrenched.

"The solution to gender-based violence lies in the whole of society approach in which all stakeholders play a role in building better communities, healthy and safe households. We believe that working together as a society we can defeat the scourge of gender-based violence," Kubayi said.

For now, South African women continue to navigate daily life in a country where violence is not only widespread but expected, a state of emergency hidden in plain sight. | IOL News

Stars remember actress Nyembo

MTHOBISI NOZULELA
mthobisi.nozulela@iol.co.za

THE Gauteng MEC for Education, Sport, Arts, Culture and Recreation Matome Chiloane is one of the latest people to offer their heartfelt condolences following the passing of South Africa's legendary actress, beloved actress Nandi Nyembe.

MEC Chiloane said: "We are deeply saddened by the passing of the legendary Mme Nandi. She gave dignity to the stories of our people and carried them with authenticity and grace."

"Earlier this year, she spoke with rare honesty about her wish to keep working rather than being pitied. That humility and strength deeply touched the nation, reminding us of the resilience of our artists and the importance of celebrating their contributions while they are still with us. Mme Nandi's name will forever stand among the greats who shaped South African storytelling."

"Our sincerest condolences go to the Nyembe family, friends and the entire creative community. May her soul rest in eternal peace."

Nyembe, who became a household name through her iconic roles in television dramas like *Yizo Yizo* and *Zone 14*.

The veteran actress' death was confirmed by her family in a joint statement with the Department of Sports, Arts and Culture on Saturday.

Nyembe, aged 75, leaves behind a legacy of unforgettable performances spanning more than five decades.



TRIBUTES are pouring in across Social media following the passing of beloved actress Mam' Nandi Nyembe. | X

Following her passing, ordinary South Africans and industry mates have taken to social media to express their sorrow and celebrate her life.

Actress Zenande Mfenyane shared a personal memory of Mam' Nandi Nyembe's care and concern during her pregnancy.

"I remember during my pregnancy how she fondly held my hand and told me that I shouldn't let just anyone stroke my belly. I feel like I personally failed you, Mam' Nandi, and I'm sorry I didn't do more. #RIPNandiNyembe."

Minister of Arts and Culture Gayton McKenzie also paid tribute to Mam' Nandi, describing her as one of South Africa's most treasured icons of the arts.

"It is with profound sorrow that the Nyembe family, together with the National

Department of Sport, Arts and Culture announce the passing of one of South Africa's most treasured icons of the arts, M Nandi Nyembe."

Meanwhile, X user @MasizoleStukw reflected on Mam' Nandi Nyembe's perfect performance in *Yizo Yizo*, recalling how they had recently rewatched the series and were struck by her portrayal of a character who stood firmly for justice and community.

"I was watching *Yizo-Yizo* just a few weeks ago on Netflix. The way she nailed her role and how she fought for all the tenants, and how she stood for the truth within her community. It was wonderful to see how far she had come in her acting career. She was the best."

Another fan @ladyhoneybee also paid tribute to her enduring presence on South African screens.

"You ran your race with such grace and power. We grew up watching you light up our screens in so many telenovelas and shows – your presence was unforgettable. A true legend, a mother to many through your roles, and a pillar in our storytelling. #RIPNandiNyembe."

X user Ulrich Janse van Vuuren honoured her legacy as both an artist and cultural voice.

"Rest peacefully, Mme Nandi Nyembe. Actress, icon, and storyteller of our time. The industry owed you far more than ever gave. Your voice and presence will be deeply missed. A heartbreaking loss for South Africa." | IOL

◆ Additional reporting by Staff Reporter

BIDDING

Hawks and NPA near conclusion of investigation into Tongaat Hulett fraud

SIFISO MAHLANGU
sifiso.mahlangu@ioli.co.za

THE Directorate for Priority Crimes Investigations also known as the Hawks, and the National Prosecuting Authority, are in the final stages of completing their investigation into an alleged fraud that was committed by one of the previous unsuccessful bidders for Tongaat Hulett, RGS Group Holdings.

In a document that *The Star* had confidentially seen, the NPA instructed the Hawks to obtain warning statements from the directors of RGS, including the

executive chairman Aquil Rajahussein, to explain their knowledge and participation in a fraudulent letter of funding that RGS admitted they provided to the Lender Group and Business Rescue Practitioners of Tongaat in November 2023 during the bidding process for Tongaat Hulett.

The charging of the company seem to be a forgone conclusion and the focus has now moved to the directors personally.

The Star is in possession of an affidavit by Rajahussein, dated 31 January 2024, where Rajahussein admits that RGS provided a fraudulent letter purporting to

emanate from ABSA Mozambique falsely confirming that RGS held an amount of approximately R2 billion with ABSA which money could be used to acquire the Lender Group claims.

Rajahussein further stated that a junior manager at RGS, without the knowledge of RGS senior management, conspired with an ABSA Mozambique official to provide the fraudulent letter.

He also said that the RGS senior management only became aware of the fraud that was committed by the junior, on 15 December 2023.

He said that the law firm Dentons

has been briefed to investigate the matter. The successful bidder for Tongaat, Vision Investments, opened criminal charges against RGS shortly after Rajahussein admitted to the fraud, but blaming a junior manager.

Ian Small-Smith, the attorney representing Vision in the criminal matter said that Vision had a statutory duty to report the fraud.

"RGS had a similar statutory duty to report this fraud to the authorities and in the event they haven't, they may be guilty of an offence under the Prevention and Combating of Corrupt Activities Act."

The Star has reached out to the legal representative of RGS and to Rajahussein and asked them to respond to the allegations.

As part of the questions we wanted to know who the junior manager is, what happened to him after the fraud was discovered, whether RGS reported the matter to the authorities and what the outcome of the Dentons investigations was.

Neither Rajahussein nor the lawyers for RGS responded to our questions despite being given sufficient time to respond.

According to a source at the IDC, which has been a major funder of Tongaat,

Vision has committed extensive funding and resources to the project and had made significant inroads into implementing the business rescue plan, together with its financial and operational partners.

Earlier this month, the *Business Report* reported that Tongaat Hulett was on the commercial mend, with three of its South African sugar mills outperforming expectations.

Its CEO, Gavin Dalgleish said: "We are seeing strong, measurable improvements across our milling operations thanks to consistent investment in infrastructure, skills and process optimisation."



R20.00

Annual Subscriber R14.22
0860 326 262

JOBURG 11/27°
Partly cloudy.
DBN 15/23° CTN 10/18°



IOL.CO.ZA THE STAR

LETTERS | P5
OPINION | PX
CROSSWORDS | P13

THE ONLY PLACE SUCCESS COMES BEFORE WORK IS IN THE DICTIONARY. | VINCE LOMBARDI



- Delivered by Email To:**
- All known Affected Persons of Tongaat Hulett Limited (in business rescue)
 - Companies and Intellectual Property Commission
- Displayed:**
- Registered office and principal place of business of the Company
- Published:**
- On the website maintained by the Company and accessible to Affected Persons
 - Availability recorded in an announcement to shareholders on the Stock Exchange News Service (SENS), released after distribution.
-

11 January 2024

NOTICE TO AFFECTED PERSONS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("Company") REGARDING THE OUTCOME OF THE VOTE ON THE BUSINESS RESCUE PLAN OF THE COMPANY.

1. Capitalised words not otherwise defined in this notice shall have the meaning ascribed to them in the Company's business rescue plan published on 29 November 2023 ("Plan").
2. We hereby give notice to all known Affected Persons of the Company of the outcome of the vote cast on the Plan including amendments proposed and approved ("Amended Plan"), that was put to a vote at the virtual meeting of Affected Persons, convened by the Business Rescue Practitioners of the Company ("BRPs"), in terms of section 151 of the Companies Act 71 of 2008, as amended ("Act"), on Wednesday 10 January 2024 which continued into Thursday 11 January 2024 ("Meeting").
3. The BRPs permitted voting by proxy at the Meeting and provided Affected Persons with proxy forms, prior to the Meeting. Due to the virtual nature of the Meeting, Creditors and any other holders of a voting interest, could also submit their votes by typing their vote in the Q&A box available for the purposes of live written submissions during the Meeting or alternatively, could submit their votes to the BRPs by email, to the Company's business rescue email address: BR@tongaat.com, during the meeting (provided they were present at the meeting).

4. For the Amended Plan to be approved and binding on the Company, it must be supported by the holders of more than 75% of the total Creditors' voting interests that were voted and the votes in support of the proposed plan must include at least 50% of the independent creditors voting interests, if any, that were voted.
5. Votes were cast by all Creditors and any other holders of a voting interest, present and voting at the meeting, and of the votes cast:
 - 5.1. 98.51% voted in favour of the Amended Plan; and
 - 5.2. 1.49% voted against the Amended Plan.
6. Of the votes cast in support of the Amended Plan by the independent Creditors with voting interests:
 - 6.1. 98.47% of the independent creditors voted in favour of the Amended Plan; and
 - 6.2. 1.53% of the independent creditors voted against the Amended Plan.
7. Based on the above, the Amended Plan has been approved with an overwhelming majority of support and has therefore been adopted.
8. Affected Persons are reminded that in terms of section 152(4) of the Companies Act 71 of 2008, a business rescue plan that has been adopted is binding on the company, and on each of the creditors of the company and every holder of the company's securities, whether or not such a person –
 - 8.1. was present at the meeting;
 - 8.2. voted in favour of adoption of the plan; or
 - 8.3. in the case of creditors, had proven their claims against the company
9. Accordingly, the approved and adopted Amended Plan is final and binding on the Company and on all Affected Persons.
10. Copies of the Amended Plan, in both clean and mark up versions, are available for download on the Tongaat website at: www.tongaat.com under the 'Business Rescue' tab.
11. Affected Persons are reminded that all notices and documents regarding the business rescue



proceedings of the Company that have been and/or will be circulated to all known Affected Persons, are/will be published and made available to all Affected Persons, on the Tongaat website at: www.tongaat.com, under the 'Business Rescue' tab.

Yours faithfully,

TJ Murgatroyd

PF van den Steen

GC Albertyn

The Joint Business Rescue Practitioners of Tongaat Hulett Limited (in business rescue)

"RM18"



5 Simmonds Street
Marshalltown
2001

Date

Contact Details

11th January 2024 Cibopstransfers25sauerstreet@standardbank.co.za

Re: Confirmation of payment processed.

We hereby confirm that we have successfully processed the following payment from account 10209864247.

Beneficiary Name	Corporate Banking Disbursement Account No 2
Beneficiary Account No	009705384
Amount	R1 510 000 000.00
Bank name	Standard Bank
Payment Reference No	Thor – Acquisitions of Claims
Date of Transaction	11 th January 2024

Should you require more information please contact Jadon Moodley on +27 11 636 8917 .

Yours faithfully

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) Authorised financial services and registered credit provider (NCRCP15)

Directors: NMC Nyembezi (Chairman) L Fuzile* (Chief Executive Officer) LL Bam PLH Cook A Daehnke* GJ Fraser-Moleketi Xueqing Guan¹ GMB Kennealy BJ Kruger Li Li¹ JH Maree NNA Matyumza ML Oduor-Otieno² ANA Peterside CON³ SK Tshabalala*

Company Secretary: K Froneman – 2023/06/12

*** Executive Director ¹ Chinese ² Kenyan ³ Nigerian**

Corporate and Investment Banking

Standard Bank Moving Forward™

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

Case No: 2025-136677

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

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

First Respondent

TREVOR JOHN MURGATROYD N.O

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O

Third Respondent

GERHARD CONRAD ALBERTYN N.O

Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Fifth Respondent

TERRIS AGRIPO (MAURITIUS)

Sixth Respondent

REMOGGO (MAURITIUS) PCC

Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Eighth Respondent

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

Ninth Respondent

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

Tenth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

JADON MOODLEY

state under oath that:

J.M

Bolt

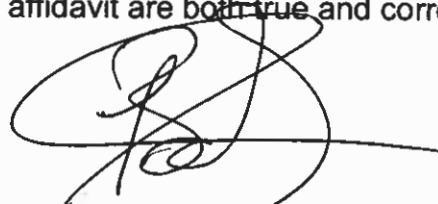
1. I am an adult male permanent employee with the title of Consultant, employed by The Standard Bank of South Africa Limited in its Corporate and Investment Banking Payments department.
2. The facts contained in this affidavit, save where expressly stated or where the context indicates otherwise, fall within my personal knowledge and are, to the best of my knowledge and belief both true and correct.
3. I have read the answering affidavit deposed to by **RUTENHURO MOYO** and confirm that the contents thereof, insofar as they relate to me, and the veracity of the proof of payment dated 11 January 2024 are both true and correct.

Dated at **SANDTON** on this the **28th** day of **AUGUST 2025**



JADON MOODLEY

THUS SIGNED AND SWORN TO at Rosebank on this 28th day of **AUGUST 2025** the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath, that the oath which he has taken in respect thereof is binding on his conscience, and that the contents of this affidavit are both true and correct.

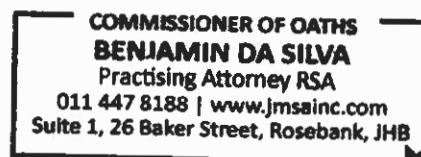


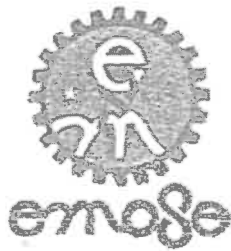
COMMISSIONER OF OATHS

FULL NAME:

DESIGNATION:

ADDRESS:





EMPRESA MOÇAMBICANA DE SEGUROS, S.A.

Maputo, 24th January 2024
Refª. Nr. 139/AES/2017

To

RGS Group Holdings Ltd

MAPUTO

Attention: Mr M. Aquil Rajahussen (Chairman)

Dear Sirs,

Tongaat Hulett Limited ("THL") (In Business Rescue): Proposed Acquisition by RGS Group Holdings Ltd ("RGS") of THL – Confirmation of Availability of Guarantees

1. We, EMOSE - EMPRESAMOÇAMBICANA DE SEGUROS, S.A. (the "Insurer"), confirm that we have been advised by RGS of its intention to acquire THL, a company incorporated in the Republic of South Africa, out of business rescue (the "Acquisition").
2. The Insurer has been requested by RGS that, in connection with the Acquisition, RGS wishes to obtain the following guarantees from the Insurer:
 - 2.1 a Credit Guarantee for an amount of up to ZAR3.6 billion (three billion and six hundred million South African Rands) in favour of the senior secured lenders of THL (the "Lender Group") guaranteeing the payment of up to ZAR3.6 billion to the Lender Group in settlement of the Lender Group's senior secured claims under the Common Terms Agreement dated on or about 2 December 2021 between *inter alia* the Company and the Lender Group and the "Finance Documents" defined therein (the "Lender Group Guarantee"); and
 - 2.2 a Credit Guarantee for an amount of up to ZAR1 billion (one billion South African Rands) in favour of Industrial Development Corporation of South Africa Limited ("IDC") guaranteeing the repayment of balance of the post-commencement loan facilities provided by IDC to THL (the "IDC PCF") in excess of ZAR1.8 billion (the "IDC Guarantee").

3. The Insurer confirms that:
- 3.1 The Insurer was contacted by RGS in regards of the Acquisition; and
- 3.2 The Insurer is available to issue the Lender Group Guarantee and the IDC Guarantee on behalf of RGS, subject to compliance with the conditions and requirements imposed by the Insurer.
4. The Insurer authorises this letter to be made available to the Lender Group, IDC, the business rescue practitioners of THL and any court in the Republic of South Africa in connection with any proceedings relating to the Acquisition and/or the business rescue proceedings of THL.
5. We trust the above meets with your approval. Should you or any of the persons referenced in paragraph 4 above have any queries in connection with this letter please contact Mr. Isaias Chembeze with the following contact details: +258 82 305 4610 or +258 84 305 4610 and isaies.chembeze@emose.co.mz.

Yours sincerely,

EMOSE - EMPRESA MOÇAMBICANA DE SEGUROS, S.A.

Janfar Abdulai

Chairman and Chief Executive Officer

0001

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

Case number: D1103/2024

In the matter between:

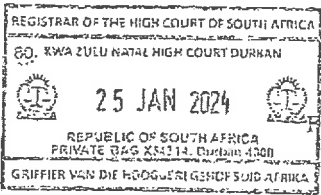
MOHINI SINGARI NAIDOO

Applicant

t/a POWERTRANS SALES AND SERVICES

and

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE)



First Respondent

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMO GGO (MAURITIUS) PCC

Sixth Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Seventh Respondent

ALMOIZNA HOLDINGS LIMITED

Eighth Respondent

THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S
BUSINESS RESCUE

Ninth Respondent

NOTICE OF MOTION

PART A

TAKE NOTICE THAT the aforesaid applicant intends making application on Friday, 2 February 2024 at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and that the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6(12).
2. To the extent necessary, granting the applicant leave to bring this application against the First Respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008 (*"the Companies Act"*).
3. That the First to Fourth Respondents be interdicted from implementing / taking any further steps relating to the implementation of the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 pending the final determination of the relief sought in Part B of this notice of motion.
4. That the costs of Part A, including the costs of two counsel, be paid by the First to Fourth Respondents as well as any other party who opposes Part A jointly and severally, the one paying the other to be absolved.
5. Further and/or alternative relief.

PART B

TAKE NOTICE THAT the aforesaid applicant intends making application to this Honourable Court on an expedited date to be arranged with the Registrar and/or the Honourable Judge President, on papers duly supplemented if necessary, for an order in the following terms:

1. That the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 be declared unlawful.
2. That the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 be set aside.

3. That the costs of Part B, including the costs of two counsel, be paid by the First to Fourth Respondents as well as any other party who opposes Part B jointly and severally, the one paying the other to be absolved.
4. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of MOHINI SINGARI NAIDOO shall be used in support of this application.

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

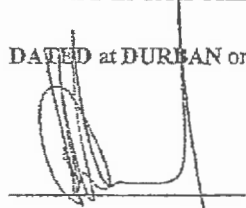
TAKE NOTICE FURTHER THAT the applicant agrees to accept service of all process filed in these proceedings by email at : devin@dmiaatt.co.za & shelin@dmiaatt.co.za & shreya@dmiaatt.co.za

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

- (a) notify the applicant's attorneys in writing by no later than 17h00 on Monday, 29 January 2024;
- (b) deliver their answering affidavits, if any, by no later than 17h00 on Wednesday, 31 January 2024;
- (c) should the above timeframes be observed, the applicant will file its replying affidavit by 17h00 on Thursday, 1 February 2024.

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 26th day of JANUARY 2024.



DMI ATTORNEYS

TO : THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Durban

AND TO: WERKSMANS ATTORNEYS

Attorneys for the First to Fourth Respondents

11th Floor, The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

Email: dandropoulos@werksmans.com / TBoswell@werksmans.com /
DHertz@werksmans.com / sgast@werksmans.com

Ref: Mr D Andropoulos / Mr T Boswell / Mr D Hertz / Ms S Gast

c/o EVH INC ATTORNEYS

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: 031 492 7971

Email: erik@evhinc.co.za

Ref: W2409/0005

AND TO: STEIN SCOP ATTORNEYS INC.

Attorneys for Fifth to ~~Eight Respondents~~ EIGHT RESPONDENT

Second Floor, Capital Hill

6 Benmore Road, Morningside, Sandton

Tel: (011) 380 8081

Mobile: 072 587 6361

Email: bradley@steinscop.com ; alexandra@steinscop.com
brookeb@steinscop.com

Ref: TER2/0004/B Scop

0006

c/o GOODRICKES ATTORNEYS

1 Nollsworth Park, Nollsworth Crescent, La Lucia Ridge

Tel: 031 301 6211

Email address: legal2@goodrickes.co.za

casper@steinscop.com;

AND TO: GARLICKE AND BOUSFIELD INCORPORATED

Attorney for the ~~Eighth Respondent~~ NINTH RESPONDENT

7 Torsvale Crescent

La Lucia Ridge Office Estate

Tel: 031 570 5408

Email: howard.stephenson@gb.co.za

Ref: H Stephenson

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

Case number: D1103/2024

In the application of:

RGS GROUP HOLDINGS LIMITED

Intervening Party

In re the matter between:

MOHINI SINGARI NAIDOO

Applicant

t/a POWERTRANS SALES AND SERVICES

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMOGGO (MAURITIUS) PCC

Sixth Respondent

**GUMA AGRI AND FOOD SECURITY LTD
(MAURITIUS)**

Seventh Respondent

ALMOIZ NA HOLDINGS LIMITED

Eighth Respondent

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

Ninth Respondent

NOTICE OF MOTION
RGS APPLICATION TO INTEREVEENE

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of RGS Group Holdings Limited ("RGS") on **Friday, 2 February 2024** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the forms and service provided for in terms of the rules and directing that this application be heard on an urgent basis in terms of Uniform Rule 6(12).
2. Granting RGS leave to intervene as an applicant in the application launched by Mohini Singari Naidoo t/a Powertrans Sales and Services under the abovementioned case number ("**the Powertrans Application**").
3. Granting the relief sought in terms of Part A of the Powertrans Application with costs including the costs of two counsel.
4. Granting RGS leave to file a supplementary affidavit in relation to Part B of the Powertrans Application in due course.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of **MOMADE AQUIL RAJAHUSSEN**, annexed hereto, will be used in support of this application.

TAKE NOTICE FURTHER THAT RGS, the intervening applicant has appointed **WHITE AND CASE INC. C/O WARRICK DE WET REDMAN ATTOTRNEYS** as its attorneys of record, at which address it will accept service of all notices and process filed in these proceedings. The applicant consents to service by email at the following addresses:

Darryl.bernstein@whitecase.com;

Viren.raja@whitecase.com;

Cameron.jeffrey@whitecase.com; and

wd2@wdattorneys.co.za

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED AT UMLANGA ON THIS 1st DAY OF FEBRUARY 2024



REGISTRAR

WHITE AND CASE INC.

Attorneys for RGS – Intervening Applicant

Katherine Towers, First Floor,

1 Park Lane, Wierda Valley,

Sandton, Johannesburg, 2196

Tel: +27 (0) 11 311 4000

Email: Darryl.Bernstein@whitecase.com

Viren.Raja@whitecase.com;

Cameron.Jeffrey@whitecase.com

Ref: D Bernstein/V Raja/C Jeffrey

C/O WARRICK DE WET REDMAN ATTOTRNEYS

Suite 14 Corporate Park,

11 Sinembe Crescent, Umhlanga, South Africa

Tel: 031.201 8820

Email: wd2@wdattorneys.co.za

TO : THE REGISTRAR OF THE ABOVE HONOURABLE COURT, DURBAN

AND TO: DMI ATTORNEYS

Attorneys for the Applicant

1st Floor

94 Florida Road, Morningside

Durban

Tel: 031 301 8623

Ref: D. Moddley

Email: devin@dmiaatt.co.za

shelin@dmiaatt.co.za

shreya@smiaatt.co.za

Service by email

AND TO: WERKSMANS ATTORNEYS

Attorneys for the First to Fourth Respondents

11th Floor, The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

Email: DAndropoulos@werksmans.com

TBoswell@werksmans.com

DHertz@werksmans.com

sgast@werksmans.com

Ref: Mr D Andropoulos / Mr T.Boswell / Mr D Hertz / Ms S Gast

C/O EVH INC ATTORNEYS

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: 031 492 7971

Email: erik@evhinc.co.za

Ref: W2409/0005

Service by email

AND TO: STEIN SCOP ATTORNEYS INC.

Attorneys for Fifth to Sixth Respondents

Second Floor, Capital Hill 6 Benmore Road,

Morningside, Sandton

Tel: (011) 380 8081

Mobile: 072 587 6361

Email: bradleyasteinscop.com;

alexandra@steinscop.com

brookeb@steinscop.com

Ref: TER2/0004/B Sc

C/O GOODRICKES ATTORNEYS

1 Nollsworth Park, Nollsworth Crescent, La Lucia Ridge

Tel: 031 301 6211

Email: legal2@goodrickes.co.za

casper@stein.scop.com

Service by email

AND TO: GARLICKE AND BOUSFIELD INCORPORATED

Attorney for the Eight Respondent

7 Torsvale Crescent

La Lucia Ridge Office Estate

Tel: 031 570 5408

Email: howard.stephenson@qb.co.za

Ref: H Stephenson

Service by email

"RM23"

WHITE & CASE SA

(Incorporated in South Africa
as White & Case Inc.)

7 February 2024

WERKSMANS ATTORNEYS
D Andropoulos/T Boswell/D Hertz/S Gast

STEIN SCOP ATTORNEYS INC.
B Stein/A Rakitzis/C Badenhorst/B Roxburgh

GARLICKE AND BOUSFIELD INCORPORATED
H Stephenson

White & Case SA
Katherine Towers, 1st Floor
1 Park Lane, Wierda Valley
Sandton, Johannesburg, 2196
Republic of South Africa
T +27 11 341 4900

Vat Registration Number:
4640267946

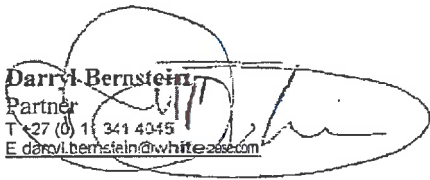
Our ref: D Bernstein/V Raja/C
Jeffrey

Dear Colleagues

**M.S. NAIDOO t/a POWERTRANS SALES AND SERVICES V TONGAATHULETT LIMITED
& OTHERS: CASE NO. D1103/2024**

1. As you are aware, we act for RGS Group Holdings Limited.
2. We refer to the notice of withdrawal dated 7 February 2024 served by DMI Attorneys earlier today, on behalf of the applicant Mohini Singari Naidoo t/a Powertrans Sales and Services, in respect of the urgent application issued under case number D1103/2024 in the Durban High Court (Urgent Application).
3. In light of the withdrawal of the Urgent Application, our client's application for leave to intervene is no longer capable of being advanced.
4. We are instructed by our client to advise you that we are not instructed to pursue any further relief against the Respondents cited in the Urgent Application, either in relation to the application as withdrawn, or independently in respect of any relief sought, whether in terms of our client's application for leave to intervene, or at all.

Yours sincerely


Darryl Bernstein
Partner
T +27 (0) 11 341 4945
E darryl.bernstein@whitecase.com

cc Devin Moodley
DMI Inc.
devin@dmiaatt.co.za

White & Case SA, Incorporated in South Africa as White & Case Inc. Registration number: 2013/220413/21
Directors: Craig Atkinson; Lloyd Chiswick; Alex Cullinan; Tiaan De Wit; Preeti Nana; Gary Feltham; Northlanipho Mchunu;
Lindani M. Mthembu; Nkomo; Bra Opono; Matthew Richards; Lulama Setele; Lionel Shawe; Sibusiso Zungu

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

Case number: D3902/2024

In the matter between:

MOHINI SINGARI NAIDOO

Applicant

t/a POWERTRANS SALES AND SERVICE

and

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE)

First Respondent

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMOGGO (MAURITIUS) PCC

Sixth Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Seventh Respondent

ALMOIZ NA HOLDINGS LIMITED

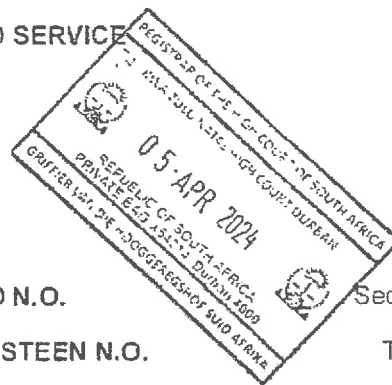
Eighth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Ninth Respondent

THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S
BUSINESS RESCUE

Tenth Respondent



NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the aforesaid applicant intends making application to this Honourable Court on the 04 day of June 2024 at 09:30am or so soon thereafter as the matter may be heard for an order in the following terms:

1. To the extent necessary, granting the applicant leave to bring this application against the First Respondent in terms of section 133(1)(b) of the Companies Act 71 of 2008.
2. Declaring the business rescue plan adopted in relation to the First Respondent at the meeting of creditors held on 11 January 2024 to be unlawful and setting it aside.
3. Directing the First to Fourth Respondents to comply, in the manner contemplated in section 7(k), with their duties and the procedures which are set out in sections 140(1)(d), 141(1) & (2)(a), 145(1)(a) and 150 to 152 of the Companies Act 71 of 2008.
4. That the costs of this application, including the costs of two counsel, be paid by the First to Fourth Respondents as well as any other party who enters notice to oppose jointly and severally, the one paying the other to be absolved.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **MOHINI SINGARI NAIDOO**, and confirmatory affidavits of Raven Naidoo and Ricky Naidoo, shall be used in support of this application.

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

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

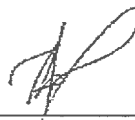
TAKE NOTICE FURTHER THAT any party who intends to oppose this application is required to:

(a) Notify the applicant's attorneys, at the abovementioned email addresses, and the Registrar of this Honourable Court of its intention to oppose by delivering a written notice to that effect within **10 days of service**.

(b) File its answering affidavit, if any, **15 days thereafter**.

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 5th day of APRIL 2024.



DMI ATTORNEYS

Applicant's Attorneys

1ST FLOOR

94 FLORIDA ROAD

0004

MORNINGSIDE

DURBAN

TEL: 031 – 301 8623

REF: D MOODLEY

EMAIL: devin@dmiaatt.co.za

shelin@dmiaatt.co.za

shreya@dmiaatt.co.za

CELL: DEVIN MOODLEY – 083 459 3311

TO : THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Durban, KwaZulu Natal

AND TO: WERKSMANS ATTORNEYS
Attorneys for the First to Fourth Respondents
11th Floor, The Central
96 Rivonia Road
Sandton

Tel: 011 535 8248

Email: dandropoulos@werksmans.com / TBoswell@werksmans.com /
DHertz@werksmans.com / sgast@werksmans.com

Ref: Mr D Andropoulos / Mr T Boswell / Mr D Hertz / Ms S Gast

c/o EVH INC ATTORNEYS

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: 031 492 7971

Email: erik@evhinc.co.za

0005

Ref: W2409/0005

AND TO: **STEIN SCOP ATTORNEYS INC.**

Attorneys for Fifth to Ninth Respondents

Second Floor, Capital Hill

6 Benmore Road, Morningside, Sandton

Tel: (011) 380 8081

Mobile: 072 587 6361

Email: bradley@steinscop.com;
brookeb@steinscop.com

alexandra@steinscop.com;

Ref: TER2/0004/B Scop

c/o GOODRICKES ATTORNEYS

1 Nollsworth Park, Nollsworth Crescent, La Lucia Ridge

Tel: 031 301 6211

Email address: legal2@goodrickes.co.za

casper@steinscop.com;

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

CASE NO.: D 3902/2024

In the matter between:

MOHINI SINGARI NAIDOO
t/a POWERTRANS SALES AND SERVICES

Applicant

and

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE)

First Respondent

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRADALBERTYN N.O.

Fourth Respondent

TERRIS AGRIPRO (MAURITIUS)

Fifth Respondent

REMOGGO (MAURITIUS) PCC

Sixth Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Seventh Respondent

ALMOIZ NA HOLDINGS LIMITED

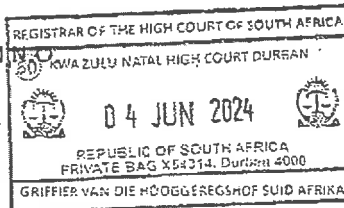
Eighth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Ninth Respondent

THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S
BUSINESS RESCUE

Tenth Respondent



NOTICE IN TERMS OF RULE 35(12)
FIFTH TO NINTH RESPONDENTS

BE PLEASED TO TAKE NOTICE THAT the aforesaid applicant requires the fifth to ninth respondents ("the Vision Parties") to produce for inspection the following documents referred to in their answering affidavit:

1. The agreement concluded between the Vision Parties and the Lender Group in terms of which inter alia the Vision Parties have / are to acquire the Lender Group's claims and security in the business rescue of the first respondent ("the **Acquisition Agreement**").
2. All previous versions of the Acquisition Agreement that were concluded between the Vision Parties and / or the Terris Parties and the Lender Group.
3. All documents regarding the deposit paid by the Vision Parties (or any of its members) to the Lender Group (or any of its members) in terms of the Acquisition Agreement, including but not limited to bank statements, confirmation of transfer of funds, emails and/or correspondence in this regard.
4. All documents regarding any further payments made by the Vision Parties (or any of its members) to the Lender Group (or any of its members) in terms of the Acquisition Agreement (i.e. other than and in addition to the deposit referred to in the preceding paragraph), including but not limited to bank statements, confirmations of transfer of funds, emails and/or correspondence in this regard.
5. All documents provided by or on behalf of the Vision Parties and /or the Terris Parties (or any of their members) to the Lender Group (or any of its members) regarding the Vision Parties' / the Terris Parties' ability to discharge their financial obligations under the Acquisition Agreement (or any previous versions thereof) / the Vision Transactions, and/or their progress or negotiations in that regard, including but not limited to correspondence in this regard from the Standard Bank of South Africa Limited (and any of its divisions or subsidiaries).
6. All the agreements that have been prepared in order to give effect to / to implement the business rescue plan proposed by the Vision Parties and adopted at the meeting of creditors of the first respondent on 11 January 2024 ("the **Vision Plan**"), including but not limited to the subscription of shares agreement and any other transactional agreements pertaining to the Vision Plan.
7. To the extent that additional agreements have been prepared in relation to the so-called Vision Transactions, and to the extent that those agreements are not already

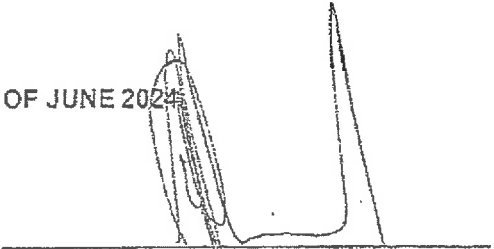
covered by the requests contained in the preceding paragraphs, all agreements that have been prepared in order to give effect to and/or implement the Vision Transactions, including but not limited to the subscription of shares agreement and any other transactional agreements pertaining to the Vision Transactions.

8. All documents relating to the regulatory filings and submissions that have been prepared and / or submitted regarding the Vision Plan, including those for purposes of regulatory compliance in South Africa and in other relevant jurisdictions.
9. All documents relating to financial regulatory compliance with regard to payments made and to be made by the Vision Parties and / or the Terris Parties in relation to the Vision Plan, the Vision Transactions, and/or the Acquisition Agreement (or any previous versions thereof) including but not limited to documents pertaining to FICA, KYC and exchange control compliance.
10. All documents, agreements and correspondence between the Vision Parties and the IDC relating to:
 - 10.1. the IDC's security requirements regarding the PCF advanced by the IDC, including the IDC's "additional security requirements" as raised at the meeting of creditors of the first respondent on 11 January 2024; and
 - 10.2. the PCF advanced by the IDC, the extension of the term of such PCF and/or any financial facility to be made available by the IDC after the conclusion of the business rescue process.

BE PLEASED TO TAKE NOTICE FURTHER THAT the aforesaid respondents are required to make the above documents available for inspection in accordance with Rule 35(12) or to state on oath within 10 days whether:

- (i) They object to the production of the document or tape recording and the grounds therefor; or
- (ii) That such document is not in their possession and in such event to state its whereabouts, if known.

DATED AT DURBAN ON THIS THE 04TH DAY OF JUNE 2024



ATTORNEYS FOR THE APPLICANT

DMI ATTORNEYS

1ST FLOOR

94 FLORIDA ROAD

DURBAN

TEL: (031) 301 8623

EMAIL: devin@dmiaatt.co.za

shelin@dmiaatt.co.za

shreya@dmiaatt.co.za

bryse@dmiaatt.co.za

REF.: MR MOODLEY/SG/Powertrans

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
DURBAN

AND TO: STEIN SCOP ATTORNEYS INC.
ATTORNEYS FOR THE FIFTH TO NINTH RESPONDENTS

2nd Floor, Capital Hill

6 Benmore Road,

Morningside, Sandton

Tel: (011) 380 8081

Mobile: 072 587 6361

Email: bradley@steinscop.com

alexandra@steinscop.com

casper@steinscop.com

Ref: TER2/0004/B Scop

c/o GOODRICKS ATTORNEYS

1 Nollsworth Park, Nollsworth Crescent,

La Lucia Ridge

Tel: 031 301 6211

Email: legal2@goodrickes.co.za



TongaatHulett

Delivered by Email To:

- All known Affected Persons of Tongaat Hulett Limited (in business rescue)
- Companies and Intellectual Property Commission

Displayed:

- Registered office and principal place of business of the Company

Published:

- On the website maintained by the Company and accessible to Affected Persons
- Availability recorded in an announcement to shareholders on the Stock Exchange News Service (SENS), released after distribution.

16 August 2024

INTERIM REPORT ON THE STATUS OF THE BUSINESS RESCUE PROCEEDINGS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("COMPANY" OR "THL")

1. BACKGROUND

1.1. The business rescue plan containing the Vision Parties' proposal, to be executed through Vision Investments 155 (Pty) Ltd ("**Vision**"), was approved and adopted by an overwhelming majority of creditors on 11 January 2024 (the "**Approved BR Plan**"). The Approved BR Plan remains binding on the Company and all affected persons, and the business rescue practitioners ("**BRPs**") remain obligated to implement the Approved BR Plan.

1.2. The Approved BR Plan contained two alternative transactions:

1.2.1. The first transaction contemplated an exchange of c. R5bn of the Lender Group claims by Vision for an equity stake of 97,3% of the shares in THL, thereafter leaving a materially reduced remaining claim of R3,6bn (the "**Equity Transaction**") owing by THL. The new terms relating to the remaining R3,6bn debt were to be agreed subsequent to the Equity Transaction but prior to substantial implementation and/or the termination of the THL business rescue ("**BR**"). The terms would need to be such that THL would no longer be financially distressed so that BR could be terminated.

AsheziMnyama Hill Road, Tongaat, 4400 • P O Box 3, Tongaat, 4400, KwaZulu-Natal, South Africa
Telephone: +27 32 439 4000 Fax: +27 32 945 3333 • www.tongaathulett.com

Tip-offs anonymous - Email: Tongaath@tip-offs.com Website: www.tip-offs.com FreeCall: 0600 212 187

Tongaath Hulett Limited (in business rescue) Registration Number: 1592/500510/06

- 1.2.2. The alternative transaction, arising as a result of the failure of the Equity Transaction, contemplates the sale by THL of all its assets (including its businesses as going concerns) to Vision by way of a set off of the purchase consideration for such assets against the Lender Group Claims (the "**Asset Transaction**").
- 1.2.3. The Asset Transaction contemplated in the Approved BR Plan will result in its shares (those held by existing Shareholders) having nil value, which will practically necessitate the delisting of THL from the JSE and the shell being liquidated. The employees, Unsecured Creditors and Secured Creditors would, however, be largely unaffected by such a change arising from the Equity Transaction to the Asset Transaction.
- 1.3. The implementation of the Approved BR Plan, as with most other BR plans, is that it is an incremental process.
- 1.4. In our view the Equity Transaction would have been the most efficient way in which to implement the Approved BR Plan, resulting in a speedy termination of BR and the return to normal operations. However, shareholders (as is their right) have chosen not to allow the Equity Transaction to be implemented and to consequently retain an investment in THL.
- 1.5. In accordance with the Approved BR Plan the Asset Transaction will now be pursued, in terms of which:
 - 1.5.1. this change will not have any material impact on the operations of THL, nor (as noted above) on its employees, creditors, suppliers and customers. The implementation of the Asset Transaction will take longer to execute than the Equity Transaction would have, due to the additional structuring, and consents (including government, regulatory, and business counterparty) needed.
 - 1.5.2. whilst the shareholders will retain a 100% interest in the shares of THL, THL will dispose of all its assets in accordance with the Asset Transaction which will practically necessitate the delisting of THL from the JSE and the shell being liquidated. As a result, THL shareholders will retain 100% of a shell company, with no prospect of recovery (compared to the 2,7% ownership stake which shareholders would have retained had the Equity Transaction been approved and completed).

2. CONSIDERATIONS

- 2.1. As reflected in the Approved BR Plan, the total claims against THL, including but not limited to those of the Lender Group, (excluding post BR supplies) amounted to approximately R13bn as at 31 October 2023.
- 2.2. As previously noted, Vision has acquired the claims of the Lender Group (a loan portfolio with a book value of approximately R8.6 billion) and paid a substantial deposit.
- 2.3. As at 31 October 2022 (the nearest practicable date to the commencement of BR) the book value of all assets of THL was c.R5.9bn. BDO estimated the "fire sale realisation" (liquidation value) of THL's assets would be c.R5.1bn.
- 2.4. From the above it is apparent that after the realisation of assets there will be debt remaining of approximately R7bn. As a result, in the event of a sale of assets, there would be no surplus available to shareholders.
- 2.5. Various media reports and certain shareholder comments suggest that a break-up of the group (i.e. sale of each asset on a piecemeal basis) would result in value remaining for shareholders. For this to happen, the assets of THL would need to realise well in excess of the remaining claims of c.R13bn (i.e. US\$710m @ say R18.30:\$1), before the escalation of the claims due to the accrual of interest.
- 2.6. In light of the conditions attached to the post commencement funding provided to THL by the IDC, any piecemeal transaction was prohibited. The process of the BR culminated in the adoption of the Approved BR Plan (designed to keep the group intact and preserve the availability of funding).
- 2.7. The consequence of the shareholders' vote would result in:
 - 2.7.1. accepting a dilution of their shareholding from 100% to 2.7% by approving the Equity Transaction, or
 - 2.7.2. crystallising a R0 share value pursuant to a sale of the THL assets.

- 2.8. The quantum of shareholder dilution contemplated in the Equity Transaction was not based on relative valuations (shareholder interests were negative), but rather the result of simple mathematics. The authorised shares of THL amounted to 5 000 000 000 shares and there were 135 112 506 shares in issue. The exchange of debt for equity contemplated all of the remaining unissued authorised shares being issued in exchange for the cancellation of c. R5bn of debt. Existing shareholders would have retained their 135 112 506 shares, which as a percentage of the then issued shares (i.e. 5 000 000 000) would have equated to 2.7%.
- 2.9. Shareholders have chosen to reject the Equity Transaction. The BRPs have not been presented with any workable alternative by the shareholders, whose objectives are unclear. Regardless of whether the shareholders had done so, the BRPs are bound by statute to pursue the implementation of the Approved BR Plan, and are not in a position to consider an alternative plan in any case.
- 2.10. This does not mean that the BR and/or the Approved BR Plan are doomed to failure. All it means is that the more efficient route for the implementation of the Vision BR Plan is no longer an option, but the less efficient and more procedurally complex route of the Asset Transaction will be followed.

3. STATUS AND WAY FORWARD

- 3.1. The BRPs remain of the view that there is a reasonable prospect of a successful business rescue.
- 3.2. While more time consuming to complete, there is no reason why an Asset Transaction cannot result in a re-capitalisation of the purchasing entity (Vision or its nominee "new THL"), such that the new THL is faced with a debt level that is a manageable quantum and repositions the new THL to operate successfully post BR.
- 3.3. Relative to the Equity Transaction, the Asset Transaction may take longer to complete given the need to obtain additional consents and approvals for the transfer of contracts, licenses and permits.
- 3.4. Despite the possible lengthier implementation of the Asset Transaction (as opposed to the implementation of the Equity Transaction), the implementation of the Asset Transaction should achieve the same result in establishing a stable operating basis going forward.

- 3.5. The end result contemplated in the Asset Transaction will now be that, inter alia:
- 3.5.1. Vision acquires from THL all of its assets (and businesses as going concerns along with employees on terms at least as favourable as their current terms of employment);
 - 3.5.2. The existing shareholders of THL retain 100% of the shares in an empty THL shell company, which will be wound up;
 - 3.5.3. THL and the BRPs will continue with the implementation of all other aspects of the Approved BR Plan and the applications for the necessary consents, and approvals;
 - 3.5.4. The BR of THL will be terminated as soon as Substantial Implementation is achieved (as set out in the Approved BR Plan). See below in this regard.
- 3.6. THL, Vision and the BRPs are continuing with their interactions to satisfy the conditions on which the Approved BR Plan is contingent, aimed at ensuring the successful implementation of the plan as soon as possible.
- 3.7. The implementation of the Asset Transaction does not affect the Competition Tribunal South Africa approval already granted, which application contemplated the possibility of the Asset Transaction.

4. SUBSTANTIAL IMPLEMENTATION

- 4.1. To assist Affected Persons with an understanding of what remains to be done, we set out that which would constitute Substantial Implementation. The BRPs will only be in a position to terminate BR once Substantial Implementation is achieved or THL is no longer financially distressed.
- 4.2. In accordance with the Approved BR Plan, Substantial Implementation will be deemed to have occurred upon the following having taken place:
 - 4.2.1. the Asset Transaction(s) contemplated in the BR Plan has been concluded;

- 4.2.2. the IDC PCF which has been provided to THL has been discharged/settled or alternative arrangements are agreed with IDC;
- 4.2.3. final Distributions have been paid to Creditors and/or an acceptable mechanism put in place for the payment of any remaining Distributions to Creditors;
- 4.2.4. the SASA Escrow has been given effect to; and
- 4.2.5. all Business Rescue Costs have been paid.

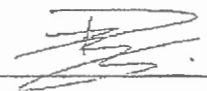
5. CLOSING REMARKS

- 5.1. It remains our view that the Company stands a reasonable prospect of being rescued successfully, as contemplated in section 128(1)(h) of the Companies Act, in a manner that will balance the rights and interests of all Affected Persons.
- 5.2. The fact that the Equity Transaction will not be pursued does not signal the end of the road for THL, but marks the beginning of the road for the Asset Transaction.
- 5.3. The Asset Transaction may merely extend the timetable for the implementation of the THL BR proceedings, but with the continued support of all employees, suppliers, creditors and stakeholders the rescue remains implementable.

Yours faithfully,



T Murgatroyd



P van den Steen



G Albertyn

The Joint Business Rescue Practitioners of Tongaat Hulett Limited (in business rescue)



Date: 05 September 2024

URGENT

Our Ref: Mr D Moodley/SG/Powertrans

Your Ref: Mr T Boswell/Ms S Gast/ag/TONG7430.15/
#10135080v1;
TER2/0004/B Scop

**TO: THE BUSINESS RESCUE PRACTITIONERS OF
TONGAAT HULETT LTD c/o WERKSMANS ATTORNEYS**

THE VISION PARTIES c/o STEIN SCOP ATTORNEYS

**ATT: Mr Trevor Boswell and Ms Simone Gast
Ms A Rakitzis Ho**

Per Email: tboswell@werksmans.com;
sgast@werksmans.com;
alexandra@steinscop.com

1st Floor

94 Florida Road
Durban, 4001

PO Box 35546
Northway, 4965

Tel: +27 31 301 8623

Email: reception@dmiaatt.co.za

Dear Mr Boswell, Ms Gast and Ms Rakitzis Ho,

RE: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We refer to the above matter and confirm that we act on behalf of RGS Group Holdings ("**RGS**").
2. We address this letter to you jointly given the uniform application of its contents to both the BRPs and the Vision Parties.
3. After the shareholders meeting of 8 August 2024, at which shareholders voted not to approve the debt-to-equity conversion contemplated in paragraph 6.1.3 of the Adopted Plan, the BRPs issued an interim report on 16 August 2024 in terms of which they state their intention to proceed with what is termed an Asset Transaction ("**the Interim Report**" and "**the Asset Transaction**").

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

4. The Asset Transaction is described by the BRPs in the Interim Report as being one of two “alternative transactions” contained in the Adopted Plan. The Asset Transaction would therefore appear to be a reference to the contents of paragraph 6.1.7 of the Adopted Plan at pages 93 – 94 thereof.
5. In terms of the Asset Transaction, and as a result of the failure of the debt-to- equity conversion, THL is apparently to sell all its assets to the Vision Parties “by way of a set off of the purchase consideration for such assets against the Lender Group Claims.” This process will culminate in the delisting and liquidation of the THL “shell”.
6. RGS has taken legal advice pursuant to the rejection of the debt-to-equity conversion by shareholders. The advice obtained is to the effect that the Adopted Plan has lapsed and that the so-called Asset Transaction is in any event incapable of lawful implementation.

Refusal to disclose the Acquisition Agreement and its current status

7. Before turning to address the above-mentioned issues, we are instructed to place on record that the failure of the debt-to-equity conversion and many of the other serious issues confronting THL’s business rescue process are directly attributable to the BRPs’ and Vision’s persistent refusal to disclose either the terms or the status of the agreement concluded between Vision and the Lender Group in relation to the acquisition by Vision of the Lender Group’s claims (“**the Acquisition**” and “**the Acquisition Agreement**”).
8. The Acquisition is described in paragraph 2.3 of the Adopted Plan as being the “key feature” thereof. The Acquisition was undeniably a pre-condition to the implementation of the debt-to-equity conversion and remains a pre-condition to the Asset Transaction. Neither of those transactions could / can proceed without the successful prior conclusion of the Acquisition.¹

¹ See for example paragraph 6.1.3.1 and the second paragraph on page 84 of the Adopted Plan in relation to the debt-to-equity conversion, and the first bullet point under paragraph 6.1.7.1 on page 93 of the Adopted Plan in relation to the Asset Transaction.

9. It is by now common knowledge that Vision has not made payment of the consideration due to the Lender Group in terms of the Acquisition Agreement and that the Acquisition has not therefore been completed. This is evident from the circular issued to shareholders in relation to the debt-to-equity conversion on 10 July 2024, which stated inter alia that the conversion would “achieve a reduction in [the] Lender Group Facility Balance to more sustainable levels” and confirmed that the Lender Group were intended to retain a claim of R3.6 billion against THL if the conversion were authorised by shareholders.
10. RGS has been informed by shareholders who voted against the debt-to-equity conversion that the unjustifiable lack of transparency on the part of the BRPs and Vision in relation to whether Vision had made payment under the Acquisition Agreement and whether Vision now in fact owns all of the Lender Group’ claims and security was central to shareholders’ rejection of the conversion and that its centrality in this regard is evident from correspondence addressed by shareholders to the BRPs prior to the shareholders meeting.
11. Given that the implementation of the Adopted Plan (i.e. both the debt-to-equity conversion and the Asset Transaction) is conditional on the prior successful implementation of the Acquisition Transaction, the Acquisition itself constitutes a condition to the Adopted Plan as contemplated in section 150(2)(c) of the Companies Act and the terms of the Acquisition Agreement should therefore have been disclosed in the Adopted Plan.
12. The status of the Acquisition Agreement remains critically relevant to both the validity and implementability of the Adopted Plan and the continued non- disclosure of both the terms and status thereof by the BRPs and Vision Parties is both unjustifiable and unlawful.

The Adopted Plan has lapsed

13. Almost eight months have elapsed since the adoption of the Vision Plan.

14. The Adopted Plan does not stipulate a date by which the Acquisition was to be completed which means that the law imposes a requirement to the effect that it (i.e. the Acquisition) had to occur within a reasonable time.
15. In their answering affidavits filed in the Powertrans application, both the BRPs and Vision Parties have admitted that the latter have not paid the purchase price due under the Acquisition Agreement.
16. The Adopted Plan itself contains numerous forecasted implementation dates which demonstrate what the BRPs and the Vision Parties themselves understood to constitute a reasonable time for the completion of the Acquisition and subsequent implementation of the plan:
 - 16.1. The projected income statement and balance sheet provided in the Plan both assume that the Vision Transactions (i.e. the Acquisition Agreement and the debt-to-equity conversion) would be completed on 1 April 2024.²
 - 16.2. The BRPs expected “to conclude binding terms of agreement with the Vision Parties (including any agreements with the IDC) during January 2024...”³
 - 16.3. The BRPs, THL management, and the Vision Parties intended “to complete the Vision Transactions...as time efficiently as possible” and to this end provided a forecast implementation timetable which set out the following timeframes:⁴
 - 16.3.1. Definitive transaction agreements were to be signed in January 2024 including the subscription agreement, shareholder loan agreements for residual debt, and any other agreements;
 - 16.3.2. A SENS announcement detailing the transactions was to be sent the next business day after signing;

² Adopted Plan at paragraphs 14.1.1 and 14.1.2.

³ Adopted Plan at paragraph 6.1.6.3.

⁴ Adopted Plan pages 90 - 92.

- 16.3.3. A JSE circular and dispensations submissions to the JSE were to occur “around end-January 2024”;
 - 16.3.4. Approval of the JSE circular (noting dispensations may be required) was expected around end-February 2024;
 - 16.3.5. A JSE circular regarding distribution to shareholders was expected “around early March 2024”;
 - 16.3.6. A general meeting of shareholders to vote on the transaction (if required) was expected “around early March 2024”;
 - 16.3.7. The announcement of the outcome of the vote held at the general meeting of shareholders was expected the same or next business day.
- 17. In fact, the shareholders meeting at which the debt-to-equity conversion was tabled for approval only occurred on 8 August 2024, seven months after the Vision Plan had been adopted and five months later than the date contained in the forecast timetable provided in the Adopted Plan. The shareholders then voted to reject the debt-to-equity conversion.
 - 18. The legal advice obtained by RGS is to the effect that the Adopted Plan has therefore lapsed on grounds that it has proven incapable of implementation within a reasonable time (i.e. because (i) Vision has failed to raise the funds necessary to discharge the purchase consideration due under the Acquisition Agreement and take ownership of the Lender Group’s claims and security, and (ii) the shareholders rejected the debt-to-equity conversion).
 - 19. In terms of the Interim Report the BRPs informed affected persons that they would now proceed with the Asset Transaction which they describe as “less efficient and more procedurally complex” and stated that this would “take longer to execute” than the debt-to-equity conversion would have.

20. Neither the BRPs nor the Vision Parties have provided any indication regarding the expected timeframe for the execution and implementation of the Asset Transaction.
21. It should be recalled that the BRPs first informed affected persons of the conclusion of the Acquisition Agreement in a SENS announcement published on 9 November 2023. This announcement confirmed prior media reports that the Vision Parties and the Lender Group had entered into the Acquisition Agreement.
22. The BRPs moreover recorded the circumstances surrounding the conclusion of the Acquisition Agreement at pages 43 – 44 of the first version of the Vision Plan (dated 29 November 2023) as follows:

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

23. Although the BRPs and Vision Parties have at all times and despite repeated requests refused to disclose the Acquisition Agreement, a copy of a previous version thereof dated 20 November 2023 was attached to papers filed in the SASA litigation during December 2023. A copy of that agreement is for ease of reference annexed hereto marked “A”.
24. In terms of clauses 6.2 and 6.4 of the aforesaid version of the Acquisition Agreement, Vision was required to make payment of the consideration due thereunder by noon on 6 December 2023 failing which the agreement would terminate.

25. Since both the BRPs and Vision Parties have confirmed that the latter have to date still not paid the purchase price due under the Acquisition Agreement it is evident that that agreement has lapsed due to default of payment.
26. At best and even if successive new Acquisition Agreements have been concluded to provide Vision with more time to raise the purchase price, the Vision Parties remain in materially the same position now as they were when the conclusion of the Acquisition Agreement was formally announced in the SENS of 9 November 2024 (i.e. an agreement is in place but Vision has not discharged the purchase price and has therefore not taken transfer of the Lender Group's claims and security).
27. All of the above considerations serve to demonstrate that the Adopted Plan has lapsed and that it is not open to the BRPs to embark on an open-ended new process in relation to the so-called Asset Transaction.

The purported alternative transaction

28. The alternative Asset Transaction is in any event incapable of lawful implementation in its current form. It does not constitute a valid alternative business rescue plan (i.e. alternative to the debt-to-equity conversion) since it quite plainly does not comply with the requirements prescribed by section 150 of the Companies Act in relation to the minimum information that must be disclosed in a business rescue plan.
29. The proposals, assumptions, and conditions contained in the Adopted Plan only address the debt-to-equity conversion and the projected financial information contained therein is premised on the successful implementation of that conversion alone.
30. By contrast, a mere page and a half of the Adopted Plan is devoted to providing a vague description of the Asset Transaction (from page 93 – 94 thereof), which description does not extend to providing the mandatory minimum information contemplated in section 150 of the Companies Act. The Adopted Plan is silent

regarding the assumptions, conditions, and financial projections on which the Asset Transaction is premised.

31. It is undeniable that the assumptions, conditions, and financial projections contained in the Adopted Plan in relation to the debt-to-equity conversion do not in any way apply to the Asset Transaction. Notably, no mention is made of the significant tax and transactional liabilities that the Asset Transaction will attract.
32. The BRPs appear to acknowledge these undisclosed issues in the Interim Report where they refer to the Asset Transaction as being “more procedurally complex” and recognise inter alia “the need to obtain additional consents and approvals for the transfer of contracts, licences and permits.”
33. The Asset Transaction cannot lawfully be progressed in the absence of full compliance with section 150 of the Companies Act, and the information prescribed in that section must therefore be disclosed to affected persons.

Conclusion

34. The delays in implementing the Adopted Plan and the failure of the debt-to-equity conversion are the direct result of the Vision Parties’ failure to consummate the Acquisition Agreement by remaining in default of payment of the purchase price due thereunder more than 10 months after the conclusion of that agreement.
35. This moreover demonstrates the fact that the Acquisition Agreement is a condition precedent to the implementation of the Adopted Plan (i.e. neither the debt-to-equity conversion nor the Asset Transaction are capable of implementation without the prior acquisition by the Vision Parties of the Lender Group’s claims and security).
36. The contentions previously advanced by both the BRPs and the Vision Parties to the effect that the Adopted Plan remains valid and binding simply because creditors voted to adopt it are moreover clearly unsustainable.

37. The Vision Plan can only remain valid and binding if the Acquisition has been successfully concluded and all the Lender Group's claims and security have been transferred to Vision.
38. Given the existential nature of the proposed Asset Transaction (i.e. the transfer of all THL's assets to a company nominated by Vision followed by the delisting and liquidation of THL), confirmation of the fact that Vision has made payment under the Acquisition Agreement and taken transfer of all the Lender Group's security and claims is now more relevant than ever.
39. This is especially so because Vision proposes to discharge the purchase consideration due for the acquisition of THL's assets in terms of the Asset Transaction by setting the purchase consideration off from the Lender Group's claims and security.
40. If Vision does not own all the Lender Group's claims and security such set off would clearly be impossible and the BRPs must therefore bear knowledge of the status of the Acquisition (i.e. the BRPs cannot possibly accept payment for all of THL's assets by way of the proposed set off if they have not verified that Vision have acquired all the Lender Group's claims and security).
41. Affected persons have a clear right to the disclosure of the Acquisition Agreement and confirmation of whether Vision has (i) paid the full purchase price due thereunder, and (ii) taken unencumbered and unqualified ownership of all of the Lender Group's claims and security.
42. We are thus instructed to demand, as we hereby do, that the BRPs and Vision Parties provide the following by **no later than close of business on Tuesday, 10 September 2024**:

42.1. A copy of the Acquisition Agreement;

42.2. Copies of any and all further agreements concluded in relation to the acquisition by the Vision Parties of the Lender Group's claims and security, including but not limited to any agreements which in effect:

42.2.1. qualify or encumber the aforesaid acquisition; or

42.2.2. impose obligations on the Vision Parties to sell or otherwise encumber THL assets after the business rescue process has been concluded.

42.3. Confirmation of whether the Vision Parties have discharged the purchase price due under the Acquisition Agreement and, if not, the rand value of any deposit or partial payment that has been made.

43. Should you refuse to provide the aforesaid information by close of business on Tuesday, 10 September 2024 we hold instructions to launch an urgent application to compel the disclosure thereof forthwith.

Yours faithfully,


D MOODLEY

DMI Attorneys

Copies to: **The Lender Group**
c/o The Lender Group Facility Agent
Standard Bank of South Africa
Corporate and Investment Banking Division
Mr Venashan Seerangam
Email: AgencySBSA@standardbank.co.za

The Industrial Development Corporation of South Africa
c/o Mr Haroon Laher
Faskens
Email: hlaher@fasken.com

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

"A"

EXECUTION VERSION

TRANSFER CERTIFICATE

To: **THE STANDARD BANK OF SOUTH AFRICA LIMITED** (acting through its Corporate and Investment Banking division), as facility agent
(the "Facility Agent")

From: **ABSA BANK LIMITED** ("Absa")
THE STANDARD BANK OF SOUTH AFRICA LIMITED (acting through its Corporate and Investment Banking division) ("SBSA")
FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank division) ("RMB")
INVESTEC BANK LIMITED (acting through its Corporate and Institutional Banking division)
INVESTEC BANK LIMITED (acting through its Investment Banking Division: Corporate Solutions)
NEDBANK LIMITED ("Nedbank")
THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA
SANLAM LIFE INSURANCE LIMITED (acting through its Sanlam Specialised Finance division)
SANLAM INVESTMENT MANAGEMENT PROPRIETARY LIMITED (acting on behalf of its third party clients)
SANLAM LIFE INSURANCE LIMITED (acting through its Sanlam Investment Management division)
SANLAM SPECIALISED FINANCE PROPRIETARY LIMITED
MOMENTUM METROPOLITAN LIFE LIMITED
ASHBURTON FUND MANAGERS PROPRIETARY LIMITED (acting for and on behalf of its clients)
(collectively, the "Existing Lenders" and each an "Existing Lender" as the context may require)

And from: **VISION INVESTMENTS 155 PROPRIETARY LIMITED**
(the "New Lender", and together with the Existing Lenders and the Facility Agent, collectively, the "Parties" and each a "Party" as the context may require)

20 November 2023

Dear Sirs,

TONGAAT HULETT LIMITED Common Terms Agreement, dated on or about 2 December 2021 (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate and:
 - 1.1. "Consideration" shall bear the meaning ascribed thereto in clause 6.1;
 - 1.2. "Facility Agent Account" means the following bank account of the Facility Agent:

Bank:	Standard Bank
Bank address:	88 Commissioner Street, Johannesburg, 2001
Branch / SWIFT code:	00 02 05
Account name:	Corporate Banking Disbursement Account No. 2
Account number:	00 970 538 4
Reference:	Thor – Acquisition of Claims
 - 1.3. "Proportionate Share" means, in respect of each Existing Lender and as at the Transfer Date, that portion of the Consideration to which that Existing Lender is entitled in terms of clause 6.1, being such amount as set out at **Schedule 1** (*Proportionate Share*);
 - 1.4. "Senior Facility E Agreement" means the agreement titled "ZAR600 000 000 Senior Secured Borrowing Base Facility" entered into on or about 29 July 2022 between certain of the Existing Lenders, the Facility Agent and the Borrower; and
 - 1.5. "Transfer Date" means date on which the New Lender has irrevocably and unconditionally effected payment of the Consideration into the Facility Agent Account in accordance with the provisions of clause 6 and the proceeds of such payment (in an amount equal to the Consideration) stand to the credit of the Facility Agent Account.
2. **Transfer of Senior Facility Commitments and Senior Facility Outstandings: Senior Facility A, Senior Facility B, Senior Facility C and Senior Facility D**
 - 2.1. In terms of clause 24.5 (*Procedure for transfer*) of the Agreement, each Existing Lender, with effect from the Transfer Date, transfers to the New Lender, by cession and delegation:
 - 2.1.1. its Senior Facility A Commitment, Senior Facility B Commitment, Senior Facility C Commitment and Senior Facility D Commitment (as applicable); and
 - 2.1.2. all of its rights and obligations under the Finance Documents (in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender) (as applicable)).
 - 2.2. On and with effect from the Transfer Date, the New Lender:
 - 2.2.1. becomes party to the Agreement and each other relevant Finance Document as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender;

- 2.2.2. becomes party to the Intercreditor Agreement as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender;
 - 2.2.3. undertakes to perform all the obligations expressed in the Agreement, the Intercreditor Agreement and the other applicable Finance Documents to be assumed by a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender; and
 - 2.2.4. agrees that it shall be bound by all the provisions of the Agreement, the Intercreditor Agreement and other applicable Finance Documents as if it had been an original party to those Finance Documents as a Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender.
- 2.3. On and with effect from the Transfer Date and against the implementation of the transactions set out at clauses 2.1 and 2.2, each Existing Lender shall:
- 2.3.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender; and
 - 2.3.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Facility A Lender, Senior Facility B Lender, Senior Facility C Lender and Senior Facility D Lender.

3. **Senior Facility E**

- 3.1. It is recorded that, as at the date of this Transfer Certificate:
- 3.1.1. no "*Senior Facility E Outstandings*" are outstanding under the Finance Documents;
 - 3.1.2. each "*Senior Facility E Commitment*" has been irrevocably and unconditionally cancelled; and
 - 3.1.3. no "*Senior Facility E Commitment*" is capable of utilisation by any member of the South African Group.
- 3.2. On and with effect from the Transfer Date, each Existing Lender which is a "*Senior Facility E Lender*" shall:
- 3.2.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as "*Senior Facility E Lender*"; and

3.2.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as "*Senior Facility E Lender*".

3.3. Capitalised and italicised terms where used in this clause 3 herein shall bear the meanings ascribed thereto in the Senior Facility E Agreement.

4. **Senior Overdraft Facilities**

4.1. It is recorded that, as at the date of this Transfer Certificate:

4.1.1. no Senior Overdraft Facility Outstandings are outstanding under any Senior Overdraft Facility Agreement;

4.1.2. each Senior Overdraft Facility Commitment has been irrevocably and unconditionally cancelled; and

4.1.3. no Senior Overdraft Facility is capable of utilisation by any member of the South African Group.

4.2. On and with effect from the Transfer Date, each of SBSA and RMB (in its capacity as Senior Overdraft Facility Lender) shall:

4.2.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Overdraft Facility Lender; and

4.2.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Senior Overdraft Facility Lender.

5. **Transfer of Ancillary Facility Outstandings**

5.1. Each of SBSA, RMB and Nedbank (each in its capacity as an Ancillary Facility Lender), with effect from the Transfer Date, transfers to the New Lender, by cession and delegation:

5.1.1. all claims to payment and repayment of all Ancillary Facility Outstandings (save for any Ancillary Facility Outstandings under any credit card, Diners card, fleet card, corporate card or similar line made available by any such Ancillary Facility Lender to members of the South African Group); and

5.1.2. all of its rights and obligations under the Finance Documents (in its capacity as an Ancillary Facility Lender).

5.2. On and with effect from the Transfer Date the New Lender:

5.2.1. becomes party to the Agreement and each other relevant Finance Document as an Ancillary Facility Lender;

- 5.2.2. becomes party to the Intercreditor Agreement as an Ancillary Facility Lender;
 - 5.2.3. undertakes to perform all the obligations expressed in the Agreement, the Intercreditor Agreement and the other applicable Finance Documents to be assumed by an Ancillary Facility Lender; and
 - 5.2.4. agrees that it shall be bound by all the provisions of the Agreement, the Intercreditor Agreement and other applicable Finance Documents as if it had been an original party to those Finance Documents as an Ancillary Facility Lender.
- 5.3. On and with effect from the Transfer Date and against the implementation of the transactions set out at clauses 5.1 to 5.2 (inclusive), each of SBSA, RMB and Nedbank (each in its capacity as an Ancillary Facility Lender) shall:
- 5.3.1. cease to be a party to the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender; and
 - 5.3.2. shall have no further rights and obligations under the Intercreditor Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender.
- 5.4. On and with effect from the Transfer Date, Absa (in its capacity as an Ancillary Facility Lender) (the "**Excluded Ancillary Facility Lender**") shall, without derogating from its rights under the Ancillary Facility Documents concluded by it with members of the South African Group:
- 5.4.1. cease to be a party to the Intercreditor Agreement, the Common Terms Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender; and
 - 5.4.2. shall have no further rights and obligations under the Intercreditor Agreement, the Common Terms Agreement and the Finance Documents to which it is a party in its capacity as Ancillary Facility Lender,

it being recorded that the Ancillary Facilities made available by the Excluded Ancillary Facility Lender, and the Ancillary Facility Documents concluded by it with members of the South African Group, shall remain unamended and of full force and effect.

6. **Consideration and payment**

- 6.1. In consideration for the transactions set out at clauses 2 and 5, the New Lender unconditionally and irrevocably agrees to pay to the Facility Agent (for the account of each Existing Lender in its Proportionate Share) an amount equal to ZAR3 510 000 000 (three billion five hundred and ten million Rand) (the "**Consideration**").

- 6.2. The payment of the Consideration shall be made by the New Lender:
 - 6.2.1. by no later than noon South Africa Time on 6 December 2023 (the "**Required Payment Date and Time**"); and
 - 6.2.2. in cash, in immediately available funds, without withholding, set-off or deduction, into the Facility Agent Account.
- 6.3. The Facility Agent shall promptly (but in any event by no later than close of business, South African time on the date of receipt) notify the Existing Lenders and the New Lender of the proceeds of the payment contemplated in clause 6.1 being received and standing to the credit of the Facility Agent Account.
- 6.4. Should the New Lender fail to comply with its payment obligations in terms of clause 6.2.1 by the date and time specified in that clause, this Transfer Certificate shall terminate and shall be of no further force and effect and no Party shall have any claim, of whatsoever nature, against any other Party in connection with any of the transactions set out in this Transfer Certificate.

7. Information

- 7.1. The New Lender shall, promptly after becoming aware thereof, notify the Existing Lenders in writing of any committee of the Public Investment Corporation ("**PIC**") taking any decision to approve or reject the Proposed PIC Funding Transaction, which notification shall, if such approval is given, set out any conditions to which such approval may be subject. For the purposes of this clause 7.1, "**Proposed PIC Funding Transaction**" means the transaction proposed to be concluded between the New Lender and PIC in terms of which PIC shall, by no later than the Required Payment Date and Time, advance monies at least equal to ZAR2 000 000 000 (two billion Rand) to the New Lender to enable the New Lender to partially discharge the Consideration.
- 7.2. The New Lender shall, by no later than 28 November 2023, provide the Existing Lenders with evidence to their satisfaction that at least ZAR1 600 000 000 (one billion six hundred million Rand) of immediately available monies stand to the credit of a bank account maintained by the New Lender with a South African bank acceptable to the Existing Lenders.

8. Limitation of the responsibility of Existing Lenders

Without derogating from the provisions of clause 24.4 (*Limitation of responsibility of Existing Lenders*) of the Agreement:

- 8.1. the Existing Lenders make no representation or warranty and assumes no responsibility to the New Lender for:
 - 8.1.1. the legality, validity, effectiveness, adequacy or enforceability of the Financing Agreements or any other documents;

- 8.1.2. the financial condition of any Obligor, any Security Provider or any other member of the Group;
- 8.1.3. the performance and observance by any Obligor, any Security Provider and/or any other member of the Group of its obligations under the Financing Agreements or any other documents; or
- 8.1.4. the accuracy of any statements (whether written or oral) made in or in connection with any Financing Agreement or any other document,

and any representations or warranties implied by law are excluded;

8.2. the New Lender confirms to the Existing Lenders that it:

- 8.2.1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor, each Security Provider, each member of the Group and its related entities in connection with its participation in the Agreement and the other Financing Agreements and has not relied on any information provided to it by any Existing Lender in connection with any Financing Agreement; and
- 8.2.2. will continue to make its own independent appraisal of the creditworthiness of each Obligor, each Security Provider, each member of the Group and its related entities whilst any amount is or may be outstanding under the Financing Agreement or any Senior Facility Commitment or Ancillary Facility Commitment is in force; and
- 8.2.3. agrees that nothing in this Transfer Certificate or any other Financing Agreement obliges an Existing Lender to:
 - 8.2.3.1. accept a re-transfer from the New Lender of any of the rights and obligations transferred in terms of this Transfer Certificate; or
 - 8.2.3.2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor, any Security Provider or any other member of the Group of its obligations under the Financing Agreements or otherwise.

9. **Resignation of The Standard Bank of South Africa Limited as Facility Agent**

With effect from the Transfer Date:

- 9.1. The Standard Bank of South Africa Limited (as facility agent) shall, notwithstanding the provisions of clause 26.1.11.2 of the Agreement, have resigned as Facility Agent; and

- 9.2. the New Lender shall have appointed Vision Investments 155 Proprietary Limited as Facility Agent.

10. **General**

- 10.1. The physical address, email address and attention details for notices of the New Lender for the purposes of clause 33 (*Notices*) of the Agreement are set out in the Schedule.
- 10.2. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 10.3. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by South African law.

SCHEDULE 1

PROPORTIONATE SHARE

Existing Lender	Proportionate Share
The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)	ZAR1 001 311 473.58
Nedbank Limited	ZAR730 354 034.38
Absa Bank Limited	ZAR435 092 480.03
FirstRand Bank Limited (acting through its Rand Merchant Bank division)	ZAR582 307 864.93
Investec Bank Limited (acting through its Corporate and Institutional Banking division)	ZAR155 394 086.62
Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)	ZAR155 394 086.62
The Land and Agricultural Development Bank of South Africa	ZAR190 785 222.15
Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)	ZAR77 949 267.16
Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)	ZAR15 860 750.29
Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)	ZAR66 318 232.85
Sanlam Specialised Finance Proprietary Limited	ZAR24 308 092.09
Momentum Metropolitan Life Limited	ZAR46 104 517.89
Ashburton Fund Managers Proprietary Limited (acting for and on behalf of its clients)	ZAR28 819 891.39

SCHEDULE 2

Administrative Details of the New Lender

Notice details:

Physical address: 134 Beethoven Street, Waterkloof Glen, Pretoria, Gauteng, 0010

Email: rute@remoggo.com

Addressee: Rute Moyo

SIGNATURE PAGE

This Transfer Certificate is accepted by the Facility Agent.

SIGNED at Rosebank on this the 20th day of November 2023

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Kelly-Ann Myles

Capacity: Head: Agency

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

Name:

Capacity:

Who warrants his authority hereto

Transfer Certificate (Terris)
Execution Version

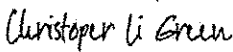
SIGNATURE PAGE

EXISTING LENDER

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

Absa Bank Limited

DocuSigned by:

C3CD8348CF68482...

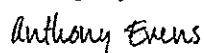
Name: Christopher Li Green

Capacity: Authorized

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

5067DBB000EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

Transfer Certificate (Terra)
Execution Version

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Rosebank on this the 19 day of November 2023

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

Martin Baumgartner

Name: Martin Baumgartner

Capacity: Head, BS&R, Risk, CIB

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

Scott Lavery

Name: Scott Lavery

Capacity: Investment Banking - Head Trade

Who warrants his authority hereto

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Johannesburg on this the 20 day of November 2023

For and on behalf of

FirstRand Bank Limited

(acting through its Rand Merchant Bank division)

Christopher Alderson

Name: Chris Alderson

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited

(acting through its Rand Merchant Bank division)



Name: Jean du Plessis

Capacity: Authorised

Who warrants his authority hereto

SIGNATURE PAGE

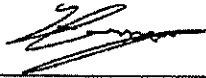
EXISTING LENDER

SIGNED at _____ on this the 20th day of November 2023

For and on behalf of

Investec Bank Limited

(acting through its Corporate and Institutional
Banking division)



Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited

(acting through its Corporate and Institutional
Banking division)



Name: Andrew Kunyamane

Capacity: Authorised Signatory

Who warrants his authority hereto

SIGNATURE PAGE

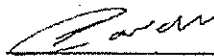
EXISTING LENDER

SIGNED at _____ on this the 20th day of November 2023

For and on behalf of

Investec Bank Limited

(acting through its Investment Banking Division,
Corporate Solutions)



Name: Kerry Caldwell
Capacity: Authorised Signatory
Who warrants his authority hereto

For and on behalf of

Investec Bank Limited

(acting through its Investment Banking Division,
Corporate Solutions)



Name: Ricardo Lupini
Capacity: Authorised Signatory
Who warrants his authority hereto

SIGNATURE PAGE

EXISTING LENDER

SIGNED at _____ on this the 20th day of November 2023

For and on behalf of

Nedbank Limited



Name: Priyan Govender
Capacity: Authorised
Who warrants his authority hereto

For and on behalf of

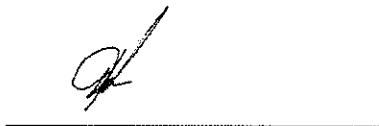
Nedbank Limited



Name: Vuyisa Sobayeni
Capacity: Authorised
Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier
Capacity: Authorised
Who warrants his authority hereto

SIGNATURE PAGE

EXISTING LENDER

SIGNED at _____ on this the 20th day of November 2023

For and on behalf of

**The Land and Agricultural Development
Bank of South Africa**

Stephen Sebueng

Stephen Sebueng
20/11/2023 13:54:41(UTC+02:00)

Name: Stephen Sebueng

Capacity: EM: Legal Services

Who warrants his authority hereto

For and on behalf of

**The Land and Agricultural Development
Bank of South Africa**

Faride Stiglingh

Faride Stiglingh
20/11/2023 14:26:41(UTC+02:00)

Name: Faride Stiglingh

Capacity: EM: Post Investment Services

Who warrants his authority hereto

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

Sanlam Life Insurance Limited

(acting through its Sanlam Specialised Finance
division)

For and on behalf of

Sanlam Life Insurance Limited

(acting through its Sanlam Specialised Finance
division)

Howard van der Merwe

Name: Howard van der Merwe
Capacity: Authorised Signatory

Who warrants his authority hereto

Name:

Capacity:

Who warrants his authority hereto

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Pretoria on this the 20th day of November 2023

For and on behalf of

Sanlam Investment Management

Proprietary Limited

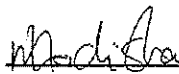
(acting on behalf of its third party clients)

For and on behalf of

Sanlam Investment Management

Proprietary Limited

(acting on behalf of its third party clients)



Name: **Mokgatla Madisha**
Capacity: **Authorised Signatory**

Who warrants his authority hereto

Name:

Capacity:

Who warrants his authority hereto

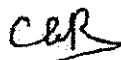
SIGNATURE PAGE

EXISTING LENDER

SIGNED at Cape Town on this the 20th day of November 2023

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)



Name: Cecilia Le Roux
Capacity: Authorised Signatory
Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)

Name:

Capacity:

Who warrants his authority hereto

SIGNATURE PAGE

EXISTING LENDER

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

**Sanlam Specialised Finance Proprietary
Limited**

For and on behalf of

**Sanlam Specialised Finance Proprietary
Limited**

Howard van der Merwe

Name: Howard van der Merwe

Capacity: Authorised Signatory

Who warrants his authority hereto

Name:

Capacity:

Who warrants his authority hereto

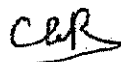
SIGNATURE PAGE

EXISTING LENDER

SIGNED at Cape Town on this the 20th day of November 2023

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)



Name: Cecilia Le Roux
Capacity: Authorised Signatory
Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment
Management division)

Name:
Capacity:
Who warrants his authority hereto

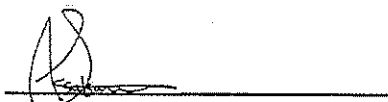
SIGNATURE PAGE

EXISTING LENDER

SIGNED at _____ on this the 20th day of November 2023

For and on behalf of

Momentum Metropolitan Life Limited



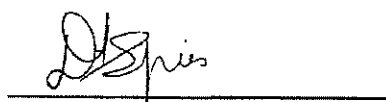
Name: Kagiso Tsatsane

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Momentum Metropolitan Life Limited



Name: Duard Spies

Capacity: Authorised Signatory

Who warrants his authority hereto

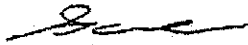
SIGNATURE PAGE

EXISTING LENDER

SIGNED at Sandton on this the 20th day of November 2023

For and on behalf of

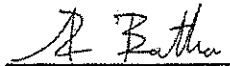
Ashburton Fund Managers Proprietary Limited
(acting for and on behalf of its clients)



Name: Santhuri Thaver
Capacity: Authorised Signatory
Who warrants his authority hereto

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting for and on behalf of its clients)



Name: Albert Botha
Capacity: Authorised Signatory
Who warrants his authority hereto

SIGNATURE PAGE

NEW LENDER

SIGNED at _____ on this the 20th day of November 2023

For and on behalf of

Vision Investments 155 Proprietary Limited

For and on behalf of

Vision Investments 155 Proprietary Limited



Name: **EUTENHURO MOYO**
Capacity: **DIRECTOR**
Who warrants his authority hereto

Name:
Capacity:
Who warrants his authority hereto



Co. Name: Stein Scop Attorneys Inc.
Registration No: 2015/306625/21
Landline: +2711 380 8080
Email: alexandra@steinscop.com
Direct: +2711 380 8087
Mobile: +2772 587 6361
Our ref: TER2/0004/ A Rakitzis Ho
Your ref: D MOODLEY

Date: 10 September 2024

DMI Attorneys

Attention: **Devindan Moodley**

Per Email: **devin@dmiaatt.co.za**
shel@dmiaatt.co.za
shra@dmiaatt.co.za

Dear Sirs,

Tongaat Hulett Limited (in business rescue)

1. We refer to your letter dated 5 September 2024 (your letter).
2. You now advise that, in addition to representing Mohini Singari Naidoo t/a Powertrans Sales And Services (Powertrans), you now also represent RGS Group Holdings Ltd (RGS). This factual circumstance alone supports our clients' and the business rescue practitioners' allegation that Powertrans has throughout the litigation launched by it against Tongaat Hulett Ltd (in business rescue) (THL) been a front for RGS to attack the business rescue plan.
3. Your letter appears to be nothing more than a further attempt by RGS, whose credibility has been seriously brought into question (particularly as a result of its withdrawal of the business rescue plan proposed by it at the eleventh hour and the fraudulent proof of payment), to scupper the implementation of the business rescue plan and derail the entire business rescue process to advance its own commercial interests.
4. We are instructed that, for reasons that have been fully ventilated in the affidavits filed by our clients in the Powertrans litigation, our clients deny that:
 - 4.1 the adopted business rescue plan (the BR Plan) has lapsed; or
 - 4.2 the asset transaction is incapable of lawful implementation.

Second Floor, Capital Hill, 1111 Main Road, Morningside, Sandton, Gauteng, 2057, South Africa

Directors: G Stein; B Smit; van der Weele; A Rakitzis Ho; S Buckas and C Badenhorst | Consultant: A Berman
Senior Associates: B Roughe; J Muller and L Grobler | Associates: B Badenhorst; A Maswoda; C Stuchan and J Erasmus
Chief Operating Officer: Y de Waard

BGI | GLOBAL

5. The commercial terms of the transaction between our clients and the Lender Group remain confidential. Those commercial terms are not a key feature of the BR Plan and are not information that ought to have been disclosed in the BR Plan.
6. The substantial implementation of the BR Plan is not dependant on further commercial arrangements between the Lender Group and Vision. Substantial implementation can be achieved in the current circumstances.
7. There has been significant progress in the implementation of the BR Plan, which plan remains valid and binding, and our clients have, and will continue, to fully cooperate with the business rescue practitioners to achieve substantial implementation of the BR Plan as soon as possible.
8. There is simply no merit to the allegations contained in your letter and your client has no right to the documents or information demanded. Your client's demands are hereby refused.
9. Should your client proceed with the urgent application as threatened in your letter, we are instructed that our clients will oppose those proceedings and seek punitive costs against your client. You are forewarned that, as your client is a *peregrinus* of our courts, our client will seek security for costs.
10. Our failure to deal with any allegation set out in your letter should not be construed as an acceptance or admission thereof by our clients. Our clients reserve the right to respond more fully at the appropriate time, if required.
11. All our clients' rights remain reserved.

Yours faithfully

A Rakitzis Ho
Director

Sent electronically and therefore not signed



DELIVERED BY EMAIL

DMI Attorneys
Email: devin@dmiaatt.co.za
Durban

Attention: Mr D Moodley

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: Mr D Moodley/SG/Powertrans
OUR REFERENCE: Mr D Hertz / Mr T Boswell / Mrs S Gast / tjb/TONG7430.15/#10399401v1
DIRECT PHONE: +27 11 535 8283 / +27 11 535 8459 / +27 11 535 8131
EMAIL ADDRESS: dhertz@werksmans.com/tboswell@werksmans.com / sgast@werksmans.com

10 September 2024

Dear Sirs

**TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) | RGS GROUP HOLDINGS | MOHINI SINGARI
NAIDOO T/A POWERTRANS SALES & SERVICES**

- 1 We refer to your letter dated 5 September 2024 ("your letter").
- 2 We note that -
 - 2.1 you have now formally placed your offices on record for RGS Group Holdings (RGS);
 - 2.2 your reference at the top of the first page of your letter is "Mr D Moodley/SG/Powertrans"; and
 - 2.3 the subject line of your email under cover of which your letter was sent is "Mohini Singari Naidoo t/a Powertrans Sales & Services / Tongaat Hulett Limited (in business rescue) and Others".
- 3 The overwhelming inference to be drawn from the above is that RGS has, at all times, been the *eminentia grise* of the litigation proceedings ("the Powertrans application") instituted by Mohini Singari Naidoo t/a Powertrans Sales and Services ("Powertrans"), and that such litigation is indeed being funded and controlled by RGS, with Powertrans merely acting as a nominal party. For the purposes of this letter, we refer to Powertrans and RGS collectively as "your clients".
- 4 Our failure to address any assertion or allegation in your letter should not be construed as an admission as to the correctness of any unanswered assertion or allegation, nor as a waiver of our clients' rights to respond thereto more fully in due course (should it become necessary to do so), which rights are, and remain, fully reserved.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Artairo K Badal T Beta JD Behr AR Berman P Bhagatjee NMN Bhengu
AL Bilaty RE Bonnet TJ Boswell W Brown PF Burger HLE Chang PG Cleland JS Cigete PPJ Coelzer C Cole-Morgan J Darling R Drimen KI Fyfe S Gast D Gower JA Gobetz
R Gookin A Guvaza GF Griesel NA Hashwayo J Hollesen MGH Honball BB Hutz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmayer A Kenny
NK Kgatle R Kilbrán N Kirby HA Kotze S Krige CJ Latha H Laskov P Le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe SS Mbasa PK Mbasa DD Magdson
MPC Mahaka JE Mardon PD Mashilane JE Meiring H Michael SM Moerane R Molise C Morille PM Mascho NPA Motsiri L Naidoo K Neluhani SW Ntuli BPF Olivier Z Oosthuizen
S Padayachy M Pansegrouw S Passmore D Pienaar T Potter AA Pysekowski RJ Rood K Rajah A Ramdhari B Ramnala MCF Rodriguez BR Roodman W Rosenberg NL Scott
TA Sibida FT Sidhahakshava LK Silberman S Sinden DE Singh JA Smyt BM Sono CI Stevens PD Steyn J Stockwell DH Swart FW Tindle SA Tom JJ Truter KJ Trudgson
DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Valsidis RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Wilans
E Wood BW Workman-Davies Consultants DH Rabin DG Williams

JOHANNESBURG • CAPE TOWN • STELLENBOSCH



- 5 Save as set out below, we have been instructed not to entertain the ongoing interrogatories contained in correspondence addressed by your clients, your clients' erstwhile attorneys or yourselves on behalf of your client, which failure should not be construed as a waiver of our clients' rights to do so in due course should the need arise, which rights are both in this respect, and generally, fully reserved.
- 6 **Ad paragraph 6 and 9 of your letter**
- 6.1 Our clients dispute that -
- 6.1.1 the Plan as approved and adopted by affected persons on 11 January 2024 ("the Plan") has "lapsed";
- 6.1.2 the "Asset Transaction" is incapable of lawful implementation; and
- 6.1.3 it is "common knowledge" that Vision has not made payment to the Lender Group.
- 6.2 The Plan, as approved and adopted, remains binding on THL, its creditors and shareholders in terms of section 152(4) of the Companies Act 71 of 2008 (as amended) ("the Companies Act"), and is being implemented.
- 6.3 Similarly, a binding agreement between the Lender Group and Vision is in place. To the best of the BRPs' knowledge, Vision has, and continues, to perform under it.
- 6.4 To date, Vision has made partial payment in respect of the Acquisition. In this regard -
- 6.4.1 Vision paid a deposit of R1.51 billion on or about 9 or 10 January 2024. This has been widely publicised;
- 6.4.2 the BRPs informed affected persons, at the meeting to vote on the adoption of the Plan on 10 January 2024, that Vision had already paid a substantial deposit to the Lender Group, which was sufficient to permit the debt-to-equity conversion provided for in the Plan, to proceed; and
- 6.4.3 the BRPs also communicated that they had received verbal confirmation from Standard Bank that the content of the Standard Bank letter dated 20 December 2023 applied to the Plan presented to the creditors at the meeting convened for 10 January 2024. This is dealt with in our clients' answering affidavit in the Powertrans application.
- 6.5 The BRPs have since been advised by both Vision and the Lender Group that -
- 6.5.1 Vision has acquired the Lender Group claims; and
- 6.5.2 the balance of the purchase price – being R2 billion – has not yet fallen due for payment and must be paid before 31 December 2024.
- 6.6 The BRPs are not aware of any breach by Vision of the terms of the Acquisition Agreement, including but not limited to, any failure by Vision to timeously meet any of their payment obligations.



7 Ad paragraphs 7 and 10 of your letter

- 7.1 The BRPs deny that they have refused to disclose the terms or status of the Acquisition Agreement, or that they have acted with a lack of transparency.
- 7.2 On 9 July 2024, we provided your offices with an affidavit deposed to by Mr Gerhard Albertyn in terms of Rule 35(12)(a)(iii). That affidavit records that the Third Acquisition Agreement, to which our clients are not party (as demanded in paragraph 42 of your letter) is not in our clients' possession or under their control.
- 7.3 Our clients cannot disclose documents that they do not have. Nor can they simply disregard the claims to confidentiality made by Vision and the Lender Group and disclose information over which such claims are made.
- 7.4 We have, however, addressed correspondence on our clients' instructions to the Lender Group and Vision insisting that the Third Acquisition Agreement be furnished to BRPs for dissemination to, *inter alia*, affected persons. As at the time of despatching this letter, the third Acquisition Agreement has not yet been received by our client.

8 Ad paragraphs 8, 11 and 12 of your letter

Our clients dispute the content of these paragraphs. There is nothing contained in your letter to support the untenable conclusion reached in paragraphs 11 and 12 thereof.

9 Ad paragraphs 13 to 27 of your letter

- 9.1 The high-level forecast timetable for implementation referred to in section 6.1.6.3 of the Plan was precisely that. As already stated in our clients' answering affidavit in the Powertrans application, -
- 9.1.1 the THL business rescue process and Vision transaction are unique both in terms of the structure thereof as well as complexity. These factors have contributed towards an extension of the forecasted time frames for completion of the Vision transaction; and
- 9.1.2 the BRPs have, over the past months, engaged extensively with THL, the JSE, the competition regulatory authorities, THL's sponsors, THL's advisors, Vision's advisors as well as multiple regulators in order to progress the Vision transaction, which process is ongoing.
- 9.2 As regards paragraph 20 of your letter, the BRPs and THL will continue to communicate with affected persons and shareholders in accordance with their statutory and regulatory obligations as prescribed in, *inter alia*, the Companies Act and the JSE Listings Requirements.
- 9.3 Your clients inexplicably refer to an agreement which has lapsed and has, to your clients' knowledge, been superseded with the Third Acquisition Agreement. The Third Acquisition Agreement was concluded between the Lender Group and Vision before the section 151 meeting. As already advised in our clients' and Vision's answering affidavits in the Powertrans application, the terms of the Third Acquisition Agreement have no bearing on the Plan.



10 Ad paragraphs 28 to 33 of your letter

- 10.1 The contents of these paragraphs, notwithstanding what is stated in paragraph 31 of your letter, are denied. The conclusion drawn by you in paragraph 32 of your letter is similarly denied.
- 10.2 With regard to paragraph 32 of your letter, it is clear from the Plan that the business (ie all its assets) of THL would be sold as a going concern. As a result, THL will become a dormant shell with no operations and/or assets. Forecasts for such a scenario would be meaningless as there would no longer be any business in THL and it would no longer have any assets.
- 10.3 Section 150 of the Companies Act has been complied with in the Plan, as has been demonstrated in both Powertrans applications.

11 Ad paragraphs 34 to 43 of your letter

- 11.1 The conclusions set out in paragraphs 34 to 41 of your letter are denied.
- 11.2 Any application brought by your clients against our clients to compel our clients to deliver a copy of the Acquisition Agreements, or any of the other documents identified in paragraph 42.2 of your letter, is doomed to failure since, to your clients' knowledge, such documents are not in the possession of our clients or under their control. Should your clients nevertheless proceed with the application threatened in paragraph 43 of your letter, our clients will seek punitive costs against your client and yourselves.
- 11.3 Nevertheless, as set out in paragraph 7.4 above, we have called upon the Lender Group and Vision to furnish a copy of the Third Acquisition Agreement for dissemination to, *inter alia*, affected persons. We tender to provide it to your offices, on receipt.

Yours faithfully

Werksmans Inc

From: Trevor Boswell <TBoswell@werksmans.com>

Date: Wednesday, 09 October 2024 at 13:52

To: Shelin Gathiram <shelin@dmatt.co.za>

Cc: "erik@evhinc.co.za" <erik@evhinc.co.za>, "legal2@goodrickes.co.za" <legal2@goodrickes.co.za>, "shreya@dmatt.co.za" <shreya@dmatt.co.za>, "alexandra@steinscop.com" <alexandra@steinscop.com>, Danny Andropoulos <dandropoulos@werksmans.com>, David Hertz <DHertz@werksmans.com>, Devindran Moodley <devin@dmatt.co.za>, Bradley Scop <bradley@steinscop.com>, Jemma Muller <jemma@steinscop.com>, Casper Badenhorst <Casper@steinscop.com>, Simone Gast <sgast@werksmans.com>

Subject: RE: URGENT: RGS // Tongaat Hulett Limited (in business rescue) [WERK-LITIGATION.FID694177]

Dear Sir / Madam

- 1 We refer to your email below.
- 2 The email under cover of which your letter dated 2 October 2024 ("**your letter**") was received fails to indicate that your letter was in fact sent to the Lender Group.
- 3 As is now common cause, our clients are not in possession of the majority of the information and documents referenced in your letter.
- 4 The demands in your letter ("**the demands**") have been directed to the attorneys representing both Vision and the Lender Group. We have called for a response to our requests within the coming days. The nature of such response will inform both the timing and our ability to respond substantively to the demands.
- 5 Your assertion that the matters traversed in your letter are required to be dealt with on an urgent basis, are belied by the fact that your requests for information and documents have been reiterated over an extensive period and the factual position as articulated by our clients in response thereto has remained unchanged. This fact is inimical to your client's assertions of urgency.

Yours faithfully
Werksmans



Trevor Boswell

Director

T +27 11 535 8459 F +27 11 535 8659 E tboswell@werksmans.com

The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196
Private Bag 10015, Sandton, 2146, South Africa

T +27 11 535 8000 F +27 11 535 8600 W www.werksmans.com

DELIVERED BY EMAIL

DMI Attorneys
Email: devin@dmiaatt.co.za
Durban

Attention: Mr D Moodley

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: Mr D Moodley/SG/Powertrans
OUR REFERENCE: Mr D Hertz/Mr T Boswell/Ms S Gast/cjf/TONG7430.17/#104262v11
DIRECT PHONE: +27 11 535 8283/+27 11 535 8459/+27 11 535 8131
EMAIL ADDRESS: dhertz@werksmans.com/tboswell@werksmans.com / sgast@werksmans.com

16 October 2024

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") | RGS GROUP HOLDINGS | MOHINI SINGARI NAIDOO T/A POWERTRANS SALES & SERVICES

- 1 We refer to your letter dated 2 October 2024 ("**your letter**"), and your further correspondence traversing the same subject matter, addressed subsequent thereto.
- 2 Our failure to address any assertion or allegation in your letter or in your subsequent correspondence should not be construed as an admission as to the correctness of any unanswered assertion or allegation, or as a waiver of the BRPs' ("**our clients**") rights to respond thereto more fully in due course (should it become necessary to do so), which rights are, and remain, fully reserved.
- 3 The matters once again traversed in your letter have previously been raised by you in one or both of -
 - 3.1 Powertrans' Rule 35(12) Notice dated 4 June 2024, which was responded to in our letter dated 10 July 2024, as read with Mr Gerhard Albertyn's affidavit dated 9 July 2024;
 - 3.2 your letter dated 5 September 2024 ("**your 5 September letter**"), which was addressed in our response dated 10 September 2024; and
 - 3.3 RGS's offer letter dated 17 September 2024 ("**the offer letter**"), which was addressed by our clients in their response dated 18 September 2024 ("**the offer response letter**").
- 4 The issues raised in your letter have been substantively addressed in prior correspondence and, in some respects, in affidavits in the applications instituted by Mohini Singari Naidoo t/a Powertrans

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badel T Bata JD Behr AR Berman P Bhagattjee NMN Bhengu AL Bilatyl RE Bonnet TJ Boswell W Brown HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gest D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollisen MGH Honiball BB Holz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Kiloran N Kirby HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashafane JE Melring H Michael SM Moerane R Moltse C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni BW Ntuli BPF Olivier Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdthin B Rammala MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Willans E Wood BW Workman-Davies Consultants DH Rabin DG Williams

Sales and Services ("**Powertrans**"). This reinforces the cogency of the assertions in paragraph 3 of our letter dated 10 September 2024 ("**the 10 September letter**").

5 As noted in your letter -

5.1 the Business Rescue Plan, as approved and adopted by an overwhelming majority of creditors at the section 151 meeting held on 10 and 11 January 2024 ("**the Plan**"), was published in January 2024, approximately nine months ago; and

5.2 the Special General Meeting of shareholders took place approximately two months ago (on 8 August 2024).

6 At that Special General Meeting, the shareholders of THL voted against the special resolution required to permit the rights issue associated with the debt-to-equity conversion ("**the Negative Vote**").

7 The consequence of the Negative Vote is that, in terms of the approved Business Rescue Plan, the Business Rescue Practitioners are now required to implement the (alternate) Business Rescue Plan ("**the Vision Sale of Asset transaction**"), and to facilitate the implementation thereof.

8 In circumstances where the Negative Vote occurred on 8 August 2024 (a little over two months ago), it is unreasonable, commercially untenable, and unrealistic to expect that the Vision Sale of Asset transaction should already have been implemented.

9 We are representing the BRPs in engaging with both the Lender Group and Vision on an ongoing basis to actively facilitate implementation of the Vision Sale of Asset transaction, as expeditiously as circumstances permit. The parties involved require a reasonable opportunity to negotiate, draft and conclude, what is, on any conceivable metric, a significantly complex transaction.

10 In amplification of paragraph 9 above, the Vision Sale of Asset transaction is a complex multi-jurisdictional transaction requiring consideration of, *inter alia*, the regulatory requirements and implications in each jurisdiction, tax optimisation, consideration of licencing and permit/authority requirements, required land transfers, assignments of contracts and requisite counterparty consents, employee transfers, interactions with key stakeholders (including the Lender Group, the IDC and shareholder bodies) and consideration of complex legal issues including the interplay between various items of different legislation ("**the Structural Issues**").

11 Since 8 August 2024 -

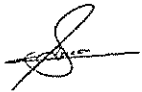
11.1 the legal, commercial, tax, regulatory and other professional teams advising the BRPs, Vision, the Lender Group, and the IDC, have been interacting, on an ongoing basis, multiple times each week since the Negative Vote occurred, to progress the Vision Sale of Asset transaction and work through and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

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

- 12 The Lender Group, Vision, the IDC and the BRPs remain committed to the implementation of the Vision Sale of Asset transaction as expeditiously as circumstances permit.
- 13 In relation to your frequent observation that Vision have not discharged the purchase price payable by them in consideration for the acquisition of the Lender Group debt and associated rights, such payment is, to your knowledge, only due and payable on 31 December 2024. Consequently, it is premature to suggest that Vision are in default of their obligations to the Lender Group in respect of that purchase.
- 14 It is also incorrect that the offer letter of 18 September 2024 contained a request that the BRPs table the RGS offer for creditors' consideration at a meeting to be convened in terms of section 151 of the Companies Act 71 of 2008 (as amended) ("**the Companies Act**"). The offer letter contains no such request.
- 15 In any event, as previously advised, our clients are precluded from proposing a new business rescue plan to creditors in terms of section 151 of the Companies Act until a stage is reached where the Plan is incapable of implementation.
- 16 Since that is not presently the case, the BRPs are obliged, in terms of section 152(5) of the Companies Act, to -
 - 16.1 attempt to satisfy any conditions on which the Plan is contingent; and
 - 16.2 implement the Plan.
- 17 The above is destructive of your assertions that the issues identified in your letter demand urgent steps from the BRPs, let alone require urgent determination by a court. Reiterating a previous demand does not detract from this fact.
- 18 Your client is forewarned that should it seek the relief foreshadowed in your letter on an urgent basis, as contended in your letter, such application will be opposed on, *inter alia*, the ground that it is not urgent, and a punitive costs order will be sought against your client.
- 19 Against that background, we respond to the substance of your letter as follows -
 - 19.1 the contents of paragraphs 1 to 6 of your letter have been dealt with in paragraphs 4 to 8 of the offer response letter. Our clients' position has not changed, nor has their contention that the Plan complies with section 150 of the Companies Act.
 - 19.2 the contents of paragraphs 11 to 25 have been dealt with in -
 - 19.2.1 paragraphs 11 to 16 of our letter addressed to you dated 10 July 2024;
 - 19.2.2 the affidavit deposed to by Mr Gerhard Albertyn dated 9 July 2024; and
 - 19.2.3 paragraphs 7.1 to 7.4, 11.2 and 11.3 of the 10 September letter;
 - 19.3 without detracting from what is set out above, and in amplification, the manner in which Vision proposes to transfer THL's assets to a company nominated by Vision ("**the purchaser**") and thereafter delist and liquidate the "shell" of THL pursuant to the Vision asset transaction will be achieved by means of, *inter alia*, the conclusion of an appropriate sale agreement taking into account, *inter alia*, all of the considerations referred to above;

- 19.4 your client consistently refers to the incorrect Acquisition Agreement, despite our clients' repeated advice that that agreement has been superseded. This has been dealt with in our clients' answering affidavit in the Powertrans application and in paragraph 9.3 of the 10 September letter; and
- 19.5 your attempt to draw inferences from the incorrect Acquisition Agreement and RGS's negotiations with the Lender Group is misguided. The content of paragraphs 21 and 24 are specifically denied.
- 20 Insofar as the demand in your email dated 14 October 2024 ("**your 14 October email**") is concerned, our failure to respond substantively to your letter at this stage is as a consequence of the fact that our clients do not have the necessary information in their possession to do so. We have written again to Vision and the Lender Group requiring them to provide our clients with further information.

Yours faithfully



Werksmans

CC Stein Scop Attorneys
ENSAfrica



"RM32"

Date: 27 March 2025

Our Ref: Mr D Moodley/SG/RGS514

Your Ref:

URGENT

MESSRS WERKMANS ATTORNEYS

ATT: TREVOR BOSWELL AND SIMONE GAST

Per Email: tboswell@werksmans.com;
sgast@werksmans.com

CC: Vision Parties, the Lender Group, and the IDC

1st Floor

94 Florida Road

Durban, 4001

PO Box 35546

Northway, 4965

Tel: +27 31 301 8623

Email: reception@dmatt.co.za

Dear Sirs,

RE: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Introduction

1. As you are aware, we act on behalf of RGS Group Holdings Limited ("**RGS**").
2. RGS's supplementary affidavit for purposes of Part B of the application launched by it in the Durban High Court on 6 November 2024 (under case number D13702/2024) ("**the Application**") is at an advanced stage of completion. We expect to be in a position to serve and file the affidavit before close of business tomorrow, Friday 28 March 2025.
3. RGS indicated in the founding affidavit that it would seek to have Part B of the Application heard on an expedited basis. In their answering affidavit, the BRPs undertook to "co-operate in ensuring Part B is heard as expeditiously as possible." We trust that the BRPs will honour this undertaking and support correspondence

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

which RGS intends to address to the Judge President in due course to request a preferential hearing allocation.

Vision's continued inability to fund the Acquisition

4. The BRPs first announced that Vision would acquire the Lender Group's claims via SENS on 9 November 2023. In terms of the first transfer certificate concluded by Vision and the Lender Group, payment by Vision was due on 6 December 2023, which payment did not occur.
5. The Vision Plan, which was adopted on 11 January 2024, assumes that the Vision Transactions, including the Acquisition, would have been completed by 1 April 2024 (see e.g. paragraphs 14.1.1.1 and 14.1.2.1 of the Plan), which also did not happen.
6. In its answering affidavit filed in the Application, Vision alleges that it paid a non-refundable deposit of R1.6 billion to the Lender Group on 11 January 2024 (i.e. by the close of the creditors meeting at which the Plan was adopted). No proof demonstrating that the deposit was paid as aforesaid has ever been provided.
7. At the creditors meeting Vision's ability to fund the Acquisition was raised numerous times by creditors, both the BRPs and Vision assured creditors that Vision had sufficient funds to implement the Plan and that the BRPs had received a letter from Standard Bank confirming this (i.e. that Vision had sufficient funds to fully implement the Plan). A copy of the Standard Bank letter is attached, marked "A".
8. Creditors voted to adopt the Vision Plan on the basis of the proof of funds ostensibly provided in terms of the Standard Bank letter. After 15 months in which Vision has failed to raise the funds necessary to either achieve the Acquisition or implement the plan, it is clear that the contents of the Standard Bank letter were untruthful.
9. RGS moreover recalls that when the BRPs announced that Kagera had been selected as the preferred Strategic Equity Partner and that Kagera would be funded by the IDC, Vision (aka Terris) publicly questioned how the IDC could provide funding

to a competing bidder. The queries raised by Vision in this regard ultimately contributed to the BRPs disqualifying Kagera and recommencing their search for a party to acquire THL out of business rescue.

10. Fifteen months after the Acquisition was announced, the prejudice which THL and all its stakeholders have suffered as a result of the continued implementation of the Vision Plan in circumstances where Vision has never had the requisite funding, is far worse than the prejudice which the aborted Kagera Plan ever brought to bear.
11. Vision's consistent failure to raise the funds necessary to complete the Acquisition has necessitated various indulgences, both from the BRPs and the Lender Group, and extensions of the payment deadline contemplated in the Acquisition Agreement, none of which were communicated to creditors.
12. In the answering affidavits filed by the BRPs and Vision in the Application during November 2024, it was alleged that there was nothing remiss about the timing of Vision's payment to complete the Acquisition and that such payment "was required to occur" by 31 December 2024. Once again, Vision failed to make payment by this extended date.
13. The fact that Vision had failed to make payment to the Lender Group by 31 December 2024 was confirmed in numerous sets of further affidavits that were filed by the BRPs and Vision during early January 2025 shortly before the hearing of Part A of the Application.
14. Both the BRPs and Vision, in terms of their aforesaid further affidavits, alleged that Vision would now make the necessary payment by a further extended deadline of 31 March 2025.
15. No explanation was provided as to why Vision failed to make payment by 31 December 2024. During the hearing of Part A of the Application, the presiding judge directly questioned counsel for Vision in relation to Vision's failures to make the

necessary payment and enquired as to when such continued defaults would, in Vision's view, entitle RGS to Part A relief.

16. In response, counsel for Vision in summary assured the Court that the delay between 31 December 2024 and 31 March 2025 was an understandable commercial delay but conceded that, should Vision fail to make payment by the latter date, there would be grounds for the type of relief sought by RGS in Part A of the Application.
17. RGS now understands that the BRPs and Standard Bank are attempting to procure funding on Vision's behalf from the IDC pursuant to an argument that if the IDC does not step in to provide funding to Vision, THL will be liquidated resulting in massive job losses and large scale damage to the KZN economy.
18. This is not in fact the case as RGS has repeatedly sent correspondence to the BRPs informing them of RGS's continued commitment to step into the breach left by the failed Vision Plan and to acquire THL out of business rescue.
19. RGS wishes to reiterate the terms of its most recent offer to the BRPs, dated 17 September 2024, to acquire THL out of business rescue. For ease of reference, a copy of RGS' letter of 17 September 2024 is attached, marked "**B**". The terms of that offer remain valid and open to acceptance by the BRPs.
20. In response to RGS's letter of 17 September 2024, the BRPs simply stated that they were unable to consider RGS' offer because the Vision Plan remained "binding" and they were thus "duty bound to continue to implement" it. A copy of the letter received from the BRPs in response to RGS's letter of 17 September 2024 is attached, marked "**C**".
21. We wish to remind you that in terms of the Companies Act, the failure of the Vision Plan due to having lapsed or due to impossibility of implementation, does not lead to the failure of the business rescue process and does not result in liquidation. The position would then be akin to one in which a business rescue plan had never been adopted. In terms of section 153 of the Act, a creditors meeting will thus have to be

convened to consider the future of the company, at which meeting any creditor may table an alternative plan for consideration. Liquidation will only result pursuant to a court order converting the business rescue into liquidation as contemplated e.g. in section 132(3)(a)(ii) of the Act.

22. Should a creditors meeting be convened after the BRPs declare the Vision Plan to have lapsed and / or failed, RGS formally confirms and undertakes to table an alternative business rescue plan for creditors' consideration. As was the case with all previous offers made by RGS, the terms of such business rescue plan will be objectively superior to the terms presently offered in terms of the failed Vision Plan and will, in particular, result in more favourable returns for both creditors and shareholders.

Conclusion

23. To this end, RGS signed a facility term sheet with Afrexim Bank on 22 January 2025 which contemplates funding of up to USD 280 million specifically for purposes of the offer set out in RGS' letter of 17 September 2024 (i.e. Annexure "B" above). A copy of the Afrexim term sheet is attached, marked "**D**".
24. The BRPs have a duty to declare that the Vision Plan has lapsed due to the non-fulfilment of the conditions adhering thereto and to accept that Vision has never had the funds necessary either to achieve the Acquisition or to implement the Plan.
25. The BRPs must now consider other viable options to ensure the success of THL's business rescue and must appreciate that liquidation is not a foregone conclusion should the Vision Plan be declared to have lapsed and / or failed.
26. The BRPs cannot, with respect, continue to support the implementation of the Vision Plan indefinitely notwithstanding Vision's continued inability to consummate the terms and conditions thereof.

27. The BRPs are therefore requested to confirm urgently:

27.1. whether Vision will fully and finally discharge the purchase price due to the Lender Group by the further extended due date of 31 March 2025;

27.2. should Vision fail to make such payment by 31 March 2025, for how much longer the BRPs will continue to entertain the Vision Plan and proceed with its implementation in the teeth of overwhelming evidence to the effect that Vision does not have access to the funding necessary to implement the Plan.

28. Should the BRPs fail to provide the above confirmations, RGS's rights to launch further interdictory proceedings against the continued implementation of the failed Vision Plan are strictly reserved. RGS moreover reserves the right to launch independent forensic investigations into the irregularities that have characterised the business rescue process and, should those investigations identify unlawful conduct, RGS will fully protect its rights by way of delictual and / or criminal claims.

Yours faithfully,

 P.P
D MOODLEY

DMI Attorneys

Copies to:

The Vision Parties

c/o Stein Scop Attorneys

Ms A Rakitzis Ho

Email: alexandra@steinscop.com

The Lender Group

c/o The Lender Group Facility Agent

Standard Bank of South Africa

Corporate and Investment Banking Division

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

Mr Venashan Seerangam

Email: AgencySBSA@standardbank.co.za; alombard@ensafrica.com

The Industrial Development Corporation of South Africa

c/o Mr Haroon Laher

Faskens

Email: hlaher@fasken.com



21 December 2023

Vision Investments 155 (Pty) Ltd
134 Beethoven Street
Waterkloof Glen
Pretoria
South Africa
0010

Dear Mr Rute Moyo,

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

As requested by the Business Rescue Practitioners of Tongaat Hulett Limited, this letter serves to confirm the following regarding the customer Vision Investments 155 (Pty) Ltd (“Vision”):

- Vision holds a Standard Bank account;
- The account has sufficient cash for Vision to execute the contemplated transaction as per the amended Vision business rescue plan dated 20 December 2023
- The account has sufficient cash to meet the proposed payment to unsecured creditors of R75 million as per the amended Vision business rescue plan dated 20 December 2023

We trust the above meets with you requirements.

This letter or your reliance on same does not give rise to any obligations or liability on the part of the Bank and/or its officials.

Yours sincerely,

[digitally executed]

Sean Wegerhoff
Executive, Advisory

21 December 2023

Date



RGS GROUP HOLDINGS LTD

17 September 2024

BY EMAIL

To: **The Joint Business Rescue Practitioners of Tongaat Hulett Ltd**

**Trevor Murgatroyd
Peter van den Steen
Gerhard Albertyn**

Dear Sirs,

Tongaat Hulett Limited (In Business Rescue): Proposed Acquisition

1. We refer to the Business Rescue Plan of Tongaat Hulett Limited (“**THL**”) adopted on 11 January 2024 (the “**THL BR Plan**”) and the related business rescue plans of THL’s subsidiaries (together with the THL BR Plan, the “**BR Plans**”) as well as to our previous letter dated 8 July 2024.
2. Subsequent to our previous letter and on 8 August 2024 shareholders voted to reject the debt-to-equity conversion that was the “key feature” of the THL BR Plan. It is evident from correspondence sent to the BRPs by shareholders prior to the shareholders’ meeting that the debt-to-equity conversion was rejected on grounds of the same concerns that RGS has consistently brought to your attention since the adoption of the THL BR Plan.
3. Chief amongst these concerns is the fact that the Vision Parties have still not paid the purchase price due by them for the acquisition of the Lender Group’s claims and security, and that the Vision Parties have thus neither acquired nor taken transfer of the Lender Group’s claims. Despite numerous requests from RGS, Powertrans, and latterly the shareholders, the Vision Parties have refused to provide any clarity in this regard and the BRPs have repeatedly stated that they do not have a copy of the acquisition agreement.
4. The significance of this lack of transparency derives from the unusual nature of the THL BR Plan in that the Vision Parties never intended to inject any capital into THL but rather undertook, once they had acquired the Lender Group’s claims and security, (i) to acquire a 97.3% shareholding in THL in exchange for a c.R4 billion reduction of the Lender Group’s former claims against THL; and, (ii) to retain the remaining c.R3.6 billion component of the Lender Group’s former claims on terms “significantly more favorable” to THL. Shareholders therefore refused to approve the debt-to-equity conversion in



RGS GROUP HOLDINGS LTD

circumstances where neither the BRPs nor the Vision Parties were willing to confirm that the latter had in fact taken ownership of the Lender Group's claims and security.

5. Following the rejection by shareholders of the debt-to-equity conversion the BRPs have issued numerous notices stating that they will now proceed with the "alternative transaction" referred to in paragraph 6.1.7 of the THL BR Plan (**"the Vision Asset Transaction"**). The Vision Asset Transaction entails the sale of all THL assets to a company to be nominated by the Vision Parties. The purchase price payable by the Vision Parties in this regard is to be set off against the Lender Group's claims and security.
6. The Vision Asset Transaction contemplated in paragraph 6.1.7 of the THL BR Plan does not, however, constitute a valid alternative business rescue plan. It does not comply with the provisions of, for example, section 150 of the Companies Act in that it does not include the mandatory statement of assumptions and conditions contemplated in section 150(2)(c) of the Act. No information is, for example, provided with regard to:
 - THL's current financial position (the financial information contained in the plan now being over 8 months old);
 - the taxes, recoupments and transactional expenses that the asset sale will attract; and,
 - the effect that the asset sale (which includes the sale of THL's businesses as going concerns) will have on the terms and conditions of employees' employment.
7. Since the debt-to-equity conversion has failed and the Vision Asset Transaction does not constitute a valid alternative business rescue plan, it will clearly be necessary to table the Vision Asset Transaction in an expanded form that complies with the requirements of *inter alia* section 150 of the Companies Act at a creditors' meeting for approval.
8. RGS Group Holdings Ltd (**"RGS"**) wishes to confirm that it remains interested in acquiring, and is willing to acquire, a controlling interest in THL on the following terms (the **"RGS Transaction"**):
 - RGS will inject **ZAR 4,451,451,350** into THL (the **"Capital Injection"**) on closing of the RGS Transaction in consideration for which RGS will acquire 90% of the issued shares in THL.
 - The Capital Injection to be used as follows:
 - ZAR 4,000,000,000 will be paid to the Senior Secured Lenders by THL in full and final settlement of their claims against THL and its subsidiaries and following such payment all security held by the Senior Secured Lenders from THL and all of its subsidiaries will be released. It should be noted that



RGS GROUP HOLDINGS LTD

the RGS Transaction does not contemplate that RGS will acquire the claims of the Senior Secured Lenders, but that RGS will fund THL for the purposes of settling the Senior Secured Lenders;

- Unsecured Creditors [other than the South African Sugar Association (“SASA”) and the Industrial Development Corporation of South Africa Limited (“IDC”)] will be settled 100% of their unsecured credit claims as follows:
 - ZAR 451,451,350 will be utilised at closing date to settle unsecured creditor claims as follows:
 - i. To pay up to the first ZAR 75,000 of each such unsecured creditor’s claim; and
 - ii. To pay up to 65 cents in the Rand of any balance of each such unsecured creditor’s claim.
 - The balance of unsecured creditors’ claims, up to 35 cents in the Rand, will be paid in instalments over a five-year period starting from the first anniversary of the closing date on an interest free basis.
- RGS will advance a subordinated shareholder loan to THL of ZAR 525,956,121 plus an amount equal to interest thereon calculated at the prime overdraft rate of First National Bank from the date of advance to the date of payment which will be used to settle the agreed compromised claim of SASA. This loan will be subordinated and only repayable to the extent THL’s assets exceed its liabilities and the IDC’s post commencement finance facility has been repaid in full.
- RGS will make available the necessary working capital facility to THL on closing of the RGS Transaction which will be used in whole or in part to settle the IDC’s post commencement financing facility.

9. All of the above payments will be made by RGS on closing of the RGS Transaction.

10. In order to finance the RGS Transaction, we propose to utilize:

- Up to USD 300,000,000 of a USD 500,000,000 Global Corporate Facility (the “**Afreximbank Facility**”) to be provided to RGS by African Export Import Bank (“**Afreximbank**”); and,
- To the extent required, RGS’ own internal cash resources.



RGS GROUP HOLDINGS LTD

11. We attach a copy of a letter addressed to RGS by Afreximbank confirming that Afreximbank is in the process of approving the Afreximbank Facility. To the extent that you wish to verify the contents of this letter you may contact the following person at Afreximbank:

Mr Humphrey Nwugo

Regional Chief Operating Officer (Southern Africa)

Email: hnnwugo@afreximbank.com

12. As additional comfort that RGS will meet its funding commitments under the RGS Transaction we have arranged for credit guarantees to be issued in favour of the Senior Secured Lenders, SASA, and the IDC by EMOSE – Empresa Moçambicana de Seguros, S.A (“EMOSE”).

13. We attach a copy of a letter addressed to RGS by EMOSE confirming its willingness to issue the credit guarantees. To the extent you wish to verify the contents of this letter you may contact the following person at EMOSE:

Mr Santos Magaia

Chief Operating Officer

Email: santos.magaia@emose.co.mz

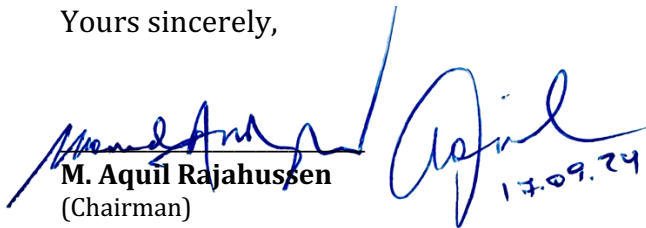
14. We believe we will be in a position to close the RGS Transaction within four (4) months of the adoption of the RGS Transaction as an approved business rescue plan.
15. As we have previously advised, we believe that significant synergies exist between the respective operations of THL and RGS and that RGS has the technical expertise to effect a permanent turnaround of THL’s business that keeps THL whole without any requirement to dispose of any parts of the THL Group.
16. RGS therefore requests that the RGS Transaction be considered by the BRPs as an alternative to the Vision Asset Transaction and that the BRPs then, in the exercise of their judgment, publish a plan that offers the best prospects of rescuing THL, offers the best return for creditors, and offers the best result for all affected persons including shareholders and employees.
17. This letter does not constitute a binding obligation on RGS and is subject to the adoption of amended business rescue plans for THL and its subsidiaries and the conclusion of definitive documentation.



RGS GROUP HOLDINGS LTD

We would welcome the opportunity to engage with you further on the proposed RGS BR Plan and look forward to your favorable response.

Yours sincerely,


M. Aquil Rajahussen
(Chairman) 17.09.24



RGS GROUP HOLDINGS LTD

RGS Group Holdings Limited

Email: aquil@rgs-holdings.com
keeghan@rgs-holdings.com

Attention: Mr A Rajahussen / Mr K Keeghan

18 September 2024

Dear Sirs

RE: PROPOSED ACQUISITION: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL"), MR TREVOR MURGATROYD N.O., MR PETER VAN DEN STEEN N.O. AND GERHARD ALBERTYN N.O. (collectively, "the BRPs")

- 1 We refer to your letter dated 17 September 2024 ("**your letter**").
- 2 We respond to your letter on the limited basis recorded below. Should it become necessary to address the remaining assertions or allegations therein (which are not admitted), our rights to do so are reserved.
- 3 The tone and content of your letter is impossible to reconcile with the content of the letter received from your attorneys (DMI Attorneys) dated 5 September 2024, which letter, threatens legal proceedings.
- 4 The Business Rescue Plan ("**the Plan**"), as approved and adopted, remains binding on THL, its creditors and shareholders in terms of section 152(4) of the Companies Act 71 of 2008 (as amended) ("**the Companies Act**"). The BRPs are duty-bound to continue to implement the Plan.
- 5 A binding agreement ("**the Acquisition Agreement**") between the Lender Group and the Vision Parties ("**Vision**") is in place. The BRPs are not aware of any breach by Vision of the terms of the Acquisition Agreement, including but not limited to, any failure by Vision to timeously meet any of their payment obligations.
- 6 The BRPs have been advised by both Vision and the Lender Group that Vision has acquired the Lender Group claims and that the balance of the purchase price has not yet fallen due for payment and must be paid before 31 December 2024.
- 7 The Plan (including the Alternate Plan referred to therein) is compliant with section 150(2) of the Companies Act.

- 8 The BR Plan does not provide for the sale of THL's businesses to a third party. In the event that the Plan fails, we will consider THL's position and next steps at that stage in discharge of our duties and responsibilities.

Yours sincerely,



TJ Murgatroyd
BUSINESS RESCUE PRACTITIONER
TONGAAT HULETT LIMITED



PF van den Steen
BUSINESS RESCUE PRACTITIONER
TONGAAT HULETT LIMITED



GC Albertyn
BUSINESS RESCUE PRACTITIONER
TONGAAT HULETT LIMITED



African Export-Import Bank
Banque Africaine D'Import-Export

USD280 MILLION INTRA-AFRICAN INVESTMENT FINANCING FACILITY TERM SHEET TO RGS GROUP HOLDINGS LTD

IMPORTANT NOTICE:

We, the African Export-Import Bank (“**Afreximbank**”), are pleased to provide you with a proposal of indicative terms in respect of the Facility (as defined below). This proposal is intended as a basis for discussions and should not be construed as a contractual offer or a binding commitment by the African Export-Import Bank to arrange or finance the Facility. Any commitment by the African Export-Import Bank shall be subject to conditions acceptable to it including but not limited to (i) satisfactory due diligence; (ii) receipt of internal credit and other relevant approvals; (iii) there being no material adverse change in respect of market conditions, the business or financial condition of the Borrower; and (iv) satisfactory documentation. Notwithstanding the above, the provisions of “Costs and Expenses” in this term sheet shall be immediately binding upon execution of this term sheet. The African Export-Import Bank will not be responsible for any losses or damages which any person suffers or incurs because of reliance on or using this term sheet. This term sheet and its contents are intended for the exclusive use of the Borrower and shall not be disclosed by the Borrower to any person other than the Borrower's affiliates and legal and financial advisors for the purposes of the proposed transaction unless the prior written consent of the African Export-Import Bank is obtained.

PARTIES

Borrower:	RGS Group Holdings Ltd (“RGS”), Mauritius
Co-Borrower:	RG Industries, SA, Mozambique
Guarantors:	Momade Aquil Rajahussen Momade Rafique Rajahussen Gulamo Momade Arif Rajahussen Gulamo Sukeina Rajahussen Gulamo Rozmin Rajahussen Gulamo Rajahussen Gulamo
Obligors:	The Borrower, Co-borrower and Guarantors
Acquisition Target:	Tongaat Hulett (South Africa)
Asset Seller:	Tongaat Hulett (South Africa)



African Export-Import Bank
Banque Africaine D'Import-Export

Lender(s):	African Export-Import Bank ("Afreximbank", the "Lender" or the "Bank")
Facility Agent and Security Trustee:	African Export-Import Bank (the "Agent" and "Trustee").
Escrow Agent:	African Export-Import Bank or any Agent acceptable to the Lender
Custodian:	African Export-Import Bank or its appointed agents (the "Custodians") The role of the Custodian shall be covered in a custodian agreement between the Lender, The Custodian and the Obligors.
Lender's Commercial/Technical/Financial Due Diligence Advisor/Consultant (LTA):	To be advised
Local Administrative Agent (LAA):	To be advised
Role of the LAA:	The LAA is expected to perform the roles below: - Provide a first demand bank guarantee in USD for 20% of the facility amount; - facilitate foreign exchange with meticaïs for remittance to the Offshore Collection Account; - report to the Agent on any potential threats to the transaction as far as the Borrower's operations are concerned and provide recommendations on action to be taken; - ensure that all local law security documents are received and perfected in accordance with local law; - ensure that all financial reports of the Borrower are prepared and sent to the Agent promptly; - keep the Local Collection Account and provide periodic statements as may be required by Afreximbank; and - any other role as may be agreed with the Agent from time to time.

A handwritten signature in blue ink, appearing to read "A. J. J.", located at the bottom right of the page.

Due Diligence:

- a. The Lender's' Financial Advisor shall independently confirm the proposed funding structure for the transaction
- b. The Lender(s) will appoint legal advisors, at its sole discretion, but at the cost of the Borrower/Purchaser to provide advice in connection with the Facility. The legal advisors so appointed shall also be retained for the documentation of the Facility;
- c. The Lender(s) may also appoint other advisors to conduct due diligence on any other issues considered relevant for its assessment of the Facility; and
- d. The due diligence shall include a review of the Sale Agreement between the Seller and the Borrower/ Purchaser, confirmation that the transaction structure will not invalidate existing regulatory requirements/ licenses, together with other checks as may be required.

THE TRANSACTION

Transaction:	The acquisition 100% shareholding in Tongaat Hulett (South Africa,) at USD300 Million and provision of working capital of USD100 Million
Funding Mix:	The funding mix for the Transaction will be maintained at: • Debt Funding: USD280 Million (not to exceed 70%) • Equity Funding: USD120 Million (not less than 30%)
Equity Resources:	Tranche A: Cash of USD90 Million (not less than 30% of Transaction amount) Tranche B: Cash of USD30 Million (not less than 30% of Transaction amount)
Acquisition Date:	The date on which the Acquirer assumes ownership of no less than 100% of the entire issued share capital Target Asset.



TERMS OF FACILITY

Facility Type:	Intra-African Investment Financing Facility
Facility Amount:	Up to USD280 Million (Two Hundred and Eighty Million United States Dollars) divided into two tranches subject to the Facility Amount: • Tranche (A): Up to USD 210 Million • Tranche (B): Up to USD 70 Million
Purpose:	The Facility Amount will be available to the Borrower to make: 1. Tranche A¹: Up to USD 210 million to support the acquisition of Tongaat Hulett Group (South Africa), as a strategic opportunity for Obligor to enhance their presence in the sugar and agriculture sector in Botswana, Mozambique, South Africa and Zimbabwe. 2. Tranche B: USD 70 million for working capital to support commercial operations of the Obligors business.
Final Maturity Date:	Tranche A: 60 months from date of first disbursement/utilization. Tranche B: 60 months from date of first disbursement/utilization. Each advance under Tranche B shall be repaid in equal quarterly instalment within 12 months. Multiple drawdowns are permitted. However, final repayment should not exceed the final maturity date which is 60 months from date of first disbursement.
Grace Period:	The first advances under Tranche A shall have a 6-month moratorium on principal only from the date of first utilisation. Interest shall be serviced during the Grace Period. Repayments shall be made in equal quarterly instalments. Final repayment should not exceed the final maturity date.



¹ Lender's debt financing amount will be based on a maximum of 70% of the asset valuation as provided by the LTA.



Drawdown:

Tranche A

The Parties (the Lender, the Borrower, the Seller and Escrow Agent) will agree on the terms of a closing memorandum detailing the transaction/drawdown mechanism:

- a. The Borrower provides proof of payment of the Equity related to the Tranche A into the Escrow Account. The Equity amount must be sufficient to meet the purchase price agreed between the Borrower and Asset Seller upon disbursement of the debt component by the Lender;
- b. The Parties agree on the terms of the Acquisition Documents and the Finance Documents (including the Pledge over the Target's Shares) which are signed and kept in escrow by the Escrow Agent;
- c. On the acquisition Date, concomitantly with the release of the Acquisition Documents and the Finance Documents (including the Share Pledge Agreement to the Lender) the Lender disburses the Facility Amount into the Escrow Account;
- d. The Escrow Agent then turns over the funds to the Asset Seller;
- e. Within a maximum of [30]² business days, the Pledge over the Shares is perfected in accordance with local laws.
- f. The Custodian takes custody of the Shares

The parties to this term sheet agree that the transaction and completion mechanism will be agreed between the Lender and the Borrower, and this clause shall be revised, in the context of the completion mechanics outlined in the SPA as well as any local legal and regulatory requirements but in event in a manner satisfactory for the Lender.

- g. The acquisition will be conditional upon:

A handwritten signature in blue ink, appearing to be "Agil".

² Subject to local counsel opinion.

- i. The carrying out of satisfactory legal and commercial due diligence in relation to the Acquisition Target;
- ii. There being no material adverse change in the position of the financial or trading position or prospects of the Acquisition Target between the date of this Term Sheet and the proposed Acquisition Date;
- iii. That no dividends are made or declared by the Acquisition Target between the date of this Term Sheet and the proposed Acquisition Date;
- iv. The net assets of the Acquisition Target not being less than those shown in the audited accounts as at 31st December 2024; and,
- v. The approval of the acquisition by the Board of the Borrower/Purchaser and the passing of a resolutions by the shareholders of the Borrower/Purchaser approving the acquisition and any related matters.

Obtaining in a form satisfactory to the Lender all regulatory/statutory approvals which are necessary in relation to the proposed acquisition of the shares and applicable regulatory licenses (including the consent or letter of no-objection of applicable regulatory authorities.

Tranche B

- a. Drawings under Tranche B shall be against invoices for raw materials and other payable.
- b. Borrower will transfer its 30% Equity under Tranche B into the Disbursement Account.
- c. Borrower then requests a disbursement of the Lenders 70% debt portion under the Facility.
- d. Payments will be made directly to the suppliers.





Repayment:

Each advance under Tranche A Facility shall be repaid over 18 equal quarterly instalments, where the first instalment shall be paid on the date falling 6 months after the end of the Grace Period. The annual repayment schedule shall be as follows:

Year	#	%
Year 1	2	11.1%
Year 2	4	22.2%
Year 3	4	22.2%
Year 4	4	22.2%
Year 5	4	22.2%
Total		100.0%

The advance under Tranche B shall be repaid over 4 equal quarterly instalments, where the first instalment shall be paid on the date falling 3 months after the disbursement date.

Sources of Repayment:

The Facility will be repaid from the following sources, amongst others:

- The Obligors operating cash flows from RG Industries, SA, Mozambique.
- Dividends and management fees due to the Obligors.
- Operating cashflows from acquired businesses and direct beneficiaries of the facility.

Transaction Security and Assurances:

The Security shall be obtained **in two stages**:

Stage 1 – at the time of disbursement

- First Demand bank guarantee for an amount of 20% of the facility amount;
- Legal Mortgage over unencumbered assets of the Obligors to be stamped for a value of 1.5x the facility amount;
- Joint and Several Personal Guarantees of the Guarantors supported by their statement of net worth;

- d) Assignment of unencumbered operating cashflows of the Obligors as well as dividends, management fees, royalties and rights under any management contracts in favour of the Obligors;
- e) Charge over Permitted Accounts;
- f) Assignment of a Global Insurance Policy to the Lender (with Lender named as 1st loss payee);
- g) Any additional security that may be required by Afreximbank.

Stage 2 – post disbursement

- h) Pledge over the acquired/issued shares (including dividends) in favour of the lender;
- i) First Ranking security over assets (legal mortgage, fixed and floating assets/debenture) acquired under the facility (including the receivables from those assets). *[This is not a day-one security but would be put in place after the relevant disbursement for the purchase of the assets to be pledged].*

The Borrower undertakes to effect the security over the assets to be acquired with the facility proceeds within a maximum period of one month post the utilization date.

Capital Repayment:

The Borrower shall repay the principal amount under Facility in full no later than the Final Maturity Date.

Voluntary Prepayment:

Permitted in whole or in part on 14 Business Days' prior notice, but, if in part, by a minimum of USD 1,000,000.00.

Amounts prepaid may not be redrawn.

Prepayments shall be made together with interest accrued on the amount prepaid and, subject to breakage costs, without penalty. No breakage costs are payable if the prepayments are made at the end of an Interest Period.

Permitted Accounts:

The Borrower shall maintain the following accounts which shall be blocked/controlled by the Agent:

- (a) Disbursement Account: The Borrower shall open a USD Disbursement Account with Afreximbank in which the disbursement proceeds of the facility will first be credited before release in line with the disbursement mechanism.



- (b) The USD Offshore Collection Account shall be opened with Afreximbank into local collection sales converted into USD by the LAA shall transferred. All proceeds in USD from [specified sources] will be paid into the Offshore Collection Account. Funds in the Collection Account will be used to meet the loan instalment repayments.
- (c) A USD Escrow Account will be opened with an Escrow Agent to hold Equity from the Borrower and Debt funding from the Lender. Funds in this account shall be used to settle the transaction.
- (d) Local Collection Account: shall be opened with the LAA into which the assigned proceeds from local sales in local currency will be paid. The LAA will on a monthly basis convert funds in the Local Collection Account to USD and transfer the converted funds into the USD Offshore Collection Account.
- (e) The Borrower shall open with the Bank, a Debt Service Reserve Account ("DSRA") in USD prior to the first utilisation. The DSRA will be funded with one instalment principal and interest repayment and funds in the DSRA will be used in meeting principal / interest that falls due and not paid.

In the event that funds in the DSRA are utilised, the account should be replenished no later than 7 business days from the date the lender notifies the borrower of such shortfall. The DSRA to remain funded during the tenor of the facility.

(together the "**Permitted Accounts**")

Funds in the Permitted Accounts shall be applied towards:

1. fees, costs and expenses due under the Facility;
2. all interest and principal amounts payable by the Borrower in respect of the Facility; and,
3. any available excess cash after the next instalment loan repayment shall with the consent of the Borrower be used to prepay the facility without a penalty.





PRICING

Annual Management Fees:	1.00% per annum commencing on the first anniversary of the facility on outstanding amount.
Advisory Fee:	1.00% flat to be calculated on the Facility Amount, due and payable by the Borrower, on notification of approval of the facility request.
Appraisal fee:	USD100,000 non-refundable flat fee, payable as follows: • 50% payable at signature of this Indicative Term Sheet • 50% payable at the communication of 1st level approvals.
Commitment Fee:	0.10% per annum, on the unused and uncanceled amount of the Facility for the Availability Period. Accrued commitment fee is payable quarterly in arrears during the Availability Period, on the last day of the Availability Period and on the cancelled amount of the Facility at the time a full cancellation is effective.
Margin:	4.5% per annum.
Interest Period:	Quarterly interest periods ending on 31 March, 30 June, 30 September and 31 December of each calendar year. Interest Periods shall not extend beyond the Final Maturity Date.
Interest Rate:	The aggregate of the applicable: (a) Margin; and (b) Base Rate
Base Rate:	USD 3 Months CME Term SOFR administered by CME Group Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period published by CME Group Benchmark Administration Limited (or any other person which takes over the publication of that rate SOFR being the secured overnight financing rate If the rate is less than zero, it shall be deemed to be zero.
Interest Rate Benchmark Replacement:	The Facility Agreement will include replacement of interest rate benchmark provisions based on the current recommended LMA form of Revised Replacement of Screen Rate Clause to enable variations to the Facility Agreement to incorporate use of a replacement interest rate benchmark rate



at the direction of the Lender acting in good faith and in a commercially reasonable manner.

Payment of Interest on Loans:

Interest is payable on the last day of each Interest Period (the "Interest Payment Date").

Default Interest:

Overdue amounts shall bear interest at 2% (two per cent.) above the applied Interest Rate.

OTHER FACILITY TERMS

Documentation:

The Facility will be made available under a facility agreement (the "**Facility Agreement**") and other documents in form and substance satisfactory to the Lender(s).

Prepayment and Cancellation:

(a) **Illegality**

A Lender may cancel its commitment and require prepayment of its share of the loans.

(b) **Change of Control**

If Momade Aquil Rajahussen; Momade Rafique Rajahussen Gulamo; Momade Arif Rajahussen Gulamo; Sukeina Rajahussen Gulamo; Rozmin Rajahussen Gulamo; Rajahussen Gulamo cease to control the Borrower or Co-Borrower or any person or group of persons acting in concert gains control of the Borrower or Co-Borrower:

i. a Lender shall not be obliged to fund a utilisation; and

ii. a Lender may by not less than 5 business days' notice cancel its commitment and require repayment of all its share of the loans.

(c) **Increased Costs, Tax Gross Up and Tax Indemnity**

The Borrower may cancel the commitment of and prepay a Lender that makes a claim under these provisions.

(d) **Voluntary Cancellation**

Permitted in whole or in part (minimum USD 1,000,000), if prior notice of 14 business days is given to the Bank. Amounts cancelled may not be re-borrowed.



Status:

Direct, unconditional and general obligations of RGS ranking at least pari-passu with other present and future unsubordinated and secured obligations of RGS.

Representations:

The Borrower and Co-Borrower will make each of the representations on the date of the Facility Agreement and in the case of repeating representations (to be specified in the Facility Agreement), on the date of each Utilisation Request and the first day of each Interest Period, which shall include but will not be limited to the following:

- (a) status;
- (b) binding obligations;
- (c) non conflict with other obligations;
- (d) no reduction of capital;
- (e) power and authority;
- (f) validity and admissibility in evidence;
- (g) governing law and enforcement;
- (h) insolvency;
- (i) no deduction of tax;
- (j) no filing or stamp taxes;
- (k) no default;
- (l) no misleading information;
- (m) financial statements;
- (n) accounting reference date;
- (o) no proceedings pending or threatened;
- (p) no breach of laws;
- (q) security and financial indebtedness;
- (r) ranking of Permitted Account security/ Transaction Security;
- (s) good title to assets;

A handwritten signature in blue ink, appearing to be "A. A. A.", is located at the bottom right of the page.

- (t) legal and beneficial ownership of the Permitted Accounts / Charged Property;
- (u) intellectual property;
- (v) Group Structure Chart;
- (w) pari passu ranking;
- (x) environmental compliance and no environmental claims;
- (y) taxation compliance and no tax claims;
- (z) sanctions; anti-bribery and corruption;
- (aa) centre of main interests and establishments;
- (bb) no material adverse consequences.

Information Undertakings:

The Borrower's and Co-Borrower obligations to supply information shall include but will not be limited to the following:

- (a) as soon as they become available, but in any event within 90 days of the end of its financial years its audited consolidated financial statements together with those of each Obligor;
- (b) as soon as they become available, but in any event within 90 days of the end of its financial half years its consolidated financial statements
- (c) with each set of consolidated financial statements, a compliance certificate signed by two directors of the Borrower and, in the case of the audited consolidated financial statements reported on by the Company's auditors [in the form agreed by the Company and the Lenders prior to the date of the Facility Agreement by the Company's auditors]
- (d) all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally;
- (e) details of any material changes in insurance cover and any insured event in relation to the Charged Property;



- (f) unless such disclosure would constitute a breach under applicable law or regulation, details of any violation of any anti-corruption laws and copies of any correspondence with any regulatory authorities related to such breach;
- (g) details of any material litigation, arbitration or administrative proceedings or any material judgment;
- (h) such other information regarding the financial condition, business and operations of any member of the Group as any Finance Party may reasonably request;
- (i) such other information regarding the Permitted Accounts/ the Charged Property and the compliance of the Borrower with the terms of the Permitted Account security documentation/any Security Document as any Finance Party may reasonably request.
- (j) The Borrower shall supply a certificate certifying no Default (or any Default and the steps being taken to remedy it) promptly upon request.
- (k) On the introduction of or any change in law, a change in the status or shareholders of an Obligor or a proposed assignment or transfer by a Lender, each Obligor shall promptly upon the request of any Lender supply such documentation and other evidence as is reasonably requested by the Agent in case of syndicated facilities (for itself and on behalf of any Lender) or any Lender (or prospective new Lender) in order for the Agent or such Lender (or prospective new Lender) to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the transactions contemplated in the Finance Documents.
- (l) The Borrower may satisfy their obligations to deliver information to those Lenders who agree by posting such information onto an electronic website.

Financial Covenants:

Customary covenants for the Borrower and Co-Borrower to include among others:

- Minimum Net Worth: the Consolidated Tangible Net Worth at all times shall not be less than US\$ 750m;
- Gearing: the ratio of Consolidated Net Debt to Consolidated Tangible Net Worth at all times shall not be greater than 1.25:1;



- Leverage Ratio: The ratio of consolidated Term Debt to Consolidated EBITDA shall not be more than 1.25:1;
- Maintain an EBITDA Margin of at least 20%; and
- Maintain a Current Ratio of 1.5x

The financial covenants shall be calculated in accordance with accounting principles and tested by reference to each of the financial statements submitted by the Borrower.

General Undertakings:

Usual for financings of this nature (subject to such qualifications and exceptions as may be agreed) in respect of each Obligor including, without limitation, the following:

Authorisations and compliance with laws:

- (a) authorisations;
- (b) compliance with laws;
- (c) environmental compliance;
- (d) environmental claims;
- (e) taxation;
- (f) sanctions;
- (g) anti-bribery and corruption;

Restrictions on business focus

- (h) restriction on merger;
- (i) no change of business;
- (j) restriction on acquisitions;
- (k) restriction on joint ventures;
- (l) holding companies;

Restrictions on dealing with assets and Security

- (m) preservation of assets;
- (n) pari passu ranking;
- (o) negative pledge;
- (p) restriction on disposals;
- (q) arm's length basis;



Restrictions on movement of cash - cash out

- (r) restriction on loans or credit;
- (s) restriction on guarantees or indemnities;
- (t) [restriction on dividends and share redemption;

Restrictions on movement of cash - cash in

- (u) restriction on financial indebtedness;

Miscellaneous

- (v) not to use the Facility proceeds for any other purpose than permitted under the Facility Agreement;
- (w) insurance;
- (x) access;
- (y) hedging / foreign exchange arrangements;
- (z) further assurance;
- (aa) conditions subsequent;
- (bb) A report to be provided on an annual basis or any shorter period as determined by Afreximbank in relation to the trade and development impact of the Facility in a form acceptable to Afreximbank.

Transaction and Permitted Account Undertakings:

Usual for financings of this nature, including, without limitation:

- (a) undertakings relating to On-Loans (including eligibility, On-Loan servicing and amendments to On-Loan Documents;
- (b) undertakings relating to the Permitted Accounts.

Events of Default:

Events of default customary and appropriate in financings of this type, including but not limited to the following:

- (a) non-payment of any amount due under the Facility unless failure to pay is caused by administrative or technical error and payment is not made within [3] Business Days of its due date;
- (b) any financial covenant not satisfied;



- (c) failure to comply with Permitted Account Undertakings;
- (d) failure to comply with any other obligations subject to agreed remedy periods if capable of remedy;
- (e) misrepresentation;
- (f) cross default, subject to an agreed minimum amount;
- (g) insolvency;
- (h) insolvency proceedings;
- (i) creditors' process;
- (j) failure to comply with court judgment or arbitral award;
- (k) ownership of Obligors;
- (l) audit qualification;
- (m) expropriation/governmental intervention;
- (n) repudiation and rescission of agreements;
- (o) litigation;
- (p) cessation of business;
- (q) unlawfulness and invalidity;
- (r) convertibility / transferability;
- (s) any governmental consent, license or approval material to the relevant business of the Borrower no longer being in full force and effect;
- (t) moratorium;
- (u) political and economic risk;
- (v) material adverse change.





Conditions Precedent to Approval:

Tranche A

1. Sale and Purchase Agreement between Asset Seller and Borrower;
2. Receipt of Business Valuation model & report used to arrive at the proposed purchase consideration;
3. Receipt of a base case Post Acquisition Financial & Business model covering the proposed Facility tenor;
4. Receipt of Financial due diligence report on the Acquisition Target;
5. Receipt of legal due diligence reports on the Acquisition Target;
6. Validation of the Valuation, Financial & Legal Due Diligence Reports by an independent consultant appointed by the Lender and at the Borrower's expense; and,
7. KYC clearance on Asset Seller and Obligor.

Dividends Distribution Clause:

The Borrower undertakes not to declare or pay any dividends throughout the Facility tenor, unless:

- a) The payment of all its Financial Obligations [Current Portion, Due Interest, Fees, and Commissions] due in the relevant year for distribution.
- b) All Financial Covenants are met.
- c) No Event of Default has occurred and/or is continuing or will occur as a result of such distribution.

Initial Conditions Precedent:

These will include (without limitation) the following in relation to the Borrower and Co-Borrower in form and substance satisfactory to the Lender:

- (a) constitutional documents;
- (b) certified resolution of board of directors authorizing the transaction;
- (c) specimen signatures;

A handwritten signature in blue ink, appearing to read "Agil".

- (d) shareholders resolutions;
- (e) borrowing/guaranteeing certificate;
- (f) certification of copy documents;
- (g) receipt of executed copies of the Facility Agreement and all other finance documents in respect of the Facility;
- (h) receipt of executed Security Documents and the perfection of all Transaction Security to Afreximbank's satisfaction;
- (i) a copy of the Share Purchase Agreement;
- (j) Receipt of Valuation Report confirming the value of the Target Shares prepared by an acceptable independent firm (nominated by the Lender) and the relevant costs shall be at the Borrower's expense;
- (k) Evidence of fulfilment of all pre-Acquisition Date obligations in the Share Purchase Agreement;
- (l) Evidence of the release of any encumbrances affecting the Target Shares/ assets which have been created or otherwise have arisen prior to the execution of the Share Purchase Agreement;
- (m) Approval of the applicable regulatory body in respect of the acquisition of the Target;
- (n) Copies of financial, and legal due diligence reports in relation to the Acquisition Target conducted by Borrower's advisors and directed to the bank and to include tax and social insurance positions as well as the regulatory position on financial assistance rules as it concerns the transaction;
- (o) Payment of all fees due under the Facility Agreement on the first drawdown date or prior to it.
- (p) All the Borrower's warranties & representations to be true and correct.
- (q) Legal opinion from the Lender's and Borrower's legal counsel (as appropriate) confirming:
- (r) That all the legal aspects related to the Transaction are in accordance with the applicable Laws in the Borrower and Target Company jurisdictions;



- (s) Confirming that all required consents are in place;
- (t) Compliance with Financial Assistance Rules in the respective jurisdictions of the Target Company and the Borrower/Purchaser;
- (u) Enforceability and control of the Borrower/Purchaser on the dividends distribution policy of the Target Company;
- (v) Capacity and authority from Borrower's legal advisors; and
- (w) Issuance of CPs satisfaction letter from Lender's legal counsel.
- (x) receipt of executed Permitted Account security documentation /Security Documents and the perfection of that security/all Transaction Security to Afreximbank's satisfaction;
- (y) a copy of all contracts that are the subject of the Transaction Security;
- (z) a copy of any relevant insurance policy, together with evidence that [the Security Agent / the Lender has been named as loss payee; the insurance cover will be taken out by the Obligors with an agreed independent insurance company through Afreximbank under its Managed General Agency insurance programme;
- (aa) a copy of any relevant insurance policy, together with evidence that [the Security Agent / the Lender has been named as loss payee; the insurance cover will be taken out by the Obligors with an agreed independent insurance company through Afreximbank under its Managed General Agency insurance programme;
- (bb) the audited financial statements of the Borrower and Co-Borrowers and each for its immediate past financial year;
- (cc) the initial budget;
- (dd) legal opinion of English and Mauritius and Mozambique counsel to the Lender;
- (ee) evidence of appointment of process agent;
- (ff) satisfactory conclusion of KYC;
- (gg) evidence that the Permitted Accounts have been opened and are fully operational;



- (hh) evidence of payment of all fees, costs and expenses then due from the borrower under the Facility Agreement;
- (ii) a copy of any other document, authorisation, opinion or assurance specified by the Lender.

General Covenants:

The Borrower will provide each of the following undertakings, which shall include but will not be limited to the following:

- a) To provide the POA and its related documents to perfect the **Acquired Shares** Transfer.
- b) To ensure that the Acquisition Target will not bear any additional indebtedness/investments, except in the normal course of business consistent with the group's banking activity and for liquidity management purposes, exceeding those reflected in the Base case financial model, without obtaining prior written approval from Lender, such consent not to be unreasonably withheld or conditioned.
- c) Payments for capital expenditure, fees to affiliates, and dividends may be paid, so long as payment would not generate a violation of a financial covenant and current obligations are met.
- d) Borrower will have the right to settle sub-debt (Shareholder's Loan) from excess cash available (after servicing the Senior Debt financial payments) after elapse of grace period subject to a pro-rata settlement of Senior Debt and that outstanding amounts under sub-debt will never fall below outstanding amounts under Senior Debt at all levels.
- e) No amendment to the agreement between the Borrower & the Acquisition Target that could possibly have a negative effect on the Borrower's ability to repay debt, interest & any other financial obligations or that could possibly have a Material Adverse Effect;
- f) Provision of financial and other information subject to sufficient notification;
- g) Notification of any Potential Event of Default or Event of Default and deliver a certificate signed by a duly



authorised representative confirming that there is no Default and no Event of Default;

- h) Obtain, comply with and maintain all material authorizations; licenses and approvals required for the business to operate profitably.
- i) Compliance with applicable commercial, employment and other material laws in the Acquisition Target's jurisdiction;
- j) Providing a certified true copy of the memorandum and articles of association of the Acquisition Target and any amendments thereto one month after Closing Date;
- k) Providing a certified true copy of the register of members of the Acquisition Target one month after Closing Date;
- l) Execute the pledge of shares agreement of the Acquisition Target shares duly signed by the Borrower;
- m) Copy of current insurance policies, which are specifically required by the Lender, within 30 days from the Acquisition Date as applicable;
- n) Except for the pledge of shares agreement and liens mandatorily applicable by operation of law in the normal course of business, not to incur, create or permit to be created or to subsist any Financial Indebtedness, (other than the Financial Indebtedness agreed upon and except in the normal course of business consistent with the group's banking activity and for liquidity management purposes exceeding those reflected in the Base case financial mode) without the prior written approval of the Lender which will not unreasonably be withheld.

Other covenants may be added if seen necessary by the Lender post completion of due diligence and agreed on base case subject to mutual agreement with the Acquirer

Assignments and Transfers:

The Bank will be entitled to sell, transfer or grant participation in the Facility to any investor at any time, without the prior consent of Borrower and Co-Borrower.

The Borrower and Co-Borrower may not assign its rights or transfer rights or obligations in respect of the Facility.



Information Covenants:

- a) Annual Audited Financial Statements of the Borrower, Co-Borrower and the Acquisition Target to be provided within a maximum of 150 days from the end of its fiscal year.
- b) Semi Annual Management Accounts of the Borrower, Co-Borrower and the Acquisition Target to be provide within 90 days after the end of every half year.
- c) Financial statements to be prepared in accordance with international Accounting Standards.
- d) Annual Budget and Projected Cash Flows of the Acquisition Target to be submitted by maximum 30 days after the first Board of Directors (BOD) meeting from the commencement of the fiscal year.
- e) Annual valuation report prepared by an acceptable IFA and addressed to Lender reflecting the acquired shares value (such report shall not be presented in case the shares were listed).

Covenants and Undertakings:

Customary for transactions of this nature including, but not limited to:

1. Obligors undertakes to provide Lender with a First Ranking security over assets acquired under the facility (including the receivables from those assets) not later than 30 days after disbursement and receipt of title deeds to the assets and property.
2. Undertaking by the Obligors not to arrange any significant financial commitments that could negatively influence its obligations regarding the Facility.
3. Undertaking from the Obligors to notify the Lender in case of Event of Default, and/or any significant events that might negatively affect the Borrower or its ability to meet its obligations under the finance documents.
4. Undertaking from the Obligors that by signing the Facility documents, the Obligors is not breaching any condition under any other contract or agreement.



5. Undertaking from the Obligors to submit to the Lender (within 120 days from the fiscal year end), a copy of the financial accounts and financial statements.
6. Undertaking from the Obligors to submit to the Lender (within 60 days from each quarter end), a copy of quarterly management accounts.
7. Undertaking from the Obligor treat the Facility on pari-passu basis with all other facilities it has obtained.
8. The Obligor undertakes to effect the security over the assets acquired with the facility proceeds within a maximum period of 1 month post the utilization date.

Undertaking not to restrict dividend distribution to shareholders in the Obligors subsidiaries and other investments

Further conditions precedent to each Utilisation:

Utilisation of the Facility will be subject to:

1. there being no Default; and
2. all required representations being true.

Taxes & other Deductions:

All payments by the Obligors shall be made free and clear of any present and future taxes, levies, deductions and withholdings of whatever nature, either present or future. Should such taxes, levies, deductions or withholdings be required by law, the Obligors will make such additional payments to the Lender that will ensure that the relevant party receives, net of such deduction or withholding, the amounts that party would have received if such taxes, levies, deductions or withholdings had not been required.

MISCELLANEOUS

Miscellaneous Provisions:

The Facility Agreement will contain provisions relating to, among other things, default interest, market disruption, breakage costs, tax gross up and indemnities including FATCA, increased costs, set-off and administration.

Costs and Expenses:

All costs and expenses (including legal fees) reasonably incurred by the Lender in connection with the preparation, negotiation, printing, execution and syndication of the Facility Agreement and any other document referred to in it shall be





paid by the Borrower promptly on demand whether or not the Facility Agreement is signed.

Governing Law:

English law including for any non-contractual obligations save were inappropriate for Transaction Security.

Enforcement (Courts):

Courts of England including for any non-contractual obligations save were inappropriate for Transaction Security. Any Finance Party may at its option submit any dispute to court proceedings in any other courts with jurisdiction.

Market Conditions:

The terms and conditions set out in this Term Sheet are subject to, in the opinion of Afreximbank, there being no:

- (a) material adverse change in the international money, loan and capital markets;
- (b) material adverse change in the financial condition of the Obligors; and
- (c) material adverse change in socio-political and economic situation of the [Mauritius/Mozambique],
- (d) occurrence of any action or inaction by the Government of **South Africa**, or pursuant to such action or inaction by the Government of **South Africa**, by entities authorised under the laws of [South Africa], to engage in foreign exchange transactions, which prevents, directly or indirectly, the Borrower from legally:
 - 1. converting local currency proceeds into US Dollars, for the purposes of its payment obligations under the Facility Documents; or
 - 2. transferring outside of **South Africa**, US Dollars for the purposes of meeting its payment obligations under the Facility Documents,

in each case from the date of the signing of this Term Sheet to the date of the signing of the facility documentation.

AfrexInsure:

Afrexim Insurance Management Company ("AfrexInsure") shall have the right of first refusal to provide any insurance cover required in connection with the Facility, provided the terms upon which such insurance is provided are competitive and market related.

Trade and Development Impact Assessment (TDIA):

A report to be provided on an annual basis or any shorter period as determined by the Bank in relation to the trade and

A handwritten signature in blue ink, appearing to read "April".



African Export-Import Bank
Banque Africaine D'Import-Export

development impact of the Facility in a form acceptable to the Bank.

Publication:

The Obligors acknowledge and accept the Afreximbank's intention to publish and to distribute information releases, reports, public statements, announcements and other communications to news media regarding the financial close of transactions with the Obligors. The Obligors shall not release such information containing the name of Afreximbank or any of its employees without the prior written consent of Afreximbank.

Expiry:

The terms set out in the Term Sheet are available for acceptance by the Borrower until 5.00 pm local time in Cairo on 31 March 2025 after which time they will expire.

You should please indicate, at your earliest convenience, the acceptance of the above terms and conditions by countersigning and returning this document to the African Export-Import Bank no later than end of business in Cairo on 31 March 2025.

For and on behalf of the African Export-Import Bank

Name:

Designation:

Accepted on behalf of the Borrower


22.01.25

By: **Momade Aquil Rajahussen**



Designation: **Chairman**

Date: **22nd January 2025**





African Export-Import Bank
Banque Africaine D'Import-Export

Accepted on behalf of the co-Borrower

By:

Designation:

Date:

Accepted on behalf of the LAA

By:

Designation:

Date:

CONFIDENTIAL

A handwritten signature in blue ink, appearing to read "Agil".

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

Case number: D13702/2024

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Fifth Respondent

TERRIS AGRIPRO (MAURITIUS)

Sixth Respondent

REMOGGO (MAURITIUS) PCC

Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Eighth Respondent

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

Ninth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED

Tenth Respondent

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

Eleventh Respondent

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

Twelfth Respondent

APPLICANT'S SUPPLEMENTARY AFFIDAVIT: PART B

A handwritten signature in black ink, appearing to be 'A. Singh', is located at the bottom right of the page.

Table of Contents

INTRODUCTION	3
LEAVE IN TERMS OF SECTION 133(1)(b) AND THE APPLICATION OF SECTION 152(4) OF THE ACT	10
VISION'S CONTINUED FAILURE TO SECURE FUNDING AND ACHIEVE THE ACQUISITION	11
THE CONSEQUENCES OF THE VISION PLAN BEING SET ASIDE.....	13
GROUND'S FOR SETTING ASIDE THE VISION PLAN	15
The Vision Plan has lapsed	15
The Vision Plan has in any event failed	18
CONCLUSION	20


2


I, the undersigned,

MOMADE AQUIL RAJAHUSSEN

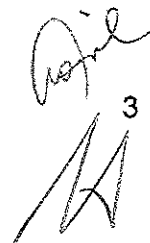
do hereby make oath and say that:

1. I am the chairman of the applicant ("**RGS**") and deposed to the founding affidavit in this application.
2. The facts contained in this affidavit are within my personal knowledge, save where the context indicates otherwise and are, to the best of my belief, both true and correct. Where I rely on information provided to me by others, I believe such information to be true and correct. Where I make legal submissions, I do so on the advice of the applicant's legal representatives.
3. For ease of reference, I have retained all definitions attributed to words in the previous affidavits filed by RGS in this matter.

INTRODUCTION

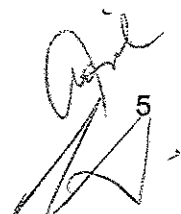
4. Part A of the notice of motion in this application is comprised of 8 prayers.¹ The substantive relief that RGS sought in terms thereof was as follows:
 - 4.1. First, to the extent necessary, an order granting RGS leave to bring this application in terms of section 133(1)(b) of the Companies Act (prayer 2);

¹ Record pp 10 – 12.


3

- 4.2. Second, the granting of an interim interdict preventing any further implementation of the Vision Asset Transaction pending the determination of Part B (prayer 3);
- 4.3. Third, an order directing the BRPs to publish specified essential information relating to the Vision Plan and its implementation on THL's business rescue website for the benefit of all affected persons (prayer 4);
- 4.4. Fourth, an order directing Vision to provide specified essential information relating to the Vision Plan and its implementation to the BRPs for similar publication on THL's business rescue website for the benefit of all affected persons (prayer 5); and
- 4.5. Fifth, an order granting RGS leave to supplement its founding affidavit prior to the hearing on Part B (prayer 6).
5. I refer below to:
- 5.1. the interim interdict sought in prayer 3 of Part A of the notice of motion as **"the Interdictory Relief"**;
- 5.2. the information disclosure relief sought against the BRPs in prayer 4 of Part A of the notice of motion as **"the BRP Disclosure Relief"**;
- 5.3. the information disclosure relief sought against Vision in prayer 5 of Part A of the notice of motion as **"the Vision Disclosure Relief"**;
- 5.4. to the orders sought in prayers 4 and 5 of Part A of the notice of motion collectively as **"the Disclosure Relief"**.

6. Part A was heard by Mr Justice ME Nkosi on 29 January 2025 and judgment was subsequently handed down on 18 February 2025 ("the Nkosi Judgment"). A copy of the Nkosi Judgment is annexed, marked "SA1".
7. The order contained in the Nkosi Judgment reads as follows:
 - "1. Part A of the application is dismissed for lack of urgency, and for failure of the applicant to satisfy the requirements of an interim interdict.
 2. Part B of the application is adjourned *sine die*.
 3. RGS is granted leave to supplement its founding affidavit prior to the hearing of Part 'B', and the second to ninth respondents are granted leave to deliver further affidavits in response to such affidavit.
 4. The applicant is ordered to pay the costs of Part 'A' of the application on scale C, such costs to include the costs of two counsel, where employed."
8. While the Nkosi Judgment included, at paragraph [3] thereof, a summary of the substantive relief sought by RGS in Part A which made specific reference to the Disclosure Relief, the learned judge dismissed Part A in its entirety "for lack of urgency, and for failure of the applicant to satisfy the requirements of an interim interdict."
9. Neither the *ratio* of the Nkosi Judgment nor the order contained therein makes any mention of the Disclosure Relief (which was not interdictory in nature), and the judgment does not include any reasoning as to why the Disclosure Relief was dismissed as being part and parcel of the Interdictory Relief (i.e. the *ratio* of the Nkosi Judgment deals only with the issues of urgency, leave under section 133(1)(b) of the Companies Act, and the requirements of interim interdictory relief.)

A handwritten signature in dark ink, followed by the number '5' written below it.

10. The summary dismissal of the Disclosure Relief has left RGS at a severe disadvantage in relation to the preparation of this supplementary affidavit and, by extension, its ability to advance a case for Part B relief.
11. The dismissal of the Disclosure Relief is perplexing given that:
- 11.1. The BRPs indicated that they would abide the BRP Disclosure Relief if the Court proceeded to engage with the merits of Part A,² which the Court in fact did (i.e. the Court did not dismiss Part A on the basis of the BRPs' *in limine* objections without engaging in the merits thereof);
- 11.2. The Lender Group indicated in correspondence before the Court that it had no objection to the disclosure of the Acquisition Agreement;³
- 11.3. In correspondence directed by the BRPs to the Lender Group, which was before the Court, the BRPs (i) asserted THL's right to be provided with a copy of the Acquisition Agreement under the Common Terms Agreement concluded by the Lender Group and THL on or about 3 December 2021, and (ii) demanded to be provided with a copy of the Acquisition Agreement on that basis (which demand was ignored);⁴
- 11.4. The BRPs were themselves of the "considered view" that affected persons "should be provided with copies of the documents that govern

² BRP AA at para 19 record p 531.

³ BRP AA, annexure "AA10" record p 671.

⁴ BRP AA, annexure "AA9" at para 8.1 record p 667.

6 

the contractual arrangements” between Vision and the Lender Group (including the Acquisition Agreement);⁵

11.5. The BRPs considered themselves “duty bound” to demand from the Lender Group substantively all of the Disclosure Relief sought by RGS against Vision in terms of prayer 5 of Part A of the notice of motion.⁶

12. There is a further issue which severely prejudices RGS’ ability to advance its case for Part B relief.

13. In response to allegations made by RGS to the effect that the business rescue process has not made any meaningful progress and has been delayed by Vision’s continued failure to secure funding and achieve the Acquisition, the BRPs and Vision (in their supplementary affidavits filed in Part A) pointed to the conclusion of agreements to sell THL’s South African, Zimbabwean, Botswanan, and Mozambiquan assets to Vision as purported proof of the progress that had allegedly been made in implementing the Vision Asset Transaction (“**the Sale Agreements**”).⁷

14. In this regard the BRPs stated under oath in relation to all the Sale Agreements that:⁸

14.1. The Sale Agreements would be made available to the Court on a confidential basis;

⁵ BRP AA, annexure “AA9” at para 8.2.1 record p 667.

⁶ BRP AA, annexure “AA9” at para 12 record pp 668 – 669.

⁷ BRP Supp Aff at paras 10 – 23 record pp 1014 – 1018 ; Vision Supp Aff at para 35 record pp 1049 – 1050.

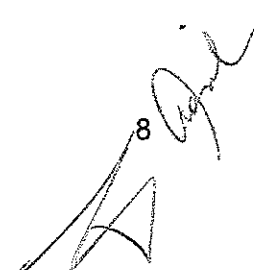
⁸ BRP Supp Aff at paras 11 and 20 record pp 1014 and 1018.



- 14.2. The Sale Agreements were tendered for inspection by RGS's attorneys "upon receipt of confidentiality undertakings acceptable to the THL respondents [i.e. the BRPs]".
15. Vision confirmed the above tender in its supplementary affidavit where it stated under oath that "Vision agree [sic] that the Asset Transaction may be disclosed on the basis as tendered by the THL respondents."⁹
16. On 25 February 2025, RGS' attorneys sent an email to Werksmans (the BRPs' attorneys) requesting that non-disclosure agreements be provided for signature by RGS's representatives so that the Sale Agreements could be provided for RGS's inspection as tendered.
17. Werksmans sent a letter in response some 9 business days later on 10 March 2025, a copy of which is annexed marked "SA2". The letter reads in relevant part as follows:
- "2. Our clients' supplementary affidavit dated 24 January 2025 ("the supplementary affidavit") was delivered for the sole purpose of updating the Court of developments in THL's business rescue in anticipation of the Court's adjudication of Part A of your client's application and, in particular, in relation to the issue of urgency and the requirements for the grant of an interim interdict.
3. Our clients' tender in relation to the Sale of Business Agreements was given in the context and for the sole purpose of a determination of Part A of your client's application. Your client did not accept the tender prior to the hearing of Part A, and it has accordingly lapsed.
4. As you are aware, the Court dismissed the relief sought in Part A of your client's application in relation to urgency. Moreover, the Court found that

⁹ Vision Supp Aff at para 35.1 record p 1049.

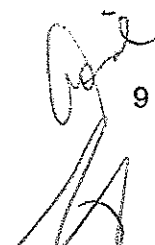
8



your client had not satisfied the requirements for the grant of an interim interdict.

5. It is, for the reasons set out above, not competent for your client to request sight of documents that were tendered for inspection in relation to a matter which has now been determined."

18. The contrived basis on which the BRPs have reneged on the tender made under oath to allow RGS to inspect the Sale Agreements is in extreme bad faith. The tender was in no way qualified or limited to the proceedings under Part A of this application as has now been alleged.
19. Due to the summary dismissal of the Disclosure Relief and the BRPs' *mala fide* refusal to honour the tender of the Sale Agreements, RGS is constrained to proceed with Part B largely in ignorance of the true state of affairs regarding the current status of the Vision Plan.
20. I pause to stress that this intentional lack of transparency on the part of both the BRPs and Vision is not only lamentable but wholly inconsistent with the spirit and objectives of Chapter 6 of the Companies Act.
21. It moreover amounts to a breach by the BRPs of their general duties as officers of this Court and their particular obligation to publish reports on the progress of the rescue proceedings for the benefit of all affected persons in terms of section 132(3) of the Act. Copies of the section 132(3) reports published by the BRPs in relation to the months of January and February of 2025 are annexed hereto, marked "**SA3**" and "**SA4**" respectively.
22. Full legal argument will be advanced in this regard at the hearing of Part B.



LEAVE IN TERMS OF SECTION 133(1)(b) AND THE APPLICATION OF SECTION 152(4) OF THE ACT

23. Mr Justice Nkosi found that the question of leave in terms of section 133(1)(b) of the Companies Act should be determined by the Court hearing Part B of this application.¹⁰
24. I am advised that this concerns a question of law which will be addressed in argument. It is, however, submitted that even if this Court should find that leave is required, RGS has clearly made out a case for the granting thereof.
25. Both the BRPs and Vision have additionally relied on section 152(4) of the Companies Act to allege that RGS is precluded from bringing this application to challenge the validity and lawfulness of the Vision Plan.
26. I am advised that this too is a question of law but submit that:
- 26.1. the insulation to legal challenge that section 152(4) of the Companies Act can offer only applies to valid business rescue plans that were lawfully adopted, that comply with the governing provisions of Chapter 6 of the Act, and which are implemented according to their terms;
- 26.2. for the reasons set out in the affidavits previously filed by RGS in this application, as duly supplemented in this affidavit below, the Vision Asset Transaction does not satisfy the peremptory provisions of the Act, has in any event both lapsed and failed, and is not being implemented according to its express terms.

¹⁰ Nkosi Judgment, annexures "SA1" above, at para 25.

VISION'S CONTINUED FAILURE TO SECURE FUNDING AND ACHIEVE THE ACQUISITION

27. At the time of commissioning this affidavit, more than 14 months have elapsed since the Vision Plan was adopted at the Creditors Meeting on 11 January 2024.
28. In its answering affidavit Vision has admitted that "in terms of the Vision Plan it was anticipated that the acquisition by Vision would have been completed by the date of the section 151 meeting..."¹¹
29. In response to the allegations contained in the founding affidavit regarding the myriad instances in which Vision failed to make payment to the Lender Group to complete the Acquisition, both Vision and the BRPs alleged that payment would at long last be made by 31 December 2024.¹²
30. When the above date came and went without payment being made, Vision filed a supplementary answering affidavit and sought to blame its latest failure to make payment to the Lender Group on (i) the uncertainty cause by this application, and (ii) political unrest in Mozambique.¹³
31. Both of the above excuses were known to Vision when it filed its answering affidavit on 22 November 2024 and do not therefore in any way explain why the payment deadline of 31 December 2024 was not met.
32. I pause to reiterate the allegations contained in the founding affidavit and the replying affidavit in relation to the representations made to creditors at the

¹¹ Vision AA at para 334 record p 782.

¹² BRP AA at e.g. para 15.2 record p 530 ; Vision AA at e.g. para 64 record p 720.

¹³ Vision Supp AA at paras 12 and 52 – 71 record pp 1045 and 1052 – 1056.

Paul
11
[Signature]

Creditors Meeting on 10 and 11 January 2024 and the reliance that was placed on the Standard Bank Letter then as evidence that Vision had the funds necessary to “implement the Plan.”¹⁴

33. The court is requested in this regard to watch the recording of the first day of the Creditors Meeting from 1:21:10 to 1:22:05 where Mr Murgatroyd unequivocally makes the above representation.
34. At the hearing of Part A on 29 January 2024, which I attended, the Court questioned counsel for Vision regarding Vision's failure to meet the deadline of 31 December 2024 and enquired when, in Vision's view, its failure to make payment would constitute grounds for the type of relief that RGS was seeking in Part A.
35. Counsel for Vision's submission was, as I recall it, to the effect that should Vision not make payment to the Lender Group by the extended deadline of 31 March 2025, that failure would entitle RGS to Part A type relief. I have instructed RGS's attorneys to procure a copy of the relevant transcript which will be provided to the court in due course.
36. I now understand from enquiries made in the industry that Vision has again failed to secure the funding to make payment to the Lender Group by 31 March 2025 (the day after the commissioning of this affidavit).
37. On 27 March 2025 RGS's attorneys sent a letter to the BRPs copying Vision, the Lender Group, and the IDC and requesting urgent confirmation as to:

¹⁴ FA at paras 120 – 158 record pp 60 – 71 ; RA at paras 49 – 57 record pp 951 – 954.

- 37.1. "Whether Vision will fully and finally discharge the purchase price due to the Lender Group by the further extended due date of 31 March 2025";
- 37.2. "Should Vision fail to make such payment by 31 March 2025, for how much longer the BRPs will continue to entertain the Vision Plan and proceed with its implementation in the teeth of overwhelming evidence to the effect that Vision does not have access to the funding necessary to implement the Plan."
38. A copy of the abovementioned letter is annexed, marked "SA5". RGS had not received any responses to the letter when this affidavit was commissioned.
39. Vision's refusal to provide proof of payment of the non-refundable deposit which it alleges to have paid to the Lender Group on 11 January 2024, its refusal to provide copies of the Acquisition Agreement either to RGS or to the BRPs upon the latter's demand, and its refusal to provide any evidence that it has taken transfer of any of the Lender Group's claims at all can no longer be ignored or explained away and must now give rise to an adverse inference that Vision is unable to either achieve the Acquisition or, by extension, implement its Plan.

THE CONSEQUENCES OF THE VISION PLAN BEING SET ASIDE

40. Vision and the BRPs have both argued that the only alternative to the Vision Plan is THL being liquidated.¹⁵
41. This argument is sensational and employed opportunistically in an attempt to persuade the Court to overlook the glaring irregularities and statutory non-

¹⁵ See e.g. Vision Supp Aff at para 16 record p 1046 ; BRP AA at para 16 record p 530.

April
13
BA

compliances set out in the founding affidavit as well as the fact that the rescue process has been taken hostage by Vision's failure to raise the funds necessary to complete the Acquisition and implement the Plan.

42. The oft-repeated dire consequences that will ensue if THL's rescue proceedings fail are in fact precisely why this Court should intervene to set the failed Vision Plan aside, as this will allow other parties such as RGS who have the funds necessary to rescue THL to table viable alternative business rescue plans.
43. An order setting the Vision Plan aside does not amount to an order placing THL under liquidation. I am advised that to convert rescue proceedings to liquidation proceedings a court order to that effect is required as is, for example, contemplated in section 132(3)(a)(ii) of the Companies Act.
44. I am advised that if this Court sets the Vision Plan aside, the position of THL's rescue would be as if no plan had ever been adopted and that another creditors meeting would then have to be convened to decide the future of the company.
45. At this meeting any interested creditor may table an alternative business rescue plan for adoption.
46. RGS has consistently informed the BRPs of its commitment to propose a plan to replace the failed Vision Plan.¹⁶
47. RGS' letter to the BRPs of 27 March 2025 repeated this commitment and confirms that RGS' offer remains valid and open to acceptance by the BRPs.

¹⁶ See e.g. Annexures "MAR18" and "MAR19" to the FA, record pp 410 – 417.

RGS in fact went so far as to include a written undertaking that it will table an alternative business rescue plan should another creditors meeting be convened.

48. The letter moreover attaches a copy of a term sheet extended to RGS by Afrexim Bank on 22 January 2025, and signed by RGS, which contemplates the provision of funding of up to USD 280 million (i.e. over R5.1 billion) specifically to enable RGS to acquire THL out of business rescue.

49. For ease of reference, a copy of the Afrexim Term sheet is annexed, marked "SA6".

50. Liquidation is therefore demonstrably not an inevitable consequence of the Vision Plan being set aside.

GROUNDINGS FOR SETTING ASIDE THE VISION PLAN

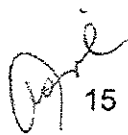
The Vision Plan has lapsed

51. Should Vision fail to make payment to the Lender Group by 31 March 2025 and complete the Acquisition, the Vision Plan would clearly have lapsed.

52. As set out in the founding affidavit, I am advised that since the Vision Plan does not stipulate a date by which the Acquisition was to be completed the law imposes a requirement that it has to occur within a reasonable time.¹⁷

53. This takes on particular importance in the context of business rescue proceedings in relation to which courts have held unequivocally that time is of

¹⁷ See e.g. FA at para 49 record pp 35 – 36.


15

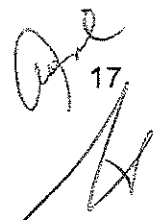

the essence and proceedings must be concluded with the maximum possible expedition.

54. This imperative is, for example, expressly recognised in section 132(3) of the Companies Act which requires the BRPs to publish monthly progress reports if rescue proceedings have not ended within three months "or such longer time as the court, on application by the practitioner, may allow..."
55. The fact that 14 months have elapsed since the Vision Plan was adopted means that the factual and financial information on which the Plan was premised, and on basis of which creditors voted to adopt the Plan, has now become stale and so dated that – even in the absence of Vision's failure to implement the Plan – creditors can no longer rely on the accuracy of the assumptions and conditions on which the Plan is premised.
56. In particular, since THL has not published financial statements since 2022 and no management accounts or any other financial data have been provided to affected persons since the Vision Plan was adopted, there is no objective basis to accept the continued relevance or accuracy of the calculation contained in the Plan to the effect that the 5c in the rand offered by Vision to unsecured creditors (R75 million in total) constitutes a better return than would be obtained under liquidation.
57. RGS's enquiries in the industry regarding THL's financial health and operating cash flow have garnered responses that indicate that the combined effect of the business rescue moratorium and the availability of the IDC PCF Facility have resulted in marked and significant improvements in THL's financial position.

58. The implementation of the Vision Plan has clearly been hamstrung by Vision's failure to secure the funds necessary to achieve the Acquisition, which the BRPs now appear to accept is a condition contemplated in the Plan itself as opposed to being extraneous thereto.¹⁸
59. The inordinate latitude that the BRPs have afforded Vision by proceeding with the implementation of the Vision Plan despite Vision's continued failure to secure funding now warrants this Court's intervention.
60. I moreover wish to point out that it appears from the limited information available regarding the further extension of Vision's payment deadline to 31 March 2025, that the Acquisition Agreement itself lapsed when payment was not made by 31 December 2024.
61. This is because Vision admits and correspondence from the Lender Group to the BRS confirms that the extension was only agreed on 24 January 2025.¹⁹
62. I am advised that if the Acquisition Agreement which was in place as at 31 December 2024 contained a resolute condition that payment had to be made by Vision by no later than that date, the Acquisition Agreement would have ceased to exist when Vision failed to meet that deadline, and the agreement could not have been revived by the extension which was agreed on 24 January 2025.

¹⁸ BRP letter to the Lender Group of 13 January 2025 at para 1, Annexure "SA3" to the BRP Supp Aff record p 1034.

¹⁹ Vision Supp AA at para 69 record p 1056.

17


63. This is relevant because the only version of the Acquisition Agreement which RGS has ever seen (annexure "MAR13" to the founding affidavit) contained a resolute condition as aforesaid.²⁰

64. This may explain why Vision has refused to disclose the Acquisition Agreement despite the Lender Group agreeing to its disclosure and the BRPs having demanded it.

The Vision Plan has in any event failed

65. I reiterate and persist with the allegations contained in the founding affidavit to the effect that:²¹

65.1. the Vision Plan failed pursuant to the rejection of the Conversion by shareholders;

65.2. The Vision Asset Transaction does not comply with the mandatory requirements of section 150 of the Act.

66. In addition to the above, the Vision Plan has failed because it is unequivocally premised on the full Acquisition by Vision of 100% of the LG Claims, which Acquisition must be achieved before the Vision Plan can be implemented.²²

67. The Acquisition is therefore a condition precedent to the Plan which has not been satisfied.

²⁰ "MAR13" to the FA record pp 370 – 395.

²¹ FA at paras 50 – 53 record pp 36 – 38 and paras 196 – 207 record pp 85 – 90.

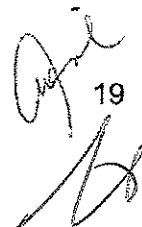
²² FA paras 164 – 166 record pp 72 – 75.

68. It is evident on the papers filed of record in this application that the BRPs are now proceeding to implement the Vision Asset Transaction on the basis that the Lender Group need only transfer to Vision sufficient claims to allow Vision to discharge the purchase price due under the Sale Agreements by set-off.²³
69. In their answering affidavit the BRPs respond to RGS's allegations that both the Conversion and the Vision Asset Transaction are conditional upon Vision's prior acquisition of 100% of the LG Claims by submitting that RGS's allegations in this regard "all relate to the debt-to-equity conversion aspect of the Plan, which is no longer of any relevance given the failure of the THL shareholders' resolution tabled at the SGM."²⁴
70. This exposes the mutually exclusive and contradictory nature of the BRPs' case. The BRPs cannot:
- 70.1. Argue that the Vision Asset Transaction complies with the requirements of section 150 of the Act because it only entails a switch from the Conversion to the Asset Transaction with all other provisions of the Vision Plan continuing to apply *mutatis mutandis*;²⁵
- 70.2. While simultaneously arguing that the express and unequivocal provisions of the Vision Plan which require Vision to acquire 100% of the

²³ See e.g. BRP Supp Aff at para 17.1.1 record pp 977 – 978 ; para 9 of the letter sent by Werksmans to the Lender Group on 14 January 2025, Annexure "SA4" to BRP Supp Aff record p 1036.

²⁴ BRP AA at e.g. para 250.1 record p 628.

²⁵ BRP AA at e.g. paras 151 – 159 (esp para 153) record pp 578 – 587.

 19

LG Claims apply only to the Conversion and not to the Asset Transaction.²⁶

71. In short: if the switch to the Asset Transaction complies with the provisions of section 150 of the Companies Act because the provisions of the Plan continue to apply *mutatis mutandis* then Vision must as a condition precedent achieve the 100% Acquisition of all the LG Claims before the Sale Agreements can be implemented.
72. If, on the other hand, the provisions of the Vision Plan as adopted do not continue to apply *mutatis mutandis* to the Asset Transaction then RGS's allegations to the effect that the Asset Transaction does not constitute a valid stand-alone rescue plan which the BRPs could proceed directly to implement without the plan being expanded and taken to creditors for a vote has been demonstrated to be correct.

CONCLUSION

73. In terms of prayer 5.4 of the Part A relief, RGS sought confirmation under oath from Vision that it has not and will not in future conclude any agreements with the Lender Group in terms of which any of THL's assets would be sold upon or after the conclusion of the rescue process in order to apply the proceeds of such sales to settle any amount due to the Lender Group or any other creditors.
74. The fact that Vision has still not succeeded in securing funding heightens the concern that Vision may, in desperation, conclude a funding agreement in terms

²⁶ BRP AA at e.g. para 250.1 record p 628.

of which it secures the funds necessary to complete the Acquisition by offering as security for such funding THL's assets which it has yet to acquire.

75. While this concern has previously been dismissed by the BRPs and Vision as being ungrounded speculation, Vision's own supplementary answering affidavit has given credence thereto.

76. In Vision's supplementary answering affidavit, it makes inter alia the following allegations in relation to the effect of the political unrest in Mozambique and the effect that this application has had on its ability to achieve the Acquisition (emphasis added):

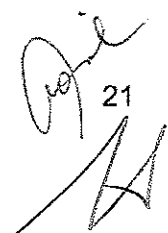
76.1. "...The political unrest significantly eroded confidence in the country's ability to maintain order, protect investments, and uphold the rule of law, all of which are **essential for the integrity of the assets underlying the Lender Group's security and which would, in part, support the raising of the necessary funding.**"²⁷

76.2. "...This introduced greater risks of legal and administrative challenges for businesses operating in the region, **further jeopardising the enforceability and value of security interests.**"²⁸

76.3. "In this climate, the risks to the underlying assets went beyond immediate physical threats. The erosion of investor confidence and the broader economic downturn associated with the unrest had a compounding effect, **reducing the value and liquidity of these assets. Even assets**

²⁷ Vision Supp AA at para 55 record p 1053.

²⁸ *Ibid* at para 58 record p 1054.


21

considered robust or strategically significant faced devaluation, operational risks, and reduced marketability under such conditions."²⁹

76.4. "As a result, it became increasingly difficult to place a definitive value on the assets, both for purposes of the sale agreements and the funding. These dynamics made it imperative for Vision and the Lender Group to reassess the risks and adopt a flexible, collaborative approach to any arrangements involving Mozambican assets."³⁰

77. The above allegations demonstrate that Vision is seeking to leverage THL's assets, which Vision does not own, to raise the funding needed to acquire those very assets.

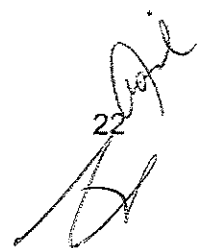
78. Not only does this demonstrate the rudimentary state of Vision's fundraising as at 27 January 2025 when the supplementary answering affidavit was filed, but it clearly gives rise to the potential for serious abuse.

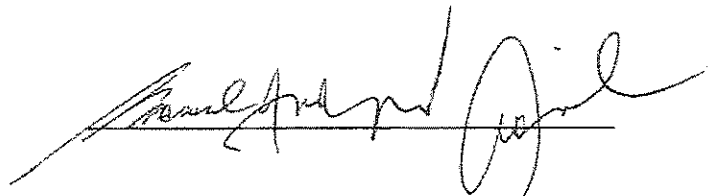
79. Creditors were not informed at the creditors meeting that Vision would fund its acquisition of the LG Claims by using THL's assets as collateral. Creditors were informed that Vision had sufficient funds to implement the Plan.

80. I humbly submit that these irregularities justify this Court's intervention and therefore respectfully pray for an order in terms of Part B of the notice of motion.

²⁹ Vision Supp AA at para 59 record p 1054.

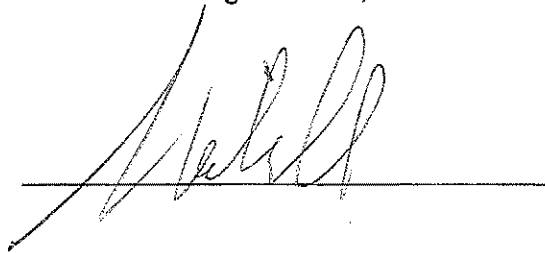
³⁰ *Ibid* at para 60 record p 1054.

22




MOMADE AQUIL RAJAHUSSEN

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at Durban on this the 30th day of **MARCH 2025**, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended by Government Notice No. 1648 of 17 August 1977, as amended having been complied with.



COMMISSIONER OF OATHS

COMMISSIONER OF OATHS
SHAHIL HIRALALL
PRACTISING ATTORNEY (RSA)
12 MARRIOTT (GLADYS MAZIBUKO) ROAD
MORNINGSIDE, DURBAN, 4001
TEL. 031 309 1123 FAX: 086 653 9751



Date: 02 May 2025

Our Ref: Mr D Moodley/SG/RGS514

Your Ref:

URGENT

MESSRS WERKMANS ATTORNEYS

ATT: TREVOR BOSWELL AND SIMONE GAST

Per Email: tboswell@werksmans.com;
sgast@werksmans.com

CC: Vision Parties, the Lender Group, and the IDC

1st Floor

94 Florida Road

Durban, 4001

PO Box 35546

Northway, 4965

Tel: +27 31 301 8623

Email: reception@dmatt.co.za

Dear Sirs,

RE: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Introduction

1. As you are aware, we act on behalf of RGS Group Holdings Limited ("RGS").
2. RGS's supplementary affidavit for purposes of Part B of the application launched by it in the Durban High Court on 6 November 2024 (under case number D13702/2024) ("the Application") was served on yourselves on 30 March 2025.
3. RGS indicated in the founding affidavit that it would seek to have Part B of the Application heard on an expedited basis. In their answering affidavit, the BRPs undertook to "co-operate in ensuring Part B is heard as expeditiously as possible." We trust that the BRPs will honour this undertaking and support correspondence which RGS intends to address to the Judge President in due course to request a preferential hearing allocation.

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

Vision's continued inability to fund the Acquisition

4. The BRPs first announced that Vision would acquire the Lender Group's claims via SENS on 9 November 2023. In terms of the first transfer certificate concluded by Vision and the Lender Group, payment by Vision was due on 6 December 2023, which payment did not occur.
5. The Vision Plan, which was adopted on 11 January 2024, assumes that the Vision Transactions, including the Acquisition, would have been completed by 1 April 2024 (see e.g. paragraphs 14.1.1.1 and 14.1.2.1 of the Plan), which also did not happen.
6. In its answering affidavit filed in the Application, Vision alleges that it paid a non-refundable deposit of R1.6 billion to the Lender Group on 11 January 2024 (i.e. by the close of the creditors meeting at which the Plan was adopted). No proof demonstrating that the deposit was paid as aforesaid has ever been provided.
7. At the creditors meeting Vision's ability to fund the Acquisition was raised numerous times by creditors, both the BRPs and Vision assured creditors that Vision had sufficient funds to implement the Plan and that the BRPs had received a letter from Standard Bank confirming this (i.e. that Vision had sufficient funds to fully implement the Plan). A copy of the Standard Bank letter is attached, marked "A".
8. Creditors voted to adopt the Vision Plan on the basis of the proof of funds ostensibly provided in terms of the Standard Bank letter. After 15 months in which Vision has failed to raise the funds necessary to either achieve the Acquisition or implement the plan, it is clear that the contents of the Standard Bank letter were untruthful.
9. RGS moreover recalls that when the BRPs announced that Kagera had been selected as the preferred Strategic Equity Partner and that Kagera would be funded by the IDC, Vision (aka Terris) publicly questioned how the IDC could provide funding to a competing bidder. The queries raised by Vision in this regard ultimately contributed to the BRPs disqualifying Kagera and recommending their search for a party to acquire THL out of business rescue.

10. Fifteen months after the Acquisition was announced, the prejudice which THL and all its stakeholders have suffered as a result of the continued implementation of the Vision Plan in circumstances where Vision has never had the requisite funding, is far worse than the prejudice which the aborted Kagera Plan ever brought to bear.
11. Vision's consistent failure to raise the funds necessary to complete the Acquisition has necessitated various indulgences, both from the BRPs and the Lender Group, and extensions of the payment deadline contemplated in the Acquisition Agreement, none of which were communicated to creditors.
12. In the answering affidavits filed by the BRPs and Vision in the Application during November 2024, it was alleged that there was nothing remiss about the timing of Vision's payment to complete the Acquisition and that such payment "was required to occur" by 31 December 2024. Once again, Vision failed to make payment by this extended date.
13. The fact that Vision had failed to make payment to the Lender Group by 31 December 2024 was confirmed in numerous sets of further affidavits that were filed by the BRPs and Vision during early January 2025 shortly before the hearing of Part A of the Application.
14. Both the BRPs and Vision, in terms of their aforesaid further affidavits, alleged that Vision would now make the necessary payment by a further extended deadline of 31 March 2025.
15. No explanation was provided as to why Vision failed to make payment by 31 December 2024. During the hearing of Part A of the Application, the presiding judge directly questioned counsel for Vision in relation to Vision's failures to make the necessary payment and enquired as to when such continued defaults would, in Vision's view, entitle RGS to Part A relief.

16. In response, counsel for Vision in summary assured the Court that the delay between 31 December 2024 and 31 March 2025 was an understandable commercial delay but conceded that, should Vision fail to make payment by the latter date, there would be grounds for the type of relief sought by RGS in Part A of the Application.
17. RGS understands that the BRPs and Standard Bank are attempting to procure funding on Vision's behalf from the IDC pursuant to an argument that if the IDC does not step in to provide funding to Vision, THL will be liquidated resulting in massive job losses and large scale damage to the KZN economy.
18. This is not in fact the case as RGS has repeatedly sent correspondence to the BRPs informing them of RGS's continued commitment to step into the breach left by the failed Vision Plan and to acquire THL out of business rescue.
19. RGS wishes to reiterate the terms of its most recent offer to the BRPs, dated 17 September 2024, to acquire THL out of business rescue. For ease of reference, a copy of RGS' letter of 17 September 2024 is attached, marked "B". The terms of that offer remain valid and open to acceptance by the BRPs.
20. In response to RGS's letter of 17 September 2024, the BRPs simply stated that they were unable to consider RGS' offer because the Vision Plan remained "binding" and they were thus "duty bound to continue to implement" it. A copy of the letter received from the BRPs in response to RGS's letter of 17 September 2024 is attached, marked "C".
21. We wish to remind you that in terms of the Companies Act, the failure of the Vision Plan due to having lapsed or due to impossibility of implementation, does not lead to the failure of the business rescue process and does not result in liquidation. The position would then be akin to one in which a business rescue plan had never been adopted. In terms of section 153 of the Act, a creditors meeting will thus have to be convened to consider the future of the company, at which meeting any creditor may table an alternative plan for consideration. Liquidation will only result pursuant to a

court order converting the business rescue into liquidation as contemplated e.g. in section 132(3)(a)(ii) of the Act.

22. Should a creditors meeting be convened after the BRPs declare the Vision Plan to have lapsed and / or failed, RGS formally confirms and undertakes to table an alternative business rescue plan for creditors' consideration. As was the case with all previous offers made by RGS, the terms of such business rescue plan will be objectively superior to the terms presently offered in terms of the failed Vision Plan and will, in particular, result in more favourable returns for both creditors and shareholders.

Conclusion

23. To this end, RGS signed a facility term sheet with Afrexim Bank on 22 January 2025 which contemplates funding of up to USD 280 million specifically for purposes of the offer set out in RGS' letter of 17 September 2024 (i.e. Annexure "B" above). A copy of the Afrexim term sheet is attached, marked "D".
24. The BRPs have a duty to declare that the Vision Plan has lapsed due to the non-fulfilment of the conditions adhering thereto and to accept that Vision has never had the funds necessary either to achieve the Acquisition or to implement the Plan.
25. The BRPs must now consider other viable options to ensure the success of THL's business rescue and must appreciate that liquidation is not a foregone conclusion should the Vision Plan be declared to have lapsed and / or failed.
26. The BRPs cannot, with respect, continue to support the implementation of the Vision Plan indefinitely notwithstanding Vision's continued inability to consummate the terms and conditions thereof.

27. The BRPs are therefore requested to confirm urgently:

27.1. whether Vision will fully and finally discharge the purchase price due to the Lender Group by the further extended due date of 00h00 01 May 2025;

27.2. should Vision have failed to make payment by the aforesaid date and time, for how much longer the BRPs will continue to entertain the Vision Plan and proceed with its implementation in the teeth of overwhelming evidence to the effect that Vision does not have access to the funding necessary to implement the Plan.

28. Should the BRPs fail to provide the above confirmations by the close of business today, 02 May 2025, RGS's rights to launch further interdictory proceedings against the continued implementation of the failed Vision Plan are strictly reserved. RGS moreover reserves the right to launch independent forensic investigations into the irregularities that have characterised the business rescue process and, should those investigations identify unlawful conduct, RGS will fully protect its rights by way of delictual and / or criminal claims.

29. Our client further wishes to indicate that your client had taken 4 (four) days to respond to our letter dated 27 March 2025, with a response only being furnished on 02 April 2025, such a delay in providing a response to this letter will not be acceptable.

Yours faithfully,


D MOODLEY P.P

DMI Attorneys

Copies to:

The Vision Parties

c/o Stein Scop Attorneys

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

Ms A Rakitzis Ho

Email: alexandra@steinscop.com

The Lender Group

c/o The Lender Group Facility Agent

Standard Bank of South Africa

Corporate and Investment Banking Division

Mr Venashan Seerangam

Email: AgencySBSA@standardbank.co.za; alombard@ensafrica.com

The Industrial Development Corporation of South Africa

c/o Mr Haroon Laher

Faskens

Email: hlaher@fasken.com

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender



DELIVERED BY EMAIL

DMI Attorneys
Email: devin@dmiaatt.co.za
Durban

Attention: Mr D Moodley

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
www.werksmans.com

YOUR REFERENCE: Mr D Moodley/SG/Powertrans/ RGS514
OUR REFERENCE: Mr D Hertz / Mr T Boswell / Ms S Gast /tjb/TONG7430.17/#10866113v4
DIRECT PHONE: +27 11 535 8283 / +27 11 535 8459 / +27 11 535 8131
EMAIL ADDRESS: dhertz@werksmans.com / tboswell@werksmans.com / sgast@werksmans.com

6 May 2025

Dear Sirs

RGS GROUP HOLDINGS LIMITED ("your client") // TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL") AND ITS BUSINESS RESCUE PRACTITIONERS ("the BRPs") (collectively, "our clients") AND ELEVEN OTHERS, CASE NO. D13702/2024 ("your client's application")

- 1 We refer to your letter dated 2 May 2025, which we received at 12h15 ("your letter").
- 2 In your letter, you demanded a response (to your letter) by close of business on the same day, failing which, you forewarned, that you held instructions to institute urgent interdictory proceedings. The time period that was unilaterally and unreasonably imposed by you is wholly inappropriate.
- 3 The inescapable inference is that your client is yet again attempting to create a basis to justify the launch of proceedings in circumstances your client is well aware that it has no tenable or legal basis to do so.
- 4 The BRP's continue to dispute that the Plan is invalid or is incapable of implementation, for the reasons set out in the papers filed to date. They continue to implement the Plan and will set out the developments in that regard in the answering affidavit to be filed by them in respect of Part B of your client's application.
- 5 No purpose will be served in dealing further with your client's ongoing vexatious conduct in this letter. We hereby fully reserve our clients right to do so in due course. Should your client proceed with its meretricious threatened application, we intend to place, *inter alia*, this letter before the Court in support of a prayer for a punitive cost award against your client.

Werksmans Inc. Reg. No. 1990/007215/01 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors: D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Artelro K Badel T Bata JD Behr AR Berman P Bhagatjee
NMN Bhengu AL Biletyi RE Bonnet TJ Boswell WJ Brown HLE Chang PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz
R Goolkin A Govuze GF Griesel NA Haiswayo J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Jense van Rensburg G Johannes S Juy J Kallmeyer A Kenny
NK Kgeme R Kiloren N Kirby HA Koba S Krige CJ Leitha H Leskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Maglison
MPC Manake JE Mardon PD Mashalane E Meiring H Michael SM Moerane R Mollise C Moratilis PM Mosebo B Moti NPA Motsiri CK Mthembu L Neldoo K Neluhani NZP Nkosi
BW Ntuli BPF Olivier Z Oosthuizen S Pedyachy M Panagrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdin B Rammla V Ramson BR Roothman
W Rosenberg NL Scott TA Sibidis FT Sinehakhavha LK Silberman S Sinden S Singh DE Singo JA Smith BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle
JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Velezidis T Volechank RN Wakefield L Watson D Wegierski
G Wickins DC Williams E Wood BW Workman-Davies Consultants DH Rebin DG Williams



- 6 Whilst we intend to respond fully to your letter in short order, we require you to urgently -
- 6.1 provide all of the relevant facts and documents that support your client's assertions ("the subject assertions") identified in paragraph 7 below; and
- 6.2 confirm whether the subject assertions emanate from your client and/or your firm, for us to do so.
- 7 The subject assertions are as follows -
- 7.1 Vision's assertion in its answering affidavit filed in your client's application that it had paid a non-refundable deposit in the amount of R1.6 billion *without* providing documentary evidence of that payment demonstrates that no such payment was made (paragraph 6 of your letter);
- 7.2 the BRP assurances that the Standard Bank letter "*ostensibly*" proves that Vision has "*sufficient funds to implement the Plan*" and that the Standard Bank letter were "*untruthful*" (paragraph 7 of your letter);
- 7.3 the factual basis for your assertion that "*Creditors voted to adopt the Vision Plan on the basis of the proof of funds ostensibly provided in terms of the Standard Bank letter*" (paragraph 8 of your letter). Our client does not accept that you have procured this advice from every creditor that voted at the meeting. Your client is required to demonstrate how, when, where and from whom it received such advice from each and every creditor that voted at the meeting;
- 7.4 the basis for your client's recollection as referred to in paragraph 9 of your letter;
- 7.5 full particulars of the manner in which "*THL and its stakeholders*" have been prejudiced and "*suffered as a result of the continued implementation of the Vision Plan*" in circumstances where Vision has allegedly "*never had the requisite funding*" (paragraph 10 of your letter). In particular, this must include, *inter alia* -
- 7.5.1 full details as to how, when, where and from whom it received each stakeholder's advice that they had been prejudiced and suffered in consequence of the continued implementation of the Vision Plan. Such details should be provided in relation to each and every stakeholder;
- 7.5.2 full details of the prejudice and suffering sustained by each and every stakeholder; and
- 7.5.3 a full explanation as to why the prejudice and suffering alleged to have been sustained by each and every stakeholder is "*worse than the prejudice which the aborted Kagera Plan ever brought to bear*";
- 7.6 how, when, where and from whom the understanding in paragraph 17 of your letter was derived; and
- 7.7 the facts that support your client's belief that it has any right to launch independent forensic investigations into the alleged irregularities that have "*characterised the business rescue process*" (paragraph 28 of your letter) as well as the source from which your client asserts that it has such a right at all.
- 8 For the avoidance of any doubt, our client disputes, *inter alia*, the subject assertions.



- 9 The contents of this letter is not exhaustive. Our client has instructed us to reserve its rights to deal with the content of your letter in greater detail in due course, which we hereby do.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Werksmans', written over a horizontal line.

Werksmans



Date: 07 May 2025

Our Ref: Mr D Moodley/SG/RGS514

Your Ref:

URGENT

MESSRS WERKMANS ATTORNEYS

ATT: TREVOR BOSWELL AND SIMONE GAST

Per Email: tboswell@werksmans.com;
sgast@werksmans.com

CC: Vision Parties, the Lender Group, and the IDC

1st Floor

94 Florida Road

Durban, 4001

PO Box 35546

Northway, 4965

Tel: +27 31 301 8623

Email: reception@dmatt.co.za

Dear Sirs,

RE: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. The above matter and your letter received yesterday, 6 May 2025, in response to our letter of 2 May 2025 refers.
2. Your letter under reply has pointedly refused to respond to the urgent confirmations sought in paragraph 27 of our letter of 2 May, i.e:
 - 2.1. Whether Vision fully and finally discharged the purchase price due to the Lender Group by the further extended due date of 00h00 on 1 May 2025; and
 - 2.2. Should Vision have failed to make payment by the aforesaid date and time, for how much longer the BRPs will continue to entertain the Vision Plan and proceed with its implementation in the teeth of overwhelming evidence to the effect that Vision does not have access to the funding necessary to implement the Plan.

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

3. Should Vision not have made payment as aforesaid, which is believed to be the case, the BRPs should have been in a position to confirm same immediately and should moreover have informed all affected persons of this fact. The time afforded to the BRPs to provide confirmation to this effect in our letter of 2 May 2025 was thus more than adequate as the confirmation sought pertains to a simple question of fact that is within the BRPs' direct knowledge.
4. We therefore reiterate our demand for this confirmation to be provided by no later than close of business today, 7 May 2025. Should the BRPs refuse to meet this deadline our clients' rights as set out in our letter of 2 May 2025 remain strictly reserved, including the right to place this correspondence before the urgent judge.
5. We do not intend to respond at this stage to the series of irrelevant interrogatories posed in your letter of 6 May 2025 but reserve the right to do so should the need arise in future.

Yours faithfully,


D MOODLEY

DMI Attorneys

Copies to:

The Vision Parties

c/o Stein Scop Attorneys

Ms A Rakitzis Ho

Email: alexandra@steinscop.com

The Lender Group

c/o The Lender Group Facility Agent

Standard Bank of South Africa

Corporate and Investment Banking Division

Mr Venashan Seerangam

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

Email: AgencySBSA@standardbank.co.za; alombard@ensafrica.com

The Industrial Development Corporation of South Africa

c/o Mr Haroon Laher

Faskens

Email: hlaher@fasken.com

Senior Practitioner: D Moodley
Attorneys: T Naicker | B Henry
Candidate Attorneys: S Gathiram | S Naidoo | B Scheepers
Practice Manager: N Govender

Wednesday, July 23, 2025 at 4:39:13 PM South Africa Standard Time

Subject: Fw: Project Thor (Tongaet) (In Business Rescue) - TC3 Addendum - Payment for today
Date: Wednesday, 16 July 2025 at 17:11:58 South Africa Standard Time
From: Agency SBSA
To: Lavery, Scott S
Attachments: image001.png

Dear Scott,

Please see below e-mail with the proof of payment to Lenders for the Vision Transfer.

Regards
 Zaakirah

From: Agency SBSA <AgencySBSA@standardbank.co.za>

Sent: Monday, May 12, 2025 1:29 PM

To: Abdul Sheik Yassim <abdulsheikyassim@absa.africa>; Adam Lombard <alombard@ensafrica.com>; Andre Geldenhuys <AndreG@Nedbank.co.za>; anthonyevens@absa.africa; Ashburton Credit <AshburtonCredit@ashburton.co.za>; Ashleigh Huxter <ahuxter@ensafrica.com>; Baumgartner, Martin M <Martin.Baumgartner@standardbank.co.za>; BelindaM3@Nedbank.co.za; Bennie Schraader <Bennie.Schraader@mmltd.co.za>; Cele, Mpumelelo <lashi.cele@rmb.co.za>; CFS Transaction Management <CFSTransactionManagement@standardbank.co.za>; Christopher Li Green <Chris.LiGreen@absa.africa>; Christopher Powels <christopherpo@nedbank.co.za>; Claire Botha <claire.botha@mmltd.co.za>; Clinton Clarke <Clinton.Clarke@absa.africa>; Corry, Nicola <Nicola.Corry@rmb.co.za>; dale.spencer@absa.africa; Dimakatso Mkhabela (SanFin) <DimakatsoM@sanlaminvestments.com>; DLRMBProjectThor@rmb.co.za; Docrat, Feroza F <Feroza.Docrat@standardbank.co.za>; Du Toit, Dayan <Dayan.DuToit@rmb.co.za>; Estelle Fong (SanFin) <EstelleF@sanlaminvestments.com>; Fernandes, Genene GC <Genene.Fernandes@standardbank.co.za>; Gareth Little (SanFin) <GarethL@sanlaminvestments.com>; Garth Abrahamse <Garth.Abrahamse@investec.com>; Govender, Neshalani N <Neshalani.Govender@standardbank.co.za>; Harry Philippou <HarryPhilippou@investec.com>; Howard van der Merwe (SCM) <Howardvdm@sanlaminvestments.com>; ibdobs@rmb.co.za; Irshaad Paruk <Irshaad.Paruk@rmb.co.za>; Jacobs, Newen <NJacobs1@landbank.co.za>; Jean du Plessis <jean.duplessis@rmb.co.za>; Kara, Mahendra <MKara@landbank.co.za>; Kemisetso Keikelame <KemisetsoK@specialisedfinance.sanlam.com>; Kerry Caldwell <KerryCaldwell@investec.com>; Khathu Mavhandu <Khathu.Mavhandu@mmltd.co.za>; Khonzinkosi Silondiwe Nkosi <Silondiwe.Nkosi@absa.africa>; Kyamulesire, Moseley MK <Moseley.Kyamulesire@standardbank.co.za>; Le Grange, C. (Catrina) <CatrinaL@Nedbank.co.za>; Liam Roets (ZA) <Liam.Roets@absa.africa>; Mahomed, Tahir <TMahomed@landbank.co.za>; Maite Leshabane <Maite.Leshabane@rmb.co.za>; Makarudze, Jotham <Jotham.Makarudze@ashburton.co.za>; Manchadi Kekana (ZA) <Manchadi.Kekana@absa.africa>; Marili Theunissen (ZA) <Marili.Theunissen@absa.africa>; Martin, Robert R <Robert.Martin@standardbank.co.za>; Mbewe, Z. (Zanele) <Zanele@nedbank.co.za>; Midzuk, Jeffrey J <Jeffrey.Midzuk@standardbank.co.za>; Mokhatshane, Mosala <MMokhatshane@landbank.co.za>; Moodley, Nireshnee <Nireshnee.Moodley@ashburton.co.za>; Natalie Louria (SanFin) <nataliel@sanlaminvestments.com>; NCIB LMO - Diversified Finance Nedbank <LevFin@Nedbank.co.za>; ovizikhungo.sicwetsha@absacapital.com; Priyan Govender <priyang@nedbank.co.za>; Prinsloo, Rene R <Rene.Prinsloo@standardbank.co.za>; Rick Lupini <Rick.Lupini@investec.com>; rudy.wuite@absa.africa; Salome Rankapole <srankapole@ensafrica.com>; Shabalala, Tshupo <Tshupo.Shabalala@ashburton.co.za>; Shaegan Pillay <Shaegan.pillay@momentum.co.za>; silondiwe.nkosi@absacapital.com; Sobayeni, V. (Vuyisa) <VuyisaS@Nedbank.co.za>; Stephen, Zola Z <Zola.Stephen@standardbank.co.za>; Swart, A. (Alexa) <AlexaS@Nedbank.co.za>; Tladi, Mosala <MTladi@landbank.co.za>; Transaction Management <AssetManagement449@absa.africa>; Umang Ramlal <Umang.Ramlal@absa.africa>; Welwood Nortier <WelwoodN@Nedbank.co.za>; Yonke Soga (Sanfin) <yonkes@sanlaminvestments.com>; Young, Kerry KL <Kerry.Anne.Young@standardbank.co.za>; Angeliqe Salsone@absa.africa; Azwhangwisi Muthelo@absa.africa; BSM Operations@mmltd.co.za; BSMFixedIncome@mmltd.co.za; ChantelleP@sanlaminvestments.com; CIBOPS-LoansAdminJHB <CIBOPS-LoansAdminJHB@standardbank.co.za>; DLAshburtonAshburtonInstoOperations@ashburton.co.za; DLRMBMiddleOffice@rmb.co.za; Funani Sithole (ZA) <Funani.Sithole@absa.africa>; Gary Oertel <goertel@ensafrica.com>; jobasson@ensafrica.com; Kagiso Tsalsane@mmltd.co.za; kallego kgapane@mmltd.co.za; Lorraine Khoza@mmltd.co.za; Naidoo, Nivashini N <Nivashini.Naidoo2@standardbank.co.za>; Prasheena.J@Nedbank.co.za; ProjectThor@Nedbank.co.za; ReneS@Nedbank.co.za; Mackay, Rory R <Rory.Mackay@standardbank.co.za>; Samantha Singh (SanFin) <SamanthaS@specialisedfinance.sanlam.com>; Sanreesha Haripersad (Bodasing) <Sanreesha.Bodasing@investec.com>; Santhuri Thaver@ashburton.co.za; Seipati VanSchalkwyk@rmb.co.za; siederma@ensafrica.com; stcl-tm@rmb.co.za; TamaraC@Nedbank.co.za
Subject: Re: Project Thor (Tongaet) (In Business Rescue) - TC3 Addendum - Payment for today

This is an external email. Please verify the sender before responding, clicking on links or opening attachments.
 Please use the Mimecast button or forward any suspicious or phishing emails to phishing@investec.com

Dear Lenders,

The Vision Transfer amount was received by the agent on the 09 May 2025.

The payment was received after our cut off times.

Please see proof of payment today to lenders:

5	2025-05-12 12:19:57.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3919	INVESTEC BANK LIMITED	000688197	74,040,972.50	NGABAT	O	INVESTEC
6	2025-05-12 12:19:57.0	2025-05-12 00:00:00.0	NO MESSAGES CREATED	Sanlam Investment Management Pty L	000688197	31,598,796.00	NGABAT	O	Standard Bank Of RSA Ltd
7	2025-05-12 12:19:56.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3917	Sanlam Ltd.	000688197	11,582,125.10	NGABAT	O	FIRST NATIONAL

									BANK LTD
8	2025-05-12 12:19:56.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3918	Ashburton Fund Managers (Pty) Ltd.	000688197	13,731,875.00	NGABAT	O	FNB
9	2025-05-12 12:19:56.0	2025-05-12 00:00:00.0	NO MESSAGES CREATED	SANLAM INVESTMENT MANAGEMENT	000688197	7,557,210.90	NGABAT	O	STANDARD BANK
10	2025-05-12 12:19:56.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3924	Momentum Metropolitan Life Ltd.	000688197	21,967,522.70	NGABAT	O	FNB
11	2025-05-12 12:19:56.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3923	The Land and Agricultural Develo	000688197	90,903,853.40	NGABAT	O	FNB
12	2025-05-12 12:19:55.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3922	ABSA BANK	000688197	207,309,481.10	NGABAT	O	ABSA
13	2025-05-12 12:19:55.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3926	INVESTEC BANK LIMITED	000688197	74,040,972.50	NGABAT	O	INVESTEC
14	2025-05-12 12:19:55.0	2025-05-12 00:00:00.0	NO MESSAGES CREATED	THE STANDARD BANK OF SA LTD	000688197	496,394,453.30	NGABAT	O	STANDARD BANK
15	2025-05-12 12:19:55.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3921	RMB DIV OF FIRSTSTRAND BK LTD	000688197	315,738,684.30	NGABAT	O	FNB
16	2025-05-12 12:19:54.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3920	NEDBANK LTD	000688197	347,993,409.80	NGABAT	O	NEDBANK
17	2025-05-12 12:19:54.0	2025-05-12 00:00:00.0	MT103 MESSAGE 2505122805SC3925	SANLAM LIFE INSURANCE LTD	000688197	37,140,660.70	NGABAT	O	STANDARD CHARTERED BANK

Regards
Zaakirah



"RM38"

The Vision Parties

Stein Scop Attorneys

Ms A Rakitzis Ho

Email: alexandra@steinscop.com

The Lender Group

C/o The Lender Group Facility Agent

Standard Bank of South Africa

Corporate and Investment Banking Division

Mr Venashan Seerangam

Email: AgencySBSA@standardbank.co.za

The Industrial Development Corporation of South Africa

Faskens

Mr Haroon Laher

Email: hlaher@fasken.com

23 May 2025

URGENT

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We refer to the above matter and confirm that we have come on record for RGS pursuant to the notice of withdrawal and substitution filed by DMI Attorneys earlier today.
2. We refer also to the letter of demand sent by DMI Attorneys on 14 May 2025.
3. No response was received to the abovementioned demand from Vision, the Lender Group, or the IDC. This despite the deadline for the demand having been close of business on 21 May 2025.

Imran Bobat
BA (UND) LLB (UND) LLM(UCLA)

TEL(031)201 0060

EMAIL: admin@boblaw.co.za

331 ST THOMAS ROAD, MUSGRAVE, DURBAN 4001

4. Whilst a response was received from the BRPs, such response in no way constitutes compliance with the separate demands made of Vision, the Lender Group and the IDC in the letter of demand dated 14 May 2025.
5. In the interests of avoiding unnecessary litigation, and since we have only today come on record, RGS has instructed us to grant an indulgence to Vision, the Lender Group and the IDC, and to afford them a final opportunity to comply with the demands made of them.
6. **We therefore reiterate the following demands for information, which is to be provided by no later than close of business on Monday, 26 May 2025:**
 - 6.1. First, that the Vision Parties –
 - 6.1.1. Provide proof of the payments they allege to have made to the Lender Group of (i) the deposit of R1.51 billion on 11 January 2024, and (ii) the balance owed of c.R2 billion on 9 May 2025;
 - 6.1.2. Provide proof that all of the Lender Group's claims in and security against THL have been transferred to Vision unconditionally (i.e. the Lender Group's claims and security of c.R8.5 billion¹ which Vision has allegedly acquired by paying the Lender Group c.R3.51bn in terms of the Acquisition Agreement);
 - 6.1.3. Provide confirmation under oath that they have not concluded an agreement with the Lender Group or any other funder or related party in terms of which they have either offered or put up THL's assets as security / collateral for any debt they incurred in raising the funds required to discharge any of their payment obligations to either (i) the Lender Group, or (ii) any other parties who are to receive distributions in terms of the Vision Plan;
 - 6.2. Second, that the Lender Group provide:
 - 6.2.1. Written confirmation that Vision has itself paid to the Lender Group, in cash, the full amount owed by Vision under the Acquisition Agreement amounting to c.R3.51 billion, with the deposit of R1.51

¹ This is the latest figure available publicly as contained in the circular to shareholders of 10 July 2024. The amount should be taken to denote the current figure including updated interest etc.

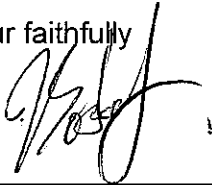
billion having been paid on 11 January 2024 and the balance having been paid on 9 May 2025;

- 6.2.2. Proof that the Lender Group has unconditionally transferred all of its claims in and security against THL to Vision (i.e. the Lender Group's claims and security of c.R8.5 billion² which Vision has allegedly acquired by paying the Lender Group c.R3.51bn in terms of the Acquisition Agreement);
- 6.2.3. Written confirmation of whether or not the Lender Group or any member thereof advanced to Vision the funds used by Vision to settle the balance of the amount due to the Lender Group above the deposit;
- 6.3. Third, that the IDC provide written confirmation regarding the nature and purpose of the facility referred to in paragraph 18.12 of the BRP AA (i.e. "a new facility has been approved by IDC for Vision Sugar and the relevant agreements are currently being drafted") and to confirm whether any amount of that facility is intended to be used by Vision to discharge any of its payment obligations pursuant to either (i) the Acquisition Agreement, or (ii) the Vision Plan.
7. **In addition, RGS demands from the Vision Parties and the Lender Group that** (i) a copy of the Acquisition Agreement, and (ii) copies of any and all previous versions of the Acquisition Agreement be provided to RGS and published on the THL business rescue website for the benefit of all affected persons **also by no later than close of business on Monday, 26 May 2025.**
8. Should the payments by Vision to the Lender Group of 11 January 2024 and 9 May 2025 in fact have been made there can be no reasonable objection by or prejudice to any of the parties involved to provide proof thereof.
9. Similarly, if the Acquisition has now been achieved and the Acquisition Agreement does not contain any terms that are inconsistent with the Vision Plan, there can be no reasonable objection by or prejudice to any of the parties involved to act transparently and provide the Acquisition Agreement to affected persons.

² This is the latest figure available publicly as contained in the circular to shareholders of 10 July 2024. The amount should be taken to denote the current figure including updated interest etc.

10. Should the demands contemplated in paragraphs 6 and 7 above not be met by close of business on Monday, 26 May 2025, RGS will have no option but to assume that Vision and the BRPs will proceed to close THL's business rescue, or alternatively progress the Asset Sales to Vision to such an extent that they will become impossible to reverse, before Part B of its application is heard.
11. RGS will in that event have no choice but to approach the High Court on an urgent basis for orders *inter alia* directing that the information demanded be disclosed to affected persons.
12. In the meantime, RGS's rights remain strictly reserved.

Your faithfully



Imran Bobat
Attorney
Bobat & Associates

FASKEN
Own tomorrow

Bell Dewar Incorporated
Attorneys, Notaries and Conveyancers

fasken.com

B-BBEE Level 2 | ISO 9001:2015 | ISO 27001:2013

PHYSICAL Inanda Greens
54 Wierda Road West
Sandton
2196
South Africa

POSTAL PO Box 652057
Benmore, 2010
South Africa

T +27 11 586 6000
F +27 11 586 6104

By E-mail

Haroon Laher
Phone: +27 11 586 6025
Fax: +27 11 586 6025
hlaher@fasken.com

To: Bobat & Associates
Werksmans Attorneys
Stein Scop Attorneys
The Lender Group (care of The Lender Group Facility Agent)
DMi Attorneys

E-mail: admin@boblaw.co.za
tboswell@werksmans.com
sgast@werksmans.com
alexandra@steinscop.com
AgencySBSA@standardbank.co.za

From: Haroon Y Laher/155269.00015

Date: 28 May 2025

Subject: **Tongaat Hulett Limited (in business rescue) (THL)**

Dear Sirs

1. We address this correspondence to you:
 - 1.1 on the instructions of The Industrial Development Corporation of South Africa Limited;
 - 1.2 in response to:
 - 1.2.1 your letter dated 23 May 2025 addressed to multiple parties including our client; and
 - 1.2.2 the demand directed to our client contained in paragraph 6.3 of your letter, replicating the demand contained in paragraph 26.4 of a letter addressed by your client's erstwhile attorneys dated 14 May 2025.
2. Our client does not intend to deal with every assertion, statement or allegation contained in your letter. Our client's failure to traverse every assertion, statement or allegation should not be construed as an admission or concession of any such assertion, statement

DS


or allegation. Our client reserves the right, should it become necessary, to deal with any such statement or allegation in the future.

3.

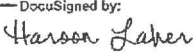
- 3.1 The written confirmations requested from our client are not relevant to any aspect or issue remaining in Part B of the RGS Application.
- 3.2 To be clear, the *nature and purpose of the facility* or *whether any amount of that facility is intended to be used by Vision to discharge any of its payment obligations pursuant to either (i) the Acquisition Agreement, or (ii) the Vision Plan* are not matters relevant to any aspect or issue remaining in Part B of the RGS Application.
- 3.3 In any event, your client has no right to request any document or information in relation to an independent commercial transaction involving our client and a third party. Neither can our client simply disregard the confidentiality that exists between our client and a third party in connection within their independent contractual relationship.

4.

- 4.1 One of the purposes which Chapter 6 of the Companies Act, 2008 strives to achieve is to provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all stakeholders. The purpose of business rescue is to aid a genuinely financially distressed company, which our client believes THL is, to maximize the likelihood of it continuing its existence, on a solvent basis, for the benefit of all stakeholders, past, present and future.
- 4.2 Our client's role in the business rescue proceedings of THL, as a post-commencement financier, remains aimed at achieving that purpose enshrined in the Companies Act, 2008. It is aimed at ensuring the continued existence of THL for the benefit of a wide range of stakeholders, including its employees, service providers, small and medium scale farmers, growers and others. There is also the socio-economic impact of the business of THL within the region of Tongaat and Kwazulu-Natal as a whole which will be hugely impacted in the event of its collapse into liquidation.
- 4.3 Our client remains committed to the success of the business rescue proceedings of THL for the benefit of all its stakeholders – including the preservation of jobs and livelihood of service providers, farmers, growers and others, all of which fall squarely within the development mandate of our client.

5. All our client's rights are, and remain, reserved.

Yours faithfully

DocuSigned by:

D12E4D675AE846B...

Fasken

Per: Haroon Y Laher



"RM40"

To: Bobat and Associates

Attention: Imraan Bobat

28 May 2025

Dear Sirs,

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")

1. We refer to your letter dated 23 May 2025 addressed to the Standard Bank Agency.
2. Please find attached a letter addressed by ENS Attorneys on behalf of each Lender to Werksmans in their capacity as the legal advisers to THL. You will note from the attached letter:
 - 2.1 The Lender Group confirmed that Vision had fully discharged all of its payment obligations *vis-à-vis* the purchase consideration due by it to the Lender Group relating to the transfer of the claims and the security of the Lender Group in respect of THL (and its subsidiaries) ("THL Group Claims and Security").
 - 2.2 The Lender Group confirmed that the THL Group and Claims and Security were unconditionally and irrevocably transferred to Vision on 9 May 2025.
3. Standard Bank accordingly resigned as the Facility Agent in respect of the THL Group Claims and Security and the new Facility Agent is Vision Investments 155 Proprietary Limited ("Vision").
4. Accordingly, please communicate with Vision as the new Facility Agent and Lender, going forward.
5. Please note for the sake of good order, any failure to deal with any aspect of your letter must not be construed to be an admission thereof.

Yours faithfully,

For and on behalf of:

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment Banking division)
(in its capacity as former Facility Agent on behalf of the Syndicated Lenders)

Name: Venashan Seerangam

Capacity: Vice-President: Agency Front Office

Who warrants his/her authority hereto

3rd Floor, East Wing, 30 Baker Street Rosebank 2196
PO Box 6075 Johannesburg 2000 South Africa
Tel. Switchboard: +27 (0)11 721 9000
AgencySBSA@standardbank.co.za

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) Authorised financial services and registered credit provider (NCRCP15)

Directors: NMC Nyembezi (Chairman) SK Tshabalala* (Chief Executive Officer) LL Bam
PLH Cook A Daehnke* OA David-Borha1 GJ Fraser-Moleketi GMB Kennealy
BJ Kruger Li Li2 JH Maree NNA Matyumza ML Oduor-Otieno3 RN Ogega3
Fenglin Tian2

Company Secretary: K Froneman – 2025/04/08

* Executive Director 1 Nigerian 2 Chinese 3 Kenyan



The MARC Tower 1
129 Rivonia Road Sandton
Johannesburg South Africa 2196
P O Box 783347 Sandton South Africa 2146
Docex 152 Randburg
tel +2711 269 7600
info@ENSafrica.com
ENSafrica.com

Werksmans Attorneys
Attention: Trevor Boswell
Email: tboswell@werksmans.com

Mr Gary Oertel our ref
 your ref
21 May 2025 date

Dear Sirs

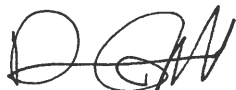
TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We have been instructed by the Lender Group to address this letter to you in your capacity as the legal representatives of the Business Rescue Practitioners of Tongaat Hulett Limited (in business rescue) ("**THL**").
2. The Lender Group hereby confirms that Vision Investments 155 (Proprietary) Limited ("**Vision**") has fully discharged all of its payment obligations *vis-à-vis* the purchase consideration due by it to the Lender Group relating to the transfer of the claims and the security of the Lender Group in respect of THL (and its subsidiaries) ("**THL Group Claims and Security**").
3. We are further instructed to confirm that the THL Group and Claims and Security were unconditionally and irrevocably transferred to Vision on 9 May 2025.

Yours faithfully

ENS

Per:



GARY OERTEL AND NEPHTALIE SITHOLE

"RM41"

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

Case number:

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

VISION INVESTMENTS 155 (PTY) LTD

First Respondent

TERRIS AGRIPRO (MAURITIUS)

Second Respondent

REMOGGO (MAURITIUS) PCC

Third Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Fourth Respondent

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

Fifth Respondent

TONGAAT HULETT LIMITED

Sixth Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Seventh Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Eighth Respondent

GERHARD CONRAD ALBERTYN N.O.

Ninth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED

Tenth Respondent

**THE INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA**

Eleventh Respondent

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

Twelfth Respondent



NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on **WEDNESDAY, 11 JUNE 2025** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6 (12).
2. That the first to fifth respondents ("**Vision**") be directed to provide the applicant with the following within 5 business days:



- 2.1. Proof of the payment of R1.51 billion made by Vision to the Lender Group on 11 January 2024;
- 2.2. Proof of the payment of circa R2 billion made by Vision to the Lender Group on 9 May 2025;
- 2.3. A copy of the agreement concluded between Vision and the Lender Group in terms of which Vision has acquired all of the Lender Group's claims and security against Tongaat Hulett Limited ("**THL**");
- 2.4. Copies of all previous versions of the agreement referred to in the preceding paragraph;
- 2.5. Proof that all of the Lender Group's claims and security against THL have been transferred to Vision;
- 2.6. A written statement confirming whether or not:

2.6.1. any of THL's assets, or any rights in relation thereto, were proffered by Vision to its funders, whether as security, collateral, pledge, guarantee or any similar mechanism, in order to raise the funds necessary to acquire the Lender Group's claims and security;

2.6.2. any of Vision's financial obligations owed to the Lender Group or any of Vision's financial obligations relating to the implementation of the business rescue plan will be satisfied in whole or in part, whether in the first instance or in the event of a default of payment by Vision, from the proceeds of:



2.6.2.1. financing raised by selling THL assets or putting such assets up as collateral; or

2.6.2.2. any facility granted in favour of THL by the Lender Group, the Industrial Development Corporation of South Africa, or any other funder.

3. That the costs of this application be paid by the first to fifth respondents, together with any party opposing the relief sought herein, jointly and severally the one paying the other to be absolved on scale C.
4. Further and/or alternative relief.

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

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

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

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

- (i) notify the applicant's attorneys in writing by **no later than 17h00 on Monday, 2 June 2025;**
- (ii) deliver their answering affidavits, if any, by **no later than 17h00 on Friday, 6 June 2025;**
- (iii) Provided that the above filing deadlines are complied with, the applicant will filed its replying affidavit on Monday, 9 June 2025.



KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at **DURBAN** on this 29th day of **MAY 2025**.

BOBAT & ASSOCIATES

331 St Thomas Road

Musgrave

DURBAN

KwaZulu Natal

Tel: 031 201 0060

Email: admin@boblaw.co.za

[Ref: RGS/THL]

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Durban

AND TO: THE FIRST TO FIFTH RESPONDENTS
Care of: Stein Scop Attorneys Incorporated
Attorneys for the First to Fifth Respondents
2nd Floor, Capital Hill
6 Benmore Road, Morningside
Sandton

Tel: 011 380 8081

Service by email to: bradley@steinscop.com, glenn@steinscop.com,
alexanda@steinscop.com, brookeb@steinscop.com,
casper@steinscop.com, keagan@steinscop.com



AND TO: THE SIXTH TO NINTH RESPONDENTS
Care of: Werksmans Attorneys
Attorneys for the Sixth to Ninth Respodnents
11th Floor The Central
96 Rivonia Road
Sandton
Tel: 011 535 8248

Service by email to: dandropoulos@werksmans.com,
tboswell@werksmans.com, dhertz@werksmans.com,
sgast@werksmans.com

AND TO: THE TENTH RESPONDENT

Care of: ENSafrica
Attorneys for the Tenth Respondent
Towe 1 The Marc
129 Rivonia Road
Sandton
Tel: 011 269 7600

Service by email to: slederman@ensafrica.com,
alombard@ensafrica.com, goertel@ensafrica.com,
jobasson@ensafrica.com



AND TO: THE ELEVENTH RESPONDENT

Care of: Faskens
Attorneys for the Eleventh Respondent
Inanda Greens Business Park
54 Wierda Road West
Sandton
Tel: 011 586 6000

Service by email to: hlaher@fasken.com

"RM42"

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

CASE NO: 2025-079452

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

VISION INVESTMENTS 155 (PTY) LTD



First Respondent

TERRIS AGRIPRO LIMITED (MAURITIUS)

Second Respondent

REMOGGO (MAURITIUS) PCC

Third Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Fourth Respondent

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

Fifth Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Sixth Respondent

TREVOR JOHN MURGATROYD N.O.

Seventh Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Eighth Respondent

GERHARD CONRAD ALBERTYN N.O.

Ninth Respondent

**THE LENDER GROUP OF TONGAAT HULETT
LIMITED**

Tenth Respondent

**THE INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA**

Eleventh Respondent

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

Twelfth Respondent

FIRST TO FIFTH RESPONDENTS' APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT the first to fifth respondents (**Vision**) intend to apply, on a date and at a time to be determined by the Registrar, for leave to appeal to the Full Court of the KwaZulu-Natal Local Division, Durban, *alternatively*, the Supreme Court of Appeal, against the whole of the judgment and order (other than the findings of urgency and paragraph 1 of the order) of this Court (*per* Acting Judge Zwane) delivered on 4 July 2025.

TAKE NOTICE FURTHER that the grounds on which Vision seeks leave to appeal are the following:

1. First ground: Right to disclosure

1.1. The Court erred in finding in paragraphs 48 to 57 of the judgment that the applicant (**RGS**) has a right to the disclosure relief.

1.2. In particular, the Court erred in the following respects:

1.2.1. The Court found that RGS required and was entitled to the disclosure relief to protect its interests in Part B and, in particular, to consider whether to withdraw Part B.¹

1.2.2. The Court ought to have found that the disclosure relief was irrelevant to the Part B relief, which is founded on the following three grounds:²

1.2.2.1. That the business rescue plan (**the Vision Plan**) in respect of the sixth respondent (**THL**) (in particular, the Asset Transaction) is unlawful for failure to comply with section 150 of the Companies Act, 2008 (**the Act**). Section

¹ Judgment ¶¶ 30-31.

² AA ¶ 19 (002-11—12).

150 concerns the requirements of a business rescue plan, such that the Court ought to have found that the Vision Plan either complied with section 150 or not, such that documents and information relating to subsequent events have no bearing on the content of the Vision Plan or its lawfulness under section 150;

1.2.2.2. That the implementation of the Vision Plan is in breach of the representations made at the meeting at which the Vision Plan was adopted, and the provisions of the Vision Plan itself. Regarding RGS's allegation of misrepresentations, the Court ought to have found that the documents and information are irrelevant to whether there was a misrepresentation, as RGS alleges, as it is common cause that Vision did not pay the Lender Group the entire purchase consideration on 11 January 2024. Regarding the RGS's allegation of breach of the Vision Plan, the Court ought to have found that RGS was not entitled to further particulars or evidence of the completed acquisition alleged in Part B, but could rely on this alleged deficiency in persisting with Part B; and

1.2.2.3. That the Vision Plan has lapsed, given that it had proven incapable of being implemented within a reasonable time given Vision's alleged failure timeously to acquire the Lender Group's claims and security. The Court ought to have found that the disclosure relief had no bearing on whether the Vision Plan had already lapsed.

1.2.3. In addition, the Court ought to have found that:

1.2.3.1. RGS had not established any legal right that required Vision to provide the disclosure sought to assist RGS in Part B;

- 1.2.3.2. if RGS required such disclosure, it could have persisted with disclosure under its (and Powertrans') rule 35(12) notices, which sought substantially the same documents;³ and
- 1.2.3.3. RGS was able to persist with Part B without such disclosure and had in fact elected to file its supplementary affidavit in Part B without such disclosure.⁴
- 1.2.4. The Court erred in finding that the decision in **Reiscor Two**,⁵ that creditors have no greater rights to information (and documentation) than they had prior to the company being placed in business rescue, is distinguishable. The Court stated as follows:⁶
- “[52] In *Reiscor Two*, case the major creditors had requested the permission and co-operation of the business rescue practitioners to consent to a due diligence by a management accountant for a period of five to seven days and full access to all documents and records of the company in business rescue. In the present case RGS seeks disclosure and information relating to the implementation of the Vision plan. The disclosure and the information sought do not relate to the affairs of THL. In my view the present matter is distinguishable from the *Reiscor Two* case.”
- 1.2.5. The Court ought to have found, based on the principle in **Reiscor Two**, that RGS had no greater rights to the disclosure it sought as a result of THL being placed in business rescue. Both **Reiscor Two** and this application concern the rights of creditors in business rescue to disclosure concerning a business rescue plan. **Reiscor Two** concerned disclosure to creditors for the purposes of

³ AA ¶¶ 26 (002-13—14), 38-39 (002-16), and 147 (002-39—40).

⁴ AA ¶ 204 (002-52).

⁵ **Reiscor Two (Pty) Ltd (In Business Rescue) v Anheuser-Busch Inbev Africa (Pty) Ltd and Others** 2025 (1) SA 315 (GJ) ¶ 68.

⁶ Footnotes omitted.

being in a position to vote on a business rescue plan.⁷ This case concerns disclosure to RGS (as a creditor) for the purposes of assessing the implementation of a business rescue plan. The *ratio* remains applicable – RGS has no greater rights as a creditor to disclosure by reason of THL being in business rescue. The further ground of distinction – that the disclosure sought by RGS does “*not relate to the affairs of THL*” – undercuts any reliance on Chapter 6 in finding that RGS has a right to the disclosure relief.

1.2.6. The Court found that Vision “*tacitly acknowledge that RGS is entitled to be informed of the steps taken in the implementation of the Vision Plan*”.⁸

1.2.7. The Court erred in making this finding and relying on it to support RGS’s right to the disclosure relief from Vision. Vision contends that any right that RGS has to be updated of the implementation steps as a creditor is contained in section 132(3) of the Act and is limited to it acquiring a monthly “*report on the progress of the business rescue proceedings*” from the business rescue practitioners (the BRPs) (not Vision).⁹

1.2.8. The Court ought to have found that RGS has no entitlement to be informed of the implementation steps or to the disclosure relief from Vision.

1.2.9. The Court found that Vision does not raise “*any claim of confidentiality*” as a ground to support a finding that RGS is entitled to the disclosure relief.¹⁰ This is incorrect. Vision asserted the confidential nature of the Acquisition Agreement between it and the

⁷ **ReIsco Two** ¶¶ 14, 38 and 46.

⁸ Judgment ¶ 55.

⁹ AA ¶ 225 and 228 (**002-59**)

¹⁰ Judgment ¶ 55.

Lender Group on no less than five occasions in its answering affidavit.¹¹

1.2.10. The Court ought to have found that the confidentiality of the commercial arrangements between Vision and the Lender Group precluded the granting of the disclosure relief sought by RGS.¹²

1.2.11. The Court found that RGS *“has a right to be informed on the progress on the implementation of the Vision Plan”*, which must include *“a corollary right to the documents and information that support the assertion that the Vision Plan is being implemented correctly and properly”*.¹³

1.2.12. The Court ought to have found that the only rights that creditors have under the Act to information and documents are set out exhaustively in sections 132(3)(a), 150(1) and 150(2) which impose obligations on the BRPs and (perhaps) THL, not on Vision, and which do not extend to the disclosure sought by the RGS. In particular, section 132(3)(a) requires only that the BRPs prepare monthly progress reports (which the BRPs did) and section 150(2)(c)(i) requires that the business rescue plan (developed by the BRPs) must contain *“a statement of the conditions that must be satisfied... for the business rescue plan to (aa) come into operation; and (bb) be fully implemented”* (which the plan does).

1.2.13. The Court ought to have placed greater weight on the fact that the BRPs were satisfied that the claims had been acquired and that the Lender Group and Standard Bank, the facility agent of the Lender Group, had confirmed this on oath.

¹¹ AA ¶¶ 176.3 (002-46), 218 (¶ 3.3) (002-56), 231 (002-60), 235 (002-60), and 326 (002-72).

¹² At least as far as the Acquisition Agreement is concerned.

¹³ Judgment ¶ 56.

1.2.14. The Court erred in failing to deal with the evidence put forward by the respondents – much of which is uncontroverted and must, in any event, be accepted under **Plascon-Evans** – that demonstrates that RGS seeks the disclosure relief, not to exercise rights as a creditor, but for an ulterior purpose as a competing bidder.

1.3. The Court ought to have found that RGS seeks the disclosure relief for this ulterior purpose.

2. **Second ground: Proof of acquisition of claims**

2.1. The Court erred in finding that Vision had not provided sufficient proof of payment to the Lender Group and acquisition of the Lender Group's claims.¹⁴

2.2. In particular, the Court erred in the following respects:

2.2.1. The Court erred in failing to have regard to the fact that Standard Bank, the facility agent of the Lender Group, had confirmed under oath in these proceedings that (i.) Vision *"has fully discharged all of its obligations vis-à-vis the purchase consideration due by it to the Lender Group relating to the transfer of the claims and security ... of the Lender Group in respect of [THL]"*, and (ii.) *"the THL Group Claims and Security were unconditionally and irrevocably transferred to [Vision] on 9 May 2025"*.¹⁵ The Court erred in not acknowledging Standard Bank's evidence under oath.¹⁶

2.2.2. The Court ought to have found that Vision had produced sufficient evidence of the acquisition of the Lender Group's claims and security and payment for the Lender Group's claims, and that there was no

¹⁴ Judgment ¶¶ 55 and 58.

¹⁵ **002-392—4.**

¹⁶ Judgment ¶ 26 in which only Standard Bank's letter and the BRP's confirmation is acknowledged.

reason to disbelieve Vision, the Lender Group and the BRPs concerning these issues.

- 2.2.3. The Court failed to have regard to the explanation of RGS's counsel in oral argument that RGS's underlying concern was that there had not been an unequivocal demonstration that all of the Lender Group's claims had been acquired, having regard to the past conduct of the parties. In this regard, the documents before the Court were clear as to the fact that the claims had been acquired in full which was confirmed from the bar by counsel for Vision.
- 2.2.4. The Court erred in insisting on documents evidencing proof of payment¹⁷ in circumstances where both the payor (Vision) and payee (the Lender Group) had unequivocally and under oath confirmed the discharge of the purchase consideration in full and, and RGS made it clear in its founding affidavit and during argument that it did not contend that the Lender Group was untruthful.¹⁸
- 2.2.5. The Court ought to have found that Vision had provided sufficient evidence of the acquisition of the Lender Group's claims and that there was no reason to doubt both Vision's and the Lender Group's statements under oath (or the BRPs' satisfaction and written confirmation).¹⁹

¹⁷ Judgment ¶ 20.

¹⁸ FA ¶ 96 (001-40).

¹⁹ RGS argued that Standard Bank's confirmation that Vision "*has fully discharged all of its obligations vis-à-vis the purchase consideration*" (¶ 4.1 002-393) could mean something other than payment in full and left room for the possibility that the Lender Group retained a portion of the claims and security. This is clearly contrary to the words used. "Fully discharged" can only mean payment in full and Standard Bank went further to state that "*the THL Group Claims and Security were unconditionally and irrevocably transferred to [Vision]*" with the result that Standard bank had resigned as Facility Agent (¶ 4.2 and 4.3 002-393).

3. **Third ground: Order regarding statements**

3.1. The Court erred in granting the relief in paragraph 2.5 of RGS's notice of motion, requiring Vision to provide a written statement as set out therein.

3.2. In particular, the Court erred in the following respects:

3.2.1. The Court erred in concluding that RGS was entitled to such a statement as a matter of law. In any event, the Court failed to have regard to the fact that Vision had provided the written statements in question in the answering affidavit;²⁰

3.2.2. The Court also failed to have regard to the fact the RGS conceded that the Court did not need to grant the relief if it was satisfied that the statements in the answering affidavit were sufficient (which they were); and

3.2.3. The Court ought to have found that Vision had complied with this relief (despite the fact that it was under no obligation to do so) to RGS's satisfaction and ought not to have granted any relief relating to it.²¹

4. **Fourth ground: *Res judicata*, *lis pendens* and abuse of process**

4.1. The Court erred in finding that the disclosure relief was not *res judicata*²² or *lis pendens*,²³ and in failing to deal with Vision's contention that the application amounts to an abuse of process.

4.2. In particular, the Court erred in the following respects:

²⁰ AA ¶ 13 (002-9—10). In ¶ 28 of the judgment, Vision's statements are summarised, but the Court does not thereafter deal with why it nonetheless grants such relief.

²¹ To the extent that the Court was of the view that Vision's statements were non-compliant, the Court should have provided reasons.

²² Judgment ¶ 43.

²³ Judgment ¶ 47.

- 4.2.1. The Court erred in finding that the disclosure relief was not *res judicata* on the basis that Judge ME Nkosi did not address the disclosure relief.²⁴
- 4.2.2. The Court erred in finding that the disclosure relief was not *lis pendens* on the basis that the relief in Part B was not the same.²⁵
- 4.2.3. The Court correctly found that the disclosure relief was substantially the same as that sought in Part A (and was between the same parties).²⁶ Having found as such, the Court ought to have found that:
- 4.2.3.1. Judge ME Nkosi specifically quoted the disclosure relief and, as such, the order dismissing Part A must include a dismissal also of the disclosure relief;²⁷ and
- 4.2.3.2. *alternatively*, the disclosure relief was found not to be urgent and, therefore, remained pending under Part A, and RGS should have re-enrolled that portion of Part A for determination in the ordinary course.²⁸
- 4.2.4. The Court found that Judge ME Nkosi dismissed the Part A disclosure relief on the basis that it was not urgent.²⁹ Proceeding on this basis, the Court erred in then not finding that RGS's application amounted to an abuse of process in that RGS sought the same disclosure relief urgently on the same grounds on which it had been previously dismissed for lack of urgency. The Court ought to have found that RGS's application amounted to an abuse of process and dismissed or

²⁴ Judgment ¶¶ 18, 38, 43.

²⁵ Judgment ¶ 47.

²⁶ Judgment ¶ 41.

²⁷ AA ¶¶ 33-34 (002-15).

²⁸ AA ¶ 36.2 (002-16),

²⁹ Judgment ¶ 38.

struck it on this basis.³⁰ The Court ought to have found that the “new grounds” relied upon by RGS in renewing the application for the disclosure relief – being the further implementation of the Asset Transaction and Vision’s acquisition of the Lender Group’s claims – were a result of RGS’s urgent interdict having been dismissed and could not be relied on to support a further urgent application seeking the same disclosure relief.

5. Fifth ground: Failure to have regard to Vision’s version

5.1. The Court erred in failing to have regard to or to give proper weight to Vision’s version of events concerning the relevant background to the application.

5.2. In particular, the Court erred in the following respects:

5.2.1. The Court erred in finding that at the creditors’ meeting adopting the business rescue plan, “creditors were unequivocally assured that the Vision Parties had sufficient funds to implement the Vision plan”.³¹

5.2.2. The Court ought to have found – as set out in Vision’s answering affidavit – that Vision held sufficient funds to implement the Equity Transaction at that stage and that it was not expected of Vision to have the immediately available funding for the full purchase price.³²

5.2.3. The Court erred in finding that Vision required 100% of the Lender Group claims before Vision could have proceeded with the Equity Transaction and that the Lender Group retaining a claim against THL after its implementation was “contrary to the express terms of the Vision plan”.³³

³⁰ The Court failed to acknowledge this contention by Vision (see Judgment ¶ 29 in which this ground is not mentioned).

³¹ Judgment ¶ 7.

³² AA ¶ 271 (002-65).

³³ Judgment ¶¶ 8 and 13.

5.2.4. The Court erred in finding that *“the Vision Parties have stated under oath that it was using THL assets in support of raising the necessary funding to complete the Acquisition”*.³⁴

5.2.5. The Court ought to have found – as set out in Vision’s answering affidavit – that Vision has not used THL’s assets to fund the acquisition of the Lender Group’s claims. Vision provided unequivocal confirmation of this in dealing with RGS’s requests for written confirmations.³⁵ Vision also noted that RGS’s contention is based on speculation and infers intentional misrepresentations by Vision, the Lender Group, and potentially the BRPs, regarding the true state of affairs.³⁶ Vision suitably explained the reference to the unrest in Mozambique and its impact on the assets.³⁷

6. Sixth ground: Relief and costs

6.1. For the reasons above, the Court erred in granting the disclosure relief and in awarding costs against Vision.

6.2. The Court ought to have dismissed the application with costs on a punitive scale against RGS (given RGS’s abuse of process).

WHEREFORE, Vision submits that leave to appeal should be granted by this Court because:

A. the appeal would have reasonable prospects of success within the meaning of section 17(1)(a)(i) of the Superior Courts Act, 2013 (**the SC Act**);

B. there are compelling reasons why the appeal should be heard as contemplated in section 17(1)(a)(ii) of the SC Act, particularly given the need for certainty on

³⁴ Judgment ¶ 11.

³⁵ AA ¶ 13 (**002-9—10**).

³⁶ AA ¶¶ 331, 332 and 326-7 (**002-74**).

³⁷ AA ¶¶ 329-330 (**002-73**).

the rights of creditors to disclosure under business rescue and the judgment in **Reiscor Two**;

- C. the decision sought on appeal does not fall within the ambit of section 16(2)(a) of the SC Act (section 17(1)(b) of the SC Act); and
- D. the decision sought on appeal would dispose of all the issues in the application (section 17(1)(c) of the SC Act).

DATED at SANDTON on this 10th day of JULY 2025.



Stein Scop Attorneys Inc.
Attorneys for the First to Fifth
Respondents
Second Floor, Capital Hill
6 Benmore Gardens
Morningside, Sandton
Tel: (011) 380 8085
Email: bradley@steinscop.com;
glenn@steinscop.com;
casper@steinscop.com;
alexandra@steinscop.com;
brookeb@steinscop.com and
keagan@steinscop.com
Ref: TER2/0010/B Scop
c/o Goodrickes Attorneys
1 Nollsworth Park
La Lucia Ridge
Tel: 031 301 6211
Email: legal1@goodrickes.co.za;
ca1@goodrickes.co.za and
dudley@goodrickes.co.za

To:
The Registrar of the
above Honourable Court, Durban

And to:

Bobat & Associates

Attorneys for the Applicant

331 St Thomas Road

Musgrave, Durban

KwaZulu Natal

Tel: 031 201 0060

Email: admin@boblaw.co.za;

Ref: RGS/THL

*Service by electronic email as agreed
to between the parties*

And to:

Werksmans Attorneys

Attorneys for the Sixth to Ninth Respondents

11th Floor, The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

Email: dandropoulos@werksmans.com;

TBoswell@werksmans.com;

DHertz@werksmans.com and

sgast@werksmans.com

c/o EVH Inc. Attorneys

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: +27 31 492 7971

Email: erik@evhinc.co.za;

irisha@evhinc.co.za; tia@evhinc.co.za

Service by electronic email

And to:

Edward Nathan Sonnenbergs Inc.

Attorneys for the Tenth Respondent

Tower 1 The Marc

129 Rivonia Road

Sandton

Tel: 011 269 7600

Email: slederman@ensafrica.com;

alombard@ensafrica.com;

goertel@ensafrica.com; and

jobasson@ensafrica.com

Service by electronic email

And to:

Faskens

Attorneys for the Eleventh Respondent

Inanda Greens Business Park

54 Wierda Road West

Sandton

Tel: 011 586 6000

Email: hlaher@fasken.com

Service by electronic email



The Business Rescue Practitioners of Tongaat Hulett Ltd

Werksmans Attorneys

Email: tboswell@werksmans.com; sgast@werksmans.com; dhertz@werksmans.com; dandropoulos@werksmans.com

22 July 2025

URGENT

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We refer to the above matter and to your letter of 16 July 2025.
2. You confirm in your letter under reply that the BRPs intend to proceed with the implementation of the Vision Plan on the same basis as set out in your earlier letter of 21 May 2025 which preceded the order issued by Justice Zwane in the second application on 4 July 2025 ("**the Zwane Order**").
3. It is moreover evident from your references to the first application, and the order made in Part A thereof by Justice Nkosi, that you are not only conflating the two RGS applications, but that the BRPs are ignoring entirely the import of the Zwane Order.
4. Your assertions regarding the similarities between the relief sought by RGS in the first and second applications are not only irrelevant, but were also raised by Vision at the hearing of the second application and rejected by Justice Zwane.

Imran Bobat
BA (UND) LLB (UND) LLM(UCLA)

5. In terms of paragraph 3 of your letter under reply you confirm that the BRPs will proceed to implement the Vision Plan (i.e. transfer all THL assets to Vision and then delist and liquidate THL) in circumstances where the only “confirmation” that the BRPs have received to the effect that Vision has “discharged its payment obligations”, is an email from Vision’s attorneys and correspondence from the Lender Group (i.e. the same information that was available to the BRPs when your letter of 21 May 2025 was sent).
6. The abovementioned “confirmation” on which the BRPs seek to rely:
 - 6.1. does not amount to independently verifiable evidence that Vision has either discharged its payment obligations, or done so in a manner that is consistent with both the Vision Plan and the Companies Act;
 - 6.2. is merely the say-so of parties with vested interests in the successful implementation of the Acquisition and the Vision Plan.
7. It is therefore evident that the BRPs have failed to discharge their duties to verify for themselves, based on direct objective information, that Vision has complied with the requirements of the Vision Plan and done so in a manner that is consistent with the provisions of the Companies Act.
8. This failure on the part of the BRPs arises in the specific and peculiar circumstances of Vision’s unexplained failure to raise the funds necessary to Acquire the Lender Group’s claims for more than 15 months after the adoption of the Vision Plan, which failure occurred despite the BRPs and Vision having assured creditors at the Creditors Meeting on 10 January 2024 that Vision had sufficient funds to implement the Vision Plan.
9. In this regard, we refer you to the detailed background set out in the letter of our predecessors, DMI, of 14 May 2025 a copy of which is annexed, marked “A” (“**the DMI Letter**”). You are requested to read the contents of the DMI Letter as though expressly incorporated herein.
10. It remains unclear as to what is meant by Vision having “discharged its payment obligations” to the Lender Group, which phrase is clearly capable of connoting a transaction other than an actual payment by Vision to the Lender Group.

11. Moreover, no explanation has been provided in relation to the allegations contained in Vision's supplementary affidavit referred to in paragraph 21 of the DMI Letter in terms of which Vision stated that THL's assets, which Vision does not own, would support Vision's fundraising to acquire THL.
12. Considering *inter alia*:
 - 12.1. Vision's unexplained failure to raise the funds necessary to complete the Acquisition (despite the representations made at the Creditors Meeting to the effect that Vision had the funds necessary to implement the Vision Plan on 10 January 2024);
 - 12.2. Vision's statement under oath that it was using THL assets to raise the funds necessary to complete the Acquisition;
 - 12.3. The Lender Group's previous confirmation to the BRPs that it would allow the Vision Asset Transaction to proceed even if Vision failed to make payment to the Lender Group in terms of the Acquisition Agreement

there is clearly an urgent need for the BRPs to verify independently that Vision has paid the Lender Group for the Acquisition and done so in a lawful manner without in any way leveraging THL's assets in order to meet its payment obligations.
13. The need for independent verification by the BRPs is further demonstrated by Vision's refusal to provide evidence of what it says it has done, i.e. paid the Lender Group and completed the Acquisition in a lawful manner. If Vision had truly settled the full purchase price due for the Acquisition, and done so in a manner that is consistent with the provisions of both the Vision Plan and the Companies Act, it would have had no reasonable objection to providing proof to this effect, especially since it has been ordered to do so by Justice Zwane.
14. Until the BRP's have independently verified that Vision has discharged its obligations in terms of the Vision Plan, and thereby acquired an entitlement to take transfer of the THL's assets, the implementation of the Vision Plan – culminating in THL's delisting and liquidation – cannot reasonably proceed.
15. The BRP's acceptance of vague confirmations provided by Vision and the Lender Group as proof that the Acquisition has been concluded lawfully is in breach of the BRPs' duties under the specific circumstances referred to above and set out in detail in the DMI Letter.

16. This has been borne out by the fact that Justice Zwane considered the same information available to the BRPs (i.e. the confirmations from Vision and the Lender Group) and determined it necessary to order Vision to disclose the proofs and confirmations contemplated in the notice of motion to the second application.
17. Proof that Vision has paid the Lender Group and concluded the Acquisition lawfully is an issue of critical significance since the Acquisition is, in terms of the Vision Plan, a condition precedent to the Vision Asset Transaction.
18. The fact that the enforceability of the Zwane Judgment has been suspended by Vision's application for leave to appeal is of no consequence. The BRPs bear the sole statutory responsibility for implementing the Vision Plan and it is therefore their duty to satisfy themselves, with reference to objective information, that the requirements of both the Vision Plan and the Companies Act have been satisfied.
19. We have therefore been instructed to provide the BRPs with one final opportunity to act in accordance with their statutory duties and to demand, as we hereby do, that the BRPs confirm by return correspondence that:
 - 19.1. The BRPs will demand the production of:
 - 19.1.1. proof of Vision's payment to the Lender Group under the Acquisition Agreement;
 - 19.1.2. proof that all of the Lender Group's secured claims of c.R8.5 billion were transferred to Vision unconditionally;
 - 19.1.3. proof that THL's assets have in no way been leveraged, encumbered, proffered as security, or employed in any other way in order to assist Vision to discharge its payment obligations to the Lender Group or any of its payment obligations in terms of the Vision Plan;
 - 19.1.4. a copy of the Acquisition Agreement to which THL is entitled in terms of the Common Terms Agreement as previously asserted by the BRPs themselves.
 - 19.2. the implementation of the Vision Plan will be suspended until the BRPs have received the information referred to in the previous paragraph and verified that Vision has completed the Acquisition lawfully and in a manner that is consistent with the Vision Plan and the Companies Act;

- 19.3. the BRPs will provide RGS and all affected persons with copies of the information referred to in paragraph 17.1 above upon receipt thereof.
20. The BRPs are required to satisfy the above demand by no later than **close of business on Friday, 25 July 2025**.
21. Should the BRPs refuse or fail to do so, RGS will launch an urgent application in the High Court to *inter alia* compel the BRPs to independently verify that the Acquisition has been completed lawfully, to disclosure the relevant information to all affected persons, and further reserves its rights to seek the removal of the BRPs without any further notice to them.

Yours faithfully



Digitally signed by
Imran Bobat
Attorney
Bobat & Associates

Tuesday, August 12, 2025 at 1:41:46 AM South Africa Standard Time

Subject: INFORMATION REQUEST - BOBAT AND ASSOCIATES
Date: Monday, 28 July 2025 at 11:56:19 South Africa Standard Time
From: admin@boblaw.co.za
To: jadon.moodley@standardbank.co.za
Attachments: image001.jpg, image002.jpg, 202507281150.pdf

Good day

We refer to our telephone discussion of even date. Thank you for taking my call.

We confirm that we act for the RGS Group Holdings LTD in the matter involving the business rescue proceedings of Tongaat Hulett Limited.

We received the enclosed "confirmation of payment processed" document from Stein Scop Attorneys.

As per our telephone discussion it appears to us that there might be a number of significant irregularities on the documents for example the font types and sizes, logo, the numbering etc. It certainly does not appear to be a regular Standard Bank proof of payment.

Kindly investigate and confirm with us whether this in fact an authentic and valid Standard Bank proof of payment.

We look forward to hearing from you.

Many thanks.

Regards
Imran Bobat

KINDLY NOTE OUR NEW OFFICE ADDRESS BELOW

Bobat & Associates
Tel: 031 201 0060
Email: admin@boblaw.co.za
331 ST THOMAS ROAD, MUSGRAVE, DURBAN

• ATTORNEYS •
BOBAT
& associates



FRAUD ALERT: If we are one of your existing beneficiaries please confirm any changes in our bank details with Mr Imran Bobat. If we are a new beneficiary please confirm our bank details first. If you have any doubt please contact us.

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to which it is addressed. If you have received this e-mail in error please notify the sender. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of the company. Finally, the recipient should check this e-mail and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this e-mail.

Tuesday, August 12, 2025 at 1:46:43 AM South Africa Standard Time

Subject: RE: INFORMATION REQUEST - BOBAT AND ASSOCIATES
Date: Tuesday, 29 July 2025 at 15:35:51 South Africa Standard Time
From: Moodley, Jadon J
To: admin@boblaw.co.za
CC: Ruan Kotze
Attachments: image001.jpg, image002.jpg

Good day sir,

Hope you are well. Sorry for the delayed response, it is month end here for us so we are extremely busy.

I can confirm that the document sent by yourself to me with the proof of payment is indeed valid and was created by myself.

Kind regards
Jadon

From: admin@boblaw.co.za <admin@boblaw.co.za>
Sent: Tuesday, 29 July 2025 11:23
To: Moodley, Jadon J <Jadon.Moodley@standardbank.co.za>
Cc: Ruan Kotze <ruankotze@capebar.co.za>
Subject: INFORMATION REQUEST - BOBAT AND ASSOCIATES

 You don't often get email from admin@boblaw.co.za. [Learn why this is important](#)
Good day

We refer to our telephone discussion yesterday and our follow email requesting information and or clarification pertaining to the alleged proof of payment dated 11th January 2024 in the sum of R1510 000 000.00

We haven't heard from you as yet.

Kindly revert as a matter of some urgency.

Many thanks.

Regards
Imran Bobat

-

KINDLY NOTE OUR NEW OFFICE ADDRESS BELOW

Bobat & Associates
Tel: 031 201 0060
Email: admin@boblaw.co.za
331 ST THOMAS ROAD, MUSGRAVE, DURBAN



The Business Rescue Practitioners of Tongaat Hulett Ltd

Werksmans Attorneys

Email: tboswell@werksmans.com; sgast@werksmans.com; dhertz@werksmans.com; dandropoulos@werksmans.com

30 July 2025

URGENT

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

1. We refer to the above matter and to your letters of 16 and 25 July 2025.
2. It is evident from your letters under reply that the BRPs have resolved to accept that the Acquisition has been concluded lawfully and not to interrogate the lawfulness or legitimacy thereof, save at the behest of RGS' letters of demand.
3. Your letter of 25 July 2025 includes correspondence from Vision which attaches two purported proofs of payment. It should be noted at the outset in this regard that:
 - 3.1. As in the past, the BRPs have only sought proof of Vision's performance under the Acquisition Agreement in response to repeated letters of demand from RGS, and have clearly failed to obtain and interrogate any such proof contemporaneously (i.e. before determining to proceed with the transfer of THL's assets to Vision and the delisting and liquidation of THL);

Imran Bobat
BA (UND) LLB (UND) LLM(UCLA)

- 3.2. The BRPs' view that the Acquisition Agreement was concluded lawfully, and that the Vision Asset Transaction remains lawful and binding, was formed before any purported proof of Vision's performance under the Acquisition Agreement was received.
4. As regard the contents of the purported proofs of payment, we wish to place the following on record.
5. Firstly, the purported proof of payment attached to Vision's letter of 24 July 2025 marked "A" is manifestly abnormal. It is not the regular proof of payment generated by Standard Bank. It moreover contains various different fonts, different font sizes, and portions thereof have clearly been copied in from different documents.
6. Secondly, the purported proof of payment attached to Vision's letter of 24 July 2025 marked "B" does not in any way constitute the proof that was demanded, i.e. proof that Vision paid the Lender Group the balance of funds owing on 9 May 2025:
 - 6.1. The document marked "B" is an email which apparently shows how the individual members of the Lender Group were settled;
 - 6.2. Proof that Vision paid the Lender Group on 9 May 2025 has not therefore been provided at all;
 - 6.3. RGS has never alleged that the Lender Group has not been / will not be settled. RGS' argument is, and has at all relevant times been, *inter alia*, that Vision failed to raise the funds necessary to settle the Lender Group independently, i.e. that the funds used to settle the Lender Group did not come directly from Vision;
 - 6.4. It is and has at all relevant times been one of RGS' main contentions, both in the Pending Application and in the application under case no 2025-079452, that Vision put up THL's assets as some form of collateral in order to ultimately raise the funds required to settle the Lender Group (an allegation which is consistent with Vision's own statement under oath in its supplementary affidavit filed in Part A of the Pending Application on 27 January 2025);
 - 6.5. If Vision used, for example, financing advanced by Standard Bank and the IDC to settle the Lender Group, the BRPs should have enquired on what terms, for example, Standard Bank and the IDC advanced the funds in circumstances where Vision does not have any assets to put up as security

itself. The BRPs should have taken steps to ensure that Vision did not in fact act in accordance with the express statements contained in its supplementary affidavit filed in Part A of the Pending Application on 27 January 2025, i.e. the BRPs should have ensured that the terms agreed by Vision to raise its financing will not affect THL or its assets in a manner that is inconsistent with the terms of the Vision Plan and / or the Companies Act.

7. In addition, Vision has not provided the Acquisition Agreement or proof that the Lender Group's claims and security have been transferred to Vision unconditionally (both of which have previously been demanded by the BRPs themselves). Vision has therefore intentionally withheld the key documents which could confirm whether or not Vision has acted beyond the scope of the Vision Plan / in conflict with the Companies Act in concluding the Acquisition Agreement.
8. Under the circumstances, the purported proofs of payment (even if accepted to be legitimate and authentic), do not provide any evidence that Vision has discharged its payment obligations and become entitled under the Vision Plan to take transfer of the THL's assets.
9. On the contrary, the fact that Vision has now glibly provided the purported proofs of payment is irreconcilable with (i) the fact that it strenuously refused to do so in terms of its opposition to the RGS application filed under case no 2025-079452, and (ii) the fact that Vision is at present seeking leave to appeal the whole of the Zwane Order (i.e. including the parts of the order in terms of which it was directed to provide the same proofs of payment that have now purportedly been provided to the BRPs in response to RGS' latest letter of demand).
10. We wish to reiterate that if Vision has in fact discharged its payment obligations in a lawful manner that was consistent with the terms of the Vision Plan, it would have had no objection to providing the proofs and documents sought by RGS (and previously demanded by the BRPs), and would certainly not have sought to appeal the Zwane Judgment if it could simply have put up evidence to demonstrate that it has done what it says it has done.
11. The dubious "proofs" of payment belatedly provided by Vision to the BRPs in response to our previous letter of demand are therefore insufficient to satisfy RGS' demands for proof of payment, and moreover ignore RGS's demands for copies of the Acquisition Agreement and proof of the transfer of the Lender Group's claims to Vision.

12. The BRPs are therefore requested to confirm **by no later than 12h00 on Friday, 1 August 2025**:
- 12.1. What steps they have taken / will take to verify the authenticity of the purported proof of payment attached as "A" to Vision's letter of 24 July 2025;
 - 12.2. What the BRPs make of the abnormalities on the face of the aforesaid purported proof of payment (e.g. the different fonts and font sizes in use and the fact that the document is not a standard proof of payment);
 - 12.3. Whether the BRPs will demand that Vision provide proof of the payment it (i.e. Vision) allegedly made to the Lender Group on 9 May 2025;
 - 12.4. Whether the BRPs will repeat their demand that Vision disclose *inter alia* copies of the Acquisition Agreement and proof that the Lender Groups claims have been transferred to Vision unconditionally.
13. In circumstances where the Vision Plan is already at an advanced stage of implementation and the BRPs are proceeding with the implementation thereof despite the findings made in the Zwane Judgment, RGS cannot continue engaging in correspondence with the BRPs and we are thus instructed to confirm that if a favourable response to this letter is not received by **12h00 on Friday, 1 August 2025** RGS will proceed to launch an urgent application *inter alia* interdicting the BRPs from taking any further steps in implementing the Vision Plan until the Vision parties have disclosed *inter alia* the Acquisition Agreement, and proof of the unconditional transfer of the Lender Group's claims to Vision.

Yours faithfully



Digitally signed by
Imran Bobat
Attorney
Bobat & Associates



DELIVERED BY EMAIL

Bobat & Associates
E-mail: admin@boblaw.co.za
Durban

Attention: Mr I Bobat

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
www.werksmans.com

YOUR REFERENCE: Mr I Bobat
OUR REFERENCE: Mr D Hertz/Mr T Boswell/Ms S Gast/sg/TONG7430.21/#11054247v1
DIRECT PHONE: +27 11 535 8283/+27 11 535 8459
EMAIL ADDRESS: dhertz@werksmans.com/tboswell@werksmans.com

1 August 2025

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL"), MR T MURGATROYD N.O., MR P VAN DEN STEEN N.O. AND MR G ALBERTYN N.O. (collectively "the BRPs") | RGS GROUP HOLDINGS (PROPRIETARY) LIMITED ("your client")

- 1 We refer to your letter dated 30 July 2025 ("your letter").
- 2 The allegations, speculation and conjecture in your letter has been addressed previously, and do not warrant repetition or a substantive response.
- 3 We do not, save as set out below, intend to deal with each of the assertions and allegations in your letter, which failure should not be construed as an admission as to the correctness of the content of any unanswered assertion or allegation nor as a waiver of our clients' right to deal more fully with the content of your letter in your clients' foreshadowed urgent application, which right is hereby reserved.
- 4 That said, our clients have instructed us to record that -
 - 4.1 they dispute your client's self-serving assertions that the BRPs have only interrogated matters relating to the Acquisition Agreement at your client's behest. The BRPs have at all times ensured the Vision Plan remains capable of implementation, in full, in discharge of their statutory obligations;
 - 4.2 your letter self-servingly and disingenuously ignores the Lender Group's confirmation provided **under oath** under case number D13702/2024, that Vision has fully discharged all of its obligations *vis-à-vis* the purchase consideration, and their unequivocal confirmation that the

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagatjee NMN Bhengu AL Bilaty RE Bonnet TJ Boswell W Brown PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Killoran N Kirby HA Kotze S Krige CJ Lalli H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane JE Meiring H Michael SM Moerane R Moitse C Moraitis B Moti NPA Motsiri CK Mthembu L Naidoo K Neluheni NZP Nkosi BW Ntuli BPF Olivier Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdthin B Rammala V Ramson BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden S Singh DE Singo JA Smit BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis T Volschenk RN Wakefield L Watson D Wegierski G Wickins DC Willans E Wood BW Workman-Davies Consultants DH Rabin DG Williams



Lender Groups' claims and security "*were unconditionally and irrevocably transferred*" to Vision on 9 May 2025; and

- 4.3 they dispute that they have at any point failed to discharge any of their statutory obligations, whether as alleged in your letter, or at all.
- 5 For at least the reasons set out above, the BRPs have instructed us to advise you that they decline to provide the confirmations sought in paragraph 12 and its sub paragraphs of your letter.
- 6 Should your client proceed to launch its threatened urgent application, that application will be opposed by our clients, and a punitive costs award will be sought.

Yours faithfully

A handwritten signature in dark ink, appearing to be 'Werksmans', located below the 'Yours faithfully' text.

Werksmans

"RM48"

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

Case number:

In the matter between:

RGS GROUP HOLDINGS LIMITED

Applicant

and

TONGAAT HULETT LIMITED

First Respondent

(IN BUSINESS RESCUE)

TREVOR JOHN MURGATROYD N.O.

Second Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Respondent

GERHARD CONRAD ALBERTYN N.O.

Fourth Respondent

VISION INVESTMENTS 155 (PTY) LTD

Fifth Respondent

TERRIS AGRIPRO (MAURITIUS)

Sixth Respondent

REMOGGO (MAURITIUS) PCC

Seventh Respondent

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

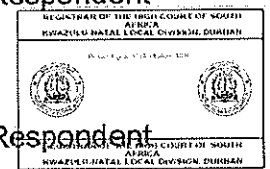
Eighth Respondent

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

Ninth Respondent

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

Tenth Respondent

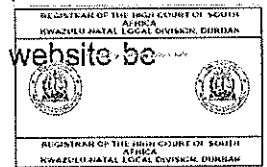


NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made on behalf of the abovementioned applicant on **WEDNESDAY, 3 SEPTEMBER 2025** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicant's non-compliance with the Uniform Rules of Court relating to service, time periods and forms be condoned, and the applicant be permitted to bring this application as a matter of urgency in terms of Rule 6(12);

- 1.1. In particular, that service on the tenth respondent by way of publication of this application on the first respondent's business rescue website be condoned.

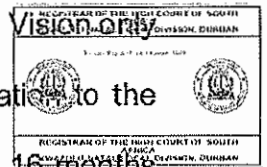


2. That the applicant be permitted to proceed with this application in terms of section 133(1)(b) of the Companies Act 71 of 2008 ("**the Act**").
3. That the second to fourth respondents ("**BRPs**") be directed in terms of section 140(3)(a) of the Act:

- 3.1. To submit a report to this Court, either in the form of one joint affidavit or three separate affidavits, by no later than ten (10) business days from the issue of this order ("**the Report**");
- 3.2. To publish the Report on the first respondent's business rescue website on the same date as it is filed with Court;
- 3.3. To include in the Report details and relevant substantiating documentation pertaining to the BRPs' knowledge of and investigations concerning the fifth to ninth respondents' ("**Vision**") funding arrangements in relation to (i) Vision's acquisition of the claims and

security previously held by the Lender Group, and (ii) the implementation of the other transactions contemplated in the business rescue plan in the first respondent's business rescue, having specific regard to:

3.3.1. The fact that while the BRPs presented to creditors, at the creditors meeting on 10 January 2024, a letter from Standard Bank dated 21 December 2023 which confirmed that Vision had "sufficient cash" to execute the transactions contemplated in the business rescue plan ("**the Standard Bank Letter**"), Vision only completed its payment to the Lender Group in relation to the acquisition of the latter's claims and security some 16 months later on 9 May 2025;



3.3.2. The authenticity of the Standard Bank proof of payment in the amount of R1 510 000 000 dated 11 January 2024 and provided to the BRPs by Vision on 24 July 2025;

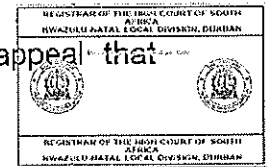
3.3.3. The fact that Vision has provided no proof of payment in relation to the payment it alleges to have made to the Lender Group in the amount of R1 730 000 000 on 9 May 2025;

3.3.4. The fact that Vision has refused to provide the BRPs with a copy of the agreement it concluded with the Lender Group pursuant to which Vision acquired the Lender Group's claims and security against the first respondent ("**the Acquisition Agreement**"), despite the BRPs having demanded a copy in terms of the Common Terms Agreement, and despite the Lender Group

having consented to the disclosure of the Acquisition Agreement;

3.3.5. The fact that Vision has refused to provide proof that it has taken unconditional transfer of all the Lender Group's claims and security against the first respondent;

3.3.6. The fact that Vision has elected not to comply with the order contained in the judgment handed down by Mr Justice Zwane on 4 July 2025 but has instead sought leave to appeal that judgment;

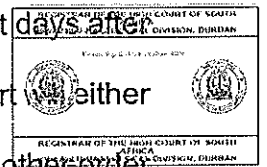


3.3.7. The question as to whether Vision obtained new financing, in lieu of the cash contemplated in the Standard Bank Letter, in order to make payment to the Lender Group in terms of the Acquisition Agreement and fund the implementation of the business rescue plan;

3.3.8. Should Vision have obtained new financing as contemplated in the preceding paragraph, the question as to whether the BRPs have interrogated the terms of such financing and any other agreement(s) that may have been concluded to ensure that (i) Vision did not obtain such financing, in whole or in part, by granting any rights over or in relation to the first respondent's assets, which rights can be exercised by Vision's funders or any other parties against or in relation to the first respondent's assets either presently or after the conclusion of the business rescue proceedings, and (ii) the terms of such financing and any other

agreement(s) that may have been concluded are not otherwise contrary to the terms of the business rescue plan or the provisions of the Act.

- 3.4. Not to take any further steps in implementing the business rescue plan relating to the first respondent's business rescue pending the submission of the Report and the Court's consideration thereof at a hearing to be enrolled by the BRPs as an interlocutory application under the abovementioned case number on the date falling six (6) court days after the Report has been submitted, and at which hearing the Court will either issue further directions, dismiss this application, or grant any other order that may be sought by any affected person by way of interlocutory notice of motion filed under the abovementioned case number pursuant to the submission of the Report.

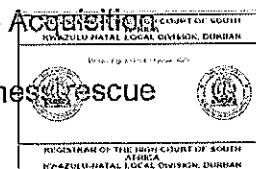


4. *In the alternative to prayer 3 above, and only in the event of this Court finding that relief under section 140(3)(a) of the Act cannot be granted, RGS seeks an order in the following terms:*

- 4.1. That the BRPs be directed to procure the following from Vision and/or the Lender Group and then to publish same on the first respondent's business rescue website immediately:

- 4.1.1. Verified proof of the payment of R1 510 000 000 made by Vision to the Lender Group on 11 January 2024;
- 4.1.2. Verified proof of the payment of R1 730 000 000 made by Vision to the Lender Group on 9 May 2025;

- 4.1.3. A copy of the Acquisition Agreement;
- 4.1.4. Copies of all previous versions of the Acquisition Agreement;
- 4.1.5. Proof that all the Lender Group's claims and security against the first respondent have been transferred to Vision unconditionally;
- 4.1.6. Confirmation as to whether Vision obtained new financing, in lieu of the cash contemplated in the Standard Bank Letter, in order to make payment to the Lender Group in terms of the Acquisition Agreement and fund the implementation of the business rescue plan;



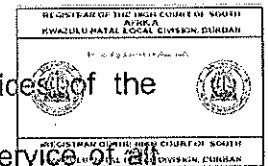
- 4.1.7. Should Vision have obtained new financing as contemplated in the preceding paragraph, written confirmation that the BRPs are satisfied that the terms of such financing and any other agreement(s) that may have been concluded (i) do not grant Vision's funders or any other parties any rights that are exercisable over or in relation to the first respondent's assets either presently or after the conclusion of the business rescue process, and (ii) are not otherwise contrary to the terms of the business rescue plan or the provisions of the Act.

- 4.2. That the BRPs be interdicted and restrained from taking any further steps in implementing the business rescue plan adopted in the business rescue of the first respondent on 11 January 2024 until they have complied with the order contemplated in paragraph 4.1 above.

5. That the costs of this application be paid by the first to fourth respondents, together with any party opposing the relief sought herein, jointly and severally the one paying the other to be absolved on scale C.
6. Further and/or alternative relief.

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

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



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

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

- (i) notify the applicant's attorneys in writing by no later than **17h00 on Monday, 18 August 2025;**
- (ii) deliver their answering affidavits, if any, by no later than **17h00 on Tuesday, 26 August 2025;**
- (iii) Provided that the above filing deadlines are complied with, the applicant will file its replying affidavit by no later than **17h00 on Friday, 29 August 2025.**

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

DATED at DURBAN on this 12th day of AUGUST 2025.



BOBAT & ASSOCIATES

Per: Imran Bobat

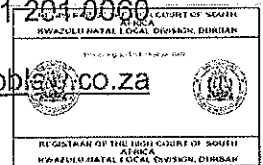
331 St Thomas Road

Musgrave

DURBAN

Tel: 031 204 0060

Email: admin@bobat.co.za



TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
DURBAN

AND TO: THE FIRST TO FOURTH RESPONDENTS

Care of: Werksmans Attorneys

Attorneys for the Sixth to Ninth Respondents

11th Floor The Central

96 Rivonia Road

Sandton

Tel: 011 535 8248

Service by email to: dandropoulos@werksmans.com,

tboswell@werksmans.com, dhertz@werksmans.com,

sgast@werksmans.com

AND TO: THE FIFTH TO NINTH RESPONDENTS

Care of: Stein Scop Attorneys Incorporated

Attorneys for the Fifth to Ninth Respondents

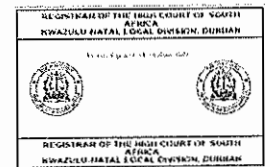
2nd Floor, Capital Hill

6 Benmore Road, Morningside

Sandton

Tel: 011 380 8081

Service by email to: bradley@steinscop.com, glenn@steinscop.com,
alexanda@steinscop.com, brookeb@steinscop.com,
casper@steinscop.com, keagan@steinscop.com





"RM49"

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

CASE NO.: 2025-136677

BEFORE THE HONOURABLE ACTING JUSTICE SIPUNZI

AT DURBAN ON 19th SEPTEMBER 2025

IN THE MATTER BETWEEN

RGSS GROUP HOLDING LIMITED

APPLICANT

and

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

1st RESPONDENT

TREVOR JOHN MURGATROYD N.O.

2nd RESPONDENT

PETRUS FRANCOIS VAN DEN STEEN N.O.

3rd Respondent

GERHARD CONRAD ALBERTYN N.O.

4th RESPONDENT

VISION INVESTMENTS 115 (PROPRIETARY) LIMITED

5th RESPONDENT

TERRIS AGRIPRO (MAURITIUS)

6th RESPONDENT

REMOGGO (MAURITIUS) PCC

7th RESPONDENT

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

8th RESPONDENT

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

9th RESPONDENT



23/12/2025-12:01:37 PM



THE AFFECTED PERSONS IN THE
FIRST RESPONDENT'S BUSINESS RESCUE

10th RESPONDENT

HAVING heard Counsel for the Applicant and having read the *NOTICE OF MOTION* and the other documents filed of record.

IT IS ORDERED

1. The applicant's urgent application is struck from the roll for lack of urgency, with costs, on scale C, such costs to include two counsel where so employed.

BY ORDER OF THE COURT

23/12/2025-12:01:37 PM



EVH INC ATT.
/nps



IN THE SUPREME COURT OF APPEAL

SCA CASE NO: _____
HIGH COURT CASE NO: 2025-079452

In the matter between:

VISION INVESTMENTS 155 (PTY) LTD	First Applicant
TERRIS AGRIPRO (MAURITIUS)	Second Applicant
REMOGGO (MAURITIUS) PCC	Third Applicant
GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)	Fourth Applicant
ALMOIZ NA HOLDINGS LIMITED (UNITED ARAB EMIRATES)	Fifth Applicant

and

RGS GROUP HOLDINGS LIMITED	First Respondent
TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	Second Respondent
TREVOR JOHN MURGATROYD N.O.	Third Respondent
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Respondent
GERHARD CONRAD ALBERTYN N.O.	Fifth Respondent
THE LENDER GROUP OF TONGAAT HULETT LIMITED	Sixth Respondent
THE INDUSTRIAL DEVELOPMENT CORPORATION OF SOUTH AFRICA	Seventh Respondent
THE AFFECTED PERSONS IN THE FIRST RESPONDENT'S BUSINESS RESCUE	Eighth Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT the first to fifth applicants ("**the applicants**") hereby apply to the President of the Supreme Court of Appeal for an order that:

- the first to fifth applicants are granted leave to appeal to the Full Court of the KwaZulu-Natal Local Division, Durban, *alternatively*, the Supreme Court of Appeal, against the whole of the judgment and order (other than the findings of urgency and paragraph 1 of

the order) of the Honourable Mr Acting Justice Zwane dated 4 July 2025 under case number 2025-079452;

2. that the costs of the application for leave to appeal before the Honourable Mr Acting Justice Zwane and the costs of this application are costs in the appeal.

The accompanying affidavit of **ALEXANDRA NICOLE HO** is annexed in support of the application.

If you intend to oppose this application, you are required to lodge your affidavit in support of your opposition in accordance with Rules 6(3) and (5) of the Rules of the Supreme Court of Appeal, after prior service upon the applicants, with the registrar of this Court within one month after service of this application upon you.

DATED at **SANDTON** on this the **28th** day of **JANUARY 2026**.



Stein Scop Attorneys Inc.

First to fifth applicants' attorneys

Second Floor, Capital Hill

6 Benmore Gardens

Morningside, Sandton

Tel: (011) 380 8080

Direct: (011) 380 8083

Mobile: 079 502 3128

Email: bradley@steinscop.com;

glenn@steinscop.com;

Casper@steinscop.com; and

alexandra@steinscop.com

Ref: TER2/0010/ A Rakitzis Ho

c/o Webbers Attorneys

Webbers Building

97 Charles Street

Bloemfontein, 9301

Tel: 051 430 1340

Email: appeals@webberslaw.com; and

am@webberslaw.com

To:

The Registrar of the Court

Bloemfontein

And to:

Bobat & Associates

First respondent's attorneys
331 St Thomas Road
Musgrave, Durban
KwaZulu Natal
Tel: 031 201 0060
Email: admin@boblaw.co.za
Ref: RGS/THL

Received a copy hereof on _____ 2026

For: First respondent's attorneys

And to:

Werksmans Attorneys

Second to fifth respondents' attorneys
11th Floor, The Central
96 Rivonia Road
Sandton
Tel: 011 535 8248
Email: dandropoulos@werksmans.com;
TBoswell@werksmans.com;
DHertz@werksmans.com and
sgast@werksmans.com
c/o EVH Inc. Attorneys
Unit 4, Holwood Crescent, Holwood Park
La Lucia Ridge, Umhlanga, 4319
Tel: +27 31 492 7971
Email: erik@evhinc.co.za;
irisha@evhinc.co.za; tia@evhinc.co.za

Received a copy hereof on _____ 2026

For: Second to fifth respondents' attorneys

And to:

Edward Nathan Sonnenbergs Inc.

Sixth respondent's attorneys
Tower 1 The Marc
129 Rivonia Road
Sandton
Tel: 011 269 7600
Email: slederman@ensafrica.com;
alombard@ensafrica.com;
goertel@ensafrica.com; and
jobasson@ensafrica.com

Received a copy hereof on _____ 2026

For: Sixth respondent's attorneys

And to:

Faskens

Seventh respondent's attorneys
Inanda Greens Business Park
54 Wierda Road West
Sandton
Tel: 011 586 6000
Email: hlaser@fasken.com

Received a copy hereof on _____ 2026

For: Seventh respondent's attorneys

IN THE SUPREME COURT OF APPEAL

SCA CASE NO: _____

HIGH COURT CASE NO: 2025-079452

In the matter between:

VISION INVESTMENTS 155 (PTY) LTD

First Applicant

TERRIS AGRIPRO (MAURITIUS)

Second Applicant

REMOGGO (MAURITIUS) PCC

Third Applicant

GUMA AGRI AND FOOD SECURITY LTD (MAURITIUS)

Fourth Applicant

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

Fifth Applicant

and

RGS GROUP HOLDINGS LIMITED

First Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Second Respondent

TREVOR JOHN MURGATROYD N.O.

Third Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Fourth Respondent

GERHARD CONRAD ALBERTYN N.O.

Fifth Respondent

THE LENDER GROUP OF TONGAAT HULETT LIMITED

Sixth Respondent

**THE INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA**

Seventh Respondent

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

Eighth Respondent

FOUNDING AFFIDAVIT IN APPLICATION FOR LEAVE TO APPEAL

I,

ALEXANDRA NICOLE HO

state under oath that:



AH

1. I am an adult female attorney and director of Stein Scop Attorneys Inc., the first to fifth applicants' attorneys of record.
2. I am duly authorised to depose to this affidavit on behalf of the first to fifth applicants.
3. The facts in this affidavit appear from the record in the proceedings, and are to the best of my belief correct.

THE PARTIES

4. The first applicant is **Vision Investments 155 (Pty) Ltd**, a company incorporated under the laws of South Africa. The second applicant is **Terris Agripro (Mauritius)**, a company incorporated under the laws of Mauritius. The third applicant is **Remoggo (Mauritius) PCC**, a fund incorporated under the laws of Mauritius. The fourth applicant is **Guma Agri and Food Security Ltd (Mauritius)**, a company incorporated under the laws of Mauritius. The fifth applicant is **Almoiz NA Holdings Limited (United Arab Emirates)**, a company incorporated under the laws of the United Arab Emirates.
5. The first to fifth applicants were the first to fifth respondents in the application in issue and the only parties against whom relief was sought and only parties that opposed the application. I will refer to the applicants collectively as "**Vision**".
6. The first respondent is **RGS Group Holdings Limited**, a company incorporated under the laws of Mauritius. I will refer to the first respondent as "**RGS**". RGS was the applicant in the application in issue.
7. The second respondent is **Tongaat Hulett Limited (in business rescue)**, a public company incorporated under the laws of South Africa, with its principal place of business at Amanzimnyama Hill Road, Tongaat, KwaZulu-Natal. I will refer to the second respondent as "**Tongaat**". Tongaat was the sixth respondent in the application in issue. It is often also referred to as "THL" in the affidavits.

2 AH

8. The third to fifth respondents are, respectively, **Trevor John Murgatroyd N.O.**, **Petrus Francois van den Steen N.O.**, and **Gerhard Conrad Albertyn N.O.**, the business rescue practitioners of Tongaat and directors of Metis Strategic Advisors at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg. I will refer to the third to fifth respondents as “**the BRPs**”. The BRPs were the seventh, eighth, and ninth respondents in the application in issue.
9. The sixth respondent is **the Lender Group of Tongaat Hulett Limited**, a grouping of South African banks that were the primary lenders to Tongaat before its business rescue. The sixth respondent was the tenth respondent in the application in issue. I will refer to the sixth respondent as “**the Lender Group**”. At the commencement of Tongaat’s business rescue, Tongaat was indebted to the Lender Group for some R8.5 billion, comprising the largest claim against Tongaat.
10. The seventh respondent is the **Industrial Development Corporation**, and the eighth respondent comprises the affected persons in Tongaat’s business rescue (the eleventh and twelfth respondents in the application in issue, respectively). They do not feature in the application in issue.

OVERVIEW

11. Under Tongaat’s adopted business rescue plan, in brief, Vision was to acquire the Lender Group’s claims. Vision’s acquisition of Tongaat (through the primary debt-to-equity swap or alternative purchase of Tongaat’s business) (the first, the “**Equity Transaction**”, the second “**the Asset Transaction**”) would then be set off against such claims. In either event, concurrent creditors would receive some dividend that would not be available to them in the event of Tongaat’s liquidation.
12. The issues in the application in issue were whether, in law, a creditor (being RGS) of a company in a business rescue (being Tongaat) has a right to disclosure regarding the

progress of an adopted business rescue plan exercisable against a party other than the BRPs and, flowing from this, whether the content of that right extends to the disclosure of the type and extent of information and documentation sought by RGS and granted by the Court below.

13. RGS's position is that a creditor has such a right, directly against Vision, and that the required disclosure is extensive. Vision's position is that any right to information to which RGS *qua* creditor may be entitled to regarding the progress of the adopted business rescue plan is exercisable only against the BRPs, and is limited in extent by the reporting structures under the Companies Act, 2008 (**the Act**).
14. The KwaZulu-Natal Division High Court (per Zwane AJ) ordered that Vision provide to RGS certain documents and make a written statement relating to Vision's acquisition of the claims of the Lender Group (**the acquisition**). The judgment is attached as **V1**, and the order is attached as **V2**. Vision seeks leave to appeal this decision.
15. More particularly, RGS sought, and the order requires Vision to provide to RGS proofs of payment, all versions of the acquisition agreement, proof of the transfer of the claims, and a written statement relating to the structure of any funding for that acquisition (**the disclosure relief**).
16. RGS did not seek this disclosure relief against Tongaat or the BRPs.
17. On this central issue, Zwane AJ found that RGS (a creditor) *"has a right to be informed on the progress on the implementation of the Vision Plan"*, which must include *"a corollary right to the documents and information that support the assertion that the Vision Plan is being implemented correctly and properly"*.¹ In the judgment refusing leave, Zwane AJ stated that because the business rescue plan provides for the acquisition as

¹ Judgment ¶ 56.

A handwritten signature, possibly 'R', is written above the page number '4' and the initials 'AH'.

a condition, *"it is necessary that [Vision] must disclose the documents and information to confirm and support the acquisition"* (being Vision's acquisition of the Lender Group claims).² The judgment in the application for leave to appeal is attached as **V3**, and the order refusing leave as **V4**.

18. The effect of Zwane AJ's judgment is that, as a general proposition in law:

18.1. a creditor of a company in business rescue is entitled to proof, in the form of the disclosure of documents and information, that a business rescue plan is being implemented according to its terms; and

18.2. a creditor's right to disclosure extends beyond the company in business rescue and its business rescue practitioners, and seemingly may be enforced against any party mentioned in the plan who is commercially linked to the transactions to be implemented under that plan.

19. As expanded on below, Vision's case is that, whatever the extent of a creditors' rights to information in connection with the implementation and progress of a business rescue plan, that right is enforceable only against the BRPs.

20. Even as against the BRPs, a creditor's right to disclosure is far more limited and a creditor enjoys no wide-ranging right to disclosure.

21. The Act imposes specific obligations on a business rescue practitioner to provide information to creditors regarding the progress and implementation of a business rescue plan at specific intervals, and the content of the reporting falls to be determined by the practitioner. It can also be accepted that a practitioner probably has an obligation to report to creditors on the occurrence of material events outside of the statutory reporting periods.

² Judgment in leave to appeal (**LTA judgment**) ¶ 18-21.

22. Zwane AJ's decision confers an entitlement on a creditor to seek and extract information from persons connected with the business rescue plan, other than the business rescue practitioner, and to an extent that not only finds no statutory purchase, but exceeds even the reporting obligations of the practitioner.
23. Zwane AJ's decision could have far-reaching effects in business rescues, allowing any creditor the right to act as a watchdog over the implementation of a business rescue plan. This level of involvement and interference by creditors (particularly those motivated by an ulterior purpose, like RGS) is likely to impede the efficient rescue of companies rather than encourage it.
24. These are the primary reasons Vision contends that there are reasonable prospects on an appeal and compelling reasons why an appeal should be heard.
25. As will appear more fully below, Zwane AJ's judgments, both in the application in issue and in the application for leave to appeal, do not clearly identify what the source of the right to disclosure against Vision is. RGS was also unable to identify an express or implied obligation to this effect.
26. The judgment, with respect, also does not clearly distinguish between what are records of the parties' contentions and the findings of fact and law that underpin the decision. However, Zwane AJ's finding that such a right exists appears most closely linked to a right of a creditor to be informed about the progress on the implementation of a business rescue plan, which, while not identified in the judgment, can only be a reference to section 132(3) of the Act (which imposes an obligation to report at intervals on the BRPs).
27. RGS has made much of the fact that the BRPs are not in possession of the information, had previously sought the information from Vision, and that Vision refused to provide it. However, even assuming the information was material and should be disclosed to

creditors, the issue remains that RGS's right to obtain that information lies exclusively against the BRPs. If the BRPs were also of the view that the information was material and ought to be disclosed, this would mean that, in addition to any rights the BRPs might have against Vision in this regard, RGS's remedy would be to compel the BRPs to obtain the relevant information from Vision to comply with their reporting obligations.³

28. Vision's grounds of appeal extend beyond the right to disclosure:

28.1. **Adequate disclosure was given:** Even assuming a right to disclosure, Vision contends that RGS had already received adequate disclosure concerning the acquisition. Most significantly, the Lender Group's agent (Standard Bank) provided an affidavit unequivocally confirming the acquisition, Vision has confirmed the acquisition, and Tongaat and the BRPs are now satisfied that it has taken place. The acquisition comprises a cession by the Lender Group (as cessionary) of the claims against Tongaat (as debtor) to Vision (as cedent). It is trite that a debtor (Tongaat) needs only to receive proper notice of the cession to be then obligated to pay the cessionary (Vision).⁴ There is no requirement to produce proof of the agreement of cession (the acquisition agreement) and performance under it (the proofs of payment and structuring). There has been unequivocal notice of the cession by the Lender Group to Tongaat, which Vision has confirmed. This is sufficient in law for Tongaat to recognise Vision as the creditor and to effect the necessary set-off under the business rescue plan. In addition, Vision had provided the written statement sought by RGS (a fact not acknowledged in the Zwane AJ judgment).

³ Tellingly, RGS in substance has sought to do so by way of an application for relief against the BRPs launched on 12 August 2025.

⁴ **Lynn & Main Inc v Brits Community Sandworks CC** 2009 (1) SA 308 (SCA) ¶ 12.

28.2. ***Vision raised valid defences to disclosure:*** Even assuming a right to disclosure and inadequate disclosure, Vision contends that it has valid defences to the disclosure. First, Vision asserts confidentiality. Zwane AJ erroneously found that Vision had not raised confidentiality as a factor in granting the order.⁵ Second, Vision asserted that RGS did not seek the relief as a creditor of Tongaat but did so with an ulterior purpose and, as such, should not be entitled to the relief sought. In summary, RGS has directly and indirectly sought to interfere in Tongaat's business rescue solely to set aside the business rescue plan so that RGS may have a second try at acquiring Tongaat. RGS was a competing bidder with Vision. It submitted a business rescue plan under which it would acquire Tongaat, only to withdraw it the day before the vote, under a cloud of fraudulent proof of funds. RGS acquired an insignificant claim of **R5,744** (0.004% of the voting rights) after the commencement of business rescue solely to interfere in Tongaat's business rescue, and has been directly or indirectly behind at least five applications relating to Tongaat's business rescue (generally seeking to interdict its implementation and to set aside the plan). Zwane AJ did not engage with Vision's case on ulterior purpose at all. Given the sheer extent of Tongaat's insolvency, RGS's financial interest in the plan, as creditor, extends to its entitlement to a dividend under the plan of only **R435.47**.⁶ The point is not that a creditor with a small claim, acting *bona fide*, has no entitlement to ensure that it will be paid under a plan, or, in appropriate circumstances, to material information from the BRPs that might affect that payment. The point is that RGS is not acting *bona fide* in using this claim to mount its various attacks against the plan in pursuit of its stated aspirations to have the plan set aside to make its own proposal to acquire Tongaat.

⁵ Judgment ¶ 55.

⁶ Under the business rescue plan, concurrent creditors (totaling R989,268,897) are to receive a pro-rata share of R75 million, equating to some 7.58 cents in the Rand. Therefore, RGS stands to receive R435.47.

29. In addition, Vision contends that, in assessing the issues before him, Zwane AJ failed to have regard to Vision's version in many material respects.
30. For all these reasons, Vision contends that Zwane AJ erred in granting the disclosure relief and granting costs against Vision, and that there are reasonable prospects of an appeal resulting in the dismissal of RGS's application with costs.

RELEVANT FACTUAL BACKGROUND

31. On 27 October 2022, Tongaat was placed in business rescue, and the BRPs were appointed. By far the largest creditor of THL was the Lender Group. The Lender Group was represented by a "Facility Agent", Standard Bank.
32. During April 2023, both RGS and Vision, therefore, were rival bidders for Tongaat's business. Throughout late 2023, RGS made numerous representations to the BRPs and the Lender Group (including under oath) that it had funding available to acquire THL and submitted a confirmation of funds purportedly from Absa Mozambique for this purpose.
33. Seen in the correct context, both business rescue plans envisaged an initial large instalment to be paid to the Lender Group on, or shortly after, adoption, and further payments in future. There was no requirement, therefore, for either RGS or Vision to have immediately available funds for the entire purchase consideration. It was necessary that RGS and Vision had immediately available funds sufficient for the initial instalment. RGS's plan provided for an initial instalment of R2 billion, a further R1 billion on the merger filing date (far into implementation), and R600 million on the closing date (at the very end of the implementation).
34. In November 2023, Vision and the Lender Group concluded the first version of an agreement (the "acquisition agreement") under which Vision would acquire all the Lender Group's claims in Tongaat. Vision was required to pay the Lender Group an

initial instalment of R1.51 billion on adoption of its proposed plan and the balance by 31 December 2024.

35. Ultimately, both Vision and RGS were permitted to present their plans to Tongaat's creditors for adoption at a meeting of creditors held on 10 and 11 January 2024. RGS withdrew its plan on 9 January 2024 because of the discovery of its fraudulent confirmation of funds. RGS admits the confirmation of funds is false but attempts to attribute blame to a nameless junior employee and an Absa Bank official. RGS denies it withdrew its plan for this is the reason, but Vision's version should be accepted under **Plascon-Evans**.
36. On 11 January 2024, Tongaat's creditors adopted the Vision Plan. On 11 January 2024, Vision paid the Lender Group the first payment of R1.51 billion. Under the Vision Plan, Vision was to acquire the entire Lender Group's claims to step into the Lender Group's position as Tongaat's largest secured creditor. The purchase consideration for both the primary Equity Transaction and the Asset Transaction is a set off (and reduction) of such claims.
37. Vision submitted a letter from Standard Bank as confirmation of funds. RGS placed great reliance in this letter as comprising a misrepresentation (which Zwane AJ appears to have accepted). The letter confirms that Vision has "*sufficient cash for Vision to execute the contemplated transaction*" under the plan. The plan itself makes it absolutely clear that the letter comprises proof that "*the substantial cash deposit*" is held in a bank account, and that the acquisition would be completed "after" adoption. Therefore, there was no misrepresentation as alleged by RGS.
38. Since then, RGS has persistently sought to interfere with the business rescue plan, directly and indirectly.



10 Ait

- 38.1. Initially, RGS used Powertrans – another creditor of Tongaat – to advance its interests. On 25 January 2025, Powertrans launched an urgent application seeking to interdict the business rescue plan and, thereafter, to set it aside. RGS intervened in that application. It was ultimately struck from the roll and then withdrawn at RGS's instance.
- 38.2. On 5 April 2024, Powertrans launched a further application seeking, in the ordinary course, to set aside the business rescue plan. On 4 June 2024, Powertrans delivered a rule 35(12) notice in that application seeking that Vision produce much of the same documents sought in the application in issue. Vision refused such documents at the time, and Powertrans did not pursue an application to compel. Powertrans has not taken steps to advance this application since May 2024, despite it being ripe for hearing, and has clearly abandoned it.
- 38.3. On 6 November 2024, and after the Equity Transaction had failed and the Asset Transaction under the Vision Plan was being pursued, RGS launched a further application ("**the main application**"). Part A of the main application – which was brought as an urgent application – sought (again) to interdict the implementation of the business rescue plan and that the BRPs and Vision be directed to disclose documents and information that include those sought in the application in issue. On 18 February 2025, Part A was dismissed by ME Nkosi J. Part B, in which RGS seeks (again) to set aside the Vision Plan, is pending. On 30 March 2025, RGS filed its supplementary founding affidavit in Part B in which it refers, among other things, to (i.) the alleged unlawful implementation of the Vision Plan and (ii.) *"the summary dismissal of the Disclosure Relief"*. RGS elected to proceed with Part B without further disclosure.
39. The evidence supporting RGS's control of even the Powertrans litigation is overwhelming and should have been accepted on **Plascon-Evans**. In each of these

applications, the motivation behind the relief sought is to imperil and ultimately set aside the business rescue plan so that RGS can put up a new plan for adoption by Tongaat's creditors.

40. Vision admittedly delayed paying the balance of the purchase consideration under the acquisition agreement which was initially due by 31 December 2024. RGS relies on a supplementary affidavit filed by Vision in January 2025 to contend that Vision admits to using THL's assets to fund the acquisition. Vision has denied this and provided the written statement sought by RGS. Vision has also explained that the statement related to future funding and that the unrest in Mozambique affected investors' appetite to provide such funding.
41. On 9 May 2025, Vision paid the Lender Group the balance of the purchase consideration for its claims and, as a result, acquired the entirety of its claims in THL. Given, among other things, confirmations received from the Lender Group and Vision, the BRPs were then satisfied that Vision's acquisition of the Lender Group's claims was complete.
42. On 29 May 2025, RGS launched the urgent application in issue seeking the disclosure relief against Vision in its capacity as a creditor of Tongaat.
43. On 4 July 2025, Zwane AJ delivered judgment granting the disclosure relief against Vision. On 10 July 2025, Vision delivered its application for leave to appeal.
44. Curiously, on 12 August 2025, RGS brought a further urgent application effectively seeking the disclosure relief in a somewhat different form against the BRPs. RGS's primary relief sought that the BRPs be directed under section 140(3)(a) of the Act ⁷ to submit a report dealing with the acquisition, including the proofs of payment, acquisition agreement, and structure of any funding. RGS's alternative relief was effectively for the

⁷ "During a company's business rescue proceedings, the practitioner – (a) is an officer of the court, and must report to the court in accordance with any applicable rules of, or orders made by, the court".

12 AH

BRPs to procure and then publish the same documents and statements that comprise the disclosure relief in the application in issue. RGS effectively sought that the business rescue plan is interdicted until satisfactory disclosure is made. I will refer to this application as “**the second disclosure application**”. The second disclosure application was struck from the roll for lack of urgency on 16 September 2025. RGS is seeking to enrol the second disclosure application in the ordinary course. Before RGS launched the second disclosure application, Vision provided RGS with proofs of payment in the hope of avoiding further litigation. RGS was not satisfied with the proofs of payment and persisted with the application.

45. On 29 December 2025, Zwane AJ delivered judgment in the application for leave to appeal, refusing leave.

VISION’S GROUNDS OF APPEAL

FIRST GROUND: RGS HAS NO RIGHT TO THE DISCLOSURE RELIEF

46. Zwane AJ’s findings concerning RGS’s right to the disclosure relief are found at paragraphs 48 to 57 of the judgment. Zwane AJ concludes that as follows:

“[57] I can find no reason why the payments to the Lender Group, the acquisition of the Lender Group’s claim, and the transfer of the Lender Group’s claims should be shrouded in secrecy. RGS is entitled to know that the assets of THL are not encumbered as security for the payment by the Vision Parties to the Lender Group.”

47. At the outset, I point out that Vision had, on oath, already confirmed that no assets of THL had been encumbered for the payment by the Vision Parties to the Lender Group, and during argument, RGS’s counsel did not press for that aspect of the relief. He argued that if Zwane AJ found it was a sufficient confirmation by the Vision Parties, then RGS would accept that.

48. Zwane AJ appears, with respect, to have overlooked Vision's version and did not evaluate it, let alone find that the statement was inadequate. This alone raises a substantial issue on appeal.
49. In the judgment refusing leave, Zwane AJ finds that Vision must provide the written statement as Vision had not explained its "*previous admission that they had leveraged [Tongaat's] assets to raise funding*".⁸ This statement includes a host of impermissible new findings – (i) that Vision made the alleged admission (which was denied), (ii) that Vision had not explained the "previous admission" (which it had), and (iii) that Vision's written statement was inadequate as a result (an analysis not engaged in at all in the main judgment).
50. Zwane AJ's conclusion regarding the disclosure relief is only supportable if: (i) RGS had established a cognisable legal right to claim such disclosure specifically from Vision; (ii) assuming that such a right exists, it is demonstrated that the disclosure already provided to RGS was inadequate; and (iii) assuming the above, Vision has no legitimate defence to such disclosure.

Right to disclosure

Distinguishing Reiscor Two

51. The Court found that the decision in **Reiscor Two**,⁹ in which the High Court found that creditors do not have greater rights to information in a business rescue, was distinguishable.¹⁰

⁸ LTA judgment ¶¶ 32.

⁹ **Reiscor Two (Pty) Ltd (In Business Rescue) v Anheuser-Busch Inbev Africa (Pty) Ltd and Others** 2025 (1) SA 315 (GJ).

¹⁰ Judgment ¶¶ 52.

52. In **Reiscor Two**, the Johannesburg High Court stated as follows:¹¹

“Business rescue proceedings do not afford creditors of a company rights to information which they did not have prior to the company being placed in business rescue. If they have reason to suspect that the business rescue practitioners are not to be trusted their remedy is to remove them, not to call for an opportunity to investigate the conduct of the business rescue process by the business rescue practitioners.”

53. Zwane AJ distinguished this case on the basis that the creditors in **Reiscor Two** had sought a due diligence, and that RGS sought disclosure relating to the implementation of the Vision Plan (and not the affairs of THL).¹²

54. The point of distinction is irrelevant. Both **Reiscor Two** and the application in issue concern the rights of creditors in business rescue to disclosure concerning a business rescue plan. **Reiscor Two** concerns disclosure to creditors to enable them to vote on the plan, while the application in issue concerns disclosure to a creditor to assess the implementation of a business rescue plan. However, that the *ratio* remains applicable – RGS has no greater rights as a creditor to disclosure by reason of THL being in business rescue. This means that, according to **Reiscor Two**, RGS cannot rely on the fact that THL is in business rescue to contend that, as a result, it has greater rights to disclosure than an ordinary creditor against a company not in business rescue. Academic commentators have also adopted this interpretation of **Reiscor Two**.¹³

55. By necessary implication, the fact that the purposes of the Act include encouraging transparency and high standards of corporate governance and providing for the efficient

¹¹ ¶ 68. Emphasis added.

¹² Judgment ¶ 52.

¹³ Meskin **Meskin’s Insolvency Law** (June 2025, SI 64) § 18.10.1 when dealing with creditor’s rights to participation in business rescue proceedings, the authors reference **Reiscor Two** and state that “[a]ccording to the decision ... the commencement of business rescue proceedings does not confer on creditors additional rights regarding access to a company’s confidential information”.

rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders, does not give a general right to creditors to disclosure concerning the implementation of business rescue plans.¹⁴

56. Zwane AJ's point of distinction that the disclosure sought by RGS does "*not relate to the affairs of [Tongaat]*" also undercuts any reliance on Chapter 6 in finding that RGS has a right to the disclosure relief.¹⁵ If RGS's disclosure relief does not concern Tongaat's affairs, then reliance on the business rescue provisions which govern Tongaat's business rescue is misplaced.
57. Zwane AJ's distinguishing of **Reiscor Two** comprises a material misdirection of law such that an appeal court could reasonably come to a different conclusion (and instead find that the principle in **Reiscor Two** applies, that RGS has no greater right to disclosure in business rescue, and dismiss RGS's application). Additionally, certainty regarding the application of **Reiscor Two** and, generally, the rights of creditors to disclosure in business rescue, provide compelling reasons why an appeal court should entertain this matter. This in itself is an essential issue on which certainty is required.

Corollary right to the disclosure relief

58. Zwane AJ found that RGS "*has a right to be informed on the progress on the implementation of the Visions Plan*", which must include "*a corollary right to the documents and information that support the assertion that the Vision Plan is being implemented correctly and properly*".¹⁶
59. The only rights that creditors have under the Act to information and documents are set out exhaustively in sections 132(3)(a), 150(1) and 150(2) which impose obligations on

¹⁴ s.7(b)(iii) and s.7(k) of the Act.

¹⁵ Judgment ¶¶ 52, LTA judgment ¶¶ 22.

¹⁶ Judgment ¶¶ 56.

16 AH

the BRPs, not on Vision, and which do not extend to the disclosure relief sought by the RGS.

60. In particular, section 132(3)(a) requires that the BRPs prepare monthly progress reports of the business rescue proceedings and deliver such reports to affected persons. The *"business rescue proceedings"* are a broader concept than the implementation of the business rescue plan, and a *"progress report"* is far more limited than the disclosure relief that RGS seeks, which is more akin to a due diligence.
61. Zwane AJ's use of "corollary" denotes that, because RGS has a right to be informed of the progress of the business rescue plan – which can only be under section 132(3)(a) – it follows naturally or directly, without anything more, that RGS also has a right to the disclosure of the documents and information concerning the implementation of the Vision Plan. For the above reasons, this respectfully does not follow. It certainly does not follow that because RGS has a right to progress reports from the BRPs, it must have a right to disclosure of proofs of payment, the acquisition agreement, and funding arrangements from Vision.
62. Section 150(2) stipulates the minimum information that a business rescue plan (developed by the BRPs)¹⁷ must contain *"to facilitate affected persons in deciding whether or not to accept or reject the plan"*. Section 150(2)(c)(i) of the Act (specifically relied on by Zwane AJ)¹⁸ requires that the business rescue plan must contain *"a statement of the conditions that must be satisfied ... for the business rescue plan to (aa) come into operation; and (bb) be fully implemented"*. The plan does include this detail.
63. Section 150 clearly governs the information that must be included in a business rescue plan so that affected persons can decide whether to accept or reject the plan This

¹⁷ s.150(1) – *"The practitioner ... must prepare a business rescue plan"*.

¹⁸ Judgment ¶ 54.



section has no relevance once a plan is adopted (as the Vision Plan was) and does not provide affected persons with a right to disclosure thereafter. A failure to comply with section 150 at best entitles an affected person to challenge the validity of the plan itself. RGS does precisely this in Part B of the main application. The business rescue plan either complies with section 150 or it does not; further disclosure is irrelevant to this issue.

64. Zwane AJ also refers to section 152(4) of the Act, which provides that a business rescue plan is binding on the company, creditors, and securities holders.¹⁹ The Court later states that the Vision Plan *“is binding not only to the Vision Parties but also to RGS”*.²⁰ However, the judgment provides that it is the *“right to be informed on the progress on the implementation of the Vision Plan”* – which can only arise under section 132(3)(a) – from which follows the “corollary right” to documents and information that support the implementation of the business rescue plan.
65. As such, the reference to section 152(4) does not appear to underpin Zwane AJ’s finding. To the extent it does, a further significant issue arises: RGS did not rely on section 152(4), directly or indirectly, to support a claim to its relief. In fact, at the centre of RGS’s case is a denial or doubt concerning the acquisition and Vision’s status as a creditor. It did not feature in RGS’s affidavits or its heads of argument. As a result, Vision did not deal with section 152(4) as a ground to support the disclosure relief. If Zwane AJ notwithstanding placed reliance on section 152(4) as a basis to find that RGS has a right to disclosure, this would amount to Zwane AJ having decided the matter *“on issues not identified by the parties as relevant to their dispute and without hearing the evidence that they agreed was both relevant and determinative of the dispute”*.²¹ The issue does

¹⁹ Judgment ¶ 54.

²⁰ Judgment ¶ 56.

²¹ **Fischer and Another v Ramahlele and Others** 2014 (4) SA 614 (SCA) ¶ 13-17 and the cases cited therein.

not fully emerge from the affidavits and, in any event, deciding it without providing the parties an opportunity to address it is prejudicial to Vision and impermissible.

66. As such, Vision respectfully submits that Zwane AJ's finding that RGS has a corollary right to the disclosure relief comprises a material misdirection of law such that an appeal court could reasonably come to a different conclusion (finding that no corollary right exists at all or against Vision and dismissing RGS's application). If Zwane AJ relied on section 152(4) to support this finding, then the court misdirected itself by impermissibly deciding an issue not raised by the parties.
67. In short, RGS's remedy lay against the BRPs. If RGS's position was that the BRPs had not adequately complied with the statutory reporting obligations, their remedy was to bring an application against the BRPs (joining Vision as an interested party) on the basis that the information was material to its position as a creditor.
68. Finally, the fact that the BRPs did not object to the disclosure relief, as Zwane AJ noted, is legally irrelevant.²² RGS was required to establish a right against Vision and elected not to pursue a claim against the BRPs.
69. RGS has never contended that it does not have a right to the disclosure relief from the BRPs. Its contention in the application in issue is that the BRPs had sought the relevant information from Vision, and that Vision had refused to provide it. That argument does not address the question of principle of whether RGS has a right against Vision, independent of a right against the BRPs, to this disclosure. If the information was indeed material, the BRPs would have had a right to acquire it from Vision so that they could make the necessary report to creditors. And if the BRPs in such circumstances refused to do so, RGS's remedy would be to compel the BRPs to obtain the information from

Vision and report to creditors. As already stated, the BRPs are now satisfied that the acquisition has been completed.

70. In the leave to appeal judgment, Zwane AJ states that RGS had “*drawn a prima facie inference of impropriety*” regarding the implementation of the acquisition agreement and had “*a reasonable doubt*” whether the acquisition complied with the business rescue plan. Zwane AJ states that Vision simply denied these allegations and relied on unfounded speculation.²³ This is factually incorrect and confusing. The judgment in the application in issue did not rely in any *prima facie* inference of impropriety. While RGS has suggested such impropriety, this does not detract from the position that it is the obligation of the BRPs to report on the progress of the implementation of the plan and, if the implementation is tainted by impropriety, to report on that as well.

Tacit acknowledgement that RGS is entitled to be informed of the steps taken in the implementation of the Vision Plan, and failure to raise confidentiality

71. Zwane AJ found that “*the Vision Parties tacitly acknowledge that RGS is entitled to be informed of the steps taken in the implementation of the Vision Plan*” such that Vision’s “*refusal to back up their claims of payment and acquisition by documentary proof is baffling*”, particularly as Vision does “*not hide behind any claim of confidentiality*”.²⁴
72. Starting with the last finding first, Vision did rely on confidentiality. The dependent to the answering affidavit asserted a claim to confidentiality on no less than **four** occasions.
73. Vision’s refusal to provide disclosure to RGS is respectfully not baffling. Vision does rely on confidentiality, but Vision has also been resolute that it will not provide disclosure to RGS, given that RGS has no right to such disclosure and given its ulterior motives. The sole purpose of RGS’s application for disclosure is to find information, however

²³ LTA judgment ¶¶ 26.

²⁴ Judgment ¶¶ 55.

immaterial, with which to further delay and attack the business rescue plan. RGS has no genuine interest as a creditor in the sum of R5,744, in the context of a company owing well over R8.5 billion to creditors.

74. Vision's conduct does not support a finding of a tacit acknowledgement of RGS's right to be informed of implementation steps by Vision. Vision respectfully submits, therefore, that Zwane AJ's finding of a tacit acknowledgement and the failure to raise confidentiality comprise material misdirections of fact such that an appeal court could reasonably come to a different conclusion (finding that no such tacit acknowledgement was made, excluding disclosure based on confidentiality, and dismissing RGS's application).
75. In the leave to appeal judgment, Zwane AJ then acknowledges Vision's claim of confidentiality regarding the acquisition agreement and then finds that confidentiality cannot preclude disclosure.²⁵ This results in the court making a fresh (and contrary) finding to sustain the decision, which is impermissible.

Disclosure Provided

76. Even assuming RGS has a right to disclosure regarding the implementation of the Vision Plan, Zwane AJ was required to assess the extent of that right, whether it extended to the documents and information sought, and whether RGS had already been provided with adequate disclosure.
77. The judgment does not deal with this issue at all.
78. This issue is most glaring when considering RGS's relief seeking a "written statement" from Vision concerning its funding arrangements in connection with possible hypothecation of THL's assets. Vision provided this written statement in its answering

²⁵ LTA judgment ¶ 23-24.

affidavit, the judgment references Vision's statement,²⁶ yet Zwane AJ ordered that Vision nonetheless provide the "written statement" sought by RGS.²⁷

79. Vision respectfully submits that Zwane AJ's failure to engage in this exercise constitutes a material misdirection of law (as far as the failure to assess the extent of the disclosure right) and of fact (as far as the failure to evaluate whether adequate disclosure had been provided) such that an appeal court could reasonably come to a different conclusion (finding that any right to disclosure is far more limited, that adequate disclosure was provided, and dismissing RGS's application).

Lender Group's confirmation of Vision's acquisition of the claims

80. Before RGS launched the application in issue, it had already received confirmation that Vision had paid the Lender Group in full and had acquired the entirety of its claims and security in THL. This confirmation came in the form of written confirmation from Vision, the Lender Group and the BRPs. Significantly the BRPs were also satisfied that the Lender Group has been paid in full. The application was accordingly entirely unnecessary and ought to have been dismissed on this basis alone.
81. Critically, in the application itself, Standard Bank, the facility agent of the Lender Group, had provided an affidavit deposed to by its Vice-President: Agency Front Office, in which the Facility Agent provided the following confirmation:

"4. I confirm the content of the letter and specifically that:

4.1. The First Respondent [Vision] has fully discharged all of its obligations vis-a-vis the purchase consideration due by it to the Lender Group relating to the transfer of the claims and security (the THL Group Claims and Security) of the Lender Group in respect of Tongaat Hulett Limited (in business rescue) (and its subsidiaries).

²⁶ Judgment ¶ 28.

²⁷ Judgment ¶ 59 (order ¶ 2.5).

4.2. *I also confirm that the THL Group Claims and Security were unconditionally and irrevocably transferred to the First Respondent on 9 May 2025.*

4.3. *That Standard Bank, accordingly, as the former Facility Agent in respect of the THL Group Claims and Security had resigned and the new Facility Agent is the First Respondent."*

82. The confirmation provided was almost identical to that provided by the Lender Group's attorneys (ENS) on 21 May 2025. When dealing with this letter in its affidavits, RGS states that it does not contend that the Lender Group was "untruthful".
83. The business rescue plan requires only that Vision (as cessionary) acquire the claims of the Lender Group (as cedent) against THL (as debtor), so that Vision's purchase consideration can be set off against those claims. The Vision Plan does not prescribe the terms of this acquisition, nor could it, as it concerns the private dealings between the Lender Group and Vision. Vision (the cessionary) has similarly confirmed the acquisition on numerous occasions, including under oath, and communicated this to THL (as the debtor) via the BRPs.
84. As stated above, this comprises sufficient notice in law for Tongaat (as debtor) to acknowledge its indebtedness to Vision. There is no requirement in law (or under the business rescue plan) that the debtor must have had sight of the deed of cession (in this case, the acquisition agreement) or proof that the cessionary has paid the cedent.
85. RGS made it clear in argument that it was **not** impugning the integrity of the Lender Group, and so Standard Bank's affidavit should have been the end of the matter.
86. It was argued, however, that Standard Bank's confirmation that Vision "*has fully discharged all of its obligations vis-a-vis the purchase consideration*" could mean something other than payment in full and left room for the possibility that the Lender Group retained a portion of the claims and security. This is clearly contrary to the words

used. *“Fully discharged”* can only mean payment in full, and Standard Bank went further to state that *“the THL Group Claims and Security were unconditionally and irrevocably transferred to [Vision]”* with the result that Standard Bank had resigned as Facility Agent.

87. As such, even if RGS has a right to disclosure, it (and the BRPs) had been provided with sufficient disclosure for the implementation of the Vision Plan, and there was no reason to disbelieve Vision, the Lender Group and the BRPs. RGS itself accepted that the Lender Group's statements were truthful.
88. As such, Vision respectfully submits that the Court's failure to engage with the adequacy of the disclosure provided comprises a material misdirection of fact and law and that an appeal court could reasonably come to a different conclusion.
89. In the leave to appeal judgment, Zwane AJ again failed to address the significance of the Standard Bank affidavit and insisted that *“documentary proof”* was necessary and that the BRPs did not independently verify the acquisition.²⁸ This is an odd outcome because even RGS during argument repeatedly made it clear that it was not impugning the integrity of the Lender Group. RGS also did not advance adequate grounds to impugn the BRP's acceptance of the factual position that the Lender Group had been paid in full. Even if RGS sought to impugn that acceptance, its remedy, as stated above, is to take the matter up with the BRPs.

Vision's defences to disclosure

90. As set out above, despite the judgment finding differently, Vision did assert confidentiality. Vision's claim of confidentiality concerns the acquisition agreement, which is a private agreement between Vision and the Lender Group.

²⁸ LTA judgement ¶ 28.



91. Zwane AJ also failed to address any of the evidence advanced by Vision demonstrating that RGS seeks disclosure relief, not to exercise rights as a creditor, but for an ulterior purpose as a competing bidder. A court may, in appropriate circumstances, non-suit a litigant that approaches the court with "unclean hands".²⁹
92. As such, even though Zwane AJ found that RGS had a right to the disclosure relief (erroneously, Vision submits), he was nonetheless obliged to consider whether RGS should be precluded from advancing that right on the grounds of abuse of process and RGS approaching the Court with unclean hands.
93. The Court should have found that RGS had abused its process and come to court with unclean hands on at least the following grounds raised in Vision's answering affidavit:
- 93.1. RGS's interest is not that of an independent creditor of THL. RGS acquired by cession a minuscule claim of R5,744 (a 0.004% voting interest) solely to advance its own plan and to provide it with *locus standi* to interfere in the business rescue process, not to secure its right to a dividend;
- 93.2. RGS is nothing more than a disgruntled bidder whose true and only motive in bringing the application in issue (and prior applications) is to acquire THL's business, having previously had the opportunity to do so, but then withdrawing its plan on the eve of the meeting, having submitted fraudulent proof of funds;
- 93.3. the disclosure relief is not sought to advance the interests of creditors, but comprises a fishing expedition for ammunition to assist RGS in setting aside the Vision Plan;
- 93.4. RGS has used another creditor (Powertrans) as a stalking horse to secure its ulterior motive and unsuccessfully sought to interdict and set aside the Vision Plan

²⁹ **Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH** 2024 (1) SA 331 (CC) ¶ 72 and 77.

in Powertrans's name; RGS and Powertrans sought the same or materially the same disclosure relief in Rule 35(12) notices and failed to exercise their rights to seek to compel Vision to provide such documents;

93.5. RGS's disclosure relief in Part A in the main application, at best for RGS, was found not to be urgent in February 2025 by ME Nkosi J, yet RGS sought the same relief again as an urgent application;

93.6. RGS pursues this litigation notwithstanding it having undertaken not to pursue such relief after the unsuccessful first Powertrans application; and

93.7. RGS has created a mountain of unresolved litigation along the way.

94. As such, Vision respectfully submits that the Court's failure to consider RGS's ulterior purpose and unclean hands comprises a material misdirection of fact and law such that an appeal court could reasonably come to a different conclusion (precluding RGS from asserting any right to disclosure and dismissing RGS's application).

95. In the leave to appeal judgment, Zwane AJ contends that the issue of ulterior purpose was not argued during the main application (while acknowledging that these issues were raised in Vision's answering affidavit).³⁰ Given the urgency, Vision filed short heads of argument, primarily focusing on urgency, but also raising RGS's ulterior purpose. Vision's counsel did argue the issue of ulterior purpose.

SECOND AND THIRD GROUNDS

96. Vision's second ground of appeal (that it provided sufficient proof of the acquisition) and third ground of appeal (that Vision provided the statements sought, but was nonetheless

³⁰ LTA judgment ¶ 25.

ordered to produce them) have both been dealt with under the heading "Disclosure Provided" above.

FOURTH GROUND: THE COURT A QUO FAILED TO HAVE REGARD TO VISION'S VERSION

97. The Court erred in failing to have regard to or to give proper weight to Vision's version of events concerning the relevant background to the application.

98. Zwane AJ erred in the following respects (among others):

98.1. Zwane AJ erred in finding that at the creditors' meeting adopting the business rescue plan, *"creditors were unequivocally assured that the Vision Parties had sufficient funds to implement the Vision plan"*.³¹ Zwane AJ ought to have found – as set out in Vision's answering affidavit – that Vision held sufficient funds to implement the Equity Transaction at that stage and that it was not expected of Vision to have immediately available funding for the full purchase price.

98.2. The Court erred in finding that *"the Vision Parties have stated under oath that it was using THL assets in support of raising the necessary funding to complete the Acquisition"*.³² The Court ought to have found – as set out in Vision's answering affidavit – that Vision has not used THL's assets to fund the acquisition of the Lender Group's claims. Vision provided unequivocal confirmation of this in dealing with RGS's requests for written confirmations. Vision also noted that RGS's contention is based on speculation and infers intentional misrepresentations by Vision, the Lender Group, and potentially the BRPs, regarding the true state of affairs. Vision

³¹ Judgment ¶ 7.

³² Judgment ¶ 11.



suitably explained the reference to the unrest in Mozambique and its impact on the assets.

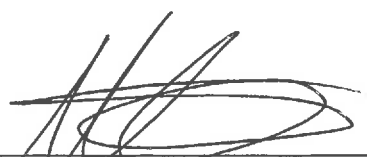
99. The Court adopted RGS's version without dealing with Vision's version. Cumulatively, these findings of fact influenced the Court's finding that RGS was entitled to the disclosure relief. Had the Court accepted Vision's version of events, which it was obliged to under **Plascon-Evans**, Vision respectfully submits that the Court could not have proceeded to then find that RGS was entitled to the disclosure relief it sought.
100. As such, Vision respectfully submits that the Court's failure to have regard to Vision's version comprises a material misdirection on the facts such that an appeal court may reasonably come to a different conclusion (and dismiss RGS's application).

OTHER GROUNDS RAISED BY VISION IN ITS APPLICATION FOR LEAVE TO APPEAL BEFORE ZWANE AJ

101. Insofar as Vision raised additional grounds in its application for leave to appeal, these are not pursued in the present application. However, if these additional grounds are raised in any answering affidavit, Vision reserves its rights to deal with them.

CONCLUSION AND PRAYER

102. For the above reasons, Vision submits that Zwane AJ ultimately erred in granting the disclosure relief and awarding costs against Vision. Zwane AJ ought to have dismissed the Disclosure application with costs on a punitive scale against RGS.
103. There are reasonable prospects of success in an appeal of Zwane AJ's judgment and compelling reasons to grant leave to appeal. Vision accordingly prays for an order in terms of the notice of motion.
104. Vision seeks leave to appeal to the full bench of the KwaZulu-Natal Division, Durban, or, in the alternative, to the Supreme Court of Appeal.


ALEXANDRA NICOLE HO

THUS SIGNED AND SWORN TO at JOHANNESBURG on this 28 day of **JANUARY 2026** the deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath, that the oath which she has taken in respect thereof is binding on her conscience, and that the contents of this affidavit are both true and correct.


COMMISSIONER OF OATHS

FULL NAME: **JAN CHRISTOFFEL KRUGER**
DESIGNATION: **COMMISSIONER OF OATHS**
PRACTISING ATTORNEY R.S.A.
ADDRESS: **512 ONTDEKKERS ROAD**
FLORIDA HILLS
ROODEPOORT
1709