

COURT ONLINE COVER PAGE

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

CASE NO: 2026-031780

In the matter between:

**Gerhard Conrad Albertyn NO ,Trevor
 John Murgatroyd NO ,Petrus Francois
 Van Den Steen NO**

Plaintiff / Applicant / Appellant

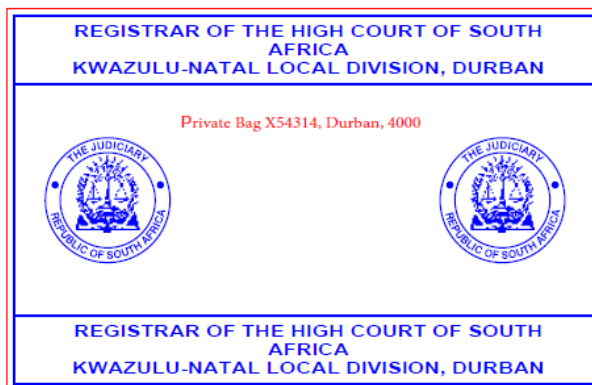
and

**Tongaat Hulett Limited,The Affected
 Persons**

Defendant / Respondent

Replying Affidavit

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 KwaZulu-Natal, Durban.**

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

CASE NO - 2026-031780

In the matter between -

GERHARD CONRAD ALBERTYN N.O.

First Applicant

TREVOR JOHN MURGATROYD N.O.

Second Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O.

Third Applicant

And

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

First Respondent

THE AFFECTED PERSONS

Further Respondents



**APPLICANTS' REPLYING AFFIDAVIT TO THE IDC'S SUPPLEMENTARY
AFFIDAVIT FILED PURSUANT TO THE COURT ORDER OF 16 APRIL 2026**

I, the undersigned,

GERHARD CONRAD ALBERTYN

do hereby make oath and say –

1 I am the deponent to the Applicants' supplementary affidavit delivered pursuant to the Court order granted on 16 April 2026 which was delivered by the Applicants on 20 May 2026 ("**the BRPs' Supplementary Affidavit**"). My particulars appear from what is stated in the BRPs Supplementary Affidavit.

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- 2 I am one of the three jointly appointed business rescue practitioners ("**the BRPs**") of Tongaat Hulett Limited (under business rescue") ("**THL**"). I am authorised to depose to this affidavit in my capacity as such.
- 3 I attach marked "**TRA1**" and "**TRA2**", confirmatory affidavits deposed to by Trevor John Murgatroyd ("**Murgatroyd**") and Petrus Francois van den Steen ("**Van den Steen**") in which they confirm the allegations made herein insofar as they relate to the BRPs.
- 4 The facts herein are, to the best of my belief, both true and correct and within my personal knowledge unless context indicates otherwise.



INTRODUCTION AND PURPOSE

- 5 This affidavit is delivered in response to the supplementary affidavit deposed to by Bongani Miya ("**Miya**") on behalf of The Industrial Development Corporation of South Africa Limited (the "**IDC**") dated 3 June 2026 and filed pursuant to this Honourable Court's order of 16 April 2026 (the "**IDC Supplementary Affidavit**").
- 6 This affidavit should be read together with the prior affidavits filed by the Applicants in these proceedings, namely the -
- 6.1 founding Affidavit dated 12 February 2026;

- 6.2 replying affidavit to RGS's preliminary answering affidavit and answering affidavit to RGS's counter-application, dated 4 March 2026 (the "**BRP Reply**");
- 6.3 consolidated replying affidavit to the IDC, Vision, SACGA, Abrina, and the Minister, dated 6 March 2026 (the "**Consolidated Reply**"); and
- 6.4 BRPs' supplementary affidavit of 20 May 2026 (the "**BRP Supplementary Affidavit**");
- 6.5 Applicants' answering affidavit to RGS's supplementary affidavit dated 27 May 2026 (the "**BRP Answer to RGS Supplementary Affidavit**"); and
- 6.6 Applicants' replying affidavit to the supplementary affidavits of Vision, SACGA, Abrina and the Minister dated 2 June 2026 (the "**BRP Reply to Supplementary Affidavits**").
- 7 I do not intend to respond to the IDC Supplementary Affidavit on a *seriatim* basis.
- 8 This affidavit addresses the IDC Supplementary Affidavit thematically, focusing on those aspects that the Applicants consider to be material to the issues before this Honourable Court.



- 9 To the extent that any allegation or assertion in the IDC Supplementary Affidavit is not specifically addressed herein, it should not be taken as an admission of the correctness of such allegation or assertion and is denied.

STRUCTURE OF THIS AFFIDAVIT

- 10 This affidavit addresses the following thematic issues arising from the IDC Supplementary Affidavit -

- 10.1 the 11th Addendum to the PCF Facility Agreement ("**PCF11**") and **funding** flows — addressing the IDC's characterisation of the budget approval mechanism, the delay in approving the May and June 2026 budgets, and the practical impact of the restrictions imposed under PCF 11 on THL's operations (paragraphs 4 to 17 of the IDC Supplementary Affidavit);
- 10.2 the IDC's allegations against the BRPs — addressing the IDC's characterisation of the BRPs' position as "pure sophistry", the allegations of lack of candour and exaggeration of THL's financial position, and the IDC's selective reliance on Mr Aitken's correspondence of 15 May 2026 (paragraphs 18 to 20 of the IDC Supplementary Affidavit);
- 10.3 the IDC's commitment and engagement — addressing the IDC's assertions regarding its ongoing engagement with Vision, the structured pathway set by the IDC board, and whether the meetings and engagements recorded in



annexure IDC SA2 constitute meaningful progress towards a viable rescue outcome (paragraphs 21 to 31 of the IDC Supplementary Affidavit);

10.4 the delay in filing — addressing the prejudice arising from the IDC's late filing of a "preliminary" supplementary affidavit and the implications thereof (paragraphs 32 to 34 of the IDC Supplementary Affidavit);

10.5 THL's true financial position and the absence of a reasonable prospect of rescue — reaffirming the BRPs' statutory conclusion under section 141(2)(a) of the Act, addressing the sustainability of reliance on PCF reflows, and the critical significance of the PCF facility expiry on 30 June 2026;



10.6 costs — setting out the basis upon which the IDC should be directed to pay the BRPs' costs on the attorney and client scale; and

10.7 conclusion and relief — summarising the Applicants' position and the relief sought.

THE 11TH ADDENDUM TO THE PCF FACILITY AGREEMENT AND FUNDING FLOWS

11 The IDC contends in paragraphs 4 to 17 of the IDC Supplementary Affidavit that the delay in funding flows following the conclusion of the 11th Addendum to the PCF Facility Agreement, PCF11, was attributable to the contractual mechanism requiring monthly budget approval and was neither deliberate nor intended to

impede THL. The IDC further contends that THL was able to operate on PCF "reflows" and that no new drawdowns were requested during the period in question.

- 12 The BRPs admit the existence and terms of PCF11, including the defined terms "Approved Budget", "Approved Costs" and "Monthly Budget". The BRPs further admit that the May and June 2026 budgets were approved by the IDC only on 27 May 2026. However, the BRPs qualify these admissions in the respects set out below.



- 13 The IDC's assertion in paragraph 14 of the IDC Supplementary Affidavit that the restrictions imposed under PCF 11 did not apply to the overall PCF facility is denied. The IDC diverts attention from the actual events.
- 14 The difficulty experienced by THL was not, as the IDC seeks to suggest, a restriction on an additional drawdown under the PCF facility.
- 15 The IDC was required to provide consent to THL for payments of amounts included in each Utilisation Request ("UR") and the IDC's, independent monitoring agent, Alwyne (the "IMA") was required in terms of its weekly reporting to provide confirmation to THL for payments of amounts included in each weekly UR amongst a number of other review procedures.

- 16 The IMA rejected certain payments included in the URs, based on instructions from the IDC and/or its interpretation of PCF 11, which caused material difficulties with the payment of previously incurred obligations.
- 17 To be clear: the practical effect of the restrictions in PCF 11 was that the IMA evaluated each item in THL's weekly URs against the letter of the PCF 11 agreement. The restrictions on the use of funds were not clearly noted in PCF 11 as applying only to the R200 million increase. The IMA accordingly applied the restrictions to the entire R2.5 billion facility. This is precisely the concern that the BRPs raised with the IDC on or about 7 April 2026 — prior to the signing of PCF 11 - and which the IDC rejected outright.



THL Properties and the Standard Bank Account

- 18 In this regard, the IDC alleges at paragraph 13.6 of the IDC Supplementary Affidavit that THL Properties held funds in a Standard Bank account that were available to provide immediate support to the milling operations, and that Standard Bank froze that account "*under instruction of Vision*".
- 19 The IDC further alleges that THL Properties was not permitted to utilise any funding from the PCF facility whilst under business rescue and that the budgets presented to the IDC included expenses to be discharged on behalf of THL Properties.

20 The BRPs respond as follows -

20.1 first, the assertion that THL Properties' bank account was frozen "under instruction of Vision" is a serious allegation directed at a party, one of South Africa's largest banks no less, which is not before this Court. In respect of this specific issue, the IDC which makes such a bald and unsubstantiated allegation and provides no documentary evidence in support thereof; and

20.2 second, the inclusion of THL Properties' expenses in the budgets submitted to the IDC was both necessary and transparent. THL Properties' operations are integral to the THL group and the preservation of value in the estate. The suggestion that the BRPs acted improperly by including these expenses in the budgets ignores the commercial reality that THL Properties (being the property division of THL) cannot be left to deteriorate without adverse consequences for the asset base available to all creditors, including the IDC itself.



Items Rejected by the IMA

21 The items rejected or queried by the IMA in the weekly URs included, *inter alia* -

21.1 group fees payable to THL's African operations, which are essential to the continued management and oversight of THL's subsidiary operations across the continent;

- 21.2 payments relating to Darnall, a mothballed but strategically important key storage and asset of South African Sugar (“**SA Sugar**”), the maintenance of which is essential to preserving THL's asset base and the value of the estate for all stakeholders;
- 21.3 expansion capital expenditure that was already part-way through implementation and which, if interrupted, would result in wasted expenditure and diminished asset value; and
- 21.4 consultancy services, including the BRPs' own fees and related advisory fees, the payment of which is a statutory entitlement under section 143 of the Companies Act, 2008 (the “**Act**”) and the non-payment of which directly impedes the BRPs' ability to discharge their statutory duties.
- 22 The characterisation of these items as "non-operational" is denied. Each was either a previously incurred obligation of THL, a statutory entitlement, or expenditure essential to the preservation of THL's operations and asset base.
- 23 The IDC's refusal to approve these items through the IMA was not a bona fide exercise of a contractual discretion — it was an unreasonable fetter on THL's ability to meet its obligations and on the BRPs' ability to discharge their statutory duties under section 140 of the Act.
- 24 In particular, the withholding of approval for the BRPs' fees and related advisory costs in terms of the adopted BR Plan constitutes an interference with the BRPs'



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statutory entitlement to reasonable remuneration under section 143 of the Act, and an impediment to the BRPs' ability to discharge their obligations and the functions vested in them under section 140(1)(a), (b) and (d) of the Act.

- 25 The IDC's conduct in this regard is self-contradictory: whilst the IDC ultimately approved the very items it had initially refused — including the fructose plant expansion capital expenditure, the BRPs' fees, and restructuring-related costs — the delay in doing so caused material operational disruption. The IDC's belated concession undercuts its characterisation of these items as "non-operational".



The April Budget and PCF Reflows

- 26 The IDC's contention that no April 2026 budget was presented requires context. PCF 11 came into effect on 16 April 2026, whilst the required budget submission date under the 11th Addendum was 15 April 2026 — the day before the addendum became effective. It was accordingly impossible for THL to submit a budget in terms of a contractual mechanism that did not yet exist. The suggestion that this evidences any dereliction on the part of the BRPs is without merit.
- 27 The IDC places considerable emphasis on the fact that THL was able to utilise PCF "reflows" being cash realised from the sale of stock, collection of debtors and limited cash sweeps to sustain its operations during the period in which the May 2026 budget remained unapproved. The BRPs admit that THL did utilise PCF reflows during this period, but the IDC's reliance on this fact to suggest that the budget approval delay was of no consequence is fallacious and is misleading.

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There were numerous payments that could not be made from the reflows because of the IDC delays in approving the budgets.

- 28 The IDC is aware that the availability of PCF reflows is an inherent feature of the revolving credit facility and has been available since the inception of the PCF. It does not constitute a substitute for an approved budget and committed drawdown capacity. Reflows are, by their nature, dependent on the ongoing sale of stock and collection of debtors subject to seasonal variation, market conditions and the operational capacity of THL's sugar milling operations. Reliance on reflows alone, without approved budgets and the ability to draw down against the committed facility, places THL in a precarious position and exposes the BRPs to the risk of being unable to meet obligations as they fall due.



- 29 The fact that no new drawdown requests were submitted by THL during April and May 2026 does not evidence an absence of need. No drawdowns could be submitted because the budget required under PCF 11 to authorise such drawdowns had not been approved. The absence of drawdown requests was a direct consequence of the IDC's failure to approve the budget in a timely manner.

The "Accommodative Framework"

- 30 The IDC's reference in paragraph 17 of the IDC Supplementary Affidavit to an "accommodative framework" for drawdowns relating to the liquidation application is noted. This framework which requires the BRPs to submit separate drawdown requests for litigation costs, with a 24-hour turnaround by the IDC, constitutes a

further fetter on the BRPs' ability to discharge their statutory duties, introducing an additional layer of IDC oversight over the BRPs' exercise of their functions under section 140 of the Act.

31 Despite the IDC commitment to a 24 hour turnaround time, a letter dated 5 June 2026, a copy of which is attached marked "TRA3", was sent to the BRPs advising that "Liquidation-Related Legal Fees" are not approved. A clear fettering of the BRP duties and responsibilities and placing the BRPs in an untenable position not having access to any other sources of post-commencement funding.



32 The IDC sought clarity on "Legal confirmation on whether the obligation for such costs rests with THL or the BRPs". This is ludicrous. It is THL that has engaged Werksmans and therefore THL that is liable. Section 135 of the Companies Act is clear on this point and a quick interrogation thereof via IDC's legal counsel would have confirmed the fact.

33 The requirement that BRPs must obtain the IDC's prior approval to incur legal costs in the prosecution of an application which the BRPs are obliged to bring under section 141(2) is an untenable constraint on the BRPs' independence and is incompatible with the statutory scheme. It bears emphasis that the IDC's "accommodative framework" was announced only after the BRPs had raised their concerns in prior affidavits which is a reactive concession that does not address the fundamental problem that the IDC asserts the right to veto expenditure which the BRPs are statutorily empowered and obliged to incur.

THE IDC'S ALLEGATIONS AGAINST THE BRPs

34 I turn to address the serious and unfounded allegations levelled against the BRPs in paragraphs 18 to 20 of the IDC Supplementary Affidavit.

35 The IDC characterises the BRPs' position regarding the application of restrictions under PCF 11 as "pure sophistry" and contends that the BRPs seek "full and unconditional control" over the PCF facility. Both characterisations are denied.

36 The BRPs do not seek unchecked or unconditional control over the PCF facility. What the BRPs require is the ability to discharge their statutory duties under section 140 of the Act, which confers upon the BRPs full management control of THL in substitution for its board and pre-existing management. This obviously includes the authority to manage THL's day-to-day operations, to pay its creditors, and to take all steps necessary to ensure the efficient conduct of the business rescue proceedings.

37 The IDC's characterisation of this lawful exercise of statutory power as a desire for "full and unconditional control" conflates statutory authority with unchecked discretion. A regime in which every payment no matter how routine or how small requires the prior approval of the IDC's Executive Credit and Investment Committee ("ECIC") or the IMA is fundamentally incompatible with the exercise of these statutory powers. The IDC's view of its entitlement of control and oversight has proved to be entirely obstructive, thereby further contributing to THL's liquidity and operational crisis.



- 38 The IDC's allegation in paragraph 19 of the IDC Supplementary Affidavit that the BRPs have been "far from candid" and have failed to make full disclosure to this Honourable Court is denied in the strongest terms. The BRPs have, throughout these proceedings, placed before this Court a comprehensive and honest account of THL's financial position, the status of the PCF facility, and the absence of any reasonable prospect of rescue.
- 39 The Founding Affidavit alone extends to 118 pages and is supported by 51 annexures. The BRP Supplementary Affidavit provided the Court with an updated account of what has transpired since 16 April 2026, albeit that nothing has changed. The BRP Reply to the Supplementary Affidavits further engaged with the positions of each respondent. To suggest that the BRPs have withheld material information from this Court is without foundation and is, with respect, a self-serving allegation made recklessly and without any supporting evidence.
- 40 The allegation in paragraph 20 of the IDC Supplementary Affidavit that the BRPs have "exaggerated" THL's dire financial position is similarly denied. The IDC's reliance on Mr Aitken's letter of 15 May 2026 to support this contention is selective and misleading. Mr Aitken's letter, annexed to the BRPs' Supplementary Affidavit as "SA5", was written in a specific context and contains material qualifications which the IDC has chosen not to address.
- 41 When Mr Aitken stated that THL "generally expects to be able to operate within that limit during this period", he was expressing an expectation based on then-



current forecasts and on the assumption that the PCF facility would remain available on its existing terms and that payments may be made within management and BRP discretion. That expectation was expressly contingent on the continued availability of the full PCF facility and did not constitute a representation that THL's financial position was anything other than dire. The IDC's selective quotation of Mr Aitken's letter, whilst ignoring its express qualifications and context, is precisely the type of misleading reliance that this Court should guard against.

42 In particular, Mr Aitken's letter must be read in the context of his request for an extension of the PCF facility beyond 30 June 2026 "to enable all engagements taking place to continue in order to avoid a liquidation of THL". The very fact that THL's CFO was requesting an extension to avoid liquidation flatly contradicts the IDC's contention that the letter supports the view that THL's financial position was comfortable. Mr Aitken's letter must also be read together with annexures "SA4" and "SA5" to the BRPs' Supplementary Affidavit, which set out in detail the operational difficulties arising from the IDC's failure to approve the May 2026 budget.

43 The IDC's criticism that the BRPs have not placed financial projections or cash flow forecasts before this Court ignores the fact that the BRPs have placed extensive financial information on record, including in the Founding Affidavit, the monthly business rescue status reports annexed thereto, and the correspondence annexed to the BRPs' Supplementary Affidavit.



44 The IDC has at all material times had access to THL's management accounts, weekly utilisation requests, and monthly budgets in line with its rights as a PCF lender to THL. The suggestion that this Honourable Court has been deprived of material financial information is unsustainable and not a single opposing party has presented any facts to genuinely or seriously contradict the BRPs' allegations that THL is factually and commercial insolvent and that the BRPs' Plan cannot be implemented

45 The BRPs have at all times acted with full transparency, and the suggestion to the contrary is rejected.



46 The IDC contends in paragraph 18.7 of the IDC Supplementary Affidavit that the BRPs received proposals from parties other than RGS and failed to present them to this Honourable Court or explain why they were rejected. The BRPs have informed this Court of the "proposals" it has received from RGS and GrowerCo. No party, including the IDC has presented anything to the BRPs which constitutes a viable, implementable and funded business rescue plan capable of being put to creditors for a vote under section 152 of the Act. High-level proposals, expressions of interest, or conditional term sheets do not meet this threshold and the BRPs were accordingly not obliged to place them before the Court as if they constituted actionable alternatives, certainly in the absence of any proposer advising as part of their proposal how they will achieve in excess of 75% vote in favour of any proposal.

47 The IDC's own affidavit acknowledges the distinction between a "proposal" and a business rescue plan that can be put to creditors for a vote under section 152 of the Act. In any event, the criticism is misdirected. It is not the BRPs' obligation to solicit rescue plans from third parties.

48 The BRPs' duty under section 141(2)(a) of the Act is to assess, objectively, whether there remains a reasonable prospect of rescue. Having concluded that no such prospect exists, the BRPs are obliged to bring this application. The IDC's suggestion that the BRPs should have done more to facilitate proposals from other parties ignores the reality that the IDC, as the sole PCF provider and one of the largest creditors, has itself failed to produce or support any viable plan or proposal.



THE IDC'S ALLEGED COMMITMENT AND ENGAGEMENT

49 I turn now to address the IDC's assertions regarding its engagement with stakeholders.

50 The IDC devotes paragraphs 21 to 31 of the IDC Supplementary Affidavit to asserting that it has been fully engaged with stakeholders and that meaningful progress is being made towards a viable restructuring solution. The BRPs acknowledge that meetings have taken place between the IDC, Vision and other stakeholders since the hearing on 16 April 2026, as recorded in the table annexed

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as “IDCSA2”. But the occurrence of meetings does not, of itself, constitute progress.

51 The table records the dates and attendees of meetings but is conspicuously silent on the outcomes. The BRPs are not aware of any binding agreement, committed funding, or implementable restructuring framework having emerged from those engagements.

52 The IDC's stated willingness to "consider" an extension of the PCF facility beyond 30 June 2026 is noted. However, a willingness to consider a request is not the same as a commitment to grant one. As at the date of deposing to this affidavit, the PCF facility expires on 30 June 2026 and THL has no committed funding source beyond that date.



53 The BRPs acknowledge the IDC's reference to a “structured pathway” set by its board on 29 May 2026 and to “positive meetings” held with Vision on 1 and 2 June 2026. Whilst any genuine progress is welcomed, structured pathways and positive meetings have been a feature of the IDC's engagement with THL since at least September 2025. None has yet produced the result that is required — namely, committed, unconditional and immediately available funding sufficient to enable THL to continue trading and to provide a foundation for a viable business rescue plan. The BRPs however continue to engage with the IDC towards this end.

54 The IDC asserts in paragraph 22 of the IDC Supplementary Affidavit that there is no reason for it to treat Vision differently from any other potential borrower or stakeholder.

55 The BRPs note, however, that the IDC is not an ordinary commercial lender. It is a state-owned development finance institution with a statutory mandate under the Industrial Development Corporation Act, 1940 (the "IDC Act") to -

"To constitute a corporation the object of which shall be to promote the establishment of new industries and industrial undertakings and the development of existing industries and industrial undertakings, and to provide for other incidental matters."



56 In the context of THL, a business of enormous socio-economic significance to KwaZulu-Natal and the sugar industry, the IDC's statutory mandate imposes a heightened obligation to act with urgency and purpose.

57 Expressions of willingness and structured pathways, without binding commitments, do not discharge that obligation.

58 The IDC further asserts in paragraph 25 of the IDC Supplementary Affidavit that it agreed to guarantee a bridge facility of R1.3 billion to enable Vision to complete the acquisition of the Lender Group's legacy claims and security.

59 Whilst noted, this guarantee was directed at enabling Vision to make payment of the balance of the purchase price owed to the Lender Group for their claims. The guarantee is a matter between Vision, IDC and Standard Bank. The guarantee

does not constitute support for THL at all and does not provide any basis for concluding that there is a reasonable prospect of rescue. All it assisted to achieve was the payment by Vision to the Lender Group. This was an element of the facility IDC had agreed to for Vision in April 2025.

60 The IDC records that Vision submitted a new proposal following the meetings of 1 and 2 June 2026. The BRPs are not in a position to comment on its content or viability, as the details have not been shared with them. A proposal submitted on the eve of the filing of the IDC Supplementary Affidavit, following more than eight months of engagement that has produced no concrete outcome, does not alter the BRPs' assessment under section 141(2)(a) of the Act.



61 The IDC's pattern of engagement is characterised by repeated cycles of meetings, discussions and pathway-setting exercises, each of which is held out as evidence of progress but none of which has culminated in the single concrete outcome that matters being binding, committed and available funding for THL. The Court is respectfully urged to assess the IDC's assertions of engagement against the objective facts that as at the date of this affidavit, there is no binding funding commitment, no executed agreement, and no term sheet providing for funding beyond 30 June 2026.

THE DELAY IN FILING

62 The IDC acknowledges in paragraphs 32 and 33 of the IDC Supplementary Affidavit that the affidavit was not filed within the time periods originally

contemplated and it apologises to the Court and the parties. No explanation is provided for this conduct and for the disregard of the Court's order. The late filing has occasioned material prejudice to the Applicants and to the Court's management of these proceedings.

63 Of particular concern is the IDC's characterisation of its affidavit as a "preliminary supplementary affidavit", which suggests that the IDC may intend to file yet further affidavits. This Honourable Court's order of 16 April 2026 provided a specific framework and timeline for the filing of further affidavits. The IDC's attempt to reserve the right to file additional papers, beyond what was contemplated by the Court's order, is an abuse of the process of this Court and is prejudicial to THL and all its stakeholders.



64 There must be finality in the filing of papers. THL's financial position continues to deteriorate and further delays in the determination of this application are prejudicial to all stakeholders, including the employees, cane growers and creditors of THL whose interests the IDC purports to champion. The delay in filing has had the practical effect of enabling the IDC to place before this Court information about meetings held and proposals received since 16 April 2026, whilst simultaneously depriving the Applicants of adequate time to investigate, verify and respond to such information.

THL'S FINANCIAL POSITION AND THE ABSENCE OF A REASONABLE PROSPECT OF RESCUE

- 65 The BRPs reaffirm their considered and inescapable conclusion, as stated in the Founding Affidavit and in each subsequent affidavit filed by the Applicants, that there remains no reasonable prospect of THL being rescued within the meaning of section 141(2)(a) of the Act.
- 66 The IDC Supplementary Affidavit does not alter this conclusion. Notwithstanding the approval of the May and June 2026 budgets on 27 May 2026, the fundamental position remains unchanged: the Vision Plan has failed on implementation; no viable alternative plan has been placed before the BRPs; and no binding restructuring framework has been agreed upon between the IDC, Vision and the BRPs.
- 67 The PCF facility expires on 30 June 2026 — a hard deadline. The IDC has expressed a willingness to “consider” an extension, but has not committed to one. There is no binding agreement, no board resolution, and no term sheet providing for funding beyond that date.
- 68 In the absence of committed funding beyond that date, THL will be unable to meet its obligations and will be forced to cease operations. The consequences of such an eventuality for THL's approximately 4 500 employees, the approximately 28 000 cane growers who depend on THL's milling operations, and THL's broader stakeholder community are catastrophic and are well-documented in the Founding Affidavit and indeed in the affidavits of all parties exchanged herein.



69 The BRPs emphasise that it is the IDC's own conduct which has undermined the very prospect of rescue that it urges upon this Court. By imposing onerous restrictions through the IMA, delaying the approval of budgets, characterising the BRPs' legitimate exercise of their statutory functions as "pure sophistry", and filing papers late and outside the court-ordered timetable, the IDC has contributed to the erosion of stakeholder confidence and the deterioration of THL's position. A party that undermines the rescue process cannot credibly assert that a reasonable prospect of rescue remains.



70 The statutory test under section 141(2)(a) is objective. It is not whether rescue is theoretically conceivable, or whether meetings are being held, or whether proposals are being considered. It is whether there is a "reasonable prospect" of achieving the goals set out in the definition of "business rescue" in section 128(1)(b) of the Act — a prospect that must be reasonable, based on reasonable grounds, and not merely speculative.

71 A reasonable prospect requires, at a minimum, committed and available funding and a viable, implementable plan. Neither exists as at the date of deposing to this affidavit. The IDC's own answering affidavit, filed on 4 March 2026, acknowledged that THL could operate only until the end of June 2026 on its then-existing cash flow forecasts. Nothing placed before this Court in the intervening three months alters that position.

COSTS

- 72 The BRPs submit that the IDC should be directed to pay the costs of the IDC Supplementary Affidavit and of this replying affidavit on the scale as between attorney and client (the “**C Scale**”).
- 73 The discretion to award costs on the attorney and client scale is to be exercised where there are circumstances warranting departure from the ordinary rule. Such circumstances include, but are not limited to, vexatious, reckless or frivolous conduct in the litigation, dishonesty or bad faith, and conduct that amounts to an abuse of the process of the Court.
- 74 The BRPs submit that the IDC's conduct in these proceedings, and in particular in the filing of the IDC Supplementary Affidavit, warrants such a departure for the following reasons.
- 75 First, the IDC Supplementary Affidavit contains serious, unfounded and reckless allegations against the BRPs characterising the BRPs' position as "pure sophistry", alleging that the BRPs have been "far from candid" with this Court, and contending that the BRPs have "exaggerated" THL's dire financial position. These are allegations of dishonesty made without any supporting evidence, damaging to the BRPs' professional reputations and standing before this Court, and made recklessly and without proper foundation.



- 76 Second, the IDC filed the supplementary affidavit late, in breach of the timelines contemplated by this Court's order of 16 April 2026, and characterised it as "preliminary" thereby reserving the right to file further papers. This unexplained disregard for a Court order has caused material prejudice to the Applicants.
- 77 Third, the IDC Supplementary Affidavit does not advance the IDC's opposition in any material respect. It is nothing more than an attempt at self-preservation and it presents no binding commitment to funding beyond 30 June 2026, no viable rescue plan, and no concrete progress. It seeks to create the impression of engagement through a recitation of meetings and expressions of willingness, none of which has produced the result that matters. The filing of an affidavit long on aspiration but devoid of substance, whilst simultaneously levelling unfounded allegations against the BRPs, warrants a punitive costs order.
- 78 Fourth, the IDC's conduct throughout these proceedings has been characterised by delay, obfuscation and a refusal to engage in good faith with the BRPs' statutory determination under section 141(2)(a) of the Act, whilst simultaneously failing to produce or support any viable alternative to the relief sought. This pattern constitutes exceptional circumstances justifying an award of costs on the attorney and client scale.
- 79 Fifth, the IDC's conduct in relation to the PCF facility including the imposition of unreasonable restrictions through the IMA, the delayed approval of budgets, and the introduction of the "accommodative framework" for litigation costs has materially increased the costs of these proceedings. The BRPs have been



compelled to address each of these issues in successive affidavits, at considerable expense, in circumstances where the IDC's own conduct has been the primary cause of the difficulties complained of.

80 The IDC then decides, in the letter dated 5 June 2026 that the BRPs legal advisors fees may not be paid, thereby obstructing the BRPs from the exercising of their duties and again causing further costs to remedy the situation.

81 The BRPs accordingly request an order directing the IDC to pay the costs of the IDC Supplementary Affidavit and of this replying affidavit on the scale as between attorney and client, such costs to include the costs of two counsel where two counsel have been employed.



CONCLUSION

82 For all the reasons set out above, and in the prior affidavits filed by the Applicants, the BRPs persist in seeking the relief set out in their notice of motion, namely that the business rescue in respect of THL be discontinued in terms of section 141(2)(a)(ii) of the Act and that THL be placed under provisional winding-up.

83 In summary -

83.1 the restrictions imposed under PCF 11, as applied by the IMA, following the instructions of the IDC, materially hampered THL's operations and the BRPs'

discharge of their statutory duties, and the IDC's characterisation of this as "pure sophistry" is unfounded;

83.2 the IDC's Supplementary Affidavit does not demonstrate any binding commitment to funding beyond 30 June 2026, nor does it present any viable, implementable rescue plan, but merely tries to serve to deflect;

83.3 THL is factually and commercially insolvent, and no party has produced binding funding capable of restoring THL to solvency or achieving a better return for creditors than liquidation;



83.4 the Vision Plan has failed on implementation but remains binding under section 152(4) of the Act;

83.5 the statutory requirements for discontinuation of business rescue under section 141(2)(a) are satisfied. This Honourable Court is respectfully requested to grant the relief sought in the notice of motion; and

83.6 the IDC's conduct in these proceedings warrants an award of costs on the attorney and client scale, as set out in the costs section of this affidavit.

WHEREFORE the BRPs pray for an order in terms of the C Scale and an order directing the IDC to pay the BRPs costs on the basis set out in this affidavit.

GERHARD CONRAD ALBERTYN N.O.

I certify that this affidavit was signed and sworn to before me at **JOHANNESBURG** on 8 **JUNE 2026** by the deponent who acknowledged that he knows and understands the contents of this affidavit, has no objection to taking this oath, considers this oath to be binding on his conscience and uttered the following words - 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS
Name:
Address:
Capacity:

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

"TRA1"

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

CASE NO - 2026-031780

In the matter between -

GERHARD CONRAD ALBERTYN N.O.

TREVOR JOHN MURGATROYD N.O.

PETRUS FRANCOIS VAN DEN STEEN N.O.

And

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

THE AFFECTED PERSONS

First Applicant

Second Applicant

Third Applicant

First Respondent

Further Respondents



CONFIRMATORY AFFIDAVIT

I, the undersigned,

TREVOR JOHN MURGATROYD

do hereby make oath and state that -

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

- 2 The facts in this affidavit are both true and correct.

- 3 I have read the applicants' replying affidavit to the IDC's supplementary affidavit filed pursuant to the court order of 16 April 2026 ("the affidavit") deposed to by GERHARD CONRAD ALBERTYN and I hereby confirm the truth and correctness of the contents of the affidavit insofar as the contents thereof relate to me and the applicants.



TREVOR JOHN MURGATROYD

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

COMMISSIONER OF OATHS
 Name
 Address
 Capacity

"TRA1"

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KWAZULU-NATAL LOCAL DIVISION, DURBAN

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THE AFFECTED PERSONS

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Second Applicant	
Third Applicant	

First Respondent

Further Respondents

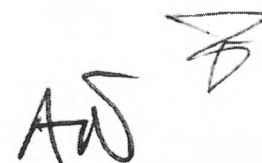
CONFIRMATORY AFFIDAVIT

I, the undersigned,

TREVOR JOHN MURGATROYD



do hereby make oath and state that -

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

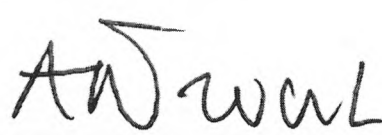


- 2 The facts in this affidavit are both true and correct.

- 3 I have read the applicants' replying affidavit to the IDC's supplementary affidavit filed pursuant to the court order of 16 April 2026 ("**the affidavit**") deposed to by GERHARD CONRAD ALBERTYN and I hereby confirm the truth and correctness of the contents of the affidavit insofar as the contents thereof relate to me and the applicants.



TREVOR JOHN MURGATROYD

I certify that this affidavit was signed and sworn to before me at Bath, UK on 8 JUNE 2026 by **TREVOR JOHN MURGATROYD** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*


COMMISSIONER OF OATHS

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

"TRA2"

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

CASE NO - 2026-031780

In the matter between -

GERHARD CONRAD ALBERTYN N.O.

TREVOR JOHN MURGATROYD N.O.

PETRUS FRANCOIS VAN DEN STEEN N.O.

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

THE AFFECTED PERSONS

First Applicant

Second Applicant

Third Applicant



First Respondent

Further Respondents

CONFIRMATORY AFFIDAVIT

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that -

GC
GC
GC

- 1 I am a senior business rescue practitioner and a director of Metis Strategic Advisors (Proprietary) Limited which conducts business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.
- 2 The facts in this affidavit are both true and correct.
- 3 I have read the applicants' replying affidavit to the IDC's supplementary affidavit filed pursuant to the court order of 16 April 2026 ("the affidavit") deposited to by GERHARD CONRAD ALBERTYN and I hereby confirm the truth and correctness of the contents of the affidavit insofar as the contents thereof relate to me and the applicants.



PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at SANDTON on 8th JUNE 2026 by **PETRUS FRANCOIS VAN DEN STEEN** who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words - *'I swear that the contents of this affidavit are both true and correct, so help me God.'*

COMMISSIONER OF OATHS

Name
Address
Capacity

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

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Our Reference: 1000100619
Your Reference: IDC 05_06_2026
Direct Line: 076 820 4000
E-mail Address: Reshlinn@idc.co.za
Date: 5 June 2026

Attention: Mr Trevor Murgatroyd
By Email: trevor@metis.co.za

To Metis Strategic Advisors,

The IDC sub-committee has considered four funding requests relating to the utilisation of the Post-Commencement Facility (PCF), specifically covering BRP fees, legal fees, and associated advisory costs.



The following outcomes were reached:

1. **Items approved in principle**

- **BRP Fees (approximately R2 689 244,46 for April–May):** These costs are supported as legitimate business rescue expenses. The sub-committee acknowledges that the Business Rescue Practitioners (BRPs) are actively delivering services in accordance with their court-appointed mandate. However, the committee has requested that the BRPs need to split fees going forward and clearly indicate fees for standard activities vs. liquidation related activities.
- **BRP Consultants and Transaction Support (approximately R252 494):** These costs are approved as necessary to support ongoing M&A and restructuring processes.
- **Business Rescue-Related Legal Fees (approximately R1 566 090,23):** These costs are supported as part of normal business rescue operations.

2. **Items not approved at this stage**

- **Liquidation-Related Legal Fees (approximately R3 919 718,15):** These costs are not approved at this time. The sub-committee noted that:
 - There is currently no mandate under the existing BIC approval framework to approve liquidation-related costs.
 - Funding such expenses would create a principle conflict, as it may effectively support litigation adverse to IDC's interests.

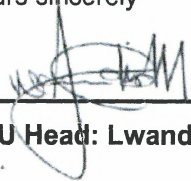
3. Way Forward

The IDC sub-committee has resolved that liquidation-related legal fees should be withheld pending further clarity, including:

- Legal confirmation on whether the obligation for such costs rests with THL or the BRPs; and
- Potential reconsideration by the BIC should circumstances materially change.

Please let me know if any further clarification is required.

Yours sincerely



SBU Head: Lwandiso Makupula



Senior Dealmaker: Reshlin Naidoo



To give us feedback on our service levels, please email your comments to service@idc.co.za

