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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.



- 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.



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- 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;



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- 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)