




ADOPTED BUSINESS RESCUE PLAN

Prepared and published to Affected Persons of:


LIVIERO CIVILS PROPRIETARY LIMITED

REGISTRATION NUMBER (1984/009243/07)

**In terms of Section 152 of the Companies Act
No. 71 of 2008 on 3 September 2018**

Unit B5, Clearview Office Park
77 Wilhelmina Avenue,
Constantia Kloof, Roodepoort, 1724
PO Box 21341
Helderkruid, 1733

Tel: +27 011 991 5500
Fax: +27 011 991 5506
www.bdo.co.za



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THESE DOCUMENTS ARE IMPORTANT AND REQUIRE YOUR
IMMEDIATE ATTENTION

CIRCULAR

TO ALL CREDITORS, SHAREHOLDERS AND OTHER AFFECTED
PERSONS RELATING TO THE PUBLICATION OF A PROPOSED
BUSINESS RESCUE PLAN IN THE MATTER OF:

LIVIERO CIVILS PROPRIETARY LIMITED

REGISTRATION NUMBER: 1984/009243/07 ("THE COMPANY")

- This document is a Circular to Creditors, Shareholders and other Affected Persons relating to a proposed Business Rescue Plan prepared in terms of Section 150 of the Companies Act, Act No. 71 of 2008, as amended ("the Companies Act") and incorporates:
 - Important dates, times and venue schedule, stipulating the dates, times and venue of The Meeting;
 - All relevant and statutory information, required in terms of the provisions of Section 150 of The Act; and
 - Proxy forms for Creditors, Shareholders and Affected Persons.
- If you are in any doubt as to The Action you should take, please consult your legal advisor, accountant, banker, or any other professional adviser immediately.
- If you are unable to attend The Meeting of Creditors to be held on the date, at the time and at the venue stipulated in the Important Dates, Time and Venue schedule of this Circular in respect of The Meetings pertaining to The Company, please complete and return the proxy being the page immediately after this Circular in accordance with the instructions contained therein, to Independent Advisory, Unit B5, Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, or fax same to (011) 991 5506 or e-mail same to businessrescuejhb@bdo.co.za to be received not later than the dates and times stipulated in the Important Dates, Times and Venue schedule of this Circular.



NOTICE OF MEETING

MEETING CONVENED IN TERMS OF SECTION 151 (AND READ WITH SECTION 152) OF THE COMPANIES ACT. (“THE MEETING”)

Notice is hereby given in terms of Section 150 of the Companies Act of The Meeting which is being convened by the Business Rescue Practitioners, **LDR VAN DER MERWE & JF KLOPPER** (“the BRPs”), for **11 September 2018 at 10am** to be held at **The Core, 1st Floor, Cnr Kikuyu & Leeuwkop Sts, Sunninghill** for purposes of considering and, if deemed fit, approving with or without modification, the proposed Business Rescue Plan published by the BRPs.

IMPORTANT DATES, TIMES, AND VENUE

The Meeting:

10am on

11 September 2018

Last day to lodge form of proxy for The Meeting:

10am on

10 September 2018

Notes:

If a form of proxy is not received by the time and date shown above, it may be handed to the chairman of The Meeting by no later than 1 hour before the commencement of The Meeting,

These dates, times and venues are subject to change. Any such change will be published to all Affected Persons.



FORM OF PROXY
LIVIERO CIVILS (PTY) LTD

REGISTRATION NUMBER: 1984/009243/07

For use by the Creditors at a meeting convened in terms of
Section 151 of the Companies Act 71 of 2008 at **The Core, 1st
Floor, Cnr Kikuyu & Leeuwkop Sts, Sunninghill on 11
September 2018 at 10am. (“the Meeting”)**

I/We _____ being a secured/preferent/concurrent creditor
of The Company for the sum of R_____ (_____ Rand) do hereby appoint (see note 1)

1. _____ ; or failing him/her
2. _____ ; or failing him/her
3. the Chairman of the meeting;

as my/our proxy to act for me/us and on my/our behalf at the meeting which will be held for the
purpose of voting for the adjournment of the meeting if necessary and for considering and, if deemed
fit, agreeing and voting, with or without modification:

(indicate with an X)

For the proposed Business Plan:	_____	Against the proposed Business Plan:	_____
<i>(with or without modification)</i>			
<i>For the remuneration Proposal</i>	_____	<i>Against the remuneration Proposal</i>	_____

SIGNED at _____ on this _____ day of _____ 2018.

SIGNATURE

Assisted by me (where applicable)

NOTES

1. A creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without deleting “the Chairman of the meeting”. The person whose name stands first on the form of proxy and who is present at the meeting will be entitled to act as proxy to the exclusion of those whose names follow.
2. Form of proxy must be lodged at to Independent Advisory, Unit B5 Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort or fax same to 011 991 5506 or email same to businessrescuejhb@bdo.co.za, to be received by not later than 24 hours prior to the meetings. In addition, forms of proxy may be handed to the Chairman of the meeting by not later than 1 hour before the meeting is due to commence.
3. The completion and lodging of this form of proxy will not preclude the relevant creditor from attending the meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such creditor wish to do so.



AGENDA FOR THE MEETING

The agenda for The Meeting is as follows: -

1. To introduce the Business Rescue Plan for consideration by the Creditors;
2. To inform The Meeting whether the BRPs continue to believe that there is a reasonable prospect of The Company being rescued;
3. Provide an opportunity for the employees' representative to address The Meeting;
4. Invite discussion, and entertain and conduct a vote, on any motion to: -
 - 4.1. Amend the proposed BR Plan, in any manner moved and seconded by holders of Creditors' voting interests, and to the satisfaction of the BRPs;
 - 4.2. Direct the BRPs to adjourn The Meeting in order to revise the BR Plan for further consideration;
5. Call for a vote for preliminary approval, by Creditors, of the proposed BR Plan, as amended if applicable;

Conclusion of The Meeting

Immediately upon the closure of The Meeting:

- 1 Conduct a separate vote as contemplated in section 143 (3) regarding the remuneration proposal as set out in the BR Plan.

1. INTRODUCTION

- 1.1. This document contains the terms and conditions of a proposed Business Rescue Plan for The Company which, if agreed to by the requisite statutory majority of Creditors, will become final and binding on The Company, its Creditors and the Shareholders upon the fulfilment of the conditions precedent referred in this BR Plan.
- 1.2. For ease of reference, this BR Plan is divided into the following sections:
 - Introduction, Definitions Interpretation and Qualifications;
 - **Part A** - Background, prepared in terms of section 150(2)(a) of The Act;
 - **Part B** - Proposals prepared in terms of section 150(2)(b) of The Act;
 - **Part C** - Assumptions and conditions prepared in terms of section 150(2)(c) of The Act;
 - **Part D** - Administrative provisions;
 - **Annexures “A”- “K”**
 - Business Rescue Practitioner Certificate.
- 1.3. This introduction, the various parts of the BR Plan and its annexures all constitute one document are to be read together. It contains the substantive terms and conditions of the proposed Business Rescue Plan prepared by the BRPs.
- 1.4. Business rescue is aimed at facilitating the rehabilitation of companies that are financially distressed by providing for:
 - 1.4.1. the temporary supervision of a company, and the management of its affairs, business and property;
 - 1.4.2. a temporary *moratorium* on the rights of claimants against a company or in respect of property in its possession; and
 - 1.4.3. the development and implementation, if approved, of a plan that balances the interests of all relevant stakeholders, to rescue a company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner:
 - 1.4.3.1. a BR Plan that maximizes the likelihood of The Company continuing in existence on a solvent basis, *alternatively*, and in the event that it is not possible for a company to so continue in existence on a solvent basis that would result in a better return for its creditors or shareholders than would result from the immediate liquidation of such company.
- 1.5. There is a reasonable prospect to develop and implement a plan for The Company to upon its acceptance continue in existence on a solvent basis, but this will a reorganization of the financial affairs of The Company and a consequential arrangement between The Company and its Creditors regarding its liabilities.

2. DEFINITIONS AND ABBREVIATIONS

- 2.1. **"The Act"** means the Companies Act No. 71 of 2008 as amended;
- 2.2. **"Adoption Date"** means the date upon which the BR Plan is adopted in accordance with section 152(2) of The Act;
- 2.3. **"Affected Persons"** means Affected Persons as defined in Section 128(1) of The Act and in relation to The Company means a shareholder, creditor, registered trade union and employee of The Company;
- 2.4. **'Assets'** means all the assets of The Company of whatsoever nature, including but not limited to, Movable- and Intangible assets;
- 2.5. **"Business day"** means any calendar day excluding Saturdays, Sundays and proclaimed public holidays within South Africa;
- 2.6. **"Business Rescue Practitioner/s" or "BRPs"** means, Van der Merwe and Klopper, duly nominated by The Company as Business Rescue Practitioners and certified in terms of Section 138 of The Act by the Commission, both being Senior Business Rescue Practitioners as defined in Regulation 126 of The Act, as evidenced by the attached Annexure¹ License Certificate issued by the CIPC;
- 2.7. **"Business Rescue Plan" or "BR Plan"** means this document which is a Business Rescue Plan prepared in terms of Section 150 of The Act published by the BRPs on the Publication Date and effective from the Commencement Date;
- 2.8. **"The Company"**, means Liviero Civils Proprietary Limited, a company duly incorporated in terms of the Laws of South Africa, under Registration number 1984/009243/07 and currently subject to Proceedings;
- 2.9. **"Claims"** means secured, preferent or concurrent Claims as envisaged in the Insolvency Act, against The Company, the cause of action in respect of which arose, prior to or on the Commencement Date, of whatsoever nature and from whatsoever cause, including claims, arising from contract or delict, actual and contingent, prospective, conditional and unconditional, liquidated and unliquidated, assessed and unassessed and whether or not due for payment of performance, specific or otherwise, and including all claims arising out of any agreements entered into by The Company on or prior to the Commencement Date, all such claims to be determined, calculated and admitted as secured, preferent or concurrent in accordance with the same ranking, as envisaged in the Insolvency Act, that attached to them upon the issue of a winding up order in respect of The Company, whether or not such claims are proved and, in no way derogating from the generality of the foregoing, shall further include all claims for Tax (in the broadest possible sense in which such term is utilised) of whatsoever nature and howsoever arising and levies and penalties and interest of whatsoever nature, (and whether assessed or not) provided that notwithstanding anything to the contrary elsewhere contained, all claims shall, for the purpose of this Business Rescue Plan, be treated as if The Company had been liquidated on the Commencement Date, irrespective of whether returns for Value added Tax, Pay as you Earn or Income Tax have been submitted on the Commencement Date or not;
- 2.10. **"Creditors"** means all legal entities, including natural persons, having secured, preferent and/or concurrent or Contingent Claims against The Company as at the Commencement Date, as envisaged in the Insolvency Act;

¹ Annexure A

- 2.11. **"Concurrent Creditors"** means those Creditors having concurrent Claims against The Company as envisaged in the Insolvency Act;
- 2.12. **"Commencement Date"** means 16 July 2018, being the effective date upon which Proceedings commenced pursuant to the Order of the High Court, dated 24 July 2018²;
- 2.13. **"Companies Commission"** or **"CIPC"** means The Companies and Intellectual Property Commission;
- 2.14. **"Contingent Claims"** means those Claims, which may arise against The Company in respect of a liability which is dependent upon on a contingent event, which event has not arisen prior to the Publication Date;
- 2.15. **"Day/s"** means calendar day/s. When any number of days is referred to in the BR Plan, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.16. **"Debtors Collection Plan Claims"** or **"DCP Claims"** means the claims of the Company, listed in Annexure "C", to be distributed to the Creditors of the Company by the Receiver, as provided for in the Debtors Collection Plan;
- 2.17. **"Debtors Collection Plan"** or **"DCP"** means the collection and distribution of the DCP Claims by the Receiver as provided for in this BR Plan;
- 2.18. **"Disputed Claims"** means those Claims which were as at the Commencement Date and remain, as at the Publication Date, disputed by The Company; or which the BRPs rejected as not being due and payable by The Company during Proceedings;
- 2.19. **"Employees"** means the employees employed by The Company as at the Commencement Date;
- 2.20. **"Excluded Creditors"** means FNB, Employees, The Shareholder, Guarantors and PCF Creditors and if applicable their respective legal successors , assignees or nominees in title;;
- 2.21. **"Effective Date"** means the first day after this Business Rescue Plan has been adopted at a meeting as envisaged in terms of Section 152 of The Act and all conditions precedent have been met;
- 2.22. **"First national Bank"** or **"FNB"** means First Rand Bank Ltd of South Africa Limited, a public company with limited liability incorporated in accordance with the laws of the Republic of South Africa, whose shares are listed on the securities exchange operated by the JSE Limited and is a licenced financial services provider with registration number 1929/001225/06;
- 2.23. **"Guarantors"** means collectively CGIC, Guardrisk and Mutual and Federal, representing the guarantors in respect of the existing projects of The Company;
- 2.24. **"Independent Creditors"** means all Creditors other than creditors related to The Company and its subsidiaries and/or directors having Claims against The Company as at the Commencement Date as envisaged in The Act;
- 2.25. **"Insolvency Act"** means the Insolvency Act No 24 of 1936, as amended;
- 2.26. **"Klopper"** means Johannes Frederick Klopper, physical address: Unit B5, Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, telephone (011) 991 5500 and, e-mail hklopper@bdo.co.za;
- 2.27. **"LRA"** means the Labour Relations Act No. 66 of 1995, as amended.

² Annexure B

- 2.28. **“Movable Assets”** means all movable assets of The Company of whatsoever nature including all communication equipment, computers, computer software, furniture, office equipment, , equipment, tools and the like as per the attached Annexure³;
- 2.29. **“Post Commencement Finance”** or **“PCF”** means post-commencement funding as contemplated in section 135 of The Act;
- 2.30. **“PCF Creditors”** means those payments as contemplated in section 135 of The Act and which are due to Creditors in respect of liabilities incurred after the Commencement Date and still due and payable to such Creditors as at the Publication Date and specifically includes any amounts that are due to Employees but remain unpaid after the Commencement Date;
- 2.31. **“Preferent Creditors”** means Creditors having preferent Claims against The Company as envisaged in terms of the Insolvency Act;
- 2.32. **“Proceedings”** means Business Rescue Proceedings as provided for in Chapter 6 of The Act;
- 2.33. **“Publication Date”** means the date of publication of the proposed Business Rescue Plan, being 3 September 2018;
- 2.34. **“Receiver”** or **“Receiver for Creditors”** means Van der Merwe
- 2.35. **“SARS”** means The South African Revenue Services;
- 2.36. **“Secured Creditors”** means Creditors having secured Claims as envisaged in the Insolvency Act;
- 2.37. **“Shareholders”** means Liviero Group (Pty) Ltd a company duly incorporated in terms of the Laws of South Africa, and currently subject to its own Proceedings;
- 2.38. **“Substantial Implementation”** means the date upon which the BRPs file with the CIPC a notice as required in terms of The Act⁴. The BRPs shall be guided by the provisions of and events contemplated in this Business Rescue Plan in his determination of whether substantial implementation has occurred, such determination being in his sole discretion;
- 2.39. **“Tax”** includes, *inter alia*, tax as defined under the Tax Administration Act, 28 of 2011 and without limitation all forms of taxation and other levies and charges payable to Governmental Authorities, including but not limited to income tax, value added tax, capital gains tax, donations tax, customs duty, stamp duty, securities transfer tax and any royalty, fee, contribution or other duty or levy and any penalties or interest on any of the foregoing and any taxation arising from any assessments and/or the reopening of any assessments of The Company for any period prior to the Commencement Date;
- 2.40. **“The Meeting”** means The Meetings in respect of The Company convened in terms of Section 151(1) of The Act;
- 2.41. **“Trade Creditors”** means the Creditors of The Company excluding the Excluded Creditors;
- 2.42. **“Van der Merwe ”** means Liebenberg Dawid Ryk van der Merwe, B Comm LLB, physical address: Unit B5, Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, telephone (011) 991 5500 and, e-mail dvandermerwe@bdo.co.za;
- 2.43. **“VAT”** shall mean value added tax as levied in terms of the VAT Act; and
- 2.44. **“VAT Act”** shall mean the Value-Added Tax Act, 89 of 199, as amended.

³ Annexure D

⁴ Section 132 (2) (c)(ii)

3. INTERPRETATION

- 3.1. Any reference in this BR Plan to:
 - 3.1.1. the singular shall include the plural and *vice versa*;
 - 3.1.2. any one gender shall include the others;
 - 3.1.3. a natural person shall include an artificial person and *vice versa*;
 - 3.1.4. a section or sections of the Insolvency Act is a reference to such sections as read with chapter XIV of the Companies Act of 1973 Act (the Old Companies Act) and item 9 of schedule 5 of The Act;
 - 3.1.5. a section or sections hereinafter is a reference to sections of The Act, unless indicated otherwise.
- 3.2. If any definition contains a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it was a substantive provision in the body of the BR Plan.
- 3.3. Any reference to a statute, regulation or any legislation shall be a reference to such statute, regulation or other legislation at the Commencement Date and as amended or substituted from time to time.
- 3.4. Where any term is defined within a particular clause then that term shall bear the meaning ascribed to it in that clause wherever it is used in the BR Plan.

4. QUALIFICATIONS TO THIS BUSINESS RESCUE PLAN

- 4.1. This Business Rescue Plan is published in compliance with the provisions of The Act within the time constraints provided for in terms of The Act. This document is provided solely for the information of Affected Persons to the Proceedings.
- 4.2. Affected Persons are advised to seek independent legal advice in order to consider the proposal as presented.

- 4.3. This Business Rescue Plan is based upon information provided to the BRPs, since the commencement of Proceedings, by The Company, its management, Affected Persons and third parties.
- 4.4. In compiling this Business Rescue Plan the BRPs accepted and relied on representations and the authenticity of documents provided to them. Should it become necessary to make representations and documents referred to herein admissible for Court purposes, the authors of the representations and documents would have to confirm these in the relevant Court processes should it become necessary.
- 4.5. Since their appointment the BRPs have undertaken investigations into the affairs of The Company pursuant to their statutory obligations. Their investigations have been limited due to the time constraints placed on them by The Act and the scope of the BRPs' statutory duties. There may therefore be certain issues that may require additional investigation for a final conclusion or determination to be formed. Whilst the BRPs have set out their conclusions in this BR Plan arising from the investigations conducted to date, please note that a liquidator (if appointed) may undertake further detailed investigations into the affairs of The Company.
- 4.6. The BRPs have during Proceedings and in their investigations taken and relied extensively on legal advice.
- 4.7. The statements and opinions expressed in this BR Plan are given in good faith and in the belief that such statements and opinions are not false or misleading. Should any new information become available between the Publication Date and the date of any subsequent meetings or reports the BRPs reserve their right to alter any conclusions reached on the basis of that new information.
- 4.8. In preparing this BR Plan and in formulating the proposals contained therein the BRPs have made the necessary forecasts with respect to asset realisations and the total value of Claims of Creditors. These forecasts and estimates may change as Assets are realised and Creditors prove their Claims against The Company. Whilst this BR Plan estimates the likely outcomes for Affected Persons, the forecasts are by their very nature uncertain and the ultimate outcome may therefor differ from the forecast contained in the Business Rescue Plan.
- 4.9. The BRPs reserves the right, should it come to their attention that material information has been withheld or additional information is brought to their attention, to amend this BR Plan.



- 4.10. For your convenience, this document may have been made available to you in electronic, as well as hard copy format. Multiple copies and versions of this document may, therefore, exist in different media. Only the final hard copy should be regarded as definitive.

5. CONFIDENTIALITY

- 5.1. This Business Rescue Plan is confidential to the Affected Persons of The Company and prepared solely for the purpose(s) set out in The Act. No person may refer to or use the names of the BRPs or the Business Rescue Plan for any other purpose, disclose or refer to them in any prospectus or other document, or make them available or communicate them to any other party.
- 5.2. No other party is entitled to rely on the Business Rescue Plan for any purpose whatsoever and the BRPs accept no duty of care or liability to any other party who is shown or gains access to this Business Rescue Plan;
- 5.3. All of the information contained in this Business Rescue Plan is of a confidential and/or proprietary nature to The Company in whatever form, and without limiting the generality thereof and shall include any of the following information, documentation, data and/or material in any form (including oral, written, electronic or visual form) disclosed or communicated by The Company and/or any of its affiliates in connection with or arising out of the Business Rescue Plan or Meetings of Creditors:
- 5.3.1. technical, scientific, commercial, financial, operational or market information, or trade secrets in relation to the Business of The Company;
- 5.3.2. agreements to which The Company and/or its affiliates are a party;
- 5.3.3. operating know-how, processes, statistics, business methods, business plans, asset lists and models (whether of a financial nature or otherwise) and techniques used by The Company and/or its affiliates in the conduct of The Company;
- 5.3.4. copyright, patents, trademarks, service marks, design rights (whether registered or unregistered), database rights, proprietary information rights and all other similar proprietary rights and applications for such rights as may exist anywhere in the world in relation to The Company;



- 5.3.5. knowledge of details and particulars in regard to The Company and/or its affiliates' suppliers, contractors, business associates and customers;
 - 5.3.6. The Company and/or its Affiliates' method/s and statistics of conducting its business;
 - 5.3.7. the contractual arrangements and commitments between The Company and/or its affiliates and their suppliers and customers; and
 - 5.3.8. any other matter or information which relates to the business in respect of which information is not readily available to the general public;
- 5.4. All confidential and/or proprietary information disclosed by The Company and/or its affiliates or which otherwise comes to the knowledge of Affected Persons in terms of the provision of this Business Rescue Plan or any meeting of Creditors, is acknowledged by Affected Persons:
- 5.4.1. to be proprietary to The Company and/or its Affiliates; and
 - 5.4.2. not to confer any rights of whatsoever nature in the disclosure of such confidential and/or proprietary information on Affected Persons.
- 5.5. Affected Persons irrevocably and unconditionally agree and undertake:
- 5.5.1. to treat and safeguard the confidential and/or proprietary information as strictly private, secret and confidential;
 - 5.5.2. not to use or permit the use of the confidential and/or proprietary information for any purpose other than purposes of the Business Rescue Plan and, in particular, not to use or permit the use of the confidential and/or proprietary information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over The Company and/or its affiliates or otherwise use it to the detriment of The Company and/or its affiliates;
 - 5.5.3. except as permitted by this Business Rescue Plan, not to disclose or divulge, directly or indirectly, the confidential and/or proprietary information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the BRPs, which consent may be granted or withheld in the sole and absolute discretion of the BRPs;



- 5.5.4. not to copy or reproduce the confidential and/or proprietary information by any means without the prior written consent of the BRPs, it being recorded that any copies of the Business Rescue Plan shall be and remain the property of The Company; and

- 5.5.5. To keep all confidential and/or proprietary Information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent confidential and/or proprietary information from falling into the hands of unauthorised third parties.

PART A

6. BACKGROUND, HISTORICAL EVENTS AND GROUP STRUCTURE⁵

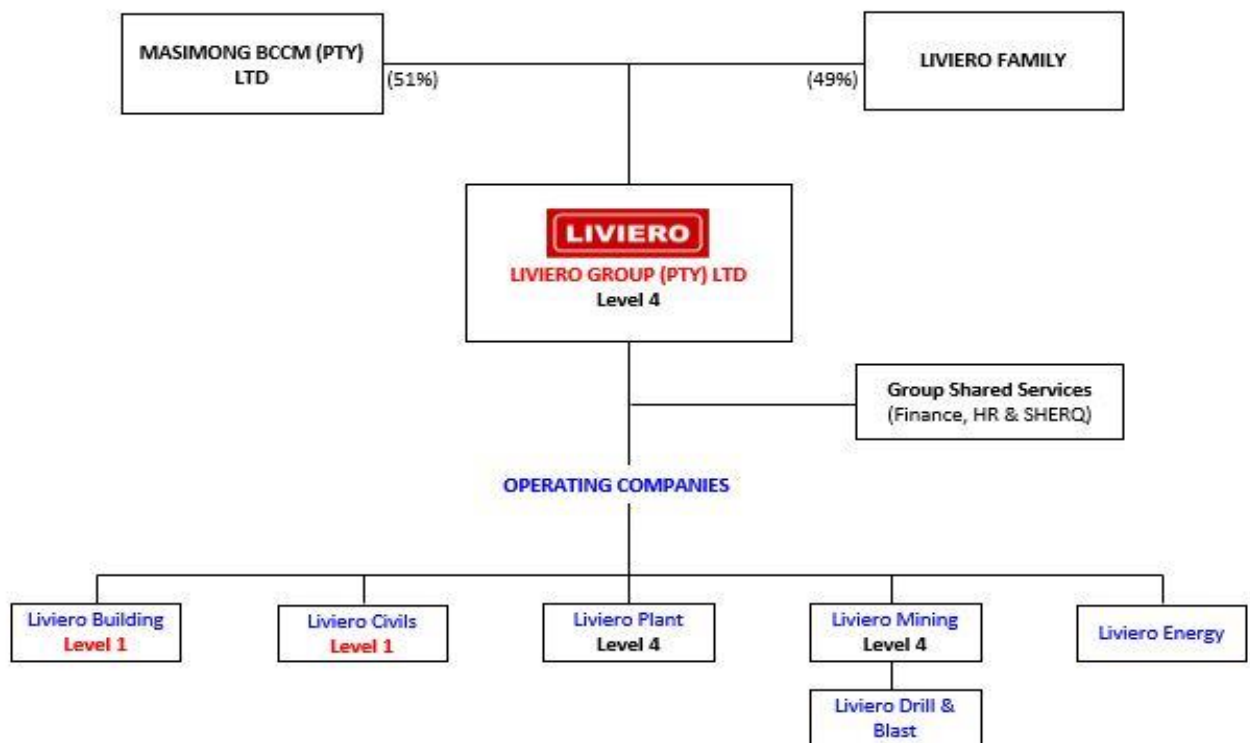
The Act requires the Business Rescue Plan to contain certain background information which is, in compliance with The Act, recorded herein below

6.1. Background and Historical Events

6.2. Group structure

6.2.1. The Company’s shares are held 100% by Liviero Group, as indicated in the above diagram.

6.2.2. Fellow subsidiaries of The Company:



⁵ Section 150(2)(a)

6.3. Company information (as at the Commencement Date)

Directors	M Groot; and A Discala
Auditors	Price Waterhouse Coopers
Financial Year End	30 August
Registered Address	Corner Dytchley Road and Marcius Street, Barbeque Downs, Kyalami, Gauteng
Principle Address	Corner Dytchley Road and Marcius Street, Barbeque Downs, Kyalami, Gauteng

6.3.1. The last audited financial statements are for the period ending 2017.

6.4. Reasons for and factors influencing The Company's financial distress

The main reasons for the financial distress of the Company are the following:

- 6.4.1. Work certified for payment by the Eastern Cape Department of Public Works for the Upgrading of the Mbinja Pass, in the amount of R26,135,689.00 was delayed by 90 days.
- 6.4.2. Work certified for payment by the Eastern Cape Department of Public Works for the Upgrading of the Centane to Kei Mouth road, in the amount of R25, 346,414.00 was delayed by 90 days.
- 6.4.3. Work certified for payment by Amatola Water for the installation of a sewer line upgrade at Ngangelizwe (Umthatha), in the amount of R2,947,111.00 was not paid. As of the Commencement Date, this has still not been paid;
- 6.4.4. Work certified for payment by Roads Agency Limpopo (RAL) for the upgrading of various roads in the Waterberg district, in the amount of R24,549,245.00 was not paid. As of the Commencement Date, this has still not been paid;
- 6.4.5. A Joint Venture Partner of the Company reneged on its contractual obligations in executing a contract for the City of Ekurhuleni, and the resulting additional loss on the project was fully funded from the cash reserves of the Company to the value of R27m;
- 6.4.6. There are various sureties and cross-indemnities between the Company and other subsidiary companies of Liviero, most notable of which is the cession of the debtor book to

the bankers of Liviero, namely FNB. As a result of the financial distress of other Liviero subsidiary companies, the overdraft facility made available by FNB has been reduced; and

6.4.7. Guarantee facilities provided by various guarantors on behalf of other subsidiary companies within Liviero have been secured against a combination of sureties, indemnities and guarantees provided by the Company.

6.5. **Commencement of Business Rescue Proceeding and important dates:**

Effective Date of the Commencement of Proceedings	16 July 2018
Court Order placing The Company in BR	24 July 2018
File notice to CIPC re BRPs appointment on	24 July 2018
Notice to affected parties regarding Business Rescue on	30 July 2018
Publish notice to Affected Persons of BRPs appointment on	30 July 2018
First meeting of Creditors held on	6 August 2018
First meeting of Employees held on	6 August 2018

6.5.1. Following a Court application by Liviero Group, issued on 16 July 2018, an order was granted on 24 July 2018 placing The Company in Business Rescue⁶. The required notices were filed with CIPC on 24 July 2018.

6.5.2. The BRPs convened and presided over the first meeting of Employees which was held on 6 August 2018, where the Employees of The Company elected to form an employees' committee.

6.5.3. The BRPs further convened and presided over the first meeting of Creditors, which was held on 6 August. At the first meeting of Creditors, the Creditors of The Company elected not to form a Creditors' committee.

6.5.4. The minutes and a full transcript of the first meeting of Creditors is available from the BRPs, having already been circulated to all known Affected Persons.

⁶ Annexure B

6.6. Status of The Company when business rescue commenced:

- 6.6.1. Prior to the Commencement Date, the Shareholder and The Company's other fellow subsidiaries, Liviero Mining (Pty) Ltd, Liviero Plant (Pty) Ltd and Liviero Building (Pty) Ltd, all voluntarily commenced their own Proceedings.
- 6.6.2. As was articulated in the application to Court to place The Company in business rescue, The Company was and remained financially distressed as defined in The Act.⁷
- 6.6.3. The Company remains fully operational with work continuing during Proceedings on a number of sites.

6.7. Initial Actions during Business Rescue:

- 6.7.1. Initially the BRPs focused their attention on stabilising The Company and in consultation with Affected Persons considering and identifying all possibilities to restructure the affairs of The Company.
- 6.7.2. The BRPs have also regularly engaged with the Shareholders, on the requirements of resuscitating The Company or its business. The BRPs have critically assessed all the options available in order to restructure either The Company or its business.

6.8. Further aspects dealt with during proceedings:

- 6.8.1. During Proceedings the BRPs have, in addition to what is stated above, *inter alia* attended to the following:
 - Taken managerial control of the operations of The Company, assisted by key individuals employed on limited duration contracts;
 - Met with and consulted extensively with Shareholders;
 - Met with and consulted with Creditors;
 - Met with and consulted with Employees and organised labour;

⁷ Section 128 (1) (f)

7. ASSETS OF THE COMPANY AND SECURITY HELD⁸

- 7.1. Other than some small tools, office equipment and sundries the Company's only asset is its various claims against third parties- debtors, in the form of either retentions, disputed claims, claims for damages and invoiced, but as yet unpaid revenue.
- 7.2. A list of the Assets of The Company at the Commencement Date is attached hereto⁹, as is required and in order to assess the financial position of The Company. Considering the small value attributed to the movable assets and in the interest of time the BRPs did not commission an independent valuation of the movable assets and have for purposes of this BR Plan assume the value to be as reflected in the books of the Company.

7.3. Movable Property:

The movable assets of The Company as they are reflected in the accounts of The Company comprises of small tools, office equipment and sundries valued at R2,396 492.00. These assets are unencumbered.

7.4. Claims in favour of the Company- debtors

As at the Publication Date the company debtors can be categorised as:

Current debtors (1 to 90 days)	R13,640,000.00
Historical debtors and disputed claims	R 69,000,000.00
Retentions due	R 18,400,000.00
Total	R 101,040,000.00

- 7.4.1. The amounts reflected above represent the realistic value that The Company and the BRPs believe can be realised from the debtors of The Company. There is a significant likelihood that recovery from these debtors over time will exceed these values.
- 7.4.2. These claims- debtors- are held as security by FNB in terms of a cession of bookdebts.

⁸ Section 150(2)(a)(i)

⁹ Annexures D

8. CREDITORS OF THE COMPANY¹⁰

8.1. A detailed list of the Creditors of The Company as verified by The Company and incorporating the Claims received and accepted by the BRPs from Creditors, as at the Commencement Date, is annexed hereto¹¹.

8.2. The amounts reflect the amounts owing to Creditors as at the Commencement Date. These amounts represent the voting interest of each Creditor for purposes of voting at The Meeting to determine the future of The Company. These amounts will also, subject to the provisions contained in this Business Rescue Plan in respect of the submission of late Claims, be used to distribute monies to Creditors in terms hereof, and will bear no interest as from the Commencement Date.

8.3. Secured Creditors

8.3.1. FNB

8.3.1.1. The Company was, as at the Publication Date, indebted to FNB in the amount of R171,000,000.00 consisting of both capital and interest.

8.3.1.2. The claim of FNB was as at the Commencement Date secured by way of a cession of debtors.

8.3.2. Lion of Africa Insurance Company Ltd, holds as security for the amounts due to them a revisionary cession of the debtors, after FNB

8.4. Preferent Creditors¹²

8.4.1. Employees:

8.4.1.1. As at Commencement Date, The Company employed 604 employees. Had The Company been liquidated as at the Commencement Date, the Employees would collectively have had claims in excess of R14,380,000.00 and the preferent portion of these claims of Employees would have been limited to a maximum of R28,000.00 per employee or an

¹⁰ Section 150(2)a)(ii)

¹¹ Annexure E

¹² Preferences in accordance with the laws of Insolvency, if The Company were to be liquidated as at the Commencement Date



estimated R25,500,000.00 in total, the balance ranking as concurrent claims against The Company.

8.4.1.2. There is no recognition agreements with organized labour, however communication and workplace matters are managed in conjunction with the BCCEI.

8.4.2. SARS

As at the Commencement Date, The Company was indebted to SARS in the amount of R7,090,000.00. The Company is fully compliant with all Tax obligations post the commencement of Proceedings.

8.5. Concurrent Creditors

8.5.1. All other verified Claims of Creditors against The Company are regarded as Concurrent Claims as is provided for in terms of the Laws of Insolvency.

8.5.2. As at the Publication Date the BRPs received and verified Claims from Concurrent Creditors, at a value as they would have been as at the Commencement Date amounting to R161,800,000.00.

8.6. PCF and PCF Creditors

8.6.1. The Company had not during Proceedings entered into any formal arrangements in respect of PCF. All services and supplies by PCF Creditors to The Company after the Commencement date are regarded by the BRPs as PCF and will in the event of the liquidation of The Company enjoy the preferences afforded to such creditors in terms of The Act¹³.

8.6.2. The amounts owing to such PCF creditors continue to be settled in the normal course of business, whilst the business of The Company continues.

8.7. Post Commencement Claims of Employees

8.7.1. During Proceedings the Company, under the auspices of the BRPs continued the consultative process, with Employees that commenced prior to the Commencement Date, as required in terms of the provisions of the LRA¹⁴. These consultations may ultimately result in the retrenchments of some of the Employees of The Company due to operational considerations.

¹³ Section 135

¹⁴ Section 189A

8.7.2. The extent of the potential retrenchment obligation of the Company to the Employees affected by the current consultative process amounts to approximately R4,150,000.00.

8.7.3. These affected Employees will enjoy the preference afforded to such claims in terms of The Act¹⁵, such Claims being considered PCF and are to be paid to these employees as provided for in this BR Plan.

8.8. Contingent Liabilities:

8.8.1. The attached schedule¹⁶ represents the contingent claim of the Guarantors as at the Publication Date.

8.9. Non Independent Creditors ¹⁷

8.9.1. Except for the amounts due to the Shareholder the Claims of all Creditors of The Company are regarded as independent in terms of The Act.¹⁸

8.10. Probable Dividends to Creditors: Liquidation Scenario

8.10.1. In the event of the liquidation of a company, it is the appointed liquidators' duty to realise the assets of the liquidated estate for the benefit of all creditors as soon as possible.

8.10.2. In compliance with The Act¹⁹, and in order to calculate the expected liquidation dividend that Creditors, in various classes, may expect to receive in the event of the liquidation of The Company, the BRPs have prepared what they deem to be the probable dividends that creditors would have received had the Company been liquidated as at the Publication Date. These calculations are attached hereto²⁰

8.10.3. This assessment by the BRPs utilises the fair values of the Assets of The Company, as well as the expected expenses that would be incurred by an appointed liquidator, in order to calculate the probable dividend that Creditors, in their various classes may have expected to receive had The Company been liquidated as at the Publication Date.

¹⁵ Section 135(1)

¹⁶ Annexure F

¹⁷ Section 128(g)

¹⁸ Section 145(5) (a)

¹⁹ Section 150(2)(a)(iii)

²⁰ Annexure J

- 8.10.4. The calculation of the probable dividend that Creditors would conceivably have received, in their respective classes, applying the above-mentioned principles, should The Company have been liquidated as at the Publication Date, is set out in the attached annexure²¹.
- 8.10.5. In attending to this calculation, the BRPs made the following assumptions regarding the realisation of the assets in the event of the liquidation of The Company:
- 8.10.5.1. The Assets of The Company would have been sold by the appointed Liquidator, by public auction, at the expected auction (forced sale) value;
- 8.10.5.2. By its very nature the collection of outstanding debtors of a construction related insolvency is notoriously difficult. Once appointed liquidators are often faced with the reality of having to elect whether or not to complete unfinished projects and more often than not elect not to do so. In such circumstances the collection of outstanding debtors are seldom possible.
- 8.10.6. The estimated liquidation dividends that would accrue, to the different classes of Creditors, had The Company been liquidated as at the Publication Date is summarised below, representing an extract of the BRPs calculation²² determination:
- 8.10.6.1. The Secured Creditor-
- FNB could have expected to receive a secured dividend of approximately R30,400,000.00 or 17,7 cents in the Rand had The Company been liquidated as at the Publication Date.
- 8.10.6.2. Preferent Creditors:
- 8.10.6.2.1. Employees collectively could have expected to receive payment of R Nil of the preferent portion of their Claims of approximately of R16,9 million, as at the Publication Date.
- 8.10.6.2.2. SARS, would have as at the Publication Date received no dividend were the Company to be liquidated as at the Publication Date.

²¹ Annexure F

²² Annexure J

8.10.6.3. Concurrent Creditors

Considering the extent of the Secured- and statutory Preferent Creditors, Concurrent Creditors would have received no dividend in the event of the liquidation of The Company either as at the Publication Date.

9. HOLDER/S OF COMPANY'S ISSUED SECURITIES²³

9.1. According to the records of The Company and as at the Commencement Date, the shares of The Company were held by:

➤ Liviero Group - 100%

9.2. No other shares have been issued and the directors declared that no shares were promised to any third parties and that there are no outstanding shares to be issued. In view of The Company's present financial position, the shares of The Company have no commercial value at this stage.

10. PRACTITIONER'S REMUNERATION OR AGREEMENT CONCERNING PRACTITIONER'S REMUNERATION²⁴

10.1. For purposes of determining the BRPs hourly remuneration, The Company has been classified in terms of the regulations to The Act as "a large company".

10.2. BRPs have to date been remunerated in terms of the provisions of The Act and regulations based on the actual time spent on the matter. The disbursements relating to consultants employed and legal fees expended by the BRPs and other sundry disbursements have also been paid by The Company in terms of The Act.

10.3. As is provided for in The Act²⁵ the BRPs propose, as part of this BR Plan, a success fee arrangement with The Company, which fee is payable by The Company during Proceedings, as provided for in the proposal, upon the arrival of specific events.

²³ Section 150(2)(a)(iv)

²⁴ Section 150(2)(a)(v)

²⁵ Section 143 (2) read with regulation 128(2)

- 10.4. Accordingly, it is proposed that the BRPs will, subsequent to the Adoption Date, continue to be remunerated based on actual time spent on the matter, but will upon their filing for Substantial Implementation be entitled to an additional success fee as proposed in this Business Rescue Plan.
- 10.5. Accordingly, the BRPs therefore proposes an agreement as contemplated in The Act, in respect of the remuneration subsequent to the Adoption Date of the BR Plan as recorded in the attached annexure²⁶, subject to the requisite majority of Creditors ratifying such proposal at The Meeting as envisaged in The Act.

11. INFORMAL PROPOSAL²⁷

This BR Plan was prepared after engagement and consultations, as referred to above, with Affected Persons and contains certain proposals informally made by Affected Persons.

²⁶ Annexure G

²⁷ Section 150(2)(a)(vi)

PART B - PROPOSAL²⁸

12. DURATION OF MORATORIUM²⁹

It is proposed that the moratorium³⁰ be extended for a period of 90 days after the filing a notice of Substantial Implementation, by the BRPs.

13. PROPOSED CONVERSION OF DEBT TO EQUITY³¹

This Business Rescue Plan does not propose the conversion of debt for any of the equity of The Company.

14. EXTENT TO WHICH COMPANY IS TO BE RELEASED FROM PAYMENT OF ITS DEBTS³²

14.1. The BRPs are of the view that the successful finalisation of Proceedings will only be achieved upon adoption of a Business Rescue Plan in terms of which The Company will be released from the payment of some of its debts, by way of a compromise of the Claims of the Trade Creditors and an arrangement regarding the Claims of the Excluded Creditors as dealt with more fully herein below.

14.2. Accordingly, the BRPs are of the opinion, based on the information currently at their disposal that The Company as a legal entity, can continue in existence on a solvent basis upon the adoption and subsequent implementation of this proposed Business Rescue Plan.

14.3. The adoption of this Business Rescue Plan will result in a better return for The Company's Creditors that would otherwise result from the liquidation of The Company as the immediate liquidation of The Company will, in the opinion of the BRPs, be extremely prejudicial to the Creditors of The Company, whilst the implementation of the proposals contained in this Business Rescue Plan will not only increase the payments to all Creditors, but ultimately ensure

²⁸ Section 150(2)(b)

²⁹ Section 150(2)(b)(i)

³⁰ Section 133 of the Act

³¹ Section 150(2)(b)(ii) of The Act

³² Section 150(2)(b)(ii)



the long term future and sustainability of The Company and the opportunity of continued employment of a substantial number of the Employees of The Company.

15. ONGOING ROLE OF THE COMPANY³³

- 15.1. **The Primary Objective** of this BR Plan is for The Company to return to solvency by rearranging its financial affairs to such an extent that the Claims of Trade Creditors are compromised and limited to the proceeds of the DCP, as provided for more fully below and for the Claims of the Excluded Creditors to be rearranged in such a manner as to assist the ongoing financial viability of the Company.
- 15.2. **The Secondary Objective** of this Business Rescue Plan is subsequent to Substantial Implementation for The Company with the ongoing assistance of the Excluded Creditors, to retain and maintain (except for the DCP Claims) its Assets to be able to secure sufficient new work and in doing so to secure the continued viability of its business.
- 15.3. Upon the adoption and subsequent implementation of the proposed BR Plan, the Company would have during proceedings substantially rearranged its financial affairs.

16. TREATMENT OF EXISTING CONTRACTS³⁴

None of the terms of any existing agreements were suspended, altered or cancelled by the BRPs during Proceedings and unless specifically mentioned in this BR Plan neither does this BR Plan envisage any amendments to existing agreements going forward³⁵.

17. PROPERTY AVAILABLE TO PAY CREDITORS³⁶

- 17.1. This Business Rescue Plan envisages that The Company will make available the proceeds of the DCP Claims to be collected and distributed by the Receiver for Creditors to the Creditors of the Company and except for FNB, excluding the Excluded Creditors, as contained herein below.

³³ Section 150(2)(b)(iii)

³⁴ Section 150(2)(b)(iii)

³⁵ Section 136 (2)(a) & (b)

³⁶ Section 150(2)(b)(iv)



BUSINESS RESCUE PROPOSAL:

18. PROPOSED SETTLEMENT WITH CREDITORS

- 18.1. The Company makes the proposal contained in this Business Rescue Plan and undertakes to perform its obligations in terms of the arrangement and compromise detailed below. In consideration for the right of Creditors to receive payments in terms of the Business Rescue Plan, and upon the fulfilment of all of the conditions contained herein below, the rights of all Creditors, against The Company including the rights of all disputed or contingent Creditors, shall be confined to the right to Claim payment from The Company in terms of this Business Rescue Plan and no other Creditor shall have any other Claim against The Company after the Effective Date.³⁷
- 18.2. Accordingly, Creditors are presented with a proposal that will, upon the adoption of this Business Rescue Plan and the fulfilment of all of the conditions precedent to the proposal, maximise the likelihood of The Company continuing in existence on a solvent basis³⁸.
- 18.3. The proposal shall however not affect the rights of any holder of a guarantee or surety obligation from individuals or entities who have bound themselves as guarantors or sureties and co-principal debtors, jointly and severally with The Company, from enforcing their rights in terms of any such surety and/or guarantee.

19. DEBTORS COLLECTION PLAN:

- 19.1. Upon the adoption of this BR Plan, the Company shall, under the auspices of the Receiver, continue to collect the DCP Claims.
- 19.2. The proceeds of the DCP Claims shall be deposited into a bank account, opened in the name of the Company, but operated by the Receiver and thereafter distributed to the Creditors of the Company as provided for in this BR Plan.
- 19.3. Any and all costs incurred by the Company and the Receiver in the collection of the DCP Claims shall be paid from the proceeds of the collection of the DCP claims and not from the ongoing operations of the Company. For the avoidance of all doubt and although the

³⁷ Section 152(4) and 154(2) of the Act

³⁸ Section 128(1)(b)(iii)



Company, under the auspices of the Receiver, shall take all reasonable steps to collect the DCP Claims, the DCP is envisaged as a self-funding mechanism.

20. PROPOSED ARRANGEMENT BETWEEN THE COMPANY AND THE EXCLUDED CREDITORS:

- 20.1. The Claims of the Excluded Creditors are not compromised in terms of the provisions of this BR Plan, but rather rearranged as specifically provided for in terms of this BR Plan.
- 20.2. The claim of FNB against the Company remains unaltered and all current and future debtors (except the DCP claims) shall remain subject to the FNB's cession of debtors.
- 20.3. The claim of the Shareholder shall likewise remain unaltered, but shall be subordinated in favour of the claims of all other creditors incurred after the adoption of this BR Plan, until such time as the Company's auditors determine the Assets of the Company exceeds its liabilities to such an extent that it would justify the un-subordination of the claim, or part thereof of the Shareholder. The Shareholder is specifically excluded from sharing in the proceeds of the DCP.
- 20.4. The claims of Employees remain unaltered as they will upon the adoption of this BR Plan remain in the employ of the Company.
- 20.5. The claims of all PCF Creditors are entirely excluded from the provisions of this BR Plan and the Company shall settle such claims in the normal course of business.
- 20.6. The contingent Claims of the Guarantors³⁹ are likewise excluded from the arrangement contained in this BR Plan and shall reduce over time and become extinguished by The Company being able to continue to perform in respect of the particular contracts that each of the issued guarantees relate to.

³⁹ Annexure F



21. PROPOSED COMPROMISE BETWEEN THE COMPANY AND ITS TRADE CREDITORS:

- 21.1. The Company makes the proposal contained in this compromise in particular as contained in this paragraph to all of its Trade Creditors.
- 21.2. In consideration for the right of Trade Creditors to receive payments in terms of this Business Rescue Plan, and with effect from the Effective Date, the Claims of the Trade Creditors as at the Commencement Date as against the Company shall become compromised and shall be limited to receiving such payment from the Receiver from the proceeds of the DCP Claims, as provided for in this BR Plan, in settlement of any and all Claims as against the Company.

22. APPLICATION OF THE PROCEEDS OF THE DC PLAN AND THE ORDER OF PREFERENCE TO APPLY:

Subject to the terms of this Business Rescue Plan and after Substantial Implementation, the Receiver shall pay, quarterly (subject to sufficient funds being available) from the proceeds of the DCP Claims and any interest earned thereon in the following manner and order of preference:

- 22.1. **To the BRPs**, for payment of all fees, administration expenses and charges outstanding prior to Substantial Implementation (if any); thereafter
- 22.2. **To the Receiver**, for payment of all fees and administrative expenses and charges incurred; thereafter
- 22.3. **To any and all legal and related collection expenses**, incurred in order to collect the DCP Claims, such cost in total not to exceed 10% of the gross proceeds of the DCP Claims and unless expressly agreed to otherwise by FNB, limited to the lesser of 10% of any one claim or R100,000.00 per claim; thereafter
- 22.4. **To FNB**, payment of 100% of the proceeds of the DCP claims up to R20, 000,000.00 (twenty million Rand) and thereafter payment of 60% of the proceeds of the DCP Claims; thereafter, if any

22.5. **To Employees**, any and all amounts due to them in consequence of any retrenchment process conducted post the commencement of Proceedings; thereafter if any

22.6. **To All other Creditors, excluding the Excluded Creditors**, payment in proportion to their Claims as against the Company.

23. EXPECTED COLLECTIONS FROM THE DCP CLAIMS:

23.1. The DCP Claims are listed in the attached schedule.⁴⁰ The extent of the recovery is unknown as the DCP claims contain a variety of claims consisting of retentions, liquidated claims and

claims for damages. For purpose of illustration a schedule is attached⁴¹ illustrating the probable payments to Creditors based on a base, best and worst case scenario.

24. BENEFITS OF ADOPTING THE BUSINESS RESCUE PLAN COMPARED TO BENEFITS TO CREDITORS IN LIQUIDATION⁴²

24.1. **For the Shareholders**:-Although the Shareholder is excluded from receiving any benefit from the proceeds of the collection of the DCP Claims and although it is required to subordinate its claim in favour of all future creditors, it is left with the opportunity to resuscitate the business of The Company and in doing so this creates the ultimate opportunity of a profitable business.

24.2. **For Employees**:-Although some of the Employees of the Company will be affected by possible retrenchment pursuant to the ongoing consultations in terms of the LRA referred to above, the majority of the current employees of the Company shall upon the adoption of this BR Plan remain so employed in the foreseeable future. Those Employees who will be required to exit the business upon the conclusion of the consultative process will receive payment to the full extent of the amounts owing to them as opposed to almost no payment had the Company been liquidated.

⁴⁰ Annexure C

⁴¹ Annexure K

⁴² Section 150(2)(b)(vi)



24.3. **For the Guarantors:** - The adoption of the BR plan and the ability of the Company to continue to operate its business will see the gradual reduction of the contingent claims of the Guarantors.

24.4. All other Creditors:

24.4.1. The expected dividends that each and every Creditor, irrespective of their ranking in terms of the laws of Insolvency, will receive from the proceeds of the DCP pursuant to the adoption of this BR Plan are in excess of what they would have received had the Company been liquidated on the Publication Date. The following graph illustrates these benefits:

Class of Creditor	Liquidation	Business Rescue
FNB	0.18	0.31
Employees	0.00	1.00
Trade Creditors	0.00	0.07-0.29*

**Based on the value of claims received as at the Publication Date*

24.4.2. Over and above the benefit of a substantial benefit in the quantum of payment from the proceeds of the DCP as opposed to that of a formal liquidation process, Creditors can expect to receive payment far sooner than what would otherwise have occurred in the event of the liquidation of The Company. Given the complexity of the Company's affairs, and the contractual obligations to clients and guarantors, it is expected that a liquidation may last longer than 24 months with no ability to pay an interim dividend to Concurrent Creditors.

24.4.3. Further to the above the estimated costs of administration incurred as a result of a formal liquidation process will far exceed the costs needed to be incurred during the collection process of the DCP.

25. EFFECT ON SHAREHOLDERS⁴³

25.1. This BR Plan does not envisage an effect on the Shareholders of The Company.

⁴³ Section 150(2)(b)(vii)



PART C- ASSUMPTIONS AND CONDITIONS⁴⁴

26. SPECIAL CONDITIONS TO BE SATISFIED⁴⁵

26.1. The following are the conditions which must be satisfied for the Business Rescue Plan to come into operation:

26.1.1. The adoption of the Business Rescue Plan by the Creditors having the majority voting interest as defined in The Act;

26.2. The conditions which must be satisfied for Substantial Implementation are exclusively subject to the determination of the BRPs.

27. CIRCUMSTANCES IN WHICH THE BUSINESS RESCUE WILL END⁴⁶

It is proposed that the Business Rescue Proceedings will end once The BRPs file their notice of Substantial Implementation.

28. EFFECTS OF THE PROPOSED BUSINESS RESCUE PLAN ON THE NUMBER OF EMPLOYEES

28.1. As at the Commencement Date, The Company employed 604 employees, but as indicated above it is anticipated that this number will reduce as a result of the completion of current contracts and the reduction in the size of the overhead structure required in order to remain competitive in the current market.

28.2. Since the Company intends to continue trading, all affected employees will retain their legal rights afforded them under the provisions of the LRA, and adequate financial provisions have been made to fund the associated termination costs.

⁴⁴ Section 150(2)(c)

⁴⁵ Section 150(2)(c)(i)

⁴⁶ Section 150(2)(c)(iii) of the Act



29. PROJECTED BALANCE SHEET AND DETAILED STATEMENT OF INCOME AND EXPENSES FOR THE ENSUING THREE YEAR PERIOD⁴⁷

29.1. In compliance with the provisions of The Act, the following documents are attached to The BR Plan a projected balance sheet⁴⁸; and a statement of income and expenses⁴⁹, for the ensuing 3 years from the arrival of the Recommencement Date.

⁴⁷ Section 150(2)(c) (iv) of the Act

⁴⁸ Annexure H

⁴⁹ Annexure I



PART D - ADMINISTRATIVE PROVISIONS

30. Duties and Powers of the Receiver

- 30.1. The Receiver shall have all such powers as the BRPs would have had, including the right to take action against any debtor/s of the Company.
- 30.2. In addition, the Receiver shall after Substantial Implementation:
- 30.2.1. notify all known Creditors that the BR Plan has been substantially implemented and in particular draw their attention to the provisions of the BR Plan and their rights and obligations thereunder;
 - 30.2.2. notify all Creditors reflected in the books of account of the Company or acknowledged as being Creditors of the Company by the BRPs, that they are regarded by him as being Creditors for purposes of participating in the distribution in terms of the BR Plan and stating the amount for which they so appear to be Creditors in the books of account of the Company; and
 - 30.2.3. provided he is satisfied that the Claim of any particular Creditor, as it appears in the books of account of the Company, is incorrect or for any other reason rejectable by him, advise such Creditor, in writing, of the fact that he rejects such Claim and that such Creditor thereupon is obliged to prove its Claim in terms of the provisions of the adopted BR Plan;
- 30.3. The Receiver shall have the right in consultation with FNB to:
- 30.3.1. take all steps necessary to enforce due compliance by the Company of any obligations imposed upon or assumed by the Company in terms of the BR Plan;
 - 30.3.2. institute any proceedings against any person which may be required to give effect to the BR Plan;
 - 30.3.3. defend any proceedings brought against him arising out of this BR Plan;



- 30.3.4. dispute any Claim, or the validity of any preference or security claimed by any Creditor or the valuation placed by any secured Creditor on any security;
 - 30.3.5. in his discretion, to compromise and/or otherwise determine by agreement the amount of any Claim, preference or security proved or to be proved. In the event that the Receiver and FNB are unable to reach consensus regarding any proposed compromise, FNB shall have the right to continue with the recovery of such claim for its own benefit and at its own expense. In such an event the amount at which the Receiver was willing to compromise the particular claim, shall then be considered the amount at which the particular claim has been recovered for purposes of this BR Plan and the Receiver shall apply that amount in his calculation of the distribution of the proceeds of the DCP Claims;
 - 30.3.6. engage the services of legal and other professional advisors in connection with any matter concerning his functions and duties, to dispense with taxation of and to agree the amount of the reasonable fees and charges of such legal and other professional advisors and to pay the remuneration and disbursements of the person/s so engaged;
 - 30.3.7. at all times to have access to all books, records, documentation and trading figures of the Company as he may reasonably and properly require for the execution of his duties as Receiver in terms of the BR Plan;
 - 30.3.8. in his discretion, be entitled to settle any disputes of whatsoever nature with the with regard to the Assets or the implementation of the BR Plan; and
 - 30.3.9. make payments to Creditors, as provided for in this BR Plan as and when he deems fit, notwithstanding that all Claims against the Company have not yet been proved.
- 30.4. The Receiver shall in quarterly intervals, following Substantial Implementation, prepare and distribute a comprehensive report to Creditors detailing:
- 30.4.1. the progress with the collection of the DCP Claims;
 - 30.4.2. the progress of distribution of the DCP proceeds to Creditors as provided for in the BR Plan;
 - 30.4.3. the status of all Late- and Disputed Claims.

31. PROOF OF CLAIMS PROCEDURE

- 31.1. The attached list⁵⁰ represent the Claims of Creditors submitted and adjudicated and accepted by the BRPs as at the Publication Date and the values reflected constitute the voting interest of such Creditor/s for purposes of voting at The Meeting to determine the future of The Company.
- 31.2. In order to participate in any distribution in terms of this BR Plan, all Claims of Creditors shall be submitted to, considered and adjudicated upon by the BRPs, up to Substantial Implementation and thereafter by the Receiver for purposes of sharing in the distribution envisaged in this BR Plan.
- 31.3. The BRPs and the Receiver require of Creditors to submit their Claims in writing with the required supporting documentation as if such claims were claims submitted in terms of the provisions of Section 44 of the Insolvency Act.

32. CREDITORS NOT REFLECTED OR AMOUNTS DISPUTED

- 32.1. Creditors who do not appear on the attached list⁵¹ or who disagree with the amount so reflected may, for a period of 60 days after the Effective Date, submit to the BRPs or the Receiver as the case may be documentation in support of such Claim, and if acceptable to the Receiver such Claim will be added to the attached list of Creditors.
- 32.2. If such Claims are received and adjudicated upon by the BRPs prior to The Meeting, the attached list will be amended to reflect such Creditors for purposes of participation at The Meeting to determine the future of The Company and would upon such acceptance constitute the voting interest of such Creditor/s.
- 32.3. If the Claim/s of Creditor/s are received and or adjudicated by either the BRPs or the Receiver after The Meeting, the Creditor in question will have forfeited its right to participate in the Meeting, but the attached list will be amended to include such a Claim as a late Claim, as provided for herein below, in order to participate in the distribution to Creditors in terms of this BR Plan.

⁵⁰ Annexure D

⁵¹ Annexure E

33. LATE CLAIMS

33.1. Creditors who, for whatever reason, do not submit their Claims to the BRPs prior to the Publication Date, may at any time after the Publication Date, and for a period of 60 days after The Effective Date, submit to either the BRPs or the Receiver documentation in support of their Claim against The Company and upon receipt and acceptance thereof by either the BRPs or the Receiver, such Claims will be considered valid and form part of the adopted Business Rescue Plan. Claims not submitted to the Receiver within 60 days the Effective Date will be deemed to have been forfeited as against The Company.

34. DISPUTED CLAIMS

34.1. As at the Commencement Date and during Proceedings The Company may have received various Claims purported to emanate either from contractual disputes or Claims for damages allegedly suffered and to the extent that the BRPs, or subsequent to Substantial Implementation by the Receiver, have rejected these Claims, The Company, the BRPs and the Receiver dispute these Claims as liabilities as against The Company.

34.2. To the extent that these disputed liabilities are for purposes of this BR Plan referred to and dealt with in this BR Plan it is done so for the sake of disclosure and in doing so neither The Company nor the BRPs admit such liabilities and hereby specifically record its continued dispute with regard to these Claims against The Company.

34.3. Upon the adoption of this BR Plan such Claims previously disputed and the rights of The Company to dispute such Claims remain unaffected by this BR Plan, except to the extent that in the event that such Disputed Claims either become settled between the parties or determined or finally liquidated in any appropriate legal forum, then such agreed or liquidated Claims will be subject to the provisions of this Business Rescue Plan and such Creditors would then be entitled to payments from The Company equal to those of the other Concurrent Creditors of The Company.

35. DISPUTE RESOLUTION MECHANISM

35.1. In respect of all or any disputes raised by either the BRPs or the Receiver on Claims submitted by any Affected Person or PCF Creditors and disputed claims for contractual damages as a result of the termination of agreements, in terms of this BR Plan, which disputes include but are not

limited to disputes on the existence or otherwise of such claim(s), on quantum of claim, security claimed by a creditor, the nature of the security, the extent and value of the security and the like (“**the dispute**”) such dispute/s can only be resolved in accordance with **the dispute** mechanism outlined below.

35.1.1. This dispute mechanism will work as follows:

35.1.1.1. all Creditors who have received notification from either the BRPs or the Receiver of a dispute are to contact the BRPs or the Receiver as the case may be within 7 days of approval of this plan or from receiving such notification, whichever is the later, and to meet with him during this period in an attempt to reach agreement on **the dispute**.

35.1.1.2. if the creditor does not avail itself of this 7-day opportunity or if after having availed itself and the dispute is not resolved within the 7 day period, or the creditor and the BRPs (or the Receiver as the case may be) agree on alternative terms for the determination of the dispute, the creditor will be afforded a further 7 days (reckoned from the date of expiry of the first 7 days) to nominate one of the retired judges from the list below as an expert (not as an arbitrator or mediator) to preside over and to resolve the dispute. Should the creditor not make this nomination, the BRPs will do so on his/her/its behalf and this nomination will be binding on the creditor(s). The list of these retired judges is:

- E Bertelsman
- P Boruchowitz
- J. Heher
- J. Kriegler
- P. Streicher

35.1.1.3. The retired judge when nominated and who agrees to accept such appointment (hereinafter referred to as “the expert”) will endeavour to complete his mandate within 30 days of his appointment or within such further time period as the expert in his sole discretion may determine. To the extent that any expert as nominated by the creditor refuses to act or is not available to act, the creditor or, if he refuses or does not do so

within three days of being requested by the BRPs to do so, the BRPs on his behalf are then obliged to choose another retired judge(s) from the above list until one such judge is available to act and is agreeable to act.

35.1.2. The expert will in his sole and absolute discretion determine:

- 35.1.2.1. the venue at which the dispute is to be resolved;
 - 35.1.2.2. the rules, regulations and procedures that will govern the determination of the dispute;
 - 35.1.2.3. the date(s) for the determination of the dispute;
 - 35.1.2.4. will give his award / determination within 5 days of the completion of the process as determined;
 - 35.1.2.5. as part of his award/determination, determine who is liable for the costs of the determination. Such costs to include his costs, legal costs, venue costs, recording equipment (if applicable), transcript of evidence (if applicable) and the like.
- 35.1.3. The Creditor/s agrees that save for any manifest error the determination of the expert will be final and binding on him / her / it / The Company and the BRPs and will not be subject to any subsequent review or appeal application / procedure / process.
- 35.1.4. The creditor, The Company and the BRPs agree to use their utmost endeavours to ensure that the entire dispute is determined by **the expert** within the 30 day period as set out above.
- 35.1.5. Insofar as any of the provisions in this paragraph are subsequent to the Adoption Date found, by an appropriate Court of Law, to be unenforceable, it is specifically recorded that the dispute resolution mechanism contained in this Business Rescue Plan is severable from the remaining provisions of this plan.

36. DEFAULT CLAUSE:

- 36.1. The compromise contemplated in this BR Plan is conditional upon The Company and the Receiver collectively fully meeting the obligations to Creditors as set out in this BR Plan. In the event of any material breach by The Company of its obligations to Creditors in terms of the BR Plan not being remedied within a reasonable period of time, or in the event The Company is placed in liquidation prior to the finalisation of the DCP, then the full balance due to Creditors in terms of their original Claims against The Company shall revive and immediately become due, owing and payable by the Company to the Creditors.

37. DOMICILIUM AND NOTICES

- 37.1. Each Creditor is hereby deemed to have chosen *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at the e-mail address stated by that Creditor in his proof of claim form, or, in the event of any Creditor not having lodged a proof of claim form, then at the Creditor's last recorded e-mail address with The Company.
- 37.2. Van der Merwe and Klopper have chosen their *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at e-mail address: dvandermerwe@bdo.co.za.
- 37.3. The Company has chosen its *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at the e-mail addresses of the BRPs.
- 37.4. Notices dispatched by the BRPs in accordance with the BR Plan shall rebuttably be deemed to have been received by the addressee reflected on such notices on the Business Day after dispatch or transmission thereof by electronic mail or to the addressee's *domicilium citandi*.

38. GENERAL PROVISIONS

- 38.1. Affected Persons who vote against this Business Rescue Plan are referred to the provisions of The Act⁵² in terms of which any affected person or combination of affected persons may make a binding offer to purchase the voting interest of one or more persons who opposed the adopted of the Business Rescue Plan, at a value independently and expertly, on the request of the BRPs, to be a fair and reasonable estimate of the return to that person if the business was to be liquidated.
- 38.2. The BRPs will retain all powers, as provided for in The Act, up to Substantial Implementation.
- 38.3. In the event of the failure of any condition precedent, alternatively in the event that an unforeseen factual circumstance arises, which prohibits the implementation of this BR Plan, the BRPs reserve the right to be able to provide notice of a further meeting of Creditors, and to re-convene the Creditors meeting.⁵³

⁵² Section 153(1)(b)(iii) of the Act

⁵³ Section 151 of the Act



38.4. Provided that any amendment will not be prejudicial to any of the Affected Persons, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan, provided that at all times the BRPs act reasonably. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.

38.5. It is specifically recorded that the provisions of paragraph 33.4 shall mutatis mutandis apply to the extension or reduction of any timeframes by the BRPs.



CERTIFICATE

We the undersigned,

LDR van Der Merwe &

JF Klopper

hereby certify that the information provided herein is accurate and projections provided herein are made on the basis of good faith based on factual information.

SIGNED AT JOHANNESBURG ON THIS 31st of August 2018

LDR van der Merwe

JF Klopper

* *Original Document signed by BRPs*