

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 57045/2020

In the matter between: -

**KINGSGATE CLOTHING (PTY) LTD T/A
MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS AND
STAR CLOTHING MANUFACTURERS**

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LTD

Sixth Applicant

APPAREL INDUSTRIES (PTY) LTD

Seventh Applicant

CLEMATIS TRADING (PTY) LTD

Eighth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

First Respondent

**PIERS MARSDEN
(JOINT BUSINESS RESCUE PRACTITIONER)**

Second Respondent

**LANCE SCHAPIRO
(JOINT BUSINESS RESCUE PRACTITIONER)**

Third Respondent

JUSTICE FDJ BRAND

Fourth Respondent

NOTICE OF OPPOSITION

KINDLY TAKE NOTICE that the Applicants herein hereby give notice of their intention to oppose the application set down on the 25TH of AUGUST 2021.

AND FURTHER TAKE NOTICE that the address at which the Applicants will accept service of all notices and processes in these proceedings is set out below.

Dated at Pretoria on this the 11TH day of AUGUST 2021.

Krumbatong

PATHER AND PATHER ATTORNEYS INC.



PATHER & PATHER
ATTORNEYS

PLAINTIFFS' ATTORNEYS
3 NOLLSWORTH CRESCENT
NOLLSWORTH PARK
LA LUCIA

REF: KUBEN MOODLEY/lg/K793

TEL: 031 304 4212

E-MAIL: kuben@patherandpather.co.za

c/o MacRoberts Inc.

MacRobert Building

1060 Jan Shoba Street

Brooklyn

PRETORIA

Tel: (012) 425 3451

Ref: KTD/62595

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA**

AND TO: ENS AFRICA INCORPORATED
ATTORNEYS FOR FIRST TO THIRD RESPONDENT
SANDTON
REF: L FIELD
C/O JACOBSON AND LEVY INC.
BUILDING A, FIRST FLOOR
141 BOSHOFF STREET
NIEUW MUCKLENEUK
PRETORIA
REF: J LEVY/ K5917

JACOBSON & LEVY INC.
RECEIVED / ONTVANG
ACCEPTED WITHOUT PREJUDICE
2021 -08- 11
ONTVANG SORDER ONWADELING
TIME: 11h13 sig: [Signature]

AND TO: COUZYN HERTZOG AND HORAK ATTORNEYS
FOURTH RESPONDENT'S ATTORNEY
321 MIDDEL STREET
BROOKLYN
TEL: (012) 460 5090
REF: OOSTHUIZEN/AM/C549
EMAIL: annaliem@couzyn.co.za

RECEIVED / ONTVANG
2021 -08- 11
COUZYN HERTZOG & HORAK

16h45
[Signature]

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 57045/2020

In the matter between:-

KINGSGATE CLOTHING (PTY) LTD T/A MAJESTIC CLOTHING MANUFACTURERS, PRINCETON SCHOOLWEAR MANUFACTURERS AND STAR CLOTHING MANUFACTURERS	First Applicant
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CLEMATIS TRADING (PTY) LTD	Eighth Applicant

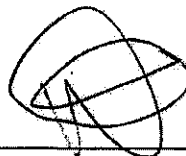
and

EDCON LIMITED (IN BUSINESS RESCUE)	First Respondent
PIERS MARSDEN (JOINT BUSINESS RESCUE PRACTITIONER)	Second Respondent
LANCE SCHAPIRO (JOINT BUSINESS RESCUE PRACTITIONER)	Third Respondent
JUSTICE FDJ BRAND	Fourth Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Applicants file evenly herewith their Opposing Affidavit in the matter.

Dated at DURBAN on this the 19th day of August 2021.



PATHER & PATHER
ATTORNEYS

PATHER AND PATHER ATTORNEYS INC.
PLAINTIFFS' ATTORNEYS
3 NOLLSWORTH CRESCENT
NOLLSWORTH PARK
LA LUCIA

REF: KUBEN MOODLEY/Ig/K793

TEL: 031 304 4212

E-MAIL: kuben@patherandpather.co.za

c/o MacRoberts Inc.

MacRobert Building

cnr. Justice Mahomed & Jan Shoba Streets

Brooklyn

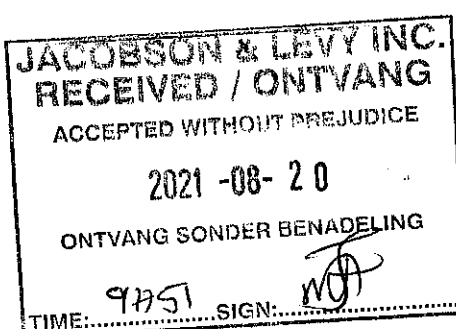
PRETORIA

Tel: (012) 425 3451

Ref: AVN/sg

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA**

**AND TO: ENS AFRICA INCORPORATED
ATTORNEYS FOR FIRST TO THIRD RESPONDENTS
SANDTON
C/O JACOBSON AND LEVY INC.
215 ORIENT STREET
ARCADIA
PRETORIA**



Sonder benadeling van Regte
Without Prejudice

AND TO: COUZYN HERTZOG AND HORAK ATTORNEYS
FOURTH RESPONDENT'S ATTORNEY
321 MIDDEL STREET
BROOKLYN
0181

RECEIVED / ONTVANG
2021-08-20
COUZYN HERTZOG & HORAK

PER EMAIL BY AGREEMENT: annaliem@couzyn.co.za

Handwritten signature

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 57045/2020

In the matter between:

KINGSGATE CLOTHING (PTY) LIMITED t/a MAJESTIC CLOTHING MANUFACTURERS, PRINCETON SCHOOLWEAR MANUFACTURERS AND STAR CLOTHING MANUFACTURERS	First Applicant
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And

EDCON LIMITED (IN BUSINESS RESCUE)	First Respondent
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LANCE SCHAPIRO (JOINT BUSINESS RESCUE PRACTITIONER)	Third Respondent
JUSTICE FDJ BRAND	Fourth Respondent

APPLICANTS' OPPOSING AFFIDAVIT


I, the undersigned

KUBENDRAN MOODLEY

do hereby make oath and say:

INTRODUCTION

1. I am an adult male attorney practicing as a partner at Pather and Pather Attorneys, the applicants' attorney of record.
2. I am the attorney dealing with the main application and as such I am duly authorised to depose to this affidavit on behalf of the applicants.
3. The facts deposed to herein are within my personal knowledge and are true and correct.
4. Where I refer to the applicants collectively, I shall refer to them as "***the applicants.***"
5. Where I refer to the first, second and third respondents collectively, I shall refer to them as "***the respondents.***"
6. Prior to dealing *ad seriatim* with the affidavit of the respondents, I wish to make some preliminary observations concerning the reason why the applicants are opposing the relief that the respondents seek, in circumstances where it pertains to an application originally brought by the applicants.




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7. Accordingly, this affidavit will address the following topics:-
- 7.1 Condonation for the late filing of the applicants' notice of opposition and opposing affidavit;
 - 7.2 Counter-Application;
 - 7.3 The Respondents' Failure to Finalise the Question of the Quanta of the Applicants' Claims;
 - 7.4 The Respondents' Refusal to agree to a Private Review;
 - 7.5 The Leave Application;
 - 7.6 Applicants' Failure to file their heads of argument;
 - 7.7 What is to happen to the Review application;
 - 7.8 *Ad Seriatim* Responses; and
 - 7.9 Conclusion.

CONDONATION FOR THE LATE FILING OF THE APPLICANTS' NOTICE OF OPPOSITION AND OPPOSING AFFIDAVIT

8. I seek condonation on behalf of the applicants for the late filing of their Notice of Opposition and this affidavit.
9. The reason for the late delivery of the Notice of Opposition and this affidavit are twofold.
10. The ***first*** was due to the difficulties in obtaining instructions from the applicants as a result of the recent unfortunate civil unrest within the KwaZulu-Natal region, including the aftermath thereof. This severally affected the applicants as well as

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the public at large within the province. Furthermore, the surgency of the covid pandemic within the province has not assisted matters.

11. The **second** ground for the delay is as a result of the applicants' contemplation of a further substantial application against the respondents.

12.

12.1 In this regard the applicants had been considering launching further proceedings against the respondents for some time.

12.2 Eventually a decision was taken to proceed with the application and this application was launched on Monday, 16 August 2021, being as soon as it was reasonably and practically possible to do so. (***the leave application***) (***KM1***)

12.3 The details of the leave application and the link between the main application are dealt with more fully hereunder. (***the review application***)

13. The applicants delivered their Notice of Opposition on 11 August 2021, being 12 days out of time.


14. This opposing affidavit is being delivered 3 days out of time and therefore the delay is not inordinate or deliberate and condonation ought to be granted for the late filing hereof.



15. I submit that there is no prejudice to the respondents as they were aware of the applicants' intention to oppose this application as early as 11 August 2021, being two weeks prior to the unopposed hearing date.
16. The answering affidavit is strictly speaking being filed within the 15-day period of delivery of the applicants' notice of opposition.

COUNTER-APPLICATION

17. I contacted the respondent's attorney of record 19 August 2021, after the service of the leave application on her clients. I enquired from her whether we could agree that the Review application and the present application could pend, pending the determination of the leave application.
18. The respondent's attorney of record advised that the respondents would not agree to this, that representation on the half of the applicants was required at the hearing on 25 August 2021 and that a punitive order for costs would be sought *de boniis propriis*, against the firm.
19. The threatened cost order is most unfortunate. I refer the above Honourable Court to annexure **KM2** hereto.
20. In any event, and given the intransigent attitude of the respondents to the present application the applicants have now been compelled to counter apply for the following relief at the hearing of this application ("**KM3**"):-



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- 20.1 the present application to be adjourned *sine dies* with leave to be granted to the respondents to supplement the present application papers, if necessary;
- 20.2 the Review application be stayed until the lapse of 30 days after the final determination of the leave application in the event of the applicants failing to institute action proceedings against the respondent *alternatively* after the final determination of the action proceedings, whichever is the later;
21. What the first to third respondents asserted in the present application and what they will seek to assert in opposition to the relief sought in the counter application is that the relief will result in the delay in the finalisation of the Review application which has a detrimental impact on the concurrent dividend payable to affected persons of the first respondent.
22. They have stated that it is therefore imperative that the Review application be finalised without further delay so that there is certainty in the Business Rescue proceedings in respect of the first respondent.
23. The applicants will demonstrate under the various rubrics set out hereunder that there will be no prejudice occasioned to the respondents in the event that the relief sought is granted in the counter application.
24. Furthermore, any assertion of prejudice is at odds with the conduct of the respondents set out hereunder.

THE RESPONDENTS' FAILURE TO FINALISE THE QUESTION OF THE QUANTA OF THE APPLICANTS' CLAIMS

25. The Review application that the applicants seek to have determined deals with legal as well as factual issues.
26. The legal issue relates to whether or not the applicants had maintained a reservation of ownership over the goods which they supplied to the first respondent.
27. The factual issue relates to the value of goods so supplied by the applicants to the first respondent.
28. In their affidavit in the arbitration before Justice Brand in regard to the reservation of ownership, the applicants raised the absence of an agreement in regard to quantum.
29. Annexed hereto marked "KMA" are three pages from that arbitration affidavit dealing with quantum.
30. The applicants point out therein, *inter alia*, that:-
- 30.1 On 28 July 2020, a letter was addressed to the second and third respondents enquiring whether they disputed both liability as well as *quanta*.

- 30.2 The response from the second and third respondents on 29 July 2020 was that they were still in the process of reconciling the amounts and would revert once the reconciliation had been completed.
- 30.3 The applicants provided schedules and all related invoices to the second and third respondents *via* a shared link with the documents having been uploaded onto the computer system of the applicants' attorneys on 20 July 2020.
- 30.4 To date of that affidavit, which was 11 August 2020, the second and third respondents had not reverted on the issue of *quanta*.
- 30.5 Annexed hereto marked "**KM5**", are three pages from the second and third respondent's affidavit from the arbitration proceedings.
- 30.6 In terms of that affidavit, they assert, *inter alia*, that:-
- 30.6.1 The quantum of the claimants' claim is an issue that should be dealt with directly between the parties to reconcile the differences.
- 30.6.2 If the parties are unable to reconcile the differences, it can then be referred to determination which will require oral evidence and a discovery process.

31. To date hereof the second and third respondents *have made no endeavour* whatsoever to indicate what their differences are or to attempt to reconcile that with the applicants.
32. In the circumstances, it is rather rich of the second and third respondents to assert that the applicants are delaying the finalisation of the Business Rescue proceedings.
33. It does not behove the respondents to suggest that only if the review goes in favour of the applicants will the necessity of quantification arise.
34. This for the simple reason that even on a Business Rescue dividend of 4 cents to 6 cents in the Rand for all concurrent creditors, the Business Rescue Practitioners will still be required to finalise that quantification.
35. The question arises as to why, if the respondents are so anxious to finalise the Business Rescue proceedings, they have done nothing whatsoever for over a year in regard to finalising the *quanta* of the applicants' claims?
36. This must call into question the *bona fides* of the respondents who assert prejudice but who have, at the same time, displayed a tardiness with the finalisation which is shocking to say the least!

RESPONDENTS' REFUSAL TO AGREE TO A PRIVATE REVIEW

37. The applicants' claims based on their reservation of ownership went before Justice Brand acting as Arbitrator.
38. The applicants resolved to review Justice Brand's determination.
39. In the interest of expedition, applicants proposed to the respondents that that review should be done privately before another Arbitrator. It is notorious that private arbitration is much quicker than the court process for obvious reasons.
40. The respondents refused to accept that proposal.
41. In doing so, they clearly realised that there would be delays in the High Court more so during Covid.
42. As against that, it is ironic that they can assert prejudicial delay.
43. Any finding by this court in regard to the Review application will itself be susceptible to appeal. One must assume that the respondents took this into account as well in declining the eminently sensible proposal put forward by the applicants.
44. How, in the light of that, the respondents can cry foul is difficult to understand.

THE LEAVE APPLICATION

45. As alluded to hereinabove, the applicants resolved to launch the leave application against the respondents. Annexed hereto marked "**KM1**" is a set of application papers in respect of an application launched by the applicants.
46. It will be noted therefrom that the applicants, *inter alia*, seek leave of this court to bring action proceedings against the respondents.
47. The applicants also refer to other proceedings which they intend to bring against the respondents but in regard to which they do not, with respect, as a matter of law, require the consent of this court to institute in terms of section 133 (1)(b) of the 2008 *Companies Act*.
48. Those other proceedings will also be by way of summons. ("**the action proceedings**")
49. In the circumstances, it is quite plain that it will be some time before the respondents will be in any position to bring the Business Rescue proceedings to a close.
50. Furthermore, it will be noted therefrom that the applicants will not only seek declaratory but consequential relief as well.



51. That consequential relief relates to payment to the claimants of the amounts that they say are due, owing and payable to them.
52. If the respondents continue disputing the *quanta*, as they have been doing up until now, the trial court will have to determine that issue as well.
53. Two different *fora* should not determine the question of quantum.
54. If so, then their position goes squarely against the cautioning of our appeal courts that in a society with limited resources, the unnecessary mulcting of costs should be avoided.
55. The most important point is that if the applicants are successful in their action proceedings against the respondents, there was simply no need to pursue the Review application. It is only in the event of their being unsuccessful in the action proceedings that they will proceed further with the Review application.
56. It is simply unnecessary and a waste of the limited funds which the first respondent has to spend on unnecessary litigation.

APPLICANTS' FAILURE TO FILE THEIR HEADS OF ARGUMENT

57. All the undertakings given on behalf of the applicants were done sincerely.
58. It was during the same period that the applicants were considering their position with regard to further proceedings.



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59. The applicants elected not to disclose their deliberations as they were not finally resolved on whether to institute further proceedings or not.
60. Their concern was that if they did resolve to bring further proceedings, which they have now done, the filing of heads of argument in the Review application might be an unnecessary step resulting in the unnecessary incurring of legal costs.
61. It is for this reason that the heads were not filed. If the applicants had decided not to bring further proceedings, then they would most certainly have delivered their heads of argument.

WHAT IS TO HAPPEN TO THE REVIEW APPLICATION HEREIN

62. The applicants had hoped that on receipt of "*KMI*" hereto, the respondents would have been circumspect and would engage with the applicants on the further conduct of this matter as well as of the other proceedings in contemplation.
63. To reiterate, if the applicants are successful in the action proceedings which they are going to bring against the respondents, it will render the present main application entirely unnecessary.
- 64.
- 64.1 It is for this reason that the relief has been framed in the manner that it has in the counter application.



- 64.2 And there is the safety net that in the event of the applicants failing to institute action proceedings within 30 court days of the final adjudication of the leave application, then the respondents would be at large to set the Review application down for hearing and proceed with the present application for the filing by the applicants of the heads of argument.
- 64.3 This would in any event be unnecessary given that the applicants recognises that they would be obliged to file their heads of argument.
- 64.4 For that reason, the review application should be stayed.
65. Alternatively, whilst the review application seeks the appointment of another Arbitrator to deal with the review as this is what is countenanced under the Arbitration Act, nothing precludes the disputing parties, if they are sensible, to agreeing that this application should also be referred to the same court dealing with the action proceedings which are to be instituted by the applicants. For this purpose, the main application can be referred to oral evidence or trial.
66. In any event, it is trite that it is inimical to our legal system to have two *fora* of first instance determining the same issue, which, in the present matter, would be the question of *quanta*.
67. It does not behove the respondents to assert that if any review on the legal issue were to go against the applicants, there would be no need to enter into *quanta* insofar as the main application is concerned. This for the simple reason that that

does not take into account the prospect that the applicants might be successful on review on the legal question.

68.

68.1 Furthermore, when the question of reservation of ownership was referred to private arbitration, the arrangement with the Learned Retired Justice, acting as Arbitrator, was that if that issue could not be determined on the papers, then evidence should be called for.

68.2 And, one of the complaints of the applicants in the review proceedings is that the Learned Judge ought to have considered calling for *viva voce* evidence.

69. It is respectfully submitted that for all of the reasons outlined herein that the above Honourable Court has an inherent jurisdiction to stay proceedings when it is in the interests of justice to do so.

70. It is in the interests of justice to do so in the present matter because it is a notorious fact that the Business Rescue of the first respondent has resulted in the concurrent creditors of the first respondent currently being offered 4 cents to 6 cents in the Rand. This demonstrates the parlous financial situation which the first respondent finds itself in. Accordingly, and in all the circumstances, legal fees ought not to be spent or wasted on matters which may be dealt with in due course.



71. The action proceedings which the applicants intend launching and the Review application pertain to the same parties and as has been repeatedly stated herein, a resolution of the action proceedings in favour of the applicants will result in the Review application not being required to be determined.
72. There is simply no basis for another court to waste precious resources and manpower to determine a matter which may resolve itself in any event.
73. I now turn to deal *ad seriatim* with the affidavit of the respondents and any allegation not specifically dealt with or at odds with what has been set out herein, must be deemed to be denied.

AD SERIATIM RESPONSES

Ad Paragraphs 1 to 22

74. The contents of these paragraphs are not in dispute.

Ad Paragraph 23

75. The first sentence of this paragraph is not in dispute.
76. It is respectfully submitted that in the circumstances of the matter, the applicants were entirely justified in not so complying.



77. In regard to the second sentence, the content is gratuitous and to be highly regretted for the reasons hereinafter set out.



Ad Paragraph 24

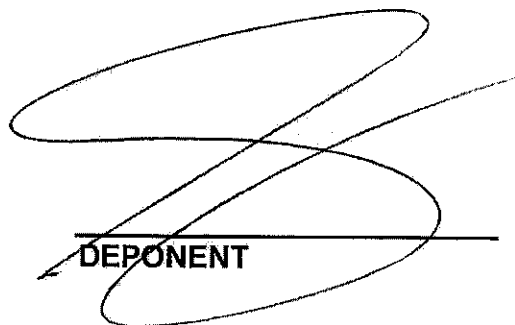
78. This paragraph deals with the heart of the issue and in this regard, the contents contained therein are disputed for all of the reasons set out herein.

CONCLUSION

79. In all the circumstances, it is submitted that a proper case has been made out for the relief that is sought in the counter application and that the present application ought to be postponed *sine dies* with an appropriate order for costs being granted against the respondents as the respondents ought to have agreed to the postponement of the present application given the launch by the applicants of the leave application.
80. The applicants are in agreement with the respondents that the costs should be those occasioned by the employment of two counsel.

WHEREFORE the applicants pray that the application be postponed *sine dies* with such costs to include those consequent upon the employment of two counsel and that an order is granted in terms of the counter-application annexed hereto marked **KM3**.





DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the 19th day of **AUGUST 2021**, the regulations contained in the Government Gazette Notice No R1258 of 21 July 1972, as amended, and Government Gazette Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

CHANTELLE ROUSSEAU
1 NOLLSWORTH PARK
NOLLSWORTH CRESCENT
LA LUCIA RIDGE
COMMISSIONER OF OATHS
PRACTISING ATTORNEY, R.S.A

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 19064/21

In the matter between:

KINGSGATE CLOTHING (PTY) LIMITED
t/a MAJESTIC CLOTHING MANUFACTURERS,
PRINCETON SCHOOLWEAR MANUFACTURERS
AND STAR CLOTHING MANUFACTURERS

First Applicant

MAYTEX LINEN CC

Second Applicant

SUPER OCEAN TRADING CC

Third Applicant

MAYTEX CARDING CC

Fourth Applicant

CRUISE COLLECTIONS CC

Fifth Applicant

TWIN CLOTHING MANUFACTURERS (PTY) LIMITED

Sixth Applicant

APPAREL INDUSTRIES (PTY) LIMITED

Seventh Applicant

CLEMATIS TRADING (PTY) LIMITED

Eighth Applicant

GLOBAL SOURCE (PTY) LTD

Ninth Applicant

SUNNINGDALE TRADING (PTY) LTD

Tenth Applicant

and

EDCON LIMITED (IN BUSINESS RESCUE)

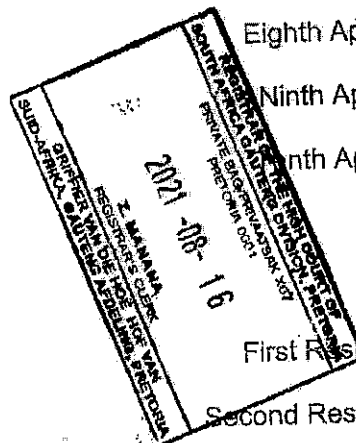
First Respondent

PIERS MARSDEN
(Joint business rescue practitioner)

Second Respondent

LANCE SCHAPIRO
(Joint business rescue practitioner)

Third Respondent



NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicants intend making application to the above Honourable Court for an order in the following terms:-

1. The applicants are given leave to institute action proceedings against the first respondent in terms of Section 133(1)(b) of the Companies Act of 2008 ("the Act") and are directed to do so within thirty days of the grant of this order.
2. The applicants are given leave to join the creditors of the first respondent, in the action proceedings, as a group to be referred to as "*the Creditors of Edcon Limited in Business Rescue*".
3. The applicants are given leave to serve the action proceedings on the Creditors of Edcon Limited in Business Rescue by way of substituted service via the provisions of Section 145(1)(a) of the Act.
4. The second and third respondents are directed to serve the action proceedings on the Creditors of Edcon Limited in Business Rescue, within five days of receipt of same from the applicants, in accordance with the provisions of Section 145(1)(a) of the Act, and to forthwith deliver an affidavit in confirmation of the fact that they have done so.

5. The applicants are directed to pay to the second and third respondents all the reasonable costs incurred by the second and third respondents in giving effect to the order in paragraph four.
6. Alternatively to paragraphs three, four and five, it is declared that notice by the second and third respondents as contemplated in Section 145(1)(a) of the Act will constitute substantial compliance with the requirement to serve the action proceedings on the Creditors of Edcon Limited in Business Rescue and will be sufficient to satisfy such requirement.
7. There be no order as to costs save in the event of one or more of the respondents opposing this application in which event such respondent or respondents be directed to pay the costs of the application with such costs to include those consequent upon the employment of two counsel.
8. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavit of **YUSUF AHMED SADEK VAHED**, with supporting annexures, will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed the address of their undersigned attorneys as the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required to:-

- a. within five days after receipt of the notice of motion, to deliver to the applicants written notice of your intention to oppose and in such notice to appoint an address within fifteen kilometres of the office of the Registrar at which you will accept notice and service of all documents in these proceedings; and
- b. within fifteen days after filing your intention to oppose deliver your answering affidavits, if any.

If no notice of intention to oppose be given, then application will be made to the above Honourable Court on _____ 2021 for the relief sought herein

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY.

Dated at _____ on this the ____ day of AUGUST 2021.



Kaumba Jona
PATHER AND PATHER INC.
Durban
c/o **MACROBERT INC**
Applicants' Attorneys
MacRobert Building
Corner Justice Mahomed and
Jan Shoba Streets
Brooklyn, Pretoria
Tel: 012 425 3451
Ref: Adriaan van Niekerk

To: The Registrar of the High Court
PRETORIA

And to: First Respondent
EDCON LIMITED (IN BUSINESS RESCUE)

And to: Second Respondent
PIERS MICHAEL MARSDEN
Suite 231, Building 2
Oxford at Glenhove.

And to: Third Respondent
LANCE SCHAPIRO
114 Oxford Road, Houghton Estate
Johannesburg

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No:

In the matter between:

KINGSGATE CLOTHING (PTY) LIMITED t/a MAJESTIC CLOTHING MANUFACTURERS, PRINCETON SCHOOLWEAR MANUFACTURERS AND STAR CLOTHING MANUFACTURERS	First Applicant
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SUPER OCEAN TRADING CC	Third Applicant
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TWIN CLOTHING MANUFACTURERS (PTY) LIMITED	Sixth Applicant
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CLEMATIS TRADING (PTY) LIMITED	Eighth Applicant
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GLOBAL SOURCE (PTY) LTD	Ninth Applicant
-------------------------	-----------------

SUNNINGDALE TRADING (PTY) LTD	Tenth Applicant
-------------------------------	-----------------

and

EDCON LIMITED (IN BUSINESS RESCUE)	First Respondent
------------------------------------	------------------

PIERS MARSDEN (Joint business rescue practitioner)	Second Respondent
---	-------------------

LANCE SCHAPIRO (Joint business rescue practitioner)	Third Respondent
--	------------------

FOUNDING AFFIDAVIT




I, the undersigned,

YUSUF AHMED SADEK VAHED

do hereby make oath and say:

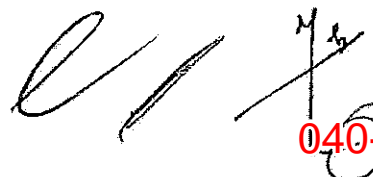
INTRODUCTION

1. I am a Director and the Chief Executive Officer of Kingsgate (Kingsgate Clothing (Pty) Ltd v/a Majestic Clothing Manufacturers, Princeton Schoolwear Manufacturers and Star Clothing Manufacturers – "Kingsgate"). Kingsgate is a company duly registered and incorporated under the laws of South Africa and has its principal place of business at 240/242 Mathews Meyiwa Road, Durban. I am duly authorised to depose to this affidavit and to bring this application on its behalf.
2. The facts deposed to herein fall within my personal knowledge and are, to the best of knowledge, true and correct.
3. Where I make submissions, I rely on advice duly received.




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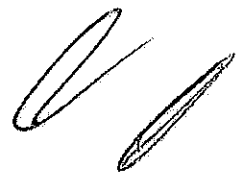
THE PARTIES

4. The applicants are all suppliers of merchandise to Edcon Limited, now in Business Rescue ("Edcon"), and are all concurrent creditors in Edcon.
5. The second applicant is Maytex Linen CC, a close corporation, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 148/154 Lansdowne Road, Jacobs, Durban.
6. The third applicant is Super Ocean Trading CC, a close corporation, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 148/154 Lansdowne Road, Jacobs, Durban.
7. The fourth applicant is Maytex Carding CC, a close corporation, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 148/154 Lansdowne Road, Jacobs, Durban.
8. The fifth applicant is Cruise Collection CC, a close corporation, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 39 Churchill Road, Stamford Hill, Durban.

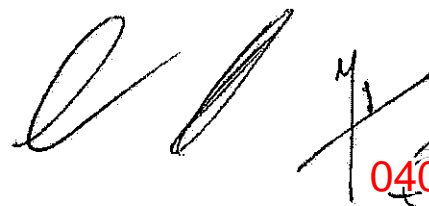


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9. The sixth applicant is Twin Clothing Manufacturers (Pty) Limited, a private company, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 858 Umgeni Road, Durban.
10. The seventh applicant is Apparel Industries (Pty) Limited, a private company, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 8 Columbus Road, Verulam, Durban.
11. The eighth applicant is Clematis Trading (Pty) Limited, a private company, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 218 Mathews Meyiwa Road, Stamford Hill, Durban.
12. The ninth applicant is Global Source (Pty) Ltd, a private company, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 10 Corobrik Place, Riverhorse Valley, Durban.


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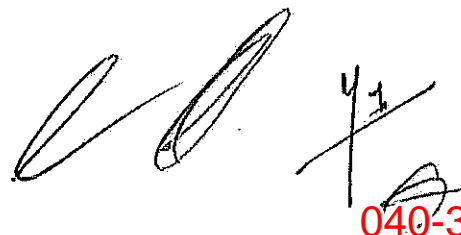
13. The tenth applicant is Sunningdale Trading (Pty) Ltd, a private company, duly registered and incorporated under the laws of the Republic of South Africa and which has its principal place of business at 10 Corobrik Place, Riverhorse Valley, Durban.
14. The first respondent is Edcon Limited ("Edcon") which is a juristic entity which is duly incorporated and registered in terms of South African law.
15. The second respondent is Piers Michael Marsden ("Marsden"), an adult male business rescue practitioner carrying on business at Suite 231, Building 2, Oxford at Glenhove. Applicants understand that Marsden is one of the principals of Matuson and Associates who specialise in Business Rescue Practice.
16. The third respondent is Lance Schapiro, an adult male business rescue practitioner carrying on business at 114 Oxford Road, Houghton Estate, Johannesburg. Applicants understand that Schapiro is employed by Matuson and Associates who specialise in Business Rescue Practice.
17. The second and third respondents are the duly appointed joint Business Rescue Practitioners to Edcon.



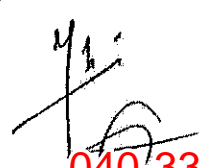

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OVERVIEW

18. Edcon, as constituted from time to time, has conducted business as a retailer of merchandise since or about 1929, having first opened its doors in Johannesburg on Joubert Street, by two brothers Morris and Eli Ross.
19. Kingsgate, as constituted from time to time, has been in existence since 1955 and has been conducting business with Edcon, as constituted from time to time, for over 50 years.
20. The second to fourth applicants have been in business for approximately 23 years and have conducting business with Edcon, as constituted from time to time, for a period of approximately 16 years.
21. The fifth applicant has been in business since 2004 and has conducted business with Edcon, as constituted from time to time, for a period of 9 years.
22. The sixth applicant has been in business since 1966 and has conducted business with Edcon, as constituted from time to time, for approximately 17 years.

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23. The seventh applicant has been in business since 1971 and has conducted business with Edcon, as constituted from time to time, for approximately the same period of time.
24. The eighth applicant has been in business since 2012, with its chief executive officer having dealt with Edcon, as constituted from time to time, for a period of 35 years.
25. The ninth applicant has been in business since 1999 and has been conducting business with Edcon, as constituted from time to time, for approximately 19 years.
26. The tenth applicant has been in business since 2010 and has been conducting business with Edcon, as constituted from time to time, for approximately 11 years.
27. As is well known, and it is respectfully submitted the above Honourable Court may take judicial cognizance thereof, Edcon was placed under voluntary business rescue on or about 30 April 2020, leaving behind a trail of unpaid concurrent creditors anywhere between R2.5-billion to R4.3-billion (the exact amount has never been made clear) being due to receive the sum of 4 cents to 6 cents in the Rand.



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28. The applicants constitute a number of these unpaid concurrent creditors of Edcon, in the total sum of R109'989'002.35, in the circumstances outlined herein below. (*"the applicants' unpaid debt"*)
29. In the not unrelated application brought by the applicants against Edcon in terms of which the applicants rely upon their reservation of ownership of the goods supplied by them to Edcon, and in regard to which the applicants intend to make application for that proceeding, after its referral to oral evidence or trial, to be heard together with the action proceedings in contemplation, the applicants set out the details as well as all the documents and other evidence furnished by them to the Business Rescue Practitioners in support of the applicants' unpaid debt.
- 30.
- 30.1 This information was furnished to the Business Rescue Practitioners by no later than 11 August 2020. To date hereof, the Business Rescue Practitioners have not reverted with any substantive dispute or challenge in regard to the applicants' unpaid debt with respect to whether or not applicants did supply merchandise to that value to Edcon for which the applicants have not been paid. That claim was referred to arbitration and the result went against the applicants (on the finding that there had been no



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reservation of ownership) who have sought to review the finding of the Learned Arbitrator.

30.2 Up until the arbitration, the Business Rescue Practitioners had not reverted with regard to the quantum of the applicants' unpaid debt nor have they done so to date hereof. (It does not behove the second and third respondents to assert that they were not required to deal with the quantification because the review went against the applicants. Even for purposes of the 4-cents to 6-cents in the Rand, the second and third respondents would have to undertake a quantification exercise.).

31. This is consistent with the conduct of the Business Rescue Practitioners who, in the respectful view of the applicants, appear to have focussed their energies on securing maximum benefit for the secured creditors of Edcon. In their monthly statutory reports, the Business Rescue Practitioners' constant refrain, up until the present time, is that they are still busy reconciling the claims of concurrent creditors.

RELIEF SOUGHT

32. The applicants seek an order in the following terms:-



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- 32.1 Leave is granted to the applicants to institute action proceedings against Edcon in terms of Section 133(1)(b) of the Act;
- 32.2 Leave is granted to the applicants to join the creditors of Edcon, in the contemplated action proceedings, as a grouping to be referred to as "*the Creditors of Edcon Limited in Business Rescue*";
- 32.3 Leave is sought to serve the action proceedings by way of substituted service on all of the creditors of Edcon by directing the second and third respondents to effect such substituted service in the manner as contemplated in Section 145(1)(a) of the Act and the regulations thereto;
- 32.4 An order directing applicants to pay all the reasonable costs incurred by the second and third respondents in effecting such service in the manner contemplated;
- 32.5 Alternatively to paragraphs 32.2, 32.3 and 32.4 it be declared that the notice to be given by the Business Rescue Practitioners under the provisions of Section 145(1)(a) of the Act be considered substantial compliance with the applicants' obligation to serve the action



proceedings on the Creditors of Edcon Limited in Business Rescue and be regarded as sufficient compliance therewith.

33. This affidavit will address the following topics for the ease of reading and benefit of the above Honourable Court:-

33.1 Edcon's reassurances regarding its financial well-being;

33.2 The June / July 2019 re-structuring;

33.3 The March 2020 lockdown

33.4 The onset of business rescue proceedings in respect of Edcon:

33.4.1 The Business Rescue Practitioners' historical relationship with relevant parties;


33.4.2 Partiality of the so-called Chairperson of the Creditors' Committee;

33.4.3 Partiality of the Business Rescue Practitioners to the interests of the secured creditors of Edcon;



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040-37

- 33.4.4 Furnishing of documentation reasonably required;
- 33.4.5 Failure to consult;
- 33.4.6 The Section 151 Meeting convened to Adopt the Business Rescue Plan;
- 33.5 The Subordination agreements;
- 33.6 Instruments of security;
- 33.7 The Hollard transaction;
- 33.8 Leave to sue in terms of Section 133(1)(b) of the *Act*;
- 33.9 Leave to join the creditors of Edcon;
- 33.10 Leave to serve on the Creditors of Edcon Limited in Business Rescue by way of substituted service; and
- 33.11 Costs.


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040-38

EDCON'S REASSURANCES REGARDING ITS FINANCIAL WELL-BEING

34. Pattison, the Chief Executive Officer of Edcon, gave public interviews, towards the end of 2018, of and concerning the financial position of Edcon and the plan to recapitalise Edcon.
35. In this regard, I refer the above Honourable Court to annexures **FA1** and **FA2** being the transcriptions of an interview that Pattison had on 21 December 2018. The above Honourable Court is referred to the transcribers' confirmation, being a sworn transcriber of the above Honourable Court, that the transcription is a true and accurate reflection of the interview, as recorded in **FA3** hereto.
36. As recorded in video 1, Pattison was requested to put a total value on the proposed recapitalisation plan for Edcon. Pattison responded in the following terms:-

"Yes, thank you for having me. It's probably in the order of about R3 billion, the current plan as it is written, and that amount of money, with the conversion of all our existing debt into equity means that Edcon will have a good runway, such that management and staff can focus on fixing the business rather than worrying about the sustainability of the business."



37. He confirmed that the restructuring involved "debt to be converted into shares".
38. In video 2, the interviewer enquired "*so, obviously, you are saying in your statement that details are very thin at the moment. But, can you tell us how far, what components of that restructuring plan goes to recovery here, Grant Pattison?*"
39. Pattison's response was:-

"The business needs to convert its debt to equity, make sure it's got enough Capital i.e. cash and that to operate for the next few years, not just the next few months as we have been doing recently. This allows management and employees to be able to concentrate, not so much on the security of the business but concentrate on customers and restoring the customer confidence in the business."





THE JUNE / JULY 2019 RE-STRUCTURING

40. It would appear that the contemplated restructuring of the Edcon Group was finally consummated during June/July 2019 as was widely reported in the media.
41. In this regard, I refer the above Honourable Court to annexure **FA4** hereto, being a report of an Interview, held with Pattison, by Adele Shevel in the BL Premium. I set out relevant extracts therefrom:-
- 41.1 *"Edcon, the 90-year-old retail colossus which last year came within an inch of collapsing into the scrap heap like rival Stuttafords, has been saved-for now, at least".*
- 41.2 *"It's a verdict that has been out till now but last week, the R2.7bn for Edcon's "restructuring" landed in its bank account. It was touch and go for a while but it's fair to say that the rescue deal for SA's largest clothing retailer can be deemed a success".*
- 41.3 *"Edcon, which first opened its doors at It goes in Joburg's Joubert Street in 1929 thanks to brothers Morris and Eli Ross, is still alive is chiefly due to one man: Grant Pattison;"*



040-41

- 41.4 *"But banks and landlords said that they would only support the deal if it included the Public Investment Corp (PIC), the state-owned company which manages pensions of government employees. Given the PIC's own internal ructions, that was never certain."*
- 41.5 *"In the end, the state-owned Unemployment Insurance Fund (UIF), whose money is managed by the PIC, agreed to put in cash. Pattison's pitch to them was, if you don't help us, you have 140,000 extra people claiming from the fund."*
- 41.6 *"In the end, the final plan was sealed in December: 21 landlords agree to inject R1 bn into the company in exchange for 5% and 10% of Edcon's shares, the UIF would get 19% of the shares, and the banks, investors and staff hold the rest."*
- 41.7 *"But perhaps the main lesson we learnt was that a company needs to ensure it can keep its independence, otherwise the banks take control. You have to pay for advisers who act against you, and you have to pay for them, monthly, in pounds."*



040-42

41.8 Presciently, Pattison is recorded as stating: "*I will always be checking in with myself if this is the best thing for the company, not just for shareholders... It's quite hard to figure out what part of capitalism you believe in. If you just think about shareholders, the Bain deal was a great deal. If you think about just the company, it wasn't.*"

42. The restructuring that took place in the middle of 2019 must be seen against the backdrop of what Pattison said at the end of 2018, namely that the object was to convert debt into equity and that Edcon was looking for not just a short-term solution.

MARCH 2020 LOCKDOWN

43. From about June/July 2019 and thereafter, the applicants continued servicing and supplying merchandise to Edcon.
44. The applicants felt reassured with regard to Edcon's financial well-being and they continued supplying goods to Edcon believing it to be debt free.
45. Various orders for merchandise were in fact placed with the applicants as late as in March 2020 by Edcon as recorded in the detailed information submitted



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to the Business Rescue Practitioners. This was one month prior to Edcon being placed in business rescue.

THE ONSET OF BUSINESS RESCUE PROCEEDING IN RESPECT OF EDCON

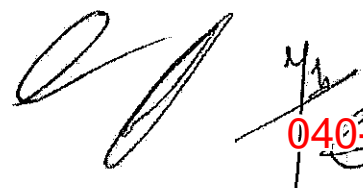
46. On 31 March 2020 the Edcon Group Chief Executive Officer tweeted:-

"Also no need to speculate how we we (sic) doing before the President's announcement on the 15th, you just had to ask. In January/Feb we increased sales relative to over 6%. In March we were doing even better, before the announcement."

47. I attach hereto marked annexure **FA5**, a copy of the aforementioned tweet.

48. Accordingly, the applicants were in shock when Edcon went into voluntary business rescue on 30 April 2020 in circumstances where the Edcon Group Chief Executive Officer had tweeted that Edcon was actually doing better in 2020 than the previous year.

49. Needless to say, if Edcon had advised the applicants, during the early part of 2020, that Edcon was in a financially difficult situation they would have reduced their exposure or stopped selling goods to it completely.

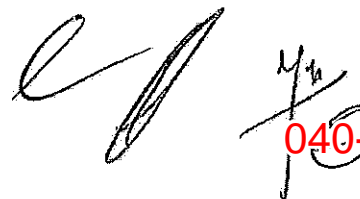


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50. In any event I refer the above Honourable Court to annexure **FA6** hereto which records the resolution passed by a meeting of the board of directors and more particularly Pattison recording the voluntary placing into business rescue of Edcon that:-

“as the company is unable to pay certain of its debts and as it appears to be reasonably unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months, the Company is therefore financially distressed within the meaning of section 129 (1) (a) of the Companies Act 71 of 2008, as amended (“the Act”).

2. *As there appears to be a reasonable prospect of rescuing the Company in terms of section 129 (1) (b) of the Act and/or if it is not possible for the Company to so continue in existence, there exists a reasonable prospect that Business Rescue Proceedings will result in a better return for the Company's creditors or shareholders, then would result from the immediate liquidation of the Company, the Company should begin voluntary business rescue proceedings in terms of section 129 of the Act.”*



040-45

51. I deal with the business rescue proceedings in order to provide background and in order to contextualise the relief that the applicants will seek in the action proceedings.
52. In this regard, the entire business rescue proceedings have resulted in a travesty of justice for the unpaid concurrent creditors, including the applicants, which is dealt with more fully hereunder.
53. The entire business rescue proceedings have been epitomised by a lack of financial transparency, has been shrouded in secret, and critically there has been an abject refusal to "come clean" to the body of the unsecured concurrent creditors with regard to the entire financial picture of the Edcon Group.
54. It is not the intention of the applicants to seek the setting aside of the Business Plan but to merely record what the applicants contend is the ***continuation of the corporate damage*** which has been perpetrated on the concurrent creditors.
55. Section 7(k) of the Companies Act of 2008 ("the Act") sets out that the purpose of the Act is to "***provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders***". This was infringed and the only





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parties whose interests were served and catered for, by the Business Rescue Practitioners, were the secured creditors.

56. We say so for the reasons that follow.
57. The Business Rescue Practitioners were clearly conflicted when regard be had to what is herein set out below.
58. The process of business rescue undertaken by the Business Rescue Practitioners breached numerous provisions of the Act.
59. The requirements set out in the Act were not followed as will be outlined hereunder.

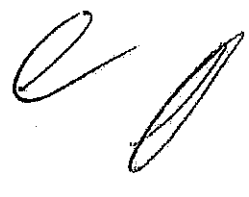
The Business Rescue Practitioners Historical Relationship with all Relevant Parties

60. On 16 December 2018 (*some fifteen months before Edcon was placed into voluntary business rescue*), a few days before the interviews aforesaid, the Sunday Times recorded that Edcon bosses met with major landlords on 7 December 2018 at law firm ENS Africa's offices in Sandton (*the first, second*



040-47

and third respondents' attorney of record) to discuss a proposal (FA7). Although this is hearsay, the applicants do not believe that this is in dispute.

61. The high-level meeting was chaired by former Investec Bank Chief Executive Officer, Stephen Koseff, ENS Africa chair, Michael Katz and Matuson & Associates. Matuson & Associates were tasked with arranging the restructuring of Edcon and all the secured creditors had to sign non-disclosure agreements to literally "***gag them***" from revealing the terms thereof.
62. In this regard, and as recorded in the minutes of the Creditors' Committee meeting dated 15 June 2020 (*para 51 of FA8*), Marsden ***attempted to minimise and dilute*** the role that Matuson & Associates had played at the time, by contending that all that they had attended to was to do a liquidation calculation to see what the lenders would receive in a liquidation scenario as well as to liaise with certain of the landlords in order to obtain a rental reduction.
63. Even if that was all they undertook, which is disputed, one still had **the exact same firm** which was integrally involved in certain aspects of the restructuring of Edcon some fifteen months before it was placed into voluntary business rescue.






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64. It is respectfully submitted that Business Rescue Practitioners are obliged to be independent and at the very least have the aura of independence, which, from the onset of the business rescue proceedings, was clearly missing.

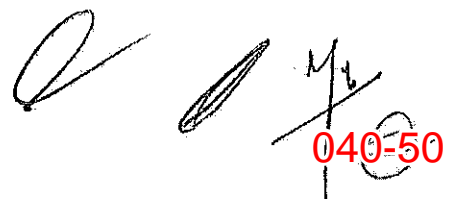
The basic requirement of a business rescue practitioner looking after the interests of all stakeholders from inception, was lacking. And one can only speculate as to the quantum of the consultancy fees Matuson & Associates' generated from that task, which, as set out below, the Business Rescue Practitioners refuse to disclose.

Partiality of the so-called Chairperson of the Creditors' Committee

65. The Business Rescue Practitioners imposed one Juliette de Hutton ("**de Hutton**") as a so-called independent attorney to assist the concurrent creditors in the Creditors Committee by serving as its Chairperson.
66. De Hutton was most certainly not independent despite the recordal of this in the Business Rescue Plan attached hereto marked annexure **FA9** ("**the Plan**") and more particularly paragraph 7.3.2.2 wherein it is recorded that she "**was appointed as the independent chairperson of the Creditors' Committee**".

   040-49

67. In fact, de Hutton has had, and continues to have, an ongoing business relationship with the current Business Rescue Practitioners in other major business rescue proceedings, such as the business rescue proceedings of South African Airways.
68. Accordingly, it would seem that she is beholden to them.
69. This is not the only ground upon which this contention is made.
70. At all material times the concurrent creditors wished to see the security instruments that had been concluded between the secured creditors and Edcon, because it was on the strength of these secured instruments that secured many of Edcon's assets, that it was determined by the Business Rescue Practitioners that the concurrent creditors would only receive 4-cents to 6-cents in the Rand. The lion's share accruing to the secured creditors.
71. In this regard, I refer the above Honourable Court to paragraph 5.3 of the Plan wherein the background to Edcon's alleged financial distress is set out. What is noteworthy is that the picture that Pattison painted of a debt-free first respondent, as aforesaid, was clearly untrue.



040-50

72. Of critical importance is the allegation in paragraph 5.3.2 in the Plan which records that "**the 2019 Restructuring was a Group-wide debt restructuring and refinancing in order to ensure the continued operation of the largest retailer in sub-Saharan Africa and the retention of tens of thousands of jobs**".
73. Accordingly, the Business Rescue Practitioners recognise that there was a restructuring of the Group debt albeit only one company in the Group was placed in business rescue, that being Edcon.
74. In this regard the Plan contained the following averments of and concerning the issue of the secured instruments:-
- 74.1 the allegation is made in paragraph 5.3.3.2 that the 2019 restructuring involved "***the restructure of R10 billion of existing financiers' debt, either through capitalisation or refinance as convertible indirectly-secured guaranteed instruments***".
- 74.2 in paragraph 9 the security of Edcon is recorded as being that which is set out in annexure B. Accordingly, annexure B was alleged to be a complete list of all the material assets of the Company at book value, as well as an indication as to which assets were held as security by Creditors as at the Commencement Date.



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- 74.3 upon a perusal of annexure B, attached to the Plan, the assets, which were alleged to be the subject to the security of Creditors, were not listed.
- 74.4 paragraph 13 of the Plan recorded that Edgars was the "**sole holder of the Company's issued securities**".
75. It was in those circumstances that the concurrent creditors requested to see these instruments of security in order to ascertain their terms, the legality thereof and the like. These instruments have never been made available to the concurrent creditors.
76. Instead, what happened, was that Marsden said he would make it available to de Hutton and de Hutton undertook to consider them as recorded in the minutes of the meeting of concurrent creditors on 4 June 2020. A copy of which is annexed hereto marked (**para 15.11 of FA10**).
77. De Hutton apparently had regard to the instruments and advised that they could not be set aside.





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78. Evidence of de Hutton's lack of transparency in regard to the instruments of security is evident in the same minutes of the Creditors Committee (*para 15.10 of FA10*) where it is recorded that after she offered to review the instruments of security, her knee-jerk immediate comment was that she **"confirmed that there was unlikely to have been any impropriety in the process."**
79. Furthermore, de Hutton addressed annexure **FA11** to the members of the Concurrent Creditors Committee on 20 July 2020, of which I was a member, recording the following:-

"My personal views, again not the views of the committee, are:

- ***that the BRPs inherited a very difficult set of facts and circumstances not of their making;***
- ***They have done their best under challenging circumstances to balance the rights of all stakeholders;***
- ***The situation that concurrent creditors find themselves in is extremely unpleasant and I have huge sympathy for them;***



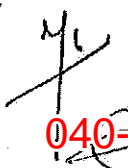

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- ***The BRPs cannot change the facts and have tried to ensure the best possible outcome for all stakeholders."***

80. It is respectfully submitted that whether or not the Business Rescue Practitioners inherited a difficult scenario is irrelevant. Her statement to this effect betrays a fundamental failure to appreciate that almost every Business Rescue Proceeding is difficult and challenging and is no excuse for any shortcomings on the part of Business Rescue Practitioners.
81. As aforesaid, de Hutton has an ongoing business relationship with the Business Rescue Practitioners, which one must assume must be lucrative, and will accordingly not adopt a position which will not align with the interests of the Business Rescue Practitioners and is accordingly unlikely to adopt a position which does not align with the interests of the Business Rescue Practitioners.

Partiality of the Business Rescue Practitioners to the interests of the secured creditors of Edcon

82. In terms of section 138(1)(d) of the Act, it is clear that the purpose of this provision is to ensure that the business rescue practitioner has not had any



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prior dealings with the company in which he is appointed that would place his independence and impartiality in doubt.


83. I have alluded to hereinabove, under the rubric "*the business rescue practitioners', historical relationship with all relevant parties*" to the prior dealings that the Business Rescue Practitioners had with Edcon which clearly placed their independence and partiality in serious question.
84. Despite the statutory obligation resting on the Business Rescue Practitioners to balance the interests of all relevant parties in the business rescue proceedings, as with de Hutton, the Business Rescue Practitioners appeared, at all times, to be overtly partial towards the interests of the secured creditors to the detriment of the concurrent creditors.
85. As recorded hereinabove under the rubric "*the business rescue practitioners' historical relationship with all relevant parties*" it bears mention that the contents of the meetings held in December 2018 were never voluntarily disclosed by the Business Rescue Practitioners to the concurrent creditors.
86. This gives rise to the question as to why this was not so disclosed? By not doing so, they have succeeded in creating a suspicion that at the relevant time what happened was that the secured creditors were afforded protection to allow for the eventuality of a failure and in the event of such a failure the



040-55

concurrent creditors would be the sacrificial lambs at the altar of commercial expediency and avarice.

87. This prior association alone contaminates the appearance of any impartiality, integrity and objectivity.
88. The fees generated in a business rescue of this nature stand to run potentially into the tens of millions of Rand. It is common knowledge that Matuson & Associates together with de Hutton and ENSAfrica (*the identical team*) are involved in the business rescue proceedings currently being undertaken by SA Airways and where the fees raised by the Business Rescue Practitioners have been called into question by the Minister of State-owned Enterprises.
89. Additionally, one of the Business Rescue Practitioners, Marsden is resident in Canada in circumstances where a business rescue practitioner is obliged to step into the shoes of the managing director of the company under business rescue in order to conduct the business.
90. In any event, their partiality and abject failure to meet their statutory obligations is manifest in the respects set out hereunder.

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Furnishing of Documentation Reasonably required

91. In terms of section 150 of the Act, the business rescue plan proposed by the Business Rescue Practitioners must contain all the information reasonably required to facilitate the various stakeholders in deciding whether or not to accept or reject the proposals made in the plan.
92. Accordingly, affected parties are entitled to documentation "**reasonably required**" to facilitate them in deciding whether or not to accept or reject the business rescue plan in due course.
93. Under the Act, any person armed with a judgement is entitled to a copy of the financials of a company. In the present circumstances, it beggars belief that the Business Rescue Practitioners could on any conceivable basis withhold pertinent financial information from concurrent creditors, who have an admitted indebtedness of R2.3-billion, as recorded in the Plan.
94. Until about 2017, the financial statements for Edcon and for the Edcon Group were posted on the Edcon website and were freely accessible and available to any member of the public. This although Edcon is not a listed public company. Inexplicably, this stopped being available coinciding with the time of the restructuring giving rise to the question as to what it is that Edcon wants to conceal.

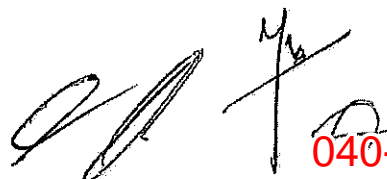


95. The second and third respondents simply refuse to make these financial statements available asserting that it contains historical information which is of no value going forward. But that is not for the Business Rescue Practitioners to decide. Surely if there was nothing to conceal, those financial statements would be made readily available. Why are they not so made available to the applicants and all the other concurrent creditors? What is it that they do not want the applicants to see?
96. This gives rise to the anomaly of someone with a judgment of R1'000.00 against Edcon being able to demand a copy of the financial statements against payment of a nominal fee but concurrent creditors owed at least R2.3-billion are not entitled to have sight of same according to the Business Rescue Practitioners.
97. This more so, bearing in mind the principles of proper governance and transparency which was explicitly recognised by the Department of Trade and Industry, which published a Policy Paper titled South African Company Law Reform ("**Policy Paper**") and did so in Government Gazette 26493 of 23 June 2004.



040-58

98. It envisaged that company law should promote the competitiveness and development of the South African economy by, *inter alia*, encouraging transparency and high standards of corporate governance.
99. The Policy Paper also stated that the framework of company law should be such that it reflects the recognition that a company is a social as well as an economic institution and accordingly that a company's pursuit of economic objectives should be constrained by social and environmental imperatives.
100. In light thereof, it is respectfully submitted that this Honourable Court should have regard to the fact that the Company is both a social as well as an economic institution and that it is no longer acceptable to view a company, under our law, as being an entity, which is entitled to devote itself purely to mercantile and economic objectives. Such objectives must be constrained by social imperatives.
101. The Business Rescue Practitioners furthermore failed to provide the applicants with all documentation reasonably required in order to enable them to decide whether or not to accept or reject the business rescue plan. The applicants were prejudiced in this regard and on this ground, amongst others, in fact launched an urgent application seeking the adjournment of the meeting that had been set down for the adoption of the Plan.



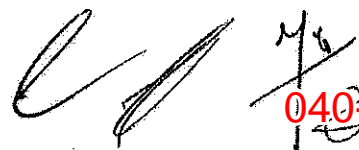
040-59

102. The urgent court, adjudicating upon the matter, determined that in the event that the applicants required further information and documentation, they could seek an adjournment of the meeting that had been set down for the adoption of the Plan and accordingly removed the urgent application from the roll.
103. The Business Rescue Practitioners, displaying their partiality towards the secured creditors, have refused to produce the following categories of critical information to the concurrent creditors.
104. Given the historical business relationship between the Business Rescue Practitioners and the prescripts of section 138(1)(d) of the *Act* which demands impartiality and independence on the part of the Business Rescue Practitioners, sight was required of their past consultancy fees/mandate agreement that had been concluded between the Edcon Group and the Business Rescue Practitioners. This might have dispelled all notions of partiality.
105. The Business Rescue Practitioners refused to produce this category of documentation.



040-60

106. The Business Rescue Practitioners refused to divulge Edcon's cash, inventory levels and financials, as dealt with more fully hereunder, being a simple matter of financial transparency, and being open with the parties who have been affected the most.
107. As aforesaid, there was the blanket refusal to furnish the documentation pertaining to the instruments of security which Edcon concluded with its creditors, securing assets of Edcon, which is likely to result in the receipt of 4-cents to 6-cents in the Rand by the concurrent creditors, once all the secured creditors have been paid. (As compared to this, when Marsden was asked at the meeting held to adopt the Plan whether the secured creditors would receive nearly all their monies back, that is not only from Edcon but from the entire Edcon Group, Marsden confirmed that that was correct).
108. The Business Rescue Practitioners have simply refused to make available Edcon's annual financial statements or the Edcon Group's consolidated annual financial statements to enable the concurrent creditors to investigate what the true financial position is. This in order to properly consider whether the Edcon Group annual financial statements as well as the annual financial statements of Edcon present a true and fair view of the overall position of Edcon.



040-61

109. The applicants required sight of the annual financial statements because this would have contained the following critical financial information:-

109.1 the directors' report;

109.2 the going concern principles;

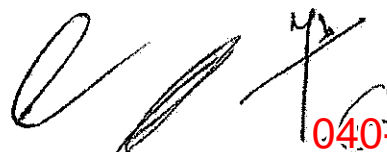
109.3 the audit committee reports including but not limited to the going concern principles which govern it;

109.4 the audit committee report in regard to the solvency and liquidity review; and

109.5 any independent's auditors' report.

110. It is respectfully submitted that a company the size of Edcon, and given its public interest score, would have been required to have audited financial statements even though it is a subsidiary.

111. More fundamentally, the Business Rescue Practitioners calculated the eventual dividend that would be generated by the Business Rescue.



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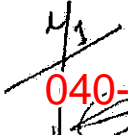
112. In this regard the attorneys of the Business Rescue Practitioners recorded in correspondence addressed to the applicants' attorney of record on 19 June 2020 in terms of annexure **FA12** that (FA-ENS correspondence dated 19 June 2020 addressed to the applicants' attorney of record):-

"16.2 Notwithstanding this, the liquidation calculation was prepared by Deloitte, which, despite being Edcon's auditors, remains an external and independent third party.


16.3. The anticipated business rescue dividend was calculated by our clients.

16.4 Our clients have carefully considered the asset and liability position of Edcon and are satisfied with the probable dividend indicated in the business rescue plan to be received by creditors if Edcon were to be placed in liquidation.

113. Accordingly, it is very unsatisfying that the anticipated business rescue dividend was calculated by the Business Rescue Practitioners and not independent auditors. Additionally, and as is readily apparent here from, the asset and liability position of only Edcon was taken into account in determining the probable dividend to be received by the creditors if Edcon was placed into liquidation.







040-63

114. The veil of secrecy and silence, apart from the abject lack of transparency which was supposed to permeate the conduct of the business rescue proceedings, was also very much evident in the conduct of Deloitte.
115. Deloitte refused to "*put their money where their mouth is*" in regard to the provision of financial information sought from them, to demonstrate the manner in which they arrived at the dividend that would be achieved by the potential liquidation of Edcon.
116. In this regard Deloitte insisted that a "*No Harm*" document be signed, absolving them from all liability as recorded in *FA12* (ENS correspondence dated 19 June 2020 addressed to the applicants' attorney of record).
117. De Hutton likewise, to the knowledge of the applicants, made no effort to obtain the annual financial statements of Edcon nor the Edcon Group consolidated annual financial statements in the circumstances outlined herein above.
118. Four creditor committees were set up by the Business Rescue Practitioners under the Business Rescue, these being for the landlords, the secured creditors, the concurrent creditors and the employees.



040-64

119. The Business Rescue Practitioners have failed to make available to the concurrent creditors, including the applicants, the minutes of the meetings that they have held with the secured creditors and with the landlords.
120. It does not behove the Business Rescue Practitioners to assert any kind of confidentiality with regard to the minutes of the meetings held with the landlords and the secured creditors.
121. It is quite plain that the Business Rescue Practitioners are determined not to be transparent and not to share with the concurrent creditors anything to do with the landlords and the secured creditors. The question is why? What are they concealing?
122. What exacerbates the matter is that the goods supplied by the concurrent creditors, including the applicants, to Edcon, is what made it possible for Edcon to continue trading during the Business Rescue such that the Business Rescue Practitioners were able to dispose of the Edgars Chain Stores and the Jet Chain Stores to third parties.
123. However, it appears to the concurrent creditors that their goods, unpaid for, is what has made it possible for the secured creditors, presumably including the landlords, to benefit the most out of those dispositions. Despite that being so,



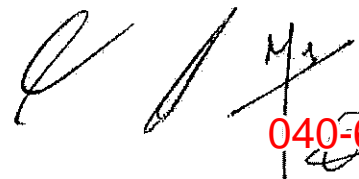
040-65

the concurrent creditors have been treated with disrespect bordering on contempt.

124. That the Business Rescue Practitioners have adopted a cavalier attitude towards the concurrent creditors, including the applicants, is further supported by the fact that at the meeting of 15 June 2020 (*FA8 – para 23*) the representative of Credit Guarantee queried with Marsden as to why certain assets, which did not fall under a general notarial bond, should not be shared amongst all the creditors.
125. In response, Marsden confirmed, in effect, that the Business Rescue Practitioners had made an error and those assets, valued at approximately R75-million, should indeed be available to all creditors. This resulted in a recalculation of the dividend payable to concurrent creditors from the Business Rescue which had the effect of taking the dividend up from 4-cents in the Rand to 6-cents in the Rand.


Failure to Consult

126. The Act prescribes that during the business rescue process, all affected parties are entitled to participate in the development of the Business Plan and be consulted and their views be considered.



Handwritten signatures and initials, including a large signature on the left and initials 'Mz' on the right.

127. This was also breached by the Business Rescue Practitioners.
128. It has authoritatively been held that the meaning of "**consult**" means that there must be sufficient information available for the affected parties and that they must actually be consulted. As aforesaid, vital information was deliberately withheld from the concurrent creditors.
129. Furthermore, and at a substantive level, consultation entails a genuine invitation to provide input and a genuine receipt of that input. Consultation is not to be treated perfunctorily or as a mere formality.
130. Additionally, engagement after a decision-maker has already reached his decision or once his mind has already become "*unduly fixed*" is not comparable with true consultation.
131. In the absence of sufficient and adequate financial information, the concurrent creditors could not even begin to "*consult*" with the Business Rescue Practitioners in the manner required by the Act.





040-67

132. In fact, the Business Rescue Practitioners admonished the applicants for adopting the robust position that they did, given the supine and inert position adopted by de Hutton. **FA12** (ENS correspondence dated 19 June 2020 addressed to the applicants' attorney of record). It recorded the following:-

"Section 149 of the Companies Act sets out the functions, duties and membership of committees of affected persons, which is limited to consultation and the receipt and consideration of reports. Notably, this section specifically prohibits the committees from directing or instructing the business rescue practitioners."


133. The applicants at no stage had any intention of instructing the Business Rescue Practitioners to do anything. All they wanted was a proper opportunity to be informed so that they could decide whether to support the Plan or not.
134. In all the circumstances, this serves to demonstrate the absolute failure and refusal of the Business Rescue Practitioners to meaningfully consult with the concurrent creditors to improve their 4-cents to 6-cents in the Rand dividend.



040-68

The Section 151 Meeting convened to Adopt the Business Rescue Plan

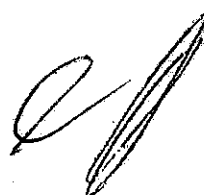
135. The eventual section 151 meeting ("***the meeting***") that had been convened to adopt the business rescue plan on 22 June 2020 was a catastrophe.
136. ***Firstly***, and given that Marsden resides in Canada, the meeting only started very late in the day South African time, and in tranches, obviously to suit his convenience, which could only operate to the extreme prejudice of the R2.3 billion concurrent creditors.
137. ***Secondly***, as recorded in ***FA12*** (ENS correspondence dated 19 June 2020 addressed to the applicants' attorney of record), the Business Rescue Practitioners determined to have the meeting held electronically and alleged that it would attempt "***to make the section 151 meeting as accessible as possible (arguably more accessible than in person meetings)***".
138. Whilst the *Act* countenances meetings by audio-visual means, they must approximate, as far as possible, to physical meetings.
139. However, and more fundamentally, because the process for the discussion of, voting on and possible amendment of the Plan has the potential to be a long and convoluted process, and such an important step in the business rescue process, the subsections in section 152 and 153 of the *Act* provide for



040-69

the meeting to be adjourned from time to time without the need to reconvene and deliver notice of the meeting each time.

140. Additionally, the meeting was conducted via the platform called Microsoft Teams, which platform has been banned for use in China. This entails the Chinese suppliers being precluded from participating during the meeting.
141. What is furthermore of great significance is that the substantial portion of the voting took place before the meeting by means of the filling out of a form which was required to be emailed to the Business Rescue Practitioners. During the course of the meeting, the Business Rescue Practitioners did indicate that they would still permit voting whilst the meeting was in session as well as after the meeting. However, they have never furnished any feedback as to how many votes were cast during and after the meeting.
142. The issue with this is that it would have been better for the voting to have taken place after contemplation and consideration of what was discussed and raised in the meeting for the adoption of the Plan and not prior to the convening of the meeting. In effect, the Business Rescue Practitioners expected the concurrent creditors, amongst others, to vote on the Plan even before the Business Rescue Practitioners had explained the Plan at the meeting!





143. The outcome of the vote was, in effect, concluded prior to the commencement of the meeting, which begs the question as to why there was even the necessity of a meeting if not to merely go through the motions as required in the Act? It would appear that the meeting was undertaken only to tick the box as it were rather than for the purpose of constructive debate in preparation of a considered vote as required by the Act.
144. Thirdly, as recorded in annexure *FA12* (ENS correspondence dated 19 June 2020 addressed to the applicants' attorney of record), it was noted that the creditors would be afforded an opportunity to address any queries and submit any motions contemplated in terms of section 151 of the *Act* in writing during the meeting.
145. It is respectfully submitted that with today's technology, there could have been direct engagement by the Business Rescue Practitioners of questions posed to them; but virtual engagements and debates were disallowed. Questions had to be typed in and were responded to by the second respondent who, as aforesaid, resides in Toronto, Canada.
146. At some point during the course of the meeting, Marsden simply stopped dealing with the typed questions. I attended the meeting and was able to witness this myself. I can confirm that a number of written requests were made to the second respondent which were not responded to by him at all.



040-71

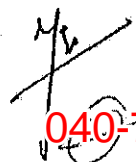
147. At a more fundamental level, the methods adopted by the Business Rescue Practitioners stifled possible debates that could have taken place during the course of the meeting. In those circumstances, this is yet another breach by the Business Rescue Practitioners of the provisions of the Act which provides for discussion and proper debate at the meeting by all interested parties.
148. On the applicants' calculation, only 468 creditors out of the potential 3018 creditors actually cast a vote during the meeting in circumstances where there are 87 secured creditors and 2931 concurrent creditors. Accordingly, this entails that only 15.5% of the creditors voted, which raises concerns of how hard the Business Rescue Practitioners pushed to involve all the concurrent creditors in the process.
149. In fact, as recorded in (*para 44 of FA8*) (15 June 2020 creditors' committee meeting) I specifically raised the fact that an independent third-party ought to be appointed to review the calculation of the vote to approve the Plan. All that Marsden responded was that he would be happy to utilise De Hutton to independently review the calculation of the votes and the examination of proxies. We were never advised as to whether or not this was undertaken and, in any event, as aforesaid, de Hutton's impartiality is not beyond question.



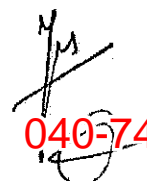
040-72

THE SUBORDINATION AGREEMENTS

150. The Business Rescue Practitioners advised the Creditors Committee on 15 June 2020, in terms of annexure (*paras 4-10 of FA8*), that although the balance sheet of Edcon reflected assets of almost R11-billion, this was misleading. Marsden said, for instance, that the right of use to assets, reflected as R4.1-billion, should be ignored. Furthermore, that properties, fixtures, equipment and vehicles would not realise anything close to the R1.1-billion reflected for those assets in the balance sheet. At the end of the day, it appeared that whilst Edcon had liabilities of about R12-billion to R13-billion, the only real asset was the stock in trade supplied by the Concurrent Creditors.
151. At the same meeting, Marsden was asked as to why Pattison had said on 26 March 2020 that Edcon held R3.2-billion in stock whereas when the Business Rescue Practitioners took over, they could only find stock in the amount of R2.4-billion. Marsden was asked about the missing R800-million worth of stock which had disappeared over the period of the lockdown when Edcon was not trading.
152. Disturbingly, Schapiro said that he could not comment in regard to what Pattison had said!



153. Applicants understand that Edcon entered into inter-creditor agreements regarding the inter-company loans that were concluded between K201 and Edgars, being the two companies immediately above Edcon within the Group, of and concerning Edcon. This leads to the conclusion that the non-disclosure agreements on or about 7 December 2018 as alluded to under the rubric "*the business rescue practitioners' historical relationship with all relevant parties*", must have resulted in the subordination of the shareholder's loans to that of the concurrent creditors, in order to ensure that Edcon could continue trading in a solvent manner.
154. If there was no such subordination of the shareholder creditors' loans, Edcon could not have traded lawfully.
155. However, and as aforesaid, the Business Rescue Practitioners have done everything to avoid delivering up these documents which would have demonstrated the inter-company loans and inter-creditor loans within the Edcon Group including the Subordination Agreements.
156. If the agreements concluded between the creditors and the respondents were above board, then there would simply be no objection to delivering them up to the applicants.



040-74

157. According to the Business Rescue Practitioners and the Plan, most of the assets of Edcon have been secured to the shareholder creditors. This makes a mockery of the subordination of their loans. It amounts to the shareholder creditors saying that they will only receive payment of their loans after all creditors have been paid whilst at the same time asserting that the assets of Edcon are pledged to them! That is perplexing in the extreme and is a fundamental violation of the whole notion of subordination.

INSTRUMENTS OF SECURITY

158. In the event that the shareholder creditors of Edcon subordinated their loans, the instruments of security that were concluded, affording the secured shareholder creditors preferential claims, would amount to sham transactions which require to be set aside.

159. We say so for the reasons that follow.

160. Firstly, subordinating your loan in order to restore the company to solvency, is in order. However, once you enter into instruments of security over the assets of the company you are seeking to restore to fictional solvency, and register notarial bonds in respect thereof, this makes a mockery and a sham of the act of subordination in the first instance.



161. **Secondly**, if the instruments of security were undertaken in terms of the Act, there would simply be no reason to refuse to disclose same. As alluded to hereinabove, when these instruments of security arrangements were concluded between the end of 2018 and the middle of 2019, the secured creditors were all bound to secrecy and compelled to sign non-disclosure agreements. This gives rise to feelings of gross discomfort about the legitimacy of these agreements.
162. **Thirdly**, it is repeated what has hereinbefore been stated, regarding the reason why the instruments of security were so vital to the applicants, in the circumstances such as the present, which resulted in the concurrent creditors, including the applicants, receiving crumbs after the secured creditors' interests had been catered for.
163. **Fourthly**, it begs the question why the Business Rescue Practitioners refused to be transparent in regard to these instruments of security, in circumstances where the Edcon Group CEO had recorded in various media outlets that after the 2019 Edcon Group restructuring, Edcon was debt free.



164. The secured assets that the secured creditors hold are:-

164.1 property, plant, equipment and vehicles;

164.2 investments in subsidiaries and associated companies;

164.3 trade receivables;

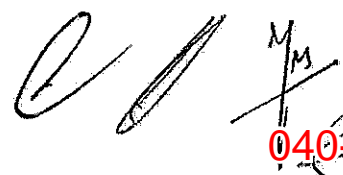
164.4 amounts owed by related parties;

164.5 sundry receivables and prepayments;

164.6 derivative financial instruments; and

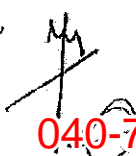
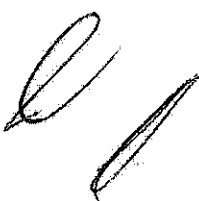
164.7 cash and cash equivalents.

165. The applicants maintain their view that the Business Rescue Practitioners have primarily acted in the interests of the secured creditors, a relationship which commenced in December 2018 when they met with them, and the nondisclosure agreements were concluded with them which in all likelihood resulted in the encumbrances and securing of all of Edcon's assets.



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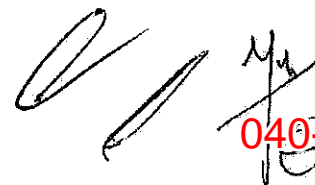
166. Effectively, the Business Rescue Practitioners appear to have preferred the secured creditors over the concurrent creditors in the circumstances outlined hereinabove.
167. As recorded hereinabove, de Hutton was the only party who might have had regard to the instruments of security. And she advised that "*there was unlikely to have been any impropriety in the process*" (it is entirely unclear whether the statement was made before or after seeing the instruments of security). What does that even mean? The question is, was there any impropriety or not?
168. The applicants have set out all of their concerns of and concerning the partiality of de Hutton, hereinabove, and most particularly that she was appointed by the Business Rescue Practitioners at a fee and has an ongoing relationship with them, which she would obviously not actively seek to disrupt in any manner or form.
169. If these instruments of security are set aside, then all of the allegedly secured assets come back and are available for distribution to meet, *inter alia*, the claims of the concurrent creditors.



040-78


THE HOLLARD TRANSACTION

170. The most valuable asset within the Edcon Group, and more particularly Edcon, was in regard to the joint venture arrangement concluded with The Hollard Insurance Company Limited. The applicants place a value of approximately R9-billion as being Edcon's share in the joint venture ("*the Hollard joint venture*").
171. It is respectfully submitted that this asset is what permitted the Edcon Group to allow Edcon to continue trading.
172. In this regard Edcon conducted a 50-50% split with Hollard in terms of the Hollard joint venture. Hollard brought the product and the compliance, and Edcon supplied the data base. In terms thereof, Edcon sold insurance to the stores' customers.
173. Edcon was generating R700-million a year nett out of this venture.
174. This "asset" was taken over by means of an agreement in terms of which the Edcon Group determined that this asset, which was held by Edcon, would be housed in K201, being the holding company for Edgars, with Edgars being the holding company for Edcon. The amount allegedly paid to Edcon for this asset of approximately R9-billion was in the region of approximately R300-million.



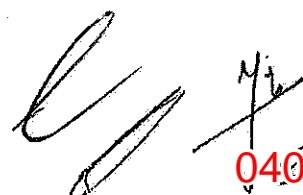
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175. Considering that the Business Rescue Practitioners will not disclose the relevant financial statements and other documents, applicants allow for the fact that the balance of a fair market price for relocating the Hollard Investment in K201 might have been settled in terms of reducing shareholder creditors loans in Edcon.
176. If that is how the balance of the market price was settled this also would have the effect of violating, fundamentally, the notion of subordination because it effectively allowed the shareholder creditors to remove or withdraw their loan accounts in circumstances that would render same unlawful.
177. The applicants determined the fair value of the Edcon 50% in the Hollard Joint Venture as being in the region of R9-billion utilising the standard price per earnings ratio which is the normal method employed by the Johannesburg Stock Exchange to value a business.
178. Furthermore, and given the fact that there are overlapping directors, and sitting on both boards, they allowed an asset to be sold or otherwise transferred from Edcon to K201, either at a nominal sum alternatively in violation of subordination.



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179. I set out hereunder a list of some the directors of K201 (**FA13**) and the list of some of the directors of Edcon as recorded in **FA14** hereto as they were at the material times (the applicants have not cited the two foreign based directors as this will unnecessarily and unduly complicate this application).
180. The directors of Edcon were:-
- 180.1 Charles Mzwandile Vikisi, ID number 750814 5347 089, company secretary;
- 180.2 Grant Michael Pattison, ID number 710325 5765 088, director;
- 180.3 Richard Vaughan, ID number 700429 5198 084, director;
- 180.4 Abigail Rachel Bisogno, ID number 570915 0154 087, non-executive director;
- 180.5 Rhidwaan Gasant, ID number 591020 5214 088, non-executive director;
- 180.6 Daphne Motsepe, ID number 570424 0789 083, non-executive director;



180.7 Mncane Esau Mthunzi, ID number 720316 5933 089, director;

180.8 Nigel Brian Palmer, ID number 309763411, non-executive director;

181. The directors of K201 were:-

181.1 Charles Mzwandile Vikisi, ID number 750814 5347 089, company secretary;

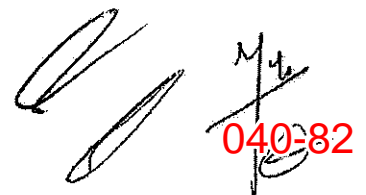
181.2 Mncane Esau Mthunzi, ID number 720316 5933 089, director;

181.3 Grant Michael Pattison, ID number 710325 5765 088, director;

181.4 Abigail Rachel Bisogno, ID number 570915 0154 087, non-executive director;

181.5 Rhidwaan Gasant, ID number 591020 5214 088, non-executive director;

181.6 Daphne Motsepe, ID number 570424 0789 083, non-executive director;



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181.7 Take Boas Seruwe, ID number 660307 5930 086, non-executive director.

182. Accordingly, the following directors were directors of both entities ("**the overlapping directors**"):-

182.1 Grant Michael Pattison, ID number 710325 5765 088;

182.2 Charles Mzwandile Vikisi, ID number 750814 5347 089;

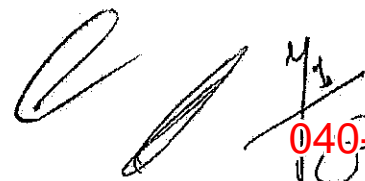
182.3 Abigail Rachel Bisogno, ID number 570915 0154 087;

182.4 Rhidwaan Gasant, ID number 591020 5214 088;

182.5 Daphne Motsepe, ID number 570424 0789 083;

182.6 Take Boas Seruwe, ID number 660307 5930 086.

183. In the event of the above Honourable Court granting the applicants leave to institute proceedings, the Business Rescue Practitioners will be obliged to provide the requisite resolution confirming that the necessary solvency and liquidity test required to be carried out in terms of the Act prior to the approval of a transaction of this kind, was carried out. Additionally, Deloitte, qua



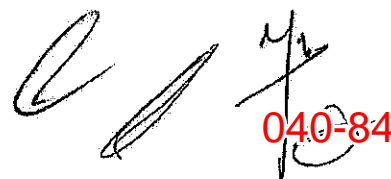
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Edcon's auditors, would likewise have been obliged to assess the validity of the solvency and liquidity test that was required to be carried out by Edcon and the applicants will oblige the Business Rescue Practitioners to make this assessment available to them as well.

184. If this transaction is valid, which the applicants dispute, the Business Rescue Practitioners should have no difficulty or reluctance to make all these documents available.

LEAVE TO SUE IN TERMS OF SECTION 133(1)(B) OF THE ACT

185. Under the Act, the applicants require either the leave of the Business Rescue Practitioners alternatively of this Honourable Court to institute proceedings against Edcon.
186. The received wisdom is that, on a correct interpretation of the Act, the applicants to do have to first seek the consent of the Business Rescue Practitioners for leave to sue before approaching this court for such consent.
187. The applicants have come to this court to seek such leave because they have no confidence that the second and third respondents will grant them the leave to do so.



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188. The applicants are required to make out a *prima facie* case in their application to this court to seek such leave.
189. It is for that reason that the applicants have set out above the detail which they have.
190. The purpose of that detail is not to found any substantive relief in this application.
191. It is simply to establish a *prima facie* case.
192. This court has to make no finding in regard to what is then set out herein other than whether it establishes a *prima facie* case.
193. The action proceedings in contemplation have been necessitated by the abject failure of the second and third respondents to make information and documents available to the applicants.
194. In this application, in order to demonstrate a *prima facie* case, the applicants have alluded to relief which they will seek which and which will affect Edcon.



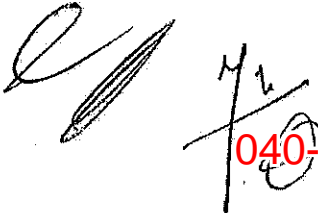
195. More particularly, applicants are intent on having the instruments of security, entered into by Edcon with its shareholder creditors and which instruments of security make a mockery of the subordination of the loans advanced to Edcon by the shareholder creditors, set aside as being invalid.
196. They are also intent on setting aside the transaction whereby the approximately R9-billion investment in the Hollard Joint Venture, which several years ago sat in Edcon, was moved to a company above Edcon within the Edcon Group for a nominal sum relative to the value of that investment or interest alternatively unlawfully permitted the shareholder creditors to withdraw a substantial portion of their loans to Edcon.
197. The applicants are also determined to have the Business Rescue Practitioners account for stock of approximately R800-million which the Business Rescue Practitioners say they cannot explain.
198. It is respectfully evident that the foregoing relief impacts Edcon directly because it is a party to those transactions and therefore the leave of this court has to be obtained in order to institute those proceedings.
199. The applicants have elected to go by way of action proceedings for substantive relief because it is plain that there are going to be disputes of fact which can only be resolved through *viva voce* evidence in due course.



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Furthermore, it is evident that discovery will be required for a proper adjudication of the matter.

200. However, applicants take this Honourable court into their confidence by mentioning that they intend pursuing additional relief in the action proceedings for which they do not need leave of this Honourable Court as that additional relief is not, *inter alia*, sought as against Edcon.
201. Applicants understand that all that is required of them in this application is to establish a *prima facie* case. To put it in language that the court is more accustomed to, applicants are required to set out a triable issue and they respectfully submit that they have done so. It is a low threshold that the applicants are required to meet.
202. In addition, applicants also allude to the fact that this leave is sought, *inter alia*, in order to deal with the manner in which the proceeds of the Business Rescue Proceedings are to be allocated and apportioned to the different categories of creditors of Edcon.
203. To put it differently, it is respectfully submitted that the need for the leave of the court to institute proceedings is really intended to safeguard, amongst other things, parties suing for debts whilst the rescue proceedings are being dealt with because this will disrupt the Business Rescue Proceedings



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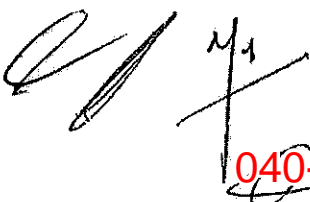
fundamentally. In addition, it is to avoid disgruntled parties from seeking to challenge the orderly dealings that are part and parcel of Business Rescue.

204. As indicated earlier, the applicants are not seeking to set aside the Business Rescue Plan which Plan has, in any event, been largely implemented.

205. They are also not seeking to pursue a claim in the ordinary sense of obtaining judgment against the company but rather the proceedings, as referred to in this application, are designed in challenging the manner in which monies are to be apportioned and allocated to the different categories of creditors.

206. Applicants submit that any refusal by this Honourable Court to grant to them the leave as sought will amount to a fundamental violation of their constitutional right to approach a court of competent jurisdiction in regard to the dispute that they allege they have.

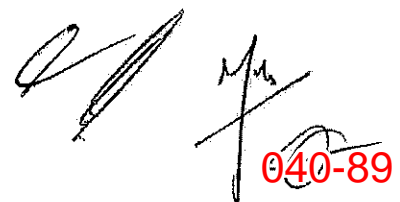
207. For all the reasons aforesaid, applicants would ask that they be given the necessary leave.



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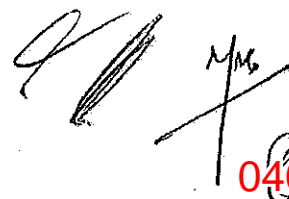
JOINDER OF CREDITORS

208. Quite evidently, the relief which the applicants have described as part of the action proceedings in contemplation will also have a direct impact upon all the creditors of Edcon.
209. It is accordingly only correct that the creditors be joined to the action proceedings.
210. To applicants' understanding, there are in excess of three thousand creditors of Edcon. Given that number it is a logistical impossibility for each creditor to be cited individually. A requirement that this be done would render nugatory the constitutional right to approach the court on the dispute at hand.
211. To cater for this, our courts have permitted the citation of that number of persons in a form of a grouping.
212. It is for this reason that the applicants seek relief whereby they be permitted to join and cite the creditors of Edcon as "*the Creditors of Edcon in Business Rescue*".
213. It is submitted that this is the only reasonable and practical expedient in all the circumstances and that this relief also be granted to the applicants.

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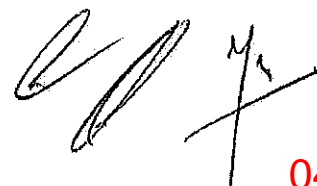
SERVICE ON THE CREDITORS OF EDCON

214. In similar vein, there is an impossible logistical challenge if the applicants were obliged to serve on every creditor of Edcon. This is simply not practicable.
215. In order to address this challenge, our courts have countenanced substituted service.
216. This is what the applicants also seek in the present application.
217. Under the provisions of Section 145(1)(a) of the Act, read together with the regulations thereto, the Business Rescue Practitioners are required to give notice to all affected parties (which includes creditors) of any legal proceeding brought against the company in Business Rescue.
218. In order to discharge their obligations in the present matter, the second and third respondents have a database of all affected persons and, to the applicants' understanding, the second and third respondents have the electronic mail contact details for each such person. If they did not then they would not be able to comply with the Act. In any event, the applicants receive regular monthly reports and the like from the second and third respondents.



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219. Here again, the only practical expedient for serving on the creditors of Edcon in Business Rescue is by the applicants asking this court to allow that service via the second and third respondents and through an order directing them to do so and to file an affidavit with this court in confirmation of the fact that they have done so.
220. The applicants understand that the cost of doing so is absolutely nominal in that all that it will require is a scanning of the action proceedings and the dispatching of same by the depressing of a single key on a keyboard.
221. That notwithstanding, it is only fair and just that even if the cost is nominal, the applicants be directed to pay those costs to the second and third respondents.
222. Alternatively thereto, the applicants have provided for relief whereby the court declares that the notice which the second and third respondents will, in any event, be required to send out to all affected persons, be considered to be substantial compliance with the requirement to serve and that such notice be regarded as being sufficient.
223. As to which expedient to adopt, the applicants are in the hands of this Honourable Court.



CONFIRMATORY AND SUPPORTING AFFIDAVITS

224. Confirmatory and supporting affidavits of second to tenth applicants will be filed together with my affidavit.

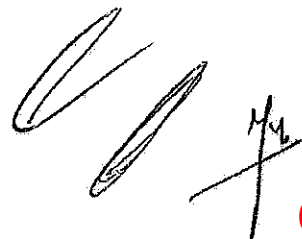
COSTS

225. The applicants are content that there be no cost order for this application.

226. However, if any one or more of the three respondents cited in this application elects to oppose it then the applicants will ask for costs against such respondent or respondents with such costs to include those consequent upon the employment of two counsel.

CONCLUSION

227. In all the circumstances it is respectfully submitted that a proper case has been made out for the relief sought.



WHEREFORE the applicants pray for an order in terms of the notice of motion to which this affidavit is attached.



DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this the 12 day of **AUGUST 2021**, the regulations contained in the Government Gazette Notice No R1258 of 21 July 1972, as amended, and Government Gazette Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Gareth Marc Leigh Peters
10 Derby Place, Derby Downs
Westville, Durban, RSA
PRACTISING ATTORNEY
CONVEYANCER & NOTARY PUBLIC
COMMISSIONER OF OATHS

**SABC NEWS
EDCON CEO GRANT PATTERSON INTERVIEW**

SKYPE INTERVIEW

OUR REF NO : 75797

DATE : 21 DECEMBER 2018

JOURNALIST : NOT ADVISED

INTERVIEWEE : GRANT PATTERSON CEO
EDCON GROUP

REPORT ON RECORDING

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1 SABC/G PATTERSON INTERVIEW

INTERVIEW EDCON BOARDGRANT PATTERSONOUR REF NO

75797

DATE

21 DECEMBER 2018

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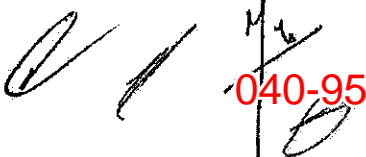
FEMALE SPEAKER The Edcon Board has approved the proposed restructuring and re-capitalisation plan. Edcon CEO, Grant Patterson says in response, lenders have extended waivers to allow time for implementation. The retail giant which owns Edgars, Jet and CNA has been under financial strain for some time now. For more on this, I'm joined via Skype by Edcon CEO, Grant Patterson. Thanks so much for your time on SABC News this afternoon. Can you put a total value on the recapitalisation climb for us?

MR PATTERSON Yes, thank you for having me. It's probably in the order of about R3 Billion, the current plan as it's written and that amount of money with the conversion of all of our existing debt into equity means that Edcon will have a good runway such that management can – management and staff can focus on fixing the business rather than worrying about the sustainability of the business.

FEMALE SPEAKER And so how long will this recapitalisation climb keep Edcon alive for?

MR PATTERSON The current plans is based on about a three year runway and within that time, the plan is to have the business profitable again and self-sustaining in terms of cash generation.

FEMALE SPEAKER Can you give us more details on that restructuring



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plan of yours?

MR PATTERSON Ja, it involves about 250 companies, it's been in planning now for six to nine months. It is a very, very complicated transaction that requires a whole bunch of ownership structures to be
5 unwound there to be converted into shares, new governance put in place and so very, very complicated deal which we're very pleased that has finally been put to bed.

FEMALE SPEAKER Will you be offloading any entities? I might have missed that in the restructuring plan.

10 MR PATTERSON The current plan doesn't involve offloading any entities however you know, these are matters that come under consideration from time to time and will be dealt with at that point in time but within the current plan, there's no intention to offload any entities.

FEMALE SPEAKER In the Sunday Times report that was speaking about
15 Edcon's troubles, we heard that you were trying to make agreements with your landlords in terms of rental agreements for shares. Is that true and what's happening with that?

MR PATTERSON Yes, so as the statement says where, subject to
20 confidentiality, you know, it's such a complicated deal, there's no one solution for one stakeholder so all the stakeholders have come together with different solutions so it's not possible to talk about it in any general terms and in terms about specific companies who participated, we are subject to those confidentiality. When the deal is implemented in the first three months of next year, those details will be able to be published.

25 FEMALE SPEAKER Okay, still in that Sunday Times article, we saw that



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3 SABC/G PATTERSON INTERVIEW

around 140 000 jobs were at stake. Is there still a chance of job losses when it comes to the restructuring climb?

MR PATTERSON You know, again the statement does say they are subject to regularity improvements and due diligence but really I think
5 those risks are now quite minor and staff members and suppliers and staff of suppliers can go into the Christmas period with some comfort.

FEMALE SPEAKER While we're still talking on the issue of jobs, there's been many allegations about the quality of jobs at Edcon, allegations that your staff are mistreated, paid poorly and infrequently as well as
10 allegations of racism, let's talk about that and what you're doing about that.

MR PATTERSON Look, it's a very large company. You know, we employ a lot of people and I'm absolutely certain there are – you know, we make mistakes and there are some employees who feel like they have been mistreated. We will more than happily address any of the complaints that
15 are made. Let me just say however though, that we do have a satisfaction survey in place for the company and so we do know those areas where staff are unhappy and when they are unhappy and let me say overall, our staff seem to be happy so you know, I'm quite comfortable with that and then on the issues of any type of illegal behaviour, you know, sexism,
20 racism, any of that, we've got extensive procedures in place in the company and including ethics hotlines which people are able to get help from the company addressing whatever complaint they've got.

FEMALE SPEAKER Is part of any of your restructuring looking specifically at your employees? I saw you Tweeting earlier on those
25 allegations that you're going to try and make them better and I think it's not



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4 SABC/G PATTERSON INTERVIEW

isolated incidents, it's quite systematic ones that have been spoken about on line. Will you be doing a sort of audit beyond saying staff can phone in and complain, will you be doing an audit to make sure that you are following labour laws, you are making sure that people aren't working for
5 long hours, people are able to sit down if they need to, they're able to take breaks if they need to, that they're getting paid decent salaries?

MR PATTERSON Yes, I mean, look, I would put into perspective that you know, Twitter is not a necessarily – which is where this discussion has been happening, it's not necessarily a good point of representation
10 however I acknowledge that those incidents do occur and so, yes, we will go and address them specifically. We will find out where those complaints have come from and we will address them. You know, I won't rest easy until I know every employee in Edcon feels respected and is certainly being treated properly.

15 FEMALE SPEAKER Grant Patterson, the CEO of Edcon joining us in their restructuring climb as well as what's happening with their jobs. It's time for ...[machine off]



040-98

**DEVAN MURUGAN/EDCON CEO GRANT
PATTERSON INTERVIEW**

SKYPE INTERVIEW

OUR REF NO : 75797

DATE : 21 DECEMBER 2018

INTERVIEWER : DEVAN MURUGAN

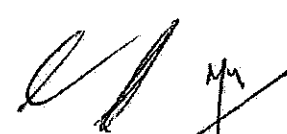
INTERVIEWEE : GRANT PATTERSON CEO
EDCON GROUP

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D MURUGAN/G PATTERSON

INTERVIEW EDCON BOARDDEVAN MURUGAN/GRANT PATTERSONOUR REF NO

DB75797

DATE

21 DECEMBER 2018


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MALE SPEAKER The Edcon Board has approved the structure of the proposed recapitalisation plan and I'll just take you back now to Devan Murugan who has the latest on the story.

MR MURUGAN Thanks very much, Gareth, and that plan by the way in response to lenders have extended waivers so lenders have extended their waivers to allow time for implementation of that restructure. There have been fears of massive job cuts as we said. Well Edcon CEO, Grant Patterson joins us now via Skype. Grant Patterson, thanks very much indeed for your time. I guess the big question is, what's in the plan of restructuring and how far does it go to this purpose of recovery and saving jobs?

MR PATTERSON Yes, thank you, and thank you for having me on. You know, it's a very exciting day for us. We've been working on this plan now for a year and those of you who have been following the story will know that I said we needed to complete a deal before Christmas and here we are a few days before Christmas, the Board met on Monday, they considered the proposal made by over 250, including the 250 companies and they approved the way forward. That was a really important point in time. That allowed our lenders who are also part of the plan and are going to convert their debt to equity to extend the deadlines that they have on the

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D MURUGAN/G PATTERSON

repayment of that debt to allow us a few months to implement the deal.

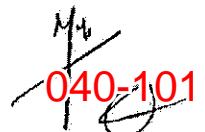
MR MURUGAN So I mean obviously you're saying in your statement the details are very thin at the moment but can you tell us how far, what components of that restructuring plan goes to the recovery here, Grant
5 Patterson?

MR PATTERSON Yes, so really it's half the story. The business needs to convert its debt to equity, make sure it's got enough capital, ie, cash in it to operate for the next few years, not just the next few months as we've been doing recently. This allows management and employees to be able to
10 concentrate not so much on the security of the business but to concentrate on customers and restoring the customer confidence in the business. That's one half of the story. Of course the other half of the story is the Board has also approved the business plan and that business plans talks to how about management is going to improve the product quality, change
15 the structures of the company such that we can focus more on servicing customers and improving our offerings. In celebration of that, if I can add, we are launching a bunch of specials in Jet, Edgars and CNA this weekend, starting today.

MR MURUGAN And I suppose when you launch these specials, you will
20 bear in mind that Edcon has been struggling with brand purpose, I mean you had stores within stores, you had brands within brands, some commentators saying that you know, it was a confusing mess. The feeling is that executives just didn't know their markets, would you agree?

MR PATTERSON I think that all the criticism aimed at Edcon has been
25 fair. We brought in a bunch of international brands. We moved our stores



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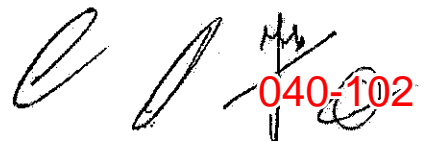
around, we made them noisy and cluttered and our offering became confused and I think we lost connection with our core customer who's the middle income family generally as well as individuals who are going to in the short time become part of the family or have empty nesters, so we lost that focus on that customer. Really what we're doing now is concentrating on the Edgars brand, the Jet brand and the CNA brand. Those of you who know the business will know in the past we've had many more brands and we think that focus will enable us as well as our focus on buying local product will enable us to restore our connection with the customer.

10 MR MURUGAN Were you behind the curb in terms of online shopping?

MR PATTERSON Yes, I think we were. We really went fully online about two years ago. Our online offering is adequate, not – it's not leading edge but I would say though that I don't think the online component as yet, the component that has been responsible for our poor performance however I do think the rates at which online trade is growing at the moment is that it is going to be our challenge in the next four or five years to make sure we up our game and stay with the best in the world.

MR MURUGAN You say this plan has been, you know, been put together over a few months now and when one looks at that time period just going 20 years back, do you not think Edgars perhaps hastily jumped into opening stores which really never took off. I mean one store that comes in mind is Melrose Arch for example, you walk in there, it really has been deserted for ages. So decisions like that have been under question, hasn't it?

MR PATTERSON Absolutely. We opened far too much space. You 25 know, I wasn't around at the time so I can't exactly explain why we're doing



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D MURUGAN/G PATTERSON

that. We had an East Gate expansion from 10 000 to 14 000 square metres. We committed to an extra 14 000 square metres at Fourways, we opened a Rosebank store that was too large. I think you're exactly right. We opened stores that were too big and part of the plan could be described as slimming down, first of all making sure we don't have too many stores in each market and also making sure that those stores are just slightly smaller so that our trading densities are higher.

MR MURUGAN Where are you with CNA, I mean here's another store that people have been saying, well you know, do you really need this in your book?

MR PATTERSON Yes, so I'm a believer in CNA, let me just tell you why. CNA did lose its way, it used to be a stationery store and an education store and then it got distracted in other categories like music and books and DVD's and gaming and electronics. What we've done is, we've pulled the business back. It's now tag lined, 'Your favourite stationery store', and we also are the market leaders in educational books, ie, study guides and non-fiction and so we're going to focus on what we're good at. I think, if you think about it, where else can you buy stationery, what other national chain sells stationery education. There's not a lot of choice. I think CNA is a very important component of South African's lives.

MR MURUGAN Grant Patterson, are you getting a bonus this year?

MR PATTERSON Absolutely not, as I said, in fact, whilst all of our stakeholders are contributing to the recapitalisation programme, I have in fact agreed to take a pay cut to show my commitment to turning the business around.



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D MURUGAN/G PATTERSON

MR MURUGAN I'm just wondering how the potential 40 000 jobs that could be on the line will sort of digest that news. In the plan, where are we with those 40 000 potential job cuts?

MR PATTERSON Yes, so what we've managed to do by putting together
5 this recapitalisation is we've managed to avoid a very large shrink in the number of stores. We'd either go out of business and have lost all the stores or we would have lost half the store so we've managed to avoid that. The business will slim down. It's actually been slimming down for the past year. We've probably downed space over the past two years of 10 percent but what we've done, working with the unions and working with the staff is when we do shut down a store, we give the staff, our staff the opportunity to transfer into one of the surrounding stores. Customers will know that we've probably cut our staff levels in our store too much. Our service has declined as a result of that so we are intending and
15 maintaining our staff levels whilst slimming down the business and then thereby improving the service in the remaining stores.

MR MURUGAN And just a final question, exactly which employees or staff members here are under threat, Mr Patterson?

MR PATTERSON Well at the moment, there aren't any staff members
20 under threat as we sit here today. We have come up with a recapitalisation, we have found all the support and so all of our staff can enjoy a Christmas where they've got confidence that they're going to be working for a business that's not only going to survive but it's also going to thrive into the future.

25 MR MURUGAN CEO of Edcon, Grant Patterson speaking to us via




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D MURUGAN/G PATTERSON

Skype, thanks very much indeed for your time.


040-105

CERTIFICATE OF VERACITY

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**SABC NEWS
EDCON/GRANT PATTERSON INTERVIEW**

OUR REF NO : 75797

TRANSCRIBER : C L BOWEN

DATE COMPLETED : 11 AUGUST 2021

NO OF TAPES/CD : 1

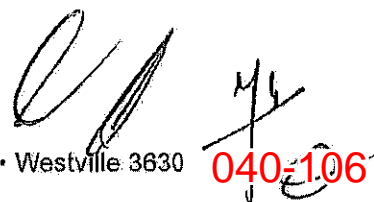
NO OF PAGES : 8



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**SABC NEWS
EDCON/GRANT PATTERSON INTERVIEW**

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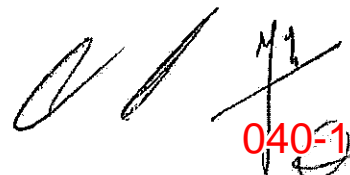
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How Grant Pattison saved Edcon

Edcon, SA's largest clothing company, on which more than 100,000 people rely, faced extinction last year. But thanks to a series of savvy interventions by CEO Grant Pattison, who in another life would be running Eskom, Edcon may just be turning the corner. This is the inside story

BL PREMIUM

04 JULY 2019 - 05:00 ADELE SHEVEL

Edcon, the 90-year-old retail colossus which last year came within an inch of collapsing into the scrapheap like rival Stuttafords, has been saved — for now, at least.

It's a verdict that has been out till now but last week, the R2.7bn for Edcon's "restructuring" landed in its bank account. It was touch and go for a while but it's fair to say that the rescue deal for SA's largest clothing retailer can be deemed a success.

Some brands haven't made it. Jetmart, fragrance brand Red Square and high-end homeware store Boardmans are history. In all, 150 of its 1,350 stores have been shut over the past 18 months and, in the rest, floor space has been slashed by 10% — 140,000m² — which is about the size of Sandton City.

In two of SA's largest malls, the Mall of Africa and Eastgate, Edgars has shrunk to one floor, from two. When the *FM* visited the Sandton City branch, there was no discernible sign that customers had fled. Some of the assistants told us they didn't have enough stock, but that's apparently part of a plan to keep the chain slightly understocked.

That Edcon, which first opened its doors as Edgars in Joburg's Joubert Street in 1929 thanks to brothers Morris and Eli Ross, is still alive is chiefly due to one man: Grant Pattison.

"I'm an engineer. When things are broken, I like to try to fix them," says Pattison, a tall, seemingly tireless 48-year-old, in an interview with the *FM*.

It sounds about right: Pattison studied electrical engineering and worked as a management trainee at Anglo American. Nor did he ever have any desire to go into retail until, in 1998, leaving a job interview for Affinity Logic (which he didn't get), he bumped into Massmart CEO Mark Lamberti in the foyer.

Pattison didn't know who Lamberti was, but had no problem telling him how badly Game's shelves were stacked. So Lamberti grabbed his car keys and drove him to a Game store, and told him to repack the shelf as a customer would want it. Pattison hauled everything off the shelf and did just that. Seven years later, he was CEO of Massmart, stage-managing its R16.5bn takeover by US retail giant Walmart.

Bored and keen for a new "strategic challenge", Pattison left Massmart in 2014 and bounced around a few prospects.

What many people don't know is that Pattison coveted the job of fixing perhaps SA's most disastrous company: Eskom. As an engineer, it wouldn't have been a big leap.

In 2016, he was shortlisted as one of the final three for the job of Eskom CEO. But as he was driving to the final interview, he got a call saying it had been cancelled.

Minutes later, he heard on the radio that Brian Molefe had been reappointed CEO, after his short stint in parliament.

Still, Pattison lies awake at night thinking about how to fix the utility. "You actually have to study electricity to understand the problem of electricity, which is that it can't be stored. You can store other things — water in a dam, steam, but you can't store electricity," he says.

In some ways, fixing Edcon is the private sector equivalent of the task at Eskom: both are huge, systemically important institutions, crippled by debt and awful decisions.

Pattison's path to the Edcon CEO position wasn't straightforward.


In February 2017, he was appointed as a nonexecutive director, where chair Gareth Penny asked him to draw up a job spec from which they could hire a new CEO.

When Penny saw Pattison's list, he laughed and said: "Grant, you're describing yourself." The spec was for someone local, who preferably lived in Johannesburg, and had retail experience (preferably apparel). Pattison walked out of the meeting as Edcon's new CEO.

He describes how he arrived full of bravado, with a typical retailer's mindset. "I was going to open more stores, put more product on the shelves, drop some costs, pump up advertising," he says.

Then the financial realities hit home. "We created a financial model [which] showed that we destroyed value every time we opened a store ... Below a certain trading density and below stock turn, opening more stores destroys value, even though they're profitable," he says.

Salvaging Edcon, in fact, would be far harder than he expected.



To understand the immensity of this task, you need to understand how it got here. In 2007, in the largest private equity buyout in SA history, the Boston-based Bain Capital arrived in SA and paid R25bn to buy Edcon and delist it from the JSE.

The problem was, Bain heaped huge amounts of debt (taken out in euro, pounds and dollars) onto the company. Every spare cent, which should have gone to invest in the stores and on new merchandise, was diverted into paying the exorbitant interest bill.

Pattison has since described Bain Capital as "morally liable" for what happened at Edcon. "How were they allowed to use foreign debt to do a leveraged buyout in SA? Surely no-one would look at the most volatile currency in the world in 2007/2008 and say — oh, that's a good idea, let's put no money in, let's just borrow it. The thing was inevitably going to collapse," he says.

In fashion-speak, Bain was the proverbial wolf in sheep's clothing.

Before the Bain deal, Edcon was a powerhouse; in the decade after that, it lost 30% of its market share and its most talented staff, and its reputation was savaged. In 2016, Bain was forced to hand over ownership of Edcon, then unable to pay the debt, to creditors in a debt-to-equity deal. It left Edcon with "just R7bn in debt". In the end, even that was too much.

Pattison inherited the "recapitalisation plan", but he soon figured it was a non-starter from the word go. For one thing, Edcon was making losses, but had forecast earnings before deductions of R2bn, which it hoped to use to repay its R7bn debt.

It was pie-in-the-sky stuff, given that it was actually deep in the red.

So Pattison had uncomfortable meetings with shareholders, explaining that not only were they not going to make R2bn in profit, they were actually going to make zero.

Shareholders didn't like it, and complained to Penny.

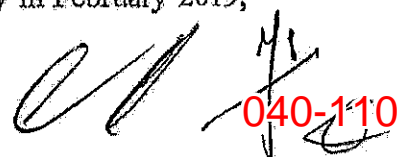
"I think the hypothesis was generated that maybe Grant was talking the thing down so Grant and his backers and partners (of which I had none) were going to come in and get the company on the cheap," says Pattison.

The next option was to try sell Edcon. But no-one would bite.

Brian Joffe's Long4Life was one of those rumoured to have looked at it, but Joffe's company told the *FM* this week that it "looks at numerous opportunities on a regular basis, but we won't comment on which investments we might have considered".

Pattison says it was "quite a disheartening process to go round the world asking for some money and effectively failing".

So he began to prepare for the worst, explaining to everyone the consequences of Edcon failing. "We started to tell people we were going to run out of money in February 2019, which we did," he says.



040-110

It would have been a crippling blow not just to Edcon's 40,000 staff, but also landlords, the banks to which it owed debt, and the 60,000 people who work in companies that supply the group — from small shoe manufacturers in the Cape, right the way up.

An ambitious deal was drawn up, with the help of top business people including former Investec CEO Stephen Koseff.

Koseff got involved because Investec was one of the banks exposed to Edcon. Investors were looking for someone they could talk to, and he'd played a pivotal role in restructuring African Bank after its collapse in 2013.

As Koseff told the *FM* this week: "I know my way around it. I know when guys are talking rubbish or not. They needed someone senior to play a role."

He knew the alternative was huge job losses. "It wasn't only the individuals who work in the company, it's also the suppliers. What do we do in the interest of saving a whole host of jobs in the country, which is under very stressed economic conditions?"

"Without some very specific interventions," says Pattison, "I think we were very close to the end."

But banks and landlords said they'd only support the deal if it included the Public Investment Corp (PIC), the state-owned company which manages pensions of government employees. Given the PIC's own internal ructions, that was never certain.

One particular meeting between Pattison and the PIC's former CEO, Dan Matjila, in November last year, sticks out. "This was one of the most stressful, pressured meetings," says Pattison.

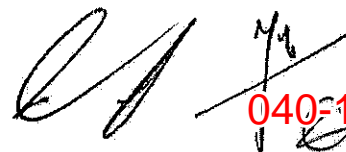
After some wrangling, Matjila said they could find a way to work together. Pattison was immensely relieved. But at lunchtime that day, Matjila resigned — and everything was up in the air again.

"The deal didn't die but for a good two hours I thought it would," says Pattison. "That was a low point."

In the end, the state-owned Unemployment Insurance Fund (UIF), whose money is managed by the PIC, agreed to put in cash. Pattison's pitch to them was, if you don't help us, you'll have 140,000 extra people claiming from the fund.

But Edcon then found an unexpected ally: the unions, which had fought Pattison bitterly during Walmart's takeover of Massmart.

"I would never have been able to do the deal had I not already done Walmart. I had relationships with most of the major players, which helped build some trust," he says.



040-111

Those at the table who opposed Pattison at Walmart reappeared at Edcon: economic development minister Ebrahim Patel, trade & industry minister Rob Davies, financial advisers Rothschild & Co, Etienne Vlok from the Southern African Clothing & Textile Workers Union (Sactwu), and Mduduzi Mbongwe and Bones Skulu from the SA Commercial, Catering & Allied Workers Union (Saccawu)

This time, they were on the same side.

"The adversarial relationship I had through Walmart was turned into a collegial one ... we fought like crazy but I feel very close to the people I fought with. It's those relationships that have helped me," he says.

Pattison positioned the deal differently to the optimists around the table, and to the pessimists. To the optimists, his pitch was that the retailer could be fixed. To the pessimists, it was: let's shrink it by a third and if it still fails, you've only got two-thirds of the problem you had.

In the end, the final plan was sealed in December: 21 landlords agreed to inject R1bn into the company in exchange for 5% and 10% of Edcon's shares, the UIF would get 19% of the shares, and the banks, investors and staff hold the rest.

Together, Edcon would get R2.7bn in new investment. Critically, it leaves Edcon entirely debt-free for the first time in 12 years.

Pattison said when the deal was put on the table, it didn't have a single opponent "other than some Twitter idiots". No-one wanted to be the person who pulled the plug on Edcon.

Estienne de Klerk, Growthpoint SA's CEO, says landlords didn't get much of an option. "In the end it was rather binary: you either agreed, or you didn't."

Growthpoint is the biggest JSE-listed property owner in SA, with 1.4-million square metres of shopping centre space. Edcon occupied nearly 8% of that.

But De Klerk says it was still the best option. "It would have taken time and quite a lot of money to repurpose space, especially space occupied by Edgars stores. I think with the deal that's done, either everyone is equally happy or equally unhappy."

Koseff played a big role in "herding all the cats", says De Klerk.

"He fulfilled a role to literally go and see everyone who needed to be seen and encourage them to be more understanding, co-operative and appreciate the big picture and potentially how it could either go wrong or go right, depending on how things played out," he says.

It was Growthpoint that proposed the idea of giving landlords equity, in exchange for the rent reduction — an idea since incorporated by Edcon. "The biggest challenge for



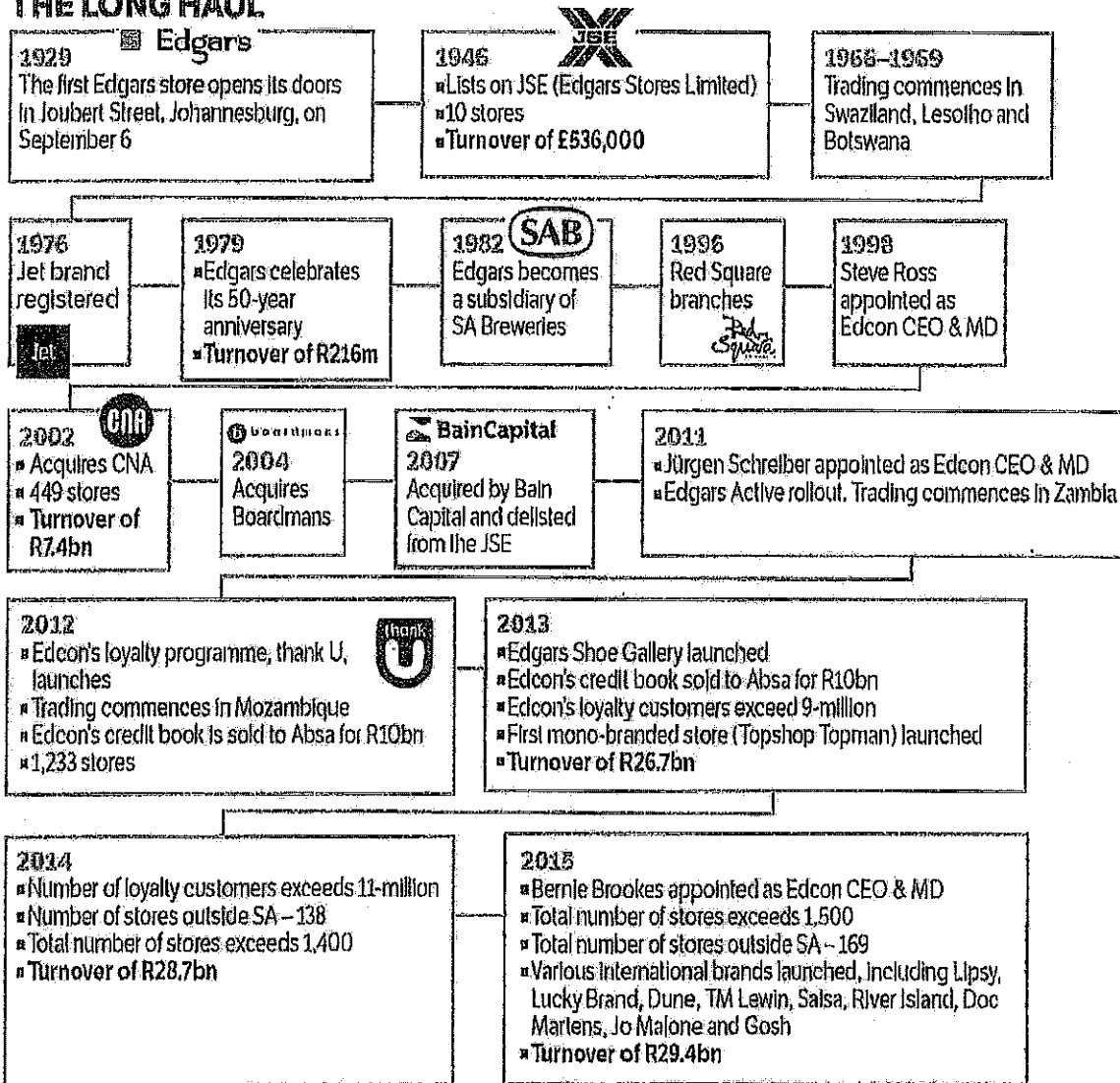
040-112

landlords isn't the economy or Edcon, but the retailers' insatiable appetite to commit to more new retail developments. That's a way bigger issue," says De Klerk.

Rivals weren't impressed, though. Truworths wrote a letter to at least one property landlord saying the deal was "anticompetitive".

Pattison rejects this view: "Competition requires companies to enter into individual commercial relationships with competitors. A landlord is a supplier to us. The fact they want to help us, even if it doesn't help Truworths, is tough."

THE LONG HAUL



Of course, it's one thing to save Edcon, but can it ever become the retail icon it was back in the 1960s? Who are its customers? What, in other words, is its raison d'être?

Pattison is clear that Edcon is not trying to be a high-fashion store. It's a family shop for moms wanting an outfit for going to church or an event and, increasingly, men who're doing more of their own shopping. It's fitted clothing for the average person, not a maximum of three sizes. "Wearability" and "washability" are important.

Jet offers similar product to Edgars, but it's a discount department store. Everything you can get in Jet is available in Edgars, but not the other way round. The Edgars version would cost more and have better quality. (Edgars makes up half the group's revenue.)

After Bain bought it, Edgars lost its way on the shop floor. Two decades ago, it was built around providing exclusive brands, private brands and selling clothes on credit.

Then the international brands arrived: H&M, Zara and Cotton On. So Edgars switched strategies: it began bringing in more international brands, and opened independent stores. It was the wrong approach.

Says Pattison: "History will show that Mr Price, TFG and Truworths had the right response ... have more local brands. We've switched to that strategy."

Edcon's revival plan has a number of imperatives: it needs better merchandise, a smaller space, and it needs its credit sales to recover. Edcon was famous as the first SA store to offer "six months' interest-free purchases" in the 1930s.

But under Bain, its credit sales plummeted. This is partly because, to raise cash to pay the debt, Edcon sold its debtors book to Absa. But Absa then started curbing the credit it would allow, which meant Edcon's credit customers fell from R10bn to R5.5bn.

Now Pattison wants credit sales to rise from less than 35% of its sales to between 40% and 45%.

On the shop floor, the clothes have been placed together in a more "sensible" manner too. In Sandton City, menswear has all been placed together, as has women's wear. It sounds obvious — but that isn't how it was in recent years.

Doni Del Sal, who was highly regarded at Woolworths and Superbalist, has joined Edcon as its apparel merchandise director. Talk is that Edcon is also hiring former House of Busby CEO Shane van Niekerk.

Veteran retail analyst Syd Vianello says Edgars' shop floors are "looking a helluva lot better. They've done all the right merchandising things; the things you can do to make it look nice to entice people to shop there, but you don't have control over the amount of money people have in their pockets."

With consumers under pressure, after a 3.2% fall in GDP in the first quarter, shops are suffering. Says Vianello: "It affects Edcon more than the other retailers. Edcon needs positive sales momentum more so than its competitors, who can withstand flat sales simply because they have the financial wherewithal to do it."

Perhaps most painfully, Edcon is shrinking its physical space.

The fact is, its trading densities are all wrong. It makes about R15,000 a square metre, compared to about R25,000 at its competitors. So Edcon is reducing its shop floor space by a third — including reducing stores in Eastgate and Sandton.



040-114

The sceptics argue that even without Bain, Edcon's days were numbered, as the department store model is dying globally.

Jean Pierre Verster, CEO of Protea Capital Management, says Edcon still has enormous challenges. While Pattison is doing the right things, the department store format is under pressure globally.

Pattison doesn't agree. The Edgars at Sandton City, he says, is the quintessential department store and it makes R35m profit a year. "It's huge, beautiful and makes lots of money. So the concept can't be wrong. Why does it work in Sandton City? We sell more clothes than many other retailers," he says.

Pattison's view is that department stores work in a big regional mall if they're smaller than 10,000m²; in a regional mall, it has to be less than 6,000m², and for inner-city malls it must be less than 3,000m².

"If department stores are dead, well then Edgars is dead," he says. "If [we] make it the right size and profitable again ... there's enough proof that its core is still working well."

Every cost line is being scrutinised too.

For example, Edcon spent hundreds of millions on "strategy consultants" over the years — many of whom came from the former owners, Bain Capital. "My guess is over the years at Edcon, I would say those guys took maybe R1bn out of Edcon" he says.

By axing the consultants, Pattison is saving about £1.5m (R27m) a month. "There have been moments where I thought you could do without advisers, but actually you can't. It's just too complicated; there are too many companies, too many legal agreements, too many bonds, too many shareholders and banks. I've come to accept it as the price of doing these things. But everyone should have paid their own costs," he says.

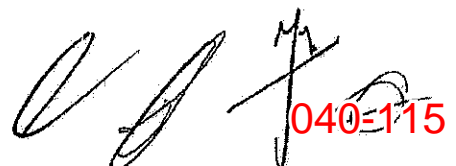
Perhaps most remarkably, even as it has shut 150 stores which had 1,000 employees, Edcon has managed to repurpose 900 of these people elsewhere. The UIF would probably have demanded no less.

So, is the turnaround working?

The numbers say yes. In the first four months of this financial year, Edcon has made more money than in the same period the previous financial year.

"June was probably our best month so far," says Pattison. Figures for the first quarter will be released this month.

Contrary to what some analysts have argued, he doesn't believe Edcon was saved because it's too big to fail. "The turnover would be filled by someone else," he says.



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Rather, he argues, Edcon was saved because there is something salvageable there. If it's a dead business, let it die — but there are green shoots, he says.

It is still doing R24bn in turnover. Rivals with far smaller revenues are turning in R4bn in profit. There's no reason Edcon, when fixed, can't do the same. Especially with enough cash in the bank for two years.

"Our very ambitious strategy is to [get to] zero profit in three years' time. And at that point Edcon again becomes independent and sustainable," says Pattison.

One of Edcon's big suppliers, who spoke on condition of anonymity, says he is seeing an improvement. "They seem to be a lot more organised. The stock-to-sales ratio is more carefully organised, they're making sure they're not overstocked and are ensuring they get a good return," he says.

He says there have been "quite drastic changes" over the past three months, and there's a new energy at Edgardale. "They're being tightly managed. The stores look fresher. There's a revamp in their top nine locations and I think that will remain strong."

Even though space in the Mall of Africa has been cut by half, the revenue from that store has risen by more than 10%.

However, Chris Gilmour, an independent retail analyst, warns that it's too early to deliver a verdict on Edcon's turnaround. "On the one hand I don't want to take anything from Grant, he's following a textbook approach, and it's the only approach to take after years of abuse at the company."


But Gilmour says it's especially tough since it's the longest retail downturn since 1945, and the economy is in need of a defibrillator. "The biggest challenge is whether Edcon is going to manage to claw back market share. I don't think that is possible. Things have changed in the past 10 to 15 years with overseas brands like H&M, Zara and Cotton On that have done fabulously well," he says.

CNA, the news agency it owns, is also "bust", he adds. "It's too early to say if it will succeed or not, but if this economy carries on for another two to three years it will be incredibly difficult for Edcon to survive."

For Pattison, it's been the sort of learning curve you wouldn't get in many other companies. Steinhoff, Tongaat Hulett and EOH, all themselves in a rescue orbit, are perhaps the exceptions.

It's the sort of invaluable case study applicable right the way across SA's private sector too.

Pattison says he became more of a banker than a retailer in the process. And it's taught him to question the way deals are typically funded.



040-116

"What I've learnt is that debt, particularly unlisted secured debt, is very, very dangerous. And when things go wrong, it's no longer about whether the CEO or management keeps their jobs or shareholders lose some money, it's about the company's survival because you have to pay the money back."

Koseff echoes Pattison's sentiment, especially when it comes to retailers.

"These businesses are not businesses you can leverage. I've learnt that as a banker and an investor — don't leverage retail firms. They don't have big balance sheets. They have big businesses and cash flows but not big balance sheets," he says.

Koseff says he's seen it five or six times, where private equity buyers have got involved. "They mess up retail businesses if they overleverage them."

If Bain hadn't bought Edcon, any slip-up on the shop floor would also have been handled differently. "All of those deals would be funded by equity holders, and they would have fired the board and management," Pattison says.

But perhaps the main lesson he learnt was that a company needs to ensure it can keep its independence, otherwise the banks take control. "You have to pay for advisers who act against you, and you have to pay for them, monthly, in pounds.

"When you breach your covenants, the world almost stops and a credit committee of a bank is now running you, and their every instinct is wrong," he says.

Allowing a foreign shareholder like Bain Capital to swoop in, and burden the company with foreign debt, is a recipe for disaster.

Already, the Competition Commission has cleared the way for Edcon's new structure. Its shareholders are Absa, Standard Bank, Investec, Growthpoint, Redefine and the PIC.

Says Pattison: "I will always be checking in with myself if this is the best thing for the company, not just for shareholders ... It's quite hard to figure out what part of capitalism you believe in. If you just think about shareholders, the Bain deal was a great deal. If you think about just the company, it wasn't."

No kidding. Edcon remains a cautionary tale of how a much-fêted private equity deal came to the brink of destroying the lives of 100,000 people.

"FA5" 040-118

twitter.com/GrantPattison/with_replies

mail YouTube Maps WhatsApp

← Grant Pattison 2,879 Tweets Follow

Explore

Settings



Grant Pattison @GrantPattison · 31 Mar 2020

Replying to @Moneyweb.

Also no need to speculate how we we doing before the President's announcement on the 15th, you just had to ask. In January/Feb we increased sales relative to space by over 6 percent. In March we were doing even better before the announcement.

🗨️ ↻ ❤️ 15 ↕

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FAB

RESOLUTION PASSED AT A MEETING OF THE BOARD
OF DIRECTORS OF
EDCON LIMITED
(REGISTRATION NUMBER 2007/003525/06)
("THE COMPANY")
HELD ON THE 28TH APRIL 2020 BY ROUND ROBIN

PRESENT:


Directors:

Gareth Penny, Grant Pattison, Rhidwaan Gasant,
Daphne Motsepe, Nigel Palmer, Abigail Bisogno, M
Mthunzi

IT WAS RESOLVED THAT:

KOMISSIE VAN STAATSKAPPE EN INTELLEKTUELE EIENDOMME	
ONDERWYS - HET KENNIS	
2020-04-29	No: 04
BUSINESS RESCUE	
COMPANIE - SAARD INTELLEKTUAL EIGENDOMME	

1. As the company is unable to pay ~~certain of its debts and~~ as it appears to be reasonably unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months, the Company is therefore financially distressed within the meaning of Section 129 (1) (a) of the Companies Act 71 of 2008, as amended ("the Act").
2. As there appears to be a reasonable prospect of rescuing the Company in terms of Section 129 (1) (b) of the Act and/or if it not possible for the Company to so continue in existence, there exists a reasonable prospect that Business Rescue Proceedings will result in a better return for the Company's creditors or shareholders, than would result from the immediate liquidation of the Company, the Company should begin voluntary business rescue proceedings in terms of Section 129 of the Act.
3. GRANT MICHAEL PATTISON (identity number 710325 5765 088) in his capacity as a director and chief executive officer of the Company, be and is hereby authorised to appoint one or more Business Rescue Practitioners of the Company in terms of Section 129 (3) (b) of the Act and is further authorised to sign any such documents required and which are ancillary to the


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business rescue proceedings and to appoint attorneys to lodge the application for voluntary business rescue proceedings in terms of section 129 of the Act and to lodge any documents required to give effect thereto.

Certified a true copy of the extracts of the minutes of the meeting.

G PATTISON
Director

G PENNY
Director

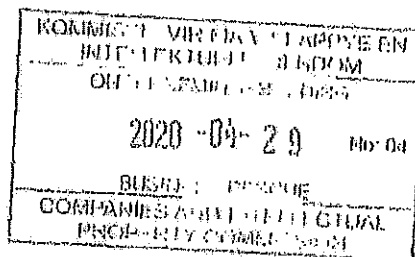
R GASANT
Director

D MOTSEPE
Director

N PALMER
Director

A BISOGNO
Director

M MTHUNZI
Director

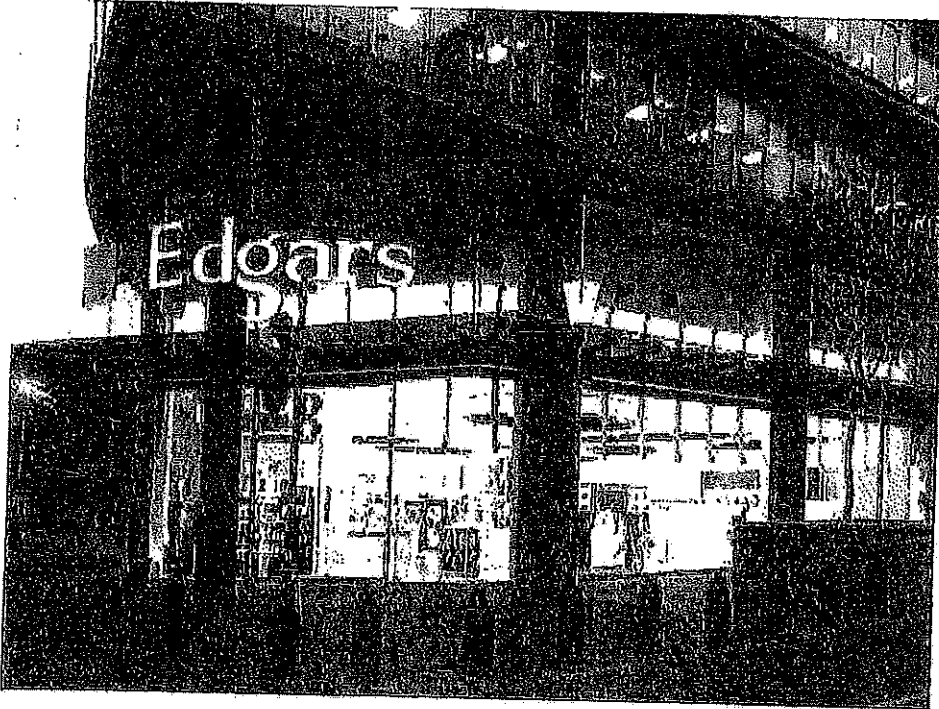


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Edcon on brink of collapse - 140,000 jobs at risk

Experts say it would be SA's biggest single jobs loss

16 December 2018 - 00:00
BY KATHARINE CHILD



Edcon, which owns Edgars, is now on its third restructuring.
Image: Courtesy of Edcon

In a desperate bid to stave off liquidation and the loss of up to 140,000 jobs, retail giant Edcon has held out the begging bowl, asking its landlords for a two-year 41% "rent holiday" in exchange for a 5% stake in the business.

The debt-laden company, which owns Edgars, Jet and CNA, is on the brink of collapse - which experts say would see SA's biggest single jobs loss.

In a letter sent to its 31 biggest landlords, Edcon warns that unless its remedies are accepted, "it is highly likely that Edcon will enter into a liquidation process" risking 40,000 direct and 100,000 indirect jobs.

The group is also seeking R2bn in emergency funding from its owners and the state-owned Public Investment Corporation.

The dramatic SOS constitutes Edcon's third restructuring in only three years to stave off the bankruptcy of what was once one of SA's most profitable retailers, now battling a mountain of debt, poor management decisions and changing shopping tastes.

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040-121

1,300 stores - would be an even bigger jobs bloodbath.

'NATIONAL INTEREST'

Economist Mike Schussler said that should Edcon go into liquidation, it would be "by far the biggest single job loss ever" in SA.

Edcon, which owns Edgars, Jet and CNA, has more than 4-million account holders and occupies 6% to 7% of SA's retail space.

Edcon bosses met major landlords on December 7 at law firm ENSAfrica's offices in Sandton to discuss the proposal. The high-level meeting was chaired by former Investec CEO Stephen Koseff, ENSAfrica chair Michael Katz and Matuson & Associates, the company managing Edcon's business rescue process.

In a follow-up letter sent four days later, which the Sunday Times has seen, it said it was in the "national interest" to prevent liquidation.

It gave landlords until this past Friday to sign a letter of intent, with binding agreements to be signed by January 15. The new equity would be implemented by January 31.

The letter said Rothschild & Co investment company had been trying to find a global company to buy Edcon but "the disposal process was unsuccessful in attracting an interested party to acquire the business".

"Edcon has been struggling with excess financial leverage, an over-leased state [too many stores] and declining credit sales."

An Edcon spokesman said there is "no comment at this stage".

RIPPLE EFFECT

Iggy Sathekge, spokesperson for retail property company Pareto, confirmed the company had attended the Edcon meeting.

Pareto's portfolio includes Southgate and Westgate malls, Bloemfontein's Mimosa Mall, Cresta in Johannesburg, The Pavillion in Westville and a share of Sandton City. It is owned by the Government Employees Pension Fund.

"Unfortunately, there was a confidentiality agreement that was signed by all parties.

Edcon was mandated as the party to respond to all queries," Sathekge said.

Pieter Prinsloo, CEO of Hyprop, which owns Rosebank Mall, Canal Walk and Cape Gate among others, as well as Growthpoint Properties MD Estienne de Klerk, said they could not comment due to the nondisclosure agreement.

"What I can say is that we are in discussion with Edcon and its financiers at this point, exploring various alternatives which do not include rent reductions," De Klerk said.

Growthpoint owns 22 malls including Waterfall Mall, Constantia Village, Brooklyn Mall and Walmer Park in Port Elizabeth.

Handwritten signatures and initials, including a large signature on the left and initials 'M' and 'J' on the right.

Trading analyst Lester Davids said the space that would become available if Edcon stores closed could bring down rentals overall in the affected malls "as landlords could be hard-pressed to find tenants to fill so much space".

He said if the proposal was agreed to, mall owners would be getting lower rentals from Edcon, which would put pressure on what they paid out to shareholders.

But Edcon going under would be even worse, he said.

"The closure of Edcon would have a ripple effect as a large number of employees would be out of work, meaning these employees' bonds, cars and store card repayments may not be paid."

The head of listed property funds at Stanlib, Keillen Ndlovu, said that though 41% was a big discount, it was better than Edcon closing.

"It's a material decline in rent but it's better to let Edcon survive than to have our malls and shopping centre vacancies increase by 6% to 10% [and it will] save tens of thousands of jobs."

He said JSE-listed property funds' exposure to Edgars was 2% of all their rental income. Earnings for property funds next year would be down 1% if Edcon rent dropped by the proposed 41%.

"Landlords are negotiating hard, but we believe they'll do their best to keep Edcon by agreeing to reduce rents to a certain level."

Schussler said Edcon was in a good negotiating position to drive down rentals as it occupied so much retail space as landlords wouldn't want approximately 7% of their retail space standing empty.

However, lower rental incomes for malls would also have an impact on ordinary South Africans, as many pension funds had investments in property companies.


The 920,000 people currently on private pensions, with a lot of exposure to property companies, could be affected with lower pension payouts, he said.

Cosatu general secretary Bheki Ntshahintshali said the federation would "really be concerned ... particularly when unemployment is so high".

He urged property companies and Edcon to come to a deal, and to include the unions and the PIC in negotiations.

"Reduce the rent, let Edcon get on their feet so they can continue to support 40,000 workers".

In the ongoing saga to save Edcon, CEO Grant Pattison earlier this year announced the closure of Boardmans stores, standalone Red Square stores and La Senza lingerie branches, saying it would absorb the home and beauty products into its main Edgars



040-123

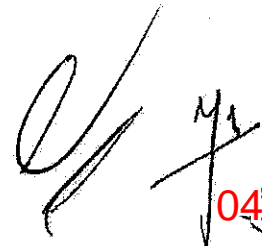
branches. Last year, Edcon sold chain store Legit for R637m.

Edcon, which analysts believe is planning to cut up to a third of all shops, has promised to close its Jet, CNA and Edgars stores only when leases end, giving property companies a chance to find new tenants.

But with mall vacancy rates at 5.5% - the highest in 15 years - this could prove tricky for property companies.



Edcon has faced a battle for survival since 2007, when US consultancy Bain delisted it from the JSE and borrowed R25bn in mainly foreign currency to take it private, -

Additional reporting by Ntando Thukwana

A handwritten signature in black ink, appearing to be 'Ntando Thukwana', is written over the red text '040-124'.

MINUTES OF A MEETING OF THE CREDITORS' COMMITTEE OF EDCON LIMITED
HELD VIA MICROSOFT TEAMS ON MONDAY 15 JUNE 2020 AT 5.30 PM

1. The meeting commenced with a welcome from chairperson of the committee, Juliette de Hutton (De Hutton). De Hutton confirmed that various questions/concerns had been raised by the committee and that she had provided a memorandum summarising these to the practitioners.
2. De Hutton handed over to the practitioners to deal with the various queries.
3. Piers Marsden (Marsden) proceeded to explain the balance sheet of Edcon Limited (Edcon) as at the end of April 2020.
4. Marsden explained that although the balance sheet reflects assets of almost R11 billion, this is misleading. The balance sheet is prepared on a going concern basis, which does not reflect realisable values in a liquidation or wind-down scenario.
5. Marsden proceeded to explain the various line items in the balance sheet commencing with non-current assets. The first line item of note is that of "Right of use assets" in the amount of approximately R4.1 billion. This is purely an accounting entry. It is balanced out in the liabilities section of the balance sheet by the finance lease liability of R3.34 billion under non-current assets and the finance lease liability of R1.8 billion under current liabilities. This is therefore not a real asset that can be converted into cash.
6. The next line item is "Properties, fixtures, equipment and vehicles" of R1.1 billion. This can be broken down further into land and buildings, leasehold improvements, fixtures and fittings, computer equipment and software and machinery and vehicles. The biggest of these, fixtures and fittings (R690 million), refers to items such as shelving and other custom made fixtures and fittings in stores. In a store that continues to operate they may have value but in a store that discontinues they have virtually no value. In regard to computers and software, these have very little value in the market, if any. Leasehold improvements are amounts which have been expended on leased property. In a liquidation one receives no value for these.
7. The next line item in the balance sheet is "Investments in subsidiaries" (R369 million). It can be broken into three main components, namely Jet Supermarkets Botswana Proprietary

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Limited, Edgars Stores (Namibia) Limited and Edgars Stores Swaziland Limited. Whether any value can be realised from these depends on whether there are buyers interested in these stores. Edcon is merely the shareholder of these entities. If there is no interested buyer they will be liquidated.



8. In summary, all the non-current assets in the total amount of R5.579 billion have very little value in a business rescue or liquidation scenario.
9. In regard to current assets, the main asset is "Inventories" in the amount of R2.4 billion. This is the asset that will lead to the largest recovery from the perspective of creditors. Creditors needs to be aware that of this there is a significant amount that is either consignment stock or subject to reservations of ownership. Consequently, of this R2.4 billion a significant amount will not flow through to creditors.
10. Marsden was asked about representations made by Grant Pattison (**Pattison**) on 26 March 2020 to the effect that Edcon held R3.2 billion in stock. Marsden was asked how R800 million of this had disappeared by the time the practitioners took over given that there was no trading due to lockdown. Lance Schapiro (**Schapiro**) confirmed that the R2.4 billion reflected on the balance sheet is cost value. He was not able to comment in regard to Pattison's alleged representation to the effect that R3.2 billion in stock was held. Marsden confirmed that the intention was to sell this stock / inventory in an accelerated sale process. They would not be able to sell the full range of stock and therefore the recovery would be lower than the R2.4 billion set out in the balance sheet.
11. In regard to "Amounts owing by Group companies and related parties", this referred to loan accounts owing primarily by subsidiaries operating in Ghana, Mozambique and Zambia. There was not likely to be any recovery from these operations, in particular Zambia (already in liquidation) and Ghana (loss making). A comment was, however, made by Louise Wiggett (**Wiggett**) to the effect that she would be able to assist with the repatriation of funds from Mozambique.
12. In regard to the line item "Sundry receivables and prepayments" these were prepayments on leases, rebates etc and the only hard asset that was recoverable was the RCS receivable in the amount of approximately R80 million.
13. As regards "Cash and cash equivalents", by the time the practitioners took over this cash had already been spent, primarily on salaries and related expenses such as PAYE. There was therefore not cash in the bank when they took over and there is no cash remaining on



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the balance sheet. Even if it had been, this cash would have been covered by the cession in place in favour of the secured creditors.

14. In the circumstances there are assets worth R11 billion. The R4.1 million relating to "Right of use assets" must be ignored. The "Properties, fixtures, equipment and vehicles" will not realise anything close to the R1.1 billion reflected on the balance sheet and the "Investments in subsidiaries" is also largely unrealisable.
15. During the explanation of the balance sheet Yusuf Vahed (**Vahed**) indicated that there was a vast amount of information he required from the practitioners that had not yet been provided. This included financial statements for previous years. Marsden indicated that he could not see the purpose of providing information in relation to the past. However, the March 2019 annual financial statements were available and there were also March 2020 annual financial statements although the latter had not yet been audited as the business rescue process interrupted this. The balance sheet under discussion was as at the end of April 2020 and therefore the numbers are more accurate than those that would be in the balance sheet as at the end of March 2020. In Marsden's view the need was to focus on getting a plan through. Creditors needed to park their rights in regard to what happened in the past. They would not be foregoing these rights and would be able to pursue them in due course, if appropriate. It was not correct to suggest that any information was being hidden by the practitioners. There is currently a window of opportunity to save the business, but stakeholders need to act quickly and at this stage there is little merit in wasting time looking backwards.
16. In summary, the only real asset available to creditors from a recovery perspective is the inventory. In the plan the practitioners have apportioned this is on a *pari passu* basis between concurrent and secured creditors. Ultimately, the recovery by secured creditors will be higher as they have security over other assets, including cash deposits and accounts receivable (including the second look book in the amount of approximately R500 million).
17. Marsden then proceeded to explain the recovery waterfall (**waterfall**). A copy of the schedule in this regard was provided at the meeting and would be emailed to creditors after the meeting. Marsden explained that it included both a high and low estimate in a liquidation scenario as well as an estimate in a trade-out scenario. The challenge faced by the practitioners is that in order to continue to trade and sell inventory they need to incur substantial costs, including rental and employee costs. In a business rescue scenario the employee costs include severance costs. The waterfall therefore refers to net recoveries

 
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after these expenses. As reflected in the waterfall, in a trade-out scenario the net recovery in respect of inventory is estimated to be R1.328 billion. Built into this are items such as the 6% turnover rental currently being paid, employee costs and utility costs. After adding net recoveries from properties, fixtures, equipment and vehicles as well as trade receivables, inter-group receivables and other receivables the total estimated net recovery is R1.9 billion. From this must be subtracted retrenchment costs of R597 million and rental PCF amounts of R408 million, leaving a total available for creditors of R895 million. Marsden clarified that only 6% turnover rental is currently being paid. The remainder is accruing as PCF and will need to be paid to landlords as a repayment of PCF.

18. The inventory will be sold over the period June and July. Initially it would be sold at a high margin, but it is anticipated that discounts will increase over time. Marsden pointed out that the net recovery of R1.9 million in a trade-out scenario is substantially higher than even the highest liquidation estimate (R939 million).
19. Marsden indicated that the total value of the secured creditors' claims is R3.8 billion and that of concurrent creditors is R4.3 billion. The ratio is therefore 54% concurrent creditors to 46% secured creditors. The assets subject to the general notarial bond (GNB) will be apportioned in the same proportion. Secured creditors will then get 100% of the proceeds of the other assets secured in their favour. The amount available for distribution to creditors from the realisation of inventory is the R1.328 billion net recovery less retrenchment costs of R597 million and PCF rental of R408 million, leaving the amount available for distribution of R324 million. Using the relevant ratios, R150 million will be attributable to the secured creditors and R174 million to concurrent creditors. This results in a recovery of approximately 4c in the Rand for concurrent creditors. The secured creditors will ultimately receive 19c in the Rand if the figures reflected in the waterfall materialize.
20. Marsden went through the list of questions sent to him by De Hutton (which had been the result of a previous meeting of the creditors' committee). A copy is attached as "A".
21. Schapiro and Marsden confirmed that a list of creditors reflecting vendor codes is being tidied up and will be provided to creditors. Schapiro indicated that he would let De Hutton know as soon as this list is available on the website.
22. In response to question 2.2 Marsden confirmed that the apportionment was *pari passu* and therefore concurrent creditors would get a proportionately great allocation than the secured creditors. Wiggett requested an explanation as to why a *pari passu* approach had been


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adopted. Why had secured creditors been allocated any of these funds? Marsden explained that if the secured creditors had perfected their GNB they would have a right to all the proceeds of these assets. As they had not perfected it, they rank equally with the concurrent creditors in regard to these assets. The negotiation with secured creditors in this regard was as a result of the fact that they wanted to claim a disproportionate share of these assets. The practitioners pushed back on this and would not agree. It should be noted that in a liquidation scenario the secured creditors would be preferent in respect of the GNB assets even if they had not perfected the GNB. In a liquidation scenario the concurrent creditors would not receive anything. Marsden clarified that the amount of approximately 19c in the Rand to be paid to secured creditors was a result of approximately 4c being received in respect of the GNB assets and a further approximately 16c in respect of other assets secured in their favour.

23. Gideon Bochedi (**Bochedi**) asked whether certain assets described as "Properties, fixtures, equipment and vehicles" did not also fall under the GNB and therefore should be shared amongst secured and unsecured creditors in the same manner. (This question was asked at point 2.3 of annexure A). Marsden confirmed that this was the case and that the waterfall calculation would be revised. [This revised calculation was then shared with creditors after the meeting and is mentioned below].
24. In regard to trading out the stock, Marsden confirmed that the book value is R2.4 billion. Trading would run for two months. On day one they would sell at good margins, but as the stock decreased and incomplete ranges were available they would start discounting stock. This would mean that by the last week of trading there would be approximately 90% discounts offered in order to sell all the stock before premises needed to be handed back to landlords. He emphasised that this scenario was based on the assumption that there were no buyers for the business.
25. Wiggitt pointed out that R895 million available to creditors from the trade-out scenario is less than what would be available in a liquidation at the high end of values. She asked what would be saved in respect of retrenchment payments if the businesses could be sold. Marsden confirmed that this depends on how many stores are taken over and how much of the head office staff is taken over. If one assumes that half of the retrenchment cost is saved (which would probably be a fair assumption) this would result in approximately another R250 million being available for distribution to creditors. Additionally, a higher amount may be realised for the inventory in a sale of the businesses (i.e. higher than R1.3 billion). Consequently, the practitioners do anticipate an increase in the dividend if they are able to



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sell the businesses. They did not publish these increased figures in the plan as there was concern that the potential buyers would be able to work back these figures to arrive at estimated offer prices of the various bidders. This would decrease the practitioners' ability to negotiate with potential buyers.

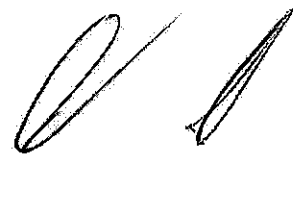
26. De Hutton indicated that she had queried the extent to which the dividend could increase if the businesses were sold and was told by Schapiro that it would not be substantial and that creditors should moderate their expectations in this regard. Marsden confirmed that the dividend would not go up to anything like, for example, 20c in the Rand, but it might perhaps go up from 4c to 7 or 8c. He could not guarantee this, but there would be some increase in the dividend.
27. Marsden also confirmed that the rental PCF, although generally a fixed number, is one they are trying to reduce wherever possible by cancelling leases in respect of stores where trading would cease in any scenario. The stock in those stores could be moved to nearby stores. The obligation to pay rental would be suspended in terms of section 136 of the Companies Act. However, it was not possible to reduce severance costs in relation to the relevant employees as it is not possible to retrench employees immediately, even where stores are to be closed. A minimum 60 day consultation period is required in terms of the Labour Relations Act.
28. In regard to question 2.5 Marsden indicated that the sale process is at a sensitive stage. They have received expressions of interest and are engaging with potential purchasers. It would be difficult for a private equity firm or a finance house to come in as a buyer as they would not be able to eliminate head office costs. All of the potential purchasers are retailers well known to all of us. He cannot disclose the names of the purchasers, but they are all large and have the financial ability to conclude this transaction. They are credible and can re-capitalise the business as required and will provide good homes to the trade creditors. Marsden confirmed that they are mostly clothing retailers, some being clothing adjacent. The failure to disclose the identities of the potential purchasers is not due to an absence of transparency but rather because he does not want to muddy the waters or compromise the sale process. They are all South African retailers. He cannot disclose the range of purchase prices offered. Marsden confirmed that the details of purchasers have been disclosed to De Hutton and that she is able to confirm to the committee that they are all credible purchasers.
29. Arthur Lambouris (**Lambouris**) expressed concern that as existing retailers all potential purchasers would have their own infrastructure and suppliers in place and therefore an



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ongoing trading partner was possibly not a "carrot" for this group of creditors. Marsden confirmed that there is no guarantee that there will be the possibility of ongoing trading. From the perspective of services such as IT there would always need to be a transitional period during which services are required by the new owners, but thereafter some buyers may not need those services. Lambouris also asked about Competition Commission approval due to the fact that all of the potential buyers are existing retailers. He wanted to know whether creditors would have a right to object during the competition approval process. Marsden confirmed that they would have such a right. Marsden confirmed that they are trying to expedite the process with the Competition authorities and using a failing firm defence. He also pointed out that if a sale is not approved by Competition authorities and there is no buyer then the market dominance of existing players in the market will automatically increase in any event. Marsden also mentioned that if there are two equal offers from different parties and one raises fewer competition considerations this might be a factor leading them to select that party. Marsden confirmed that there are still multiple bidders in both processes (i.e. Edgars and Jet).

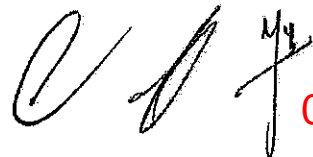
30. Wiggett asked what prevents purchasers from waiting for a liquidation and then "picking up the pieces" more cheaply. Why would they pay more through a business rescue process? Marsden confirmed that this is a risk and therefore during competitive bidding process they do not want to push buyers too far. Many thought retailers would allow Edcon to fail and would pick up the market share themselves. In terms of advantages of business rescue: there have, for example, already been lease terminations by landlords in respect of stores that Edcon would prefer to keep (and buyers would be interested in obtaining). The business is able to continue to trade in business rescue far easier than in a liquidation scenario. A liquidation process is very disjointed. It takes time for a liquidator to be appointed and time to get an extension of powers. A liquidator has limited ability to continue to trade. He must pay rental, employees etc and would generally require an indemnity to do so. It is not unfair to say that a liquidator would probably be unable to continue to trade and would simply sell off stock in an auction or similar process. If there is no prospect of ongoing business the landlords would have a hypothec which they would exercise. There would then be nothing for liquidators to sell and zero recovery for anyone. There would be no chance of a going concern sale. Liquidation is therefore not a realistic alternative.
31. In regard to question 2.6 Marsden emphasised that creditors should not make assumptions and must obtain confirmation that current supply is regarded as PCF. In regard to those



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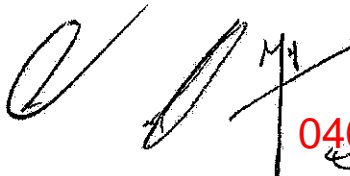
who have made arrangements to be paid on seven day terms, they clearly have made the appropriate arrangements.

32. In terms of question 2.7 Marsden confirmed that rights against directors would survive by operation of law. There is no compromise of claims recorded in the plan and all claims against directors would be retained. By voting in favour of a plan creditors would not be stepping back from their rights.
33. In regard to question 2.8 Marsden confirmed that buyers have different timeframes (between 3 to 9 months) for getting off Edcon systems (such as IT) and onto new systems. As long as Edcon needs these services they must pay for them. He anticipates that new purchasers will engage with service providers to determine what is required going forward. If service providers demonstrate an ability to add value they may be retained in the long-term. On the downside, it is likely that various long-term contracts will be required to be terminated in terms of section 136 of the Companies Act. This would be by mean of court applications which creditors can oppose. Damages claims would arise if contracts were terminated. As regards voting interests, no creditor has a vote until they have a liquidated claim and it was not anticipated that any liquidated claims would be in place as at the date of voting on adoption of the plan.
34. As regards litigation against Prime Logistics (question 2.10), Marsden confirmed that this has been settled. He also confirmed that the stock that had been held by Prime Logistics was included in the dividend calculation as it was stock held by Edcon as at 30 April 2020. He confirmed that a settlement amount was paid to Prime Logistics. This was calculated based on the value of the lien claim by Prime Logistics and weighing this up against the value of the inventory held by them. He could not say how much was paid as this may be subject to confidentiality in terms of the settlement agreement. He could, however, confirm that it was not the total amount owed to them. The practitioners had considered whether it was to their benefit to settle and had decided to do so. That stock is now going into the stores to be sold.
35. In regard to the litigation brought by Pan African Shop Shopfitters (question 2.11), Marsden confirmed that this was set down for hearing on Thursday, 18 June 2020.
36. In regard to creditors' queries that had not been responded to (question 2.12) he could only apologise. He will provide whatever creditors are entitled to and, to the extent that creditors are not entitled to information he will provide information that he believes advances the



process. He will be doing this because it is the responsible thing to do, not because he is obliged to do so.

37. Marsden confirmed that if reference was had to the balance sheet and the liabilities then the position is that Edcon is indeed technically insolvent.
38. At this stage various creditors expressed their anger and frustration. They confirmed that they had been "*led down the garden path*" by Edcon. They supplied in good faith based on the assurances of the CEO and senior management that Edcon was financially sound. This business rescue and the losses suffered are now destroying their businesses. They will not be able to rely on old management if they are retained in the new businesses. The trust has been broken. They will not be able to trust the business under new owners or to extend credit. Marsden confirmed that business rescue does not decrease the ability of creditors to seek redress. There is no compromise of their claims or waiver of their rights. He and his fellow practitioner were appointed to try and see what is possible based on the facts as at the date of their appointment. In a liquidation scenario there is zero prospect of jobs, there will be zero stores that survive and zero chance of ongoing trading with a trade partner that continues to exist. Creditors will also get zero by way of recovery. The alternative is the possibility of the brand surviving and creditors still having the choice whether or not to trade with the new trading partner/s. There will be no obligation to do so. A vote in favour of a plan is not a vote against looking back and pursuing directors, if necessary. However, in Marsden's view the most important thing at this stage is to get a plan through and new owners in place.
39. Marsden was asked once again about the possibility of converting debt to equity. He confirmed that this has been considered. The problem is that new cash is still needed to run the business. It will need right sizing, which includes retrenchments and cancelling leases, and these come at a cost. In addition, suppliers will not provide goods on terms and the upshot of all of this is the cash in the amount of approximately R500 million to R1 billion would be required for ongoing trading. On top of this the secured creditor exposure will then remain.
40. Marsden was questioned as to whether the new owners will not pay more than currently offered. Marsden confirmed that he is trying to create a competitive environment and therefore secure the best possible price. However, purchasers will be taking on staff and leases and a body of angry creditors. They need to capitalise the business going forward.



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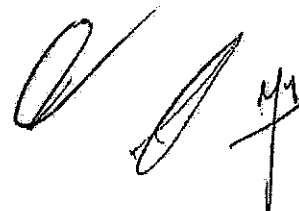
There is the acquisition price and then there is still a big investment required by way of working capital for the stores to get to December.

41. Marsden then proceeded to discuss the meeting that will take place to vote on the plan. He confirmed that it will not be a physical meeting but on a virtual platform. Proxies must be provided to the practitioners by Friday, 19 June. They will need to reconcile these over the weekend. The meeting will be on Monday, 22 June. At the meeting they will go through the statutory requirements and employee representatives will be able to address the meeting. At that stage the practitioners will then either look at the proxies and count the votes or adjourn to deal with amendments to the plan. In the latter case they would then reconvene the meeting in order to assess votes on an amended plan.
42. In regard to the sale process, binding offer are required to be submitted by the end of June. They will announce the successful purchaser soon thereafter – probably in the first week of July.
43. In regard to information still required by creditors such as Vaheer and Lambouris, it was requested that a final list should be provided to the practitioners that evening. [A list was subsequently received from Vaheer].
44. Vaheer indicated that he would like an independent third party to review the calculation of the votes to approve the plan. Marsden suggested the company's auditors (Deloitte) but Vaheer indicated that in his view they were not independent. Wiggett suggested that Marsden is professional and independent and they can trust him. Marsden indicated that he would be happy to utilize De Hutton to independently review the calculation of votes and the examination of proxies.
45. De Hutton emphasized that all questions must be reached to the practitioners before the meeting.
46. As regards discrepancies between amounts claimed by creditors and amounts reflected in the company ledger, Marsden confirmed that as long as both were in the same ballpark they would accept the value reflected in the creditor's proxy for voting purposes. If there was a big difference this would need to be investigated.
47. Marsden confirmed that no-one has the name of the bidders for the businesses (i.e. neither the landlords nor the secured creditors nor anyone else). The information has only been disclosed to De Hutton so that she can verify to the committee that they are all credible parties.



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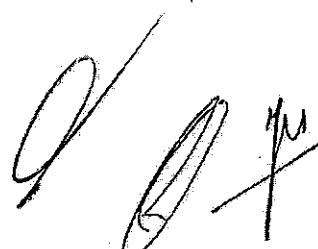
48. Questions were asked about the independence of Deloitte in attending to the liquidation calculation. Marsden confirmed that there was value in using the auditors as they know and understand the group and its structure and the nature of the assets. In his view they are independent.
49. Benjy Duchen asked why they could not wait to vote until after buyers had been selected. Marsden indicated that (i) there is urgency to publish and vote on the plan due to the stance adopted by unions that retrenchments cannot begin until the plan is actually approved not simply published and (ii) in engaging with buyers they have indicated that the practitioners do not yet have a mandate to sell the businesses. They are concerned that creditors may reject the plan. It is therefore important to get the plan approved. In regard to not disclosing the identity of bidders Marsden referred, by way of illustration, to the fact that the landlords want a buyer to take more rather than less stores. They are not concerned as to the price that is paid. However, secured creditors are only interested in the price that is paid. Different stakeholders therefore have different imperatives and would seek to interfere with the process. The practitioners would lose control of the process. The stakeholders need to have some faith in what is a fragile process where buyers can easily be scared off. De Hutton confirmed that it is not unusual not to know who a buyer is in advance. Many plans anticipate the sale of assets without knowing who the buyer is going to be.
50. Lambouris confirmed that in his view creditors should not make an emotional decision and vote against the plan simply because they do not know who the buyer is going to be. This would be to their detriment.
51. Vaher asked whether Matuson & Associates had any involvement with Edcon prior to taking the business rescue appointment. Marsden confirmed that in the 2019 restructure they had attended to the liquidation calculation to see what lenders would receive in a liquidation scenario. Additionally, one member of the Matuson team had assisted Mike Pienaar and the property team at Edcon in dealing with landlords and the rental reduction process that was part of the 2019 restructure.
52. Ronnie Herr asked whether there had been sufficient pushback from the practitioners to secure a better offer. Marsden confirmed that this had been done. They were not simply accepting the offers and were engaging in a competitive process. He was confident that pencils would be sharpened before binding offers were received.



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53. Marsden confirmed that if the plan is not adopted this will either lead to liquidation or the publication of an amended plan. Which of these ensued was likely to depend on why the initial plan failed. In his view it is hard to pass a plan once it has initially failed. If some parties want more then others are automatically receiving less. A failed plan therefore tends to end in liquidation.
54. Creditors emphasized that it must be made clear to all creditors that proxies must be provided before the meeting. Marsden agreed.
55. In regard to the questions as to whether it was worth engaging with the secured creditors to negotiate a bigger share of the unencumbered assets, Marsden expressed the view that the chance of a concession by them is remote. In fact, they are asking for a large shares themselves.
56. Various questions were posed about the proxy form and how to complete it. Marsden confirmed that they would review it to make it more user friendly. The proxy form would need to be completed in favour of the practitioners because there will be no actual attendees at the meeting.
57. Marsden confirmed that the waterfall would be amended to correct the position regarding assets other than inventory falling under the GNB.
58. The meeting adjourned at approximately 8pm.

Postscript: The waterfall calculation has since been revised to take account of other assets that fall under the GNB. The revised calculation was emailed to creditors by De Hutton. It reflects the fact that the estimated recovery for concurrent creditors will now be 6% (up from 4%). The recovery for the secured creditors reduces to 17% (from 19%).



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BUSINESS RESCUE PLAN

Prepared in terms of section 150 of the Companies Act, No. 71 of 2008

In relation to

EDCON LIMITED

(under business rescue)

(Registration No. 2007/003525/06)

Prepared by:

PIERS MICHAEL MARSDEN

(joint business rescue practitioner)

and

LANCE SCHAPIRO

(joint business rescue practitioner)

**MATUSON
ASSOCIATES**

PUBLICATION DATE: 8 JUNE 2020

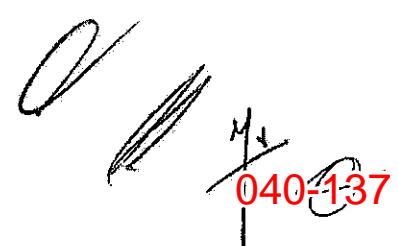
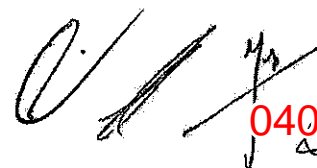

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Annexure A – List of Leases

Annexure B – List of Material Assets

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Annexure E – Cash Flow Forecast

1. INTERPRETATION AND PRELIMINARY

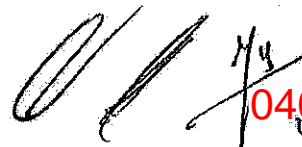
The headings of the paragraphs in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Plan nor any paragraph hereof. Unless a contrary intention clearly appears -

1.1. words importing –

- 1.1.1. any one gender include the other two genders;
- 1.1.2. the singular include the plural and *vice versa*; and
- 1.1.3. persons include natural persons, created entities (corporate and un-incorporate and the State) and *vice versa*;

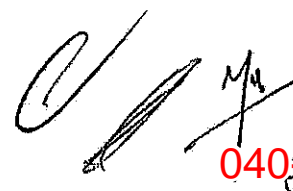
1.2. the following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings –

- 1.2.1. "2019 Restructuring" means the restructuring undertaken in terms of the Group in or around June 2019, dealt with more fully below from paragraph 5.3.1 onwards;
- 1.2.2. "Accelerated Sales Proceeds" means the proceeds generated from the Accelerated Sales Process, as defined in paragraph 18.3.1, excluding the Second Look Book Sales Proceeds and Subsidiary Secured Proceeds;
- 1.2.3. "Adoption Date" means the date upon which the Business Rescue Plan is approved in accordance with section 152(2), read with section 152(3)(b), of the Companies Act;
- 1.2.4. "Advisors" means the advisors to the BRPs, namely Matuson & Associates and ENSAfrica, and their respective employees or representatives;
- 1.2.5. "Affected Person/s" shall bear the meaning ascribed thereto in Section 128(1)(a) of the Companies Act and in relation to the Company means ECSL, Creditors and Employees and SACCAWU;
- 1.2.6. "Allocation Date" means 31 August 2020;
- 1.2.7. "Bowmans" means Bowman Gilfillan Incorporated, attorneys practising as such at 22 Bree Street, Cape Town;
- 1.2.8. "Brands" means the intellectual property, brands and trademarks currently owned by the Company in respect of each trading Division;



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- 1.2.9. "BRPs" means the joint business rescue practitioners of the Company, appointed in terms of section 129(3)(b) of the Companies Act, being Marsden and Schapiro, and shall include a reference to "Receivers" as the context requires in this Business Rescue Plan;
- 1.2.10. "Business" means the business of the Company from time to time being the retailing of non-food items through its Divisions, including, apparel, beauty products, cellular stock, footwear, homeware and financial services;
- 1.2.11. "Business Day" means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.2.12. "Business Rescue" means proceedings to facilitate the rehabilitation of the Company, which is financially distressed, as more fully defined in section 128(1)(b) of the Companies Act and paragraph 6.1;
- 1.2.13. "Business Rescue Costs" means the remuneration and expenses of the BRPs and other claims arising out of the costs of the Business Rescue, including the costs of the Advisors;
- 1.2.14. "Business Rescue Plan" means this document together with all of its annexures, as amended from time to time and prepared in accordance with section 150 of the Companies Act;
- 1.2.15. "CCMA" means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the LRA;
- 1.2.16. "CIPC" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 1.2.17. "Claims" means Pre-commencement Claims and Post-commencement Claims;
- 1.2.18. "Commencement Date" means 29 April 2020, being the date upon which Business Rescue commenced in accordance with section 129(1), read with section 132(1)(a)(i), of the Companies Act;
- 1.2.19. "Company" means Edcon Limited, Registration No. 2007/003525/06, a public company incorporated in accordance with the laws of South Africa, at present under Business Rescue and carrying on the Business under the name and style of the various Brands and through the Divisions;
- 1.2.20. "Companies Act" means the Companies Act, No. 71 of 2008, as amended;




- 1.2.21. "Contracts" means those contracts entered into by the Company and third parties, either prior to or after the Commencement Date;
- 1.2.22. "Costs" means the costs associated with:
- 1.2.22.1. the Business Rescue and Receivership, including, without limitation, the remuneration and expenses of the BRPs and the Receivership Administration Expenses, any claims arising out of the costs of the Business Rescue and Receivership, and any other costs whatsoever incurred during the Business Rescue and Receivership; and
- 1.2.22.2. any PCF Employee and PCF Creditor Claims;
- 1.2.23. "Creditors" means Pre-commencement Creditors and Post-commencement Creditors;
- 1.2.24. "Creditors' Committee" means the committee comprising Creditors, excluding Intercreditor Secured Creditors and Landlords, formed in terms of section 145(3), read with section 147(1)(b), of the Companies Act;
- 1.2.25. "Deloitte" means Deloitte Touche Tohmatsu Limited;
- 1.2.26. "Disputed Claims" means any and all Claims which are disputed in the Business Rescue and which dispute shall be determined in favour of or against such Creditors in terms of the Dispute Resolution in paragraph 39;
- 1.2.27. "Distribution/s" means distributions to be made to Creditors by the BRPs and/or the Receivers in terms of this Business Rescue Plan;
- 1.2.28. "Divisions" means the divisions of the Company, namely, Edgars, Jet and Thank U, more fully dealt with in paragraph 5.1.2;
- 1.2.29. "ECSL" means Edgars Consolidated Stores Limited, Registration No. 1946/022751/06, a public company incorporated in accordance with the laws of South Africa, of which the Company is a wholly owned subsidiary;
- 1.2.30. "Employees" means employees of the Company;
- 1.2.31. "Employees' Committee" means the committee elected for the purposes of representing the Employees during Business Rescue in terms of section 144(3)(c), read with section 148(1)(b), of the Companies Act;
- 1.2.32. "ENSAfrica" means Edward Nathan Sonnenbergs Incorporated, attorneys practising as such at Tower 1 | The Marc, 129 Rivonia Road, Sandton;



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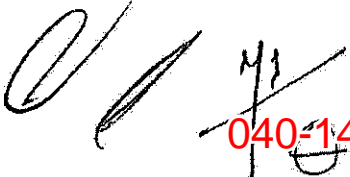
- 1.2.33. "Final Claims Date" means the final date for the filing of Pre-commencement Claims, being 90 days from the Adoption Date;
- 1.2.34. "Financially Distressed" shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;
- 1.2.35. "Foreign Subsidiaries" means the following wholly owned foreign subsidiaries of Edcon Limited, comprising:
- 1.2.35.1. Jet Supermarkets Botswana (Proprietary) Limited, Registration No. CO709;
- 1.2.35.2. Edgars Swaziland Limited, Registration No. 2 OF 1966;
- 1.2.35.3. Edgars Stores Lesotho (Proprietary) Limited, Registration No. 69/102;
- 1.2.35.4. Edgars Stores Namibia (Proprietary) Limited, Registration No. 78/02418/07;
- 1.2.35.5. Edcon International (Singapore) PTE Limited, Registration No. 201210267K (dormant);
- 1.2.35.6. Edcon International Hong Kong (Proprietary) Limited, Registration No. 1746908 (dormant);
- 1.2.35.7. Edcon Limitada, Registration No. 100155079;
- 1.2.35.8. Edcon Stores Limited, Registration No. 379/1948;
- 1.2.35.9. Jet Supermarkets Zambia Limited, Registration No. 89464 (In liquidation);
- 1.2.35.10. Edcon (Shanghai) Trading Co. Limited, Registration No. 310000400691682; and
- 1.2.35.11. Jetcon Mart Ghana Limited, Registration No. CS121362012;
- 1.2.36. "General Concurrent Creditors" means those Creditors who do not hold security for their Claims and/or are not statutorily preferred in terms of section 135 of the Companies Act;
- 1.2.37. "Group" means the group of companies related to the Company, reflected in the



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organogram in paragraph 5.2;

- 1.2.38. "Insolvency Act" means the Insolvency Act, No. 24 of 1936, as amended;
- 1.2.39. "Instruments" means the instruments issued by the Company pursuant to the 2019 Restructuring, detailed from paragraph 5.3.1 onwards, also referred to as "Notes";
- 1.2.40. "Intercreditor Agreement" means the agreement concluded between, among others, the Company, Newco, the Intercreditor Secured Creditors and the Security Administrator on or about 25 June 2019;
- 1.2.41. "Intercreditor Secured Creditors" means the secured parties as defined in the Intercreditor Agreement;
- 1.2.42. "Landlords Agreement" means the agreement concluded between the Company, Newco and Participating Landlords in or about June 2019, as part of the 2019 Restructuring, in terms of which agreement *inter alia* the relationship between the Landlords on the one hand and the Company and Newco on the other hand was regulated following the 2019 Restructuring;
- 1.2.43. "Landlord/s" means the landlord/s of the premises leased to the Company in terms of the Leases, including the Participating Landlords;
- 1.2.44. "Landlords' Committee" means the committee comprising Landlords, established in terms of section 145(3) of the Companies Act;
- 1.2.45. "Leases" means the lease agreements in respect of which the Company was a tenant as at the Commencement Date;
- 1.2.46. "Lenders' Committee" means the committee comprising Intercreditor Secured Creditors, excluding Participating Landlords, established in terms of section 145(3) of the Companies Act;
- 1.2.47. "Local Subsidiaries" means the following wholly owned local subsidiaries of the Company or companies in which the Company has a shareholding, comprising:
- 1.2.47.1. National Security Corporation Proprietary Limited, Registration No. 1946/023720/07 (dormant);
- 1.2.47.2. Securex Security Services Proprietary Limited, Registration No. 2009/013225/07 (dormant);

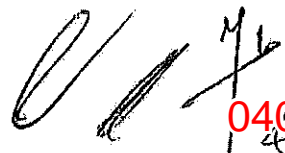


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- 1.2.47.3. Rapid Dawn 132 Proprietary Limited, Registration No. 2002/004179/07;
- 1.2.47.4. Topics Proprietary Limited, Registration No. 1955/000568/07;
- 1.2.47.5. Cosyro Proprietary Limited, Registration No. 2013/085954/07 (dormant);
- 1.2.47.6. Kamhandi Retail Proprietary Limited, Registration No. 2002/006468/07 (dormant);
- 1.2.47.7. Bessle Retail Trading Proprietary Limited, Registration No. 2012/089060/07 (50% shareholding); and
- 1.2.47.8. TSTM SA Retail Proprietary Limited, Registration No. 2011/125186/07 (50% shareholding);
- 1.2.48. "LRA" means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.2.49. "Management" means the executive management of the Company as at the Commencement Date;
- 1.2.50. "Management Restructuring Plan" means the plan developed by Management for the restructuring of the Company prior to the commencement of Business Rescue, more fully dealt with in paragraph 7.5.1;
- 1.2.51. "Marsden" means Piers Michael Marsden, the joint business rescue practitioner appointed by the Company in terms of section 129(2)(b) of the Companies Act;
- 1.2.52. "Matuson & Associates" means Matuson & Associates Proprietary Limited, Registration No. 2009/008967/07, a company duly incorporated in accordance with the laws of South Africa;
- 1.2.53. "Newco" means K2019216440 (South Africa) Limited, of which ECSL is a wholly owned subsidiary;
- 1.2.54. "Notice of Meeting" means the notice of the meeting to consider the Business Rescue Plan delivered to all Affected Persons as contemplated in terms of section 151(2) of the Companies Act;
- 1.2.55. "Participating Landlords" means those Landlords who concluded and are still party to the Landlords Agreement;
- 1.2.56. "PCF" means post-commencement finance as contemplated in section 135 of the Companies Act;




- 1.2.57. "PIC" means the South African Public Investment Corporation SOC Limited;
- 1.2.58. "Post Allocation Date Trading Proceeds" means all proceeds generated from the sale of stock and any other proceeds generated from the operations of the Company after the Allocation Date, excluding (i) all monies collected in respect the Second Look Book after the Allocation Date; (ii) Second Look Book Sales Proceeds; and (iii) the Subsidiary Secured Proceeds;
- 1.2.59. "Post-commencement Claims" means any claim against the Company, the cause of action in respect of which arose after the Commencement Date;
- 1.2.60. "Post-commencement Creditors" means all persons, including legal entities and natural persons, having Post-commencement Claims;
- 1.2.61. "Pre-commencement Claims" means any claim against the Company, the cause of action which arose prior to the Commencement Date;
- 1.2.62. "Pre-commencement Creditors" means all persons, including legal entities and natural persons, having Pre-commencement Claims;
- 1.2.63. "Pre-commencement Secured Creditors" means all Pre-commencement Creditors holding security for their Claims, excluding the Intercreditor Secured Creditors;
- 1.2.64. "Proposal" means the proposal to rescue the Company, being the Sales Process, more fully dealt with in Part B of this Business Rescue Plan;
- 1.2.65. "Publication Date" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being 8 June 2020;
- 1.2.66. "Rand" or "R" or "ZAR" means the lawful currency of South Africa;
- 1.2.67. "Receivers" means the receivers to be appointed in terms of paragraph 29, being Marsden and Schapiro;
- 1.2.68. "Receivership" means the process which will commence on the Adoption Date, more fully dealt with in paragraph 29;
- 1.2.69. "Receivership Administration Expenses" means the remuneration and expenses of the Receivers and other claims arising out of the costs of the Receivership;
- 1.2.70. "SACCAWU" means South African Commercial Catering and Allied Workers



Union, being the registered trade union in terms of section 96 of the LRA, representing 3 327 employees of the Company;

- 1.2.71. "**Sales Process**" means the sales process embarked upon by the BRPs to rescue the Company, comprising the Accelerated Sales Process and Wind-Down Process, more fully dealt with in paragraph 0 and paragraph 21;
- 1.2.72. "**Schapiro**" means Lance Schapiro, the joint business rescue practitioner appointed by the Company in terms of section 129(2)(b) of the Companies Act;
- 1.2.73. "**Second Look Book**" means the Company's own funded second look credit book;
- 1.2.74. "**Second Look Book Sales Proceeds**" means the proceeds received from the sale of the Second Look Book, less realisation costs or expenses relating to or arising from the sale of the Second Look Book;
- 1.2.75. "**Section 151 Meeting**" means the meeting to determine the future of the Company as contemplated in terms of section 151 of the Companies Act;
- 1.2.76. "**Secured Creditors**" means those Creditors who hold security for their Claims against the Company, including, but not limited to, Intercreditor Secured Creditors and Pre-commencement Secured Creditors;
- 1.2.77. "**Secured Trading Proceeds**" means all proceeds generated from the sale of stock and any other proceeds generated from the operations of the Company, excluding the Second Look Book Sales Proceeds and Subsidiary Secured Proceeds, with effect from the Commencement Date up to and including the Allocation Date, less all and any Costs, excluding potential severance costs, incurred by or on behalf of the Company in respect of which Costs the cause of action arose between the Commencement Date and Allocation Date, both days included;
- 1.2.78. "**Security Administrator**" means the security administrator appointed in terms of the Intercreditor Agreement, namely ABSA Bank Limited;
- 1.2.79. "**South Africa**" means the Republic of South Africa;
- 1.2.80. "**Subsidiaries**" means the Local Subsidiaries and Foreign Subsidiaries of the Company;
- 1.2.81. "**Subsidiary Secured Proceeds**" means any proceeds received in respect of any shares in the Subsidiaries or in respect of any inter-company loans, less costs or expenses arising from or relating to the realisation of such shares or



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inter-company loans;

1.2.82. "Substantial Implementation Date" means the date on which the BRPs will file with CIPC a notice of substantial implementation of this Business Rescue Plan in terms of section 152(8) of the Companies Act, whereupon the Company's Business Rescue will end in terms of section 132(2)(c)(ii);

1.2.83. "Tax/Taxation" means -

1.2.83.1. levies payable to government authorities;

1.2.83.2. normal taxation;

1.2.83.3. capital gains tax;

1.2.83.4. value-added tax;

1.2.83.5. any taxation arising from new assessments of taxation and/or the reopening of any income tax assessments of the Company for any period prior to the Commencement Date;

1.2.83.6. donations tax;

1.2.83.7. customs duty;

1.2.83.8. securities transfer tax;

1.2.83.9. all Pay-As-You-Earn taxation (PAYE) not paid over;

1.2.83.10. all other forms of taxation, other than deferred tax; and

1.2.83.11. any penalties or interest on any of the foregoing;

1.2.84. "UIF" means the South African Unemployment Insurance Fund (a fund established in terms of section 4 of the Unemployment Insurance Act, 2001) (represented by the PIC); and

1.2.85. "VAT" means the value-added tax levied in terms of the South African Value-Added Tax Act, No. 89 of 1991, as amended;

1.3. any reference to any statute, regulation or other legislation in this Business Rescue Plan shall be a reference to that statute, regulation or other legislation as at the Publication Date, and as amended or substituted from time to time;

1.4. any reference in this Business Rescue Plan to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or



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may from time to time be, amended, varied, novated or supplemented;

- 1.5. if any provision in a definition in this Business Rescue Plan is a substantive provision conferring a right or imposing an obligation on any person or entity then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Business Rescue Plan;
- 1.6. where any term is defined in this Business Rescue Plan within a particular paragraph other than this paragraph 1, that term shall bear the meaning ascribed to it in that paragraph wherever it is used in this Business Rescue Plan;
- 1.7. where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;
- 1.8. any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be; and
- 1.9. words or terms that are capitalised and not otherwise defined in the narrative of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of tables) shall bear the meaning assigned to them in the Companies Act.

2. ACTION TO BE TAKEN BY AFFECTED PERSONS


- 2.1. If any Affected Person is in doubt as to what action should be taken arising from the contents of this Business Rescue Plan, such Affected Person or Affected Persons are advised to consult an independent attorney, accountant or other professional advisor in addition to any consultation with or direction received from the BRPs.
- 2.2. Nothing contained in this Business Rescue Plan shall constitute legal or Tax advice to any Affected Person, nor do the BRPs make any representations in respect thereof.

3. STRUCTURE OF THE BUSINESS RESCUE PLAN

For the purposes of section 150(2) of the Companies Act, this Business Rescue Plan is divided into 3 (three) parts as follows –

3.1. PART A - BACKGROUND

This part sets out the background to the Company and its Divisions, and the factors that resulted in the Company being Financially Distressed and being placed under Business Rescue.



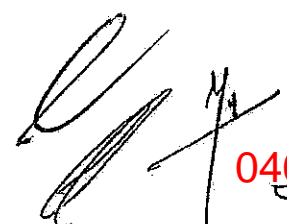
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3.2. **PART B - PROPOSAL**

This part describes the terms of the proposal and includes, *inter alia*, the benefits and/or effect of adopting the Business Rescue Plan as opposed to the Company being placed into liquidation.

3.3. **PART C – ASSUMPTIONS AND CONDITIONS**

This part sets out, *inter alia*, what conditions need to be fulfilled in order for the Business Rescue Plan to become effective, and to be implemented.



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PART A – BACKGROUND

4. COMPANY INFORMATION

4.1. Shareholding Structure

As at the Publication Date, ECSL is the sole shareholder of the Company.

4.2. Directors

4.2.1. As at the Commencement Date, the Directors, according to the CIPC, are –

Name of Director	Date of Appointment
Grant Michael Pattison (chief executive officer)	01 February 2018
Abigail Rachel Bisogno	30 September 2019
Daphne Motsepe	30 September 2019
Gareth Peter Hebert Penny	30 September 2019
Mncane Esau Mthunzi	30 September 2019
Nigel Brian Palmer	30 September 2019
Rhidwaan Gasant	30 September 2019

4.2.2. The records of the Company are in the process of being updated with the CIPC, however, according to the Company records, the following are the Directors of the Company as at the Publication Date:

Name of Director	Date of Appointment
Grant Michael Pattison (chief executive officer)	01 February 2018
Abigail Rachel Bisogno	30 September 2019

4.3. Company Information

Financial Year: 31 March

Registered Business Address: Edgardale
1 Press Avenue
Crown Mines
2092

Postal Address: P.O. Box 100
Crown Mines
2025

Business Telephone Number: (011) 495 – 6000

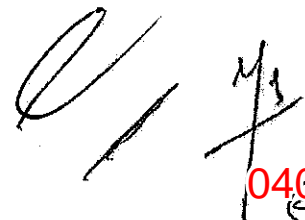
Business Fax Number: (011) 837 – 5019

Accountants / Auditors: Deloitte

5. COMPANY BACKGROUND

5.1. Background to the Company

- 5.1.1. The Company was registered in 1929 to operate as a non-food retailer to consumers in Johannesburg, Gauteng. The Company has since expanded across Southern Africa and been restructured from time to time, with the last restructure being the 2019 Restructuring, dealt with from paragraph 5.3.1 onwards.
- 5.1.2. The Company is one of the largest non-food retailers in Southern Africa and operates through the following three Divisions:
- 5.1.2.1. Edgars Division, created in 1929 and is a leading retailer of clothing, footwear, textiles, cosmetics, accessories and cellular products, housing local and international brands, as well as the Edgars private label brand.
- 5.1.2.2. Jet Division, created in 1976 and has since pioneered the retail sector as a value fashion retailer that prides itself in selling quality products at the best prices. The products include clothing, shoes, accessories, beauty, homeware and cellular products.
- 5.1.2.3. Thank U Digital Division, created in 2012 and is one of South Africa's largest customer-relationship (loyalty) programmes, with over 14 million cardholders. This division comprises Thank U Insurance, Thank U Credit, and Thank U Loyalty and Rewards.



5.1.3. As at the Commencement Date:

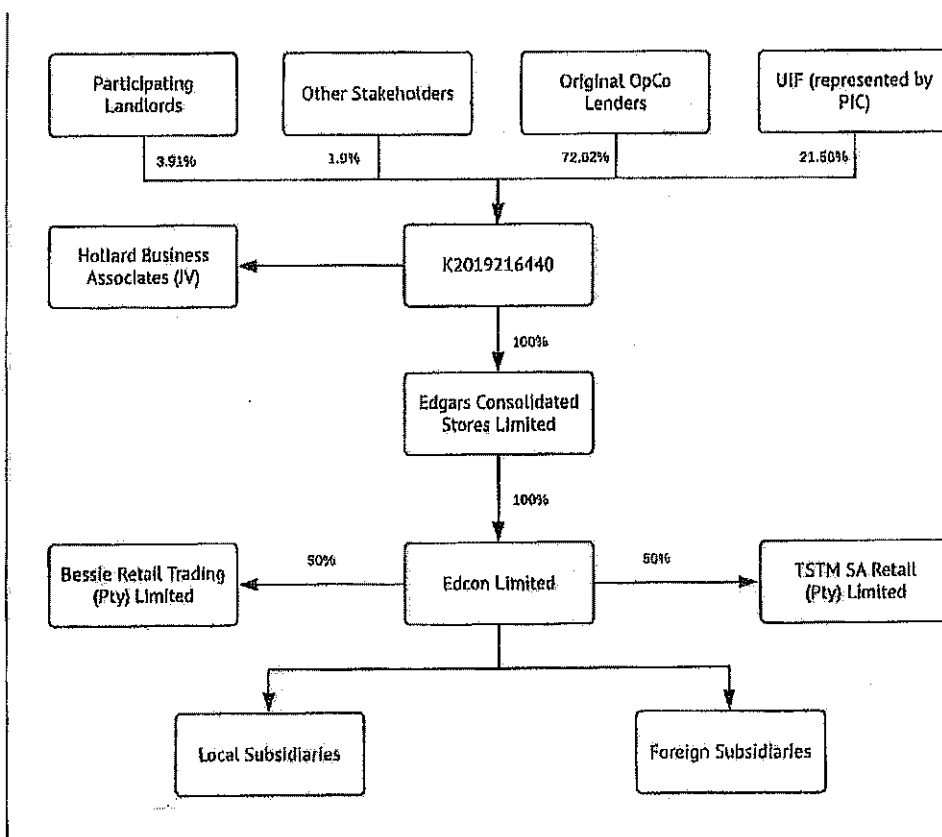
5.1.3.1. The Company operated its retail divisions through approximately 650 stores, all of which are situated on premises leased by the Company in terms of the Leases.

5.1.3.2. The Company employed approximately 17 292 employees and approximately 5 000 seasonal casual workers.

5.1.4. In addition, the Company is a shareholder of the Subsidiaries.

5.1.5. As stated above, the Company is wholly owned by ECSL. ECSL is, in turn, wholly owned by Newco.

5.2. Simplified Group Organogram





*Note: The "Other Stakeholders" in the diagram above are the subscribers pursuant to the tip-offer made on 3 September 2019 by the board of directors of K2016470219 (South Africa) Limited ("Holdco 2" which was the indirect holding company of the Company pre the 2019 Restructure and which is now dormant) to the A shareholders and B shareholders of HoldCo 2 ("Tip Offer Subscribers") in exchange for their release of all claims, in their capacity as shareholders and creditors of the HoldCo 2 and its subsidiaries, in connection with the share pledge enforcement over Edcon Acquisition Proprietary Limited's shares in ECSL under the 2019 Restructuring.


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5.3. Background to the Company's Financial Distress

- 5.3.1. In June 2019, the Group, following various financial discussions and negotiations over the prior 13 months, underwent a restructuring exercise, being the 2019 Restructuring.
- 5.3.2. The 2019 Restructuring was a Group-wide debt restructuring and refinancing in order to ensure the continued operation of the largest retailer in sub-Saharan Africa and the retention of tens of thousands of jobs.
- 5.3.3. The 2019 Restructuring involved *inter alia*:
- 5.3.3.1. The capitalisation of R9.3 billion of intra-group debt;
 - 5.3.3.2. The restructure of R10 billion of existing financier debt, either through capitalisation or refinance as convertible indirectly-secured guaranteed Instruments;
 - 5.3.3.3. The sourcing of R2.7 billion of additional cash financing from existing financiers; the UIF (represented by the PIC); and Participating Landlords:
 - 5.3.3.3.1. The additional funding was sourced through the issuance by the Company of Instruments, and shares issued by the newly-incorporated holding company, Newco, with such shares and Instruments being stapled.
 - 5.3.3.3.2. The successful issuance required negotiation of the Instrument terms with a consortium of South African and international banks and funds who were lenders to the Company (referred to as the "OpCo Lenders"); the UIF (represented by the PIC); and approximately twenty six Landlord groups (who became the Participating Landlords).
 - 5.3.3.4. Subsequent to the 2019 Restructuring being implemented, the Tip Offer was launched and completed resulting in the Tip-Off Offer Subscribers becoming holders of 1.9% of the Instruments issued by the Company and shares issued by Newco.


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- 5.3.3.5. The following Instruments were issued:
- 5.3.3.5.1. Tranche A Instruments (comprising Tranche A1 Instruments and Tranche A2 Instruments) - issued to the Opco Lenders to the Company to refinance their existing secured debt and as consideration for the provision of new money;
 - 5.3.3.5.2. Tranche B1 Instruments - issued to the UIF (represented by the PIC) in consideration for the provision of new money;
 - 5.3.3.5.3. Tranche C Instruments - issued to the Participating Landlords in exchange for (i) an upfront cash subscription, (ii) periodic/monthly cash subscriptions or (iii) periodic / monthly rent reductions, each in accordance with the Landlords Agreement; and
 - 5.3.3.5.4. Tranche D Instruments - issued to the Tip-Offer Subscribers pursuant to the Tip-Offer.
- 5.3.3.6. The following conditional Instruments were issued to the UIF (represented by the PIC) to provide downside protection in an enforcement scenario:
- 5.3.3.6.1. Tranche B2 Instruments, which would entitle the UIF (represented by the PIC) to a conditional claim and associated rights against the Company. Such claim is conditional upon an Acceleration Event (as defined in the terms and conditions of the Instruments) occurring which has not been rescinded. At all other times, the Tranche B2 Instruments do not constitute an obligation of the Company.
 - 5.3.3.6.2. This claim has arisen by virtue of the Business Rescue.
- 5.3.3.7. As mentioned above, the Instruments were Issued by the Company and are "stapled" to ordinary shares Issued by Newco.
- 5.3.3.8. Other than the Tranche B2 Instruments, the Instruments are convertible into ordinary shares in Newco should certain conversion





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triggers be met. The Instruments are indirectly-secured (using the standard South African security SPV structure) and guaranteed by Newco and certain Subsidiaries. The Instruments are English law governed.

5.3.4. Pursuant to the 2019 Restructuring:

- 5.3.4.1. Existing shareholders of the group constituted by Holdco 2 (which was the indirect holding company of the Company prior to the 2019 Restructuring) ceased to own the Company following a share pledge enforcement over Edcon Acquisition Proprietary Limited's shares in ECSL under the 2019 Restructuring, and the transfer of such shares in ECSL to Newco;
- 5.3.4.2. Pursuant to the 2019 Restructuring, Newco became the indirect holding company of the Company;
- 5.3.4.3. The persons receiving shares in terms of the 2019 Restructuring became shareholders of the Group by the issuance of shares in Newco;
- 5.3.4.4. Newco also acquired 50 N ordinary shares in Hollard Business Associates Proprietary Limited ("HBA"), accepted cession of all rights and delegation of all obligations under and in terms of the joint venture agreement between HBA, Pickent Holdings Proprietary Limited and ECSL, the latter which regulates the rights and obligations associated with the shares in HBA;
- 5.3.4.5. Additional funding was obtained upfront from Participating Landlords who elected to contribute their subscription consideration upfront, in a single payment, as specified in the Landlords Agreement staggered throughout the period till 31 March 2021, through the issue of Instruments by the Company and shares in Newco;
- 5.3.4.6. Additional staggered funding from Participating Landlords (who did not contribute their funding upfront) was obtained by monthly rental commitments until 31 March 2021 under the Leases with such Participating Landlords, whereby –
 - 5.3.4.6.1. the Participating Landlords elected to contribute their subscription consideration monthly, and whereby monthly they would be issued a specified amount of Instruments by the Company and transferred a

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specified amount of shares in Newco as set out in the Landlords Agreement; or

5.3.4.6.2. such rental commitments were automatically discounted (resulting in a lower future rental burden for the Company), in consideration for which such Participating Landlords would be provided, monthly, with a specified amount of instruments issued by the Company and a specified amount of shares in Newco as set out in the Landlords Agreement; and

5.3.4.7. The existing debt of the Company advanced by the Opco Lenders was restructured.

5.3.5. Following the 2019 Restructuring of the Group and with the capital injection from the new shareholders to the Group, it was anticipated that the Company would be in a less precarious financial position and begin to trade profitably.

5.3.6. Of the funding received pursuant to the 2019 Restructuring, the majority was utilised, as planned, to fund the losses experienced by the Company for the financial years ended March 2019 and March 2020.

5.3.7. The Company was on track in terms of the 2019 Restructuring until the end of December 2019.

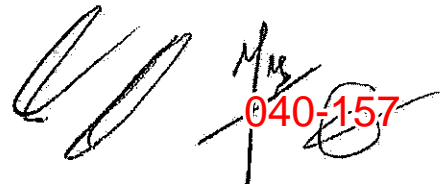
5.3.8. However, in early 2020 the Company's financial position became distressed due to:

5.3.8.1. The recession in the South African economy, which coincided with load-shedding, disrupting purchasing patterns.

5.3.8.2. Poor sales as a result of the only partially-completed repositioning of its credit and product offering.

5.3.8.3. The advent of the COVID-19 pandemic which resulted in the Government of South Africa announcing and implementing measures, including an initial 45 day social distancing and lockdown period. This resulted in a further trading slump and the Company immediately experiencing a loss of R2 billion in sales.

5.3.9. The loss of sales, and consequently the Company's failure to meet the March 2020 and April 2020 sales targets, as well as the decline in collections of the debtors' book due to the lockdown resulted in the Company only having



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sufficient liquidity to pay salaries for March 2020 and for April 2020, with the latter payment being in terms of the agreed banded reduction referred to in paragraph 7.5.6.3. The Company was unable to honour all of its contractual obligations with suppliers.

- 5.3.10. The aforesaid factors resulted in the Company becoming financially distressed and accordingly the board of the Company resolved to place the Company in Business Rescue.

6. SUMMARY OF THE BUSINESS RESCUE

6.1. Introduction

Business Rescue, as defined in section 128(1)(b) of the Companies Act, refers to proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for –

- 6.1.1. the temporary supervision of a company by one or more business rescue practitioners, and of the management of its affairs, business and property;
- 6.1.2. a temporary moratorium on the rights of claimants against a company or in respect of property in its possession; and
- 6.1.3. the development and implementation, if approved, of a plan to rescue the company in question by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company in question continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company.

- 6.2. The following summary sets out the salient dates on which certain events have taken and will take place during Business Rescue –

Board Resolution to commence Business Rescue	28 April 2020
Commencement of Business Rescue (date on which the above resolution was filed by CIPC)	29 April 2020
Appointment of BRPs	4 May 2020
First Employees' Meeting	18 May 2020
First Creditors' Meeting	18 May 2020
First Employees' Committee Meeting	25 May 2020
First Landlords' Committee Meeting	27 May 2020
First Lenders' Committee Meeting	27 May 2020
First Creditors' Committee Meeting	28 May 2020



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Second Creditors' Committee Meeting (Consultation on the development of the Business Rescue Plan)	4 June 2020
Second Landlords' Committee Meeting (Consultation on the development of the Business Rescue Plan)	4 June 2020
Second Lenders' Committee Meeting (Consultation on the development of the Business Rescue Plan)	5 June 2020
Second Employees' Committee Meeting (Consultation on the development of the Business Rescue Plan)	5 June 2020
Meeting with SACCAWU	5 June 2020
Publication of the Business Rescue Plan	8 June 2020
Section 151 Meeting	22 June 2020

7. STEPS TAKEN SINCE THE APPOINTMENT OF THE BRPS

7.1. ADMINISTRATIVE MATTERS

7.1.1. Appointment of BRPs

The BRPs were appointed by CIPC on 4 May 2020.

7.1.2. Management Control

In terms of section 140(1)(a) of the Companies Act, the BRPs took over full management control of the Company, but as they were entitled to do, the BRPs delegated certain functions to some of Management.

7.1.3. Notices

The BRPs have been publishing notices to affected persons in terms of the Companies Act.

7.1.4. Reporting to CIPC

The BRPs have complied with all statutory obligations under the Companies Act and will render monthly reports to CIPC as contemplated in section 132(3) of the Companies Act.

7.1.5. Committee Meetings

It was agreed between the BRPs and the Directors of the Company, together with certain key senior Management, that regular meetings would be held with the respective committees for purposes of providing updates on developments in the Business Rescue.



7.1.6. Deloitte appointed to calculate potential Liquidation Dividend

- 7.1.6.1. The BRPs appointed Deloitte as independent experts to calculate the potential liquidation dividend that would be received by Creditors, in their specific classes, if the Company were to be placed in liquidation as at 30 April 2020.
- 7.1.6.2. As will more fully appear below, if the Company had been liquidated on 30 April 2020, General Concurrent Creditors would have received a dividend of zero cents in the Rand.

7.1.7. Publication of Business Rescue Plan and Notice of Meeting

- 7.1.7.1. The Business Rescue Plan will be published to all Affected Persons on the Publication Date.
- 7.1.7.2. The Notice of Meeting will be delivered to all Affected Persons simultaneously with the publication of the Business Rescue Plan.
- 7.1.7.3. Publication of the Business Rescue Plan and delivery of the Notice of Meeting will take place in accordance with the provisions of the Companies Act and the Regulations thereto.

7.1.8. Cash Resources

In order to preserve the cash resources of the Company, the BRPs implemented immediate cash relief initiatives and explored broader cost optimisation initiatives, including:

- 7.1.8.1. In respect of rentals payable to Landlords, implementing an interim measure payment based on a percentage of the gross turnover generated in each respective store, with the difference between payments and contractual obligations being accrued as PCF.
- 7.1.8.2. In respect of Employees:
- 7.1.8.2.1. continuing with the banded salary reductions implemented in early April 2020, which will continue until June 2020, referred to in paragraph 7.5.6.3, and non-payment of contractual increases which become due and payable during Business Rescue, the latter being treated as PCF; and
- 7.1.8.2.2. cancelling all discretionary payments.



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7.1.9. Stock

In respect of purchase orders for stock:

- 7.1.9.1. Limited fast moving stock is being acquired on a cash on delivery basis.
- 7.1.9.2. Local purchase orders placed prior to the Commencement Date will only be proceeded with upon confirmation from the BRPs.
- 7.1.9.3. International purchase orders placed prior to the Commencement Date were put on hold, with no orders being shipped.

7.1.10. Leases

In respect of Leases, the consensual cancellation and/or suspension, in terms of section 136 of the Companies Act, of those Leases where the Company is no longer trading and has vacated the premises ("**Onerous Leases**").

7.1.11. Contracts

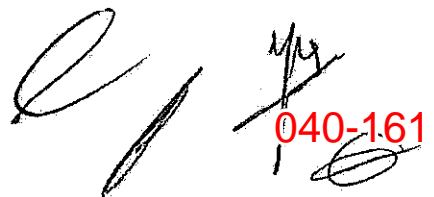
In respect of other Contracts, the consensual cancellation and/or suspension, in terms of section 136 of the Companies Act, of Contracts concluded prior to the Commencement Date.

7.1.12. Own Funded "Second Look" Credit Book

In respect of the Company's own funded second look credit book ("**Second Look Book**"), the suspension of all new account openings and tightening the provision of credit by only allowing credit to customers of good standing (i.e. CD0 and CD01 or customers with no level of arrears allowed to rotate within current limits).

7.2. LABOUR**7.2.1. Employees' Meetings**

- 7.2.1.1. A first meeting of Employees, as contemplated in section 148(1) of the Companies Act, was convened on 18 May 2020.
- 7.2.1.2. At this meeting, *inter alia*:
 - 7.2.1.2.1. the business rescue process was explained;



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7.2.1.2.2. Employees were informed of the BRPs' belief regarding the reasonable prospect of rescuing the Company; and

7.2.1.2.3. nominations were requested for the establishment of the Employees' Committee.

7.2.2. Employees' Committee

7.2.2.1. Pursuant to the first meeting of Employees, the Employees' Committee was duly established.

7.2.2.2. The Employees' Committee comprises the following:

7.2.2.2.1. representatives from SACCAWU; and

7.2.2.2.2. representatives for the independent employees (being those employees not represented by SACCAWU).

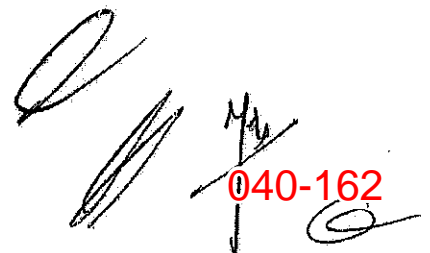
7.2.2.3. The Employees' Committee met with the BRPs on 25 May 2020 and 5 June 2020.

7.2.3. Consultation During the Development of the Proposed Business Rescue Plan

7.2.3.1. On 5 June 2020, the BRPs consulted with, *inter alia*, representatives on the Employees' Committee on the development of the proposed Business Rescue Plan to:

7.2.3.1.1. enable them to make representations to the BRPs for consideration, subject to the BRPs' overall responsibility to publish a Business Rescue Plan which they regard as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

7.2.3.1.2. requested the Employees' Committee to submit any questions in regard to the proposed Business Rescue Plan to enable the BRPs to consider same prior to the Publication Date.



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7.2.4. Section 189 of the LRA Process

- 7.2.4.1. Regrettably, the implementation of the Sales Process may lead to positions being declared redundant across various job categories and in significant numbers. This may, in turn, result in the dismissals of some or all of the Employees, for operational reasons subject to the outcome and implementation of the Sales Process.
- 7.2.4.2. It should be emphasised that no final decisions have yet been taken, nor will any final decisions be taken until the Employees and the Company have exhausted consultation (and hopefully achieved consensus).
- 7.2.4.3. It is proposed that the Company will issue notices in terms of section 189(3) read together with section 189A of the LRA ("section 189(3) notices") to all Employees and SACCAWU on or about 10 June 2020.
- 7.2.4.4. The issuance of the section 189(3) notices will be the first step in a statutory facilitated consultation process which, it is envisaged, will commence on or about 10 June 2020 under the auspices of facilitation at the CCMA. The Company and the consulting parties will hold consultation meetings on dates to be determined by the CCMA.
- 7.2.4.5. The Company will, for a minimum period of 60 (sixty) days as prescribed in terms of the LRA, consult with the consulting parties, on all the issues set out in the section 189(3) notice. This consultation process will be facilitated by a commissioner from the CCMA and is set to end on or around 10 August 2020 to the extent that agreement cannot be reached sooner and/or subject to the exhaustion of consultations.

7.2.5. Wage Agreement

On or about 27 May 2019, the Company concluded a wage agreement with SACCAWU to regulate salaries until 6 May 2021. In terms of this wage agreement, the Company agreed to pay salary increases for the period 7 May 2019 to 6 May 2020 and 7 May 2020 to 6 May 2021. The Company implemented the salary increases for the period 7 May 2019 to 6 May 2020. To date, the BRPs have not yet authorised the payment of the salary increases from 7 May 2020 or incentives and will keep the Employees updated of any developments. Any amounts which become contractually due and payable to

  
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Employees during Business Rescue will be treated as PCF in terms of section 136 of the Companies Act.

7.3. CREDITORS

7.3.1. Creditors' Meeting

7.3.1.1. A first meeting of Creditors, as contemplated in section 147(1) of the Companies Act, was convened on 18 May 2020.

7.3.1.2. At the First Meeting of Creditors, *inter alia*:

7.3.1.2.1. the business rescue process was explained;

7.3.1.2.2. Creditors were informed of the BRPs' belief regarding the reasonable prospect of rescuing the Company;

7.3.1.2.3. the BRPs notified Creditors where proof of Pre-commencement Claims by Pre-commencement Creditors could be submitted; and

7.3.1.2.4. nominations were requested for the establishment of various committees according to the categories of Creditors.

7.3.2. Creditors' Committee

7.3.2.1. Pursuant to the First Meeting of Creditors, a Creditors Committee was duly established.

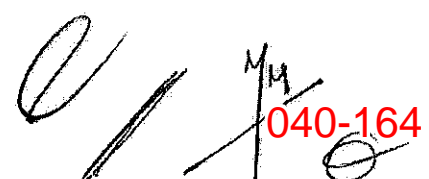
7.3.2.2. Juliette De Hutton from Bowmans was appointed as the independent chairperson of the Creditors' Committee.

7.3.2.3. The Creditors' Committee met with the BRPs on 28 May 2020 and 4 June 2020.

7.3.3. Lenders' Committee

7.3.3.1. Pursuant to the First Meeting of Creditors, a Lenders' Committee was duly established.

7.3.3.2. The Lenders' Committee met with the BRPs on 27 May 2020 and 5 June 2020.



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7.3.4. Landlords' Committee

- 7.3.4.1. Pursuant to the First Meeting of Creditors, a Landlords' Committee was duly established.
- 7.3.4.2. The Landlords' Committee met with the BRPs on 27 May 2020 and 4 June 2020.

7.3.5. Consultation During the Development of the Proposed Business Rescue Plan

On 4 and 5 June 2020, the BRPs consulted with, *inter alia*, representatives on the Creditors' Committee on the development of the proposed Business Rescue Plan to:

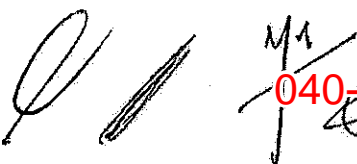
- 7.3.5.1. enable them to make representations to the BRPs for consideration, subject to the BRPs' overall responsibility to publish a Business Rescue Plan which they regard as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and
- 7.3.5.2. requested the respective committees to submit any questions in regard to the proposed Business Rescue Plan to enable the BRPs to consider same prior to the Publication Date.

7.4. LEGAL

7.4.1. Legal Proceedings

7.4.1.1. Pan African Shopfitters Applications:

- 7.4.1.1.1. An application was launched by Pan African Shopfitters Proprietary Limited on 4 May 2020 out of the High Court of South Africa, Gauteng Local Division, Johannesburg for the liquidation of the Company.
- 7.4.1.1.2. Pan African Shopfitters Proprietary Limited thereafter launched an urgent application out of the High Court of South Africa, Gauteng Local Division, Johannesburg to set aside the resolution to commence Business Rescue proceedings.
- 7.4.1.1.3. The BRPs have opposed both applications launched by Pan African Shopfitters Proprietary Limited.



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7.4.1.1.4. The applications have been referred to the Commercial Court. A timetable still has to be determined for the filing of further documents and the hearing date/s.

7.4.1.1.5. Affected Persons will be advised of further updates.

7.4.1.2. Prime Freight Logistics;

7.4.1.2.1. The Company instituted an urgent application against Prime Freight Distributors Proprietary Limited t/a Prime Logistix on 2 June 2020 for the release of stock being withheld from the Company. The urgent application is set-down for hearing in the week of 8 June 2020.

7.4.1.2.2. The urgent application has been opposed.

7.4.1.2.3. Affected Persons will be advised of further updates.

7.4.2. **Suspension and Cancellation of Contracts**

7.4.2.1. Section 136(2)(2) of the Companies Act authorises the BRPs during Business Rescue to entirely, partially or conditionally suspend, for the duration of the business rescue proceedings, any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue.

7.4.2.2. The BRPs are in the process of establishing which obligations of the Company must be suspended and/or cancelled.



7.4.3. **Investigation into the Affairs of the Company**

7.4.3.1. In terms of section 141(1) of the Companies Act, the BRPs must investigate the Company's affairs, business, property and financial situation.

7.4.3.2. Immediately following their appointment, the BRPs consulted with Management in order to *inter alia* –

7.4.3.2.1. ascertain the financial position of the Company;

7.4.3.2.2. identify the assets and liabilities of the Company;

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and

7.4.3.2.3. Identify all of the Leases and outstanding rentals.

7.4.3.3. The BRPs will continue to exercise their statutory obligations in terms of section 141 of the Companies Act.

7.4.3.4. The Creditors' Committee have requested that the chairperson of the Creditors' Committee review the security in terms of the 2019 Restructuring and have reserved their rights to challenge the security.

7.4.4. Directors' responsibilities

In a meeting held with the Directors of the Company, the BRPs handed a copy of a letter to the Directors of the Company wherein the BRPs –

7.4.4.1. advised the Directors of the duties of the BRPs during Business Rescue;

7.4.4.2. advised the Directors of their duties and responsibilities during Business Rescue; and

7.4.4.3. requested certain documentation to be furnished by the Directors to the BRPs.

7.4.5. General

The BRPs were required to engage attorneys to advise on, *inter alia*, issues relating to competition, employment, Tax, regulatory issues, the Sales Process, contractual disputes, post-commencement agreements, Claims against the Company, including reservation of ownership and liens, and various issues arising out of the Business Rescue.

7.5. BUSINESS RESCUE INITIATIVES

7.5.1. Management Restructuring Plan

Prior to the Commencement Date, Management considered a further restructuring of the Business, i.e. after the 2019 Restructuring, entailing an accelerated closure of its loss-making stores and a reduction of overhead expenses, in order to ensure the continued survival of the Business of the Company. The BRPs have utilised the expertise of Management as well as



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considered the proposals in the restructuring plan for the purposes of the Business Rescue.

7.5.2. **Categorisation of Leases**

7.5.2.1. In terms of the Management Restructuring Plan, certain stores were identified as:

7.5.2.1.1. Onerous stores (i.e. the Onerous Leases);

7.5.2.1.2. Non-viable stores;

7.5.2.1.3. Marginal stores; and

7.5.2.1.4. Viable stores.

7.5.2.2. The list of stores, according to the aforesaid categories, is attached as Annexure A.

7.5.2.3. The BRPs and Management have reviewed the aforesaid categories.

7.5.2.4. In term of the onerous stores, as stated above, these are stores which are no longer trading and where the Company vacated the store prior to the Commencement Date.

7.5.2.5. In terms of the non-viable stores:

7.5.2.5.1. These stores were identified as the remaining loss-making stores within the store footprint, where the trading density was too low for the store to become viable or in certain instances where the store rentals were at a level where the store could not generate a profit.

7.5.2.5.2. The Company has no option but to allow the cancellation of the Leases of these stores during the course of Business Rescue.

7.5.2.5.3. The Company has not made a decision on these store closures and is willing to listen to the Employees and consider their views. Should the Company be persuaded, reopening of stores could be a possibility which can be canvassed.


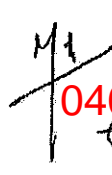


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- 7.5.2.5.4. Should the Sales Process generate interest in these stores, the decision around these stores closures will be reconsidered.
- 7.5.2.5.5. Should retrenchments be unavoidable, the Company will ensure that an agreed or fair and objective selection criteria is used. Therefore, a conclusion cannot be drawn that the Employees in the non-viable stores are the specific Employees who would definitely be retrenched.
- 7.5.2.6. In terms of the marginal stores, these stores are not necessarily loss making, however, require negotiated Lease terms.
- 7.5.2.7. In terms of the viable stores, these stores are profitable and within nodal strategy.
- 7.5.2.8. Should it become clear that there is no interest in certain of the marginal stores or viable stores, the BRPs will then consider the cancellation of the respective Leases of those stores during the course of Business Rescue.

7.5.3. Investment Process

- 7.5.3.1. Part of the Management Restructuring Plan contemplated an investment process ("Investment Process"), which entailed the following:
- 7.5.3.1.1. a capital investment through the existing shareholders, alternatively, a new investor/s; and
- 7.5.3.1.2. if such investment was obtained, a restructure of the Company's current organisational structure to ensure the continued operation of the Company on a solvent basis.
- 7.5.3.2. Prior to the Commencement Date, Management approached the Newco shareholders and the intercreditor Secured Creditors to ascertain if they were interested in the Investment Process, however, there was no interest in same.
- 7.5.3.3. Notwithstanding the aforesaid, and after the Commencement Date, the BRPs considered it prudent and necessary to establish if the

 
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Company could be rescued through the Investment Process, however, there was no interest in the aforesaid Investment Process.

7.5.4. Sales Process

The Sales Process was embarked upon, dealt with in paragraph 0 and paragraph 21.

7.5.5. Monitoring of stock and sales

7.5.5.1. The BRPs, together with Management, have performed an analysis of the stock on hand to identify the 'good' stock as well as the discontinued, phased out, damaged and end of season stock.

7.5.5.2. The buying process has been carefully controlled and concurrently the BRPs have been approving the buying of stock by the Company.

7.5.5.3. The BRPs' management of stock was done to achieve the appropriate balance of stock levels for the Business during Business Rescue.

7.5.5.4. The BRPs have been monitoring sales, setting sales strategies and setting realistic and reliable forecasts.

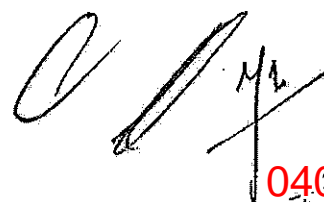
7.5.5.5. Sales and expenses have been carefully monitored and controlled on a daily basis.

7.5.6. Cost Cutting

7.5.6.1. Since their appointment, the BRPs together with Management have made ongoing efforts to cut operating costs, wherever possible.

7.5.6.2. Numerous Contracts relating to IT service providers, catering, security, cleaning and other service providers have been renegotiated or cancelled by mutual agreement to reduce costs. The cancellation or renegotiation of these Contracts results in further savings of approximately R39.7 million per month.

7.5.6.3. The BRPs also elected to continue with the banded salary reductions implemented in early April 2020, which will continue until June 2020. Salary reductions ranged from 10% for middle Management to 30%



for the Executive Committee and 100% for the Group CEO. These salary reductions result in savings of R11 million per month.

7.5.7. Cash Administration

In order to minimise the operating expenses of the Company, the BRPs, together with Management, continue to:

- 7.5.7.1. monitor the cash flow and financial position;
- 7.5.7.2. perform daily bank reconciliations;
- 7.5.7.3. analyse costs;
- 7.5.7.4. control payments; and
- 7.5.7.5. enforce general controls.

7.5.8. Supplier Negotiations

The BRPs have agreed consignment and SBT (sales based terms) agreements and have managed to retain supply from key merchandise suppliers on a discounted cash on delivery basis.

7.5.9. Letters of Credit ("LC")

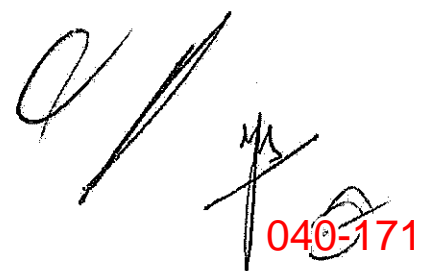
All open LCs / standby LCs, covering stock that has not yet been shipped, to the value of approximately R80m are in the process of being cancelled.

7.5.10. Temporary Employment Relief Scheme ("TERS")

- 7.5.10.1. On 13 May 2020, the BRPs appointed Solvd, a consulting firm to assist in the UIF Covid-19 TERS application for the shortfall of the April salary payment during level-5 lockdown in which the Company was unable to trade.
- 7.5.10.2. On 18 May 2020, the Company received approximately R84 million in this regard.

7.5.11. Thank U Store Card

Reinstated the usage of the Thank U store card with certain merchants.



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8. MARKET CONDITIONS, COVID-19 AND TRADING FOLLOWING THE COMMENCEMENT DATE**8.1. Market Conditions and COVID-19**

8.1.1. The Government imposed lockdown prevented the Company from trading, which resulted in a loss of sales, and therefore a negative cash flow impact of approximately R2 billion. The lockdown, coupled with restrictions on trading certain stock lines in level 4, prevented the Company from following its normal trading and clearing patterns.

8.1.2. This has further compounded the financial position of the Company as well as the stock holding and aging of certain categories.

8.2. Trading

8.2.1. The Company is currently generating cash through daily trading.

8.2.2. Trade throughout the month of May 2020 was better than initially forecasted, despite Covid-19 restrictions on operations and ranges which could be sold. Trading hours and ranges of merchandise were also significantly reduced relative to the prior year.

8.2.3. Management anticipate a slowdown in turnover in June 2020 as the pent up demand in the market has worked itself through.

9. MATERIAL ASSETS AND SECURITY OF THE COMPANY AS AT THE COMMENCEMENT DATE

As required in terms of section 150(2)(a)(i) of the Companies Act, a complete list of all the material assets of the Company at book value, as well as an indication as to which assets were held as security by Creditors as at the Commencement Date, is attached hereto as **Annexure B**.

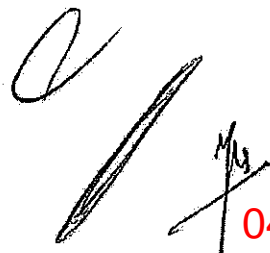
10. CREDITORS OF THE COMPANY AS AT THE COMMENCEMENT DATE

10.1. As required in terms of section 150(2)(a)(ii) of the Companies Act, a complete list of the Pre-commencement Creditors of the Company, as reflected in the Company's records, as at the Commencement Date, is attached hereto as **Annexure C**.

10.2. Annexure C indicates which of the aforesaid Pre-commencement Creditors:

10.2.1. would qualify as secured, statutorily preferent or concurrent in terms of the laws of insolvency; and

10.2.2. have proved their Pre-commencement Claims.



11. CREDITORS VOTING INTEREST AND VOTING BY PROXY

- 11.1. In terms of section 145 of the Companies Act, for the purpose of any vote by Creditors:
- 11.1.1. a Creditor has a voting interest equal to the value of the amount owed to that Creditor by the Company on the date of the vote on the Business Rescue Plan; and
 - 11.1.2. a Creditor who would have a subordinated claim in liquidation has a voting interest, as independently appraised and valued at the request of the BRPs, equal to the amount, if any, that the Creditor could reasonably expect to receive in a liquidation of the Company.
- 11.2. Post-commencement Creditors, including Employees with Post-commencement Claims in terms of section 135(1) of the Companies Act, will have a voting interest equal to the value of the amount owed to that PCF Creditor on the date of the vote on the Business Rescue Plan.
- 11.3. A Creditor who has a Disputed Claim, contingent Claim, prospective Claim, damages or unliquidated Claim will only be allowed to vote in the sole discretion of the BRPs.
- 11.4. A Creditor whose Claim amount does not reconcile with the Company's records will only be allowed to vote on the amount determined in the sole discretion of the BRPs.
- 11.5. In light of the regulations and measures implemented by the Government of South Africa pursuant to the global outbreak of COVID-19, the following process will apply in respect of the Section 151 Meeting (meeting to determine the future of the Company) and voting called for in terms of section 152 of the Companies Act (consideration of the Business Rescue Plan):
- 11.5.1. As set out above, the BRPs have consulted with the respective committees on the development of the proposed Business Rescue Plan prior to the Publication Date. The BRPs have attempted to deal with all questions and/or suggestions prior the Publication Date.
 - 11.5.2. Pursuant to the Publication Date, Affected Persons are requested to provide any further questions and/or proposed amendments to the BRPs prior to the Section 151 Meeting so that the BRPs can consider and address same prior to the Section 151 Meeting to plan@edconbr.co.za.
 - 11.5.3. The Section 151 Meeting will be held electronically. A hyperlink providing access to the Section 151 Meeting will be circulated prior to the Section 151 Meeting.
 - 11.5.4. All voting will be conducted by way of proxy. A hyperlink providing access to the form of proxy will be included in the Notice of the Meeting. The form of proxy will also be available at www.matusonassociates.co.za/edcon. All forms of proxy



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given on behalf of a company, a legal entity or a trust must be accompanied by a valid and authorised resolution supporting the appointment of the proxy. Completed forms of proxy must be emailed to creditors@edconbr.co.za.

11.5.5. Creditors are encouraged to lodge their forms of proxy as soon as possible, however, will be afforded an opportunity to lodge their proxy forms by no later than 17h00 on Friday, 19 June 2020.

11.5.6. In the event that, during the Section 151 Meeting:

11.5.6.1. Further questions are raised and/or proposed amendments are moved, which can be fully addressed during the Section 151, the BRPs will:

11.5.6.1.1. adjourn the Section 151 Meeting for two (2) hours to receive any further forms of proxy or amended forms of proxy; and

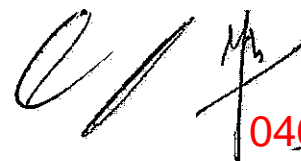
11.5.6.1.2. reconvene the Section 151 Meeting to announce the outcome of the vote.

11.5.6.2. Further questions are raised and/or proposed amendments are moved, which cannot be fully addressed during the Section 151 Meeting for whatsoever reason:

11.5.6.2.1. the Section 151 Meeting will be adjourned for one week ("Adjourned Period") to allow the BRPs time to respond to the questions and consider whether the proposed amendments are seconded by holders of creditors' voting interests and satisfactory to the BRPs;

11.5.6.2.2. the BRPs will publish their response/s to the question/s raised and/or the proposed amendments to the Business Rescue Plan to all Affected Persons during the Adjourned Period;

11.5.6.2.3. Creditors and Affected Persons who have not lodged their forms of proxy or wish to change their forms of proxy will be afforded until 17h00 on Friday 26 June 2020 to do so; and



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11.5.6.2.4. the Section 151 Meeting will be reconvened on 29 June 2020 to announce the outcome of the vote.

11.5.7. Creditors who provided forms of proxy prior to the Section 151 Meeting will be deemed to have accepted any amendments made to the Business Rescue Plan during and/or after the Section 151 Meeting, unless expressly advised otherwise in writing to the BRPs prior to the reconvening of the Section 151 Meeting.

11.5.8. Notwithstanding what has been stated in this paragraph, the BRPs have a discretion to accept any form of proxy submitted or change the process referred to above, which change will be notified to Affected Persons.

12. PROBABLE DIVIDEND ON LIQUIDATION

12.1. As required in terms of section 150(2)(a)(iii) of the Companies Act, the probable dividend which would be received by Concurrent Creditors if the Company was placed in liquidation on 30 April 2020 is 0 zero cents in the Rand. Affected Persons are referred to the table in paragraph 27 for a comparison of Business Rescue and liquidation dividends that would be received by Creditors in their respective classes.

12.2. In order to establish the aforesaid probable dividend, the BRPs engaged Deloitte as an independent expert to calculate the potential dividend in a liquidation scenario.

12.3. The calculation in support of a liquidation dividend as at 30 April 2020 is based on an independent exercise undertaken by Deloitte.

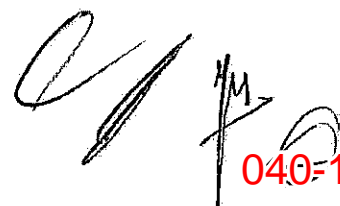
12.4. Deloitte relied on financial and other information provided to it by the Company and its Subsidiaries, and discussions with Management and the BRPs, for the purpose of calculating the liquidation dividend as at 30 April 2020, and the approximate realisation value is set out in the full liquidation calculation document prepared by Deloitte.

12.5. The methodology used by Deloitte in calculating the liquidation dividend is the methodology chosen by Deloitte in their sole discretion and the BRPs are not in a position to comment on the methodology.

12.6. The figures in this paragraph take into account all the costs associated with a liquidation, including all the costs associated with Section 89 of the Insolvency Act.

13. HOLDERS OF THE COMPANY'S ISSUED SECURITIES

As required in terms of section 150(2)(a)(iv) of the Companies Act, ECSL is the sole holder of the Company's issued securities.



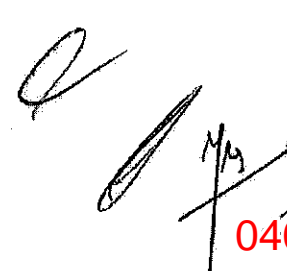
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14. THE BRPs' REMUNERATION

- 14.1. The Company's public interest score, calculated in terms of Regulation 26(2) of the Companies Act, as at the Commencement Date was 43 708. A company is regarded as a large sized company if its public interest score is over 500.
- 14.2. Section 143 of the Companies Act provides for the remuneration of business rescue practitioners.
- 14.3. In terms of section 143 of the Companies Act, the BRPs have proposed an agreement with the Company providing for further remuneration in the form of an increase in the hourly tariff to market related hourly rates of R4 500.00 per hour, effective from the Commencement Date until the Substantial Implementation Date, which agreement is subject to the adoption of this Business Rescue Plan. A separate meeting to approve the proposed agreement will be convened in accordance with the terms of section 143 of the Companies Act.
- 14.4. In terms of section 150(2)(a)(v) of the Companies Act, a copy of the written agreement concerning the BRPs' remuneration, as contemplated in terms of section 143 of the Companies Act, is attached hereto as Annexure D.

15. STATEMENT ABOUT WHETHER THE BUSINESS RESCUE PLAN INCLUDES A PROPOSAL MADE INFORMALLY BY A CREDITOR

As required in terms of section 150(2)(a)(vi) of the Companies Act, this Business Rescue Plan does not include any informal proposals made by a Creditor or Creditors of the Company.



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PART B – PROPOSAL

16. MORATORIUM

- 16.1. In terms of section 133 of the Companies Act, the commencement of Business Rescue places a moratorium on legal proceedings and enforcement action against the Company. This means that, subject to the exceptions provided for in section 133 of the Companies Act, Creditors will not be able to proceed in any forum against the Company for non-payment of debts during Business Rescue.
- 16.2. The intention of a moratorium is to give the Company the best possible chance to implement the Business Rescue Plan.
- 16.3. As required in terms of section 150(2)(b)(l) of the Companies Act, the moratorium in relation to the Company commenced on the Commencement Date and is expected to remain in place until the Substantial Implementation Date. After the Substantial Implementation Date, Creditors will only be entitled to payment in accordance with the provisions of this Business Rescue Plan.

17. OBJECTIVE

- 17.1. The purpose of the Business Rescue provisions contained in the Companies Act, as set out in section 7(k) of the Companies Act, is to provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders.
- 17.2. The objective of Business Rescue, as set out in section 128(1)(b)(iii) of the Companies Act, is to develop and implement a plan that rescues the Company:
- 17.2.1. by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis; or
- 17.2.2. if the aforementioned is not possible, results in a better return for the Company's creditors or shareholders than would result from the immediate liquidation of the Company.
- 17.3. This Business Rescue Plan seeks to:
- 17.3.1. Rescue the Company by implementing the Proposal set out herein.

17.3.2. Provide Affected Persons with information reasonably required to facilitate them in deciding upon this Business Rescue Plan, including information upon which Affected Persons may:

17.3.2.1. assess the likely outcome of the dividend yield calculation under Business Rescue, as set out in 27; and

17.3.2.2. be reasonably assured of the likelihood of obtaining a better outcome under Business Rescue, when compared to a liquidation.

18. **SUMMARY OF THE PROPOSAL IN TERMS OF THIS BUSINESS RESCUE PLAN**

18.1. The BRPs, together with Management, conducted an objective assessment of the Company and evaluated various Business Rescue scenarios.

18.2. Pursuant to conducting the aforesaid assessment and evaluation, and after consultation with the relevant Affected Persons, the BRPs propose the implementation of the Sales Process to rescue the Company.

18.3. The Sales Process comprises two parts:

18.3.1. First Part:

18.3.1.1. The first part entails the implementation of an accelerated sales process ("Accelerated Sales Process").

18.3.1.2. In terms of the Accelerated Sales Process, the BRPs:

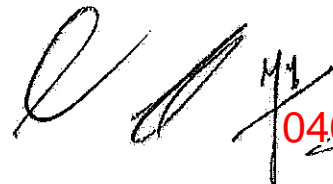
18.3.1.2.1. First sought to achieve a sale of the entire Business as a going concern.

18.3.1.2.2. The aforesaid was not possible, therefore the BRPs are seeking the sale of the Divisions as going concerns.

18.3.2. Second Part:

18.3.2.1. The second part entails the implementation of a wind-down process ("Wind-Down Process").

18.3.2.2. In terms of the Wind-down Process, the BRPs will seek to realise all remaining assets (including Brands) and/or Divisions which are not sold pursuant to the Accelerated Sales Process, by way of a trade out process, private treaty, auction or any other manner which the



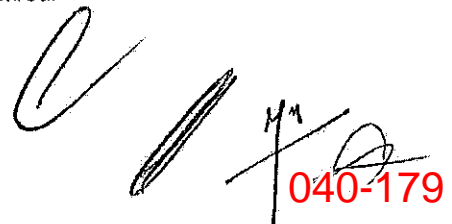
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BRPs, in their sole discretion, deem appropriate given the circumstances prevailing at that time.

- 18.4. The Sales Process is more fully dealt with in paragraph 0 and paragraph 21.
- 18.5. Since the Commencement Date, the Company has been operating the Business and trading the Divisions.
- 18.6. The Intercreditor Secured Creditors are secured (via an SPV security structure) pursuant to various security documents, including a general notarial bond registered over the Company's movable assets and a security cession and pledge (which *inter alia* secures all bank accounts held by the Company and claims against third parties including the Second Look Book). The intellectual property including the Brands have not been secured. As at the Commencement Date, the general notarial bond had not been perfected by the Intercreditor Secured Creditors. Consequently, the stock owned by the Company and the Brands are unencumbered.
- 18.7. To ensure that Creditors receive a better return in Business Rescue and to facilitate the Business Rescue process, the BRPs have developed an allocation mechanism to achieve an equitable sharing of the costs incurred and proceeds generated during the Business Rescue.
- 18.8. This allocation is summarised in the table below:

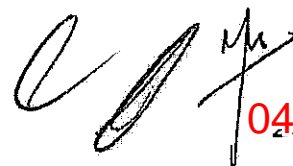
PROCEEDS	ALLOCATION
Secured Trading Proceeds	Intercreditor Secured Creditors
Second Look Book Sales Proceeds	Intercreditor Secured Creditors
Subsidiary Secured Proceeds	Intercreditor Secured Creditors
Post Allocation Date Trading Proceeds	Payment waterfall in paragraph 30
Accelerated Sales Proceeds	Payment waterfall in paragraph 30

- 18.9. Affected Persons are referred to paragraph 22 and paragraph 30 for more details relating to the allocation and payment of the proceeds.
- 18.10. The advantages of proceeding with this Business Rescue Plan are, *inter alia*, as follows:
- 18.10.1. If the Sales Process is implemented, the BRPs will seek to obtain the sale of the Business or its Divisions as going concerns, thereby resulting in the transfer of the relevant Employees and many jobs being preserved.



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- 18.10.2. Employees who are retrenched, if any, would be in a better position than in a liquidation.
- 18.10.3. The bulk of the retail footprint would continue to trade resulting in ongoing rentals for landlords.
- 18.10.4. The total costs will be less than the costs of liquidation.
- 18.10.5. The trade creditors, many of whom rely on the Edgars and Jet Divisions as a trading partner, will continue to have a sustainable customer to trade with going forward.
- 18.11. Affected Persons are referred to paragraph 32 below for more information relating to the advantages of proceeding in terms of this Business Rescue Plan as opposed to a liquidation.
- 18.12. The Business Rescue will result in the rescue of the Company and will balance the interests of all stakeholders.
19. **BACKGROUND TO THE PROPOSAL IN TERMS OF THIS BUSINESS RESCUE PLAN:**
- 19.1. The BRPs were appointed to the Company at a challenging time. In particular, the Company had just come out of the level 5 lockdown and was re-opening its stores in accordance with the measures implemented in respect of the level 4 lockdown.
- 19.2. Prior to the Commencement Date:
- 19.2.1. Management of the Company developed the Management Restructuring Plan, which contemplated either an injection of funding and restructuring of the Business, or an outright sale of the Business (i.e. the Investment Process).
- 19.2.2. Management commenced engaging in discussions with several finance providers, including *inter alia* the Group's shareholders and developmental finance organisations in regard to the Management Restructuring Plan.
- 19.3. Subsequent to the Commencement Date:
- 19.3.1. The BRPs immediately embarked on a process to consider the Management Restructuring Plan, the operational capabilities of the Business and the value residing in the Business and respective Divisions.
- 19.3.2. The BRPs engaged with Management to investigate the likelihood of the Investment Process being successful. Due to the challenges experienced in raising funding, it became apparent to the BRPs that a parallel process was required by the BRPs as an alternative proposal to realise value for all



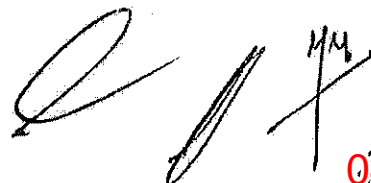
stakeholders as envisaged in the Companies Act, being the Accelerated Sales Process.

- 19.3.3. It also became apparent that, in the absence of any PCF, any proposal to rescue the Company would have to be implemented without delay.
- 19.3.4. The BRPs accordingly decided to continue seeking an investment in terms of the Investment Process and, at the same time, the BRPs commenced with the Accelerated Sales Process.
- 19.3.5. It is imperative that an Accelerated Sales Process yields a favourable result prior to the end of June 2020 in order to provide sufficient lead time for supplier negotiations to be finalised and procure summer stock. Without this, the Business would likely fail in the summer season due to a lack of product to sell. As mentioned above, the BRPs already established prior to the Publication Date that there was no interest in the Investment Process (please refer to paragraph 7.5.3).
- 19.3.6. Consequently, the BRPs have prepared this Business Rescue Plan based on the Sales Process, which is detailed below.

19.4. Salient Considerations:

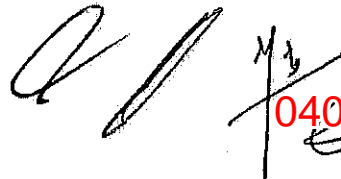
Creditors should note the following challenges the BRPs were faced with, in respect of realising value for Creditors, including, *inter alia*:

- 19.4.1. The absence of PCF or shareholder funding severely limited the options open to Management and the BRPs, which required the Accelerated Sales Process.
- 19.4.2. The timing to implement the Sales Process was particularly demanding, considering the requirement to provide sufficient comfort to suppliers to put summer stock into production in order to ensure the sustainability of the business going forward.
- 19.4.3. Concerns around the impact on future sales levels as a result of the economic damage of the lockdown.

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20. FIRST PART: ACCELERATED SALES PROCESS

- 20.1. The first part of the Sales Process is the implementation of the Accelerated Sales Process.
- 20.2. As set out above:
- 20.2.1. Due to timing and the absence of post-commencement funding, the BRPs embarked on the Accelerated Sales Process in parallel with the Investment Process.
- 20.2.2. In terms of the Accelerated Sales Process, the BRPs:
- 20.2.2.1. First sought to achieve a sale of the entire Business as a going concern.
- 20.2.2.2. The aforesaid was not possible, therefore the BRPs are seeking the sale of the Divisions as going concerns .
- 20.3. The Accelerated Sales Process comprises a two phased process whereby each interested party has been requested to submit an indicative offer in the first phase of the Accelerated Sales Process, followed by a binding offer in the second phase of the Accelerated Sales Process.
- 20.4. The Accelerated Sales Process can be summarised as follows:
- 20.4.1. Phase 1:
- 20.4.1.1. Initially 19 parties expressed their interest in participating in the Accelerated Sales Process. The BRPs addressed a formal letter to all interested parties on or around 13 May 2020 which, *inter alia*, set out the terms, timelines, requirements and process to be followed and adhered to by interested parties ("Process Letter").
- 20.4.1.2. The Process Letter required all interested parties to comply with the following requirements in order to participate in the Accelerated Sales Process and be granted access to the virtual data room containing information relevant to the Accelerated Sales Process:
- 20.4.1.2.1. Signature of a confidentiality agreement; and
- 20.4.1.2.2. Demonstration to the BRPs, in their sole discretion, that the interested parties have the operational and financial capacity to implement a transaction of the Company's size and complexity within the stipulated



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timeframes, before being allowed to participate in the Accelerated Sales Process and being granted access to a virtual data room containing the information relevant to the Sales Process.

20.4.1.3. 15 interested parties complied with the Phase 1 requirements and were accordingly granted access to the virtual data room.

20.4.1.4. The BRPs received expressions of interest from various interested parties for all or part of the Divisions.

20.4.2. Phase 2:

20.4.2.1. Interested parties were invited to proceed to the second phase of the Accelerated Sales Process as preferred bidders ("Preferred Bidders").

20.4.2.2. The Process Letter provided the initial requirements for Preferred Bidders to *inter alia* complete their due diligence and final binding offers ("Binding Offers"), and advised that more detailed information relating to Phase 2, including timing and restrictions, would be provided separately to the Preferred Bidders.

20.5. Upon receipt of the Binding Offers, the BRPs will evaluate same and thereafter convene meetings with the respective committees to discuss the Binding Offers and the acceptance of one or more of the Binding Offers. The BRPs will, notwithstanding the views of the committees, have the authority to make the final determination of the acceptable Binding Offer/s.

20.6. For ease of reference a summary of the Accelerated Sales Process timeline is set out below:

Procedure	Date (2020)
Distribution of a process letter	13 May
Compliance with participation requirements	14 May
Access to the virtual data room granted	14 May
Management meetings by arrangement	From 18 May
Indicative Offer submission deadline	29 May
Selection and notification of preferred bidders and the commencement of Phase 2	2 June
Due diligence finalisation and close of virtual data room	30 June

Binding Offer submission deadline	30 June
Consultation with committees to consider the Binding Offers	Early July 2020
Selection of the successful Binding Offer	Early July 2020
Completion of the transaction documents and implementation of same	As soon as practical thereafter.
Note: The above timetable is an abridged timetable and is subject to change in the BRPs' sole discretion.	

20.7. The transaction documents concluded in the Accelerated Sales Process will provide for payment by the respective purchasers into the bank account opened and operated by the Receivers in terms of paragraph 29.2.2, if necessary.

20.8. Should it transpire, after the Allocation Date or such earlier date determined by the BRPs in their sole discretion, that there is no interest in acquiring certain assets and/or Divisions through the Accelerated Sales Process, then the BRPs will proceed to realise such assets and/or Divisions in terms of the second part of the Sales Process, being the Wind-Down Process.

21. SECOND PART – WIND-DOWN PROCESS

21.1. The second part of the Sales Process is the implementation of the Wind-Down Process, which will be implemented after the Allocation Date or such earlier date determined by the BRPs in their sole discretion.

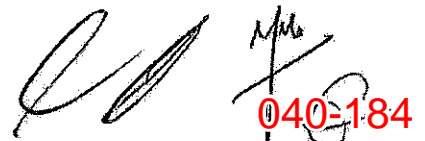
21.2. The Wind-Down Process entails the following:

21.2.1. Realisation of all of the Company's assets (including Brands) and/or Divisions which are not sold pursuant to the Accelerated Sales Process, by way of a trade out process, private treaty, auction or any other manner which the BRPs, in their sole discretion, deem appropriate given the circumstances prevailing at that time, including the trade out of inventory over a period determined by the BRPs in their sole discretion;

21.2.2. Proposed cancellation of Leases and Contracts which could not be assigned; and

21.2.3. Proposed retrenchment of all remaining Employees.

21.1. The BRPs will convene meetings with the respective committees to provide updates on the Wind-Down Process. The BRPs will, notwithstanding the views of the committees, have the



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authority to make the final determination in regard to the processes adopted and acceptance of offers.

- 21.2. Any transaction documents concluded in the Wind-Down Process will provide for payment by the respective purchasers into the bank account opened and operated by the Receivers in terms of paragraph 29.2.2, if necessary.


22. ALLOCATION OF PROCEEDS IN THE BUSINESS RESCUE

- 22.1. As stated above, to ensure that Creditors receive a better return in Business Rescue and to facilitate the Business Rescue process, the BRPs have developed the following allocation mechanism to achieve an equitable sharing of the Costs incurred and proceeds generated during the Business Rescue:

- 22.1.1. The Secured Trading Proceeds will be allocated to the Intercreditor Secured Creditors;
- 22.1.2. The Subsidiary Secured Proceeds will be allocated to the Intercreditor Secured Creditors;
- 22.1.3. The Second Look Book Sales Proceeds will be allocated to the Intercreditor Secured Creditors;
- 22.1.4. The Post Allocation Date Trading Proceeds will be allocated in terms of the payment waterfall in paragraph 30; and
- 22.1.5. The Accelerated Sales Proceeds will be allocated in terms of the payment waterfall in paragraph 30.

- 22.2. This Business Rescue Plan provides for a Receivership to deal with the Secured Trading Proceeds, Post Allocation Date Trading Proceeds, Second Look Book Sales Proceeds, Accelerated Sales Proceeds, the Subsidiary Secured Proceeds, Claims and Distributions detailed in this Business Rescue Plan, which Receivership will arise upon the Adoption Date. The Receivership is dealt with in paragraph 29 below.

- 22.3. The Secured Trading Proceeds, Post Allocation Date Trading Proceeds, Accelerated Sales Proceeds, Subsidiary Secured Proceeds and Second Look Book Sales Proceeds will be paid into the bank account opened and operated by the Receivers in terms of paragraph 29.2.2, if necessary, who will make payment in accordance with the terms of this Business Rescue Plan.



22.4. The amounts payable to the Intercreditor Secured Creditors in terms of this Business Rescue Plan will be paid by the Receivers to the Security Administrator. In this regard:

22.4.1. the Intercreditor Secured Creditors, in consultation with the Security Administrator, can decide whether to submit their respective Claims to the Security Administrator (who will also exercise the respective Intercreditor Secured Creditors' votes in the Business Rescue through the Security Administrator); and

22.4.2. the Security Administrator will then administer payment to the Intercreditor Secured Creditors in accordance with the Intercreditor Agreement.

23. ONGOING ROLE OF THE COMPANY

As required in terms of section 150(2)(b)(iii) of the Companies Act, if the Business Rescue proceeds in accordance with the Sales Process, the Company will no longer operate as the Business and/or Divisions, including any remaining assets, will be sold.

24. EFFECT ON CREDITORS

24.1. Contracts

As required in terms of section 150(2)(b)(iii) of the Companies Act, in the event that the Business Rescue proceeds in terms of the Sales Process, certain Contracts will have to be cancelled, modified or restructured. To the extent that Contracts are cancelled, Claims for damages will be limited as contemplated in paragraph 24.2.

24.2. Damages

24.2.1. In the event that Creditors claim damages, whether contractual or delictual, against the Company, which damages Claim is accepted by the BRPs or proved by way of the Dispute Resolution or by Court or similar proceedings, such damages Claims:

24.2.1.1. Shall be a concurrent Claim, unless the Creditor holds security for such claim.

24.2.1.2. Must be mitigated and can only be claimed if proven.

24.2.1.3. In respect of damages related to Leases:

24.2.1.3.1. Will be deemed to be limited to a maximum Claim equivalent to 3 (three) month's rental (not operational costs) in respect of Onerous Leases and



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6 (six) month's rental (not operational costs) in respect of other Leases, as payable at the Commencement Date. For the sake of clarity, it is recorded that the damages are limited in nature to re-instatement costs and early termination; and

24.2.1.3.2. If a Landlord was given an opportunity to assign a lease, but refused to do so on reasonable grounds, such Landlord will be precluded from submitting a claim for damages.

24.2.1.4. In respect of damages related to other Contracts, will be deemed to be limited to general damages suffered over the lesser of three months from the date on which the alleged claim for damages arose or the balance of the Contract duration.

24.2.1.5. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable at the time of entering into the relevant Contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of such Contract so as to be said to flow naturally and generally and not to be too remote.

24.2.1.6. Will be deemed to exclude all consequential (including loss of profit) and indirect damages.

24.2.1.7. If disputed, will be resolved in terms of the Dispute Resolution, detailed in paragraph 39.

24.3. Claims and release of the Company from the payment of debts

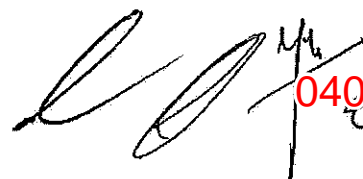
24.3.1. Creditors and Claims will be dealt with in accordance with paragraphs 22 and 30.

24.3.2. As required in terms of section 150(2)(b)(ii) of the Companies Act:

24.3.2.1. Creditors shall retain their Claims against the Company for any balance that may still be due to them by the Company after receipt of the final Distribution; and

24.3.2.2. There is no proposal to convert any debt to equity in the Company or another Company in terms of this Business Rescue Plan.

24.3.3. Therefore if the Business Rescue Plan is implemented in accordance with its terms and conditions, a Creditor will not be deemed to have acceded to the



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discharge of the whole or part of a debt owing to that Creditor and will not lose its rights to enforce the relevant debt or part of such debt against the Company and the provisions of section 154(1) of the Act will not apply.

24.3.4. A Creditor will also notwithstanding the fact that this Business Rescue Plan has been adopted and implemented, will be entitled to enforce any debt owed to it by the Company immediately before the beginning of Business Rescue, except for any payment that is made pursuant to this Business Rescue Plan.

24.4. Section 22 of Value Added Tax Act:

No Claims will be compromised in terms of this Business Rescue Plan and Creditors will retain their Claims against the Company for any balance that may still be due to them by the Company after payment of the final Distribution.

25. PROPERTY OF THE COMPANY AVAILABLE TO PAY CREDITORS

As required in terms of section 150(2)(b)(iv) of the Companies Act, the Business Rescue Plan contemplates the sale of the Company's Business, Divisions and/or assets, and the distribution of the proceeds by the Receivers in accordance with paragraph 22 and the payment waterfall in paragraph 30.

26. EFFECT OF THE BUSINESS RESCUE PLAN ON THE HOLDERS OF EACH CLASS OF THE COMPANY'S ISSUED SHARES

As required in terms of section 150(2)(b)(vii) of the Companies Act, if the Sales Process is implemented, the rights of the sole shareholder, being ECSL, will not be altered.

27. COMPARISON OF THE BUSINESS RESCUE TO LIQUIDATION

27.1. As at the Publication Date, the outcome of the Accelerated Sales Process is unknown. Consequently, the estimated Business Rescue dividend set out in this Business Rescue Plan has been determined based on the Wind-Down Process, as envisaged in paragraph 21.

27.2. The following table sets out a comparison of the outcomes that are likely to arise under the Business Rescue (in terms of the Wind-Down Process) as compared to a liquidation (the liquidation calculation is based on the information provided in Deloitte's liquidation calculation):

	Liquidation	Business Rescue (Based on Wind-Down Process)
Intercreditor Secured Creditors	5,5 cents / Rand	19 cents / Rand
Employees	Limited to R32 000	100 cents / Rand

PCF	N/A	100 cents / Rand
Concurrent / Unsecured creditors	0 cents / Rand	4 cents / Rand

28. ASSUMPTIONS MADE WITH REGARD TO FORECAST OF THE BUSINESS RESCUE DIVIDEND

28.1. Trading Assumptions

28.1.1. Revenue:

28.1.1.1. Revenue has been forecasted by Management, taking into account current trading conditions and historical performance. In addition further factors such as the current inventory on hand, inventory aging, historical sell through rates, anticipated margins and relevant adjustments to factor in the Covid-19 restrictions as well as consumers' available disposable income in the current economic environment.

28.1.1.2. Revenue for June 2020 is anticipated to be R738m, under current trading terms and conditions.

28.1.1.3. From 1 July 2020 onwards:

28.1.1.3.1. The store trade out will commence and continue for a two month period ("Trade Out Period").

28.1.1.3.2. The Company will start discounting stock to clear its inventory and maximise recovery over the Trade Out Period.

28.1.1.3.3. The below table sets out the discount percentages as well as the forecast sell through rate:

Week Commencing	28-Jun	07-May	07-Dec	19-Jul	26-Jul	08-Feb	08-Sep	16-Aug	23-Aug
Trading Week	14	16	16	17	18	19	20	21	22
Trading Month	July	July	July	July	July	August	August	August	August
Jet									
Discount %	30%	30%	50%	50%	75%	75%	90%	90%	90%
Sell through Rate of Inventory	12%	10%	15%	12%	20%	15%	5%	5%	5%
Edgars									
Discount %	30%	30%	40%	50%	50%	75%	75%	90%	90%
Sell through Rate of Inventory	9%	8%	7%	7%	8%	18%	10%	9%	5%

28.1.2. Purchases:

28.1.2.1. In June 2020, inventory is to be purchased selectively, only for fast moving seasonal items in order to support the Accelerated Sales Process.

28.1.2.2. An average of R80 million of inventory is to be purchased per week (excluding the consignment, sales-based terms and reservation of title inventory which is being settled on a weekly basis).

28.1.2.3. Inventory purchases will cease from 1 July 2020. In addition consignment, sales-based terms and reservation of title inventory will also cease and such stock will be returned to suppliers.

28.1.3. Other income:

Other income, including various fee related income, will continue to be earned until 30 June 2020, following which such income will cease.

28.1.4. Rental and utility costs:

28.1.4.1. Store rental is based on turnover rental arrangements.

28.1.4.2. Head office and distribution centre rentals are based on the ratio of actual rental incurred to contractual rental on the store portfolio based on turnover rental arrangements.

28.1.4.3. The differences between the contractual rental and the rental contemplated in 28.1.4.1 and 28.1.4.2 above will be paid at the end of the Trade Out Period.

28.1.4.4. Utilities will be paid monthly throughout the Trade Out Period.

28.1.5. Payroll costs:

Payroll costs, including benefits and related taxes, will be paid throughout the Trade Out Period.

28.1.6. Other expenses:

28.1.6.1. Critical IT costs required to run the Business will be paid as required.

28.1.6.2. Store critical costs, such as security and cleaning costs, will be paid as required.



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28.1.6.3. Logistics costs will be paid as required.

28.2. Proposed Retrenchments

The total liability for the proposed retrenchments has been calculated at approximately R597 million and will be paid at the end of the Trade Out Period subject to cash availability and the section 189 process.

28.3. Other Assets

28.3.1. Second Look Book:

28.3.1.1. The Company will collect in stores for two months during the Trade Out Period.

28.3.1.2. After the Trade Out Period, stores would be closed and debtors handed over to a collection agency for 6 months to a year, following which the residual book as well as the written off book will ultimately be sold.

28.3.1.3. The estimated total realisation of the Second Look Book (including the written off book) is approximately R318 million.

28.3.2. Property Plant and Equipment, Inter Group Loans and Other Receivables and Prepayments:

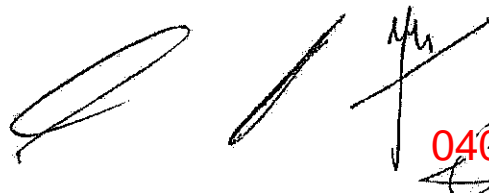
The realisation of the remaining assets is based on the estimates provided in the liquidation calculation, which is approximately R253 million.

29. RECEIVERSHIP

29.1. With effect from the Adoption Date, the BRPs will also be appointed as the Receivers in order to:

29.1.1. receive the Accelerated Sales Proceeds, Post Allocation Date Trading Proceeds, Second Look Book Sales Proceeds, Subsidiary Secured Proceeds and Secured Trading Proceeds; and

29.1.2. distribute the aforesaid proceeds in accordance with the provisions of this Business Rescue Plan.



- 29.2. The Receivers will have all such powers as may be necessary for them to discharge their obligations in terms of the Receivership and without in any way restricting the generality of such powers, the Receivers shall have the following powers and obligations:
- 29.2.1. to perform all acts and discharge all duties which the Receivers are required to perform and discharge in order to give effect to the implementation of terms of the Receivership;
 - 29.2.2. to open and operate banking accounts and investments, if necessary, as if they were trustees in terms of section 70(1) of the Insolvency Act, *mutatis mutandis*;
 - 29.2.3. to admit or reject any Claims tendered for proof as provided for in paragraph 31;
 - 29.2.4. to compromise the Claims and defend any proceedings which may be instituted against the Receivers for the enforcement of Claims disputed by the Receivers;
 - 29.2.5. to abandon to Secured Creditors any property held as security at a value agreed to between the secured Creditor and the Receivers;
 - 29.2.6. to proceed in terms of the Dispute Resolution or institute any legal proceedings in their capacities as the Receivers, as they may in their sole discretion deem appropriate, against any person as may be required to give effect to the Receivership and to defend any proceedings brought against the Receivers arising out of the Receivership where the subject matter of the dispute relates to their powers and obligations in terms of the Receivership;
 - 29.2.7. to have access to all books, records, documentation and trading figures of the Company as they may reasonably and properly require for the execution of their duties as Receivers in terms of the Receivership;
 - 29.2.8. to engage the service of attorneys, advocates, other professional advisers and service providers in connection with any matter concerning the Receivership, their functions and duties, to dispense with taxation and to agree on the amount of their reasonable fees and charges and to pay such fees and disbursements of such persons out of the monies becoming available to the Receivers in terms of the Receivership;
 - 29.2.9. to receive any and all amounts payable to them in terms of transaction documents concluded pursuant to the Sales Process and the power to disburse all such amounts to any relevant person/s and Creditors contemplated in this Proposed Transaction; and



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29.2.10. to investigate the Company's affairs, business, property and financial situation and take appropriate steps as contemplated in section 141(1)(c) of the Companies Act.

29.3. The Receivers will be entitled to charge out their time at the rate of R4 500.00 per hour, excluding VAT.

30. ORDER OF DISTRIBUTION – PAYMENT WATERFALL IN BUSINESS RESCUE & RECEIVERSHIP

30.1. As required in terms of section 150(2)(b)(v) of the Companies Act, the order of preference in which proceeds will be applied to pay Creditors if the Business Rescue Plan is adopted is set out in paragraph 22 and the payment waterfall referred to therein is set out below.

30.2. In term of sections 135 and 144 of the Companies Act, Creditors are to be paid in the following order of priority (to the extent that there are funds available to pay all categories of Creditors) (i.e. the payment waterfall):

30.2.1. The Business Rescue Costs, including but not limited to legal costs, the costs of the Advisors, operating costs and other costs associated with the Business Rescue;

30.2.2. Employees for any remuneration, reimbursement for expenses or other amount of money relating to employment which becomes due and payable by the Company to the Employees during the Business Rescue (to the extent that they have not been paid);

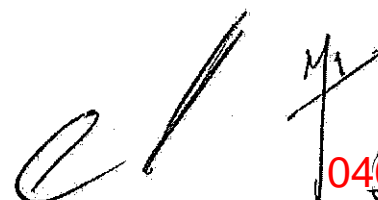
30.2.3. Secured PCF Creditors;

30.2.4. Unsecured PCF Creditors;

30.2.5. Employees for any remuneration, reimbursement for expenses or other amount of money relating to employment which became due and payable by the Company to the Employees prior to the Business Rescue (to the extent that they were not paid); and

30.2.6. Unsecured / General Concurrent Creditors, including Secured Creditors in respect of any residual Claim remaining after realisation of their security.

30.3. In respect of Pre-commencement Secured Creditors, their Claims will rank in respect of such secured asset in priority to all other claims, other than the BRPs' remuneration and expenses, as contemplated in section 143 of the Companies Act.




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- 30.4. All unpaid amounts in terms of Leases as at the Commencement Date, will be treated as unsecured Pre-Commencement Claims as no Landlord had perfected its landlord's hypothec as at the Commencement Date.
- 30.5. All unpaid amounts in terms of Leases after the Commencement Date will be treated as PCF.
- 30.6. The Receivers will make Distributions as soon as it is practically possible to do so.

31. **PROOF OF CLAIMS BY CREDITORS**

- 31.1. The exchange rate in respect of all Claims expressed in foreign currency will be determined as at the Commencement Date.
- 31.2. General Concurrent Creditors will not be entitled to charge interest on their Pre-commencement Claims from the Commencement Date.
- 31.3. Creditors are required to lodge their Claims with the Receivers online at www.matusonassociates.co.za/edcon prior to the Final Claims Date for purposes of participating in Distributions made by the Receivers:
- 31.3.1. Those Claims which have already been submitted to the BRPs will be deemed to have been submitted to the Receivers in terms of this Business Rescue Plan;
- 31.3.2. The BRPs or the Receivers, as the case may be, have a discretion as to whether to allow a Creditor to lodge any Claim after the Final Claims Date; and
- 31.3.3. Creditors who have lodged Claims after the Final Claims Date, and whose Claims have been accepted by the BRPs or the Receivers in the exercise of the BRPs' or Receivers' aforesaid discretion, forfeit their right to participate in Distributions that have been made prior to the lodgement of their Claims.
- 31.4. The provisions in paragraph 31.3 will apply *mutatis mutandis* to Creditors asserting a claim for damages.
- 31.5. Claims, including claims for damages, shall be proved to the satisfaction of the BRPs or the Receivers.
- 31.6. In the event that the BRPs or the Receivers, as the case may be, dispute any Claim or security, such disputed Claims will be dealt with in accordance with the Dispute Resolution more fully dealt with in paragraph 39.



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32. BENEFITS OF ADOPTING THE BUSINESS RESCUE PLAN COMPARED TO LIQUIDATION

As required in terms of section 150(2)(b)(vi) of the Companies Act, the benefits of adopting the Business Rescue Plan compared to a liquidation are as follows:

32.1. Continuity of Business or Divisions

32.1.1. To the extent that the Business or Divisions are sold in terms of Sales Process:

32.1.1.1. A significant number of the jobs pertaining to the Business or Divisions would be preserved.

32.1.1.2. The trade creditors, many of whom rely on Edgars and Jet as a trading partner will continue to have a sustainable customer to trade with going forward.

32.1.1.3. The remaining store footprint will provide Landlords with a sustainable tenant going forward.

32.2. Quantum

32.2.1. Creditors will receive a better dividend in Business Rescue than on a liquidation of the Company.

32.2.2. By way of illustration, please refer to paragraph 27.

32.3. Timing

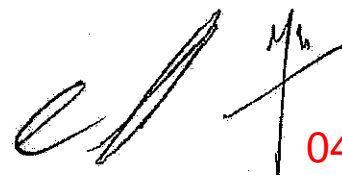
32.3.1. The Business Rescue Plan will be implemented in a far shorter time frame than liquidation proceedings.

32.3.2. The anticipated time period estimated for completing the Business Rescue is approximately 6 months.

32.3.3. The average time it takes to conclude a liquidation process can be between 18 - 24 months, or longer depending on the complexity of the business and affairs of a company.

32.4. Employees

32.4.1. Employees have continued to receive salaries since the Commencement Date.



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32.4.2. In a liquidation:

32.4.2.1. Employees would be entitled to receive a maximum amount of R32 000.00 (thirty two thousand Rand) per employee, to the extent that there are funds available; and

32.4.2.2. Employees will only receive payment once the final liquidation and distribution account has been approved at the end of the liquidation process.

32.5. Fees

32.5.1. The BRPs submit that the entire costs of the Business Rescue will be significantly lower than the liquidation costs.

32.5.2. The estimated fees a liquidator would be entitled to in terms of the liquidation calculation prepared by Deloitte is approximately R66 million based on the realisation of the assets.

32.6. Landlords

32.6.1. After the Commencement Date, Landlords have been paid in terms of the interim measure payments detailed in the First Landlord Notice, dated 2 May 2020, and Second Landlord Notice, dated 14 May 2020, with any shortfalls in terms of the Leases being treated as PCF.

32.6.2. Certain Leases will be ceded and assigned in terms of the Sales Process.

32.6.3. Landlords in respect of Leases which are suspended and/or cancelled will be entitled to a claim for damages in accordance with the provisions of paragraph 24.2.

32.7. General Benefits of Business Rescue

32.7.1. Stock

The sale of stock in terms of a liquidation typically results in minimal value being realised, generally less than cost.

32.7.2. Protecting Goodwill

32.7.2.1. By virtue of uninterrupted trading, the BRPs were able to preserve the goodwill in relation to the Divisions. Accordingly, in the absence of an investor, the BRPs are able to sell the various Divisions of the



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Company as going concerns with goodwill which has a value.

32.7.2.2. In a liquidation scenario the various stores of the Company would have to be closed down immediately if the liquidator determines not to continue trading. A liquidator would only continue to trade if he or she received an indemnity to cover him or her for any losses in trading – given the circumstances it is highly unlikely that this would happen.

32.7.3. Avoiding breakdown of controlled environment

32.7.3.1. During Business Rescue because the Company is continuing to trade in the ordinary course of business, the BRPs are able to wind-down the affairs of the Company to the extent required in an orderly fashion.

32.7.3.2. Stricter controls remain over all assets of the Company, which avoids or minimises risks of theft and damage.

33. RISKS OF THE BUSINESS RESCUE PLAN

33.1. Notwithstanding what has been stated in this Business Rescue Plan, the Business Rescue and the amount which Creditors could receive in terms of the Business Rescue may be adversely affected by, *inter alia*, the following factors:

- 33.1.1. the uncertainty surrounding the economic climate in light of COVID-19 and the risk that the country or certain provinces, metropolitan districts or hotspots are placed back into lockdown;
- 33.1.2. the budgeted sales figures not being achieved;
- 33.1.3. the approval of any proposed transaction by the Competition Commission taking longer than expected;
- 33.1.4. the discrepancies in the asset registers and inventory lists differing materially (more than 10%) from the actual assets and inventory on hand, thus reducing the purchase price as being received on the sale of such assets;
- 33.1.5. the expected realisation value for stock, fixtures and fittings that the BRPs anticipate to achieve at a sale or at an auction or through trading differs materially (more than 10%) from the actual realised value;
- 33.1.6. the final verification and agreement of the quantum of the Creditors' Claims takes longer than expected or if the records of the Company are irreconcilable with the Claims received;


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- 33.1.7. the closure, consolidation and stock verification process during the period of handover of the Company to a successful purchaser being more complex and costly than anticipated thereby resulting in a downward adjustment of the purchase consideration;
 - 33.1.8. deteriorating market conditions;
 - 33.1.9. labour action as a result of potential store closures and the section 189(3) notices issued by the Company preventing or delaying the potential closure of any stores as contemplated in this Business Rescue Plan;
 - 33.1.10. unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever;
 - 33.1.11. unforeseen claims for damages arising from the cancellation of any Contracts or agreements of any nature whatsoever, howsoever arising;
 - 33.1.12. any changes in legislation that impacts Business Rescue;
 - 33.1.13. any challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto;
 - 33.1.14. any regulatory challenges of any nature whatsoever, howsoever arising;
 - 33.1.15. any unforeseen circumstances, outside of the control of the BRPs of any nature whatsoever howsoever arising that impacts on Business Rescue;
 - 33.1.16. the revocation of support from any Affected Persons, service providers and/ or suppliers;
 - 33.1.17. material discrepancies in the information made available to the BRPs by the Directors and Management;
 - 33.1.18. increase in claims for damages for certain Leases not being ceded and assigned; and
 - 33.1.19. poor collections/recovery rates in respect of the Second Look Book due to the deteriorating economic environment.
- 33.2. It should be noted that, in the unlikely event of an immediate liquidation of the Company, the risks set out in this paragraph 33 would still apply.



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PART C – ASSUMPTIONS AND CONDITIONS

34. CONDITIONS FOR THE BUSINESS RESCUE PLAN TO COME INTO OPERATION AND BE FULLY IMPLEMENTED

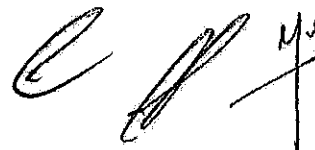
- 34.1. As required in terms of section 150(2)(c)(i)(aa) of the Companies Act, the Business Rescue Plan will come into operation upon the Adoption Date.
- 34.2. As required in terms of section 150(2)(c)(i)(bb) of the Companies Act, the Business Rescue Plan will be fully implemented upon the finalisation of the Sales Process, payment of the Final Distribution and upon the Substantial Implementation Date.

35. EFFECT OF THE BUSINESS RESCUE PLAN ON EMPLOYEES

As required in terms of section 150(2)(c)(ii) of the Companies Act, the effect of the Business Rescue Plan on Employees is set out in paragraph 7.2.4.

36. CIRCUMSTANCES IN WHICH THE BUSINESS RESCUE PLAN WILL END AND THE DURATION OF BUSINESS RESCUE

- 36.1. As required in terms of section 150(2)(c)(iii) of the Companies Act, the Business Rescue Plan will end when the Business Rescue ends.
- 36.2. In terms of section 132(2) of the Companies Act, the Business Rescue will end when:
- 36.2.1. the Business Rescue Plan is:
- 36.2.1.1. proposed and rejected and the BRPs and Affected Person/s do not take any action to extend the Business Rescue in any manner contemplated by the Companies Act; or
- 36.2.1.2. adopted and implemented (with the conditions fulfilled) and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC (i.e. on the Substantial Implementation Date); or
- 36.2.2. a High Court orders the conversion of the Business Rescue into liquidation proceedings; or
- 36.2.3. the BRPs file a notice of termination of the Business Rescue with CIPC.



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37. PROJECTED BALANCE SHEET AND PROJECTED STATEMENT OF INCOME AND EXPENSES

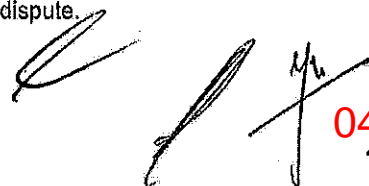
- 37.1. In terms of section 150(2)(c)(iv) of the Companies Act, a projected balance for the Company and statement of income and expenses for the ensuing three years must be included in the Business Rescue Plan.
- 37.2. If the Business Rescue proceeds in terms of the Sales Process, there will be no continuation of the Company and as such no projected balance sheet or statement of income and expenses for the ensuing three years.
- 37.3. In light of the aforesaid, this Business Rescue Plan includes a cash flow forecast for the anticipated duration of the Business Rescue, which is attached as **Annexure E**.

38. EXISTING LITIGATION

All parties who have instituted legal proceedings, including any enforcement action, prior to the Commencement Date in respect of any Claims against the Company in any forum will be subject to the provisions of paragraph 31, dealing with the proof of Claims.

39. DISPUTE RESOLUTION

- 39.1. Reference in this paragraph to BRPs will include a reference to Receivers.
- 39.2. Subject to paragraph 39.5, save as provided for in section 133 of the Companies Act, in respect of all or any disputes by the BRPs on Claims, which disputes include, but are not limited to, disputes on the existence or otherwise of Claim(s), on quantum of Claim(s), security claimed by a Creditor, the nature of the security, the extent and value of the security and the like ("dispute"), such dispute may be resolved in accordance with the dispute mechanism outlined below ("Dispute Mechanism").
- 39.3. The Dispute Mechanism procedure will be as follows:
- 39.3.1. All creditors who have received notification from the BRPs of a dispute are required within 15 (fifteen) days of receipt of such notice to contact the BRPs and to meet with the BRPs during this period in an attempt to reach agreement on the dispute ("**Settlement Meeting**").
- 39.3.2. If the Creditor does not avail itself of this 15 (fifteen) day opportunity, the Creditor will be deemed to have accepted the BRPs' position in regard to the dispute
- 39.3.3. If the Creditor does avail itself of the Settlement Meeting, however, the dispute is not resolved and the Creditor persists with the dispute, the BRPs and Creditor must agree to the appointment of a retired judge as an expert (not as an arbitrator or mediator) to preside over and to resolve the dispute.



- 39.3.4. Should the BRPs and the Creditor fail to reach an agreement on the expert, then the Arbitration Foundation of South Africa will be requested to make the appointment.
- 39.3.5. The appointed expert must endeavour to complete his/her mandate within 30 (thirty) days of his/her appointment or within such further time period as the expert in his/her sole discretion may determine.
- 39.3.6. The expert will in his/her sole and absolute discretion determine:
- 39.3.6.1. the venue at which the dispute is to be resolved;
 - 39.3.6.2. the rules, regulations and procedures that will govern the determination of the dispute;
 - 39.3.6.3. the date(s) for the determination of the dispute;
 - 39.3.6.4. will give his award / determination within 5 (five) days of the completion of the process as determined by him;
 - 39.3.6.5. will 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.
- 39.3.7. The Creditor/s agree/s that, save for any manifest error the determination of the expert will be final and binding on the Creditor/s, the Company and the BRPs and will not be subject to any subsequent review or appeal application / procedure / process.
- 39.3.8. The expert shall be entitled to make an award for costs in his/her discretion.
- 39.3.9. The Creditor, the Employee/s, the Company and the BRPs agree to use their utmost endeavours to ensure that the entire dispute is determined by the expert as expeditiously as possible.
- 39.4. To the extent necessary, should the BRPs be of the view that certain disputes may be settled or compromised, the BRPs shall be authorised to settle and compromise such a dispute.
- 39.5. The BRPs may in their sole and absolute discretion decide that the Dispute Mechanism is not appropriate for resolving the dispute and/or that the application of the Dispute Mechanism may result in prejudice to other Creditors or Employees or the Company. In such event, the BRPs shall be entitled in terms of 133 of the Companies Act to refer the dispute to Court and if an expert has already been nominated, such nomination will lapse and be of no force or effect.



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40. ABILITY TO AMEND THE BUSINESS RESCUE PLAN

- 40.1. 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.
- 40.2. Should an amendment be contemplated which would prejudice Affected Persons, then the BRPs shall be entitled to propose same for consideration and voting at a subsequent meeting of those Affected Persons who would be prejudiced thereby. Such amendment shall only be effective should such Affected Persons vote in favour thereof and it is adopted in the same manner as provided for in section 152 of the Companies Act.
- 40.3. It is specifically recorded that the provisions of paragraph 40.1 and paragraph 40.2 shall *mutatis mutandis* apply to the extension or reduction of any timeframes by the BRPs.

41. SEVERABILITY

Any provision in this Business Rescue Plan which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Business Rescue Plan, without invalidating the remaining provisions of this Business Rescue Plan or affecting the validity or enforceability of such provision in any other jurisdiction.

42. CONCLUSION

For the reasons set out above, the BRPs are of the view that if the Business Rescue proceeds in terms of the Sales Process, same will result in an efficient rescue of the Company, in a manner that balances the rights and interests of all relevant stakeholders.

43. BRPs' CERTIFICATE

- 43.1. We, the undersigned, Piers Michael Marsden and Lance Schapiro, hereby certify to the best of our knowledge and belief that –
- 43.1.1. any actual information provided herein appears to be accurate, complete and up to date;
- 43.1.2. the BRPs have relied on financial information including opinions and reports furnished to them by Management and Advisors;
- 43.1.3. any projections provided are estimates made in good faith on the basis of factual information and assumptions as set out herein; and

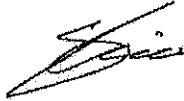


43.1.4. in preparing the Business Rescue Plan, the BRPs have not undertaken an audit of the information provided to them by Management, the Company's auditors and by the Advisors, although where practical, the BRPs have endeavoured to satisfy themselves of the accuracy of such information.



Piers Marsden, in his capacity as the duly appointed
business rescue practitioner (in terms of the Companies Act)

Date: 8 June 2020



Lance Schapiro, in his capacity as the duly appointed
business rescue practitioner (in terms of the Companies Act)

Date: 8 June 2020

