

# Business Rescue Plan

of

**PHUMELELA GAMING AND LEISURE LIMITED  
(IN BUSINESS RESCUE)  
REGISTRATION NUMBER (1997/016610/06)  
("Phumelela")**

**Published: 18 August 2020**

**In terms of:** section 150 of the Companies Act 71 of 2008;

**By:** its Business Rescue Practitioner, John Evans

**for consideration by:** "affected persons" (as defined in Section 128(1)(a) of the Companies Act 71 of 2008) in terms of Sections 151 and 152 of the Companies Act

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***THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION***

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**CIRCULAR TO CREDITORS AND SHAREHOLDERS RELATING TO THE PUBLICATION OF THE PROPOSED BUSINESS RESCUE PLAN OF:**

**PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)**

**REGISTRATION NUMBER: 1997/016610/06**

**("THE COMPANY")**

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1. This proposed Business Rescue Plan is published in terms of the provisions of Sections 150(5) of the Companies Act for subsequent consideration at a meeting to be held in terms of Section 151 of the Companies Act on **Tuesday, 1 September 2020 at 11h00 via a Zoom webinar**. All affected persons will be invited to the meeting via a separate email with the necessary joining details. A separate e email will be sent in good time with relevant details.
2. If you are in any doubt as to the action you should take, immediately consult your legal adviser, accountant, banker, or other professional adviser.
3. If you are unable to attend the meeting to be held in terms of Section 151 of the Companies Act **on Tuesday, 1<sup>st</sup> September 2020, at 11:00am via Zoom Webinar** and want to vote at this meeting, kindly complete the attached proxy (being the page immediately after this Circular) (in accordance with the instructions contained therein) and return it, to **RS Advisors, 2<sup>nd</sup> Floor, Building 13, The Woodlands, Woodmead Drive, Sandton** to be received by no later than **17h00 on Monday, 31 August 2020** or email same to [johnevens@rsadvisors.co.za](mailto:johnevens@rsadvisors.co.za) by no later than **10h59 on the day of the meeting**.
4. Voting at the meeting will be conducted using a bespoke voting tool. The creditors duly authorised representatives will be required to register on the voting website in order to cast a vote electronically. Details to be include on the instructions for the meeting.

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**NOTICE OF PUBLICATION OF BUSINESS RESCUE PLAN**

**PHUMELELA GAMING AND LEISURE LIMITED**

**(IN BUSINESS RESCUE)**

**REGISTRATION NUMBER: 1997/016610/06**

**("THE COMPANY")**

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Notice is hereby given of the publication of the Business Rescue Plan of the Company, which incorporates:

- Important Dates, Times and Venue schedule, stipulating the dates, times and venue of the meeting;
- Proxy forms for those creditors who wish to vote but cannot personally attend the meeting to vote (at 11:00am on Tuesday, 1 September 2020);
- An Agenda for the meeting;
- An Explanatory Statement; and
- All the relevant information as required by Section 150 of the Companies Act;

**VENUE & IMPORTANT DATES AND TIMES**

**Method of conduct of meeting and Venue:**

The meeting will be held electronically on the **Zoom** platform **on Tuesday, 1 September 2020 at 11am**, for purposes of considering and, if deemed fit, approving with or without modification, this Business Rescue Plan.

**Time and Date of meeting:**

**11:00 am on Tuesday, 1 September 2020**

**PROXY**

**Last day to lodge form of proxy for the Creditors' meeting:**

**By email:** 10:59 am on Tuesday, 1 September 2020 to [johnevens@rsadvisors.co.za](mailto:johnevens@rsadvisors.co.za)

**By delivery:** 17:00 on Monday, 31 August 2020 to 2<sup>nd</sup> Floor, Building 13 The Woodlands, 20 Woodmead Drive, Gallo Manor, Gauteng

**Notes:**

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

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**PHUMELELA GAMING AND LEISURE LIMITED (IN BUSINESS RESCUE)**  
**REGISTRATION NUMBER: 1997/016610/06**

**FORM OF PROXY**

For use by the creditors at a meeting convened in terms of Section 151 of the Companies Act 71 of 2008 to be held electronically via Zoom Webinar **on Tuesday, 1 September 2020 at 11am** ("the meeting") or at any subsequent adjournment of the meeting.

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I/We \_\_\_\_\_ being a secured/preferent/concurrent creditor of the Company for the sum of R\_\_\_\_\_ (\_\_\_\_\_ Rand) do hereby appoint (see note 1)

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

as my/our proxy to act for me/us and on my/our behalf at the meeting which will be held for the purpose of considering and, if deemed fit, voting: (indicate with an X)

**In favour of the approval of the proposed Business Rescue Plan**, with or without modification: \_\_\_\_\_

**Against the approval of the proposed Business Rescue Plan**, with or without modification: \_\_\_\_\_

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SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
SIGNATURE

Assisted by me (where applicable)

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**NOTES**

1. A creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without deleting "the Chairman of the meeting". The person whose name stands first on the form of proxy and who is present at the meeting will be entitled to act as proxy to the exclusion of those whose names follow.
2. The form of proxy must either be:
  - 2.1. Delivered and lodged at **RS Advisors, Second Floor, Building 13, The Woodlands, Woodmead Drive, Sandton** to be received by not later than 17:00 on the day prior to the meeting; or
  - 2.2. emailed to [johnnevans@rsadvisors.co.za](mailto:johnnevans@rsadvisors.co.za) by not later than 1 minute before the meeting is due to commence (commencement time is 11h00).
3. The completion and lodging of this form of proxy will not preclude the relevant creditor from attending the meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such creditor wish to do so.

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## **AGENDA FOR THE MEETING**

THE AGENDA FOR THE MEETING IS AS FOLLOWS:-

1. To introduce this Business Rescue Plan for consideration by the Creditors;
2. To inform the meeting whether the BRP continues to believe that there is a reasonable prospect of the Company being rescued;
3. Provide an opportunity to any representatives of the employees to address the meeting;
4. Invite discussion, and entertain and conduct a vote, on any motion to:-
  - 4.1. amend the proposed plan, in any manner moved and seconded by holders of Creditors' voting interests, and satisfactory to the Business Rescue Practitioner;
  - 4.2. direct the Business Rescue Practitioner to adjourn the meeting to revise the plan for further consideration;
5. Unless adjourned, call for a vote for preliminary approval, by Creditors, of the proposed plan, as published or if applicable as amended at the meeting.

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## **THE BUSINESS RESCUE PLAN**

### **1. DEFINITIONS AND ABBREVIATIONS**

- 1.1. **"The Act"** means the Companies Act 71 of 2008 as amended;
- 1.2. **"Adoption Date"** means the date upon which the Business Rescue Plan is approved as provided in sections 152(2) and 152 (3) of The Act;
- 1.3. **"Affected Person/s"** means affected persons of the Company as defined in Section 128 (1)(a) of The Act and in relation to the Company means its Shareholder, Creditors and employees of the Company and their trade union(s);
- 1.4. **"Assets"** means all assets of the Company as reflected in the books of account of the Company as at the Commencement Date and any assets it acquired after the Commencement Date;
- 1.5. **"Business Rescue Practitioner" or "BRP"** means Evans;
- 1.6. **"Business Rescue Plan" or "the Plan"** means this plan as published by the BRP on 18 August 2020 and as contemplated in terms of Section 150 of The Act, and where apposite, as amended (from time to time);
- 1.7. **"Company" or "Phumelela"** means Phumelela Gaming and Leisure Limited (in business rescue) - a Company duly incorporated in terms of the Laws of South Africa under registration number 1997/016610/06;
- 1.8. **"Claim(s)"** subject to the proviso below, means all claims against the Company, the cause of action in respect of which arose prior to or on the Commencement Date, of whatsoever nature and from whatsoever cause, including claims arising from contract, delict, actual, contingent, prospective, conditional, unconditional, liquidated, unliquidated, assessed, unassessed, whether or not due for payment of performance, specific or otherwise, and includes all claims arising out of any agreements entered into by the Company on or prior to the Commencement Date, all such claims to be calculated and admitted as they are in terms of the Insolvency Act, and as they are upon the issue of a winding up order in respect of the Company, whether or not such claims are proved or not, which claims shall, for the purpose of being proved in this Business Rescue Plan, be treated as if the Company had been liquidated on the Commencement Date; provided however that in applying the provisions of the Insolvency Act any preferences or rights of preferences as created in that Act attributed to any Creditor is expressly excluded such that no Creditor can claim as against the Company any preferences in respect of their claim insofar as such preference(s) are dealt with, established or created by any provision of the Insolvency Act;
- 1.9. **"Commencement Date"** means 8 May 2020 being the date upon which the resolution of the directors of the Company to voluntarily commence Proceedings was filed with the CIPC;
- 1.10. **"Companies Commission" or "CIPC"** means the Company and Intellectual Property Commission;
- 1.11. **"Concurrent Claims"** means Claims that are not Secured Claims or Preferent Claims;



- 1.12. **“Concurrent Creditors”** are those Creditors who have Concurrent Claims against the Company;
- 1.13. **“Creditor(s)”** means all natural and legal persons having a claim whether a Secured Claim(s), a Preferent Claim(s) and/or a Concurrent Claim(s) against the Company and whose Claim(s) has/have been accepted by the BRP or if rejected, have subsequently succeeded in having their claim(s) proved against the Company in accordance with one of the processes referred to in 7.16 to 7.16.2.6 below;
- 1.14. **“Days”** unless indicated to the contrary means calendar days;
- 1.15. **“Distribution”** means distributions to be made to Creditors by the BRP pursuant to the Plan;
- 1.16. **“Evans”** means John Francis Evans, CA (SA), Physical address: Second Floor, Building 13, The Woodlands, Woodlands Drive, Woodmead, Sandton, 2052, telephone: (011) 656 0144, email address: [johnevans@rsadvisors.co.za](mailto:johnevans@rsadvisors.co.za);
- 1.17. **“Final Claims Date”** means the final date for the filing of Claims, being 30<sup>th</sup> November 2020;
- 1.18. **“Group”** means the Company and all its subsidiaries;
- 1.19. **“Insolvency Act”** means the Insolvency Act 24 of 1936 (as amended);
- 1.20. **“Investec”** means Investec Bank Limited, registration number 1969/004763/06;
- 1.21. **“JSE”** means the Johannesburg Securities Exchange
- 1.22. **“Management”** means the senior management of Phumelela Gaming and Leisure Limited including Andrew Ralph Langham, Patrick Davis, William Clucas and Dean Sawarjith;
- 1.23. **“MOD”** means Mary Oppenheimer Daughters (Pty) Limited, registration number 2017/475601/07 and its nominees;
- 1.24. **“PCF”** means post commencement finance provided to the Company in terms of Section 135 of the Act;
- 1.25. **“PCF Creditor(s)”** means those creditors who have and will in the future provide PCF during the Proceedings;
- 1.26. **“Plan Fund”** means a special purpose fund established by way of *inter alia* the creation of a Bank Account to be opened by the BRP to be operated under his sole control for the sole purpose of receiving for the benefit of Creditors (and where apposite the Company) all the monies relevant to paragraph 8.3, which monies will until the Substantial Implementation Date be administrated solely by the BRP;
- 1.27. **“Preferent Claim(s)”** means Claims determined, calculated and admitted as having a preference as envisaged in The Act;
- 1.28. **“Preferent Creditor(s)”** means Creditors having Preferent Claims;
- 1.29. **“Proceedings”** means Phumelela Gaming and Leisure Limited’s business rescue proceedings per the provisions of, *inter alia*, Chapter 6 of The Act;
- 1.30. **“Publication Date”** means 18 August 2020 the date on which this Business Rescue Plan is published;
- 1.31. **“RMB”** means First National Bank Limited (acting through its Rand Merchant Bank division), registration number 1929/001225/06;
- 1.32. **“SARS”** means South African Revenue Services;

- 1.33. **“SARS Claims”** means all claims made by SARS for tax (in the broadest possible sense in which such term is and can be utilised) of whatsoever nature and howsoever arising and includes levies, penalties and interest of whatsoever nature, whether assessed or not and irrespective of the date upon which the returns for such tax have been or are still to be submitted by the Company to SARS and includes any VAT clawback in terms of the provisions of the Tax Administration Act;
- 1.34. **“Secured Claim(s)”** means that or those Claim(s) against the Company which are validly secured by any one or more of the Assets of the Company;
- 1.35. **“Secured Creditor(s)”** are those Creditors who have a Secured Claim(s) against the Company;
- 1.36. **“the Shareholders”** means all persons who hold an equity interest in the Company;
- 1.37. **“Substantial Implementation Date”** means the date upon which the BRP files with the CIPC a notice that all the events contemplated in 12.5.1 have occurred and is the date upon which the Company’s business rescue and Proceedings will terminate;
- 1.38. **“The Meeting/s”** means the meetings in respect of the Company convened in terms of section 151 (1) of The Act;
- 1.39. **“VAT”** means Valued Added Tax as contemplated in the Valued Added Tax Act;

## 2. QUALIFICATIONS TO THIS BUSINESS RESCUE PLAN

- 2.1. This Business Rescue Plan is published in compliance with the provisions of The Act<sup>1</sup>. It is provided solely for the information of Affected Persons.
- 2.2. This Business Rescue Plan is confidential and prepared solely for the purpose(s) set out in The Act. No person may refer to or use the names of the BRP or the Business Rescue Plan for any other purpose, disclose or refer to them in any prospectus or other document, or make them available or communicate them to any other party. No other party is entitled to rely on this Business Rescue Plan for any purpose whatsoever and the BRP accepts no duty of care or liability to any other party who reads or is shown or gains access to this Business Rescue Plan.
- 2.3. Affected Persons are advised to seek independent legal and/or financial advice in order to consider the Business Rescue Plan as presented.
- 2.4. This Business Rescue Plan is based, inter alia, upon information received by and provided to the BRP from the commencement of Proceedings by the Company, its Management, Affected Persons and third parties.
- 2.5. In compiling this Business Rescue Plan the BRP has accepted and relied on this information, representations and the authenticity of documents provided to him. Should it become necessary to make representations and documents admissible for Court purposes, the authors of the representations and documents would have to confirm these in the relevant Court processes should it become necessary to do so.
- 2.6. Since his appointment the BRP has pursuant to his statutory obligations undertaken investigations into the affairs of the Company<sup>2</sup>. His investigations have been limited due to the time constraints placed on him by The Act. There may therefore be certain issues that may require additional investigation for a final conclusion or determination to be formed. Whilst he has set out his conclusions in this Business Rescue Plan arising from the investigations conducted to date, please note that if the Company is ever liquidated its liquidator(s) may undertake further detailed investigations into the affairs of the Company.
- 2.7. The statements and opinions expressed in this Business Rescue Plan are given in good faith and in the belief that such statements and opinions are not false or misleading. Should any new information of a material nature become available between the date of publication of this Business Rescue Plan and the date of any subsequent meetings or reports, the BRP reserves his rights to alter any conclusions reached on the basis of that new information.

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<sup>1</sup> Section 150 of The Act

<sup>2</sup> Section 141 of The Act

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- 2.8. In preparing this Business Rescue Plan and in formulating proposals the BRP has made forecasts and estimates with respect to Asset realisations, in certain cases assets valuations and the total value of Claims of Creditors. These forecasts and estimates may change as Assets are realised and Creditors continue to prove their Claims against the Company. Whilst this Business Rescue Plan estimates the likely outcomes for Affected Persons, the forecasts are by their very nature uncertain and the ultimate outcomes may differ from the outcomes forecast in the Business Rescue Plan.
- 2.9. The BRP reserves the right, should it come to his attention that material information has been withheld or additional information is brought to his attention, to amend this Business Rescue Plan.
- 2.10. For your convenience, this plan has been made available to you in electronic as well as hard copy format. Multiple copies and versions of this document may, therefore, exist in different media. Kindly note that only the final hard copy as signed by the BRP is regarded as definitive.

### 3. **ASSUMPTION OF CONTROL BY THE BRP**

- 3.1. The BRP, upon his appointment assumed management control of the Company, in conjunction with the Company's existing Management. The BRP, with input from the Management, assessed the financial position of the Company, its cash requirements in the short, medium and long term and most importantly assessed its viability.
- 3.2. In terms of the provisions of The Act the BRP can delegate any power or function to a person who is part of the Company's board and who was part of the pre-existing Management of the Company<sup>3</sup>. The Company's day to day affairs are currently being attended to under the supervision of the BRP with a number of day to day tasks having been delegated to Management.

### 4. **FIRST MEETING OF CREDITORS<sup>4</sup>, EMPLOYEES<sup>5</sup> AND BUSINESS RESCUE PROCESS TO DATE**

- 4.1. The first meetings of employees<sup>5</sup> were convened and held on 21 May 2020.
- 4.2. Thereafter the BRP convened and presided over the first meeting of Creditors on 22 May 2020. A recording of this meeting is available to Creditors from the BRP and will be provided upon receipt of a request for one.

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<sup>3</sup> Section 140(1) of The Act

<sup>4</sup> i.t.o Section 147 of The Act

<sup>5</sup> i.t.o Section 148 of The Act

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4.3. At these meetings the BRP informed Creditors and Employees *inter alia* that in his opinion there was a reasonable prospect of rescuing the Company.

5. **THE BUSINESS OF THE COMPANY**

5.1. The business of Phumelela Gaming and Leisure Limited comprises horse racing and betting.

5.2. The Horse Racing Business

5.2.1. The Company as at commencement of business rescue owns and operates the following horse racing tracks and training centres:

5.2.1.1. Turffontein Racecourse in Johannesburg – This is a racetrack

5.2.1.2. The Vaal Racecourse in Vereeniging – This is a racetrack

5.2.1.3. Flamingo Park in Kimberly – This is a racetrack

5.2.1.4. Fairview Racecourse in Port Elizabeth – This is a racetrack

5.2.2. The Company stages about 240 race meetings in a normal calendar year.

5.2.3. The Horse Racing Business generates revenues from, *inter alia*:

5.2.3.1. production and distribution of its racing picture (via a TV channel on DSTV known as TellyTrack);

5.2.3.2. distribution of the racing data feed to customers;

5.2.3.3. the sale and receipt of sponsorships in respect of races, race days and venues;

5.2.3.4. totaliser betting operations and comingling fees; and

5.2.3.5. a share of the betting taxes levied on horse racing betting by the various gambling boards. (the share of levy due to the Company has not been paid since March 2019 and is the subject of a legal dispute between the Company and the Gambling Boards to enforce Phumelela's rights)

5.3. TellyTrack

5.3.1. Phumelela, in about May 2013, entered into a partnership with Gold Circle (Pty) Limited and Kenilworth Racing (Pty) Limited to produce and distribute the racing picture and feed. This racing product is distributed, *inter alia*, to:

5.3.1.1. DSTV Channel 239 – TellyTrack;

5.3.1.2. South African Bookmakers and their retail outlets;

5.3.1.3. International partners in Africa, Europe, Asia, Australasia and North America.

5.3.2. The TellyTrack partnership agreement provides that the partners will share in revenues and costs in the following shares:

5.3.2.1. Phumelela – 61%

5.3.2.2. Gold Circle – 24.96%

5.3.2.3. Kenilworth Racing – 14.04%

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5.3.2.4. Phumelela is the appointed partnership manager of the TellyTrack partnership

5.4. Totaliser Licence and Totaliser Betting Outlets (“TAB”)

5.4.1. The Company holds the following Totaliser Licences:

- 5.4.1.1. Gauteng Gambling Board
- 5.4.1.2. Eastern Cape Gambling and Betting Board
- 5.4.1.3. Free State Gambling, Liquor and Tourism Authority
- 5.4.1.4. Mpumalanga Gambling Board (branch licences)
- 5.4.1.5. Limpopo Gambling Board (site licences)

5.4.2. These licences cover the operations of the following retail outlets:

- 5.4.2.1. TAB Online
- 5.4.2.2. Turffontein Racecourse
- 5.4.2.3. Fairview Racecourse
- 5.4.2.4. Vaal Racecourse
- 5.4.2.5. Flamingo Park
- 5.4.2.6. 108 TAB Branches and
- 5.4.2.7. 74 TAB Agencies

5.5. Subsidiary Companies and investments

5.5.1. The Company is the 100% shareholder of the following trading companies:

5.5.1.1. Phumelela Gold International Limited (incorporated in the Isle of Man) (“PGI”)

5.5.1.1.1. PGI Owns a 50% share in:

- 5.5.1.1.1.1. Premier Gateway International Limited (Isle of Man); and
- 5.5.1.1.1.2. Premier Gateway International Services Limited (Isle of Man).

5.5.1.2. Betting World (Pty) Limited

5.5.1.2.1. Betting World has:

- 5.5.1.2.1.1. 55 Betting World Branches and Agencies
- 5.5.1.2.1.2. 7 Franchise Betting World stores; and
- 5.5.1.2.1.3. Betting World Online operations.
- 5.5.1.2.1.4. 100% shareholding in Cerino Trading 13 (Pty) Limited, which provides Tote management software to Phumelela.
- 5.5.1.2.1.5. 50% of the equity of Supaworld (Pty) Limited;
- 5.5.1.2.1.6. 50% + 1 share of Betting World Eastern Cape (Pty) Limited which has another 7 Betting World stores;
- 5.5.1.2.1.7. 40% of the equity in Vulindlela Betting World Consortium (Pty) Ltd (a wagering business) and
- 5.5.1.2.1.8. 5% of the equity in Omphe Tshiamo Investment (Pty) Ltd (a wagering business);

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5.5.1.3. TAB North West (Pty) Limited

5.5.1.3.1. TAB North West (Pty) Ltd is a 100% owned subsidiary of Phumelela Gaming and Leisure and operates the TAB retail stores in the North West province.

5.5.2. The Company also owns shares in the following operating companies:

5.5.2.1. 50% of the equity of Supabets SA Holdings (Pty) Limited (an entertainment and wagering business);

5.5.2.2. 50% of the equity in Uptonvale Services (Pty) Limited trading as Interbet;

5.5.2.3. 33% of the equity in SW Security Solutions SA (Pty) Limited (provider of security solutions);

5.5.3. Property Owning Subsidiaries

5.5.3.1. The Company owns 100% of the equity in the following property owning companies:

5.5.3.1.1. Rand Sporting Club (Pty) Limited which owns:

5.5.3.1.1.1. 2 small erfs (2458 sqm in total) that form part of the Arlington Racecourse

5.5.3.1.1.2. A Residential property in Kimberley used as the racecourse managers home

5.5.3.1.2. East Cape Racing (Pty) Limited which owns:

5.5.3.1.2.1. 5 properties in the Nelson Mandela Bay Metropolitan Municipality that make up Fairview Racecourse – measuring approximately 561.1 hectares

5.5.3.1.2.2. 3 properties in the Nelson Mandela Bay Metropolitan Municipality that make up Arlington Racecourse – measuring approximately 116.2 hectares which is no longer used for a racecourse and is for sale.

5.5.3.1.3. Tote Property Investments (Pty) Limited which owns:

5.5.3.1.3.1. a property that is leased to Betting World in Welkom

5.5.3.1.4. Glenfiddich Investments (Pty) Limited , Hadrian Investments (Pty) Limited, Shelanu Investments (Pty) Ltd and Injector Investments (Pty) Ltd hold – these companies each own an erf of a combined property.

5.5.3.1.4.1. These four erven are separately owned by each company and these 4 erven together are used for the purpose of the Witbank Betting World outlet.

5.5.3.1.4.2. These erven are situated in the western fringe of the Witbank CBD at no's 41-47 Smuts Avenue, between Lazarus and Eadie Streets.

6. **TRADING DURING BUSINESS RESCUE**

- 6.1. The Company traded during the Proceedings.
- 6.2. Trading was however curtailed due to the effects of the lockdown decreed in terms of the Disaster Management Act as follows:
- 6.2.1. At commencement of business rescue all horse racing and retail operations were closed and not permitted to operate in terms of the lockdown regulations promulgated in terms of the Disaster Management Act;
- 6.2.2. Horse racing was however permitted to commence on 1 June 2020 subject to strict regulations restricting access to the venue on race days and in accordance with safety and sanitation protocols required to prevent the spread of COVID-19;
- 6.2.3. Retail betting shops were allowed to reopen on 1 July 2020 and are also subject to strict hygiene protocols and limitations on the number of customers allowed to enter the shop at any one time.
- 6.3. As permitted the Company resumed horse racing and reopened retail trading outlets in an attempt to, *inter alia*:
- 6.3.1. preserve value in the assets and operations of the Company;
- 6.3.2. facilitate the potential sale of the operations on a going concern basis which would preserve jobs and avoid substantial sums of money being spent on retrenchment costs;
- 6.3.3. implement turnaround and restructuring initiatives to return trading operations to profitability; and
- 6.3.4. generate better overall returns for Affected Persons of the Company whilst balancing the interests of all the relevant stakeholders.



## 7. **BUSINESS RESCUE PLAN: PART A – BACKGROUND**

In compliance with the Act<sup>6</sup> the Business Rescue Plan contains certain background information. This is recorded below.

### 7.1. **Company Information**

JSE	The Company's shares are listed and traded on the JSE
Shareholders:	There are 102 500 558 shares in issue held by 874 shareholders
Financial Year End:	31 July
Registered Business Address:	Turffontein Racecourse, 14 Turf Club Street, Turffontein, Johannesburg, 2001
Postal Address:	PO Box 82625 South Dale 2135
Business Telephone Number:	+27 (11) 681 1500
Auditors:	2019 – KPMG (resigned)
Last audited financials:	31 July 2019

#### Public Interest Score

The Company's public interest score, per the business rescue affidavit, is 4906 made up as follows:

2050 being the number of employees in the Group  
761 being 1 point for every million rand of liability  
1221 being 1 point for every million rand of turnover  
874 being one point per shareholder

### 7.2. **Employees**

The Group employed 2050 people at the Commencement Date of which 1120 were employed by the Company. Most of the employees were furloughed as at commencement of business rescue due to the effects of the lockdown regulations. Some employees returned to work when horse racing resumed, and the retail outlets were reopened. Many at this time however are still furloughed.

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<sup>6</sup> Section 150(2)(a)

Employees across the Group were invited to apply for voluntary severance of their employment and about 100 applications were received and accepted during proceedings.

No employees were retrenched during business rescue and no retrenchments are contemplated in this business rescue plan. Many employees however remain furloughed and will only return to work when the lockdown regulations permit a return to full operations.

### 7.3. Trading History per its Annual Financial Statements and Management Accounts

#### Phumelela Audited Financial Statements (Company only)

<b>Income Statement (R'000's)</b>	<b>FY 2019</b>	<b>FY 2018</b>
Betting Income	717 253	759 031
Other Operating	560 325	588 133
Investment	164 288	149 275
<b>Net Income</b>	<b>1 441 866</b>	<b>1 496 439</b>
Operating Expenses	(1 070 070)	(995 019)
Horse Racing and Stakes	(253 559)	(245 816)
Taxes - Direct	(154 070)	(158 823)
Credit Loss Allowances	(3 773)	
<b>Profit/(Loss) from Operations</b>	<b>(39 606)</b>	<b>96 781</b>
Financing Costs	(35 418)	(34 303)
Tax and Other	2 964	21 120
<b>Comprehensive Income / (Loss) for the year</b>	<b>(72 060)</b>	<b>83 598</b>

#### Phumelela Management Accounts (Company Only)

<b>Management Accounts</b>	<b>April 2020</b>
<b>Income Statement (R'000's)</b>	<b>YTD</b>
Betting Income	421 658
Other Operating	386 006
Investment	157 658
<b>Net Income</b>	<b>965 322</b>
Operating Expenses	(717 760)
Horse Racing and Stakes	(146 884)
Taxes - Direct	(95 734)
<b>Profit/(Loss) from Operations</b>	<b>4 944</b>
Financing Costs	(16 136)
<b>Comprehensive Loss for the period</b>	<b>(11 192)</b>

7.4. **Balance Sheet**

**Phumelela Audited Financial Statements (Company only)**

<b>EQUITY AND LIABILITIES (R'000's)</b>	<b>FY 2019</b>	<b>FY 2018</b>
<b>Total equity</b>	<b>662 107</b>	<b>802 703</b>
Share capital and premium	474 143	474 143
Retained earnings	187 964	328 560
<b>Non-current liabilities</b>		<b>300 000</b>
Borrowings		300 000
<b>Current liabilities</b>	<b>720 807</b>	<b>300 489</b>
Trade and other payables	321 120	236 880
Short-term borrowings	300 000	
Amounts owing to subsidiary companies	24 578	14 697
Contingent consideration liability	28 806	28 806
Betting dividends payable	5 448	5 927
Bank overdraft	40 855	14 179
<b>Total equity and liabilities</b>	<b>1 382 914</b>	<b>1 403 192</b>
<b>ASSETS (R'000's)</b>	<b>FY 2019</b>	<b>FY 2018</b>
<b>Non-current assets</b>	<b>1 019 771</b>	<b>1 056 769</b>
Property, plant and equipment	293 487	307 288
Intangible assets	1 511	1 033
Investment in subsidiaries	96 336	96 336
Investments		12 108
Interest in equity-accounted investees	581 531	581 531
Long-term loans	21 341	30 427
Deferred taxation asset	25 225	25 225
Amounts owing by subsidiary companies	340	2 821
<b>Current assets</b>	<b>363 143</b>	<b>346 423</b>
Inventories	3 134	2 778
Trade and other receivables	113 904	134 767
Amounts owing by subsidiary companies	144 531	84 402
Income tax receivable	17 017	18 568
Defined benefit funds	14 650	14 650
Cash and cash equivalents	69 907	91 258
<b>Total assets</b>	<b>1 382 914</b>	<b>1 403 192</b>

**Phumelela Management Accounts (Company Only)**

<b>ASSETS (R'000's)</b>	<b>April 2020</b>
<b>Non-current assets</b>	<b>1 008 603</b>
Property, plant and equipment	264 747
Intangible assets	847
Right of use Asset	22 092
Investment in subsidiaries	96 336
Interest in equity-accounted investees	580 541
Long-term loans	18 815
Deferred taxation asset	25 225
<b>Current assets</b>	<b>370 590</b>
Inventories	2 353
Trade and other receivables	113 136
Amounts owing by subsidiary companies	181 516
Income tax receivable	19 430
Defined benefit funds	14 650
Cash and cash equivalents	39 505
<b>Total assets</b>	<b>1 379 193</b>

<b>EQUITY AND LIABILITIES (R'000's)</b>	<b>April 2020</b>
<b>Total equity</b>	<b>650 910</b>
Share capital and premium	474 143
Retained earnings	176 767
<b>Non-current liabilities</b>	<b>261 679</b>
Borrowings	236 168
Right of use asset	25 511
<b>Current liabilities</b>	<b>466 604</b>
Trade and other payables	322 961
Short-term borrowings	40 000
Amounts owing to subsidiary companies	26 264
Contingent consideration liability	28 806
Betting dividends payable	3 023
Bank overdraft	45 550
<b>Total equity and liabilities</b>	<b>1 379 193</b>

We draw to your attention that the audited Annual Financial Statements include the company's interest in the TellyTrack partnership but the management accounts do not.

7.5. **Summary of the Company's Material Assets and Related Encumbrances** <sup>7</sup>

7.5.1. **Property, Plant & Equipment:** The Company's audited accounts as at 31 July 2019 and management accounts for the period ended 30 April 2020, include the following fixed assets:

<b>Audited FY2019 (R'000's)</b>	<b>Cost</b>	<b>Accumulated</b>	
		<b>Depreciation</b>	<b>Net Book value</b>
Land and Buildings	211 417	51 304	160 113
Plant and Machinery	197 306	123 372	73 934
Motor vehicles, Trucks and Trailers	35 987	25 120	10 867
Information Technology	70 712	50 574	20 138
Leasehold Improvements	61 819	45 056	16 763
Furniture and Fittings	29 194	20 085	9 109
Marks, Names and Signage	4 841	2 278	2 563
	<u>611 276</u>	<u>317 789</u>	<u>293 487</u>

<b>Management Acc - April 20 (R'000's)</b>	<b>Cost</b>	<b>Accumulated</b>	
		<b>Depreciation</b>	<b>Net Book value</b>
Land and Buildings	211 398	54 137	157 261
Plant and Machinery	194 651	132 556	62 095
Motor vehicles, Trucks and Trailers	35 987	26 734	9 253
Information Technology	63 783	49 100	14 683
Leasehold Improvements	57 598	46 821	10 777
Furniture and Fittings	30 462	21 961	8 501
Marks, Names and Signage	5 297	3 120	2 177
	<u>599 176</u>	<u>334 429</u>	<u>264 747</u>

A further high-level breakdown of the assets as at the end of April 2020 indicates that many of the assets are fully depreciated.

The land & buildings were appraised by Jan Oberholtzer (sworn appraisers) who estimates that the properties would realise between R83 million and R175 million on a forced sale auction basis.

The plant & machinery, vehicles, information technology and furniture & fittings at Turffontein were appraised by WH Auctioneers on a forced sale basis. The valuations were thereafter extrapolated to cover all assets in the Company. In total we estimate that these assets could realise R40.9 million on a forced sale auction basis.

<sup>7</sup> Section 150(2)(a)(i)

<b>Management Acc - Apr 20 (R000's)</b>	<b>Cost</b>	<b>Accumulated Depreciation</b>	<b>Net Book value</b>
Furniture and Fittings - Branches	14 363	10 337	4 026
Furniture and Fittings	16 099	11 624	4 475
IT Equipment	32 595	26 426	6 169
Betting terminals	31 188	22 674	8 514
Leasehold Improvements - branches	44 202	39 791	4 411
Leasehold Improvements	13 396	7 030	6 366
Marks, Names and Signage	5 297	3 120	2 177
Motor vehicles, Trucks and Trailers	35 987	26 734	9 253
P & M - Night racing lights (Turffontein)	44 800	22 875	21 925
P & M - Other	29 326	22 921	6 405
P & M - Racing related	32 085	24 927	7 158
P & M - TV monitors and screens	16 941	12 915	4 026
P & M - Studio and recording	45 186	31 799	13 387
P & M - Tractors, Tankers and Trailers	26 313	17 119	9 194
Land and Buildings	211 398	54 137	157 261
	<b>599 176</b>	<b>334 429</b>	<b>264 747</b>

#### 7.5.2. Land & Buildings

<b>Management Acc April 20 (R000's)</b>	<b>Land Cost</b>	<b>Buildings Cost</b>	<b>Improve- ments</b>	<b>Total Cost L&amp;B</b>	<b>Accumulated Depreciation</b>	<b>Net Book Value</b>
Turffontein Racecourse	41 715	3 392	97 332	142 439	31 490	110 949
Vaal Racecourse	346	24 736	26 189	51 271	17 959	33 312
Kimberley Racecourse	2 256	244	14 183	16 683	4 612	12 071
Westonaria	9	682	314	1 005	76	929
	<b>44 326</b>	<b>29 054</b>	<b>138 018</b>	<b>211 398</b>	<b>54 137</b>	<b>157 261</b>

7.5.2.1. The above properties have been valued at the request of the BRP by sworn appraiser Jan Oberholtzer. The valuations assume sale of the properties for development or use other than horse racing.

### Property Valuation Summary

R'000's	Low	High
Turffontein Racecourse	69,000	141,000
Vaal Racecourse	13,500	27,000
Kimberley Racecourse	430	5,700
Westonaria	480	1,200
	<u>83,410</u>	<u>174,900</u>

### 7.5.3. Plant & Machinery

Plant and Machinery by category Management Acc - April 20 (R'000's)	Accumulated		Net Book value
	Cost	Depreciation	
Night Racing Lights	44 800	22 875	21925
Fixtures and Fittings	10 199	7 163	3036
Generators Branches and Lights	4 688	4 065	623
Racing Plant and Machinery	34 133	26 668	7465
TV's, monitors and screens	16 941	12 915	4026
Security and CCTV	12 391	9 952	2439
Studio and recording equipment	45 186	31 799	13387
Vehicles	26 313	17 119	9194
	<u>194 651</u>	<u>132 556</u>	<u>62 095</u>

Studio recording and broadcast equipment consists of HD camera's, outside broadcasting vehicles and hawkeye equipment that is used to broadcast racing.

Racing Plant and Machinery includes tractors, starting gates and four wheelers located at Turffontein, Vaal, Kimberley, Fairview and the North Rand Training Centre.

Plant and Machinery by location Management Acc - April 20 (R'000's)	Accumulated		Net Book value
	Cost	Depreciation	
Branches	16 240	13 082	3 158
Operations	31 021	22 583	8 438
Racing	124 501	83 177	41 324
Phumelela Technical Broadcast Systems	22 889	13 714	9 175
	<u>194 651</u>	<u>132 556</u>	<u>62 095</u>

### 7.5.4. Motor Vehicles Trucks and Trailers

The fleet of vehicles includes water tankers, horse trailers and delivery vehicles (bakkies and small hatch backs). The average residual value used in the depreciation calculation is 20%. Whilst there are a few newer vehicles most are old and fully depreciated.

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<b>Motor Vehicles by location</b>	<b>Accumulated</b>		
	<b>Cost</b>	<b>Depreciation</b>	<b>Net Book value</b>
<b>Management Acc - April 20 (R'000's)</b>			
Betting Retail	4 766	3 115	1 651
Corporate	2 962	1 627	1 335
Vaal	2 506	1 945	561
Kimberley	384	276	108
Turffontein	17 489	14 061	3 428
Telly track	1 853	1 441	412
North Rand Training Centre	2 472	2 022	450
Fairview	3 555	2 247	1 308
	<b>35 987</b>	<b>26 734</b>	<b>9 253</b>

7.5.5. **Information technology**

<b>IT Equipment by category</b>	<b>Accumulated</b>		
	<b>Cost</b>	<b>Depreciation</b>	<b>Net Book value</b>
<b>Management Acc - April 20 (R'000's)</b>			
PCs and office printers	4 424	4 171	253
Routers and switches	4 013	2 780	1 233
Betting terminals	30 706	22 467	8 239
Mobile betting terminals	582	280	302
Software	4 370	3 703	667
Laptops, cell phones and tablets	3 105	2 439	666
Servers and firewalls	8 636	7 793	843
Video conferencing	16	15	1
Finance leased	1 650	1 543	107
Uncategorised	6 281	3 909	2 372
	<b>63 783</b>	<b>49 100</b>	<b>14 683</b>

Betting terminals account for more than half of the current net book value of IT equipment and have an estimated remaining useful life on average of more than 4 years. This is predominantly Tab and Amtote hardware. The residual value built into the depreciation calculation is just over 3% across all categories.

<b>IT Equipment by location</b>	<b>Accumulated</b>		
	<b>Cost</b>	<b>Depreciation</b>	<b>Net Book value</b>
<b>Management Acc - April 20 (R'000's)</b>			
Branches	3 133	2 761	372
Betting	1 530	1 400	130
Corporate	54 605	42 549	12 056
Racing	3 921	1 856	2 065
Security	594	534	60
	<b>63 783</b>	<b>49 100</b>	<b>14 683</b>



7.5.6. **Leasehold Improvements**

The Company has improved properties that it leases from subsidiaries and third parties. The leasehold improvements were made to the following properties:

<b>Leasehold Improvements Management Acc - April 20 (R'000's)</b>	<b>Cost</b>	<b>Accumulated Depreciation</b>	<b>Net Book value</b>
Randjesfontein (North Rand) Training Ctr	18 296	10 209	8 087
Betting Retail	2 789	303	2 486
Branches	41 708	39 782	1 926
	<u>62 793</u>	<u>50 294</u>	<u>12 499</u>

7.5.7. **Furniture & Fittings**

<b>Furniture and Fittings Management Acc - April 20 (R'000's)</b>	<b>Cost</b>	<b>Accumulated Depreciation</b>	<b>Net Book value</b>
Branches	14 363	10 337	4 026
Betting Admin	7 629	5 347	2 282
Corporate, Finance, Audit, HR and H&S	3 882	2 756	1 126
IT	906	526	380
Hospitality, Sales, Publishing	2 057	1 732	325
Racing ops	1 625	1 263	362
	<u>30 462</u>	<u>21 961</u>	<u>8 501</u>

Furniture and Fittings are depreciated to an average residual value of 10%. No furniture or fittings have been procured since the July 2109 year end.

7.5.8. **Marks, names & Signage**

The Company owns approximately 250 registered trademarks that include "Soccer 6", "Betting World", "Tab", "the Phumelela Horse to Racing", "Turffontein" and "TellyTrack".

Betting World (Pty) Ltd owns an additional 80 trademarks including "Soccer World" and "Cricket World".

The above Trademarks and Names have no value in the books of account and signage is written off between 3 and 5 years with no residual values.

7.6. **Investments in Subsidiaries and amounts owing (to) / from subsidiaries:**

<b>Management Acc - April 2020</b>	<b>Investment R'000's</b>	<b>Loans to / (from) Subsidiaries R'000's</b>
Betting World (Pty) Ltd	47 500	90 729
Shelanu Investments (Pty) Ltd		24
Injector Investments (Pty) Ltd		24
Glenfiddich Investments (Pty) Ltd		269
Hadrian Investments (Pty) Ltd		24
Tote Property Investments (Pty) Ltd	1 967	(2 201)
Tab North West (Pty) Ltd	8 100	(1 475)
East Cape Racing (Pty) Ltd	11 227	45 835
Rand Sporting Club (Pty) Ltd	22 960	(6 944)
Highveld Racing Authority Technical Services (Pty) Ltd	4 253	(8 799)
Highveldt Training Centre (Pty) Ltd		(277)
Transvaal Racing Holdings (Pty) Ltd		(6 559)
Vaal Racecourse (Pty) Ltd		-
Silks Gaming And Leisure (Pty) Ltd		(9)
Phumelela Gold International Ltd	329	
	96 336	110 641

Additional information in respect of the subsidiary companies is included at Annexure C.

7.7. **Investee Companies and amounts owing (to) / from other Group Companies**

The investee companies operate independently of Phumelela and are not managed by Phumelela.

<b>Interest In Equity-Accounted Investees</b>	<b>Share</b>	<b>April 2020 R'000's</b>	<b>FY19 R'000's</b>
Supabets SA Holdings Proprietary Limited	50%	470 475	470 475
SW Security Solutions Group	33%	66	1 056
Uptonvale Services Proprietary Limited	50%	110 000	110 000
		580 541	581 531

7.8. **Current assets**

7.8.1. **Inventories**

The value in the April 2020 management accounts is R2.3m which is made up of the following:

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- Beverages – R 67k
- Fuel – R 234k
- Decoders and smartcards – R 2.05m

The decoders are used by the outlets (both Tab and Betting World) to receive a decoded signal via TellyTrack to show content.

7.8.2. Trade Receivables

<b>Management Acc - April 2020 R'000's</b>	<b>Trade Receivables</b>	<b>Provision for Bad Debt</b>
Stable Rent	5 998	
Prepayments and Deposits	14 075	
International Trade Partners	90 170	(13 458)
South African Trade Partners	7 447	
Betting World	11 189	
Staff Loans	3 635	
Provisions	1 148	
Ingwe Yesizwe Loan	3 642	
Other	3 804	
	141 108	(13 458)
	141 108	(13 458)

Stable rents are well over 120 days and are being actively recovered.

Loans to Yesizwe are being recovered and where appropriate provisions are being raised.

Insurance provisions can be recovered from AON.

Staff loans are no longer given and recovery of existing loans is being managed.

The Mashonaland Turf Club debt (R30.4m included in International Trade Partners) has been provided for in part (R13.48m) pre-business rescue and the remainder provided for in May.

7.8.2.1. Cash and Cash Equivalents:

<b>Management Acc - April 2020 R'000's</b>	<b>Cash and Cash Equivalents</b>
Operating Accounts	34 358
Foreign Currency accounts (ZAR equivalent)	5 073
Petty Cash	118
Overdraft - RMB	(45 594)
	(6 045)
	(6 045)

7.9. Creditors of the Company<sup>8</sup>

The following is a summary of the Creditors (See Annexure A attached for more detail of creditors) of the Company, as set out in the records of the Company as at the Commencement Date, plus any new claims in respect of post commencement transactions and incorporating the information contained in the claim forms thus far received by the BRP from these Creditors.

<b>Creditor Category R'000's</b>	<b>Per company records</b>	<b>Claims submitted</b>
Employees - leave pay	7 407	7 407
Trade - local	191 482	624 911
Trade - International	128 220	104 225
Related party creditors	27 042	26 264
MOD - post commencement finance	-	61 133
RMB	45 594	62 594
Investec	277 167	281 287
	<u>676 912</u>	<u>1 167 820</u>

<b>Material Claims (top 10 claims as submitted) R'000's</b>	<b>Claim values as submitted</b>
Racing Association	345 872
Investec	281 287
Gold Circle	104 930
Premier Gateway International	87 180
RMB	62 594
MOD	61 133
Kenilworth Racing	53 579
IHH Company (Pty) Ltd (Supabets)	28 806
Telemedia	11 055
Singapore Turf Club	8 569

Notes on Creditors' claims: The BRP is reviewing the claim of The Racing Association, Gold Circle, Kenilworth Racing and IHH Company (Pty) Ltd as these do not accord with the company records nor do they appear to be justified by agreement or documentation.

These claims, if disputed, will be resolved using the Dispute Resolution mechanism set out in paragraph 7.16 below.

<sup>8</sup> Section 150 (2)(a)(ii)

- 7.9.1. A list of the known Creditors of the Company is attached at Annexure A. It reflects in columns:
- 7.9.1.1. Claims of each Creditor per the Company's records, and
- 7.9.1.2. the quantum of each Creditors' claim as claimed in their claim forms and as received by the BRP to date, and
- 7.9.1.3. subject to what is recorded in paragraph 7.9.2.1 below, the Voting Interest of each Creditor that the BRP will allow and utilise for the determination of the vote in terms of Section 152 of the Act.
- 7.9.2. In regard to Annexure A the following is to be noted:
- 7.9.2.1. the recordal of the Claims and quantum of the Voting Interest attributable to each claim in Annexure A is no reflection of the actual or true quantum of each Creditors' claim, is not final or binding on the Company or the BRP, is preliminary only and will be allowed and utilised by the BRP solely for the purposes of determining the "Voting Interests" of each Creditor as this term is defined in Section 128(1)(j) of the Act; and
- 7.9.2.2. it is thus agreed and acknowledged by the Affected Parties that:
- 7.9.2.2.1. the recordal of Claims in Annexure A is insofar as the Company and BRP is concerned, without admission of liability, not binding on the Company or the BRP, without prejudice to the Company and the BRP's right to challenge and/or dispute all or any of the Claims on any basis whatsoever;
- 7.9.2.2.2. all and any such disputes will be determined per the processes and procedures set out in 7.16 below.
- 7.9.3. To be fair and reasonable to all affected persons and subject to the provisions of paragraph 7.15.1 below the BRP has retained the sole discretion whether or not to allow a Creditor(s) to lodge any Claim(s) after the Final Claims Date and only where the BRP is satisfied with that Claim(s) to the extent that he can accept it/them.
- 7.9.4. However, Creditors who lodge a Claim(s) after the Final Claims Date, and whose Claim(s) has/have been accepted by the BRP (in the exercise of the BRP's discretion), agree to and do hereby forfeit their right to participate in any Distribution(s) made prior to the lodgement of their Claim(s).
- 7.9.5. Creditor(s) who lodge Claim(s) must do so to the satisfaction of the BRP. Claims must, if the BRP so requires, be proven by affidavits which are to contain such facts / information

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and are to be accompanied by such supporting documents as requested by the BRP and as is normally required for the proving of Claim(s), this before becoming eligible to receive payment in terms of this Business Rescue Plan. All claim forms and supporting documentation are to be delivered to [johnevans@rsadvisors.co.za](mailto:johnevans@rsadvisors.co.za). Original affidavits if requested/required by the BRP must be delivered to 2<sup>nd</sup> Floor, Building 13, The Woodlands, Woodlands Drive, Woodmead, Sandton.

7.9.6. It is hereby expressly agreed that the Business Rescue Practitioner has the right, power and authority to enter into negotiations with any Creditor(s) to settle any Claim(s) with any Creditor(s) and/or compromise any Claim(s) with any Creditor(s).

7.9.7. If and when this plan is adopted all disputed or rejected Claims will be dealt with and resolved per paragraph 7.16 below.

7.10. Related Parties

7.10.1. The BRP has assessed and determined that the following creditors are not independent in terms of the provisions of section 128 (1) (g) of the Act.

<b>Related party claims R'000's</b>	<b>Claim values as submitted</b>
Betting World (Pty) Ltd	779
Hightveldt Training Centre (Pty) Ltd	277
Highveld Racing Authority Technical Services	8 799
Rand Sporting Club (Pty) Ltd	6 944
Silks Gaming & Leisure (Pty) Ltd	9
Tab North West (Pty) Ltd	1 475
Tote Property Investments (Pty) Ltd	2 201
Transvaal Racing Holdings (Pty) Ltd	6 559

7.11. Secured Creditors<sup>9</sup>:

7.11.1. RMB

7.11.1.1. RMB enjoys the following security in respect of its claims against the company:

7.11.1.1.1. Limited cross surety as co-principal debtor with joint and several liability for indebtedness up to R17 million from:

7.11.1.1.1.1. Rand Sports Club (Pty) Limited

7.11.1.1.1.2. East Cape Racing (Pty) Limited

7.11.1.1.1.3. Tote Properties Investments (Pty) Limited

<sup>9</sup> Disclosure required per Section 150(2)(a)(ii) of the Act

7.11.1.1.1.4. TAB North West (Pty) Limited

7.11.1.2. The Company has ceded to RMB the proceeds of enforcement of its mortgage bond registered over a property owned by Kenilworth Racing (Pty) Limited.

7.11.1.3. Cession and pledge of credit balances of the bank accounts of:

7.11.1.3.1. the Company

7.11.1.3.2. East Cape Racing (Pty) Limited

7.11.1.3.3. Rand Sports Club (Pty) Limited

7.11.1.3.4. East Cape Racing (Pty) Limited

7.11.1.3.5. Tote Properties Investments (Pty) Limited

7.11.1.3.6. TAB North West (Pty) Limited

7.11.1.4. The above security held by RMB is valid and enforceable in both business rescue and liquidation.

7.11.2. **RMB & Investec**

7.11.2.1. RMB and Investec enjoy the following security in respect of its claims against the company:

7.11.2.1.1. A security cession which includes the book debts of the Company, licences, bank accounts, insurance policies and proceeds of insurance policies, any PGI disposal proceeds and PGI distributions received.

7.11.2.1.2. Pledge and Cession of the shares owned by the Company in:

7.11.2.1.2.1. Rand Sporting Club Proprietary Limited

7.11.2.1.2.2. Hadrian Investments Proprietary Limited

7.11.2.1.2.3. Shelanu Investments Proprietary Limited

7.11.2.1.2.4. Injector Investments Proprietary Limited

7.11.2.1.2.5. Glenfiddich Investments Proprietary Limited

7.11.2.1.2.6. Transvaal Racing Holdings Proprietary Limited

7.11.2.1.2.7. Tote Property Investments Proprietary Limited

7.11.2.1.2.8. Vaal Racecourse Proprietary Limited

7.11.2.1.2.9. East Cape Racing Proprietary Limited

7.11.2.1.2.10. TAB North West Proprietary Limited

7.11.2.1.2.11. Betting World Proprietary Limited

7.11.2.1.2.12. SW Security Solutions SA Proprietary Limited

7.11.2.1.2.13. Uptonvale Services Proprietary Limited

7.11.2.1.2.14. Supabets SA Holdings Proprietary Limited

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7.11.2.2. The above security held by RMB and Investec is valid and enforceable.

7.11.2.3. We believe that the above security held by RMB and Investec may not be valid in liquidation. We, and the independent expert, have treated it as invalid in the calculation of estimated returns from the liquidation of the Company.

7.12. Preferent Creditors<sup>10</sup>:

7.12.1. **Employees:** The Company had 1120 employees on the Commencement Date. The employees enjoy a preference in business rescue for all amounts due to them. The employees retrenchment Claims, assuming all employees are retrenched, are calculated as follows:

<b>Employee Claims and entitlement on retrenchment</b>	<b>R'000's</b>
Severance	32,920
Notice Pay	14,500
Leave Pay	7,407
	54,827
	54,827
 Preferent in liquidation	 19,898
Concurrent in liquidation	34,929
	54,827

7.12.2. **SARS:** SARS as at the commencement date had a claim for outstanding VAT of R2 578 605.91. All SARS claims are by operation of law treated as concurrent. In liquidation however, the SARS claims for unpaid VAT would rank as preferent. This is one reason why the Proceedings are favourable to trade Creditors as opposed to liquidation proceedings.

7.13. Concurrent Creditors<sup>11</sup>:

All Creditors other than those who are secured and preferent creditors, rank as concurrent creditors in liquidation or business rescue as the case may be.

7.14. Post Commencement Finance

7.14.1. MOD provided post commencement finance of up to R100m to fund the operation of the company during business rescue (“1<sup>st</sup> PCF Facility”). To date R60m has been drawn against

<sup>10</sup> Disclosure required per Section 150(2)(a)(ii) of the Act

<sup>11</sup> Disclosure Per Section 150(2)(a)(ii) of the Act



the facility. The balance remains available to the Company and if the business rescue plan is adopted will likely be drawn down to fund operations whilst the sale transactions are implemented.

7.14.2. The 1<sup>st</sup> PCF facility accrues interest of prime +2% and is repayable either in terms of the statutory preference set out in the Act and confirmed herein or on the first anniversary of each draw whichever occurs first.

7.14.3. MOD have in order to facilitate an orderly sale process, agreed to provide an additional PCF facility of R550m ("2<sup>nd</sup> PCF Facility"). This facility allows the Company to draw three equal amounts directly into the Plan Fund for distribution as provided for in the Plan. See paragraph 9.5 below for more detail.

7.15. Late Claims:

7.15.1. Creditors who have not submitted their Claims to the BRP prior to the Final Claims Date may, as provided above, do so up to the Substantial Implementation Date, together with all documentation evidencing and in support of their claim(s). Such Claims will be adjudicated by the BRP and if accepted will form part of this Business Rescue Plan as adopted by Creditors and will, subject to the provisions of paragraph 7.9.4 above, be entitled to participate in Distributions.

7.15.2. Claim(s) not submitted to the Company or the BRP before the Substantial Implementation Date are:

7.15.2.1. forfeited as against the Company;

7.15.2.2. no longer of any force and effect as against the Company; and

7.15.2.3. taken to have been and will henceforth after the Substantial Implementation Date be treated as abandoned as against the Company.

7.16. Disputed Claims:

7.16.1. All or any disputes by the BRP on Claim(s) submitted by Creditor(s) and PCF Creditors which includes but is not limited to disputes as to the validity of, the existence of, the enforceability or otherwise of any Claim(s), dispute on quantum of Claim(s), dispute on the security claimed by a Creditor (whether in respect of the nature of the security and/or the extent and value of the security, and the like ("**the Dispute(s)**") can only be resolved in accordance with the dispute(s) mechanism and process set out below.

7.16.2. This dispute mechanism will work as follows:

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7.16.2.1. all Creditor(s) who have received notification from the BRP of the Dispute are within 7 Days of such receipt, to contact and meet the BRP to during this period, reach agreement on all or any of the aspect(s) of the Disputes.

7.16.2.2. if the Creditor(s) do/does not avail himself/herself/itself of this 7 Days opportunity or if after having availed itself as such the Dispute is not resolved, such Creditor(s) will be afforded a further 7 Days (reckoned from the date of expiry of the first 7 Day period) to nominate one of the retired judges from the list below as an expert (not as an arbitrator or mediator) to preside over and to resolve the Dispute. Should the Creditor(s) not make this nomination, the BRP will do so and this nomination will be binding on the BRP and the Creditor(s). The list of these retired judges are:

- J. Heher
- J. Kriegler
- P. Boruchowitz

7.16.2.3. After nomination, the retired judge who agrees to accept such appointment (hereinafter referred to as **“the Expert”**) will be asked to complete his task/mandate within 30 Days of this appointment or within such further time period as the Expert in his sole discretion may determine. To the extent that any Expert nominated by the Creditor(s) refuses to act or is not available to act, the Creditor(s) is afforded 3 Days after learning of this fact to choose another retired judge(s) from the above list until one such judge is available to act and is agreeable to act. Should the Creditor(s) refuse to nominate another retired judge as set out above, or should he/she/it not do so within 3 Days of being requested to do so by the BRP, the BRP shall do so and such nomination shall be binding on the BRP and the Creditor(s).

7.16.2.4. The Expert will in his sole and absolute discretion:

- determine the venue at which the Dispute is to be resolved;
- determine the rules, regulations and procedures that will govern the determination of the Dispute;
- determine the date(s) for the determination of the Dispute;
- give this award / determination within 5 Days of the completion of the process as determined by him;
- as part of this award / determination, determine who is liable for the costs of the determination such costs to include his costs, all legal costs;
- determine venue costs, cost of any recording equipment (if applicable), transcript of evidence (if applicable) and the like.

7.16.2.5. The Creditor(s) agree/s that the determination of the Expert will be final and binding on him/her/it/the Company and the BRP and will not be subject to any subsequent appeal application/procedure/process, save for a review in respect of any manifest error.

7.16.2.6. The Creditor(s), the Company and the BRP agree to use their best endeavours to ensure that the entire Dispute is determined by the Expert within the 30 Days period as set out above.

7.17. List of the Holders of the Company’s Issued Securities<sup>12</sup>:-

7.17.1. The Company is listed on the JSE and has 874 registered shareholders holding 102 500 558 ordinary shares. The major shareholders are:

**Phumelela Gaming and Leisure Limited  
Shareholders with more than 2.5m shares at 30 April 2020**

Thoroughbred Horseracing Trust	27 391 183
Kalamojo Trading And Investments (Pty) Ltd	9 450 000
IHH Company (Pty) Ltd	8 796 443
Yerranzano Property Investments Ltd	4 498 011
Lotus Good Investments Inc No 2	3 951 899
Gride Investments (Pty) Ltd	3 898 542
Vela Phumelela Investments	3 518 976
Citiclient Nominees No 8	3 006 517
The Racing Association	2 951 484
Dihla Investment Holdings (Pty) Ltd	2 861 042

7.18. Practitioner’s Remuneration<sup>13</sup> or Agreement Concerning Practitioner’s Remuneration<sup>14</sup>

7.18.1. For purposes of determining the BRP’s hourly remuneration, the Company has been classified in terms of the regulations to The Act as “a large Company”;

7.18.2. The BRP is being remunerated in terms of the provisions of The Act, regulations, and further per agreement, i.e. as agreed by the BRP and the Company <sup>15</sup>, which agreement was approved by the Creditors at a meeting convened for that purpose on 22 May 2020

<sup>12</sup> Section 150 (2) (a) (iv)

<sup>13</sup> Section 143 (2) of The Act

<sup>14</sup> Section 150(2)(a)(v) of The Act

<sup>15</sup> Annexure B

and Shareholders at a meeting convened for that purpose on 10 July 2020. All disbursements relating to consultants employed by the BRP and other sundry disbursements have so far and will continue to be paid by the Company in terms of The Act.

7.19. Proposals made by Affected Persons

7.19.1. This Business Rescue Plan was prepared after engagement and consultations with Affected Persons and contains certain proposals informally made by Affected Persons.

7.20. Events Leading to the Plan

7.20.1. The following summary sets out the salient dates on which certain significant events of the Business Rescue Proceedings have taken and will take place:

Board Resolution to Commence Business Rescue Proceedings filed at the CIPC	8 May 2020
BRP appointed	8 May 2020
First Meetings with employees	21 May 2020
First Creditors' meeting	22 May 2020
Plan published	18 August 2020
Meeting to consider the Plan (in terms of Section 151 and 152 of the Act)	1 September 2020

7.20.2. The following consultations have taken place with affected persons:

7.20.2.1. Employees committee: 24 June 2020, 8 July 2020 and 24 July 2020

7.20.2.2. Creditors Committee: 8 July 2020 and 22 July 2020

7.20.2.3. Shareholders: 10 June 2020

7.21. Actions Taken by the BRP since his appointment:

7.21.1. The BRP has since his appointment done, *inter alia*, the following:

7.21.1.1. discharged in full his obligations in terms of the provisions of Section 129(3) of the Act.

7.21.1.2. dispatched all statutory notifications and publications.

7.21.1.3. arranged and presided over the first and subsequent meetings of employees and or their representatives.

- 7.21.1.4. arranged and presided over the first creditors' meeting and subsequent meetings of the creditors committee.
- 7.21.1.5. conducted investigations into the affairs of Company.
- 7.21.1.6. met regularly with the senior management and other management staff to discuss trading strategy, reports to be compiled, ongoing financial management, banking arrangements, debtors collections, creditors claim procedures and similar day to day operations.
- 7.21.1.7. met with and communicated with Secured Creditors in respect of their Claim(s) and security;
- 7.21.1.8. communicated with various strategic Creditor(s) to discuss their Claim(s), the ongoing supply and trading arrangements and in general regarding the business rescue process.
- 7.21.1.9. met with Employees and Trade Unions regarding lockdown regulations, business rescue, voluntary severance and ongoing employee trading arrangements.
- 7.21.1.10. attended meetings and held consultations with potential purchasers of the business, assets and branch operations of the Company and that of its subsidiaries as going concerns or for the major assets owned by the Company.
- 7.21.1.11. appointed FTI Consulting to assist with an independent Fast Track M&A process to solicit formal bids for some or all of the assets of the Company.
- 7.21.1.12. met with, discussed and negotiated the terms of the potential and agreed transactions for the sale of the business operations and assets of the Company.
- 7.21.1.13. attended meetings and held consultations with each of the following:
  - 7.21.1.13.1. Shareholder(s);
  - 7.21.1.13.2. Creditor(s); and
  - 7.21.1.13.3. Employees and Trade Unions.
- 7.21.1.14. responded/ing to correspondence.
- 7.21.1.15. obtained and continue to obtain legal advice and where necessary institute and defend legal actions.

- 7.21.1.16. receiving, checking, verifying Creditor Claims received, dealt with and still dealing with queries regarding certain Creditor Claims.
- 7.21.1.17. dealt with and continue to deal with all aspects of trading including appointment of a restructuring executive and delegation of the management of day to day trading to Management.
- 7.21.1.18. prepared the Plan.
- 7.21.1.19. pursued debtors of the Company to recover their indebtedness to the Company.
- 7.21.1.20. determined which of the creditors are "related" / not independent and notified them that they can vote as non-independent creditor(s).
- 7.21.1.21. Appointed independent liquidation specialists to prepare a report on the possible outcome for affected parties if the company was placed into liquidation on the effective date and worked with them to provide them with all the information that they required to perform this task. (see 8.19 below)
- 7.22. Legal Matters
  - 7.22.1. Attached at Annexure F is a schedule of legal matter as was attached to the resolution commencing business rescue. Further comment is set out below.
  - 7.22.2. KwaZulu Natal Bookmakers Association & Gauteng Off-Course Bookmakers Association v Phumelela
    - 7.22.2.1. The KwaZulu-Natal Bookmakers Society instituted an application to interdict Phumelela and Kenilworth Racing from offering tote betting on sports other than horseracing.
    - 7.22.2.2. The application was dismissed with costs by the Pretoria High Court.
    - 7.22.2.3. On 26 August 2019, the appeal was heard by the Supreme Court of Appeal and on 19 September 2019 it was dismissed with costs.
    - 7.22.2.4. The costs in respect of the high court action have been taxed in the amount of R661,515.77.
    - 7.22.2.5. The costs in respect of the appeal have been taxed in the amount of R344,613.15.

7.22.2.6. These costs are payable by the South African Bookmakers' Association (formerly the KwaZulu-Natal Bookmakers' Society) and the Gauteng Off-Course Bookmakers' Association, jointly and severally, the one paying the other to be absolved.

7.23. Probable Liquidation Dividend if the Company was placed in liquidation

7.23.1. The estimate of what Creditors might receive if the Company had been placed in liquidation (as opposed to the proceedings) is set out below and is presented in compliance with the requirement of the Act<sup>16</sup>.

7.23.2. Upon the liquidation of any company it is the appointed liquidators' duty to realise the assets of that Company for the benefit of Creditors as soon as possible.

7.23.3. In compliance with the Act and to calculate the expected liquidation distribution Creditor(s) (in their various classes) and what the Shareholders may expect to receive in the event of the liquidation of the Company, the BRP appointed an experienced independent liquidator to provide his estimate and opinion. He is Allan Pellow of Mazars.

7.23.4. The possible distributions above exclude any recovery from directors or other persons who may be held personally responsible for losses incurred by creditors because of trading in insolvent circumstances or for any other reason.

7.23.5. It is estimated that the Shareholders of the Company will not receive any distributions if the Company is placed in liquidation.

<b>Summary of Liquidation Outcomes (R 000's)</b>	<b>Estimated Claim Value</b>	<b>Estimated Distribution (Rands)</b>	<b>Estimated Distribution (Cents per rand)</b>
<b>Secured Creditors</b>			
RMB	60,714	14,478	0.24
<b>Preferent Creditors</b>			
Employees	19,897	19,897	1.00
SARS	2,698	2,698	1.00
<b>Concurrent Creditors</b>	878,606	484,689	0.55
<b>Total Return Calculations</b>			
RMB	60,714	56,908	0.94
Employees	54,826	39,108	0.71

<sup>16</sup> Section 150 (2)(a)(iii)

## 8. BUSINESS RESCUE PLAN: PART B:<sup>17</sup>

The business rescue plan has been prepared after consultation with employees, creditors and shareholders. Where apposite it includes proposals made by affected persons during these consultations.

### 8.1. Philosophy behind the Plan

8.1.1. The philosophy behind the Plan is to balance the interests of all affected persons including the 2050 employees in the Group by:

8.1.1.1. keeping employees employed for as long as possible and in the event of retrenchment securing full payment of their respective statutory maximum retrenchment payments,

8.1.1.2. maximising the returns from the ongoing ownership and trading of the business of the Company and from the realisation of the working capital assets of the Company,

8.1.1.3. realising as much as is possible, within a reasonable time frame, from the sale of the business of the Company and/or its assets,

8.1.1.4. maximising the pay-out of distributions to Creditor(s) and where possible, leaving a surplus to be retained in the Company or returned to shareholders.

8.1.1.5. paying a distribution to the Creditor(s) in excess of what they would receive if the Company was placed in liquidation.

8.1.2. With this philosophy in mind, the following factors were taken into account in developing the business rescue plan:

8.1.2.1. The Group at commencement of business rescue had 2050 employees with a total retrenchment claim of R69.5 million. The saving of jobs via the sale of the business, or part thereof, as a going concern will reduce the retrenchment costs and improve returns for concurrent creditors.

8.1.2.2. The Company at the Commencement Date had Claims from Creditors of about R1.17billion as against the company records which indicates claims of R677m.

8.1.2.3. At the Commencement Date the Company had not issued notice nor had it commenced consultations in terms of section 189 of the Labour Relations Act.

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<sup>17</sup> Section 150 (2) (b) of The Act



- 8.1.2.4. Ongoing trading, inter alia, enhances the collectability of accounts receivable, saleability of the business as a going concern and value of the interconnected operations of the Company and Group.
- 8.1.2.5. Trading the business, even on a limited basis, allowed the BRP to explore the possibility of selling certain of the Company's businesses or part thereof as a going concern. There were and are advantages to a sale as a going concern such as the saving of jobs and the avoiding of retrenchment costs and the value created from a sale of assets in situ as a going concern as opposed to a break up or auction sale.
- 8.1.2.6. The BRP received many expressions of interest for the component parts of the business or assets and following a fast track sale process received formal proposals from the interested parties.
- 8.1.3. Taking the above into account the BRP elected to trade the business during the proceedings which:
- 8.1.3.1. enhanced the value of the various business operations of the Group,
- 8.1.3.2. facilitated collection of book debts,
- 8.1.3.3. secured funding to facilitate the orderly sale of the business operations and assets of the Company whilst providing a guaranteed minimum contribution to the Plan Fund,
- 8.1.3.4. secured a buyer for the Horse Racing Business and assets,
- 8.1.3.5. secured a buyer for Phumelela Gold Investments Limited,
- 8.1.3.6. retained employment of almost all employees as a result of the going concern sale of the horse racing and potential sale of Betting World businesses, and
- 8.1.3.7. elicited bids for the other assets of the Company.
- 8.1.4. Taking all of the above into account the BRP is of the view that it is best for the Company and Affected Persons to achieve the following:
- 8.1.4.1. Continue to trade the business so that the sale of the Horse Racing Business and assets and the sale of the Betting World business can be concluded;
- 8.1.4.2. Draw down against the PCF agreements to fund trading and to fund the minimum guaranteed contributions to the Plan Fund;
- 8.1.4.3. Assess the profitability and trading outlook of the remaining subsidiaries and investee companies and either continue to hold these assets for the benefit of the Creditors

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and the Company or to sell these investments now or at a future date when markets and trading returns to more normal levels following an easing of restrictions imposed by the lockdown regulations;

- 8.1.4.4. To evaluate and consider the sale of the other assets of the Company at an appropriate time so as to maximise returns for Creditors and the Company whilst not unduly delaying payment to Creditors in respect of their claims;
- 8.1.4.5. Pursue claims that the Company has for unpaid gambling levies;
- 8.1.4.6. Pursue all other claims that the Company has now or may have in the future against third parties present and past, directors, debtors, subsidiaries, investee companies or joint venture partners;
- 8.1.4.7. Defend any claims made against the Company;
- 8.1.4.8. Distribute the net cash generated from trading and the various sale agreements, such distributions to take place in accordance with the payment waterfall and preferences set out in paragraph 8.4.3 and 9 (and their sub paragraphs);
- 8.1.4.9. To the extent creditors are not paid their claims in full, to compromise the unpaid balance of their claim(s) against the Company. Creditors will receive payment of their final distribution in full and final settlement of their claim(s) against the Company and after payment of their final distribution is received by them they will have no further claim(s) against the Company; and
- 8.1.4.10. To, once all distributions have been paid to creditors and shareholders, wind up the affairs of the Company.

## 8.2. **The Plan**

Taking all of the above into account, to balance the interests of all Affected Persons and to successfully rescue the Company, the Company proposes that the BRP be mandated and authorised to do all things necessary to implement the business rescue plan, including but not limited to:

- 8.2.1. continue to trade the horse racing and Betting World businesses,
- 8.2.2. collect the book debts of the company including via the courts if required,
- 8.2.3. implement the Sale of the Horse Racing Business and assets,

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- 8.2.4. implement the Sale of Phumelela Gold International Limited,
- 8.2.5. sell the property, plant and equipment assets of the Group that are not part of and or included in the above transactions,
- 8.2.6. participate in the management of the subsidiaries and other investments as contemplated in the respective shareholder agreements,
- 8.2.7. consider and pursue opportunities to sell these investments in subsidiary and investee companies or recover the equity in each after the sale of the assets and winding up of the entity,
- 8.2.8. if any of the above mentioned agreements cannot be implemented to sell all the business and / or Assets of the Company by private treaty or public auction at his sole discretion, it being agreed that if the sale by private treaty has not been concluded by 31 July 2021, the business rescue practitioner will commence with the sale of unsold Assets by public auction, and
- 8.2.9. pursue and collect all of the accounts receivable;
- 8.2.10. institute new and pursue and finalise the outstanding and pending litigation matters both by and against the Company; and
- 8.2.11. sell the Company's shares in each of its subsidiaries and failing that take such steps as required to recover the Company's investment in each subsidiary; and
- 8.2.12. enter into short term contracts of employment with selected employees to assist with the implementation of the Business Rescue Plan, and
- 8.2.13. pay whatever funds remain to the Employees, Creditors and Shareholders of the Company per the payment waterfall and preferences as set out below.

8.3. **Security for Creditors**

- 8.3.1. To ensure that all monies received by the BRP from trading and sales from Commencement Date to date of payment of distributions and that the proceeds from the sale of assets and businesses are secured for the benefit of the BRP, his advisors, employees, Creditor(s) and potentially Shareholder the BRP will:

- 8.3.1.1. open the Plan Fund account;

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- 8.3.1.2. retain control over the net cash generated from trading the business of the Company from the Commencement Date and to pay the net proceeds thereof into the Plan Fund;
- 8.3.1.3. pay the proceeds of all monies collected from all of the Company's debtor(s) and receivables into the Plan Fund;
- 8.3.1.4. pay the net proceeds of the sale of the business and / or Assets into the Plan Fund.
- 8.3.2. Irrevocably cede and assign as the BRP hereby does the proceeds of all monies the Company receives pursuant to the above to the Plan Fund for the benefit of the BRP, his legal and other advisors, the Employees and Creditor(s).
- 8.4. **The creation, purpose, objectives and workings of the Plan Fund**
  - 8.4.1. The Plan Fund will be created by the BRP (opening a special purpose bank account at Investec Bank and/or such other bank as required), in the name of "Phumelela Gaming and Leisure Limited Creditors Plan Fund" and into which the BRP will transfer and deposit the following cash and proceeds which the Company has irrevocably ceded to the Plan Fund:
    - 8.4.1.1. the net cash collected from the Company's debtors, and generated from trading by the Company since the Commencement Date;
    - 8.4.1.2. the net proceeds of the sale of any Assets and / or business of the Company;
  - 8.4.2. The Plan Fund will be created solely for the benefit of Employees, Creditors the BRP and his advisors, the latter for the payment of their respective fees and disbursements for their services rendered and once Creditor(s) have been paid their claims in full and there remains any cash, this cash is for the benefit of the Company. It will serve no other purpose and is not created for, nor exists for, the benefit of any other person(s) whomsoever.
  - 8.4.3. The cash as ceded and deposited into the Plan Fund will thereafter be paid as follows:
    - 8.4.3.1. firstly, in compliance with the requirements of Section 135 of the Act, for the payment in full of the agreed remuneration and expenses of the BRPs and any legal, accounting, expert valuation and other costs associated with the Proceedings in relation to the Company and the preparation of this Plan;

- 8.4.3.2. secondly, to the Secured Creditor(s) amounts that are due out of the proceeds from the realisation or sale of the assets over which they enjoy security; and
- 8.4.3.3. thirdly, to the employees for their employment during the Proceedings (to the extent that they have not already been paid for these services) and to the extent necessary, any relevant retrenchment costs;
- 8.4.3.4. fourthly, to PCF Creditors;
- 8.4.3.5. fifthly, employees in respect of any remuneration, reimbursement for expenses or other amount of money relating to employment that became due to them pre commencement of business rescue; and
- 8.4.3.6. sixthly, to Concurrent Creditor(s), including SARS, as a distribution pro rata to their Claims to the maximum value of those Claim(s); and
- 8.4.3.7. thereafter, the balance will be paid to the Company.

8.5. **Minimum Guaranteed Contribution to the Fund Plan**

- 8.5.1. MOD have, subject to approval of the business rescue plan to their satisfaction, provided post commencement finance to guarantee a minimum contribution of R550m to the Plan Fund. The contribution will be provided in three equal tranches on:
  - 8.5.1.1. 29 October 2020
  - 8.5.1.2. 29 March 2021
  - 8.5.1.3. 30 November 2021
- 8.5.2. The above contributions to the Plan Fund effectively provide inter alia Creditors with a minimum distribution from adoption of this business rescue plan that is not contingent on implementation of any sale transaction.
- 8.5.3. The above contributions and PCF loan is contingent on MOD notifying the company in writing that it is satisfied (in its sole and absolute discretion)
  - 8.5.3.1. With the power of attorney given in favour of MOD by the Company and/or any other member of the Group in order to enable the MOD to register the general notarial bond and mortgage bonds which form part of the agreed security;
  - 8.5.3.2. With the written guarantees which form part of the agreed security given by the relevant members of the Group as security for the obligations of the Company under this agreement and the First PCF Agreement;

- 8.5.3.3. With the Business Rescue Plan that was finally adopted as contemplated in terms of section 152 of the Companies Act; and
- 8.5.3.4. That all acquisition agreements in respect of the acquisition of the Horse Racing Business and assets and Phumelela Gold International Limited have been signed by parties thereto.
- 8.5.4. The 2<sup>nd</sup> PCF Facility will only participate in distributions from the Plan Fund once R550m has been distributed from the Plan Fund in accordance with the provisions of this plan. MOD will from that point participate in distribution from the Plan Fund in accordance with the provisions of paragraph 8.4.3.
- 8.6. **The Estimated recoveries in this scenario are summarised in paragraph 10.3 below and attached hereto marked Annexure E.**

9. **PROPOSED PAYMENT ARRANGEMENT AND EFFECT ON CREDITORS**

- 9.1. At the Substantial Implementation Date, the Company, under the auspices of the BRP, would have made payment to all Creditor(s) their entitlement to receive payments as provided for in this Business Rescue Plan.
- 9.2. At the Substantial Implementation Date the Company will have no assets except if the proceeds from the sale of some or all of the assets is sufficient to make all payments set out in paragraph 8.4.3 and in so doing discharge the claims of all creditors, in which case the Company will have cash and any assets that it was not necessary to sell. In both cases there will be no money in the Plan Fund, which bank account will then be closed.

9.3. Based on the Plan the Estimated Distributions to Creditor(s) is as follows:

**Phumelela Gaming & Leisure Limited Summary of Business Rescue Outcomes**

<b>Summary of Business Rescue Outcomes (R 000's)</b>	<b>Estimated Claim Value</b>	<b>Estimated Distribution (Rands)</b>	<b>Estimated Distribution (Cents per rand)</b>
<b>Secured Creditors</b>			
RMB	60 714	60 714	1.00
Investec	281 154	281 154	1.00
<b>Preferent Creditors</b>			
Employees	-	-	1.00
MOD - PCF	61 130	61 130	1.00
<b>Unsecured Concurrent Creditors</b>			
<b>Guaranteed Plan Fund Contribution</b>	335 043	241 970	0.72
<b>Estimated Distribution</b>	335 043	335 043	1.00
<b>Estimated Surplus available for shareholders</b>		100 000	

The distributions set out above are estimates that are not binding and based on assumptions. They are impacted mainly by the final value of the amounts generated from trading, the proceeds obtained on sale of Assets, the final quantum of the employee claims for retrenchment and the quantum of Concurrent Claims themselves.

9.4. Nature and duration of moratorium<sup>18</sup>

9.4.1. The moratorium is to remain in place, of full force and effect until the Substantial Implementation Date. From the Substantial Implementation Date it will lapse and be of no further force and effect.

9.5. Extent to which the Company is to be Released from the Payment of Debts<sup>19</sup>

9.5.1. Creditors will receive payment of their final distribution in full and final settlement of their claim(s) against the Company and after payment of their final distribution is received by them, they will have no further claim(s) against the Company. The creditors agree to the discharge of that part of their debt which is not paid by the Company.

<sup>18</sup> Section 150(2)(b)(i) of The Act

<sup>19</sup> Section 150(2)(b)(ii) of The Act

9.6. Ongoing Role of the Company / Treatment of Existing Agreements<sup>20</sup>

9.6.1. Upon the adoption and subsequent implementation of the proposed Business Rescue Plan the Company would have during the Proceedings:

9.6.1.1. realised all of its Assets and distributed the proceeds therefrom to Creditor(s) up to the maximum value of their Claim(s);

9.6.1.2. Paid Creditor(s) a distribution in excess of what they would have received if the Company were liquidated;

9.6.1.3. Successfully rescued the Company as defined in Section 128(1)(b)(ii) of the Act.

9.6.2. Accordingly Creditors are presented with a proposal that will, upon the adoption of this Business Rescue Plan and the subsequent implementation thereof, result in a better return and outcome for them than would be achieved were the Company placed in Liquidation<sup>21</sup>.

9.6.3. During the Proceedings the BRP agreed the termination of or will cancel the following agreements<sup>22</sup>:

9.6.3.1. Leases in respect of the branches that have closed; and

9.6.3.2. Contracts for services no longer required as a result of the sale of horse racing or at the branches that have closed; and

9.6.3.3. Contracts in respect of equipment no longer in use or required by the business.

These cancellations may give rise to damages claims against the Company which will be treated as Concurrent Claim(s).

9.6.4. During the Proceedings the Company has and will continue to comply with all regulatory requirements.

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<sup>20</sup> Section 150(2)(b)(iii)

<sup>21</sup> Section 128(1)(b)(iii)



9.7. Property of the Company to be available to Creditors<sup>23</sup> and Order of Preference to Apply<sup>24</sup>

9.7.1. This Business Rescue Plan proposes that the net cash generated from trading during the proceedings plus further net realisations from the sale of Assets post the Adoption Date will be ceded irrevocably to the Plan Fund and distributed to the Creditor(s) of the Company, and as the case may be the Company in the manner and order as detailed in this Plan (above) out of the Plan Fund.

9.8. Proposed arrangement between the Company and its Creditor(s):

9.8.1. This Plan regulates:

9.8.1.1. the terms of the payment of amounts due to Creditor(s);

9.8.1.2. the rights of Creditor(s):

9.8.1.2.1. in terms of this Plan in regard to the BRP, which shall be limited to the right to claim payment of any distributions to which they are entitled to in terms of this Plan;

9.8.1.2.2. the compromise of their Claim(s) in the event that the realisations set out herein are not sufficient to make payment in full to Creditors.

9.8.1.3. that once Creditor(s) have received all distributions to which they are entitled to in terms of this Plan:

9.8.1.3.1. they will have no further Claim(s) whatsoever against the BRP;

9.8.1.3.2. they will have no further Claim(s) whatsoever against the Company.

9.9. Creditor(s) agree that on adoption of the Plan they will not take any legal steps or commence proceedings against the Company including the passing of resolutions to wind up the Company for a period of 7 months after the last transfer date in respect of the Sale of its Assets or Businesses.

10. EFFECT ON SHAREHOLDERS

10.1. The Company has approximately 874 shareholders.

10.2. This business rescue plan does not alter the rights of the Shareholders.

10.3. This proposed business rescue plan affects the rights of Employees and Creditor(s) only.

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<sup>23</sup> Section 150(2)(b)(iv)

<sup>24</sup>Section 150(2)(b)(v)

- 10.4. As the business rescue plan does not alter the rights of the Shareholders, the Shareholder(s) will not be required to vote on the adoption or not of the business rescue plan.
- 10.5. Shareholders will to the extent that the proceeds from the sale of assets is sufficient to repay creditors in full, receive distribution pro rata to their shareholding in the company.

11. **THE BENEFITS OF ADOPTING THE BUSINESS RESCUE PLAN AS OPPOSED TO LIQUIDATION SCENARIO** <sup>25</sup>

- 11.1. The implementation of the Plan will rescue the Company as contemplated in the Act by virtue of the fact that it will result in a better return for Creditors than would be achieved by the immediate liquidation of the Company.
- 11.2. The estimated return to Concurrent Creditor(s) in terms of the Plan is between 72 and 100 cents in the rand in respect of their Claims against the Company. This is better than the estimated return in the event of the liquidation of the Company, which scenario envisages a distribution to Concurrent Creditor(s) of 40 to 60 cents in the rand and no surplus funds for the benefit of the Company.
- 11.3. The liquidation of the Company potentially favours SARS only. SARS may, depending on the final recoveries and Claim(s) values, achieve a better outcome from liquidation than business rescue. SARS who are preferent in Liquidation are concurrent in business rescue and will be treated as a Concurrent Creditor in this Plan;
- 11.4. Employees will retain their employment and if retrenched will, as a Preferent Creditor be paid their entire retrenchment benefits.
- 11.5. The Plan achieves and gives effect to the express objective of Section 7(k) of the Act.
- 11.6. Secured Creditor(s) and Preferent Creditor(s) will receive Distributions in full in settlement of the secured or preferent portions of their Claim(s) and in regard to the former will not be subject to any administrative costs or deductions. This is not so in a liquidation scenario.
- 11.7. Creditors will be paid their distributions far quicker than they would be paid if the Company were to be liquidated where the estimated payment date would be 2 years hence.
- 11.8. Liquidations are conducted under the auspices of the Master of the High Court. Business rescues are not as invasive and are completed within a short period of a few months. Without the Master's intervention, business rescue practitioners have the freedom and ability to efficiently finalise proceedings. This has the effect of Creditors being paid in a

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<sup>25</sup> Section 150(2)(b)(vi)

comparatively shorter time frame. Liquidations generally take a minimum of 2 to 4 years to finalise. In liquidations distributions are usually paid towards the end of the liquidation proceedings. The payment of distributions in business rescue is effected within a few months after adoption of the Plan by Creditors if not sooner.

## 12. **BUSINESS RESCUE PLAN: PART C- ASSUMPTIONS AND CONDITIONS**<sup>26</sup>

### 12.1. The Plan has the following Key Assumptions

12.1.1. The claims of Creditor(s) do not differ materially from amounts claimed by them in their claim forms submitted to date and / or the balance recorded as due to them in the books and records of the Company.

12.1.2. The anticipated or estimated selling price for the Assets is achieved.

12.1.3. The sale of Horse Racing Business, the sale of Betting World and other sale transactions will be approved by the relevant regulators.

12.1.4. All conditions precedent in respect of the sale of business and assets being timeously waved or fulfilled.

### 12.2. Statement of Conditions to be Satisfied<sup>27</sup>

12.2.1. The Business Rescue Plan is conditional on its adoption by the requisite vote of Creditor(s) as stipulated for in Sections 152(2)(a) and (b) of The Act.

### 12.3. Effect of this Proposed Business Rescue Plan on the number of Employees<sup>28</sup>

12.3.1. As at the Commencement Date the Group had 2050 employees most of whom will be transferred in terms of section 197 and 197A of the Labour Relations Act to the new owners of their respective business operations.

12.3.2. Any employees not so transferred will be retrenched and will receive their full retrenchment entitlement.

### 12.4. Circumstances in which the Business Rescue will end<sup>29</sup>

12.4.1. It is proposed that the Proceedings will end when:

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<sup>26</sup> Section 150(2)(c)

<sup>27</sup> Section 150(2)(c)(i)

<sup>28</sup> Section 150(2)(c)(ii)

<sup>29</sup> Section 150(2)(c)(iii)

**Legal Advisors**

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ATTORNEYS

- 12.4.1.1. this Plan is proposed and rejected and no Affected Person/s act to extend the Proceedings in any manner contemplated by the Act; or
- 12.4.1.2. this Plan is adopted and implemented and the BRP has filed a notice of substantial implementation of the Plan with the CIPC; or
- 12.4.1.3. a Court orders the conversion of the Business Rescue Proceedings into liquidation proceedings.

12.5. Substantial Implementation

12.5.1. Substantial implementation will take place, subject to the below conditions having been met to the satisfaction of the BRP, on the third business day after:

- 12.5.1.1. All the Company's Assets have been sold and the proceeds from such sale received; and
- 12.5.1.2. All the Claim(s) against the Company of whatsoever nature have been proven, adjudicated and finalised; and
- 12.5.1.3. All Claims which the Company and or the BRP have against any person(s) have been finalised; and
- 12.5.1.4. All cash has been paid out and distributed as provided for in the Plan.

12.6. Projected Balance Sheet and Detailed Statement of Income and Expenses for the Ensuing Three Year Period<sup>30</sup>

12.6.1. A three year forecast is not included as the Plan envisages a winding down of the affairs of the Company and as such the Company will not trade into the future.

13. GENERAL PROVISIONS

13.1. Affected Persons who vote against this Business Rescue Plan are referred to the provisions of Section 153(1)(b)(ii) of The Act<sup>31</sup> in terms of which any Affected Person or combination of Affected Persons may make a binding offer to purchase the voting interest of one or more persons who opposed the adoption of the Business Rescue Plan at a value independently and expertly determined, on the request of the BRP, to be a fair and reasonable estimate of the return to that person, or those persons, if the Company was to be liquidated.

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<sup>30</sup> Section 150 (2)(c)(iv)

<sup>31</sup> Refer to section 153 (1) (b) (iii)

- 13.2. In the event that any condition is not fulfilled, the Company defaults on its obligations herein, or in the event that an unforeseen factual circumstance arises which prohibits or delays the implementation of this Plan or the timeous implementation of this Plan in full, then the BRP reserves the right, on written notice to the Affected Persons, to convene a meeting to determine if, how and when the Plan can continue and be implemented. The Affected Persons do hereby waive any rights they may have to object to the convening of the meeting,<sup>32</sup> any time periods for the convening of such a meeting and agree to attend such meeting either in person or by proxy. The Affected Persons agree that any decision taken at this meeting will be made by the Creditor(s) and further agree that any decision taken at this meeting by the Creditor(s) will be by majority vote (as determined by the value of their voting interests reckoned by the BRP on the day of the vote). All Affected Persons undertake to act in good faith to resolve any issues and to ensure that the Plan is, where possible, implemented.
- 13.3. Provided that any amendment will not be prejudicial to any of the Affected Persons, but subject to paragraph 14.4, the BRP shall have the ability, upon 14 Days prior written notice, to amend, modify or vary any provision of this Business Rescue Plan, provided that at all times the BRP in doing so acts reasonably. The amendment will be deemed to take effect on the 14th day of the date of the written notice of the amendment to all Affected Persons.
- 13.4. If prior to the expiry of the 14th day as provided for in 13.3 any one or more Creditor(s) objects to any such amendment(s), the BRP will put such amendment to the vote of Creditors and the proposed amendment(s) will be carried by a simple majority of independent Creditor(s) of voting interests (reckoned and determined by the BRP at time of the vote) who vote in favour of it/them.
- 13.5. Notwithstanding anything herein contained to the contrary, if the Company defaults on any payments it is obliged to make in terms of this Plan, and it appears to the BRP that it will not be able to remedy this breach within a reasonable period of time, the BRP may, after consulting Affected Persons and the Company, launch an application to wind up the Company.

#### 14. **CONCLUSIONS**

- 14.1. For the reasons set out above, the implementation of the Plan will result in a better financial return and general outcome to Concurrent Creditor(s) as opposed to a liquidation of the Company.

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<sup>32</sup> Section 151

**CERTIFICATE**

I the undersigned John Francis Evans, state that the actual information provided by the company and used in preparing this business rescue plan appears to be accurate, complete and up to date and the projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the plan.

This Statement is made subject to the Qualifications set out in Section 2 of this business rescue plan.

SIGNED AT JOHANNESBURG ON THIS THE 18 th DAY OF AUGUST 2020.



**JF Evans**

**BUSINESS RESCUE PRACTITIONER**