STRAUSS DALY
ATTORNEYS

OUR REFERENCE : POOLE/JAA/TAG6/0001
YOUR REFERENCE :
DATE : 2 NOVEMBER 2017

NOTICE TO AFFECTED PERSONS

Dear Sirs

TAG YACHTS SOUTH AFRICA (PTY) LIMITED - UNDER BUSINESS RESCUE ("the Company")
REGISTRATION NO. 2007/015993/07

NOTICE IN TERMS OF SECTION 150 OF THE ACT

The Business Rescue Plan is published herewith together with: -

1. Annexure A : List of Creditors at Commencement Date
2. Annexure B : Comparative Analysis
3. Annexure C : Claim Documents

Yours faithfully

CM POOLE
THE PRACTITIONER
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BUSINESS RESCUE PLAN FOR

TAG YACHTS SOUTH AFRICA (PTY) LIMITED
2007/015993/07
(the "Company")

prepared in terms of Chapter 6 of the Companies Act 71 of 2008 (Section 150 of the Companies Act)

PUBLICATION DATE	:	2 November 2017
MEETING DATE	:	16 November 2017
MEETING TIME	:	10:00
VENUE	:	Jeffreys Bay Golf Club

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Annexure A	:	List of Creditors at Commencement Date
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INTRODUCTION

1. Introduction

1.1 This document contains the terms and conditions of a proposed business rescue plan as amended for the Company which, if agreed to by the requisite statutory majority of Creditors, shall become binding on the Company and its Creditors upon the fulfilment of the conditions of implementation referred to in clause 19 of this Plan.

1.2 For ease of reference, this Plan is divided into the following sections:

1.2.1 Introduction, Definitions and Interpretation;

1.3.2 Part A — Background (Section 150(2)(a) of the Companies Act);

1.2.3 Part B — Proposals (Section 150(2)(b) of the Companies Act);

1.2.4 Part C — Assumptions and conditions (Section 150(2)(c) of the Companies Act);

1.2.5 Part D — Administrative provisions; and

1.2.6 Practitioner's Certificate.

1.3 This Introduction and this Plan are to be read together.

1.4 Business rescue is aimed at facilitating the rehabilitation of companies that are financially distressed by providing for the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the company continuing in existence on a solvent basis, ***alternatively***, and in the event that it is not possible for a company to so continue in existence on a solvent basis that would result in a better return for its creditors or shareholders than would result from the immediate liquidation of such company.

1.5 **This Plan is aimed at achieving the organised wind-down of the Company by way of the realisation of all the assets of the Company by way of private treaty, and/or public auction and/or tender, which will result in a far better return for Creditors than in the case of the immediate winding-up / liquidation of the Company.**

1.6 What follows are the substantive terms and conditions of the Plan.

2. Definitions and Interpretation

2.1 Definitions

In this Plan, unless the context requires otherwise:

2.1.1 **Adoption Date** means the date upon which this Plan is approved in accordance with Section 152(2) read with Section 152(3)(b), (75% of the Creditors' voting interest that were voted and at least 50% of the independent Creditors' voting interest, if any, that were voted);

2.1.2 **Affected Person** shall bear the meaning given to the term in Section 128(1)(a), being a shareholder, creditor or employee of the Company and any registered trade union representing any employee of the Company;

2.1.3 **Business** means the Company's business of the manufacture of yachts which trades under the name and style of "Tag Yachts";

2.1.4 **Business Day** means any day other than a Saturday, Sunday or public holiday;

2.1.5 **CIPC** means the Companies and Intellectual Property Commission, established in terms of Section 185;

2.1.6 **Claim** means any claim of whatsoever nature and howsoever arising against the Company, including a Secured, Preferent or Concurrent Claim as envisaged in terms of the Insolvency Act, the origin, cause of action or agreement in respect whereof arose or was concluded before the Commencement Date and without in any way derogating from the generality of the aforegoing, shall include an actual, contingent, prospective, conditional or unconditional, liquidated or unliquidated, assessed or unassessed claim, whether due or yet to fall due for payment or performance, including any claim the origin of which arose from statute, regulation or other legislation or arising out of any contract and/or agreement entered into before the Commencement Date and cancelled thereafter and, in no way derogating from the generality of the aforegoing, shall include any Claim for Tax;

2.1.7 **Company** means Tag Yachts South Africa (Pty) Limited, registration number 2007/015993/07;

2.1.9 **Commencement Date** means 23 August 2017, being the date upon which the Rescue Proceedings commenced in accordance with Section 129(1), read with Section 132(1)(a)(i);

2.1.10 **Companies Act** means the Companies Act 71 of 2008 (as amended);

2.1.11 **Concurrent Claim** means any Claim which is unsecured and enjoys no preference in accordance with the Insolvency Act and "**Concurrent Creditor**" has the corresponding meaning;

2.1.12 **Contracts** means any right, title or interest of the Company in any contract, agreement or understanding entered into between the Company and a person before the Commencement Date;

2.1.13 **Creditor/s** means any person having a Claim against the Company;

2.1.14 **Employees** means any employee of the Company as at the Commencement Date;

2.1.15 **Employees' Claims** means those Employees that have: -

2.1.15.1 Claims against the Company as envisaged in clause 2.1.6 (outstanding at Commencement Date – Section 144(2) of the Companies Act); and/or

2.1.15.2 claims against the Company for remuneration, reimbursement for expenses and any monies relating to the employment of such Employees as contemplated in Section 135(1) of the Companies Act;

2.1.16 **Encumbrance** means any claim, charge, mortgage, lien, burden, option, pledge, security, withholding, retention of title, right of pre-emption, right of first refusal or other third party rights or claims, restrictions on the free transferability or security interest or an agreement, arrangement or obligation to create any of the aforegoing;

2.1.17 **Implementation Date** means the date of filing by the Practitioner with CIPC of a notice of substantial implementation of this Plan as contemplated in Section 132(2)(c) of the Companies Act;

2.1.18 **Insolvency Act** means the Insolvency Act 24 of 1936 (as amended);

2.1.19 **Insolvency Law** means the law relating to insolvency as contemplated in the Insolvency Act as read with Chapter XIV of the Companies Act, 1973, read with item 9 of Schedule 5 of the Companies Act;

2.1.20 **Meeting** means the meeting (or any adjourned meeting) of Creditors as contemplated in Section 151 and called for the purpose of considering this Plan;

2.1.21 **Plan** means this Business Rescue Plan or the amendment thereof together with its schedule and annexures, prepared and published by the Practitioner for consideration and adoption by Creditors in terms of Section 152;

2.1.22 **Practitioner** means Colin Mark Poole in his capacity as business rescue practitioner of the Company, and shall include any business rescue practitioner or practitioners appointed in terms of Section 139(3);

2.1.23 **Preferent Claim** means any Claim which is preferent in accordance with the provisions of the Insolvency Act and "**Preferent Creditor**" shall has the corresponding meaning;

2.1.24 **Publication Date** means the date on which this Plan is published by the Practitioner in terms of Section 153 of the Companies Act;

2.1.25 **Rescue Proceedings** means the business rescue proceedings commenced by the Company in terms of Section 129(3) on the Commencement Date;

2.1.26 **RSA** means the Republic of South Africa;

2.1.27 **SARS** means the South African Revenue Service;

2.1.28 **Secured Claim** means any Claim which would be secured in accordance with the Insolvency Act and "**Secured Creditors**" has the corresponding meaning;

2.1.29 **Tax or Taxation** shall mean tax as defined under the Tax Administration Act 28 of 2011 and without limitation all forms of taxation and other levies and charges payable to governmental authorities, including but not limited to income tax, value added tax, capital gains tax, donations tax, customs duty, stamp duty, securities transfer tax and any royalty, fee, contribution or other duty or levy and any penalties or interest on any of the aforegoing and any taxation arising from any assessments and/or the reopening of any assessments of the Company;

2.1.30 **VAT** means valued added tax as levied in terms of the VAT Act;

2.1.31 **VAT Act** means the Valued Added Tax Act, 1991.

2.2 Interpretation

2.2.1 Any reference in this Plan to:

2.2.1.1 the singular shall include the plural and vice versa;

2.2.1.2 **Person** means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality);

2.2.1.3 any one gender shall include the other gender;

2.2.1.4 a clause is a reference to the relevant clause of this Plan;

2.2.1.5 a Part is a reference to the relevant clause of this Plan;

2.2.1.6 any section is a reference to that section in the Companies Act, unless indicated otherwise;

2.2.2 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

2.2.3 The headings do not govern or affect the interpretation of this Plan.

2.2.4 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Plan.

2.2.5 When any number of days prescribed in the Plan same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the RSA, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

2.2.6 The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.

2.2.7 Where any term is defined within a particular clause other than as set forth in this clause 8, then that term shall bear the meaning ascribed to it in that clause wherever it is used in the Plan.

2.2.8 Any reference to legislation is to that legislation as at the Commencement Date, as amended or replaced from time to time.

2.2.9 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.

2.2.10 A reference to a person includes that persons successors-in-title and permitted assigns.

2.2.11 A time of day is reference to RSA time.

2.2.12 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the Plan does not apply.

Part A: Background

(Section 150(2)(a))

3. **Overview**

3.1 As at the Commencement Date:

3.1.1 the sole director of the Company was Timothy Franciscus van der Steene

3.1.2 the Shareholders of the Company were Timothy Franciscus van der Steene (50%) and Eric Johnston Cook Family Trust (50%);

3.1.3 the registered office of the Company is at Fish Eagle Park, Sea Vista, St Francis Bay.

3.2 The Business conducted by the Company was that of the manufacture of Yachts

4. **Business rescue**

4.1 The director resolved to place the Company under Business Rescue as contemplated in Section 129 and subsequently filed such resolution, which was registered at the CIPC on 23 August 2017.

4.2 In support of such resolution, the director is required to attest under oath (a sworn statement) as to: -

4.2.1 the reasons in support of the commencement of Business Rescue Proceedings, which were attested to by the director as being:-

"An inherent good business and healthy order book;
Quality products being manufactured;
Specialised skill and experience in the yacht building industry; and
Good prospects of obtaining external funding to recapitalise and restructure the Company".

4.2.2 the basis for forming an opinion that there is a reasonable prospect that the Business of the Company could be rescued, which was attested to by the director such being:-

"The statutory moratorium afforded to the Company during the Business Rescue Proceedings will allow the Company's affairs to be restructured so as to permit service over a period of time of the overdue trade creditors and loans which will in due course allow the Company to trade back to profitability.

In turn, Business Rescue Proceedings will be to the benefit of all affected parties concerned in that it will at the very least provide a far better return to creditors that in the case of liquidation."

4.3 As will be evident from this Plan, Business Rescue Proceedings will be to the benefit of all Affected Persons concerned in that it will at the very least provide a far better return to Creditors than in the case of liquidation.

4.4 The appointment of the Practitioner by the Company was confirmed by CIPC on 28 August 2017.

4.5 The first meeting of Employees in terms of Section 148 was held at the Business premises on 6 September 2017 and the first meeting of Creditors in terms of Section 147 was held at the Jeffreys Bay Golf Club on 7 September 2017.

4.6 The Plan was due to be published on 3 October 2017, however, an extension until 31 October 2017 was sought and granted to be Creditors.

5. **Material Assets and Encumbrances (Section 150(2)(a)(i))**

5.1 The material assets of the Company at Commencement Date consist of:

5.1.1 Movable Assets

Inventory consisting of: -

- Raw materials and components – cost value 1 000 000
- Complete 60-foot yacht (the Phoenix) – cost value 26 500 000

Plant and Equipment – carry value / book value 239 000

Office Equipment – carry value / book value 10 000

Motor vehicle : Toyota Landcruiser – realizable value 435 000

5.1.2 Receivables

Debit loan account – TF van der Steene 192 953
Deposit – Sparcraft Masts 388 000

5.1.3 Investment in Subsidiary

50% Shareholding in Tag Yachts 50 SA (Pty) Limited – unable to determine

6. **Creditors and Classes (Section 150(2)(a)(ii))**

6.1 A list of Creditors as at the Commencement Date is set out in **Annexure A**.

6.2 The following table provides a summary of the Creditors in their respective classes in accordance with Insolvency Law, if the Company had been wound up on Commencement Date, rounded off to the nearest R1 000.

Type of Creditor	*Claim Value*
Secured Creditors	
• Toyota Financial Services (Pty) Limited *(instalment sale agreement – Land Cruiser 70 Series SW)*	456 000
• Industrial Development Corporation *(cession of debtors and loan accounts)*	193 000 *
Preferent Creditors	
• Employees	1 352 000
• SARS	1 925 000
• Industrial Development Corporation *(general notarial bond)*	2 600 000 **
Concurrent Creditors	
• Trade Creditors	1 551 000
• Employees	1 604 000
• Shareholders Loan *(Eric Johnston Cook Family Trust)*	28 048 000
• Industrial Development Corporation *(shortfall)*	24 155 000
• MEIBC	845 000
• NUMSA	26 000
TOTAL CLAIMS	**62 755 000**

* *This amount relates to the debit loan account of the director.*

** *This amount represents the capital sum of R2 000 000 and a cost and interest clause of R600 000 as the extent to which all movable assets of the Company are encumbered by way of a general notarial bond in favour of the Industrial Development Corporation.*

7. Probable Liquidation Dividend (Section 150(2)(a)(iii))

7.1 This Plan contemplates the wind-down of the Company which will enable the Practitioner to effectively perform the same task as a liquidator in the realisation of the assets of the Company.

7.2 Whatever the realized value of the assets may be following the adoption of this Plan, the costs incurred in realizing the assets in the case of liquidation will be substantially higher than in business rescue, thereby reducing the dividend that will ultimately be paid to Creditors. Such realisation costs consist of but are not limited to: -

7.2.1 Liquidator's fees calculated at 10% plus VAT on the sale of all movable assets and the recovery of all debts due to the Company.

7.2.2 The bond of security costs which is calculated at 0,057% of the total asset value.

7.2.3 Master's fees which has a maximum of R25 000.

7.3 In addition to the high realisation costs, it is not uncommon for the winding-up of a liquidated entity to take between 12 and 18 months to complete. It is only once the Liquidation and Distribution Account has been confirmed by the Master of the High Court that Creditors are entitled to a dividend.

7.4 In summary, the probable dividend due to Creditors in the case of the Company being wound up or liquidated will be substantially less than in the case of business rescue and will become only payable at the very least, 12 to 18 months after liquidation and at a substantial prejudice, particularly to the Employees.

8. Equity holding the Company (Section 150(2)(a)(iv)

Timothy Franciscus van der Steene	:	50%
Eric Johnston Cook Family Trust	:	50%

9. Practitioner's Remuneration (Section 150(2)(a)(v))

9.1 The Practitioner has charged (and shall continue to charge) amounts to the Company for his remuneration in accordance with the tariff prescribed in Section 143(6) plus expenses and disbursements of the Practitioner.

9.2 The Company was classified as a medium company in terms of Regulation 127(2) and as such the hourly tariff is R1 315.79 (one thousand three hundred and fifteen Rand and seventy nine Cents) per hour, exclusive of VAT, subject to a maximum of R16 447.37 (sixteen thousand four hundred and forty seven Rand and thirty seven Cents) per day, exclusive of VAT.

9.3 In addition to the tariff remuneration, the Practitioner is entitled in terms of Section 143(2) to charge a further remuneration ("Success Fee") on the basis of a contingency related to the adoption of a business rescue plan, or the inclusion of any particular matter within the Plan or the attainment of any particular result of combination of results relating to the Business Rescue Proceedings.

Such Success Fee is final and binding on the Company if it is approved by the holders of the majority of Creditors' voting interest present and voting at a meeting called for the purpose of considering the proposed Success Fee and, to the extent as may be applicable by the holders of the majority of voting

rights attached to any shareholders of the Company that entitle the shareholder to a portion of the residual value of the Company on winding up.

A Remuneration Agreement proposing the Success Fee will follow.

10. Informal Proposal (Section 150(2)(a)(vi))

This Plan does not include any proposal made informally by a Creditor of the Company.

Part B: Proposal

(Section 150(2)(b))

11. Plan Overview

11.1 Initially, the plan was to complete the two projects in progress at Commencement Date at a revised costing, with a small profit margin. Simultaneously with that, was to be the introduction of two new products, the first being a voyage yacht for the charter market in the Caribbean, and the second being a 55-foot power boat for the European leisure market and to then exist the bespoke current product range. The strategy being to secure on-going repetitive business which would create effective economies of scale. This would see the introduction of working capital for cashflow and a capital investment in plant and equipment.

11.2 Despite attempting to engage with the project clients, legal action was instituted by the project clients against the Company seeking access to and possession of the respective projects. In turn legal action was instituted by the landlord against the Company for the ejectment of the Company from the main premises which housed the projects and from which the Company traded. Despite this destroying the Company's manufacturing abilities and any possibility of introducing the two new products referred to in clause 11.1 above, the Company's bad track record was equally, if not more of a cause in failing to secure any future projects. Effectively this terminated the Company's operational activities.

11.3 The following became more apparent during the review of the Company: -

11.3.1 The Company had traded under insolvent circumstances since inception (as evidenced by the annual financial statements).

11.3.2 The projects were substantially under-costed, an example being the first yacht being sold at a R3 million loss, resulting in selling prices concluded with prospective customers being significantly lower than similar competitor products in the market which was unrealistic.

11.3.3 Project management skills and systems were lacking, causing massive overruns in time on all projects resulting in irrecoverable overhead costs, consequently destroying all cashflow.

11.3.4 In mitigating the lack of cashflow, the Company embarked on raising deposits and advances sooner than what would be the norm for the project flow.

11.3.5 The securing of deposits and advances for new projects and the expenditure of such deposits and advances on old projects resembled characteristics similar to that of a ponzi scheme (pyramid scheme).

11.4 The Plan therefore contemplates the organized disposal of the Company's assets to secure a better return for Creditors than would be the case in a liquidation, thereby fulfilling the alternative objective of business rescue as contemplated in Section 128(1)(b)(iii) of the Companies Act, and a payment to Creditors of a dividend within one (1) month of finalization of the sale and receipt of the proceeds thereof of the assets referred to hereunder.

11.4.1 Disposal of the Phoenix

11.4.1.1 The Phoenix was the third 60-foot yacht built by the Company as a demonstrative product for marketing and developing the yacht building industry in South Africa. The yacht was completed in 2015 and had the latest technology introduced at that stage.

11.4.1.2 The cost to build the Phoenix was approximately R26.5 million, which was funded by both the Industrial Development Corporation and the Department of Trade and Industry.

11.4.1.3 The objective of the Phoenix project has not been met in that the Phoenix is docked at Cape St Francis Harbour thereby restricting its exposure to the international yachting fraternity. Ideally the Phoenix should be based in Miami to get such exposure.

11.4.1.4 At Commencement Date, the Phoenix was being marketed at an amount of US$2 050 000. All the major selling agents have the Phoenix on their books. As no offers have been received to date, the marketing price of the Phoenix was reduced to US$1 750 000.

11.4.1.5 The Practitioner proposes that: -

- as there is no further manufacturing continuity by the Company which completely negates typical after-sale backup, the marketing price of the Phoenix be again reduced to US$1 500 000 with an incentivized commission structure for any selling agent who achieves a higher price than US$1 500 000.

- there be the flexibility of accepting offers from US$1 000 000.

- the mode of sale and the terms and conditions in regard thereto be that as determined by the Practitioner in his sole discretion.

- that a period of four (4) months be given to sell the Phoenix, which four (4) month period will commence the month following that in which the Adoption Date occurs, failing which and in the absence of an extension granted by the statutory majority of Creditors required to adopt a plan, that the Practitioner terminate rescue proceedings and file for liquidation.

11.4.2 Disposal of Other Assets (Motor Vehicle, Inventory, Plant and Equipment & Office Equipment)

11.4.2.1 Motor Vehicle – the vehicle be sold at such price as acceptable to Toyota Financial Services, alternatively in the absence thereof to be voluntarily surrendered back to Toyota Financial Services if such sale is not concluded within fourteen (14) days of Adoption Date.

11.4.2.2 Inventory, Plant and Equipment & Office Equipment – these assets are to be offered for sale to the original suppliers at a discounted price, the remaining assets to then be sold on auction within four (4) months of Adoption Date. This period commencing the first month following that in which the Adoption Date occurred.

12. Duration of the Moratorium (Section 150(2)(b)(i))

The moratorium imposed by Section 133 in respect of any legal proceedings, including any enforcement action, against the Company, or in relation to any property belonging to the Company or in its possession, shall terminate on Implementation Date.

13. Extent to which the Company is to be released from its debts (Section 150(2)(b)(ii))

13.1 If this Plan is adopted and implemented as contemplated in Section 152, the Company will be released of its debts up to the extent to which such debts are not satisfied from the proceeds of the sale of the assets and recovery of loans to related parties.

13.2 None of the Company's debts are proposed to be converted to equity in the Company.

14. **Treatment of existing Agreements and the ongoing role of the Company (Section 150(2)(b)(iii))**

14.1 Save as otherwise provided for in this Plan, all Contracts, including any Contracts suspended in terms of Section 136(2)(a), shall remain in force and any suspension thereof uplifted on the Implementation Date.

14.2 As to the lease agreements entered into by the Company with the various landlords, the extent of the damages (unpaid rental) suffered by the landlord arising out of the suspension by the Practitioner of the Company's obligations, shall be treated as post-commencement finance and will be paid in the order of preference referred to in clause 16.6 hereunder.

14.3 Any Creditor with a Claim, the cause of which arose from a Contract and the performance of which was due at the Commencement Date, shall be limited to assert such Claim for performance only as an unsecured Claim for damages (in lieu of performance) against the Company.

15. **Property available to pay Claims (Section 150(2)(b)(iv))**

The Plan contemplates the realisation of all the assets/property of the Company in settlement in accordance with the order of preference referred to in clause 16 of all Creditors' Claims.

16. **Order of Preference (Section 150(2)(b)(v))**

Subject to the terms of this Plan, Claims shall be treated in the order of preference as contemplated and provided for in Chapter 6 of the Companies Act as follows:

16.1 Practitioner's claim for further remuneration, expenses, disbursements and costs;

16.2 Employees' Claims as contemplated in Section 135(1);

16.3 Secured Claim - Toyota Financial Services (Pty) Limited : instalment sale agreement;

16.4 Secured Claim - Industrial Development Corporation Limited : cession of debtors and loan account

16.5 Employees' Claims as contemplated in Section 144(2);

16.6 Other post-commencement finance claims as contemplated in Section 135(3)(a)(i);

16.7 all other unsecured Claims as contemplated in Section 135(3)(a)(ii)

17. **Benefits of adopting this Plan (Section 150(2)(b)(vi))**

17.1 One of the objectives of business rescue is to provide a better return to Creditors than in the case of the immediate winding-up / liquidation of the Company.

17.2 This Plan achieves this objective by simply authorizing the Practitioner to effectively perform the task of a liquidator in realizing the assets which results in a substantial cost saving thereby increasing the dividend to Creditors and also to allow the payment of such dividend within a far shorter period of time than would ordinarily occur in the case of liquidation.

17.3 A comparative analysis of the expected dividends to be paid, should this Plan be adopted as opposed to the Company being liquidated is summarized hereunder and set out in detail in **Annexure B.** The anticipated dividend based on the assumed realisation price of the assets being: -

17.3.1 Business Rescue

* secured creditors – paid in full

* preferent creditors : all employees claims of whatsoever nature, including retrenchment packages – paid in full

* concurrent creditors – 20c/R1

Expected payment date within one (1) month of finalization of the sale of all assets

17.3.2 Liquidation

* secured creditors – paid in full

* preferent creditors : employees – only their statutory preferent portion to be paid in full

* preferent creditors : SARS – paid in full

* concurrent creditors – 10c/R

Expected payment date twelve (12) months of finalization of the sale of all assets

17.4 For this Plan to be adopted it must be supported by holders of more than 75% of the Creditors voting interest that were voted and at least 50% of the independent Creditors voting interest, if any, that were voted.

17.5 If the Plan is not adopted, the Practitioner may: -

17.5.1 seek a vote from holders of voting interests to prepare and publish a revised Plan (a simple majority of Creditors voting interest is sufficient to secure this vote); or

17.5.2 advise the meeting that the Company will apply to court to set aside the result of the vote by holders of voting interests on the grounds that such vote was inappropriate.

17.6 If the Plan is not adopted and the Practitioner fails to take either of the steps contemplated in clause 17.5 above, any Creditor present at the meeting may: -

17.6.1 seek a vote of approval from Creditors requiring that the Practitioner prepare and publish a revised Plan (a simple majority of Creditors voting interest is sufficient to secure this vote); or

17.6.2 apply to court to set aside the result of the vote by holders of voting interests on the grounds that such vote was inappropriate.

17.7 A court may order that a vote be set aside on the basis that it is inappropriate if the court is satisfied that it is reasonable and just to do so, having regard to: -

17.7.1 the interests represented by the creditor who voted against the proposed business rescue plan;

17.7.2 the provision, if any, made in the proposed business rescue plan in respect of such creditor; and

17.7.3 the fair and reasonable estimate of the return to that creditor if the company was to be liquidated

17.8 Creditors who consider voting against the Plan, should ensure that their reasons for doing so are in line with the principles set out by the recent Supreme Court of Appeal decision of "*Firstrand Bank Limited v KJ Foods CC (in business rescue) [2015] ZASCA 50,* handed down on 26 April 2017 relating to the issue of "*setting aside of an inappropriate vote of a creditor*".

18. **Effect of this plan on the Holders of Company's Issued Securities (Section 150(2)(b)(vii)**

This Plan will not affect the holders of each class of the Company's issued securities.

Part C: Assumption and Conditions

(Section 150(2)(c))

19. **Conditions (Section 150(2)(c)(i)**

For this Plan to be implemented, all that is required is the adoption thereof by Creditors.

20. **Effect on Employees (Section 150(2)(c)(ii))**

20.1 All Employees have been subjected to a retrenchment process as envisaged in terms of Section 189 of the Labour Relations Act 66 of 1995.

20.2 As is evident from **Annexure B** referred to in clause 17.3, there is a far greater financial benefit to Employees if this Plan is to be adopted as opposed to liquidation.

- Under business rescue, an anticipated amount of R3 188 000 will be paid to Employees.
- Under liquidation, an anticipated amount of R1 507 000

21. **Circumstances in which the Business Rescue shall end (Section 150(2)(c)(iii))**

21.1 The Rescue Proceedings shall end, if the Plan is adopted and implemented, upon:

22.1.1 the Practitioner filing a notice of substantial implementation of this Plan as contemplated in Section 132(2)(c)(ii); or

22.1.2 the Practitioner filing a notice of the termination of the Rescue Proceedings as contemplated in Section 132(2)(b).

22. **Projected Financial Statements (Section 150(2)(c)(iii))**

Given the nature of the Plan, there are no projected financial statements.

23. **Binding nature of an Adopted Business Rescue Plan (Section 152(4) and (5))**

In the event of the Plan being adopted as contemplated in terms of Section 152, the Plan shall be binding on the Company and on each of the Creditors and the directors.

24. **Proof of Claims**

24.1 All Claims dealt with in this Plan shall be proved, considered and adjudicated upon by the Practitioner for purposes of sharing in the distribution envisaged in this Plan, as Claims against the Company as at Commencement Date. Claims must be proved to the satisfaction of the Practitioner.

24.2 Creditors who are reflected in the books of account of the Company as Creditors (**Annexure A**), shall be regarded by the Practitioner as Creditors for the amounts for which they so appear to be Creditors, per **Annexure A;**

24.3 Creditors who allege that they are Creditors of the Company for amounts which differ from that appearing in **Annexure A,** or are not recorded as Creditors in **Annexure A** ("Dispute Creditors"), are required to lodge their Claims with the Practitioner in accordance with the provisions of the Insolvency Act and complete the Proof of Claim affidavit (**Annexure C).**

24.3.1 Such claims shall be proved to the satisfaction of the Practitioner as if he was the officer presiding at a meeting convened for the proof of claims within the meaning of Section 44 of the Insolvency Act.

24.3.2 **Dispute Creditors are required to take note that:** -

Such Proof of Claim Affidavits are required to contain supporting documentation and information evidencing the amount so claimed, failing which the claim will be rejected by the Practitioner.

Dispute Creditors must lodge their Proof of Claim Affidavits with the Practitioner at least four (4) full Business Days before the time and date of the Meeting, either by way of delivery to the Practitioner - 9th Floor Strauss Daly Place, 41 Richefond Circle, Ridgeside Office Park, Umhlanga, alternatively transmitted electronically to e-mail address: jakeroyd@straussdaly.co.za / vfuller@straussdaly.co.za in a manner and form such that the claim document can conveniently be printed by the Practitioner.

The decision as to whether or not to accept such Dispute Creditor's Claim shall be conveyed to the Dispute Creditor prior to the Meeting. If accepted by the Practitioner, such Dispute Creditor's voting interest shall be determined in accordance with such Claim amount. If rejected, the Practitioner's decision shall be subject to review by the Court upon the application by the Dispute Creditor, provided that any such review proceedings shall be brought within fifteen (15) days of receipt of advice of that decision in writing from the Practitioner. Should the Dispute Creditor fail to make such an application, the Dispute Creditor shall be deemed to have waived its right to dispute such decision and shall thereafter be debarred from bringing such review proceedings.

24.4 Any Creditor may prove a conditional Claim. If the condition, to which the Claim is subject to has been fulfilled, before any amount is paid or to be paid ("Award") under this Plan, the Practitioner shall admit the Claim as if it had been unconditional.

If an Award has been allocated by the Practitioner on a conditional Claim, the Practitioner shall deposit the amount of that Award in a special account with a registered commercial bank and shall pay over the Award, together with any interest thereon, to the Creditor when the condition has been fulfilled. If the condition is not fulfilled, then the Award plus the interest thereon shall be distributed amongst the other Concurrent Creditors on a pro rata basis. If, in the opinion of the Practitioner, the costs of making the distribution shall be disproportionate to the value of the portions which Creditors shall receive, then the Practitioner shall be entitled to retain such Award, plus accrued interest as part of the Practitioner's remuneration.

25. Duties and Powers of the Practitioner

The Practitioner shall, after the Adoption Date:

25.1 forthwith notify all known Creditors that this Plan has been adopted, and particularly draw their attention to the section of this Plan dealing with the proof of Claims and their rights and obligations thereunder;

25.2 have the right, to the exclusion of Creditors and the Company, to:

25.2.1 institute any proceedings against any person which may be required to give effect to this Plan; or

25.2.2 defend any proceedings brought against him arising out of this Plan and be entitled to dispute any Claim;

25.2.3 in his discretion, to compromise and/or otherwise determine by agreement the amount of any Claim proved or to be proved in terms of this Plan;

25.2.4 engage the services of legal and other professional advisors in connection with any matter concerning his functions and duties, to dispense with taxation or assessment of and to agree the amount of reasonable fees and charges of such legal and other professional advisors and shall be entitled to pay the remuneration and disbursements of the person so engaged as an expense of the Practitioner as contemplated in Sections 135 and 143; and

25.2.5 at all times have access to all books, records, documentation and trading figures of the Company as he may reasonably and properly require for the execution of his duties as Practitioner in terms of the Plan.

26. Domicilium and Notices

26.1 Each Creditor is hereby deemed to have chosen *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at the e-mail address or telefax number stated by that Creditor in his proof of claim form, or, in the event of any Creditor not having lodged a proof of claim form, then at the Creditor's last recorded e-mail address or telefax number with the Company.

26.2 Notices dispatched by the Practitioner in accordance with the Plan shall rebuttably be deemed to have been received by the addressee reflected on such notices on the Business Day after dispatch or transmission thereof by electronic mail or telefax to the addressee's *domicilium citandi*.

27. Practitioner's Certificate (Section 150 (4))

I, the undersigned, Colin Mark Poole state as follows:

In preparation of the Plan I have relied on factual information provided by the director and management of the Company together with, to the extent applicable, the valuation provided by experienced valuers. I have not undertaken an audit on the information provided to me and cannot warrant or guarantee the accuracy of such information, or that the prices obtained in realisation of the assets will be in line, at the very least, with the valuation amounts (if applicable), or market trends, or that the dividends will be that which has been projected.

All projections provided in the Plan are estimates made in good faith on the basis of factual information and assumptions set out in the Plan.

C M Poole
2 November 2017

ANNEXURE A

TAG YACHTS SOUTH AFRICA (PTY) LTD (IN BUSINESS RESCUE)

Creditors Listing at Commencement Date

1)	Trade Supplier account and name	Balance
	AFR001 (African Overalls)	3,188.18
	NEP001 (Neptune Engineering)	41,040.00
	MAC002 (MACSTEEL)	15,794.75
	RHA001 (RICHARD HARRISON)	11,725.00
	afr003 (AFROSPEED (PTY) LTD)	891.00
	ALG002 (ALGOA MIDAS)	2,868.99
	AMT001 (AMT Composites - Local)	4,408.42
	AGR001 (ANDRAG AGRICO)	543.01
	ASS002 (ASSA ABLOY SA (PTY) LTD)	0.03
	AUTOPAGE (TIM) (AUTOPAGE (TIM))	3,342.09
	BAK001 (BAKKER YACHT ELECTRO)	10,477.00
	BAY003 (BAYVIEW BOATING)	25,000.00
	BES001 (BESTMADE 36CC)	98,239.29
	BRA001 (BRAEMAR PAINTS SPECIALISTS)	3,536.42
	BUI001 (BUILDERS EXPRESS)	1,100.00
	CDY001 (C - DYNAMICS)	6,255.67
	CAB001 (CABLE AND WIRE ELECTRICAL WHOLESALERS)	15,365.45
	CIT003 (CITY PAINT & TOOL)	35,036.64
	COA001 (COASTLAND SALES)	105,409.92
	COM001 (COMMERCIAL MARINE)	5,318.49
	CENG001 (CORRECT ENGINEERING CC)	36,912.82
	3DP001 (CREATE 3D PRINTING)	16,800.00
	EEL001 (ECHO ELEKTRIES & LIGHTING)	19,978.86
	GTR001 (G TRENT COMPRESSORS)	3,117.90
	GEO001 (GEORGE PARIS)	2,489.89
	HIG001 (GURIT ASIA PACIFIC)	50,364.56
	HAY001 (HAYWIRE ELECTRICAL)	5,102.00
	HIQ001 (HI-Q TYRE EXCHANGE)	30.03
	HUM001 (HUMANSDORP PAINT CENTRE CC)	187.40
	HUT001 (HUTTON AND COOK)	200,000.00
	JCH001 (JCH INSTRUMENTS & SERVICES cc t/a MACSY SUPPLIES)	5,178.78
	MAL001 (MALHERBE FAMILY TRUST)	18,375.51
	MAN002 (MANGO AIRLINES)	3,258.19

MEG003 (MEGAYACHTS MALLORCA - JAMES)	302,288.20
MEI001 (MEIKLE'S HANDYMAN SERVICES)	1,800.75
NEA001 (NEASA)	372.00
ONT001 (On-Tap)	12,689.63
POW002 (POWERSOL)	6,580.37
RIT001 (RAND INTERNATIONAL)	15,390.00
SCO001 (SCOTT BADER)	165,064.52
SEA004 (SEARTEX SOUTH AFRICA)	4,478.96
SOL002 (SOLBIAN ENERGIE ALTERNATIVE s.r.l)	2,145.62
TT001 (TRUE TECHNOLOGIES)	990.00
UNI002 (UNIQUE WELDING ALLOYS - DIV OF Weldamax pty)	3,938.33
WAL001 (WALTONS STATIONERY)	5,782.88
YYD001 (YOUNG YACHTS INTERNATIONAL)	112,254.29
CEN001 (CENTRAL BOATING)	3,552.54
EAS001 (EAST CAPE HAND TOOLS CC)	3,106.50
MOO001 (MOORE STEPHENS)	64,725.71
PEN001 (PENNYPINCHERS)	16,336.42
SAF001 (SAFETYMATE)	36,676.16
STR001 (STRAND HARDWARE)	13,489.60
VET001 (VETUS MAXWELL)	28,226.00
TOTAL TRADE SUPPLIERS' PAYABLE	**1,551,224.77**

2) **Other Creditors**

INDUSTRIAL DEVELOPMENT CORPORATION	26,562,251.82
SA REVENUE SERVICES	1,924,835.85
ERIC JOHNSTONE COOK TRUST	28,048,344.15
E J COOK (personal loan)	28,023.18
TOYOTA FINANCIAL SERVICES	456,000.00
MEIBC	864,581.72
NUMSA	26,133.69
EMPLOYEES	159,655.25

TOTAL CREDITORS **59,621,050.43**

ANNEXURE B

SCENARIOS AS AT COMMENCEMENT DATE (23 August 2017)				
	BUSINESS RESCUE	*BUSINESS RESCUE DIVIDEND*	*LIQUIDATION*	*LIQUIDATION DIVIDEND*
Sale of Assets calculated at R14 : $1				
* Business Rescue - assumed sale price US$1.5 million				
* Liquidation - assumed sale price 75% of Business Rescue price due to stigma attached to a liquidation sale and the general market trend of a substantially reduced price - US$1.125 million				
Sale of Assets	21 000 000		15 750 000	
Less				
Business Rescue Costs & Disbursements	(1 140 000)		-	
Sales Commission - Phoenix	(2 394 000)		(1 795 500)	
Holding Costs - Phoenix	(168 000)		(280 000)	
Holding Costs - Other Assets	(200 000)		-	
Liquidation costs	-			
* Administration Rental	-		(450 000)	
* Insurance	-		(80 000)	
* Security	-		(10 000)	
* Master's Fees	-		(25 000)	
* Bond of Security	-		(89 775)	
* Liquidator's Fees	-		(1 795 500)	
	17 098 000		**11 224 225**	
Preferent Claims				
* Employee claims - pre business rescue	(203 000)	(203 000)	-	
* Employee claims - post business rescue	(3 110 000)	(3 110 000)	-	
* Employee claims - pre liquidation preferent	-		(1 352 000)	(1 352 000)
* South African Revenue Services - preferent	-		(1 925 000)	(1 925 000)
* Industrial Development Corp. - general notarial bond	(2 600 000)	(2 600 000)	(2 600 000)	(2 600 000)
* Provision for Landlords damages	(200 000)	(200 000)		
	(6 113 000)		**(5 877 000)**	
Concurrent Claims				
* Employee claims - pre liquidation concurrent portion	-		(1 604 000)	(154 900)
* South African Revenue Services	(1 925 000)	(381 100)	-	-
* Trade Creditors	(1 551 000)	(307 100)	(1 551 000)	(149 800)
* Industrial Development Corp. - shortfall	(23 962 000)	(4 743 900)	(23 962 000)	(2 314 300)
* Shareholder loan - Eric Johnston Cook Family Trust	(23 748 000)	(4 701 600)	(23 748 000)	(2 293 600)
* Shareholder loan - Eric Johnston Cook Family Trust *(claim subordinated in favour of IDC)*	(4 300 000)	(851 300)	(4 300 000)	(415 300)
* Provision for Landlords damages			(200 000)	(19 300)
	(55 486 000)	**(17 098 000)**	**(55 365 000)**	**(11 224 200)**
dividend (Rand)	- 0.20		- 0.10	

ANNEXURE C

PROOF OF CLAIM AFFIDAVIT
TAG YACHTS SOUTH AFRICA (PTY) LIMITED – UNDER BUSINESS RESCUE
Date of Commencement of Business Rescue : 23 August 2017

CREDITOR'S PARTICULARS:

NAME: _____

ADDRESS: _____

_____

PARTICULARS OF CLAIM:

TOTAL AMOUNT OF CLAIM R _____

I, _____

do hereby make oath and say:

That I am a **MEMBER / DIRECTOR / FINANCIAL MANAGER / ACCOUNTANT / PARTNER / SOLE PROPRIETOR** *(Delete what is not applicable)*

of _____ *(the Creditor)*

That I have personal knowledge of the facts hereinafter stated.

That as at 23 August 2017, **TAG YACHTS SOUTH AFRICA (PTY) LIMITED** which company has been placed under Business Rescue, was and is still truly indebted to the Creditor in the sum of R_____

(_____

_____)*(in words)*

in respect of _____

The Creditor holds the following security for such debt: _____

_____

That no other person besides the said Company is liable (otherwise than as surety) for the said debt or any part thereof.

_____

Signature of Declarant

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit which was signed and affirmed/sworn to before me at _____ on _____ 2016 under compliance with the regulations contained in Government Notice R1258 dated 21st July 1972 (as amended).

_____

COMMISSIONER OF OATHS

NOTES FOR COMPLETION OF CLAIM FORMS

1. **Affidavit**

   1.1 **Completion and signature**
   The Commissioner of Oaths must print his full name and business address below his signature and state his designation and the area for which he holds his appointment or by office held by him if he holds his appointment ex officio. Alterations must be initialled by declarant and Commissioner of Oaths.

   1.2 **The claim amount must be that which is due up to the date of commencement of Business Rescue.**

2. **Supporting vouchers**

   2.1 **Goods supplied on open account**
   A detailed statement, as per attached, supporting the affidavit must be attached to the claim, showing the monthly total and brief description of the purchases and the payment for the full period of trading or for a period of 12 months immediately prior to the date of commencement of Business Rescue.

   2.2 **Money lent**
   Annex detailed statement of account plus acknowledgement of debt or receipts or paid cheques.

   2.3 **Interest**
   Documentation in support of any claim for interest outstanding up until date of commencement of Business Rescue.

   2.4 **Legal charges**
   Annex attorney's taxed bill of costs which must show dates of the items therein.

   2.5 **Security Documents**
   For example mortgage bonds, special and/or general notarial bonds, cession, pledge, instalment sale agreements must be annexed to this Affidavit.

   2.6 **Rent**
   Annex copy of lease (if any) and detailed statement of rent due up to date of commencement of Business Rescue showing rental and periods.

   2.7 **Suretyships**

   Annex copy of documents and detailed statement of claim against principal debtor.

3. **Power of attorney**

   3.1 Should a Creditor be unable to attend a meeting, a Power of Attorney is annexed hereto for such Creditors benefit for the purposes of nominating a third party to attend any meeting and vote accordingly.

4. **Resolution**
   Should the Creditor be a legal entity, a Resolution must be completed authorising a specific party to sign this Claim Affidavit. An example of a Resolution is annexed hereto.

Statement of goods supplied on open account

In the case of a claim being in respect of goods sold and delivered on an open account this statement should be completed in every respect and attached to the claim documents.

Name of creditor : _____
Address of creditor : _____
Name of debtor : TAG YACHTS SOUTH AFRICA (PTY) LIMITED
Brief description of goods supplied : _____

Details of sales :-

DATE	INVOICE NUMBER	AMOUNT	MONTHLY TOTALS (NOT PROGRESSIVE)
TOTAL DEBITS "A"		R	R

Details of payments received and credits allowed

DATE	PAYMENTS OR CREDITS (SPECIFY NATURE)	AMOUNT	MONTHLY TOTALS (NOT PROGRESSIVE)
TOTAL DEBTS "B"		R	R
	AMOUNT OF CLAIM AS PER AFFIDAVIT – ie "A" LESS "B"	R	

POWER OF ATTORNEY TO PROVE CLAIMS AND VOTE

TAG YACHTS SOUTH AFRICA (PTY) LIMITED – UNDER BUSINESS RESCUE

I, the undersigned,

_____

in my capacity as

_____

of _____
(hereinafter referred to as the said creditor) do hereby nominate, constitute and appoint

_____ **AND/ OR** _____

with power of substitution to be the said creditor's lawful attorney and agent in the said creditor's name, place and stead, to attend all meetings of creditors in the matter of

TAG YACHTS SOUTH AFRICA (PTY) LIMITED – UNDER BUSINESS RESCUE

_____

on the said creditor's behalf to prove the said creditor's claim and to exercise on the said creditor's behalf all voting and other powers in respect of such claim relating to the Business Rescue of TAG YACHTS SOUTH AFRICA (PTY) LIMITED and generally to act on the said creditor's behalf at all meetings of the company in all matters and things in which the said creditor's interests are concerned, hereby promising to ratify and confirm whatsoever the said agent may do or perform by virtue of these present.

Dated at _____ **this** _____ **day of** _____ **2017**

As Witnesses :-

1. _____

2. _____ _____

Signature

_____(Proprietary) Limited / Close Corporation

CERTIFIED EXTRACT FROM THE MINUTES OF A MEETING OF DIRECTORS / MEMBERS OF THE ABOVEMENTIONED COMPANY / CLOSE CORPORATION

held at _____ **on the** _____ **day of** _____**2017**

It was resolved

That Mr _____

a director/member of the company / close corporation, be and is hereby authorised and empowered to sign all the necessary documents to enable the company to prove its claim against
TAG YACHTS SOUTH AFRICA (PTY) LIMITED – UNDER BUSINESS RESCUE

to attend meetings of creditors of TAG YACHTS SOUTH AFRICA (PTY) LIMITED, and to speak and vote on behalf of the company / close corporation, with power, in his discretion to substitute and appoint any other person or persons to attend such meetings on the company's / close corporation's behalf and to vote thereat.

_____
SIGNED ON BEHALF OF THE BOARD

Full Name of Creditor : _____

CREDITOR BANK ACCOUNT DETAILS

Name of Bank : _____

Branch : _____

Branch code : _____

Account Holder : _____

Account Number : _____

Creditor's Reference : _____