

**BUSINESS RESCUE PLAN**

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

in relation to

**SAIL MINERALS PROPRIETARY LIMITED**

(under business rescue)

(Registration No. 2013/101076/07)

Prepared by:

**SIVIWE DONGWANA**

(business rescue practitioner)



**PUBLICATION DATE: 11 February 2022**

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## 1. INTERPRETATION AND PRELIMINARY

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

### 1.1. words importing –

1.1.1. any one gender includes the other two genders;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. persons include natural persons, created entities (corporate and un-incorporate and the State) and *vice versa*;

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

1.2.1. "**Absa**" means Absa Bank Limited, Registration No. 1986/004794/06, a company incorporated in accordance with the laws of South Africa;

1.2.2. "**Adamantem**" means Adamantem Proprietary Limited, Registration No. 2017/292632/07, a company incorporated in accordance with the laws of South Africa;

1.2.3. "**Adoption Date**" means the date upon which the Business Rescue Plan is approved in accordance with section 152(2), read with section 152(3)(b), of the Companies Act;

1.2.4. "**Advisors**" means the advisors to the BRP, namely Adamantem and ENSAfrica, and their respective employees or representatives;

1.2.5. "**Affected Person/s**" shall bear the meaning ascribed thereto in Section 128(1)(a) of the Companies Act and, in relation to the Company, means Chrometco, Sail Mining, Creditors and Employees;

1.2.6. "**BCM**" means Black Chrome Mine Proprietary Limited, Registration No. 1998/010730/07, a private company incorporated in accordance with the laws of South Africa;

1.2.7. "**BRP**" means the business rescue practitioner of the Company, appointed in terms of section 129(3)(b) of the Companies Act, being Dongwana;

1.2.8. "**Business Day**" means any day other than a Saturday, Sunday or official public

holiday in South Africa;

- 1.2.9. "**Business Rescue**" means proceedings to facilitate the rehabilitation of the Company, which is financially distressed, as more fully defined in section 128(1)(b) of the Companies Act and paragraph 6.1;
- 1.2.10. "**Business Rescue Costs**" means the remuneration and expenses of the BRP and other claims arising out of the costs of the Business Rescue, including the costs of the Advisors;
- 1.2.11. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time and prepared in accordance with section 150 of the Companies Act;
- 1.2.12. "**Chrometco**" means Chrometco Limited, Registration No. 2002/026265/06, a public company incorporated in accordance with the laws of South Africa and listed on the Alternative Exchange of the Johannesburg Stock Exchange, being a 51% majority shareholder of the Company;
- 1.2.13. "**CIPC**" means the Companies and Intellectual Property Commission of South Africa, established in terms of section 185 of the Companies Act;
- 1.2.14. "**Claims**" means Pre-commencement Claims and Post-commencement Claims;
- 1.2.15. "**Commencement Date**" means 21 September 2021, being the date upon which Business Rescue commenced in accordance with section 131(1), read with section 132(1)(b), of the Companies Act;
- 1.2.16. "**Company**" means Sail Minerals Proprietary Limited, Registration No. 2013/101076/07, a private company incorporated in accordance with the laws of South Africa, at present under Business Rescue;
- 1.2.17. "**Companies Act**" means the Companies Act, No. 71 of 2008, as amended;
- 1.2.18. "**Concurrent Allocation**" means an amount of R8 000 000.00 (eight million Rand) allocated to the payment of the General Concurrent Creditors, as more fully dealt with in paragraph 18.9;
- 1.2.19. "**Contracts**" means those contracts entered into by the Company and third parties, either prior to or after the Commencement Date;
- 1.2.20. "**Creditors**" means Pre-commencement Creditors and Post-commencement Creditors;

- 1.2.21. **“Creditors’ Committee”** means the committee comprising Creditors, formed in terms of section 145(3), read with section 147(1)(b), of the Companies Act;
- 1.2.22. **“Disputed Claims”** means any and all Claims which are disputed in the Business Rescue and which dispute shall be determined in favour of or against such Creditors in terms of the Dispute Resolution in paragraph 35;
- 1.2.23. **“Distribution/s”** means distributions to be made to Creditors by the BRP in terms of this Business Rescue Plan;
- 1.2.24. **“Dongwana”** means Siviwe Dongwana, the BRP;
- 1.2.25. **“Employees”** means employees of the Company;
- 1.2.26. **“ENSAfrica”** means Edward Nathan Sonnenbergs Incorporated, attorneys practising as such at Tower 1 | The Marc, 129 Rivonia Road, Sandton;
- 1.2.27. **“Final Claims Date”** means the final date for the filing of Pre-commencement Claims, being 23 May 2022;
- 1.2.28. **“Financially Distressed”** shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;
- 1.2.29. **“General Concurrent Creditors”** means those Creditors who do not hold security for their Claims and/or are not statutorily preferred in terms of section 135 of the Companies Act;
- 1.2.30. **“Group”** or **“Sail Group”** means the group of companies related to the Company, reflected in the organogram in paragraph 5.2;
- 1.2.31. **“Insolvency Act”** means the Insolvency Act, No. 24 of 1936, as amended;
- 1.2.32. **“Jubilee”** means Jubilee Tailings Treatment Company Proprietary Limited and Jubilee Processing Proprietary Limited, wholly owned subsidiaries of Jubilee Metals Group PLC, and their nominee, namely, Braemore Platinum Resources Proprietary Limited;
- 1.2.33. **“Management”** means the executive management of the Company as at the Commencement Date;
- 1.2.34. **“Notice of Meeting”** means the notice of the meeting to consider the Business Rescue Plan delivered to all Affected Persons as contemplated in terms of section 151(2) of the Companies Act;
- 1.2.35. **“PCF”** means post-commencement finance as contemplated in section 135 of the

Companies Act;

- 1.2.36. **"Post-commencement Claims"** means any claim against the Company, the cause of action in respect of which arose after the Commencement Date;
- 1.2.37. **"Post-commencement Creditors"** means all persons, including legal entities and natural persons, having Post-commencement Claims;
- 1.2.38. **"Pre-commencement Claims"** means any claim against the Company, the cause of action which arose prior to the Commencement Date;
- 1.2.39. **"Pre-commencement Creditors"** means all persons, including legal entities and natural persons, having Pre-commencement Claims;
- 1.2.40. **"Pre-commencement Secured Creditors"** means all Pre-commencement Creditors holding security for their Claims;
- 1.2.41. **"Proposal"** means the proposal to rescue the Company, being the Proposed Restructure, more fully dealt with in Part B of this Business Rescue Plan;
- 1.2.42. **"Proposed Restructure"** means the restructure proposed by the BRP in paragraph 19;
- 1.2.43. **"Publication Date"** means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being 11 February 2022;
- 1.2.44. **"Rand"** or **"R"** or **"ZAR"** means the lawful currency of South Africa;
- 1.2.45. **"ROM"** means run-of-mine chrome ore;
- 1.2.46. **"Sail Contracting"** means Sail Contracting Proprietary Limited (in liquidation), Registration No. 2017/048014/07, a private company incorporated in accordance with the laws of South Africa;
- 1.2.47. **"Sail Holdings"** means Sail Holdings Proprietary Limited, Registration No. 2016/291369/07, a private company incorporated in accordance with the laws of South Africa;
- 1.2.48. **"Sail Mining"** means Sail Mining Group Proprietary Limited, Registration No. 2019/559196/07, a private company incorporated in accordance with the laws of South Africa, being a 49% minority shareholder of the Company;
- 1.2.49. **"Section 151 Meeting"** means the meeting to determine the future of the Company as contemplated in terms of section 151 of the Companies Act;

- 1.2.50. "**Secured Creditors**" means those Creditors who hold security for their Claims against the Company;
- 1.2.51. "**SIM**" means Sail International Marketing Pte Limited, Registration No. 201313273M, a company incorporated in accordance with the laws of Singapore;
- 1.2.52. "**South Africa**" means the Republic of South Africa;
- 1.2.53. "**Substantial Implementation Date**" means the date on which the BRP will file with CIPC a notice of substantial implementation of this Business Rescue Plan in terms of section 152(8) of the Companies Act, whereupon the Company's Business Rescue will end in terms of section 132(2)(c)(ii);
- 1.2.54. "**Tax/Taxation**" means -
- 1.2.54.1. levies payable to government authorities;
  - 1.2.54.2. normal taxation;
  - 1.2.54.1. capital gains tax;
  - 1.2.54.2. value-added tax;
  - 1.2.54.3. any taxation arising from new assessments of taxation and/or the reopening of any income tax assessments of the Company for any period prior to the Commencement Date;
  - 1.2.54.4. donations tax;
  - 1.2.54.5. customs duty;
  - 1.2.54.6. securities transfer tax;
  - 1.2.54.7. all Pay-As-You-Earn taxation (PAYE) not paid over;
  - 1.2.54.8. all other forms of taxation, other than deferred tax; and
  - 1.2.54.9. any penalties or interest on any of the foregoing;
- 1.2.55. "**VAT**" means the value-added tax levied in terms of the VAT Act; and
- 1.2.56. "**VAT Act**" means the Value-Added Tax Act, No. 89 of 1991, as amended;
- 1.3. any reference to any statute, regulation or other legislation in this Business Rescue Plan shall be a reference to that statute, regulation or other legislation as at the Publication Date, and as



amended or substituted from time to time;

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

## 2. **ACTION TO BE TAKEN BY AFFECTED PERSONS**

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

### 3. **STRUCTURE OF THE BUSINESS RESCUE PLAN**

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

#### 3.1. **PART A - BACKGROUND**

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

#### 3.2. **PART B - PROPOSAL**

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

#### 3.3. **PART C - ASSUMPTIONS AND CONDITIONS**

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

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## PART A – BACKGROUND

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### 4. COMPANY INFORMATION

#### 4.1. Shareholding Structure

As at the Publication Date, the issued share capital of the Company comprised 1 000 (one thousand) ordinary shares, held as follows:

4.1.1. Chrometco – 51%; and

4.1.2. Sail Mining – 49%.

#### 4.2. Directors

As at the Commencement Date and the Publication Date, the directors of the Company are –

| Name of Director        | Date of Appointment |
|-------------------------|---------------------|
| Fan Yang                | 18 June 2013        |
| Piotr Sergiusz Kiskurno | 29 November 2019    |

#### 4.3. Company Information

Financial Year: February

Registered Business Address: 25 Sunninghill Office Park

4 Peltier Drive

Sunninghill

Gauteng

Postal Address: P.O Box 1553

Kelvin

Sunninghill

2054

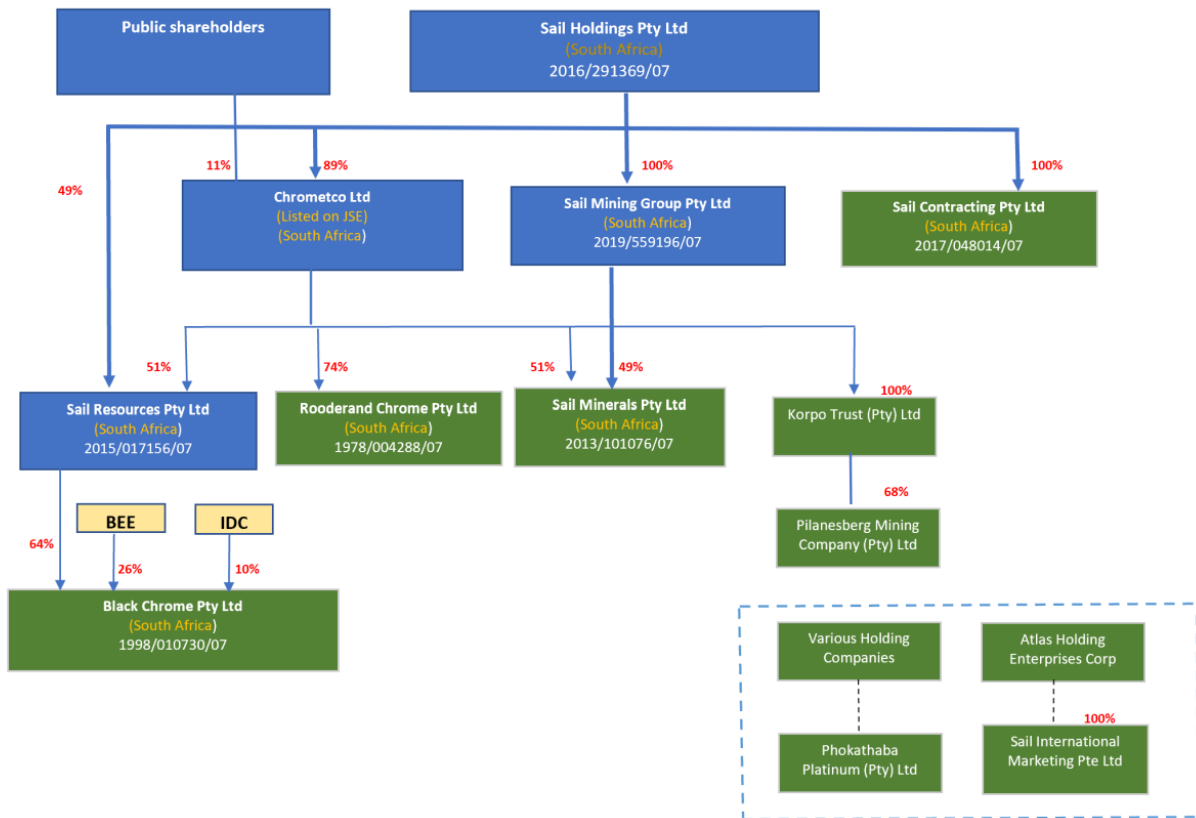
Auditors: Moore Cape Town Incorporated

## 5. COMPANY BACKGROUND

### 5.1. Background to the Company's Business

- 5.1.1. The Company was established in June 2013 and forms part of the integrated chrome mining, processing and sale operations conducted by the Sail Group.
- 5.1.2. The Sail Group conducted its business primarily through three companies, namely, BCM, Sail Contracting and the Company, as follows:
- 5.1.2.1. BCM owns the primary asset in the Group, being the chrome mine and related chrome and PGM mining rights, from which it produces ROM.
- 5.1.2.2. Sail Contracting, prior to its liquidation, provided mining services to BCM. In this regard, the majority of the employment contracts within the Group were concluded with Sail Contracting. In addition, Sail Contracting owns certain mining assets.
- 5.1.2.3. The Company, in turn, owns a significant portion of mining and processing plant and equipment. In addition, the Company is the:
- 5.1.2.3.1. beneficiary of ROM acquired from BCM by way of an offtake agreement; and
- 5.1.2.3.2. chrome concentrate exporter, primarily to the East, with the assistance of SIM.
- 5.1.3. The aforesaid has resulted in a high degree of operational and financial interconnectedness between the companies within the Sail Group, including the Company. This, in turn, has resulted in significant intercompany loans within the Group. The intercompany loan accounts, as at 31 August 2021, are reflected in **Annexure A**.
- 5.1.4. The Company, BCM and Sail Contracting were, prior to the liquidation of Sail Contracting, all consolidated into Chrometco, an entity listed on the Alternative Exchange of the Johannesburg Stock Exchange, with Sail Holdings being the ultimate holding company.
- 5.1.5. As stated above, the Company is a subsidiary of Chrometco and Sail Mining, and has no subsidiaries.

## 5.2. Simplified Group Organogram



## 5.3. Employees

5.3.1. Prior to the Commencement Date, the Company entered into Voluntary Separation Packages (“VSPs”) with 20 of its 30 employees, retaining only 10 employees with the required skills and experience for the anticipated Business Rescue. The total costs associated with the VSPs was paid by the Company prior to the Commencement Date.

5.3.2. The remaining 10 employees each agreed to a reduced salary and repayment of back-pay.

## 5.4. Background to the Company's Financial Distress and Business Rescue

The genesis of the Company's financial distress can be traced back to 2018. However, more recently, the Company's financial distress is primarily attributed to the following four factors:

5.4.1. Construction of Chrome Processing Plant

5.4.1.1. In order to maximise and unlock value from the sale of chrome in 2018, the Company undertook the construction of the chrome processing plant located at the mine in Burgersfort, Limpopo at a cost of approximately R396 million.

- 5.4.1.2. This project required a major capital outlay from the Company and its success was central to the future success of the Company.
- 5.4.1.3. The project comprises two plants, with the first plant (SP1) designed and constructed by Mets, and the second plant (SP2) constructed under the consultancy of a former Mets employee supported by a team from the Company.
- 5.4.1.4. The plant operations are inefficient, in terms of the yield recovery and the grade of the product produced, consequently, the plant still requires further modifications.

#### 5.4.2. Financing of Plant Construction

- 5.4.2.1. On the face of it, the Company did not raise any long-term debt for the construction of the processing plant and appears to have funded its construction from working capital, intercompany loans as well as having obtained advances on offtake agreements.
- 5.4.2.2. Whilst cash advances from offtake agreements appear advantageous to the Company in that cash is received upfront, they are not without any costs. First, the monies advanced are generally significantly discounted to factor in time value of money. Second, a portion of the payment is payable after delivery of the concentrate at its final destination and the final quality assessment is done thereon to determine its final price. Given the inefficiencies in the processing plant, there have been lower volumes and the quality of the concentrate has generally been less than promised to buyers, resulting in lower than expected final sales prices.
- 5.4.2.3. The net effect of the above has been negative on the Company's working capital.
- 5.4.2.4. After the 2021 financial year-end, the Company secured a conditional life-of-mine offtake agreement with Jubilee, a reputable platinum group metals ("**PGM**") producer for its intermediate product produced by the chrome processing plant. In terms of the offtake agreement, the Group received an advance of approximately R57 million for securing the supply of intermediate product. In addition, the Group managed to dispose of its historical intermediate product for the provisional amount of approximately R60 million.

#### 5.4.3. COVID-19 Pandemic

- 5.4.3.1. The advent of the COVID-19 pandemic in early 2020 and the consequent lockdown restrictions resulted in the initial complete halting of all mining production and operations in South Africa.
- 5.4.3.2. The operations of BCM were adversely affected by the lockdown restrictions. Consequently, the Company was also affected due to a shortage of supply of ROM.
- 5.4.3.3. The direct impact of the COVID-19 lockdown on the Group, for a period of five weeks over April 2020 and a reduced capacity of 50% during May 2020, led to a 120 000 tonne reduction in underground mining production at BCM and significant losses being incurred.
- 5.4.3.4. The Company therefore did not have sufficient ROM to process into chrome concentrate over this period. Consequently, insufficient revenue was being generated and the Company could not meet its obligations as a consequence of this shortfall, which adversely affected the Company's cash-flow.

#### 5.4.4. The Chrome Market

- 5.4.4.1. Following the COVID-19 lockdown restrictions, there was a significant drop in the chrome market price to USD130/t during the third quarter of the 2021 financial year.
- 5.4.4.2. At the 2021 financial year-end, the chrome market price had recovered to USD175/t, however, the increase in the chrome market price was offset by the significant increase in freight rates, from an average of USD19/t for the year to a rate of USD35/t.
- 5.4.4.3. The Company's financial position and performance for the 2021 financial year worsened due to the depressed chrome market and significant increase in logistics costs.

5.4.5. The aforesaid factors resulted in the Company becoming financially distressed.

5.4.6. Consequently, on 5 July 2021, the Company's board of directors passed a resolution to place the Company under supervision and commence Business Rescue in terms of section 129 of the Companies Act.

5.4.7. In terms of the sworn statement accompanying the resolution, the reasons for the Company's financial distress included the following:

- 5.4.7.1. the Company's inability to fully service the offtake agreement;
  - 5.4.7.2. the limited operations of the Company and BCM resulting in these entities being unable to fully produce and process the ROM;
  - 5.4.7.3. the increase in inland logistics and freight rates occasioned by the stringent COVID-19 border controls between South Africa and Mozambique. Due to the Company's location it almost entirely relies on the port of Maputo, resulting in it becoming uneconomical for the Company to export chrome ore financed by and securitised to Absa;
  - 5.4.7.4. the lack of revenue generation into the Company in light of the freight rates recorded above; and
  - 5.4.7.5. the Company not having further funds available to pay its creditors and its debts over the immediately ensuing six months.
- 5.4.8. Although attempts were made to lodge the resolution and supporting documents to commence Business Rescue with CIPC on 5 July 2021 on CIPC's new e-services platform, this platform was down and/or encountering technical issues which precluded the uploading of any documents.
- 5.4.9. The resolution and supporting documents were accordingly emailed to CIPC on 5 July 2021, however, after various correspondence was exchanged and further attempts were made to upload the documents onto the e-services platform, CIPC held the position that the earliest date for the commencement of Business Rescue would be 8 July 2021.
- 5.4.10. CIPC's position posed a problem as winding-up applications had been served on the Company by Tubemech Logistics Proprietary Limited and Reinhardt Transport Group Proprietary Limited ("**RTG**") on 6 July 2021 and 7 July 2021 respectively.
- 5.4.11. The aforesaid winding-up applications and dispute between the Company and CIPC (in regard to the filing of the resolution as well as the date of commencement of the Business Rescue) resulted in Chrometco having no option but to proceed with an application to place the Company in Business Rescue in terms of section 131(1) of the Companies Act.
- 5.4.12. On 21 September 2021, an order was granted placing the Company in Business Rescue in terms of section 131(1) of the Companies Act.



## 6. SUMMARY OF THE BUSINESS RESCUE

### 6.1. Introduction

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

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

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

|  |  |
|--|--|
| Court Order Commencing Business Rescue   | 21 September 2021                      |
| Interim BRP Appointed  | 21 September 2021                      |
| First Creditors' Meeting and Ratification of BRP Appointment                                 | 6 October 2021                         |
| First Employees' Meeting   | 6 October 2021                         |
| Request for an extension to publish the Business Rescue Plan                                 | 22 October 2021                        |
| Request for an extension to publication the Business Rescue Plan                             | 21 January 2022                        |
| Publication of the Business Rescue Plan  | 11 February 2022                       |
| Further Consultations with Affected Persons on the Published Business Rescue Plan            | 14 February 2022<br>– 24 February 2022 |
| Section 151 Meeting  | 25 February 2022                       |
| Consultations with Affected Persons on the Business Rescue and proposed Business Rescue Plan | 22 September 2021 –<br>20 January 2022 |

## 7. STEPS TAKEN SINCE THE APPOINTMENT OF THE BRP

### 7.1. ADMINISTRATIVE MATTERS

#### 7.1.1. Appointment of BRP

On 21 September 2021, Dongwana was appointed as the interim BRP in terms of section 131(5) of the Companies Act. On 6 October 2021, Dongwana's appointment as BRP was ratified by the holders of the majority of the independent Creditors' voting interests at the first meeting of Creditors, as contemplated in section 147 of the Companies Act.

#### 7.1.2. Management Control

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

#### 7.1.3. Notices

The BRP has been publishing notices to affected persons in terms of the Companies Act.

#### 7.1.4. Reporting to CIPC

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

#### 7.1.5. Committee Meetings

Meetings will be held, as and when required, with the Creditors' committee during the Business Rescue.

#### 7.1.6. Extension for the Publication of the Business Rescue Plan

In terms of section 150(5) of the Companies Act, the Business Rescue Plan was required to be published within 25 (twenty five) Business Days from the appointment of the BRP. The BRP ultimately obtained an extension from the Creditors, as contemplated in section 150(5)(b) of the Companies Act, for the publication of the Business Rescue Plan to 11 February 2022.

### 7.1.7. **Publication of Business Rescue Plan and Notice of Meeting**

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

### 7.1.8. **Cash Resources**

In order to preserve the cash resources of the Company, the BRP:

- 7.1.8.1. implemented cash preservation initiatives and explored broader cost optimisation initiatives, these are dealt further in paragraphs 7.6.3 and 7.6.4;
- 7.1.8.2. used proceeds generated from the rental of mining equipment and sale of non-essential moveable assets to make payment to certain key suppliers in terms of deferred payment arrangements.

### 7.1.9. **Contracts**

The review of contracts concluded prior to the commencement of the business rescue is currently ongoing to make a determination whether there is a need to consensually cancel and/or suspend any contracts in terms of section 136 of the Companies Act.

## 7.2. **LABOUR**

### 7.2.1. **Employees' Meetings**

- 7.2.1.1. A first meeting of Employees, as contemplated in section 148(1) of the Companies Act, was convened on 6 October 2021.
- 7.2.1.2. At this meeting, *inter alia*:
  - 7.2.1.2.1. the Business Rescue process was explained;
  - 7.2.1.2.2. Employees were informed of the BRP's belief regarding the reasonable prospect of rescuing the Company; and

- 7.2.1.2.3. it was agreed that an Employees' Committee did not have to be established due to the low number of Employees.

### 7.3. CREDITORS

#### 7.3.1. Creditors' Meeting

- 7.3.1.1. A first meeting of Creditors, as contemplated in section 147(1) of the Companies Act, was convened on 6 October 2021.
- 7.3.1.2. At the First Meeting of Creditors, *inter alia*:
  - 7.3.1.2.1. the appointment of the BRP was ratified;
  - 7.3.1.2.2. the Business Rescue process was explained;
  - 7.3.1.2.3. Creditors were informed of the BRP's belief regarding the reasonable prospect of rescuing the Company;
  - 7.3.1.2.4. the BRP notified Creditors of the process for the proof of Pre-commencement Claims by Pre-commencement Creditors; and
  - 7.3.1.2.5. nominations were requested for the establishment of a Creditors committee.

#### 7.3.2. Creditors' Committee

- 7.3.2.1. Pursuant to the First Meeting of Creditors, a Creditors Committee was duly established, as contemplated in section 147(1)(b) of the Companies Act.
- 7.3.2.2. Following the publication of this Business Rescue Plan, the BRP will meet with the Creditors Committee to discuss same.

### 7.4. CONSULTATION DURING THE DEVELOPMENT OF THE PROPOSED BUSINESS RESCUE PLAN

The BRP consulted with various Affected Persons, including, the major Creditors, Employees and shareholders of the Company, as well as representatives and certain shareholders of other entities within the Group, on the development of the proposed Business Rescue Plan to:

7.4.1. enable them to make representations to the BRP for consideration, subject to the BRP's overall responsibility to publish a Business Rescue Plan which he regards as representing the best prospects of rescuing the Company as contemplated in the Companies Act; and

7.4.2. requested the Affected Persons to submit any questions in regard to the proposed Business Rescue Plan to enable the BRP to consider same prior to the Publication Date.

## 7.5. **LEGAL**

### 7.5.1. **Suspension and Cancellation of Contracts**

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

7.5.1.2. The BRP is in the process of establishing which obligations of the Company must be suspended and/or cancelled.

### 7.5.2. **Investigation into the Affairs of the Company**

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

7.5.2.2. Immediately following his appointment, the BRP consulted with Management in order to *inter alia* –

7.5.2.2.1. ascertain the financial position of the Company; and

7.5.2.2.2. identify the assets and liabilities of the Company.

7.5.2.3. The BRP will continue to exercise his statutory obligations in terms of section 141 of the Companies Act.

### 7.5.3. **Directors' responsibilities**

In a meeting held with the Directors of the Company, the BRP –

7.5.3.1. advised the Directors of the duties of the BRP during Business Rescue;

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

7.5.3.3. requested certain documentation to be furnished by the Directors to the BRP.

7.5.4. **General**

The BRP was required to engage attorneys to advise on, *inter alia*, issues relating to employment, Tax, regulatory issues, the Proposed Restructure, contractual disputes, post-commencement agreements, Claims against the Company and various issues arising out of the Business Rescue.

7.6. **BUSINESS RESCUE INITIATIVES**

7.6.1. **The Proposed Restructure**

7.6.1.1. The BRP, together with the Advisors and Management, conducted an objective assessment of the Company and evaluated various options to rescue the Company.

7.6.1.2. Pursuant to conducting the aforesaid assessment and evaluation, the BRP developed the Proposed Restructure, being a proposal to restructure the Company's affairs, business, property, debt and other liabilities, and equity in a manner that would maximise the likelihood of the Company continuing in existence on a solvent basis.

7.6.1.3. The details of the Proposed Restructure are set out in paragraph 19.

7.6.2. **Post-Commencement Finance**

7.6.2.1. The PCF contemplated in the founding affidavit to the business rescue application did not materialise.

7.6.2.2. The BRP together with management pursued various initiatives to obtain PCF from various parties since the Commencement Date.

7.6.2.3. The engagements to obtain PCF are continuing and the BRP anticipates that these engagements will be finalised prior to the Section 151 Meeting.

7.6.3. **Cost Cutting**

7.6.3.1. Since the Commencement Date, the BRP together with Management have made ongoing efforts to cut costs, wherever possible.

7.6.3.2. The BRP secured the deferment of payments with key suppliers / Creditors.

7.6.3.3. The BRP concluded standstill agreements with relevant counter-parties.

7.6.4. **Cash Administration**

7.6.4.1. The BRP took control of the bank accounts of the Company and conducted an analysis in respect of all payments made.

7.6.4.2. In order to minimise the expenses of the Company, the BRP, together with Management, established a Cash Preservation Forum which continues to:

7.6.4.2.1. monitor the cash flow and financial position;

7.6.4.2.2. review and approve requests for payments;

7.6.4.2.3. perform daily bank reconciliations;

7.6.4.2.4. analyse costs to determine the top priority items; and

7.6.4.2.5. enforce general financial discipline and controls.

7.6.5. **Generating Income**

7.6.5.1. Income was generated through *inter alia* the sale of non-essential assets and chrome concentrate spillage recovered from the clean-up of the processing plant.

7.6.5.2. The proceeds have been utilised to:

7.6.5.2.1. fund the care and maintenance costs which are essential for the preservation of assets of the Company; and

7.6.5.2.2. provide leverage for negotiating deferred payment arrangements with key suppliers/service providers.

8. **MARKET CONDITIONS AND TRADING FOLLOWING THE COMMENCEMENT DATE**

8.1. **Market Conditions**

8.1.1. According to the Macquarie Commodities Compendium published in Q4 of 2021 there has been a large run-down of ferrochrome stocks in South Africa, China

and Europe over the past year. In 2021, enforced output cuts in the inner Mongolia and power cuts in five provinces restricted Chinese output from July 2021 – September 2021 but supply has recovered strongly in South Africa.

8.1.2. Ore prices had underperformed due to weaker ferrochrome production in China, the biggest ore market, and some small South African mines were forced to make production cuts.

8.1.3. However, Chinese chrome ore stocks are now falling, with the port inventory in China currently at circa 2.6 million tonnes down from a high of circa 3.9 million tonnes in 2021, supporting a steady rise in ore prices. In the meantime, the outlook for ferrochrome production is positive as a result of resolution of the energy constraints. Confirmed strong stainless demand growth needs to be supported by steady Chinese ferrochrome production and South African ore supply growth.

## 8.2. Trading

8.2.1. The Company is currently not trading as it ceased operations in July 2021.

8.2.2. Relatively small quantities of concentrate and spillage have been sold to fund care and maintenance costs.

8.2.3. In terms of the Proposed Restructure, it is intended that the Company will restart operations and trade on a solvent basis.

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

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

## 10. CREDITORS OF THE COMPANY AS AT THE COMMENCEMENT DATE

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

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

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



10.2.2. have proved their Pre-commencement Claims.

## 11. CREDITORS' VOTING INTERESTS AND VOTING BY PROXY

11.1. In terms of section 145 of the Companies Act, for the purpose of any vote by Creditors:

11.1.1. a Creditor has a voting interest equal to the value of the amount owed to that Creditor by the Company on the date of the vote on the Business Rescue Plan; and

11.1.2. a Creditor who would have a subordinated claim in liquidation has a voting interest, as independently appraised and valued at the request of the BRP, equal to the amount, if any, that the Creditor could reasonably expect to receive in a liquidation of the Company.

11.2. Post-commencement Creditors, including Employees with Post-commencement Claims in terms of section 135(1) of the Companies Act, will have a voting interest equal to the value of the amount owed to that PCF Creditor on the date of the vote on the Business Rescue Plan.

11.3. A Creditor who has a Disputed Claim, contingent Claim, prospective Claim, damages or unliquidated Claim will only be allowed to vote in the sole discretion of the BRP.

11.4. A Creditor whose Claim amount does not reconcile with the Company's records will only be allowed to vote on the amount determined in the sole discretion of the BRP.

11.5. In light of the regulations and measures implemented by the Government of South Africa pursuant to the global outbreak of COVID-19, the following process will apply in respect of the Section 151 Meeting (meeting to determine the future of the Company) and voting called for in terms of section 152 of the Companies Act (consideration of the Business Rescue Plan):

11.5.1. Pursuant to the Publication Date, Affected Persons are requested to provide any further questions and/or proposed amendments to the BRP at [BusinessRescue@sailchrome.com](mailto:BusinessRescue@sailchrome.com) prior to the Section 151 Meeting so that the BRP can consider and address same prior to the Section 151 Meeting.

11.5.2. The Section 151 Meeting will be held electronically. A hyperlink providing access to the Section 151 Meeting will be circulated prior to the Section 151 Meeting.

11.5.3. All voting will be conducted by way of proxy. A hyperlink providing access to the form of proxy will be included in the Notice of the Meeting. The form of proxy will also be available at <https://www.sailchrome.com/SailMinerals/>.

11.5.4. All forms of proxy given on behalf of a company, a legal entity or a trust must be accompanied by a valid and authorised resolution supporting the appointment of

the proxy. Completed forms of proxy must be emailed to [BusinessRescue@sailchrome.com](mailto:BusinessRescue@sailchrome.com).

- 11.5.5. Creditors are encouraged to lodge their forms of proxy as soon as possible, however, will be afforded an opportunity to lodge their proxy forms by no later than 17h00 on 24 February 2022.
- 11.5.6. In the event that during the Section 151 Meeting further questions are raised and/or proposed amendments are moved, the BRP will address such questions and/or proposed amendments and Creditors will be afforded an opportunity to amend their forms of proxy, should they so wish, during the Section 151 Meeting.
- 11.5.7. Creditors who provided forms of proxy prior to the Section 151 Meeting will be deemed to have accepted any amendments made to the Business Rescue Plan during the Section 151 Meeting, unless expressly advised otherwise in writing by way of an amended form of proxy submitted to the BRP during the Section 151 Meeting and prior to the announcement of the outcome of the vote on the Business Rescue Plan.
- 11.5.8. Notwithstanding what has been stated in this paragraph, the BRP has a discretion to accept any form of proxy submitted or change the process referred to above, which change will be notified to Affected Persons.

## 12. PROBABLE DIVIDEND ON LIQUIDATION

- 12.1. As required in terms of section 150(2)(a)(iii) of the Companies Act, the probable dividend which would be received by Concurrent Creditors if the Company was placed in liquidation on 21 September 2021 is zero cents in the Rand. Affected Persons are referred to the table in paragraph 24 for a comparison of Business Rescue and liquidation dividends that would be received by Creditors in their respective classes.
- 12.2. The potential dividend in a liquidation scenario was calculated by Adamantem.
- 12.3. Adamantem relied on financial and other information provided to it by the Company and the Group, and discussions with Management, for the purpose of calculating the liquidation dividend as at 21 September 2021.
- 12.4. A copy of the liquidation calculation is attached as **Annexure D**. The figures used in Annexure D take into account all the costs associated with a liquidation, including all the costs associated with Section 89 of the Insolvency Act.

13. **HOLDERS OF THE COMPANY'S ISSUED SECURITIES**

13.1. As required in terms of section 150(2)(a)(iv) of the Companies Act, the holders of the Company's issued securities are Chrometco and Sail Mining. For further information relating to this, please refer to paragraph 4.1.

14. **THE BRP'S REMUNERATION**

14.1. The Company has a public interest score, calculated in terms of Regulation 26(2) of the Companies Act, of over 500. Consequently, the Company is regarded as a large sized company.

14.2. Section 143 of the Companies Act provides for the remuneration of business rescue practitioners.

14.3. In terms of section 143 of the Companies Act, the BRP has proposed an agreement with the Company providing for further remuneration. A separate meeting to approve the proposed agreement will be convened in accordance with the terms of section 143 of the Companies Act.

14.4. In terms of section 150(2)(a)(v) of the Companies Act, a copy of the written agreement concerning the BRP's remuneration, as contemplated in terms of section 143 of the Companies Act, is attached hereto as **Annexure E**.

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

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

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## PART B – PROPOSAL

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### 16. MORATORIUM

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

### 17. OBJECTIVE

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

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

17.3.2.1. assess the likely outcome of the dividend yield calculation under Business Rescue, as set out in 24; and

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

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

18.1. The BRP, together with Management and the Advisors, conducted an objective assessment of the Company and evaluated various options to rescue the Company.

18.2. Pursuant to conducting the aforesaid assessment and evaluation, and after consultation with the relevant Affected Persons and entities within the Group, the BRP has developed a proposal in accordance with Objective A, referred to in paragraph 17.2, being a restructuring of the Company's affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Company continuing in existence on a solvent basis.

18.3. The proposal to rescue the Company is the implementation of the Proposed Restructure.

18.4. In summary, the objective of the Proposed Restructure is to restart the full operations of the Company's business, comprising the processing of ROM and sale of chrome concentrate, including securing ROM for processing to generate chrome concentrate. The restart of operations comprises clear steps informed by the realities of the infrastructure to support the business and, critically, the need to restart trading as soon as possible.

18.5. The Proposed Restructure is more fully dealt with in paragraph 19.

18.6. The Company has not been operating its processing plant since July 2021. Notwithstanding the aforesaid, the Company has significant inventory on-hand in the form of ROM and tailings (generated from the processing of the ROM purchased prior to the Commencement Date).

18.7. As at the Publication Date, the Company is indebted to Absa, Jubilee and RTG in a cumulative amount of approximately R518 million. The indebtedness to Jubilee is secured by means of a special notarial covering bond and notarial deed of adherence, and the indebtedness to Absa is secured by means of *inter alia* pledge and cession agreements. Absa and Jubilee are accordingly entitled to all proceeds from the realisation of the assets subject to their security, up to the amount of the indebtedness owed to them.

18.8. In its unprocessed form, the inventory will not realise sufficient proceeds to substantively reduce the secured claims of Absa and Jubilee. The PCF is therefore critical to restart the

processing plant to process the ROM into chrome concentrate, which processing will also generate more tailings. The chrome concentrate will then be sold at a higher price than what would be received for the ROM, and additional tailings generated will be capable of being sold in terms of beneficial offtake agreements.

- 18.9. To ensure that the General Concurrent Creditors receive a better dividend in the Business Rescue, and subject to this Business Rescue Plan being adopted and the Proposed Restructure being successfully implemented, the BRP will allocate an amount of R8 000 000.00 out of the proceeds generated by the Company, once its working capital cycle has been restored, to the payment of the General Concurrent Creditors, being the Concurrent Allocation.
- 18.10. The Concurrent Allocation will result in the General Concurrent Creditors receiving a dividend of 5 (five) cents in the Rand ("**General Concurrent Dividend**"), compared to a probable dividend of 0 (zero) cents in the Rand upon liquidation, subject to the risks and assumptions set out in this Business Rescue Plan and the amounts reflected in Annexure B.
- 18.11. To ensure a successful Business Rescue in terms of Objective A, payment of the General Concurrent Dividend to the General Concurrent Creditors will be in full and final settlement of the Pre-commencement Claims of the General Concurrent Creditors. The General Concurrent Creditors will, accordingly, not retain the balance of their Claims against the Company after payment of the General Concurrent Dividend, same being discharged as contemplated in section 154 of the Companies Act upon payment of the General Concurrent Dividend.
- 18.12. The advantages of proceeding with this Business Rescue Plan are, *inter alia*, as follows:
  - 18.12.1. the Company's business will be restructured in a manner that will result in the Company continuing in existence in a solvent manner, as opposed to being placed in liquidation;
  - 18.12.2. the continued existence of the Company will result in continuity of business with a number of creditors who are also suppliers and/or service providers to the Company;
  - 18.12.3. General Concurrent Creditors will receive the General Concurrent Dividend, as opposed to zero cents in the Rand in a liquidation;
  - 18.12.4. the remaining Employees will not be retrenched and their jobs will be preserved;  
and
  - 18.12.5. the Business Rescue Costs will be less than the costs of liquidation.

18.13. Affected Persons are referred to paragraph 28 below for more information relating to the advantages of proceeding in terms of this Business Rescue Plan as opposed to a liquidation.

18.14. In the circumstances, a Business Rescue in accordance with the Proposed Restructure will not only achieve Objective A, but will also result in a better return than upon a liquidation and will balance the interests of all stakeholders.

## 19. **PROPOSAL TO RESCUE THE COMPANY - THE PROPOSED RESTRUCTURE**

19.1. The Group is underpinned by a single integrated chrome mining, processing and sale business, with each of BCM, Sail Contracting and the Company all contributing to and being dependent on each other for, *inter alia*, the mining right, mining and plant infrastructure, plant and equipment, mining services, processing services and marketing.

19.2. The Proposed Restructure of the Company comprises the following steps:

19.2.1. Securing the ROM feedstock:

19.2.1.1. The mining right resides with BCM, which is currently under care and maintenance, and had previously procured mining services from Sail Contracting to mine and generate ROM for sale to the Company;

19.2.1.2. Sail Contracting is currently in liquidation and can no longer provide such services to BCM, however, has minimal mining assets which could contribute to the mining at BCM on an arm's length commercial arrangement that would potentially yield a benefit for its creditors;

19.2.1.3. Consequently, the Company has developed a plan for provision of mining services to BCM;

19.2.1.4. These services will be provided on the back of an agreement currently being discussed with BCM to ensure the securing of ROM to the Company on terms and conditions that preserve the interests of the Affected Parties in the Company; and

19.2.1.5. This is to ensure that ROM feedstock is secured for processing and sale by the Company.

19.2.2. Refurbishment of Infrastructure:

19.2.2.1. The plant has not been operating since July 2021 and the mine has also been in care and maintenance since then.

- 19.2.2.2. A critical step for the restart of operations is the refurbishment of and minor capital expenditure on the entire infrastructure to provide a solid platform for trading sustainably and maintaining a solid working capital cycle and which will result in the Company generating cash sustainably.
  - 19.2.2.3. A restart plan which was developed towards the end of 2021 identifies all the necessary refurbishments for the restart of operations.
  - 19.2.2.4. The proposals for the operations and maintenance of the plant also provide for the identification and implementation of the necessary refurbishments to the plant for the generation of quality concentrate for sale.
- 19.2.3. Appointment of plant operator and recruitment of labour:
- 19.2.3.1. There is general acceptance by the Company and management that the chrome processing plant has not yielded the expected and desired results to match the significant amounts incurred in its construction.
  - 19.2.3.2. It is also further conceded that there is a need to outsource the operations and maintenance of the plant to an external party with recognised competence in the design, construction and operating of chrome processing plants.
  - 19.2.3.3. A process is currently underway for the selection and appointment of a plant operator.
  - 19.2.3.4. As part of the process for Jubilee to provide the Company with its proposal, Jubilee has requested 8,000 metric tonnes of ROM to perform a trial run on the material to provide accurate product yields, grade of concentrate produced and PGM grades to enable the provision of the cost per tonne of the concentrate produced.
  - 19.2.3.5. Noting the limitations of BCM as identified above, the Company's restart plan contemplates the facilitation of mining services which includes the procurement of labour in order to secure the ROM required for the processing and sale.



19.2.4. Restart of operations and trade:

19.2.4.1. The refurbishment and restart of the processing plant will enable the processing of the more than 250 000 tonnes of ROM currently on-hand to generate chrome concentrate for sale;

19.2.4.2. In addition to selling the chrome concentrate, the process would yield PGM rich tailings, from which the Company would generate additional revenues; and

19.2.4.3. The restart of mining operations to produce ROM would enable a sustained business for the Company beyond the immediate processing of the available inventory as articulated above towards long-term sustainable operations over the life-of-mine.

19.2.5. The proceeds generated from the sale of the chrome concentrate and tailings will be used to restore a working capital cycle and ensure the continued operation of the Company, thereby allowing it to purchase more ROM from BCM in terms of the Proposed Restructure.

19.2.6. Once the working capital cycle has been restored to a sustainable level, the General Concurrent Dividend will be paid to the General Concurrent Creditors from available cash resources. In terms of the Proposed Restructure model, the BRP anticipates that this will be paid after six months of the restart of operations.

19.3. The Proposed Restructure is subject to and will commence upon the approval of the necessary PCF.

20. **ONGOING ROLE OF THE COMPANY**

20.1. As required in terms of section 150(2)(b)(iii) of the Companies Act, if the Business Rescue proceeds in accordance with the Proposed Restructure, the Company will continue operating in accordance with the Proposed Restructure.

21. **EFFECT ON CREDITORS**

21.1. **Contracts**

As required in terms of section 150(2)(b)(iii) of the Companies Act, in the event that the Business Rescue proceeds in terms of the Proposed Restructure, certain Contracts may be cancelled, modified or restructured. To the extent that Contracts are cancelled, Claims for damages will be limited as contemplated in paragraph 21.2.

## 21.2. Damages

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

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

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

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

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

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

21.2.1.6. If disputed, will be resolved in terms of the Dispute Resolution, detailed in paragraph 35.

## 21.3. Claims and release of the Company from the payment of debts

21.3.1. Creditors and Claims will be dealt with in accordance with paragraph 26.

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

21.3.2.1. General Concurrent Creditors shall not retain their Claims against the Company for any balance that may still be due to them by the Company after receipt of the General Concurrent Dividend; and

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

21.3.3. Therefore if the Business Rescue Plan is implemented in accordance with its terms and conditions, the General Concurrent Creditors will be deemed to have acceded to the discharge of the whole or part of a debt owing to that General Concurrent Creditor and will lose its rights to enforce the relevant debt or part of such debt against the Company and the provisions of section 154(1) of the Act will apply.

21.3.4. A General Concurrent Creditor will also, notwithstanding the fact that this Business Rescue Plan has been adopted and implemented, not be entitled to enforce any debt owed to it by the Company immediately before the beginning of Business Rescue, except for any payment that is to be made pursuant to this Business Rescue Plan.

21.4. **Section 22 of Value-Added Tax Act:**

21.4.1. Section 22 of the VAT Act will apply in respect of the Pre-commencement Claims of the General Concurrent Creditors which will be compromised in terms of this Business Rescue Plan, as provided for in paragraph 21.3.

21.4.2. Any Claim that may be due to SARS as a result of the application of section 22 of the VAT Act will be treated as a Pre-commencement Claim, subject to the proof of Claim process contemplated in this Business Rescue Plan. Upon the BRP's acceptance of such Claim, SARS will form part of the General Concurrent Creditors and be paid out of the Concurrent Allocation in accordance with the provisions of paragraph 26.

22. **PROPERTY OF THE COMPANY AVAILABLE TO PAY CREDITORS**

22.1. As required in terms of section 150(2)(b)(iv) of the Companies Act, the Business Rescue Plan contemplates the Proposed Restructure and the distribution of the Concurrent Allocation by the BRP in accordance with the payment waterfall in paragraph 26.

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

23.1. As required in terms of section 150(2)(b)(vii) of the Companies Act, if the Business Rescue proceeds in accordance with the Proposed Restructure, the rights of the Company's shareholders will not be altered.

## 24. COMPARISON OF THE BUSINESS RESCUE TO LIQUIDATION

24.1. The following table sets out a comparison of the outcomes that are likely to arise under the Business Rescue as compared to a liquidation:

|   | <b>Liquidation</b>    | <b>Business Rescue<br/>(Proposed Restructure)</b> |
|---|-----------------------|---|
| <b>Secured Creditors</b>                | 30 cents / Rand       | 100 cents / Rand                                  |
| <b>Employees</b>                        | Limited to R32 000    | 100 cents / Rand                                  |
| <b>PCF</b>                              | N/A                   | 100 cents / Rand                                  |
| <b>Concurrent / Unsecured creditors</b> | 0 (zero) cents / Rand | 5 cents / Rand                                    |

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

25.1. The assumptions made with regard to the forecast of the business rescue dividend are detailed in the notes to Annexure F.

## 26. ORDER OF DISTRIBUTION – PAYMENT WATERFALL IN BUSINESS RESCUE

26.1. As required in terms of section 150 (2) (b) (v) of the Companies Act, the order of preference in which proceeds will be applied to pay creditors if the Business Rescue Plan is adopted is set out below.

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

26.3. In respect of the General Concurrent Creditors, their Claims will be paid out of the Concurrent Allocation in full and final settlement of their Claims.

26.4. In regard to the remaining Creditors (i.e. excluding the General Concurrent Creditors), in terms of section 135 of the Companies Act, such Creditors are to be paid in the following order of priority (to the extent that there are funds available to pay all categories of Creditors):

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

- 26.4.2. Employees for any remuneration, reimbursement for expenses or other amount of money relating to employment which becomes due and payable by the Company to the Employees during the Business Rescue (to the extent that they have not been paid);
- 26.4.3. Secured PCF Creditors;
- 26.4.4. Unsecured PCF Creditors; and
- 26.4.5. Employees for any remuneration, reimbursement for expenses or other amount of money relating to employment which became due and payable by the Company to the Employees prior to the Business Rescue, to the extent that they were not paid.

26.5. The BRP will make Distributions as soon as it is practically possible to do so.

## 27. **PROOF OF CLAIMS BY CREDITORS**

- 27.1. The exchange rate in respect of all Claims expressed in foreign currency will be determined as at the Commencement Date or the date on which a Distribution is made, whichever is the lowest exchange rate.
- 27.2. General Concurrent Creditors will not be entitled to charge interest on their Pre-commencement Claims from the Commencement Date.
- 27.3. Creditors are required to lodge their Claims with the BRP online at [BusinessRescue@sailchrome.com](mailto:BusinessRescue@sailchrome.com) prior to the Final Claims Date for purposes of participating in Distributions made by the BRP:
  - 27.3.1. The BRP has a discretion as to whether to allow a Creditor to lodge any Claim after the Final Claims Date; and
  - 27.3.2. Creditors who have lodged Claims after the Final Claims Date, and whose Claims have been accepted by the BRP in the exercise of the BRP's aforesaid discretion, forfeit their right to participate in Distributions that have been made prior to the lodgement of their Claims.
- 27.4. The provisions in paragraph 27.3 will apply *mutatis mutandis* to Creditors asserting a claim for damages.
- 27.5. Claims, including claims for damages, shall be proved to the satisfaction of the BRP.
- 27.6. In the event that the BRP disputes any Claim or security, such disputed Claims will be dealt with in accordance with the Dispute Resolution more fully dealt with in paragraph 35.

## 28. **BENEFITS OF ADOPTING THE BUSINESS RESCUE PLAN COMPARED TO LIQUIDATION**

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

### 28.1. **Continuity of Business**

28.1.1. If the Business Rescue proceeds in terms of the Proposed Restructure, and the Proposed Restructure is fully implemented, the Company's business, affairs and debt will be restructured in a manner that will allow the Company to continue operating its business on a solvent basis.

28.1.2. Those Creditors who are also suppliers and/or service providers to the Company will have the opportunity to continue supplying and/or providing services to the Company.

### 28.2. **Quantum**

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

28.2.2. By way of illustration, please refer to paragraph 24.

### 28.3. **Timing**

28.3.1. The Business Rescue Plan is likely to be implemented in a shorter time frame than liquidation proceedings.

### 28.4. **Employees**

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

28.4.2. If the Business Rescue proceeds in terms of the Proposed Restructure, the Employees' jobs will be saved and further employment may be provided.

28.4.3. In a liquidation:

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

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

28.5. **Fees**

28.5.1. The BRP submits that the entire Business Rescue Costs will be significantly lower than the liquidation costs.

28.6. **PCF**

28.6.1. The BRP is able to seek PCF, with or without security, for the implementation of the Business Rescue Plan.

29. **RISKS OF THE BUSINESS RESCUE PLAN**

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

29.1.1. the fulfilment of the conditions of this Business Rescue Plan taking longer than expected and/or the Proposed Restructure failing for any reason;

29.1.2. unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever;

29.1.3. unforeseen claims for damages arising from the cancellation of any Contracts or agreements of any nature whatsoever, howsoever arising;

29.1.4. any changes in legislation that impacts Business Rescue;

29.1.5. any challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto;

29.1.6. any regulatory challenges of any nature whatsoever, howsoever arising;

29.1.7. any unforeseen circumstances, outside of the control of the BRP of any nature whatsoever howsoever arising that impacts on Business Rescue;

29.1.8. the revocation of support from any Affected Persons, service providers and/ or suppliers;

29.1.9. material discrepancies in the information made available to the BRP by Management; and

29.1.10. market conditions worsen.

29.2. It should be noted that, in the unlikely event of an immediate liquidation of the Company, the risks set out in this paragraph 29 would still apply.

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## PART C – ASSUMPTIONS AND CONDITIONS

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30. **CONDITIONS FOR THE BUSINESS RESCUE PLAN TO COME INTO OPERATION AND BE FULLY IMPLEMENTED**
- 30.1. As required in terms of section 150(2)(c)(i)(aa) of the Companies Act, the Business Rescue Plan will come into operation on the Adoption Date.
- 30.2. This Business Rescue Plan and the implementation of same is subject to the conditions listed below being fulfilled:
- 30.2.1. The adoption of the Business Rescue Plan in terms of section 152 of the Companies Act;
- 30.2.2. The provision of the necessary PCF;
- 30.2.3. The conclusion of an agreement with Sail Contracting in regard to its plant and mining equipment; and
- 30.2.4. The conclusion of an agreement with BCM and the Company to secure ROM.
- 30.3. In the event that the aforesaid conditions are not fulfilled, the BRP will:
- 30.3.1. Publish a notice to Affected Persons, informing them of the conditions that could and could not be fulfilled and providing an update on the Business Rescue to date; and
- 30.3.2. Convene a meeting of Affected Persons to discuss the notice and conduct a vote on whether Creditors want the Business Rescue to proceed in accordance with Objective B (i.e. proceed with a wind-down of the Company's assets) or apply to court for an order discontinuing the Business Rescue and placing the Company into liquidation in terms of section 141(2)(a)(ii) of the Companies Act.
- 30.4. As required in terms of section 150(2)(c)(i)(bb) of the Companies Act, the Business Rescue Plan will be fully implemented upon the finalisation of the Proposed Restructure, the fulfilment of the aforesaid conditions and payment of the Final Distribution (i.e. the Substantial Implementation Date).



31. **EFFECT OF THE BUSINESS RESCUE PLAN ON EMPLOYEES**

31.1. As required in terms of section 150(2)(c)(ii) of the Companies Act, the Business Rescue Plan will have no effect on Employees.

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

32.1. As required in terms of section 150(2)(c)(iii) of the Companies Act, the Business Rescue Plan will end when the Business Rescue ends.

32.2. In terms of section 132(2) of the Companies Act, the Business Rescue will end when:

32.2.1. the Business Rescue Plan is:

32.2.1.1. proposed and rejected and the BRP and Affected Person/s do not take any action to extend the Business Rescue in any manner contemplated by the Companies Act; or

32.2.1.2. adopted and implemented (with the conditions fulfilled) and the BRP has filed a notice of substantial implementation of the Business Rescue Plan with the CIPC (i.e. on the Substantial Implementation Date); or

32.2.2. a High Court orders the conversion of the Business Rescue into liquidation proceedings; or

32.2.3. the BRP files a notice of termination of the Business Rescue with CIPC.

33. **PROJECTED BALANCE SHEET AND PROJECTED STATEMENT OF INCOME AND EXPENSES**

33.1. In terms of section 150(2)(c)(iv) of the Companies Act, the projected balance sheet and statement of income and expenses for the ensuing three years, based on the assumption that Business Rescue Plan is adopted, is attached as **Annexure F**.

34. **EXISTING LITIGATION**

34.1. All parties who have instituted legal proceedings, including any enforcement action, prior to the Commencement Date in respect of any Claims against the Company in any forum will be subject to the provisions of paragraph 27, dealing with the proof of Claims.

35. **DISPUTE RESOLUTION**

35.1. Subject to paragraph 35.4, save as provided for in section 133 of the Companies Act, in respect of all or any disputes by the BRP on Claims, which disputes include, but are not limited

to, disputes on the existence or otherwise of Claim(s), on quantum of Claim(s), security claimed by a Creditor, the nature of the security, the extent and value of the security and the like (“**dispute**”), such dispute may be resolved in accordance with the dispute mechanism outlined below (“**Dispute Mechanism**”).

35.2. The Dispute Mechanism procedure will be as follows:

35.2.1. All creditors who have received notification from the BRP of a dispute are required within 15 (fifteen) days of receipt of such notice to contact the BRP and to meet with the BRP during this period in an attempt to reach agreement on the dispute (“**Settlement Meeting**”).

35.2.2. If the Creditor does not avail itself of this 15 (fifteen) day opportunity, the Creditor will be deemed to have accepted the BRP’s position in regard to the dispute.

35.2.3. If the Creditor does avail itself of the Settlement Meeting, however, the dispute is not resolved and the Creditor persists with the dispute, the BRP and Creditor must agree to the appointment of a retired judge as an expert (not as an arbitrator or mediator) to preside over and to resolve the dispute.

35.2.4. Should the BRP and the Creditor fail to reach an agreement on the expert, then the Arbitration Foundation of South Africa will be requested to make the appointment.

35.2.5. The appointed expert must endeavour to complete his/her mandate within 30 (thirty) days of his/her appointment or within such further time period as the expert in his/her sole discretion may determine.

35.2.6. The expert will in his/her sole and absolute discretion determine:

35.2.6.1. the venue at which the dispute is to be resolved;

35.2.6.2. the rules, regulations and procedures that will govern the determination of the dispute;

35.2.6.3. the date(s) for the determination of the dispute;

35.2.7. The expert will give his award / determination within 5 (five) days of the completion of the process as determined by him and will, as part of his award / determination, determine who is liable for the costs of the determination, such costs to include his costs, legal costs, venue costs, recording equipment (if applicable), transcript of evidence (if applicable) and the like.

35.2.8. The Creditor, the Employee/s, the Company and the BRP agree to use their

utmost endeavours to ensure that the entire dispute is determined by the expert as expeditiously as possible.

35.3. To the extent necessary, should the BRP be of the view that certain disputes may be settled or compromised, the BRP shall be authorised to settle and compromise such a dispute.

35.4. The BRP may in his sole and absolute discretion decide that the Dispute Mechanism is not appropriate for resolving the dispute and/or that the application of the Dispute Mechanism may result in prejudice to other Creditors or Employees or the Company. In such event, the BRP shall be entitled in terms of section 133 of the Companies Act to refer the dispute to Court and if an expert has already been nominated, such nomination will lapse and be of no force or effect.

### 36. **ABILITY TO AMEND THE BUSINESS RESCUE PLAN**

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

36.2. Should an amendment be contemplated which would prejudice Affected Persons, then the BRP shall be entitled to propose same for consideration and voting at a subsequent meeting of those Affected Persons who would be prejudiced thereby. Such amendment shall only be effective should such Affected Persons vote in favour thereof and it is adopted in the same manner as provided for in section 152 of the Companies Act.

36.3. It is specifically recorded that the provisions of paragraph 36.1 and paragraph 36.2 shall *mutatis mutandis* apply to the extension or reduction of any timeframes by the BRP.

### 37. **SEVERABILITY**

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

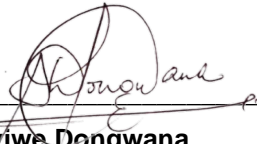
### 38. **CONCLUSION**

38.1. For the reasons set out above, the BRP is of the view that if the Business Rescue proceeds in terms of the Proposed Restructure, same will result in an efficient rescue of the Company, in a manner that balances the rights and interests of all relevant stakeholders.

**BRP'S CERTIFICATE**

I, the undersigned, Siviwe Dongwana, hereby certify to the best of my knowledge and belief that –

- any actual information provided herein appears to be accurate, complete and up to date;
- I have relied on financial information including opinions and reports furnished to me by Management and Advisors;
- any projections provided are estimates made in good faith on the basis of factual information and assumptions as set out herein; and
- in preparing the Business Rescue Plan, I have not undertaken an audit of the information provided by Management, the Company's auditors and by the Advisors, although where practical, I have endeavoured to satisfy myself of the accuracy of such information.



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**Siviwe Dongwana**

(in my capacity as the duly appointed BRP)

Date: 11 February 2022