

BUSINESS RESCUE PLAN

**FASHION X MANUFACTURING (PTY) LTD
(REG. NO. 2017/443761/07)
(IN BUSINESS RESCUE)**

PUBLISHED ON 16 OCTOBER 2020

AS AMENDED

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BUSINESS RESCUE PLAN

FASHION X MANUFACTURING (PTY) LTD (Reg No. 2017/443761/07) (IN BUSINESS RESCUE)

1.

Introduction

This is the business rescue plan prepared for Fashion X Manufacturing (Pty) Ltd (Reg. No 2017/443761/07) (in business rescue) by the business rescue practitioner of FXM in accordance with the provisions of Chapter 6 of the Companies Act No. 71 of 2008. The business rescue plan will be presented for consideration and possible adoption at a meeting of Creditors of FXM and other holders of voting interests convened in terms of section 151 of the Companies Act No. 71 of 2008.

2.

Definitions

In this business rescue plan, the following words and expressions shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

- 2.1 "Act" means the Companies Act No. 71 of 2008 (as amended);
- 2.2 "Adoption Date" means the date of the adoption of the Plan at the Meeting;
- 2.3 "Affected Person" or "Affected Party" means a shareholder or creditor of FXM, any registered trade union representing employees of FXM and if any of the employees of FXM are not represented by a registered trade union, each of those employees or their respective representatives;
- 2.4 "BRP" means P de Villiers Berrangé;
- 2.5 "Business Day" means any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.6 "Chapman" means Brett Vincent Chapman, a major businessman;
- 2.7 "Claim" means a secured, preferent or concurrent claim, as defined in the Insolvency Act, against FXM, the cause of action in respect of which arose prior to or on the Commencement Date or after the Commencement Date:-
- 2.7.1 Including a claim arising from contract or delict, actual or contingent, prospective, conditional or unconditional, liquidated or unliquidated, assessed or unassessed and whether or not due for payment or performance, specific or otherwise; but

- 2.7.2 Excluding a Claim of whatsoever nature and from whatsoever cause that can properly be regarded as costs or expenses of the business rescue proceedings, such claim is to be determined, calculated and admitted as secured, preferent or concurrent by the BRP in accordance with the ranking contemplated in the Insolvency Act, but subject to section 135 of the Act;
- 2.8 "CIPC" means the Companies and Intellectual Property Commission of South Africa, established by section 185 of the Act;
- 2.9 "**Commencement Date**" means 10 September 2020, the date on which the business rescue proceedings in respect of FXM commenced;
- 2.10 "**Concurrent Creditor**" means a Creditor having a concurrent Claim, as contemplated in the Insolvency Act, against FXM, including a Claim arising from a suretyship or guarantee executed by FXM;
- 2.11 "**Creditor**" means a natural person or a legal entity having a Claim against FXM;
- 2.12 "**DCI**" means DCI Agencies CC (CK 2006/049776/23) a close corporation duly incorporated and registered as such in accordance with the Close Corporations Act 1984 with its registered address at 218 Mathews Meyiwa Road, Stamford Hill, Durban;
- 2.13 "**Disputed Claim**" means a Claim which is rejected either in whole or in part by the BRP and which Claim is to be dealt with in terms of clause 26;
- 2.14 "**Edgley**" means Bevan Gareth Edgley, a major businessman;
- 2.15 "**Implementation Date**" means the date on which the BRP files a notice with the CIPC of the substantial implementation of the Plan as contemplated in section 152 (8) of the Act;
- 2.16 "**Insolvency Act**" means the Insolvency Act No. 24 of 1936 (as amended);
- 2.17 "**FXM**" means Fashion X Manufacturing (Pty) Ltd (Reg. No. 2017/443761/07), a company duly incorporated and registered as such in accordance with the Act with its registered address at 105 Rapson Road, Morningside, Durban, 4001;
- 2.18 "**LRA**" means the Labour Relations Act No. 66 of 1995;
- 2.19 "**Meeting**" means a meeting convened by the BRP for the consideration and possible adoption of the Plan or any amendment thereof by Creditors and other holders of a voting interest as contemplated in section 151 of the Act;
- 2.20 "**Members**" means:
- 2.20.1 Edgley;
- 2.20.2 Chapman;
- 2.20.3 Sawers;

- 2.21 "Month" means:
- 2.21.1 in reference to a number of months, from a specific date, a period commencing on that date to the immediately preceding day on the same date of any subsequent month; and
- 2.21.2 in any other context, a month of the calendar, that is, one of the 12 months of the calendar;
- 2.22 "Orders" means the orders placed by FXM customers for the current season as reflected in its order book from time to time;
- 2.23 "PCF" means post commencement finance as contemplated in section 135 of the Act;
- 2.24 "Plan" means this document together with all its annexures, prepared and published by the BRP for consideration and possible adoption by Creditors in accordance with Part D of Chapter 6 of the Act;
- 2.25 "Sawers" means Nicolas Sawers, a major male businessman;
- 2.26 "Secured Creditor" means, a Creditor having a secured Claim, as contemplated in the Insolvency Act, against FXM;
- 2.27 "Signature Date" means the date of signature of this Plan by the BRP;
- 2.28 "Standard Bank" means Standard Bank of South Africa Ltd;
- 2.29 "Stock" means fabric, trims, completed garments, work in progress;
- 2.30 "Unity" means Unity Group Investments (Pty) Ltd, a company duly incorporated and registered as such in accordance with the Act with its registered address at Unit 1, Parlock, 570 Inanda Road, Newland West, Durban, 4037;
- 2.31 "VAT" means value-added tax in terms of the Value-Added Tax Act;
- 2.32 Any reference to:
- 2.32.1 a clause or paragraph shall, subject to any contrary indication, be construed as a reference to a clause or paragraph in this Plan;
- 2.32.2 any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time;
- 2.33 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it was a substantive provision of this Plan;
- 2.34 Unless the context dictates otherwise, an expression which denotes any gender includes the other and a reference to a natural person includes an artificial person and to the singular includes the plural, and *vice versa* in each case;

- 2.35 The annexures to this Plan form an integral part hereof and words and expressions defined in this Plan shall bear, unless the context otherwise requires, the same meaning in such annexures;
- 2.36 When any number of days is prescribed in this Plan same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.37 In the event that the day for payment of any amount due in terms of this arrangement shall fall on a day that is not a Business Day, the relevant date shall be the immediately succeeding Business Day;
- 2.38 Where any term is defined within the context of any particular clause in this Plan, the term so defined, unless it is clear from that clause that the term so defined has limited application to that clause only, shall bear the same meaning as so defined for all purposes in terms of this Plan, notwithstanding that the term has not been defined in the definitions clause;
- 2.39 Words and expressions defined in the Act which are not defined in this Plan shall have the same meanings in this Plan as those ascribed to them in the Act.

3.

Disclaimer

- 3.1 The information contained herein has been prepared in compliance with the Act *inter alia* to assist Affected Persons to evaluate this Plan and to vote thereon;
- 3.2 Whilst every effort has been made to present an accurate and complete overview of the affairs of FXM, the BRP has not independently verified all of the information contained herein. Neither the BRP, FXM nor their respective affiliates, employees, officers, directors or agents make any representations or warranties (express or implied) as to the accuracy or completeness of the information contained in this Plan or any statements, estimates or projections contained herein. Consequently they will not have any liability arising from the use of the information contained herein. Insofar as the Plan includes certain statements, estimates and projections related to the anticipated future performance of FXM. Such statements, estimates and projections reflect various assumptions and elements of subjective judgment concerning anticipated results, which are subject to business, economic and competitive uncertainties and contingencies that may or may not prove to be correct. Neither the BRP, FXM, nor their respective affiliates, employees, officers, directors or agents shall be liable for such statements, estimates and projections;
- 3.3 The content of this Plan must not be construed as legal advice and Affected Persons are advised to seek their own professional advice on the legal, financial and tax consequences of voting for or against this Plan.

PART A: BACKGROUND

4.

FXM's Business and Business Rescue

- 4.1 FXM carries on business as a design house which sources and supplies fashion clothing garments, to major clothing retailers in South Africa. Such business FXM carried on at 14 Klinker Place, Briardene, Durban, KwaZulu-Natal;
- 4.2 At the Commencement Date FXM had 42 employees;
- 4.3 On 10 September 2020 the Members resolved that FXM voluntarily commences business rescue proceedings and be placed under supervision as contemplated in section 129 of the Act. FXM's business rescue proceedings commenced on 10 September 2020;
- 4.4 On 10 September 2020 the Notice of the Appointment of the BRP as FXM's Business Rescue Practitioner was filed with the CIPC;
- 4.5 The First Meeting of employees' representatives was held on 23 September 2020;
- 4.6 The First Meeting of FXM's Creditors was held on 23 September 2020.

5.

Reasons for FXM's financial distress

- 5.1 According to the affidavit deposed to by the member of FXM in support of the resolution to place FXM under business rescue proceedings, FXM was experiencing severe cash flow difficulties and was unable to meet its payment obligations to its creditors as and when such payments fell due. FXM did not have funds wherewith to pay its creditors and to fund the carrying on of its manufacturing activities;
- 5.2 The cause of this financial predicament was threefold:
- 5.2.1 Edcon Ltd
- (i) Edcon Limited ("Edcon") commenced business rescue on about 29 April 2020. The Edcon group of companies ("Edcon Group") was FXM's largest customer;
- (ii) FXM has approximately R37 million worth of unpaid invoices in respect of goods supplied to the Edcon Group. As a result of Edcon's business rescue proceedings, these invoices will not be paid and had to be written-off entirely by FXM;
- (iii) The abovementioned write-off had a dire effect on FXM's cash flow and overall financial position;

- (iv) The anticipated recovery is approximately four cents in the Rand in respect of its claim in the Edcon business rescue, when distributions are eventually paid. The distribution, when it is paid, will be wholly insufficient to repair the damage caused to FXM's financial situation;

5.2.2 COVID-19 Pandemic

- (i) The COVID-19 pandemic, and the regulations imposed by the Government in response thereto, effectively forced FXM to cease trading for a period of approximately seven weeks, from the final week of March 2020 until it was able to resume trading during the third week of May 2020;
- (ii) As with many other businesses, the direct and indirect consequences of the pandemic have had a dire effect on FXM's financial position and made it all the more difficult to recover from the blow dealt by the Edcon business rescue;

5.2.3 CGIC

- (i) During or about the third week of August 2020, FXM became aware that the Credit Guarantee Insurance Company of Africa Limited ("CGIC") had taken the decision to not provide any credit insurance cover to persons supplying goods to FXM on credit;
- (ii) The majority of the FXM's suppliers, including its major fabric suppliers, rely on CGIC for credit insurance. As such FXM was unable to obtain its critically needed supplies on credit and it did not have sufficient cash flow to obtain further supplies on a cash-on-delivery basis;
- (iii) As a result, FXM will be unable to fulfill orders placed by its customers, which orders fall due in the coming months ahead of the summer season;

5.3 FXM has total liabilities of approximately R59.2 million;

5.4 For the current financial year up to the Commencement Date FXM's trading activities yielded revenue of R75 million for 6.5 months, but FXM suffered a loss of approximately R32.8 million for the same period;

6.

Conduct of FXM's business subsequent to Commencement Date

6.1 The BRP interrogated FXM's records and business affairs to establish whether or not FXM has a commercially viable business which is capable of being rescued by taking appropriate restructuring measures aimed at returning FXM to a solvent status or which measures would result in a better return for FXM's creditors than its immediate liquidation;

- 6.2 In the conduct of the above investigation, the BRP was assisted by FXM's Members and the employees of FXM, relevant to such investigation;
- 6.3 Pursuant to the above investigation, the BRP concluded that:
- 6.3.1 FXM has Orders from 5 blue chip customers of R70 million and remains a sought after manufacturer in the clothing retail sector;
 - 6.3.2 FXM should continue with the execution of the Orders for its customers, which should generate revenue of approximately R80 million in the next 6 months period;
 - 6.3.3 FXM retrenched some of its employees and thereby reduced its overheads substantially before the Commencement Date;
- 6.4 Subsequent to the Commencement Date, FXM continued with the execution of the Orders and its business under the supervision of the BRP;
- 6.5 During the abovementioned period of trading, an existing invoice factoring facility ("factoring facility") between FXM and Standard Bank continued to apply, but no fresh invoices were factored in terms of such facility;
- 6.6 FXM's manufacturing activities subsequent to the Commencement Date were funded by DCI who made PCF funding available to the BRP in cash/credit facilities in terms of a loan agreement of which a copy is attached hereto as **annexure "BRP1"**;
- 6.7 On 10 October 2020 a fresh finance factoring agreement was concluded between the Standard Bank, FXM and the BRP. This finance factoring agreement will be hereinafter referred to as "the October 2020 factoring agreement". Invoices have been factored in terms of the October 2020 factoring agreement.

7.

FXM's Material Assets

FXM's assets of value comprise equipment, motor vehicles and stock (fabric and trims):

- 7.1 A schedule setting forth FXM's equipment is annexed hereto as **annexure "BRP2"**. The schedule:
- 7.1.1 contains a description of the equipment;
 - 7.1.2 shows the estimated open market value of the equipment to be R1,057,512.20;
 - 7.1.3 shows the estimated forced sale value of the equipment to be R539,875.00 as set forth in **annexure "BRP3"**;

- 7.2
- 7.2.1 FXM is the instalment sale purchaser of four motor vehicles, the details of which are set forth in **annexure "BRP4"** hereto. According to **annexure "BRP4"** the collective estimated open market value of the motor vehicles is R1,035,000.00 and their estimated forced sale value is R924,000.00 as per **annexure "BRP5"**;
- 7.2.2 The four motor vehicles are financed by way of instalment sale agreements concluded with Standard Bank. At the Commencement Date the difference between the open market value and the settlement figure in terms of the 4 instalment sales was similar. FXM will continue with these instalment sale agreements and pay the monthly instalments;
- 7.3 As at 14 September 2020, FXM had Stock with an estimated open market value of R12,260,000-00 and an estimated forced sale value of R4,030,000.00. The valuation of the Stock is set forth in **annexure "BRP6"**, and the forced sale value is set forth in **annexure "BRP7"**.
- 7.4 The valuation of FXM's assets was performed by Peter Charles Maskell, a valuer, sworn appraiser, registered estate agent and auctioneer carrying on business as Peter Maskell Auctioneers;
- 7.5 All leases in operation at the Commencement Date with FXM shall continue;
- 7.6 Included in the Debtors are the following potential claims by FXM:
- 6.6.1 A VAT refund of approximately R4.8 million by SARS due for the Edcon bad debt VAT refund;
- 6.6.2 An anticipated recovery from the Business Rescue Practitioner of Edcon Limited for 4% which equates to R1.48 million;
- 7.7 FXM's debtors are subject to a cession *in securitatem debiti* in favour of the Standard Bank.

8.

FXM's Creditors

- 8.1 At Commencement Date the total liability of FXM to its Creditors was in the sum of R59.2 million. A schedule reflecting FXM's liability to its Creditors is annexed hereto as **annexure "BRP8"**;
- 8.2 The claims reflected on **annexure "BRP8"** are admitted by the BRP as valid and enforceable against FXM. Consequently, such Creditors will be entitled to exercise a vote at the Meeting in respect of the Plan, which vote shall carry the voting interest reflected on **annexure "BRP8"**, subject to any variation in the debtor recovery;
- 8.3 Standard Bank is the only Creditor whose Claims are secured by FXM's assets;

- 8.4 At the Commencement date FXM was indebted to the Standard Bank in terms of the existing factoring facility in the sum of approximately R2,7 million. FXM was further indebted to the Standard Bank in the sum of approximately R12,9 million arising from a settlement agreement concluded between FXM and the Standard Bank relating to the unpaid Edcon invoices which were factored to the Standard Bank;
- 8.5 DCI by virtue of the PCF loan is a creditor at the date of preparation of the Plan in the amount of R13.7million

9.

Probable Liquidation Dividend

The estimated probable dividend that will accrue to Creditors if FXM is to be liquidated forthwith is set forth in **annexure "BRP9"** hereto. According to **annexure "BRP9"**:

- 9.1 The net amount available for distribution to Creditors, after the costs of realization and the liquidation costs is estimated to be R3.8 million;
- 9.2 The Secured Claims of Standard Bank will be settled in full by the proceeds of the invoices factored to it by FXM prior to the commencement of business rescue proceedings and post the commencement of business rescue proceedings and by the proceeds of the debtors ceded to Standard Bank;
- 9.3 There is no payment due to the employees of FXM as preferent Claims. All retrenchment claims having been paid before the Commencement Date;
- 9.4 All other Creditors will receive a dividend of approximately 7.8 c in the Rand.

10.

Holders of the FXM's Issued Securities

- 10.1 The FXM issued share capital of 100 shares is owned as follows:
- | | |
|-----------|------------|
| Sawers - | 40 shares; |
| Chapman - | 40 shares; |
| Unity - | 20 shares; |
- 10.2 On adoption of the Plan the issued share capital of 100 shares shall be held as follows:
- | | |
|-----------|------------|
| Sawers - | 25 shares; |
| Chapman - | 25 shares; |
| DCI - | 50 shares. |

11.

Agreement relating to BRP'S Remuneration

- 11.1 The BRP is a senior attorney and senior business rescue practitioner with over 30 years experience in the liquidation, rescue and turnaround industry;
- 11.2 FXM is a medium company, as defined by its PI score. The BRP remuneration in accordance with the tariff prescribed in Regulation 128 of the Companies Regulations 2011 is R1 500-00 incl VAT per hour;
- 11.3 The hourly rate prescribed by the tariff in Companies Regulation 128 is not market related and is outdated as it was determined during 2008. Accordingly, a Remuneration Agreement with the BRP is proposed in terms of which the basic remuneration payable by the Company to the BRP, shall be:
- 11.3.1 An initial hourly tariff of R1 500.00 (including VAT), in accordance with section 143(1) of the Act and Regulation 128 of the Companies Regulations, with effect from the Commencement Date up to the date on which the Business Rescue Plan is Adopted or rejected; thereafter
- 11.3.2 A revised hourly tariff of R3 000-00 (excluding VAT), in accordance with section 143(2)(a) of the Companies Act on approval and adoption of the Business Rescue Plan in terms of section 152(2) and (3) of the Companies Act, retrospectively with effect from the Commencement date; and
- 11.3.3 Notwithstanding the number of hours charged, the BRP has agreed to limit his fee to R500,000.00 plus VAT, if the hourly rate exceeds that;
- 10.4 The Directors and Shareholder of FXM support the increase in the hourly rate together with the maximum hourly rate in light of the BRP's experience. The proposed Remuneration Agreement is annexed hereto, as **annexure "BRP10"**.

12.

Proposals made informally by Creditors

The Plan contains no proposals made informally by Creditors.

PART B: PROPOSALS

13.

Essential terms of the Plan

- 13.1 The BRP is of the considered opinion that it is possible for FXM to be rescued as contemplated in section 128(1)(b) of the Act, should the Plan be adopted;
- 13.2 The terms of the Plan are:

- 13.2.1 DCI will purchase shares at par value from the Members as follows:
- | | |
|-----------|------------|
| Chapman - | 15 shares; |
| Sawers - | 15 shares; |
| Unity - | 20 shares. |
- By virtue of such purchase, DCI will own 50 of the 100 issued shares of FXM. The aforementioned purchase is a condition precedent to the Plan;
- 13.2.2 Subsequent to the adoption of the Plan, FXM shall continue with the carrying on of its business;
- 13.2.3 The FXM debt to the Standard Bank in terms of the factoring facility and the settlement agreement shall be settled by the recoveries in terms of factored invoices and recoveries from debtors, as the FXM debtors have been ceded to the Standard Bank as security for its claims against FXM;
- 13.2.4 It is contemplated that FXM's debt to the Standard Bank will be settled in full by no later than the end of November 2020;
- 13.2.5 Upon the settlement in full of FXM's debt to the Standard Bank, the existing factoring facility will be terminated;
- 13.2.6 The October 2020 factoring agreement shall continue to apply subsequent to adoption of the Plan;
- 13.2.7 On adoption of the Plan, the BRP shall continue to recover payment from FXM customers in respect of invoices which have not been factored to the Standard Bank in terms the existing factoring facility;
- 13.2.8 DCI will purchase the Claims of the Creditors, excluding the Claims of the Standard Bank for the collective sum of R13.7 million;
- 13.2.9 The payment of the purchase price of each claim shall be administered by the BRP;
- 13.2.10 The purchase price of the Claims shall be funded as follows:
- 13.2.10.1 DCI has advanced PCF in the sum of approximately R13.7 million. In terms of section 135(2) read with section 135(3) of the Act, the claim of DCI to the repayment of the PCF, is a Preferent Claim.
- 13.2.10.2 The aforesaid Preferent Claim of DCI will not be repaid, but the monies earmarked for such repayment will be utilised to fund the purchase of the Claims of the Creditors by DCI;
- 13.2.11 The BRP shall pay the purchase price of R13.7 million to the Creditors whose Claims are purchased in accordance with the schedule set forth in annexure "BPR10" hereto. Accordingly, annexure "BPR10" hereto sets out the dividend that Creditors will effectively receive in respect of their Claims;

- 13.2.12 The Creditors whose Claims are purchased by DCI shall cede their Claims to DCI. Such cession shall be effective on the date that such Creditors receive final payment of the purchase price of their Claims from the BRP. Accordingly, subject to final payment of the purchase price of their Claims as set forth in **annexure "BRP10"** hereto, the Creditors listed in **annexure "BRP10"** hereto (excluding the Standard Bank) hereby cede and transfer to DCI their right, title and interest in and to their Claims, which cession DCI hereby accepts;
- 13.2.13 The Plan does not contemplate the retrenchment of any employees of FXM;
- 13.2.14 The lease agreement in respect of the premises from which FXM carries on business shall remain in place;
- 13.2.15 Save for the termination of the existing factoring facility as contemplated above, all other credit agreements, finance agreements and lease agreements shall remain in place;
- 13.2.16 The Plan does not contemplate the sale of any assets of FXM;
- 13.2.17 The security that Standard Bank has for its Claims shall not be affected in any manner whatsoever by the transactions set forth above and shall remain in force against third parties who provided security for the Claims of Standard Bank against FXM;
- 13.2.18 The BRP shall make payment of the purchase price of their Claims to the Creditors, excluding the Standard Bank, as follows:
- 13.2.18.1 An amount of not less than R4.5 million, by 7 December 2020;
- 13.2.18.2 An amount of not less than R4.5 million, less any business rescue costs that may have been incurred since the payment referred to in clause 13.2.18.1 by 15 January 2021;
- 13.2.18.3 The balance of the purchase price due (of approx. R4.7 million), less any business rescue costs that may have been incurred since the payment referred to in clause 13.2.18.2 by 28 February 2021;

14.

Moratorium on legal proceedings against FXM

- 14.1 Section 133 of the Act provides that during business rescue proceedings no legal proceeding, including enforcement action against FXM or in relation to any property belonging to FXM or lawfully in its possession may be commenced or proceeded with *inter alia* without the written consent of the BRP or with the leave of the appropriate Court;
- 14.2 The aforementioned moratorium shall remain in place whilst FXM is in business rescue.

15.

Extent to which FXM is to be released from the payment of its debts

- 15.1 The Plan does not contemplate the release of FXM from the payment of its debt;
- 15.2 The Plan does not provide for the conversion of any of FXM's debt to equity in FXM or in any other company.

16.

The ongoing role of FXM and the treatment of any existing agreements

- 16.1 Pursuant to the purchase of 50% of the issued share capital DCI and the purchase of Claims as set forth in clause 13 above, FXM will carry on its business with the existing employees;
- 16.2 The existing Orders shall be executed by FXM under the control of the existing management team;
- 16.3 No lease agreements to which FXM is a party will be cancelled upon the adoption of the Plan, including the lease for the property where FXM trades from.

17.

Property of FXM available to pay Creditors' Claims

The Plan does not contemplate the realisation of any property of FXM to pay Creditors' Claims.

18.

Order of distribution if Plan is adopted

If the Plan is adopted, the available funds will be distributed in satisfaction of the costs and Claims mentioned hereunder in the order mentioned hereunder:

- 18.1 Payment of the unpaid remuneration and expenses of the BRP, including legal costs, the costs of professional advisors and other costs reasonably associated with the facilitation of the business rescue proceedings and the preparation and implementation of the Plan;
- 18.2 Payment of the secured Claims of Standard Bank;
- 18.3 Payment of the purchase price of the Claims purchased by DCI.

19.

Benefits of adopting the Plan as opposed to liquidation

The benefits of adopting the Plan as opposed to the liquidation of FXM are as follows:

- 19.1 The additional costs of the administration of liquidation proceedings will not be incurred;
- 19.2 All the employees of FXM will retain their employment;
- 19.3 Concurrent Creditors will receive approximately 31.6 cents in the Rand (as the purchase price of their Claims) as opposed to a dividend of 7.8 cents in the Rand if FXM is liquidated;
- 19.4 Creditors will receive monies much sooner than would be the case if FXM is liquidated;
- 19.5 Those Creditors who were suppliers to FXM may benefit from the continuation of FXM's business.

20.

Effect of the Plan on the Member

The Plan has as a condition precedent that Unity sells its entire shareholding in FXM to DCI and Sawers and Chapman sell 15% respectively of their shareholding in FXM to DCI.

PART C: ASSUMPTIONS AND CONDITIONS

21.

Conditions that must be satisfied for the Plan to be implemented

For the Plan to be implemented, the following conditions must be satisfied:

- 21.1 The Plan must be adopted by the holders of more than 75% of the Creditors' voting interests that are voted and the vote must include at least 50% of the independent Creditors' voting interests, if any, that are voted;
- 21.2 The shareholding in FXM will be as follows:

Chapman -	25%
Sawers -	25%
DCI -	50%
- 21.3 DCI must make funding available for the purchase of the Claims as set forth above.

22.

The effect of the Plan on the employees of FXM

The Plan does not contemplate the retrenchment of any employees of FXM.

23.

Circumstances in which the business rescue proceedings will terminate

FXM's business rescue proceedings will terminate when the BRP files a notice of substantial implementation as contemplated in section 132(2)(c)(ii) of the Act, further alternatively when the business rescue proceedings in respect of FXM is terminated by an order of Court and FXM is placed in liquidation.

24.

Projected balance sheet and income and expenses statement

As the new shareholders intend introducing additional funds to recapitalize the business and to grow its market share, it is not possible for the BRP to supply a projected balance sheet and income and expense statement as required in terms of section 152(4) of the Act.

PART D: ADMINISTRATIVE AND GENERAL PROVISIONS

25.

Proof of Claims

- 25.1 The Creditors listed in **annexure "BRP8"** hereto are regarded by the BRP as Creditors in the amounts listed in the annexure and having the voting interests listed in the annexure;
- 25.2 The Claims of Creditors that are not reflected on **annexure "BRP8"** are deemed to have been rejected by the BRP, in which event such Creditors are required to lodge their claims for proof with the BRP at Berrangé Inc., Suite 9, Second Floor, Block C, Town Bush Office Park, 460 Town Bush Road, Montrose, Pietermaritzburg, KwaZulu-Natal within a period of fifteen (15) Business Days after the Adoption Date;
- 25.3 Save for those Creditors listed on **annexure "BRP8"**, all Creditors are required to prove their Claims to the satisfaction of the BRP as if the BRP was an officer presiding at a meeting of Creditors as provided for in the Insolvency Act and all Claims are to be supported by affidavits which are to contain such information and are to be accompanied by such supporting documents as are required for proving claims in accordance with the Insolvency Act;
- 25.4 The BRP's decision in respect of a Claim shall be subject to review by a Court upon application by any party affected thereby, provided that any such review proceedings shall be brought within fourteen (14) Business Days of receipt of written advice of such decision from the BRP. Should the Affected Person fail to make such an application, he shall be deemed to have waived his right to dispute such decision and shall thereafter be debarred from bringing any such review proceedings and shall to the extent to which his Claim or security or preference is so rejected or reduced, be deemed to have abandoned his right to any dividend under this Plan or any amendment thereto;

26.

Disputed Claims

- 26.1 The BRP reserves the right to dispute any Claim up until the Implementation Date;
- 26.2 The BRP may, at any stage during the business rescue proceedings accept any Disputed Claim, which Claim shall then be dealt with in accordance with the terms of this Plan or any amendment thereto.

27.

Contingent Claims

Upon the adoption of this Plan, any contingent Claims shall be deemed to be Disputed Claims and the rights of FXM to dispute such contingent Claims remain unaffected by the adoption of this Plan or any amendment thereto, except to the extent that such disputed contingent Claim either becomes settled between the Creditor concerned and the BRP or determined or liquidated in any legal forum in which event such Creditor would be entitled to payment in terms of this Plan or any amendment thereto.

28.

Failure to prove Claims and late proof of Claims

- 28.1 Creditors whose Claims are not recorded on annexure "BRP8" and Creditors who are otherwise obliged to prove their Claims as provided for in this Plan and who have received proper notice of:
- 28.1.1 The submission of this Plan; and
- 28.1.2 Meetings as required in terms of section 151 of the Act,
- and who fail to submit their Claims within the period stipulated in this Plan shall be deemed to have abandoned their right to participate in any distribution under this Plan or any amendment thereto;
- 28.2 Creditors alleging not to have been given proper notice of:
- 28.2.1 The submission of this Plan; and
- 28.2.2 Meetings as required in terms of section 151 of the Act;
- at the outset shall be entitled to prove their Claims in the manner stipulated in clause 25 above within thirty (30) calendar days after receiving proper notice of this Plan and any meeting referred to in section 151 of the Act, failing which they shall be deemed to have abandoned their right to participate in any distribution under this Plan or any amendment thereto;
- 28.3 If a Claim is proved after the payment of distributions by the BRP in terms of this Plan or any amendment thereof or if the monies which the BRP have on hand for distribution are

not sufficient to pay a dividend in respect of a Claim that has been proved late as contemplated herein, such Creditor shall lose the right to share in dividends paid out in accounts predating the proof of his Claim;

- 28.4 FXM shall have the right to recover from any Creditor who has received payment under this Plan or any amendment thereto prior to the proof of a late claim, the amount by which the dividend to such Creditor exceeds the amount which should have been paid to him had the late claim been proved timeously;
- 28.5 A certificate under the hand of the BRP as to the amount so refundable by the Creditor referred to in clause 28.4 above shall be *prima facie* proof of the refundable amount in any proceedings instituted against such Creditor for recovery thereof.

29.

General Duties and Powers of the BRP

- 29.1 The BRP shall have all those powers as contemplated in law;
- 29.2 The BRP shall be entitled to deal with all and any claims not specifically provided for in this Plan in accordance with common law and all applicable statutory provisions.

30.

Domicilium and Notices

- 30.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Plan at which address all processes and notices arising out of or in connection with this Plan, its breach or termination may validly be served upon or delivered to the Parties;
- 30.2 For the purposes of this BR Plan the parties respective addresses shall be:
- 30.2.1 BRP:- Suite 9, Second Floor, Block C, Town Bush Office Park, 460 Town Bush Road, Montrose, Pietermaritzburg, KwaZulu-Natal
e-mail: vanessa@b-inc.co.za
Attention: Pierre de Villiers Berrangé
- 30.2.2 FXM:- 14 Klinker Place, Briardene, Durban, KwaZulu-Natal;
- 30.3 Each Creditor is hereby deemed to have chosen as its *domicilium citandi et executandi* and as its address for the delivery of all notices hereunder for all purposes arising out of or in connection with this Plan at the address stated by that Creditor in his proof of claim form or as reflected in the books of account and records of FXM;
- 30.4 Any notice given by email in terms of this Plan shall be in writing and shall be deemed to have been duly received by the addressee on the date the email is sent by the addressor, unless the contrary is proved.

31.

Costs

FXM shall pay all costs, expenses, fees and charges incurred in the negotiation, drafting and execution of the Plan and the final implementation of all aspects arising from or relating to this Plan.

32.

General

- 32.1 This document constitutes the sole record of this Plan. No Affected Person or any other party shall be entitled to rely upon any terms, conditions or representations not recorded herein;
- 32.2 No novation, amendment, variation, addition, or cancelation of this Plan or any waiver or relaxation of any of the provisions or terms of this Plan shall be binding unless recorded in a written document signed by the parties hereto;
- 32.3 The provisions in this Plan which are or may become illegal, invalid or unenforceable shall be severed from the balance of this Plan without invalidating the remaining provisions of this Plan or affecting the validity or enforceability of such remaining provisions;
- 32.4 No indulgence, leniency or extension of time which any party may grant or show to any party shall in any way prejudice such party or preclude such party from exercising any of its rights in the future;
- 32.5 This Plan is and shall remain irrevocable until the Implementation Date, and may not be withdrawn before then without the BRP's consent. Should this Plan be preliminarily adopted by the required majority of the Creditors as required by the Act, it shall not be capable of being withdrawn until the Implementation Date;
- 32.6 On the Implementation Date the BRP will file a notice with CIPC of the substantial implementation of this Plan in accordance with section 152(8) of the Act.

33.

Ancillary Provisions

- 33.1 No part of this Plan is intended to circumscribe or limit the rights of any Creditor arising out of any suretyship agreements, surety mortgage bonds or covering mortgage bonds in respect of which FXM is the principal debtor;
- 33.2 The terms of this Plan and any payment received by Creditors in terms of this Plan shall have no effect on the liability of the Member and any other persons as contemplated and provided for in the provisions of the Close Corporations Act 1984, the Companies Act 1973 and the Companies Act 2008 relating to and arising from the conduct of the business of FXM prior to the adoption of the Plan.

34.

Procedure to Amend the BR Plan

- 34.1 Should the Plan be adopted and if, in the opinion of the BRP, the Plan can no longer be implemented, then the BRP will notify all Affected Persons of this fact;
- 34.2 If the BRP at the abovementioned stage continues to believe that business rescue will yield a better return for creditors than liquidation, the business rescue proceedings shall not end and the BRP will have ten (10) days, or such longer time as the Creditors may agree to, after publication of the notice referred to in clause 34.1 above, publish a revised Plan;
- 34.3 The provisions of Section 151 to 153 of the Act, and other applicable sections, will apply *mutatis mutandis* to the revised Plan and the process of the possible adoption thereof;
- 34.4 The BRP shall be entitled to convene further Meetings in the event that circumstances arise which warrant an amendment to the Plan or for any other reasons which in the opinion of the BRP warrant such Meeting.

35.

The BRP's Certificate and Declaration

I, Pierre de Villiers Berrangé, the business rescue practitioner of Fashion X Manufacturing (Pty) Ltd (in business rescue) confirm that the Plan was prepared to the best of my ability and that I relied on actual information provided by the directors, management and Creditors of FXM. Projections contained in and referred to in this Plan are estimates made in good faith on the basis of factual information and assumptions as set forth in the Plan.

DATED AT PIETERMARITZBURG ON THIS 16TH DAY OF OCTOBER 2020.



Pierre de Villiers Berrangé
(in his capacity as BRP)