



## AFSA | SARIPA BUSINESS RESCUE

# THE MODEL CLAUSE FOR INCORPORATION IN THE BUSINESS RESCUE PLAN CONCERNING THE RESOLUTION OF DISPUTES

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The following clause should be included under Part B of the business rescue plan:

### **Dispute Resolution Mechanism**

Any dispute of whatsoever nature relating to:

- (i) the acceptance or rejection of any claim whether in whole or in part or the value or ranking of any claim or the recognition of any security or preference, lien or hypothec attaching to such claim; or
- (ii) claims which are not reflected in the records of the company in business rescue and are not recognised under the business rescue plan;
- (iii) any act or omission by the Business Rescue Practitioner affecting the rights or legal interests of any Affected Party (as defined in Section 128(1)(a) of the Companies Act) of the company in business rescue; or
- (iv) the proper interpretation or implementation of any provision in the Business Rescue Plan,

shall be submitted for final determination in accordance with the AFSA-SARIPA RULES by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

For the purpose of this clause:

**"claims"** means secured, preferent or concurrent claims as envisaged in the Insolvency Act, against the company, the cause of action in respect of which arose, prior to or on the commencement date of business rescue proceedings or thereafter and of whatsoever nature and from whatsoever cause, including claims, arising from contract or delict, actual and contingent, prospective, conditional and unconditional, liquidated and unliquidated, assessed and unassessed and whether or not due for payment or performance, specific or otherwise, and including all claims arising out of any agreements entered into by the company on or prior to the commencement date;

**"creditors"** means all legal entities, including natural persons and Trusts, having secured, preferent and/or concurrent or contingent claims against the company as at the commencement date or thereafter.