

RM MINING & INDUSTRIAL CLOSE CORPORATION (IN LIQUIDATION)
("the Close Corporation")

MASTER'S REFERENCE NUMBER G.404/2015

REPORT SUBMITTED BY THE JOINT LIQUIDATORS IN TERMS OF SECTION 79 OF THE CLOSE CORPORATIONS ACT NO. 69 OF 1984 (AS AMENDED), TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MAGISTRATE, BENONI, ON WEDNESDAY, 18 NOVEMBER 2015, AT 10H00.

Nature of Liquidation	Application in the High Court of South Africa - Gauteng Local Division, Johannesburg
Date of Liquidation	09 October 2014
Date of Provisional Order	n/a
Date of Final Order	24 February 2015
Final Appointees	Liebenberg Dawid Ryk van der Merwe & Karabo Anzer Moetsi
Date of Final Certificate of Appointment	14 May 2015
Date of First Meeting	18 November 2015

GENERAL AND STATUTORY INFORMATION

Registrar of Companies

According to the Registrar of Companies, the Close Corporation was incorporated under Registration Number 2009/014490/23.

Registered Address and Business Address

Both the registered address and the address where the Close Corporation conducted business from, was at 28 Klein Street, Lakefield, Benoni, 1501.

Business of the Close Corporation

The principal business activity of the Close Corporation was in mining equipment and spares.

Member

According to the records in our possession, the member of the Close Corporation, as at the date of liquidation, was:-

- Mr Richard Mayiya - Date of Birth 31 July 1980



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Auditors of the Close Corporation

The Auditors at date of liquidation were DC Snyman and Company.

WE NOW REPORT IN TERMS OF SECTION 79 OF THE CLOSE CORPORATION'S ACT:-

SECTION 79(a)

Financial Statement of Assets and Liabilities

The following represents the assets and liabilities of the Close Corporation, at date of liquidation, based on information to hand. We did not receive the Statement of Affairs (Annexure CM100) from the erstwhile member, as is required by him.

ASSETS		
<u>Encumbered Assets</u>		
• Isuzu KB300D-TEQ - Reg No. XFH031GP - encumbered by way of Instalment Sale Agreement to WesBank		216,000-00
• Isuzu KB300D-TEQ - Reg No. XFH031GP - encumbered by way of Instalment Sale Agreement to WesBank		216,000-00
• FAW 15.180 FL 8 Ton F.C – encumbered by way of Instalment Sale Agreement to Wesbank		350,000-00
<u>Unencumbered Assets</u>		Unknown
LIABILITIES		
<u>Secured Creditors</u>		
WesBank in terms of Instalment Sale Agreements	1,066,517-85	
<u>Preferent Creditors</u>		
SARS -	Unknown	
Salaries	Unknown	
<u>Concurrent Creditors</u>		
Applicant		
Trade Creditors - Approximately	2,163,978.80	
<u>SHORTFALL</u>		2,763,496-65
TOTAL	3,230,496-65	3,230,496-65

NOTES:

1. The above figures are subject to adjustment verification.

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NOTES: (continued)...

2. The amounts stated for the vehicles are estimates. To date the former Member has not handed the vehicles over to the Joint Liquidators nor to Wesbank. The vehicles are not at the premises where the Close Corporation traded from. Wesbank has appointed a tracing agent to assist with the recovery of the various vehicles.

3. The amount stated for creditors is according to the application for liquidation as well the claims received. The amounts may change if further creditors prove claims. To date the former Member has not provided the joint liquidators with a complete list of creditors.

SECTION 79(b)

Causes of the Close Corporation's failure

As our investigations into the affairs of the Close Corporation have not as yet been completed, we are unable to fully comment on this aspect at this stage, although the liquidation of the Close Corporation seems to have been directly brought about by the inability of the Close Corporation to honor its obligations to the major Creditor, Sulzer Pumps (South Africa) (Pty) Limited.

SECTION 79(c)

Report under Section 400(2) of the Companies' Act Read with Section 66 of the Close Corporation's Act

The member has failed to provide us with:-

1. The Company's statutory books and records; and
2. A Statement of Affairs as is provided for in terms of the provisions of Section 363 of the Act.

SECTION 79(d)

Personal liabilities of Member or Officer

At this point it is not possible to comment as to whether the member is personally liable:-

1. To the Close Corporation on the ground of breach of trust or negligence;
2. To make repayments to the Close Corporation in terms of Section 70(2) or (3) or Section 71(1) or (2) of the Act; and
3. To either a creditor of the Close Corporation or to the Close Corporation itself.

A report will be submitted in this regard should it become necessary.



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SECTION 79(e)

Legal Proceedings

As far as we are aware there are no legal proceedings pending by or against the Close Corporation, at the date of the commencement of the winding-up.

SECTION 79(f)

Further Enquiry

The Liquidators do not intend to hold an Enquiry at present. Creditors will be informed if the Joint Liquidators decide to proceed with an enquiry into the affairs of the Close Corporation. Instructions from creditors are awaited for the holding of an enquiry.

SECTION 79(g)

Books and Records

We have to date received no books or records of any nature whatsoever, and am thus unable to comment as to whether books and records have been properly kept in compliance with the requirements of Section 56 of the Close Corporations Act No. 69 of 1984 (as amended).

SECTION 79(h)

Progress and Prospects of Liquidation

The Second Meeting of Creditors to be finalised, realisation of assets and lodging of Final Liquidation Account.

SECTION 79(i)

Matters requiring further directions of Creditors and Contributories

Such directions as we desire, and sanction of the actions taken by the Joint Liquidators to date, are contained in the Resolutions to be submitted for consideration and adoption, are attached hereto.

GENERAL

There appears to be a definite danger of contribution to be levied onto creditors who submit a claim for proof.

DATED AT ROODEPOORT ON THIS THE 2ND DAY OF NOVEMBER 2015.



LIEBENBERG DAWID RYK VAN DER MERWE

KARABO ANZER MOETSI

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS
HELD BEFORE THE MAGISTRATE, BENONI, ON 18 NOVEMBER 2015, AT 10H00.**

RESOLVED THAT:

- 1 The report of Liquidator or Joint Liquidators, as the case may be, hereinafter referred to as (the Liquidator"), as submitted be received and adopted and all his actions referred to therein be and are hereby confirmed, ratified and approved.
- 2 All actions of whatsoever nature hereto-before taken by the Provisional Liquidator and/or Liquidator be and are hereby confirmed, ratified and approved.
- 3 The Liquidator be granted the authority and is vested with all the powers mentioned in Section 386(4)(a) – (i) of the Companies Act No 61 of 1973, as amended, such powers to be exercised at his sole and absolute discretion.
- 4 The Liquidator be and is hereby authorised in his sole and absolute discretion to:
 - 4.1 Take legal advice on any question of law affecting the administration and distribution of the Close Corporation;
 - 4.2 Institute or defend on behalf of the Close Corporation any action or other legal proceedings of a civil nature for the recovery of monies due to the Close Corporation or otherwise and subject to the provisions of any law relating to criminal procedure, institute any criminal proceedings;
 - 4.3 Hold any enquiry into the affairs of the Close Corporation and/or any matter relating thereto;
 - 4.4 Investigate and institute legal proceedings for the recovery of any voidable or undue preferences, voidable dispositions of property or any other impeachable transactions of whatsoever nature and to abandon same at any time;
 - 4.5 Write up the books of the Close Corporation as may be required, and if necessary, to produce a balance sheet, audited or not, as at the date of liquidation, either for the purpose of investigating the affairs of the Close Corporation, establishing the claims of creditors, or any other purpose.

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- 5 The Liquidator be and is hereby authorised in his sole and absolute discretion to employ and engage the services of attorneys and/or counsel (senior and/or junior) and/or accountants and/or bookkeepers and/or any employee of the insolvent and/or recording agents and/or any other person who in the sole discretion of the Liquidator may be of assistance in the winding-up of the Close Corporation in relation to any matter referred to in 4 above and further to pay all the costs thereof of whatsoever nature out of the estate as costs incurred in the liquidation.
- 6 The Liquidator be and is hereby authorised to collection any debts due to the Close Corporation and for the purpose thereof to sell or compound or compromise any of these debts for such sum and upon such terms and conditions as he in his sole discretion may deem fit, and to accept any part of the debt in settlement thereof, and to grant an extension of time for the payment of any such debt, and to abandon any debt which he in his sole discretion may deem to be irrecoverable.
- 7 The Liquidator be and is hereby authorised to dispose of any movable and immovable property of the Close Corporation, whether in his possession or under his control now or to come into his possession or under his control in the future by public auction, private treaty or public tender upon such terms and conditions as he in his sole and absolute discretion shall determine and to abandon any such assets for which he can find no purchaser or abandon them to a secured creditor at the value placed thereon by such creditor or at such value as is agreed upon by the Liquidator and the creditor if such creditor's claim is secured by such assets and to sign all such documents as may be necessary to give effect to such disposition.
- 8 The Liquidator be and is hereby authorised and empowered in his sole discretion to compromise and admit any claim against the Close Corporation of whatsoever nature and howsoever arising and whether disputed or not and whether actual, contingent, prospective, conditional, unconditional, assessed, unassessed, liquidated or unliquidated as a liquidated claim in terms of Section 78(3) of the Insolvency Act No 24 of 1936 as amended, read with Section 339 of the Companies Act No 61 of 1973, as amended, at such amount as may be agreed upon by the Liquidator, provided that proof thereof has been tendered at a meeting of creditors.
- 9 The Liquidator be and is hereby authorised to make application for the destruction of books and records of the estate six months after the confirmation of the Final Liquidation and Distribution Account.
- 10 The Liquidator be and is hereby authorised to perform any act or exercise any power for which he is not expressly required by the Companies Act No 61 of 1973, as amended, to obtain the leave of the Court.

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MASTER'S REFERENCE NUMBER G.404/2015

- 11 The Liquidator be and is hereby authorised to submit to the determination of arbitrators any dispute concerning the Close Corporation or any claim or demand by or upon the Close Corporation.
- 12 The Liquidator be and is hereby authorised to carry on or discontinue any part of the business of the Close Corporation insofar as may be necessary for the beneficial winding-up thereof.
- 13 The Liquidator be and is hereby authorised to exercise *mutatis mutandis* the powers conferred upon a Liquidator by Section 35 (uncompleted acquisition of immovable property before liquidation) and 37 (effect of liquidation upon a lease) of the Insolvency Act No 24 of 1936, as amended, read with Section 339 of the Companies Act No 61 of 1973, as amended.
- 14 The further administration of the affairs of the Close Corporation be left entirely in the hands and at the discretion of the Liquidator.
- 15 That the sale of the movable assets by Public Auction/Private Treaty be and are hereby ratified.

q.q. CREDITORS

q.q. MEMBER

q.q. PRESIDING OFFICER