

**PROTECH KHUTHELE HOLDINGS LIMITED (IN LIQUIDATION) ("PKH")  
: MASTER'S REFERENCE NUMBER G.20348/14**

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**REPORT OF THE JOINT LIQUIDATORS, MR. THEODOR WILHELM VAN DEN HEEVER, MR. LIEBENBERG DAWID RYK VAN DER MERWE, MR. MARK ABRAHAM CHRISTIAN AND ME. IRENE SUSAN PONNEN, IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO. 61 OF 1973 (AS AMENDED), SUBMITTED AT A SECOND MEETING OF CREDITORS, MEMBERS AND CONTRIBUTORIES, HELD BEFORE THE MASTER OF THE HIGH COURT JOHANNESBURG, ON 01 SEPTEMBER 2017 AT 10H00.**

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**INTRODUCTION:**

PHK was provisionally wound-up upon application of Mr. Gavin Cecil Gainsford, the appointed Business Rescue Practitioner by way of an Order in The High Court of South Africa (South Gauteng High Court, Johannesburg), under Case Number 23866/2014 dated 02 July 2014. A final winding up order was granted on 19 September 2014.

Messrs. MA Christian, IS Ponnien, MI Patel and TW van den Heever were appointed Provisional Liquidators under Provisional Certificate of Appointment No. G.20348/14 dated 21 July 2014.

**FIRST MEETING OF CREDITORS:**

The First Meeting of creditors was convened by the Master of the High Court, Johannesburg, and held before the Master of the High Court, Johannesburg on 07 December 2015.

At the meeting claims were submitted, interrogated and adopted by the presiding officer, subsequent to which creditors with approved claims voted for the appointment of final liquidators.

As a result thereof Messrs. LDR van der Merwe, MA Christian, IS Ponnien, MI Patel and TW van den Heever were appointed as joint final liquidators under Certificate of Appointment No. G.20348/14 dated 05 May 2016.

Mr. MI Patel has subsequently been removed as one of the appointed Joint final liquidators and the Master and a revised final certificate of appointment was issued by the Master of the High Court on 06 July 2017.

**GENERAL INFORMATION:**

- The Company's registered address as at date of liquidation was Cnr R512 to Lanseria, Elandsdrift Road, Lanseria, 1748;
- The Auditors of the Company at date of liquidation were Deloitte & Touche;
- The Company's Tax number as at date of liquidation was 9523111145;
- The Company's VAT number as at date of liquidation was 4300244912.

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**REPORT**

Pursuant to *Section 402 of the Companies Act No. 61 of 1973*, as amended, we report as follows:

To date, the Directors have not lodged a Statement of Affairs (Form CM 100) with the Master of the High Court, in accordance with the provisions of Section 363(2) of the Companies Act.

**(a) THE AMOUNT OF THE ISSUED SHARE CAPITAL OF THE COMPANY AND THE ESTIMATED AMOUNT OF THE ASSETS AND LIABILITIES**

The Company was registered under Certificate of Incorporation No. 2000/024352/06 on 22 September 2000. According to information available, the Directors were:

**DIRECTOR(S) AT DATE OF LIQUIDATION:**

- |                               |                                 |
|-------------------------------|---------------------------------|
| • Matsotso Johanna Vuso       | Identity Number 730606 0284 084 |
| • Antony Stewart William Page | Identity Number 610711 5065 085 |
| • Terence William Rensen      | Identity Number 470703 5026 182 |
| • Malcolm Paton Adamson       | Identity Number 430613 5106 083 |
| • Neville David Robertson     | Identity Number 480602 5181 088 |
| • Paul Sean O'Flaherty        | Identity Number 630106 5036 085 |

**ASSETS AND LIABILITIES**

<b><u>ASSETS:</u></b>	<b>NOTES</b>	<b>R</b>	<b>R</b>
➤ Various office furniture & fittings			73 500.00
➤ Claims against third parties and recovery of debtors			Unknown

**LIABILITIES:**

**SECURED CREDITORS:**

⇒ Unknown

**PREFERENT CREDITORS:**

⇒ Various 9 897 947.41

**CONCURRENT CREDITORS:**

⇒ Various 227 592 031.27

Apparent shortfall before costs of administration		R 237 416 478.68
	<u>R 237 489 978.68</u>	<u>R 237 489 978.68</u>



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**NOTES:**

1. The proceeds of the movable assets in the above estate pertain to office furniture and fittings which were sold to the purchaser of the building where the company traded from. To further remove, store and eventually sell by public auction would have resulted in the underlying value of the assets being completely eroded.
2. PKH has an investment in a company, Ground Improvement Solutions (Pty) Ltd and we are currently investigating the collectability of the loan account.
3. PKH is a shareholder in GPS Joint Venture SARL registered in the Democratic Republic of the Congo. It is uncertain whether a recovery will be made from this quarter as the company due to its financial constraints could not fully participate in this joint venture and hence our ability to make a recovery is impaired. This matter is receiving our attention and a more comprehensive report to creditors will follow.
4. At this stage, a danger of contribution on proved creditors does exist.

**(b) CAUSES OF THE COMPANY'S FAILURE**

It would appear that the Company failed to maintain its Black Empowerment status thus impairing its ability to maintain and tender on new contracts. Its involvement in the DRC Joint Venture and the delays on that project substantially depleted its resources which culminated in its liquidation.

**(c) REPORT TO THE MASTER OF THE HIGH COURT IN TERMS OF SECTION 400(2)**

Should any irregularities be uncovered during the course of our administration, a report will be submitted to the Master of the High Court under Section 400(2) of the Companies Act No. 61 of 1973.

**(d) LIABILITY OF ANY DIRECTOR OR OFFICER OR FORMER DIRECTOR OR OFFICER FOR DAMAGES OR COMPENSATION TO THE COMPANY OR FOR ANY DEBTS OR LIABILITIES OF THE COMPANY**

To the extent that it becomes apparent to the Liquidators that this avenue of recovery is open to creditors, our further advice will follow.

**(e) LEGAL PROCEEDINGS BY OR AGAINST THE COMPANY**

Other than the litigation re the winding-up of the company, we are not aware of any further applications.

The Joint Provisional Liquidators filed a report with the Master in terms of the provisions of Section 45(3) of the Insolvency Act no. 24 of 1936 as read with the provisions of the Companies Act No. 61 of 1973, requesting the Master to expunge the claims of Constantia Insurance Co. Ltd. At the time of the distribution of this report, the Master had not yet communicated its ruling.

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**(f) FURTHER ENQUIRY IN REGARD TO ANY MATTER RELATING TO THE PROMOTION, FORMATION OR FAILURE OF THE COMPANY OR THE CONDUCT OF ITS BUSINESS**

We will postpone this meeting for the purpose of an enquiry into the affairs of the estate, particularly with regard to the fair value report done by PWC to investigate whether claims exist against third parties.

**g) ACCOUNTING RECORDS**

Although we have managed to download the company records from the cloud-based system which we believe is all the records that exist, we cannot definitively comment as to compliance with Section 284 of the Companies Act No. 61 of 1973.

**(h) PROGRESS AND PROSPECTS OF WINDING-UP**

The finalization of the estate will largely be determined by:-

1. The final determination of the claims of Constantia Insurance Co. Ltd, whether by way of the outcome of the Master's ruling under Section 45(3) *vis-à-vis* these claims or subsequently by a competent Court;
2. The assessment and recovery of claims against third parties;
3. The outcome of the enquiry re potential claims against third parties.

**(i) DIRECTIONS OF CREDITORS**

Such directions as we require are contained in the resolutions attached for your consideration. These resolutions will be submitted to the Second Meeting of Creditors on 01 September 2017 in conjunction with this Report. We seek that the Resolutions be adopted to enable us to continue the efficient administration of the liquidation.

**DATED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017**

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**T W VAN DEN HEEVER**  
**JOINT LIQUIDATOR**

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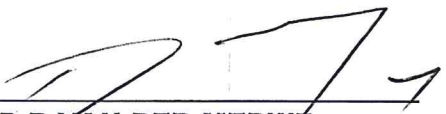
**M A CHRISTIAN**  
**JOINT LIQUIDATOR**

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**I S PONNEN**  
**JOINT LIQUIDATOR**



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**L D R VAN DER MERWE**  
**JOINT LIQUIDATOR**



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**RESOLUTIONS SUBMITTED AT THE SECOND MEETING OF CREDITORS HELD  
BEFORE THE MASTER OF THE HIGH COURT JOHANNESBURG, ON  
01 SEPTEMBER 2017 AT 10H00.**

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**RESOLVED**

1. **THAT** the actions of the Provisional Liquidator / Joint Provisional Liquidators / Joint Liquidators and/or Provisional Trustee / Joint Provisional Trustees / Trustee / Joint Trustees in employing night watchmen to protect the premises and assets of the Company be and are hereby approved and ratified, all costs relating thereto to be costs in the liquidation.
2. **THAT** the actions of the Liquidator / Provisional Liquidator / Joint Provisional Liquidators / Joint Liquidators and/or Trustee / Provisional Trustee / Joint Trustees and/or Joint Provisional Trustees in having disposed of assets, shares and loan accounts, prior to the date of this meeting, be and are hereby approved and ratified, all costs incurred in relation thereto to be costs in the liquidation.
3. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised to collect any outstanding debts due to the Company / Close Corporation in liquidation or Insolvent Estate and for the purpose thereof either to sell or compound any of these debts for such sum and on such terms and conditions as they in their sole discretion may deem fit, or to abandon any claims which they, in their sole discretion, may deem to be irrecoverable, or to institute legal action and/or employ Attorneys and/or Counsel in connection with the recovery of the debts, and to proceed to the final end or determination of any such legal actions instituted or to abandon same at any time as they in their sole discretion may deem fit, all legal costs so incurred to be costs in the liquidation.
4. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised by the creditors in terms of Section 73 of the Judicial Matters Amendment Act 1998, to waive the taxation by the Taxing Master of the High Court of the fees and disbursements of attorneys The prior written authorisation by creditors is hereby waived and the actions taken by the Liquidator / Joint Liquidators and/or Trustee / Joint Trustee are hereby ratified.
5. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised to employ a Forensic Auditor being a Chartered Accountant, to investigate and write up the books of the Company / Close Corporation or Insolvent Estate to the date of liquidation or sequestration, and to produce an audited Balance Sheet as at that date, all costs, to be charged at Auditor General Rates incurred in relation thereto to be costs in the liquidation.
6. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees are hereby authorised and empowered to –

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- 6.1 engage the services of Attorneys and Counsel in connection with any matter arising out of or related to the affairs of the Company / Close Corporation / Insolvent Estate;
- 6.2 agree with such Attorney on the tariff and/or scale of fees to be charged by and paid to the Attorney for the rendering of the services to the Company / Close Corporation / Insolvent Estate;
- 6.3 pay to the Attorney; provided that there is at all times a sufficiency of funds in the Free Residue, the agreed costs and the disbursements made by the Attorney as and when the services are rendered and the disbursements are made subject to -
  - 6.3.1 the taxation of such costs and disbursements by the Master of the High Court when the Attorney has performed his Mandate;
  - 6.3.2 the repayment by the Attorney to the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees of any payment made by the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees to the Attorney in respect of the latter's costs and disbursements which exceeded the amount determined by the taxation, or in the event of the Attorney becoming disentitled to such payment, or any portion thereof, if it should be excluded from the confirmed Liquidators' / Trustees' Account pursuant to any objection under Section 111 of the Insolvency Act, 1936; and
  - 6.3.3 that the Liquidator / Joint Liquidator and/or Trustee / Joint Trustees are/is hereby authorised to engage whatever further legal assistance the former may require in the interests of the estate and that the costs thereof be paid out of the funds of the estate as part of the costs of administration.
- 7. **THAT** the Liquidator / Provisional Liquidator / Joint Provisional Liquidators and/or Joint Liquidators and/or Trustee / Provisional Trustee / Joint Trustee and/or Joint Provisional Trustee be and are hereby authorised and empowered in their discretion to contest or defend any legal proceedings by or against the Company / Close Corporation and/or Insolvent Estate and, should they deem it necessary, to employ Attorneys and/or Counsel to assist and all costs incurred in terms thereof to be costs in the liquidation.
- 8. **THAT** the Liquidator / Joint Liquidator be and is/are hereby authorised to institute or defend legal action and/or employ the services of a tracing agent or debtor collector in order to collect debts owing to the estate or in respect of any other matter affecting the estate including the holding of Enquiries or examinations in terms of the Insolvency Act, 1936 and/or the Companies Act No. 61 of 1973, as amended, as he/ they may deem fit, and for such purposes to employ the services of attorneys and/or counsel of his / their choice and to pay the cost out of the funds of the estate as part of the costs of administration which accounts do not have to be taxed but a fee approved by the Liquidator / Joint Liquidators will be payable.
- 9. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised to dispose of the immovable and movable assets of the Company / Close Corporation and/or Insolvent Estate by either Public Auction or Public Tender or Private Treaty. The mode of sale for any one or more of the assets to be at the discretion of the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees, and all costs incurred in relation thereto to be costs in the liquidation.



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10. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised and empowered in their discretion to hold an Enquiry into the formation and affairs of the Company / Close Corporation and/or Insolvent Estate, and/or any matters relating thereto, should they deem it to be in the best interests of Creditors, and to employ Attorneys and/or Counsel and/or Recording Agents to assist in the said Enquiry, and to summons any persons who they should deem necessary, to be present at the Enquiry, all costs so incurred to be costs in the liquidation, and that should costs be incurred for the use of a tape recorder where the State does not supply the service free of charge, the costs thereof and the cost for obtaining copies of the Court Records will be deemed part of the administration costs of the estate.
11. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised and empowered to investigate any apparent voidable and/or undue preference and/or any dispositions of property, and to take any steps which they in their discretion may deem necessary, including the instituting of legal action and the employment of Attorneys and/or Counsel, to have these set aside, and to proceed to the final end or determination of any such legal actions or to abandon same at any time as they in their sole discretion may deem fit, all costs incurred in terms thereof to be costs in the liquidation.
12. **THAT** in the event of any asset which is subject to a Mortgage Bond, Pledge or other form of security not realising sufficient to pay the claim of the secured creditor plus the pro-rata share of the costs of administration in full, then the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised, in their discretion, to abandon such asset to the creditor concerned at an agreed valuation, subject to the payment by such creditor of a pro-rata share of the costs of administration in terms of Section 89 of the Insolvency Act, as amended.
13. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised and empowered in their discretion, to compromise or admit any claim against the Company / Close Corporation and/or Insolvent Estate, whether liquidated or illiquid, as a liquidated claim in terms of Section 78(3) of the Insolvency Act, as amended, provided that proof thereof has been tendered at a meeting of creditors.
14. **THAT** the actions of the Provisional Liquidator / Liquidator / Joint Provisional Liquidators / Joint Liquidators and or Provisional Trustee / Joint Provisional Trustee / Trustee in advertising, calling for tenders for the purchase of the business and/or assets of the Company / Close Corporation or Insolvent Estate be and are hereby approved and ratified, all costs so incurred to be costs in the liquidation.
15. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised and empowered to sign all the necessary documents as may be required to effect transfer of the ownership of the assets, including immovable property, to the purchasers thereof.
16. **THAT** the actions of the Liquidator / Joint Provisional Liquidators and/or Joint Liquidators and/or Trustee / Joint Provisional Trustees and/or Joint Trustees in continuing the business of the Company / Close Corporation and retaining staff be and are hereby approved and ratified, all costs so incurred to be costs in the liquidation.



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17. **THAT** the actions of the Liquidator / Provisional Liquidator / Joint Provisional Liquidators and/or Joint Liquidators in employing salesmen and administrative personnel and generally to protect the interests of creditors be and are hereby approved and ratified and the fees of such personnel to be costs in the liquidation.
18. **THAT** the Liquidators / Joint Liquidators be and are hereby authorised and empowered to continue the business of the Company / Close Corporation from the date of liquidation until such time as creditors instruct them to the contrary or until such time as the assets are realised and to do all things which they in their sole discretion may deem necessary for the successful continuation of the business (all costs so incurred to be costs in the liquidation) and without restricting the generalities of their powers they are hereby specifically authorised:
- (i) To discharge and engage employees and to fix their remuneration.
  - (ii) To continue the lease of the Company's premises until such time as it is decided to determine the lease.
  - (iii) To employ persons to undertake the physical count and valuation of stock in trade at the beginning and end of any trading period subsequent to the date of liquidation of the Company.
  - (iv) To employ persons to prepare an inventory or inventories of all movable assets of the Company.
  - (v) Generally to do all things which they in their discretion may deem to be necessary to determine the lease.
19. **THAT** the action of the Liquidator / Provisional Liquidator / Joint Provisional Liquidators and/or Joint Liquidators in terminating any of the leases of the Company's / Close Corporation's offices, be and are hereby ratified, all costs so incurred to be costs in the liquidation.
20. **THAT** the Liquidator / Provisional Liquidator / Joint Provisional Liquidators and/or Joint Liquidators be and are hereby indemnified against any losses and/or claims for damages resulting from the continuation of the Company's / Close Corporation's business, all such losses and damages to be costs in the liquidation.
21. **THAT** the Liquidator / Provisional Liquidator / Joint Provisional Liquidators and/or Joint Liquidators / Trustee / Provisional Trustee / Joint Trustee / Joint Provisional Trustee be and are hereby authorised to abandon any asset if it is, in their opinion, of no value to the estate or if the realisation thereof would not, in their opinion, result in any benefit to the estate.
22. **THAT** the payment of reasonable expenses incurred by the Liquidator / Joint Liquidator and/or Trustee / Joint Trustee for his / their personal or his / their employee's transportation and accommodation in carrying out any statutory duty or in the performance of his / their duty as Liquidator / Joint Liquidator and/or Trustee / Joint Trustee be paid as administration costs additional to the Liquidator / Joint Liquidator and/or Trustee / Joint Trustees remuneration, immediately or as soon as the estate receives sufficient funds to meet such expenses. Such expenses include all reasonable hotel accommodation, necessary air travel, car rental and fuel calculated in accordance with AA-Tariffs.

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23. **THAT** the payment of reasonable expenses incurred by the Liquidator / Joint Liquidator and/or Trustee / Joint Trustee in carrying out any statutory duty or in the performance of his / their duty as Liquidator / Joint Liquidator and/or Trustee / Joint Trustee, be paid as administration costs additional to the Liquidator / Joint Liquidators and / or Trustee / Joint Trustees' remuneration./ Such expenses include the expenses incurred for countrywide deeds office searches, KreditInform enquiries, ITC Enquiries, Deed Search Enquiries, obtaining copies of Title Deeds, Bond documents, Court Orders and any other documents required, postages and petties and attendance at the Registrar of Deeds for the noting of Court Orders.

24. **THAT** the Liquidator / Joint Liquidator and/or Trustee / Joint Trustees are / is hereby authorised to charge as an administration expense against the estate, the costs of circularizing creditors, which circulars shall include but not necessarily be limited to:

- The provisional and Interim circular to creditors;
- Applications for extensions; and
- Progress reports.

In each case the actual expenditure relating to the postage and photocopying of documentation for the circular. Such expenses of obtaining photocopies, shall include the costs of photocopying bundles for the purposes of creditors' reports, circulars and in particular interrogations, which costs shall also include the costs of plastic binding covers and metal binders. The production of a certificate of the Provisional Liquidator / Liquidator / Trustee of such expenditure will be accepted by the creditors and will be sufficient proof of the disbursements.

25. **THAT** the Liquidator / Provisional Liquidator / Joint Liquidator / Joint Provisional Liquidator and/or Trustee / Provisional Trustee / Joint Trustee and/or Joint Provisional Trustee in his / their sole discretion be authorised to make advance awards to creditors. He / they are furthermore entitled in cases where he / they have made advance awards, to take his / their fee on the assets, where an award has been made in his / their sole discretion.

26. **THAT** the advances to the Company / Close Corporation / Insolvent Estate must be reimbursed to either the Financial Institution or D & T Trust (Pty) Limited at a rate of prime plus 2% for the period of such advance, and that this is regarded as a cost of administration.

27. **THAT** the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees be and are hereby authorised to make application for the destruction of the books and records of the Company / Close Corporation six months after the confirmation of the final account.

28. **THAT** the Report submitted by the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees, be and is hereby approved and adopted.

29. **THAT** the further administration of the affairs of the Company / Close Corporation / Insolvent Estate be left in the hands of the Liquidator / Joint Liquidators and or Trustee / Joint Trustees at his/their sole discretion.



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30. THAT all actions of the Liquidator / Joint Liquidators and/or Trustee / Joint Trustees to date be and are hereby approved and ratified.

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**q.q. CREDITORS**

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**PRESIDING OFFICER**

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**DATE**