

MORNING DEW TRADING 475 CC (IN LIQUIDATION)
("the Close Corporation")

MASTER'S REFERENCE NUMBER : T2017/08

REPORT SUBMITTED BY THE JOINT LIQUIDATORS IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO 61 OF 1973 AS AMENDED TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MASTER OF THE HIGH COURT PRETORIA ON 3 FEBRUARY 2011 AT 10H00

Nature of Liquidation	Application High Court of SA (Witwatersrand Local Division)
Date of liquidation	29 August 2006
Date of provisional Order	N/A
Date of Final Order	5 June 2008
Provisional appointees	JF Klopper & T J Mphahlele
Date of 1 st meeting of creditors	25 September 2008

GENERAL AND STATUTORY INFORMATION

Registrar of Companies

The Close Corporation was duly registered with the Registrar of Companies under their reference number 2007/085660/23

Registered Address

The registered address of the Close Corporation is Block B, Milestone Place, Route 21, Corporate Park, Sovereign Drive, Irene, 0062.

Members

It appears from my investigations the following persons were members:

R Truter
F Ferreira
C W J Botes
J Z Brooks
J J Joubert

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Business of the Close Corporation

The Close Corporation carried on business of distributors of energy drinks.

We now report in terms of Section 79 of the Close Corporation's Act:

SECTION 79(a)

Financial Statement Of Assets And Liabilities

According to information available to us the following would appear to represent the financial position of the Close Corporation as at the date of liquidation:

ASSETS		
Encumbered Assets		
Unencumbered Assets		
Movable assets - See note 1		15 000-00
Debtors - approximately		130,000.00
LIABILITIES		
Secured Creditors'	None	
Preferent Creditors		
Employees	0-00	
SARS	unknown	
Concurrent Creditors – estimated at	1,922,000.00	
Sub Total		
Deficit		

1. The assets consist of energy drinks the majority of which reach expiry date prior to liquidation and the balance expired in August 2008, hence the stock currently in our possession has no market value. Some of the stock has been sold however it is not certain whether it is possible to sell the remaining stock.

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SECTION 79(b)

Causes Of The Close Corporation's Failure

According to the member and the Notice of Motion the principle causes of the Close Corporation's failure are attributable to the following:

1. A dispute amongst the investors and members of the close corporation.

SECTION 79(c)

Report Under Section 400(2) Of The Companies' Act Read With Section 66 Of The Close Corporation's Act

The Members appears to have contravened the following provisions of the Companies' Act.

Section 242 in that I have not been furnished with the Minute Book of the Company and the Members may have failed to maintain same.

Section 284 in that I have not been furnished with the books and records of the Company and the Members may have failed to maintain same.

Section 363 In that I have not been furnished with a Statement of Affairs form.

SECTION 79(d)

Personal Liabilities Of Members Or Officers

At this stage we are unable to comment on whether the former member or officer of the Close Corporation can be held personally liable for the debts of the Close Corporation. A report will be submitted, 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.

SECTION 79(f)

Further Enquiry

The estate does not have sufficient free residue funds at its disposal to fund any further enquiry in terms of the provisions of Section 415 of the Companies' Act read with Section 66(1) of the Close Corporation's Act and accordingly creditors indemnified us and proceed with an enquiry into the affairs of the Close Corporation.

SECTION 79(g)

Books And Records

No records relating to the affairs of the Close Corporation have been handed to us.

SECTION 79(h)

Progress And Prospects Of Liquidation

Upon our appointment as Provisional Liquidators we immediately investigated the affairs of the Close Corporation. A letter of demand has been sent to all debtors of the Close Corporation, and an accounting will be made in our Liquidation Account to be submitted to the Master of the High Court in due course. We arranged for upliftment and storage of some of the stock of the company.

SECTION 79(i)

Matters Requiring Further Directions Of Creditors And Contributories

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

GENERAL

Although there does not appear to be any danger of a contribution being levied on Creditors, a minimal dividend will accrue to Creditors.

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DATED at JOHANNESBURG this _____ day of February 2011.


J.E. KLOPPER

DATED at this _____ day of February 2011.

T J MPHABLELE

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS
HELD BEFORE THE MASTER OF THE HIGH COURT PRETORIA ON 3 FEBRUARY 2011 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 heretobefore 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;

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- 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.
- 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

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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.
- 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.

q.q. CREDITORS