

SUN VALLEY BIO FRUIT CC (IN LIQUIDATION)**REGISTRATION NUMBER: 2005/155981/23****MASTER'S REFERENCE NUMBER: S15/2015**

REPORT OF THE JOINT LIQUIDATORS, IN TERMS OF SECTION 79 OF THE CLOSE CORPORATION'S ACT NO. 69 OF 1984 ("THE ACT") TO BE SUBMITTED AT A THE SECOND MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, UITENHAGE, ON WEDNESDAY, 20 SEPTEMBER 2017 AT 11H00

ORDER OF THE COURT AND MEETINGS

Nature of Application	Ex Parte Application to the High Court of South Africa (Eastern Cape Local Division, Port Elizabeth) - Case Number: 1668/2015
Date of Provisional Order	12 May 2015
Date of Final Order	02 June 2015
Liquidators	J F Klopper & W Langson
Appointment Date	26 May 2015

GENERAL AND STATUTORY INFORMATION**Registrar of Companies**

The Close Corporation was registered with the Registrar of Companies and Close Corporations on 28 October 2005 under Registration Number 2005/155981/23.

Registered Address

The registered address of the Close Corporation is reflected as being Lynette Place 2, Graaf-Reinet Road, Uitenhage, 6229.

Members

It appears from our investigations that the following two persons were the members of the Close Corporation as at date of liquidation:

- Johanna Catherina Swart - (Identity number: 480618 0020 006) -50%
- Martinus Swart – (Identity number: 470419 5031 003) -50%) - (Deceased subsequent to the date of liquidation).

Accounting Officer

The accounting officer of the Close Corporation is reflected as being Strydom & Partners Inc, 2 Lynette Place, Graaff Reinet Road, Uitenhage, 6229.

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REPORT IN TERMS OF SECTION 79 OF THE ACT
SECTION 79(a): ASSETS AND LIABILITIES

The following represents the assets and liabilities of the Close Corporation as at date of liquidation based on documentation lodged and investigations conducted.

ASSETS AND LIABILITIES	AMOUNT	AMOUNT
<u>Movable assets:</u>		
Cash		30 750,00
TOTAL ASSETS		30 750,00
<u>LIABILITIES</u>		
<u>Secured Creditors:</u> None		
<u>Preferent Creditors:</u> South African Revenue Services	Unknown	
<u>Concurrent Creditors:</u> Lekkerbly Boerdery Charles Botha Hendrik Nel Jacobus Botha C & A E Boerdery	R11 755 416 R 5 038 067 R 1 344 000 R 1 963 622 R 3 351 667	
SHORTFALL		23 422 022
TOTAL	R23 452 772	R23 452 772

Notes:

The assets and liabilities reflected above are subject to change and verification, depending on the claims submitted for proof as well as further investigations into the affairs of the Close Corporation.

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COMMENT ON THE ASSETS

The extent of the movable assets are unknown at this stage. Further investigations are underway.

COMMENT ON THE LIABILITIES

The extent of monies owing to the South African Revenue Services is unknown at this stage.

The liabilities relate mainly to monies owing to trade creditors in respect of services rendered and goods delivered to the Close Corporation.

SECTION 79(b): CAUSES OF THE CORPORATIONS FAILURE

According to the members as reflected in the Founding Affidavit in support of the court application for liquidation, the Close Corporation's main business was purchasing and exporting organically-grown citrus fruit. The Close Corporation conducted its business from premises in Kirkwood. According to the Founding Affidavit in support of the court application, the Close Corporation was dormant at date of liquidation.

Paragraph 10 of the Founding Affidavit states that, that initially, when the business commenced trading, Sun Valley Bio Fruit purchased fruit from the Blackie Swart Family Trust. The members of Sun Valley Bio Fruit are also trustees of the Blackie Swart Family Trust.

Other farmers in the area, namely Sun-Ad Farms, C & A E Botha Boerdery and Lekkerbly Boerdery started selling citrus fruit to Sun Valley Bio Fruit.

At the beginning of 2013, a dispute arose between the Close Corporation and some of the creditors who then stopped selling their citrus fruit to the Close Corporation in liquidation.

SECTION 79(c): REPORT UNDER SECTION 400(2) OF THE COMPANIES ACT READ WITH SECTION 66 OF THE ACT

At this stage it is unknown whether the former members have contravened provisions of the Companies Act. The books and records are being investigated as to whether the legal provisions, as required in respect of the keeping of such books and records have been complied with. We will furnish a report to the Master should it become necessary.

SECTION 79(d): LIABILITIES OF MEMBERS

At this stage, we cannot comment on whether the former members may be held personally liable on the following grounds:

1. To the Close Corporation on the grounds 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;

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3. To either a creditor of the Close Corporation or to the Close Corporation itself.

Should information come to light at a later stage that would change the status of the above, a report will be submitted. We are conducting further investigations into the affairs of the Close Corporation.

SECTION 79(e): LEGAL PROCEEDINGS

Legal action and legal proceedings were pending against the Close Corporation as at date of liquidation.

SECTION 79(f): ENQUIRY INTO FORMATION AND FAILURE

There are certain aspects relating to the trade, dealings and affairs of the Close Corporation that the Liquidators may want to investigate at an enquiry. Investigations are on-going with regard to the failure of the Close Corporation and the conduct of its business.

SECTION 79(g): BOOKS AND RECORDS

The Close Corporation's books and records have not as yet been handed to us.

SECTION 79(h): DIVIDEND PROSPECTS AND FURTHER WINDING UP

At this stage there would appear to be no prospect of a concurrent dividend award to creditors. Creditors will be advised should this position change.

SECTION 79(i): MATTERS REQUIRING THE FURTHER DIRECTIONS OF CREDITORS

Such directions as required of creditors are contained in the draft resolutions, which are submitted for consideration and adoption by the creditors at this meeting in conjunction with this report. Creditors are requested to adopt these resolutions to enable the administration of the affairs of the Close Corporation to be finalised.

SIGNED AT STELLENBOSCH ON THE *28th* DAY OF SEPTEMBER 2017.


J F KLOPPER
JOINT LIQUIDATOR

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SIGNED AT PORT ELIZABETH ON THE *6th* DAY OF SEPTEMBER 2017.


**W LANGSON
JOINT LIQUIDATOR**

**C/O INDEPENDENT ADVISORY (PTY) LIMITED
P O BOX 820
STELLENBOSCH
7599**

**TELEPHONE: 021 - 880 5400
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RESOLUTIONS SUBMITTED AND TO BE ADOPTED AT THE SECOND MEETING OF CREDITORS HELD BEFORE THE MAGISTRATE, UITENHAGE, 20 SEPTEMBER 2017 AT 11H00.

RESOLVED THAT:

- 1 The report of Liquidator or Joint Liquidators, as the case may be, hereinafter referred to as (the Liquidators"), as submitted, be received and adopted and all their actions referred to therein be and are hereby confirmed, ratified and approved.
- 2 All actions of whatsoever nature hereto before taken by the Liquidators be and are hereby confirmed, ratified and approved.
- 3 The Liquidators 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 their sole and absolute discretion.
- 4 The Liquidators be and are hereby authorised in their 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.
- 5 The Liquidators be and are hereby authorised in their 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 Liquidators 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.

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- 6 The Liquidators be and are hereby authorised to collect 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 they in their 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 they in their sole discretion may deem to be irrecoverable.
 - 7 The Liquidators be and are hereby authorised to dispose of any movable and immovable property of the Close Corporation, whether in their possession or under their control now or to come into their possession or under their control in the future by public auction, private treaty or public tender upon such terms and conditions as they in their sole and absolute discretion shall determine and to abandon any such assets for which they 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 Liquidators 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 Liquidators be and are hereby authorised and empowered in their sole discretion to compromise and admit any claim against the company 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 Liquidators, provided that proof thereof has been tendered at a meeting of creditors.
 - 9 The Liquidators be and are hereby authorised to make application for the destruction of books and records of the Close Corporation six months after the confirmation of the Final Liquidation and Distribution Account.
 - 10 The Liquidators be and are hereby authorised to perform any act or exercise any power for which they are not expressly required by the Companies Act No. 61 of 1973, as amended, to obtain the leave of the Court.
 - 11 The Liquidators be and are 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 Liquidators be and are 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 Liquidators be and are 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 creditors hereby consent to the Liquidators' remuneration ("the remuneration") being taxed by The Master of High Court in terms of Section 384 of the Act **at the higher figure** of:
 - 14.1 the prescribed tariff as is contained in Annexure CM 104 to the Winding up Regulations to the Act;

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- 14.2 the increased amount of work done by the Liquidators in terms of the actual time spent by their staff in the discharge of their duties in the winding-up as is reflected on properly kept timesheets at the charge out tariff of the respective professional and administrative staff and which will be deemed to be good cause for the increase of such remuneration.
- 15 The remuneration referred to in 14 above may further be increased based on aspects such as:
- 15.1 the complexity of the estate in question;
- 15.2 the degree of difficulty encountered by the Joint Liquidators in the administration of the estate, and
- 15.3 particular difficulties experienced by the Joint Liquidators because of the nature of the assets or some other similar feature connected with the winding-up.
- 16 The further administration of the affairs of the Close Corporation be left entirely in the hands and at the discretion of the Joint Liquidators.

q.q. CREDITOR / MEMBER

THE PRESIDING OFFICER