

# *I N D E P E N D E N T*

*C O R P O R A T E R E C O V E R Y A D V I S O R S*

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Date: **18 MAY 2007**

## **TO ALL KNOWN CREDITORS**

Dear Sir / Madam

**CANCUN TRADING NO. 141 CC (IN LIQUIDATION)**  
**REGISTRATION NUMBER : CK 1999/026553/23**  
**MASTER'S REFERENCE NUMBER : C85/2007**

We refer to the above matter and enclose a copy of the Joint Liquidators' Report, together with Resolutions, to be adopted at the First Meeting of Creditors to be held before the Master of the High Court, Cape Town, on Friday, 25 May 2007 at 09:00 a.m.

We confirm that, based on information at this stage, it is evident from the assets and liabilities reflected in the report that only secured creditors will benefit from the sale of the movable assets and claim forms are therefore not enclosed for completion by creditors.

We take this opportunity of assuring you of our best attention at all times.

Yours faithfully  
**INDEPENDENT TRUSTEES (PTY) LTD**

**H A PLAATJIES (MRS)**  
**For JOINT LIQUIDATORS**

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Directors:

JF Klopper B Com B Proc R Pieters B Econ LDR Van der Merwe B Com LLB  
MJ Maseko B Juris LLB HA Plaatjies B Juris LLB

**CANCUN TRADING NO. 141 CC**  
**(IN LIQUIDATION)**  
**("the Close Corporation")**

**REGISTRATION NUMBER : CK 1999/026553/23**

**MASTER'S REFERENCE NUMBER : C85/2007**

REPORT BY THE JOINT LIQUIDATORS, JOHANNES FREDERICK KLOPPER, ADRIAAN PETRUS SENEKAL *and* SADECK ZHAUN AHMED, IN TERMS OF SECTION 79 OF THE CLOSE CORPORATION'S ACT, NO. 69 OF 1984, ("THE ACT"), TO BE SUBMITTED AT A FIRST MEETING OF CREDITORS AND MEMBERS TO BE HELD BEFORE THE MASTER OF THE HIGH COURT, CAPE TOWN, ON FRIDAY, 25 MAY 2007 AT 09H00

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**INTRODUCTION AND MEETINGS**

The Close Corporation was placed under liquidation by an Order of the Magistrate's Court for the District of Stellenbosch held at Stellenbosch on 01 March 2007 pursuant to an application by Metcash Trading Africa (Pty) Limited under Case Number 528/2007.

The Master of the High Court, Cape Town, appointed Messrs. J F Klopper, A P Senekal and S Z Ahmed as Joint Liquidators in terms of Certificate of Appointment Number C85/2007 dated 09 March 2007.

The Provisional Order of Liquidation was made final on 19 April 2007.

**FORMATION AND HISTORY OF THE CLOSE CORPORATION**

It appears from documentation lodged that the Close Corporation was incorporated in terms of the Act under Registration Number CK 1999/026553/23 with its registered address situated at Bruk Munkes and Company, 3<sup>rd</sup> Floor, Ruskin House, 2 Roeland Street, Cape Town, Western Cape, and its principal place of business situated at Friendly Seven Eleven, 8 Morkel Street, Unipark, Stellenbosch, Western Cape.

It appears from our investigations that the sole member of the Close Corporation as at date of liquidation was:

- Mr D B le Roux.

The Close Corporation traded as a Seven Eleven Franchisee which became a Metcash Seven Eleven in June 2004.

**REPORT IN TERMS OF SECTION 79 OF THE ACT**

**SECTION 79(a) : ASSETS AND LIABILITES**

The following represents the assets and liabilities of the Close Corporation as at date of liquidation based on the application for liquidation and information provided by the member. Unless otherwise stated, these figures represent estimates and may change.

<b>ASSETS</b>	<b>AMOUNT {R}</b>	<b>AMOUNT{R}</b>
<b><u>Movable Property:</u></b>		
Office furniture and effects - valued at <i>(Subject to a Perfected Notarial Bond in favour of ABSA Bank Limited)</i>		R63 360,00
Stock - valued at <i>(Subject to a Perfected Notarial Bond in favour of ABSA Bank Limited)</i>		R36 657,23
Cash on hand approximately		R5 000,00
<b>SUB-TOTAL</b>		<b>R105 017,23</b>
<b>LIABILITIES</b>		
Secured Creditor : Estimated at	R577 036,00	
Preferent Creditors : Unknown at this stage	Unknown	
Concurrent Creditors : Estimated at	R410 000,00	
<b>SHORTFALL</b>		<b>R882 018,77</b>
<b>TOTAL</b>	<b>R987 036,00</b>	<b>R987 036,00</b>

**NOTES:**

We have approached the Master of the High Court, Cape Town, for an extension of our powers in terms of Section 386(2A) of the Companies Act No. 61 of 1973 to sell the movable assets by way of a public auction.

### **SECTION 79(b): CAUSES OF THE CORPORATION'S FAILURE**

According to information at our disposal and investigations conducted, the Close Corporation's demise was as a result of the following.

The Close Corporation was not in a position to meet its financial obligations in respect of the Franchise Agreement entered into with Metcash Trading Africa (Pty) Limited.

Under the circumstances, it became uneconomical to continue with business activities and an application for the liquidation of the Close Corporation was consequently applied for by Metcash Trading Africa (Pty) Limited.

### **SECTION 79(c): CONTRAVENTIONS AND OFFENCES : SECTION 400(2) OF THE COMPANIES ACT READ WITH SECTION 66 OF THE ACT**

At this stage, the members appears to have contravened certain provisions of the Act in that he failed to lodge a Statement of Affairs and failed to keep books and records. Once we have investigated this matter fully we will lodge a report to the Master of the High Court, if necessary.

### **SECTION 79(d) : LIABILITIES OF MEMBERS**

At this stage it is difficult to state whether the former member is personally liable to the Close Corporation:

- 1 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;
- 3 to either a creditor of the Close Corporation or to the Close Corporation itself.

A report will be submitted should it become necessary.

### **SECTION 79(e) : LEGAL PROCEEDINGS**

We have no knowledge of any legal proceedings pending or threatened by or against the Close Corporation as at date of liquidation save for actions relating to the recovery of debt caused by the liquidation of the Close Corporation.

### **SECTION 79(f) : ENQUIRY INTO FORMATION AND FAILURE**

Based upon the information available to us at this stage, it appears that an enquiry will not be necessary with regard to the formation and failure of the Close Corporation. However, should information come to hand that would warrant an enquiry, a report will be submitted.

### **SECTION 79(g) : BOOKS AND RECORDS**

No books and records relating to the Close Corporation's affairs in terms of Section 79(g) have been kept.

### **SECTION 79(h) : DIVIDEND PROSPECTS AND FURTHER ADMINISTRATION**

It is evident from the assets and liabilities reflected above that only secured creditors will receive dividend awards in this estate.

### **SECTION 79(i) : MATTERS REQUIRING 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 Close Corporation in liquidation to be continued with and finalised.

### **GENERAL**

1. In the light of recent criticism involving Liquidators' fees and a judgement in the Supreme Court of Appeal handed down in April 2004 and reported in January 2005, we deem it appropriate to bring to your attention our view that the Master of the High Court must tax Liquidators' fees in accordance with the tariff as is provided for in terms of Section 384(1) of the Companies Act, but having done so, the Master may reduce or increase the amount arrived at by applying the tariff if, in his or her discretion, there is "good cause" to do so.
2. The dominant provision of the aforesaid judgement is that the remuneration to which a Liquidator is entitled is remuneration for work or services rendered, not a set commission, and that it must be reasonable.
3. The tariff serves as a point of departure for the determination of the appropriate fee. However, once taxation is complete, the Master has a flexible discretion to increase or decrease the amount of remuneration arrived at by the previous application of the tariff.
4. The concept of 'good cause' is very wide and there is nothing in the Act which indicates that it should be interpreted so as to exclude any factor which may be relevant in determining what constitutes reasonable remuneration for a Liquidators' services in the circumstances of each case.

5. Obviously, what factors are relevant will vary from case to case, but may certainly include aspects such as:
  - 5.1. the complexity of the estate in question;
  - 5.2. the degree of difficulty encountered by the Liquidators in the administration thereof;
  - 5.3. the amount of work done by the Liquidators **and the time spent by them in the discharge of their duties involved.**
6. If, in the administration of the estate particular difficulties are experienced by the Liquidators because of the nature of the assets or some other similar feature connected with the administration, this would undoubtedly constitute 'good cause' entitling the Master to increase the tariff remuneration.
7. In view of the above we hereby advise that we have resolved to keep time records of the work done by our staff in order to enable the Master to be guided along the above-mentioned guidelines and are in the process of writing up detailed time sheets of the effort and correspondence in this matter which will then be presented to the Master when submitting the next account in this matter.
8. We also wish to bring to your attention that the SCA held in the above-mentioned reported judgement that an hourly fee of R1 800,00 for a Liquidator based on the experience and qualifications of the parties in that matter would not be inappropriate. For your information we also advise that the charge out rates of our staff will be based on this rate as a point of departure and taking into consideration the qualifications of our staff.

**JOHANNES FREDERICK KLOPPER  
JOINT LIQUIDATOR**

**ADRIAAN PETRUS SENEKAL  
JOINT LIQUIDATOR**

**SADECK ZHAUN AHMED  
JOINT LIQUIDATOR**

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**CANCUN TRADING NO. 141 CC**  
**(IN LIQUIDATION)**  
**("the Close Corporation")**

**REGISTRATION NUMBER : CK 199/026553/23**

**MASTER'S REFERENCE NUMBER : C85/2007**

**RESOLUTIONS TO BE SUBMITTED AND ADOPTED AT THE FIRST MEETING OF CREDITORS AND MEMBERS TO BE HELD BEFORE THE MASTER OF THE HIGH COURT, CAPE TOWN, ON FRIDAY, 25 MAY 2007 AT 09H00**

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**RESOLVED THAT:**

- 1 The report of the Provisional Joint Liquidators or Joint Liquidators, as the case may be, hereinafter referred to as "the Joint 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 heretofore taken by the Joint Liquidators be and are hereby confirmed, ratified and approved.
- 3 The Joint 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 Joint 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 corporation;
  - 4.2 Institute or defend on behalf of the corporation any action or other legal proceedings of a civil nature for the recovery of monies due to the 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 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 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 corporation, establishing the claims of creditors, or any other purpose.
- 5 The Joint 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 corporation and/or recording agents and/or any other person who in the sole discretion of the Joint Liquidators may be of assistance in the winding-up of the 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 Joint Liquidators be and are hereby authorised to collect any debts due to the 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 Joint Liquidators be and are hereby authorised to dispose of any movable and immovable property of the 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 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 Joint Liquidators be and are hereby authorised and empowered in their sole discretion to compromise and admit any claim against the corporation of whatsoever nature and howsoever arising, 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 Joint Liquidators, provided that proof thereof has been tendered at a meeting of creditors.
- 9 The Joint Liquidators be and are 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 Joint 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 Joint 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 Joint 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 Joint 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 Section 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 Joint 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;
  - 14.2 the increased amount of work done by the Joint 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.

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q.q. CREDITOR / MEMBER