

# *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*

Independent Trustees (Pty) Limited (Reg No 2002/025164/07)  
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## **TO ALL KNOWN CREDITORS**

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Our Ref: **J F KLOPPER / Henriëtte**  
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Date: **02 August 2006**

Dear Sir / Madam

**COPPOOLSE & FINLAYSON INTERNATIONAL (PTY) LIMITED (IN LIQUIDATION)**  
**("THE COMPANY")**  
**COMPANY REGISTRATION NUMBER : 2005/018264/07**  
**MASTER'S REFERENCE NUMBER : C14/2006**

We refer to the above-mentioned matter and enclose a copy of the Joint Liquidators' Report, together with Resolutions, to be adopted at the Second Meeting of Creditors and Members to be held before the Magistrate, Goodwood, on Wednesday, 16 August 2006 at 09h00.

We reiterate and confirm that there is no danger of a contribution being levied upon creditors in this matter. However, based on asset realisations and known claims, there would appear to be no prospect of a concurrent dividend award due to the substantial secured and preferent claims which have been submitted.

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

**J F KLOPPER**  
**JOINT LIQUIDATOR**

*Sent electronically and therefor not signed*

**COPPOOLSE & FINLAYSON INTERNATIONAL (PTY) LIMITED**  
**(IN LIQUIDATION)**  
**("THE COMPANY")**

**REGISTRATION NUMBER : 2005/018264/07**

**MASTER'S REFERNCE NUMBER : C14/2006**

**REPORT OF THE JOINT LIQUIDATORS, JOHANNES FREDERICK KLOPPER, MUHAMMAD RUSHDI RAJAH, CHRISTIAAN JACOBUS PRETORIUS *and* STEPHEN MALCOLM GORE, IN TERMS OF SECTION 402 OF THE COMPANIES ACT, ACT NO. 61 OF 1973, AS AMENDED, ("THE ACT"), TO BE SUBMITTED TO AT A SECOND MEETING OF CREDITORS AND MEMBERS TO BE HELD BEFORE THE MAGISTRATE, GOODWOOD, ON WEDNESDAY, 16 AUGUST 2006 AT 09H00**

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**ORDER OF THE COURT AND MEETINGS CREDITORS**

The company was placed in provisional liquidation by Order of the High Court of South Africa (Cape of Good Hope Provincial Division) on 10<sup>th</sup> January 2006 pursuant to an application by Excelsior Boerdery (Pty) Limited T/A Du Preez Estate under Case Number 13006/2005.

The application for the provisional liquidation of the company was issued in the High Court on 14<sup>th</sup> December 2005 and in terms of the provisions of Section 348 of the Act, liquidation is deemed to have commenced on that date.

Messrs J F Klopper of Independent Trustees, C J Pretorius of Planet Administrators, M R Rajah of S A B & T Inc (Chartered Accountants) and S M Gore of Sanek Trust were appointed as Joint Provisional Liquidators by the Master of the High Court, Cape Town, under Certificate of Appointment Number C14/2006.

The provisional order was made final on 21 February 2006.

The first meeting of creditors was held before the Magistrate, Goodwood, on 03 May 2006, at which meeting sixty-one claims totalling R22,650,913.41 were submitted and proved by the presiding officer.

No voting took place at that meeting of creditors and the Joint Provisional Liquidators were appointed as Final Liquidators by the Master of the High Court, Cape Town, as per Certificate of Appointment Number C14/2006 dated 11 July 2006.

## **HISTORY AND INFORMATION OF THE COMPANY**

A Close Corporation, Hendriks & Hendriks Wijnkoperij CC, was initially formed during 1991 under Registration Number 1991/034146/23 which was converted to the company under Registration Number 2005/018264/07 with its principal place of business situated at 21 – 23 Kenwyl Avenue, Okavango, Brackenfell, Western Cape.

Investigations conducted by the Joint Liquidators and documents relating to a proposed restructuring of the company's affairs during the latter part of 1995 revealed that one of the company's directors, Robert Coppoolse, initially acted as agent for certain wine estates in selling their wines into the export market during or about 1991.

Coppoolse was joined in the venture by Walter Finlayson, a well known South African wine maker during 1992, and the close corporation referred to above changed its name to Coppoolse Finlayson International CC. ("CFI CC").

This close corporation entered into a joint venture in the wine making business in 1995 which was dissolved in 1998 when the company moved into the premises in Brackenfell. A modern facility for blending, bottling and wine making was built by a property owning entity known as Units 5 & 6 Kenwyl Drive CC (which was also converted to a company during 2005). The members of this close corporation and the shareholders of the company are the same. The present directors were joined by Mr Viv Grater, a chartered accountant, who became a member of CFI CC.

The property owning entity also acquired the farm Bon Esperance near Stellenbosch during 2002.

During October 2005 the shareholders appear to have entered into discussions with a view to going their separate ways.

It would appear that Mr Coppoolse, the remaining shareholder, sought other investors to help refinance the company's business which, according to the author of documents prepared with a view to proposing a scheme of arrangement or compromise in terms of section 311 of the Act during November 2005, was suffering from cash flow problems apparently due to the strength of the Rand.

During November 2005, the company, represented by Mr Coppoolse held discussions with Overhex Private Cellars (Pty) Limited about the possibility of using the company's facilities in a joint venture.

These meetings and discussion relating to the joint venture came to an end when the company received notice from its largest client in Europe, Group LFE in the Netherlands, that their contract for 2007 would not be renewed. At that stage the shareholders and directors apparently decided that the company's business should be terminated or "closed".

In the documentation relating to the proposed Section 311 scheme of arrangement it is stated that, upon completing a physical stock count at the end of November 2005 and after having received a valuation reflecting the realisable values for the company's stock and assets, it became apparent that the company was insolvent.

### **REGISTERED ADDRESS**

The registered address of the company is reflected as being 4 Glen Roy, Pinelands, Western Cape.

### **DIRECTORS AND SHAREHOLDERS**

It appears from our investigations that the following persons served as the directors of the company:

Walter Maurice Finlayson;  
Robert Christian Coppoolse.

### **BUSINESS OF THE COMPANY**

The principal business of the company was that of a merchant selling bulk wine into Europe.

### **AUDITORS**

The former auditor of the company is reflected as being Cameron & Prentice of 4 Glen Roy, Pinelands, Western Cape.

### **STATEMENT OF AFFAIRS**

We have not been placed in possession of a Statement of Affairs by the directors as required in terms of Section 363 of the Companies Act, No 61 of 1973, as amended.

### **SECTION 402(a) : FINANCIAL STATEMENT OF ASSETS AND LIABILITIES**

The following represents estimates of the assets and liabilities of the company at date of liquidation and are subject to verification and adjustment depending on the claims submitted for proof.

<b>ASSETS</b>		
Movable assets sold by public auction (Subject to instalment sale agreements in favour of Wesbank and Standard Bank)		3,845,847.00
Book debts collected to date (Subject to cession in favour of Standard Bank)		3,966,931.46
Movable Property and effects: (Subject to a general notarial bond in favour of Standard Bank)		
Movable assets sold by public auction		4,428,659.36
Proceeds of bottled wine		1,030,468.00
Proceeds of bulk wine		188,700.00
Movable assets sold by MJO prior to public auction		140,350.00
Khaya trademark sold for		136,800.00
Sentinel trademark sold for		173,060.00
<b>SUB TOTAL</b>		<b>13,910,815.82</b>
<b>LIABILITIES</b>		
Secured Creditors	3,985,475.13	
Section 98A Preferent Creditors: Further claims awaited	181,942.62	
Section 99 Preferent Creditors: To be determined	-	
Section 102 Preferent Creditors	3,593,950.77	
Section 103 Concurrent Creditors: Further claims awaited	14,974,719.16	
<b>Shortfall</b>		<b>8,825,271.86</b>
<b>TOTAL</b>	<b>22,736,087.68</b>	<b>22,736,087.68</b>

**NOTE:**

The assets were sold by way of a public auction pursuant to an Order of the High Court of South Africa which, inter alia, authorized the Joint Provisional Liquidators to dispose of the stock and the movable assets of the company, including the trademarks and trade names, by private treaty and/or by public auction.

**SECTION 402(b) : CAUSES OF THE COMPANY'S FAILURE**

These appear to include:

1. Strength of the Rand affecting the value of exports.

Other potential causes of failure are still being investigated.

**SECTION 402(c) : REPORT TO THE MASTER IN TERMS OF SECTION 400 (2) OF THE COMPANIES ACT**

Save to state that the directors have failed to submit a Statement of Affairs, it is not at this stage certain what other contraventions of the Act have been committed by the directors. This is still under investigation.

The directors have been requested to submit a Statement of Affairs. The books and records are alleged to have been properly kept but we have been unable to determine as yet whether the legal provisions as required in respect of the keeping of such records have been complied with. A report will be submitted should it become necessary.

Although directors failed to attend the first meeting of creditors, their failure to do so was attributable to a typographical error in the letter advising of the date and time of the first meeting.

#### **SECTION 402(d) : PERSONAL LIABILITIES OF DIRECTORS OR OFFICERS**

At this stage it is not clear whether the former directors of the company can be held personally liable for the debts of the company. Investigations are being conducted and a report will be submitted should it become necessary. Our investigations in this regard are continuing.

#### **SECTION 402(e) : LEGAL PROCEEDINGS**

We have no knowledge of any legal proceedings pending or threatened by or against the company as at date of liquidation other than actions relating to the recovery of debt.

#### **SECTION 402(f) : ENQUIRY**

Based upon the information available to us at this stage, it appears that an enquiry may be necessary with regard to the formation and failure of the company.

The effect of the commencement of the liquidation on 14<sup>th</sup> December 2005 on creditors is also being investigated, particularly in relation to transactions between then and the granting of the provisional winding up order.

#### **SECTION 402(g) : BOOKS AND RECORDS**

Certain books and records relating to the company's affairs in terms of the Act have been handed to us. These records are mainly in electronic format and will require more investigation.

#### **SECTION 402(h) : ESTIMATED DIVIDEND**

Based on asset realisations and known claims, there would appear to be no prospect of a concurrent dividend award due to the substantial secured and preferent claims which have been submitted.

**SECTION 402(i) : MATTERS REQUIRING THE FURTHER DIRECTIONS OF CREDITORS**

Such directions as are required of creditors are contained in the draft resolutions numbers 1 – 13 which are submitted for consideration and adoption by the creditors at the second meeting of creditors in conjunction with this report. Creditors are requested to adopt these resolutions to enable the administration of the company in liquidation to be continued and finalised.

**SIGNED AT STELLENBOSCH ON THIS DAY OF AUGUST 2006**

.....  
**JOHANNES FREDERICK KLOPPER  
JOINT LIQUIDATOR**

**SIGNED AT BELLVILLE ON THIS DAY OF AUGUST 2006**

.....  
**MUHAMMAD RUSHDI RAJAH  
JOINT LIQUIDATOR**

**SIGNED AT CAPE TOWN ON THIS DAY OF AUGUST 2006**

.....  
**CHRISTIAAN JACOBUS PRETORIUS  
JOINT LIQUIDATOR**

**SIGNED AT CAPE TOWN ON THIS DAY OF AUGUST 2006**

.....  
**STEPHEN MALCOLM GORE  
JOINT LIQUIDATOR**

**C/O INDEPENDENT TRUSTEES (PTY) LIMITED**

**P O BOX 820  
STELLENBOSCH  
7599**

**TELEPHONE: 021 – 880 5400**

**TELEFAX: 021 – 880 5430**



**COPPOOLSE & FINLAYSON INTERNATIONAL (PTY) LIMITED**  
**(IN LIQUIDATION) (“THE COMPANY”)**

**REGISTRATION NUMBER : 2005/018264/07**

**MASTER’S REFERNCE NUMBER : C14/2006**

**RESOLUTIONS**

**RESOLUTIONS TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS AND MEMBERS TO BE HELD BEFORE THE MAGISTRATE, GOODWOOD, ON WEDNESDAY, 16 AUGUST 2006 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, (“The Act”) 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 company;
  - 4.2. Institute or defend on behalf of the company any action or other legal proceedings of a civil nature for the recovery of monies due to the company

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 company 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 company 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 company, 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 company 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 company 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 company 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 company, 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 Joint 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 Joint 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 Act, 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 company or any claim or demand by or upon the company.
12. The Joint Liquidators be and are hereby authorised to carry on or discontinue any part of the business of the company 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 37 (effect of liquidation upon a lease) of the Insolvency Act No 24 of 1936, as amended, read with Section 339 of the Act.
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 them or 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 company be left entirely in the hands and at the discretion of the Joint Liquidators.

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**q.q. CREDITORS**