

# *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**

Your Ref:  
Our Ref: **H A PLAATJIES / ELAINE**  
Direct Line: **021 – 880 5400**  
Direct Fax: **021 – 880 5430**  
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Direct E-Mail: **hillaryp@corprecover.co.za**  
Date: **21 July 2010**

Dear Sir / Madam

### **INSOLVENT ESTATE: KAPULA CANDLES (PTY) LIMITED (IN LIQUIDATION) MASTERS REFERENCE NUMBER: C 82/2010 REGISTRATION NO. 2000/009316/07**

We refer to the above matter and enclose a copy of the Joint Liquidators' Report, together with Resolutions, to be adopted at the Second Meeting of Creditors to be held before the Magistrate, Bredasdorp, on Thursday 5 August 2010.

We confirm that 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.

We assure you of our best attention at all times.

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

**H A PLAATJIES**  
**JOINT LIQUIDATOR**

**Independent Trustees (Pty) Ltd is a member of hww insolvency cooperation partners**

Austria (Vienna) Brazil (Sao Paulo) Cayman Islands (Grand Cayman) Czech Republic (Prague) France (Paris) Germany (Hamburg) Great Britain (London)  
Hungary (Budapest) India (New Delhi) Italy (Rome) Mexico (Mexico City) Netherlands (Amsterdam) Poland (Warsaw) Republic of China (Hong Kong)  
Romania (Bucharest) Russia (Moscow) South Africa (Johannesburg) Spain (Barcelona) Sweden (Stockholm) USA (New York)

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

\* Member of the Association of Insolvency Practitioners of Southern Africa ("AIPSA")

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

REPORT OF THE JOINT LIQUIDATORS, JOHANNES FREDERICK KLOPPER, HILLARY ANNE PLAATJIES and BONGANI RAZIYA, IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO. 61 OF 1973, AS AMENDED, TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS & CONTRIBUTORIES TO BE HELD BEFORE MAGISTRATE, BREDASDORP, ON THURSDAY, 05 AUGUST 2010, AT 09H00

**ORDER OF THE COURT AND MEETINGS**

Nature of Application	Application to the High Court of South Africa (Western Cape High Court, Cape Town) – case number: 1680/2010
Provisional Liquidators	J F Klopper, H A Plaatjies & B Raziya
Provisional Appointment Date	12 February 2010
Final Liquidators	J F Klopper, H A Plaatjies & B Raziya
Final Appointment Date	25 June 2010
Date of 1 <sup>st</sup> meeting of creditors	19 May 2010
Claims proved at first meeting	Standard Bank and workers claims proved

**GENERAL AND STATUTORY INFORMATION**

**Registrar of Companies**

According to the Registrar of Companies, the company was incorporated under registration number on 2000/009316/07.

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

### **Registered Address**

The registered address of the company is reflected as 13 Cereal Street, Bredasdorp.

### **Directors**

It appears from our investigations that the following person consented to serve as the director of the company:

- André Roedolf Appelgryn
- Ilse Appelgryn
- Daniel Simoleit

### **Business of the Company**

Kapula Candles (Pty) Limited, a company duly incorporated in terms of the laws of the Republic of South Africa.

The company's main business was the manufacturing and sale of hand painted candles and ceramics. The company provided its goods to various industries.

### **Auditors**

The auditors of the company, Boshoff Visser Bredasdorp Incorporated is situated in Bredasdorp at P O Box 776, Bredasdorp, 7280.

### **STATEMENT OF AFFAIRS**

We have not as yet 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. We have, however, not been hampered in our administration of the affairs of the company as a result of this.

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

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

The following represents the assets and liabilities of the company that we are aware of as at date of liquidation. The assets and liabilities listed are subject to verification and adjustment and may change depending on the claims submitted for proof.

<b>ASSETS</b>	<b>AMOUNT {R}</b>	<b>AMOUNT{R}</b>
Erf Number 1185 & 1186 Bredasdorp – sold for (Subject to Covering Bond in favour of Standard Bank)		R 600 000,00
Movable assets and intellectual property - sold for		R 600 000,00
Debtors recovered		R 1 016 102,71
Debtors outstanding		R 305 389,24
Stock sales		R 76 737,35
<b>TOTAL</b>		<b>R 2 521 499,90</b>
<b>LIABILITIES</b>		
<b><u>Secured Creditors:</u></b> The Standard Bank of South Africa Limited – Cession of debtors – R1 721 674,65 and covering bond - R 799 657,35	R 2 521 332,90	
<b><u>Preferent Creditors:</u></b> SARS – VAT & LBS	R 181 000,00	
Workers – estimated at	R 946 490,31	
Concurrent Creditors - Estimated at	R 1 052 579,88	
<b>SHORTFALL</b>		<b>R 2 179 902,20</b>
<b>TOTAL</b>	<b>R 4 701 403,00</b>	<b>R 4 701 402,19</b>

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

### **COMMENT ON THE ASSETS**

We received an offer to purchase the assets of the company in the amount of R600 000,00 for the immovable property and R600 000,00 for the movable assets. The liquidators obtained a Section 386(4) court order and pursuant to obtaining this court order the assets were sold by private treaty.

### **COMMENTS ON THE LIABILITIES**

Standard Bank's claim is secured by an unrestricted cession of book debts and a first continuing covering mortgage bond over the immovable property.

Preferent creditors consists of the workers' claims and a claim by the South African Revenue Services. The extent of monies owing to the South African Revenue Services is approximately R 181 000,00.

The balance of the liabilities relates to monies owing in respect of services rendered, goods purchased and delivered (concurrent creditors).

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

Initial investigations revealed that during 2000 the company commenced business as manufacturer and supplier of candles (mainly handpainted) and handpainted ceramics, and conducted its business from premises in Bredasdorp. The company's main clients are Woolworths and an overseas client.

In April 2009, a factory operated by the company in Elsie's River, was destroyed in a fire. The consequences of the fire resulted in further operational and financial implications which caused a financial setback.

A dispute arose between the directors which caused a severe breakdown in the relationship between directors. One of the directors instructed overseas creditors of the company to make payment into a bank account other than the company's bank account. This director used his best endeavours to alienate the overseas customers of the company. The director substantially depleted the company's bank account in Germany. The alleged mismanagement of funds and deadlock in the management caused major cashflow problems for the company.

In the light of the above, the company was unable to settle the claims of its creditors in the ordinary course of business.

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

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

Should information come to light at a later stage to the effect that the directors could be held personally liable for the debts of the company, a report will be submitted to the Master.

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

At this stage we are unable to comment as to whether any former director of the company could be held personally liable for the debts of the company. Should information come to light at a later to the effect that the directors could be held personally liable for the debts of the company, a report will be submitted should it become necessary.

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

Legal proceedings pending or threatened by or against the company as at date of liquidation related to the following:

1. recovery of debt;
2. Substantial damages claim against the company as a result of the fire at one of it's premises;
3. Legal proceedings to vindicate the transfer of the trademark belonging to the company.

**SECTION 402(f) : ENQUIRY**

Based upon the information available to us at this stage, it appears that an enquiry may not be necessary with regard to the formation and failure of the company in terms of the provisions of the Act. A report will be submitted should it become necessary.

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

The books and records kept in terms of the Act have been handed to us.

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

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

Based on asset realisations and known claims, there would appear to be no prospect of an award due to concurrent creditors in this estate 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 – 16 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 with and finalized.

**SIGNED AT STELLENBOSCH ON THIS 21<sup>st</sup> DAY OF JULY 2010**

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

**SIGNED AT STELLENBOSCH ON THIS 21<sup>st</sup> DAY OF JULY 2010**

.....  
**HILLARY ANNE PLAATJIES**  
**JOINT LIQUIDATOR**

**KAPULA CANDLES (PTY) LIMITED**  
**(REGISTRATION NUMBER: 2000/009316/07)**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C 82/2010**

**SIGNED AT**

**ON THIS**

**DAY OF JULY 2010.**

.....  
**BONGANI RAZIYA**  
**JOINT LIQUIDATOR**

**C/O INDEPENDENT TRUSTEES (PTY) LIMITED**  
**P O BOX 820**  
**STELLENBOSCH**  
**7599**  
**TEL: 021 – 880 5400**  
**FAX: 021 – 880 5430**



**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, BREDASDORP, ON THURSDAY, 5 AUGUST 2010 AT 09H00**

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**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 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 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 Liquidator 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 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

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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 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 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 estate 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 company or any claim or demand by or upon the company.
- 12 The 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 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.

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- 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;
  - 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 Liquidators in the administration of the estate, and
  - 15.3 particular difficulties experienced by the 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**

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**PRESIDING OFFICER**