

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 / S DANEEL**
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Date: **08 AUGUST 2008**

Dear Sir / Madam

**SIBEKO WINES (PTY) LIMITED (IN LIQUIDATION) (“THE COMPANY”)
COMPANY REGISTRATION NUMBER : 2004/028033/07
MASTER’S REFERENCE NUMBER : C535/2007**

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, Bellville, on Friday, 15 August 2008 at 11h00.

We confirm that based on asset realisations and known claims at this stage, only the secured creditor will receive a dividend award in this estate. Concurrent creditors are therefore requested not to lodge claim documents for proof at this meeting.

Yours faithfully
INDEPENDENT TRUSTEES (PTY) LTD

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

SIBEKO WINES (PTY) LIMITED (IN LIQUIDATION)
("THE COMPANY")

REGISTRATION NUMBER : 2004/028033/07

MASTER'S REFERENCE NUMBER : C535/2007

REPORT OF THE JOINT LIQUIDATORS, JOHANNES FREDERICK KLOPPER *and* MARC BRADLEY BEGINSEL, IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO. 61 OF 1973, AS AMENDED, ("THE ACT"), TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, BELLVILLE, ON FRIDAY, 15 AUGUST 2008 AT 11H00

ORDER OF THE COURT AND MEETINGS CREDITORS

The company was placed under provisional liquidation by Order of the High Court of South Africa (Cape of Good Hope Provincial Division) on 06 December 2007 pursuant to an application by The Trustees for the time being of the Carebea Trust under Case Number 15581/2007.

Mr J F Klopper and Mr M B Beginsel were appointed as Provisional Joint Liquidators by the Master of the High Court, Cape Town ("the Master") in terms of Certificate of Appointment Number C535/2007 dated 20 December 2007.

The provisional order of liquidation was made final on 15 March 2008.

The first meeting of creditors was held before the Magistrate, Bellville, on 06 June 2008. No claims were submitted for proof at this meeting.

No voting took place at the first meeting of creditors and the Provisional Joint Liquidators were appointed as Final Joint Liquidators by the Master in terms of Certificate of Appointment Number C535/2007 dated 25 June 2008.

HISTORY AND INFORMATION OF THE COMPANY

According to the records obtained from the Registrar of Companies, the company was registered as a private company and was incorporated in terms of the Companies Act, No. 61 of 1973, under Registration Number 2004/028033/07.

REGISTERED ADDRESS

The registered address of the company is reflected as being 5 Iona Street, Bellville, Western Cape.

DIRECTORS AND SHAREHOLDERS

It appears from investigations conducted that the following persons served as the directors of the company as at date of liquidation:

- Christiaan Rudolf Liebenberg;
- Nothemba Tobi;
- Fikile Brenda Kuhlase.

The Trustees for the time being of the Carebea Trust were the holders of 16% of the issued share capital of the company as at date of liquidation.

BUSINESS OF THE COMPANY

The company carried on the business in the selling and exporting of wine. The company sourced wine from suppliers, labelled the wine and exported or sold the wine.

AUDITORS

The auditor of the company is reflected as being Henri Grové and Partners.

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.

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

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

ASSETS	AMOUNT {R}	AMOUNT{R}
<u>Movable Assets:</u>		
Wine sales		R14 000,91
Trademark (Cape Concert) – value unknown at this stage		Unknown
Outstanding book debts estimated at <i>(Ceded in favour of Umlimi Holding(Pty) Limited)</i>		R26 505,00
TOTAL ASSETS		R40 505,91
LIABILITIES	AMOUNT {R}	AMOUNT {R}
<u>Secured Creditor</u> Umlimi Holdings (Pty) Limited	R12 231,85	
<u>Preferent Creditors</u> Unknown at this stage	Unknown	
Concurrent Creditors : Estimated at	R1 329 785,21	
SHORTFALL		R1 301 511,15
TOTAL	R1 342 017,06	R1 342 017,06

COMMENTS ON THE ASSETS:

We have sold some of the wine stock which was held in storage at the premises of Paarl Valley Bottling Company (Pty) Limited.

The Cape Concert Trademark might be the most valuable asset and negotiations with regard thereto are ongoing.

We are still in the process of collecting the outstanding book debts.

COMMENT ON THE LIABILITIES

The secured claim of R12 231,85 is in respect of Umlimi Holding's secured portion of the claim with regard to their cession over the book debts. The balance of their claim in the amount of R385 502,08 is in respect of the concurrent portion of their cession over the book debts.

The balance of the liabilities in the amount of R944 283,13 relates in the main to monies due to various trade creditors (concurrent creditors).

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

According to documentation lodged and investigations conducted, it would appear that the company's financial downfall could be attributed to the fact that the company was not able to deliver on a lucrative contract entered into with Shoprite-Checkers. However, the full details of the company's demise are still being investigated.

As the company was unable to pay its creditors and operating expenses in the ordinary course of business, the Trustees for the time being of the Carabea Trust consequently applied for the liquidation of the company.

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

Based upon the information available to us at this stage, it is not our intention to submit a report to the Master of the High Court. A report will be submitted at a later stage should it become necessary.

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

At this stage it appears that the former directors of the company cannot be held personally liable for the debts of the company. Investigations are still being conducted and a report will be submitted should it become necessary.

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 will not be necessary with regard to the formation and failure of the company in terms of the provisions of the Act.

SECTION 402(g) : BOOKS AND RECORDS

No proper books and records were kept.

SECTION 402(h) : ESTIMATED DIVIDEND

Based on asset realisations and known claims, there would appear to be no prospect of a dividend award to concurrent creditors in this estate. Only the secured creditor will benefit from the sale of the movable assets.

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 with and finalised.

GENERAL

- 1 In the light of recent criticism involving Liquidator's 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 Liquidator's 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 Liquidator's 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 Joint Liquidators in the administration thereof;
 - 5.3 the amount of work done by the Joint 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 Joint 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 we 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**

and

**MARC BRADLEY BEGINSEL
JOINT LIQUIDATOR**

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

7599

SIBEKO WINES (PTY) LIMITED (IN LIQUIDATION)
("THE COMPANY")

REGISTRATION NUMBER : 2004/028033/07

MASTER'S REFERENCE NUMBER : C353/2007

RESOLUTIONS

**RESOLUTIONS TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS
TO BE HELD BEFORE THE MAGISTRATE, BELLVILLE, ON FRIDAY,
15 AUGUST 2008 AT 11H00**

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 heretobefore 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.

CREDITORS / DIRECTORS

MAGISTRATE, BELLVILLE