

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: **R PIETERS / S DANEEL**
Direct Line: **021 – 880 5400**
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Direct E-Mail: **rynettep@corprecover.co.za**
Date: **15 JULY 2009**

Dear Sir / Madam

H INVESTMENTS NO 121 (PTY) LIMITED (IN LIQUIDATION)
MASTERS REFERENCE NUMBER: C733/2008
REGISTRATION NUMBER: 1997/015420/07

We refer to the above matter and enclose an 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, Malmesbury, on Thursday, 23 July 2009 at 09h00.

We confirm that, at this stage, there may be a danger of a contribution in the estate and creditors are therefore requested not to lodge claim documents for proof at the second meeting of creditors.

We assure you of our best attention at all times.

Yours faithfully
INDEPENDENT TRUSTEES (PTY) LIMITED

RYNETTE PIETERS
JOINT LIQUIDATOR

H INVESTMENTS NO. 121 (PTY) LIMITED (IN LIQUIDATION)
REGISTRATION NUMBER: 1997/015420/07
("the Company")

MASTER'S REFERENCE NUMBER : C733/2008

REPORT OF THE JOINT LIQUIDATORS, RYNETTE PIETERS, JOHANNES FREDERICK KLOPPER *and* HASSEN KAJIE, 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'S COURT, MALMESBURY, ON THURSDAY, 23 JULY 2009, AT 09H00

ORDER OF THE COURT AND MEETINGS

Nature of Application	Application in the High Court of South Africa (Cape of Good Hope Provisional Division) under Case Number 13317/2008
Date of Provisional Order	13 November 2008
Date of Final Order	23 December 2008
Provisional Liquidators	Rynette Pieters, Johannes Frederick Klopper and Hassen Kajie
Provisional Appointment Date	28 November 2008
Final Liquidators	Rynette Pieters, Johannes Frederick Klopper and Hassen Kajie
Final Appointment Date	28 May 2009
Date of 1 st meeting of creditors	15 April 2009
Claims proved at 1 st meeting	Three claims were submitted. One claim was proved and two claims were rejected

GENERAL AND STATUTORY INFORMATION

Registrar of Companies

According to the Registrar of Companies, the company was incorporated under registration number 1997/015420/07 on 15 September 1997.

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Registered Address

The registered address of the company is reflected as being AM Trust Building, 5 Church Street, Malmesbury, Western Cape.

Directors

It appears from our investigations the following two persons consented to serve as the directors of the company:

- Graham John Knox (Identity Number : 430721 5069 100);
- Diane Alice Knox (Identity Number : 431220 0073 109).

Share Capital

- 1 The authorised share capital of the company is R1000 divided into 1000 ordinary shares par value shares of R1 each.
- 2 The issued share capital of the company is 100 ordinary par value shares of R1 each.

Business of the Company

It appears from our investigations that the company traded as Siyabonga Wines and carried on business as a manufacturer and distributor of Stormhoek wines in South Africa and exported wine into countries, particularly into the United Kingdom. All of the wines were sourced by the company. Some Stormhoek branded wines belonged to the company and some to Orbital Wines (prior to liquidation). Home of Origin Wines (Pty) Limited, a South African company, was contracted to bottle, store and despatch to export customers many of these wines according to orders provided by the company.

Auditors

The auditor of the company is reflected as being Chris de Jager and Partners situated in Malmesbury, Western Cape.

STATEMENT OF AFFAIRS

We have not been place in possession of a Statement of Affairs as required in terms of Section 363 of the Companies Act No. 61 of 1973 as amended. This has, however, not hampered us with our administration and investigations into the affairs of the company.

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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.

ASSETS	AMOUNT {R}	AMOUNT{R}
<u>IMMOVABLE PROPERTY</u>		
Farm Number 1263, Klein Doolhof Farm, Wellington – sold for <i>(Subject to a Mortgage Bond ifo Afagri Operations Limited)</i>		R4 500 000,00
<u>MOVABLE ASSETS</u>		
Wine Stock – estimated at <i>(Subject to a lien i.f.o. Home of Origin Wine (Pty) Limited)</i>		R221 100,00
Cellar equipment, bottled and bulk stock and movable assets – sold for		R307 800,00
Vehicle : Corsa Bakkie – sold for <i>(Subject to Instalment Sale Agreement in favour of The Standard Bank : Vehicle & Asset Management)</i>		R17 100,00
Intellectual property – Trademark, Website domain etc <i>(Subject to dispute)</i>		Unknown
TOTAL		R5 046 000,00

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LIABILITIES	AMOUNT {R}	AMOUNT {R}
<u>Secured Creditors :</u> Afgri Operations Limited – estimated at Home of Origin Wine (Pty) Limited – estimated at The Standard Bank : Vehicle & Asset Management – estimated at	R3 467 334,78 R221 100,00 R10 254,21	
<u>Preferent Creditors :</u> Section 98A employees claims – estimated at SARS - Unknown at this stage	R466 560,00 Unknown	
Concurrent Creditors - estimated at	R7 471 774,01	
SHORTFALL		R6 591 023,00
TOTAL	R11 637 023,00	R11 637 023,00

COMMENT ON THE ASSETS

With the consent of the secured creditor and with an extension of our powers granted to us by the Master in terms of Section 386(2A) of the Companies Act No. 61 of 1973 read with the provisions of the Act, the immovable property was sold by way of a public auction.

The Corsa Bakkie was sold by public auction.

The cellar equipment, bottled and bulk stock and movable assets were sold by way of a private treaty.

The Intellectual property, i.e. trademark and trade name are currently still under investigation.

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COMMENTS ON THE LIABILITIES

The liabilities relate in the main to monies owing to Afgri Operations Limited in respect of their loan to the company secured by a Mortgage Bond registered over the immovable property, monies owing to Home of Origin Wines (Pty) Limited in respect of their Lien over the wine stock as well as to monies owing to the Standard Bank in respect of their Instalment Sale Agreement registered over the vehicle (secured creditors).

The extent of monies owing to the South African Revenue Services (if any) is unknown at this stage as we have to date not received any claims from SARS. In terms of Section 98A of the Insolvency Act, money is owing to former employees in respect of unpaid salaries, leave pay and severance pay (preferent creditors).

The balance of the liabilities relate to monies owing in respect of loan agreements as well as monies owing to various trade creditors in respect of services rendered and goods supplied and delivered (concurrent creditors).

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

According to the directors, the company's demise was as a result of the following:

An United Kingdom company by the name of Origin Wines Limited bought from the administrators of Orbital Wines Limited and Bulk Business Brokers International Limited (both of which have been liquidated in the United Kingdom), amongst the assets, the intellectual property rights in a variety of wine brands, including the Stormhoek Trade Mark rights as for the legal entity of the United Kingdom only. As a result of the liquidation of Orbital Wines Limited and Bulk Business Brokers International Limited, the company, who was one of the major creditors in both estates, was left without the prospect of dividend payments.

The company has denied that Origin Wine Limited bought from Orbital Wines Limited the Stormhoek brand rights in any territory other than in the United Kingdom. It was the company's view that Stormhoek rights in other territories and countries (including South Africa) never belonged to Orbital Wines and Orbital Wines or its administrator was not in any position to sell these rights.

Further, an application to register the Stormhoek Trade Mark in South Africa and another application to register the same in the United States was made by a consultant to Orbital Wines (Jason Korman, through a vehicle called Gaping Void Limited) in his personal capacity for his own benefit. These applications were later assigned to Bernard Fontannaz in his personal capacity.

The company made a competitive application to register Stormhoek in South Africa based on its exclusive trading of the brand in South Africa from 2004 to today.

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The application for the liquidation of the company was brought by Home of Origin Wines (Pty) Limited and Origin Wines Limited to recover bottling debts incurred by Orbital Wines before administration which the company was held liable for.

The Management of Origin Wines Limited and Home of Wines (Pty) Limited denied in an Affidavit in the Court documents that the application for the liquidation had anything to do with the South African or any other trade mark rights and was made exclusively to recover monies owing.

The company still has a claim against Home of Wines (Pty) Limited for the proceeds of wine removed and sold without permission.

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 may be held personally liable for the debts of the company. Investigations are 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 on 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. Should information come to light at a later stage that would warrant an enquiry, a report will be submitted.

SECTION 402(g) : BOOKS AND RECORDS

The books and records that the company was required to keep in terms of the Act have been handed to us.

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SECTION 402(h) : ESTIMATED DIVIDEND

Based on asset realisations and known claims, there may be a danger of a contribution in this estate.

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.

**RYNETTE PIETERS
JOINT LIQUIDATOR**

**JOHANNES FREDERICK KLOPPER
JOINT LIQUIDATOR**

**HASSEN KAJIE
JOINT LIQUIDATOR**

**INDEPENDENT TRUSTEES (PTY) LIMITED
P O BOX 820
STELLENBOSCH
7599**

**TELEPHONE: 021 – 880 5400
TELEFAX: 021 – 880 5430**

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS
TO BE HELD BEFORE THE MAGISTRATE, MALMESBURY, ON THURSDAY, 23 JULY 2009
AT 09H00**

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 Provisional Liquidator and/or Joint 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.

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- 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 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.

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- 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.
- 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 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

MAGISTRATE, MALMESBURG