

**AQUA D'OR MINERAL WATER (PTY) LIMITED (IN LIQUIDATION)**  
**(REGISTRATION NUMBER: 2007/008242/07**  
**("the company")**

**MASTER'S REFERENCE NUMBER: C1183/2009**

**REPORT OF THE JOINT LIQUIDATORS, 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 AT THE MASTER'S OFFICE, CAPE TOWN, ON 13 JULY 2010, AT 09H00**

**ORDER OF THE COURT AND MEETINGS**

Nature of Liquidation	Application to the High Court of South Africa (Western Cape High Court, Cape Town) – case number: 23331/09
Date of Liquidation	10 November 2009
Date of Provisional Order	10 November 2009
Date of Final Order	12 February 2010
Provisional Liquidators	J F Klopper & D Terblanche & M C Rawoot
Final Liquidators	J F Klopper & D Terblanche & M C Rawoot
Date of 1 <sup>st</sup> meeting of creditors	30 March 2010

**GENERAL AND STATUTORY INFORMATION**

**Registrar of Companies**

The company was duly registered with the Registrar of Companies on 14<sup>th</sup> March 2007 under the reference number 2007/008242/07.

**Registered Address**

The registered address of the company is reflected as Suite 318B, V&A Waterfront, Cape Town.

**Directors**

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

- Buthelezi, Norbert Sfiso (Identity Number: 61081 4579085)
- Mazantsana, Zamile Elliot (Identity Number: 66082 56920897)

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- Bagg, Jeffrey Allen (Identity Number: 59101 75063085)

**Business of the Company**

The company's principal business activity was the bottling of mineral water and the distribution of non-alcoholic beverages.

**Auditors**

The auditors of the company, Sizwentsaluba VSP is situated in Vlaeberg, Cape Town.

**STATEMENT OF AFFAIRS**

We have not been provided with a Statement of Affairs 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 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 26155, Observatory- sold for (Excluding Vat) <i>(Subject to Mortgage Bond in favour of Absa Bank)</i>		R 1 655 000.00
Vehicle -2008 Toyota Auris 1.6 –sold for <i>(Subject to Instalment Sale Agreement in favour of Wesbank)</i>		R 142 500.00
Vehicle -2008 Toyota Dyna 3.5 Ton (CA419 236)-sold for <i>(Subject to Instalment Sale Agreement in favour of Wesbank)</i>		R 223 400.00
Vehicle -2008 Toyota Auris 1.6(CA18629)-sold for <i>(Subject to Instalment Sale Agreement in favour of Wesbank)</i>		R 143 640.00
Vehicle -2007 VW Polo 1.6 Comfortline –sold for <i>(Subject to Instalment Sale Agreement in favour of Absa)</i>		R 96 900.00

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Vehicle -2007 VW Caddy 1.6 Panelvan – sold for (Subject to Instalment Sale Agreement in favour of Absa)		R 71 820.00
Vehicle -2006 VW LT 46 2.5 TDI Panelvan – per valuation (Subject to Instalment Sale Agreement in favour of Absa)		R 100 000.00
Vehicle -2007 VW Crafter 38 2.5TDI –sold for (Subject to Instalment Sale Agreement in favour of Absa)		R 178 980.00
Vehicle -2006 VW Transporter 1.9 TDI –sold for (Subject to Instalment Sale Agreement in favour of Absa)		R 127 680.00
Vehicle -2007 VW Transporter 1.9 TDI –per valuation (Subject to Instalment Sale Agreement in favour of Absa)		R 85 000.00
Vehicle -2007 VW Crafter (CA47 2911)- per valuation (Subject to Instalment Sale Agreement in favour of Absa)		R 50 000.00
Other movables and intellectual property – per valuation (Subject to Notarial Bond in favour of Absa)		R 2 494 906.50
<b>TOTAL</b>		<b>R 5 369 826.50</b>
<b>LIABILITIES</b>		
<u>Secured Creditors:</u> Estimated at	R 9 932 508.05	
<u>Preferent Creditors:</u> Former Employees-	R 204 664.68	
South African Revenue Services (SARS)- estimated at	R 180 000.00	
<u>Concurrent Creditors:</u> Estimated at	R 6 279 308.17	
<b>SHORTFALL</b>		<b>R 11 226 655.40</b>
<b>TOTAL</b>	<b>R 16 596 480.90</b>	<b>R 16 596 480.90</b>

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**COMMENT ON THE ASSETS**

Pursuant to an application to the High Court of South Africa, we have obtained an Order in terms of which our powers were extended to enable us to sell the company's assets by way of public auction or private treaty.

The vehicles subject to instalment sale agreements in favour of Wesbank were uplifted and sold by way of a public auction. The other vehicles subject to instalment sale agreements in favour of Absa were also uplifted and will in due course be sold on public auction.

The immovable property, has been sold and we will now sell the other movables by way of private treaty.

**COMMENTS ON THE LIABILITIES**

The liabilities relate in the main to monies owing to ABSA Bank in respect of, loans secured by a Mortgage Bond registered over the immovable property, instalment sale agreements registered over 7 of the vehicles vesting in the company and in respect of a general notarial bond registered over the other movables. The liabilities further relates to monies owing to Wesbank in respect of their instalment sale agreements relating to the other 3 vehicles belonging to the company.

The extent of monies owing to the South African Revenue Services is unknown at this stage as we have not as yet received details of their claim.

The balance of the liabilities relates to monies owing in respect of trade creditors and services rendered.

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

According to one of the company's directors the company's failure is due to the downturn of the economy and the escalation in operating costs. The company started experiencing financial difficulties during 2009 and started defaulting on some of its commitments and payments to creditors.

The company also experienced a huge problem with clients defaulting on payments causing a ripple effect on the cash flow as well as capability of the company to conduct its business. This had the unfortunate effect that the company experienced difficulty in fulfilling its contractual obligations and payments of creditors.

As a result of the above an application for the liquidation of the company was consequently applied for by one of the directors, Jeffrey Allen Bagg.

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**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. 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 we are unable to comment as to whether any director of the company could be held personally liable for the debts of the company. 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 in this regard. Investigations into the conduct of the company's affairs will however continue.

**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) : FURTHER ENQUIRY INTO THE AFFAIRS OF THE COMPANY**

There are certain aspects relating to the trade, dealings and affairs of the company that the liquidators may want to investigate at an enquiry. Investigations are on-going with regard to the failure of the Company and the conduct of its business. Should the liquidators decide to convene a meeting for an enquiry in terms of section 415 of the Act creditors will be advised accordingly.

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

The books and records in terms of the Act have been uplifted by us from the company's premises but we are not yet able to report as to whether the records complied fully with section 284 of the act.

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

Based on asset realisations and known claims, it would appear that there is a danger of a contribution being levied upon creditors and that only secured creditors may expect a dividend.

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

Such directions as we desire, and sanction of the action taken by the Provisional Liquidators and Liquidators to date, are contained in the Resolutions to be submitted for consideration and

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adoption, are attached hereto. It should be borne in mind that we have already obtained certain powers pursuant to the Court application referred to above.

Dated at Stellenbosch this 25<sup>th</sup> of June 2010.

  
**JF KLOPPER**

Dated at Cape Town this 30 of June 2010.

  
**D TERBLANCHE**

Dated at Cape Town this 21<sup>st</sup> of June 2010.

  
**M C RAWOOT**

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

**TEL: 021 - 880 5400**  
**FAX: 086 511 6125**

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS TO BE HELD AT THE MASTER'S OFFICE, CAPE TOWN ON 13 JULY 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

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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.
- 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



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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**