

AGI MANUFACTURING (PTY) LIMITED **(IN LIQUIDATION) - *"the Company"***

MASTER'S REFERENCE NUMBER : G2240/2010

LIQUIDATORS' REPORT TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MASTER OF THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG, ON FRIDAY 19 AUGUST 2011 AT 10H00 IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO 61 OF 1973, AS AMENDED, AS READ WITH CLAUSE 9 OF SCHEDULE 5 TO THE COMPANIES ACT NO 71 OF 2008, AS AMENDED (*"the Act"*).

ORDERS OF COURT AND MEETINGS

The Company was, at its own instance, provisionally wound up by Order of the South Gauteng High Court, Johannesburg, on 7 December 2010, which Order was made final on 8 March 2011. The undersigned were appointed jointly as Provisional Liquidators by the Master of the South Gauteng High Court, Johannesburg (*"the Master"*), on 7 December 2010.

The first meeting of creditors was held before the Master on 30 May 2011. The undersigned were appointed liquidators by the Master on 22 June 2011.

FORMATION OF THE COMPANY

The Company was incorporated on 7 December 1995 under Certificate of Incorporation Number 1995/013228/07.

CAPITAL STRUCTURE

The authorised share capital of the Company is R4,000 divided into 4,000 ordinary shares of R1 each, of which 100 shares were issued and are held by Africa Glass SA Holdings (Pty) Limited (now also in liquidation).

REGISTERED OFFICE

The registered office of the Company is at 1 Setchell Road, Roodekop.

DIRECTORS AND AUDITORS

The sole director of the Company as at the date of provisional winding up was Mr Roy John Douglas. The Company's auditors were Messrs Deloitte and Touche.

NATURE OF THE BUSINESS OF THE COMPANY

The Company forms part of a group of companies of which the ultimate holding company is AG Industries Limited, which company is listed on the Johannesburg Securities Exchange. The listing of AG Industries Limited was suspended on or about Friday 26 November 2010. The AGI Group ("AGI") was, inter alia, engaged in the following businesses:-

1. The extrusion of aluminium sections for the purpose of manufacturing aluminium doors and windows.
2. The manufacture and processing of glass products for the building and allied industries.
3. The manufacture of aluminium glass doors, windows and showers.

The Company was engaged in the extrusion of aluminium section from aluminium billet for use in the fabrication of windows, doors, showers and other associated products and its principal place of business was situated at 1 Setchel Road, Roodekop, Gauteng.

CAUSES OF THE FAILURE OF THE COMPANY

The failure of the Company can be linked to the failure of AGI. The background to the failure of AGI as described to us by the former Chief Executive Officer can be summarised as follows:-

- In early 2006 AGI entered into a period of rapid expansion resulting in the acquisition of costly fixed assets and a significant increase in fixed overheads relating to the employment of more staff (management in particular) and premises.
- The newly acquired fixed assets were largely financed by way of finance leases obtained from South Africa's four major banks.

- During 2007 and despite the South African residential construction boom, the financial results of AGI were mediocre and its profit was, in fact, boosted by the sale of a number of properties including the Roodekop property.
- The period of trading from 2006 onwards showed a progressive trend of margin erosion as more competitors entered the market often with a far lower cost base. AGI was also affected by the strong Rand which gave rise to imports also negatively impacting on AGI.
- In addition to higher debt associated with the acquisition of fixed assets, overdraft debt increased by approximately 300%. In addition to borrowing money from the four major South African banks, loans were also procured from HSBC and Mercantile Bank. The overdraft debt was unsecured other than in respect of cross sureties signed by companies within the Group.
- At the time it appeared as though gearing ratios did not weaken to a point indicating any crisis. In fact the shares of the holding company had been quite popular in the period preceding the market correction of 2008 due to the construction and residential property boom and easy access to finance. In 2007 AG Industries Limited traded at nearly R6.00 per share and had a market capitalisation of approximately R1.1-billion.
- The share price did however start to decline in 2007 and never subsequently recovered. By late 2008 it was all but impossible to raise equity capital in the market and AGI's directors were looking at all possible options.
- AGI had a high degree of seasonality in its business cycle, with the first quarter of every year being very quiet following a busy fourth quarter ahead of the December builder's holiday. In January and February 2009 AGI experienced a severe liquidity crunch. A short term directors loan of R2-million was required to run the payroll in February 2009.
- Roy Douglas was appointed as Chief Executive Officer and started working in April 2009 to try and turn AGI around. He called the lending banks together and instituted a system of managing cash flows in great detail on a daily basis. At that stage the banks were unsecured and initially provided a level of emergency funding in order to allow trading to continue. During mid 2009 plans were made to rescue the business. One way of doing this was to dispose of portions of AGI at reasonable value. Two major sales were accomplished as a result of this strategy. Unfortunately one of the sales which would have yielded the largest proceeds was significantly delayed by the Competition Commission and the value ultimately received was severely eroded due to delays relating to approval.
- The strategy to return AGI to profitability was developed during mid 2009 but implementation was held off until December 2009 when factories could be closed and re-located when the business cycle was at its lowest. This programme reduced the manufacturing and distribution footprint and re-organised AGI with leaner regional support structures. This included a revised corporate structure

that operated the business as a single co-ordinated entity instead of as a number of independent structures based along product lines, thereby eliminating costly duplicated resources overhead costs.

- As a consequence of the steps outlined above, the number of staff employed by AGI reduced from about 1,800 to 1,080. Whilst the loss of jobs was to be regretted, it was necessary to give AGI a chance of survival.
- The last and equally crucial leg of the restructuring was to implement a restructuring of AGI's debt and equity. This was agreed in November 2009 but due to the complexity of the arrangements and regulatory issues, implementation was only completed in late April 2010. The restructuring consisted of a rights issue at a ratio of 20:1, underwritten by the Banks with the shares they took up converting debt to equity. Based on the uptake by existing shareholders, the Banks had 76% of the shares due to the underwriting commitment after the rights issue. In terms of an agreement, the Banks immediately sold 56% of the company shares to a new controlling shareholder, Castellás Limited, and retained 20%.
- As a result of the restructuring R205-million of debt was converted to equity and AGI was granted a new banking facility of R109-million. This was drawn down by roughly R78-million at the conclusion of the process, giving AGI access to R31-million in cash for future operation purposes. The source of these additional funds was Castellás Limited and existing shareholders who followed their rights. Castellás made an investment of approximately R33.5-million. Approximately R8-million in fees was paid to various professional advisors.
- After the restructuring, most of the AGI assets were encumbered in favour of the Consortium of Banks.
- In June 2009 initial emergency funding of about R20-million was made available and together with credit insurance from CGIC allowed AGI to continue trading particularly with two of its most important suppliers, the PG Group and Wispeco.
- From November 2009 AGI was always under a high level of cash flow pressure which impacted on the ability both to run the business according to the best operational principles and to implement the required restructuring programme. Restructuring costs were very high.
- During the second half of 2010 it became clear that further funding would be required and lengthy negotiations took place to find a way forward. Negotiations were entered into with the Industrial Development Corporation who had conditionally approved R60-million worth of funding but this was subject to a preference share issue and also subject to certain conditions.
- It is apparent that AGI was always plagued by a lack of working capital which compromised its performance. It had geared up for boom times and then suffered quite dramatically when construction activity dropped off. A number of

other competitors came into the market to compete with AGI and all these factors led to the Group incurring substantial losses towards the end of 2010.

- On 26 November 2010 Main Street 766 (Pty) Limited ("*Main Street*") (a special purpose vehicle comprising five banks) issued an application out of the South Gauteng High Court, Johannesburg (under Case No 48258/2010) for an order to perfect a general notarial bond registered in its favour. The Court granted the order pursuant to which Main Street took possession of all the movable assets of relevant companies within AGI. As a result of this, AGI ceased to trade.
- The unwillingness on the part of the Banks to furnish any further funding, the fact that they had perfected their security and the realisation that there was no other source of funding available for AGI resulted in the ex parte winding up of AGI trading companies.

ASSETS AND LIABILITIES

The Statement of Affairs (Form CM 100) has not been lodged but from information made available to the undersigned it would appear as though the Company's financial position as at the date of its provisional liquidation was approximately as follows.

NOTES ASSETS

1.	Property, plant and equipment at nett book value as at October 2010	33,120,655
2.	Inventories at cost as at 7 December 2010	474,317
3.	Claims against AGI Glass (Pty) Limited and AGI Aluminium (Pty) Limited in respect of credit sales as at October 2010	22,637,646
4.	Amounts owed by fellow subsidiaries as at October 2010	6,885,691
5.	Bank balances and cash as at 7 December 2010	<u>740,808</u>

R63,859,117

LIABILITIES

SECURED

6.	Instalment sale liabilities as at October 2010	20,064,572
7.	<u>Main Street 766 (Pty) Limited ("<i>Main Street</i>")</u> Secured by a cession of debtors and by a pledge of movable assets	<u>90,908,685</u>

Balance carried forward **R110,973,257**

Balance brought forward	R110,973,257
8. <u>PG Group (Pty) Limited</u> Suretyship - secured by a cession of debtors	29,034,145
<u>PREFERENT</u>	
9. Amounts owing to employees for salaries, wages, bonuses and holiday / leave pay	1,653,369
10. Amounts owing to SARS for VAT, UIF and Employees' tax and amounts owing to other statutory preferent government agencies	not yet determined
<u>CONCURRENT</u>	
11. Amounts owing to holding company and fellow subsidiaries as at October 2010	160,112,863
12. Trade and other payables as at October 2010	<u>7,446,988</u>
	<u>R309,220,622</u>

NOTES TO ASSETS AND LIABILITIES

Commentary

- On 26 November 2010 Main Street applied to the south Gauteng High Court and was granted an order to perfect its General Notarial Bond. Pursuant thereto Main Street, through its agent, took possession of all the movable assets of the AGI trading companies including the Company and thereafter held same as security for its claim. AGI (including the Company) ceased trading and other than for retaining certain administration staff and the debt collection team, employees were sent home.
- The Company was, at its own instance, wound up on 7 December 2010.
- On 21 December 2010 the provisional liquidators of the Company together with the provisional liquidators of the other AGI companies successfully applied to the South Gauteng High Court in terms of Section 386 of the Companies Act 61 of 1973 for an order extending certain of their powers including the power to sell any movable property by public auction, public tender or private contract.
- On 10 February 2011 the assets of all the AGI companies in liquidation and certain AGI subsidiary companies not in liquidation were disposed of at a boardroom auction. There were two registered bidders, each of whom had paid the required deposit of R30,000,000.

- There was no bid for the combined debtors' book. The AGI assets consisting mainly of fixed assets, stock, furniture and equipment and vehicles were sold to the highest bidder, Shirewood Investments CC for R52,000,000 plus VAT of R7,280,000. In terms of the sale agreement, the successful purchaser assumed liability for all overheads associated with the assets purchased with effect from 10 February 2011 onwards and the deposit paid was held as security for these and other obligations. Ultimately, the full purchase price of R59,280,000 was collected and R10,000,000 of the R30,000,000 deposit refunded.
- The liquidators of the AGI companies have, as required in terms of the sale of assets agreement, allocated the purchase price between the respective AGI companies.
- The liquidators will investigate the validity of security claimed and any set-offs effected.

NOTES – ASSETS

- 1 & 2 The Company's property, plant and equipment and inventory (including VAT) realised R8,436,403.81 at the boardroom auction.
3. We have been advised that credit sales were actually invoiced through AGI Glass (Pty) Limited and AGI Aluminium (Pty) Limited. Therefore the debtors relating to these sales are accounted for in the books of AGI Glass (Pty) Limited and AGI Aluminium (Pty) Limited. Accordingly, it would be these two companies which would be indebted to the Company for sales made by the Company on credit but invoiced by the said companies.
4. The claims against fellow subsidiaries would appear to be irrecoverable.
5. The amount standing to the credit of the Company's account as at the winding up date was either set-off against amounts due to the bank or ceded to the bank as security.

NOTES – LIABILITIES

6. This relates to assets purchased by the Company in terms of instalment sale agreements.
7. The Company bound itself as surety and co-principal debtor to Main Street for the obligations of other AGI companies. The cession of debtors in favour of Main Street pre-dates the cession to PG Group (Pty) Limited.
8. The cession of debtors in favour of PG Group (Pty) Limited is dated 14 May 2010.
9. & 10. At this stage there would appear to be no free residue funds available to pay a dividend to preferent creditors.
11. These are loan accounts in favour of various AGI companies.

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| 12. | A more up to date liability to trade and other creditors will only be determined if and when claims are submitted. The amount includes the concurrent portion of employee claims. |
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REPORT TO THE MASTER

The undersigned will, in due course, be filing a report to the Master in terms of the Act.

LIABILITY OF DIRECTORS AND OFFICERS

Investigations are on-going as to whether any director or officer of the Company or former director or officer of the Company could be held liable for damages or compensation to the Company or for any debts or liabilities of the Company as provided for in the Act.

PROMOTION, FORMATION AND FAILURE OF THE COMPANY

An Enquiry has been convened in terms of Section 417 and 418 of the Act with a view, inter alia, to determining the recoverability of outstanding debtors and to investigate possible liability of certain parties.

LEGAL PROCEEDINGS

The only proceedings of which the undersigned are aware and in respect of which notice was received in terms of Section 359 was that from Main Street giving notice of its intention to proceed to seek a final perfection order on 26 July 2011. The undersigned do not intend opposing the application.

BOOKS AND RECORDS

The Company appears to have kept a record of its transactions which were sufficient to disclose most the information required.

PROGRESS AND PROSPECTS OF WINDING-UP

The undersigned report that they will, through the forum of an enquiry convened in terms of Section 417 and 418 of the Companies Act, subpoena such parties as they are

so advised which could lead to the recovery of further assets and also with a view to establishing claims against any third parties who could be held liable to the Company. They will also, through this forum and subject to financial constraints, investigate whether there are any transactions entered into by the Company before its winding up which are capable of impeachment and which may lead to a recovery of assets or a benefit to the general body of creditors.

LEASES

There were no lease agreements in the name of the Company of which the undersigned are aware.

ESTIMATED DIVIDEND

At this stage it would appear that all the assets of the Company are encumbered and there would accordingly still appear to be little prospect of a dividend to either preferent or concurrent creditors. In fact, there is a danger of a contribution being levied on creditors who prove claims and so no unsecured claim received will be submitted for proof without a written instruction to the contrary from the creditor concerned.

**DATED AT CAPE TOWN
THIS DAY OF
JULY 2011**

**DATED AT
THIS DAY OF
JULY 2011**

**DATED AT
THIS DAY OF
JULY 2011**

**S M GORE
JOINT LIQUIDATOR**

**K C MONYELA
JOINT LIQUIDATOR**

**I S PONNEN
JOINT LIQUIDATOR**

**DATED AT
THIS DAY OF
JULY 2011**

**L M MOLOTO
JOINT LIQUIDATOR**

AGI MANUFACTURING (PTY) LIMITED (IN LIQUIDATION) - "the Company"

MASTER'S REFERENCE NO : G2240/2010

RESOLUTIONS TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MASTER OF THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG, ON FRIDAY 19 AUGUST 2011 AT 10H00

IT IS HEREBY RESOLVED :

1. That the report of the liquidator(s) and his/their actions as referred to therein be and are hereby approved, ratified and confirmed.
2. That the actions of the provisional liquidator(s) and liquidator(s) in engaging the services of attorneys and/or counsel on such matters as he/they found necessary in the administration of the Company in liquidation to date, are hereby approved, ratified and confirmed. That the costs thereof be paid out of the funds of the Company in liquidation as part of the costs of administration. That the liquidator(s) be authorised to conclude written agreements with their attorneys in terms of the provisions of Section 73 of the Insolvency Act No. 24 of 1936 (as amended) as read with the provisions of the Companies Act No. 61 of 1973 (as amended), dispensing with the need for preparation of bills and the taxation thereof, and that the actions of the provisional liquidator(s) and liquidator(s) in concluding such written agreements to date, are hereby approved, ratified and confirmed.
3. That the liquidator(s) be and is/are hereby authorised to engage whatever further legal assistance he/they may require in the interests of the Company in liquidation and that the costs thereof be paid out of the funds of the Company in liquidation as part of the costs of administration.
4. That the liquidator(s) be and is/are hereby authorised to institute or defend legal actions in order to collect debts owing to the Company or in respect of any other matter affecting the Company in liquidation including the holding of enquiries or examinations in terms of the Companies Act, 1973, as amended, or as read with the Insolvency Act, 1936, as amended, as he/they may deem fit, and for such purposes to employ the services of attorneys and/or counsel of his/their choice and to pay the costs out of the funds of the Company in liquidation as part of the costs of administration.

5. That the liquidator(s) be and is/are hereby authorised to settle or compromise any legal proceedings whether instituted or to be instituted by or against the Company, on such terms and conditions and for such amount as he/they in his/their discretion may deem fit.
6. That the liquidator(s) be and is/are hereby authorised to sell any movable or immovable property of the Company in liquidation of whatsoever description and including outstanding debts by public auction, public tender or private treaty in such manner, upon such terms and conditions and for such amounts as he/they may deem fit.
7. That the liquidator(s) be and is/are hereby authorised to consent to the cancellation of any bond passed in favour of the Company.
8. That the liquidator(s) be and is/are hereby authorised to agree to any reasonable offer of composition made to the Company by any debtor, to accept payment of any part of any debt due to the Company in settlement thereof, to grant an extension of time for the payment of any debt and to abandon such amounts due to the Company as he/they has/have been unable to recover or dispose of as he/they may deem fit.
9. That the liquidator(s) be and is/are hereby authorised to engage the services of auctioneers or agents to sell the assets of the Company in liquidation and to determine the conditions of sale and manner of advertising in his/their discretion.
10. That the liquidator(s) be and is/are hereby authorised and empowered in his/their discretion to compromise or admit any claim against the Company, whether liquidated or unliquidated, arising from any guarantee or any other cause whatsoever, as a liquidated claim in terms of Section 78(3) of the Insolvency Act, as amended, at such amount as may be agreed upon between the creditor(s) concerned and the liquidator(s) provided that proof thereof has been tendered at a meeting of creditors.
11. That the liquidator(s) be and is/are hereby authorised to transfer to the purchaser thereof any immovable property sold by the Company prior to its liquidation or to agree to the cancellation of any such sale and to re-sell such property or to agree to the substitution of a new purchaser under any existing Deed of Sale.
12. That the liquidator(s) be and is/are hereby authorised to abandon any asset or assets of the Company where no purchaser for the asset(s) can be found.
13. That the liquidator(s) be and is/are hereby authorised to terminate leases in respect of premises or of any other object entered into by the Company in liquidation.

14. That the liquidator(s) be and is/are hereby authorised to, if necessary, borrow moneys with or without providing security therefor and that the interest payable on such loans shall be paid as costs of administration of the Company in liquidation.
15. That the liquidator(s) be and is/are hereby authorised to engage the services of bookkeepers, accountants, auditors or any other person for any purpose in and about the affairs of the Company which he/they may require and the costs so incurred to be paid as costs of administration of the Company in liquidation.
16. That the future administration of the Company be left in the hands of and to the discretion of the liquidator(s).

qq CREDITORS

PRESIDING OFFICER

qq MEMBERS