

STAWELKLIP ESTATES (PTY) LIMITED **(IN LIQUIDATION) - *"The Company"***

MASTER'S REFERENCE NUMBER : C660/2011

LIQUIDATORS REPORT TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MAGISTRATE, PIKETBERG, ON WEDNESDAY 11 JANUARY 2012 AT 9H00 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 placed in Provisional Liquidation by Order of the Western Cape High Court, Cape Town, on 29 June 2011 which Order was made final on 18 August 2011. The undersigned were appointed as joint provisional liquidators by the Master of the Western Cape High Court, Cape Town, on 14 July 2011.

Eight claims amounting to R15,713,445.86 were admitted to proof at the First Meeting of Creditors which was held before the Magistrate, Piketberg, on 28 September 2011. The undersigned were nominated for the appointment as joint liquidators and duly appointed by the Master of the High Court on 13 October 2011.

FORMATION OF THE COMPANY

The Company was incorporated on 8 August 2000 under Certificate of Incorporation Number 2000/018540/07.

CAPITAL STRUCTURE

The authorised share capital of the Company is R1,000 divided into 1,000 ordinary shares of One Rand each, of which 2 shares have been issued.

REGISTERED OFFICE

The registered office of the company is at 82 Voortrekker Street, Porterville.

DIRECTORS, AUDITORS AND SECRETARY

According to a CIPC Company Report the only active directors of the Company as at the date of Provisional Liquidation were Mrs H E Schreiber and Mr H A Schreiber. Ms Y Z Cuba and Mr S M Xayiya are reflected as having resigned.

The Auditors of the Company were Louw Redelinghuyse and Kie of 82 Voortrekker Street, Porterville.

NATURE OF THE BUSINESS OF THE COMPANY

The Company conducted the business of a fruit farm.

The Company was formed and was to be continued on the basis of co-operation and a shared confidence between its two shareholders, the Hochland Trust and Indima Farming (Pty) Limited. The Hochland Trust, through Mr Hugo Schreiber would manage the farming activities and Indima Farming (Pty) Limited, through the company Circin Capital (Pty) Limited (in early 2008 Circin Capital (Pty) Limited was replaced by an entity known as G5 Investments), would attend to the strategic management and investment planning.

This arrangement is recorded in both the management agreement and the shareholders agreement. The Hochland Trust and Indima Farming (Pty) Limited would each hold 50% of the issued shares in the Company and would each have two directors on the board of the Company.

From about the time of the appointment of G5 Investments, the relationship between Hugo Schreiber, as the alter ego of the Hochland Trust, and Indima Farming (Pty) Limited started to sour.

CAUSES OF THE FAILURE OF THE COMPANY

The Company was wound up at the instance of Indima Farming (Pty) Limited on the basis that it was just and equitable to do so.

The grounds alleged for the granting of a just and equitable winding up, due to the breakdown of the relationship of trust in Hugo Schreiber's handling of the Company's affairs, were:-

1. an alleged overstatement of the Hochland Trust loan account in the company and the inability of Indima Farming (Pty) Limited and the Hochland Trust to resolve this dispute. Notwithstanding certain communications pertaining to the loan

account, by November 2008, the dispute was still not resolved. It had been stressed that the loan account dispute be resolved as a matter of urgency as Indima Farming (Pty) Limited's tax return could not be submitted until the Company's financial statements were finalised.

Subsequently a meeting was held on 11 November 2008, which meeting was described as a meeting of shareholders. According to the draft minutes of the meeting *"the dispute in respect of the Hochland Trust loan account are resolved on the basis that by agreement the amount of the loan is R12,500,000.00."* However in April 2009 Hugo Schreiber, in a letter to Jaco van Lill of G5 Investments indicated that a further R3,051,263.53 should be reflected in the Trust's loan account as owing by the Company to the Hochland Trust.

Despite further efforts, the loan account issue remained outstanding although an attempt was later made by Greg Johnson (as accountant appointed by Hugo Schreiber) to resolve the issue. This outstanding issue had a detrimental effect on the Company's affairs as the financial statements could not be finalised.

2. at the time the Company acquired the farms and the farming business Hugo Schreiber was in negotiations with a Dutch firm to establish a pilot cherry project on the Hochland Trust property. A special purpose vehicle, Early Dawn Fruit Growers (Pty) Limited was incorporated. The Dutch government contributed €750,000.00 to the project, generally referred to as the PSOM Grant.

In terms of the agreement of sale between the Hochland Trust and the Company (in terms of which the Company acquired the farms and the farming business of the Hochland Trust) it was agreed that this sale included the sale and transfer by the Hochland Trust to the Company of its entire shareholding in, and the loan account against Early Dawn Fruit Growers (Pty) Limited.

At the meeting on 11 November 2008 Pierre Louw of Louw and Cronje indicated that there may be a risk of exposure to the repayment of the monies already received and the Trust required some form of indemnity from the Company should this eventuality arise. Jaco van Lill of G5 Investment indicated that a forensic audit of this transaction should be done.

Subsequent to this meeting a dispute arose as to the availability of the underlying agreement pertaining to the PSOM grant. Whilst this dispute could not be resolved, it is clear that this issue contributed to the breakdown of trust between Indima Farming (Pty) Limited and the Hochland Trust's alter ego, Hugo Schreiber.

3. Other financial administrative issues:-

- 3.1 although the shareholders' agreement between Indima Farming (Pty) Limited and the Hochland Trust specifically stated that no expenditure exceeding R100,000.00, not provided for in the budget of the Company, could be undertaken unless approved by 51% of the shareholders or directors representing 80% of the issued shares of the Company voting in

favour thereof, Hugo Schreiber undertook capital expenditure in excess of this amount not provided for in any budget and not approved as provided for in the shareholders agreement.

3.2 there were further alleged disputes between Indima Farming (Pty) Limited and Hugo Schreiber with regard to various financial management issues such as:-

3.2.1 equal control over the payment system;

3.2.2 provision of current management accounts;

3.2.3 future strategy in respect of operational and capital budget.

After the application to liquidate was launched, attempts were made to settle the matter in terms of which one of the shareholders would purchase the other shareholders shareholding in the Company. This came to nought primarily because of the marked difference in the values arrived at and placed on the shares in the Company.

In response to the aforementioned, the Hochland Trust alleged that the real reason why Indima Farming (Pty) Limited wanted the Company to be liquidated was to enable it to get access to the water from two boreholes on the farm, Stawelklip, which is required by Highlands Eco Estate (Pty) Limited (a 40% shareholder in Indima Farming (Pty) Limited) to obtain the necessary approvals for its proposed development on the neighbouring farm of the Highlands Trust. This water issue exacerbated the mistrust between the parties.

It was clear to the Court that the Hochland Trust (Hugo Schreiber) and Indima Farming (Pty) Limited could no longer be expected to jointly manage the affairs of the Company. It was the Court's view that the relationship between them had broken down irretrievably.

Accordingly the Court decided that a provisional winding up order should be made.

ASSETS AND LIABILITIES

The Statement of Affairs (Form CM 100) has not been lodged but the Company's trial balance as at 30 June 2011, made available to the undersigned, reflects the Company's financial position as at the date of its provisional liquidation as follows:-

ASSETS

Immovable Properties

- Comprising the farms described as Voorste Valley, Hochland and Staweklip (at cost)
- and a packing warehouse (at nett book value)

33,058,761.57

29,295,390.14

3,763,371.43

Movable Assets

- Comprising farm implements, workshop tools, motor vehicles, office equipment (at nett book value) 120,092.49

Inventories

- Comprising packing material, produce on hand (at cost) 5,439,312.00
- Trade Debtors and customers (at book value) 5,638,573.85
- VAT Control Account 309,535.88
- Deferred Tax 61,697.06
- Loans to Group Companies 13,468,269.98
 - Early Dawn Farms 9,251,932.56
 - Bergsoon Farms 1,588,386.02
 - Toorkraans Boerdery 364,910.00
 - Voorstevle Plaas 2,263,041.40

TOTAL ASSETS**R58,096,242.83****LIABILITIES****Long Term Loans**

- O.W. Henning 1,000,000.00
- Hochland Trust 16,1612,859.85
- Indima Holdings 8,268,275.77

Other Loans

- Landbank 11,142,027.61
- ABSA Bank Limited 6,655,872.22
- Cherry Trust 1,168.35
- Technofin 4,942.64

ABSA Bank Current Account 1,451,695.66

Sundry Credit Card 11,642.27

Trade Creditors 4,564,310.38

Provision for PAYE, UIF and SDL 16,449.04

Interest payable on Long Term Loans 653,012.32**R49,931,256.11****NOTES**

1. The immovable properties were valued by a sworn appraiser at the amount of R34,000,000.00.

2. The moveable assets (including inventories) have been valued by a sworn appraiser at an amount of R4,692,170.00.
3. The loan of the Landbank is secured by means of a mortgage bond B10149/2007 registered over the immovable properties, a Notarial Collateral Bond BN10150/2007 over the movable assets and a Cession of Policy No 6827810 at Mutual and Federal.
4. The loan of ABSA Bank Limited as well as the ABSA Bank Limited current account overdraft is secured by means of a mortgage bond No B7432/2008 registered over the immovable properties.
5. Trade creditors as at date of provisional liquidation amount to R3,064,264.69.

The loans of the shareholders, namely Hochland Trust and Indima Holdings have been subordinated as against all other creditors.

REPORT TO THE MASTER

The undersigned will, in due course, be filing a report to the Master of the High Court in terms of Section 400(2) of the Companies Act.

LIABILITY OF DIRECTORS AND OFFICERS

We are still investigating whether any 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 Companies Act.

PROMOTION, FORMATION AND FAILURE OF THE COMPANY

At this stage the undersigned are still investigating whether there is any matter relating to the promotion, formation or failure of the Company or the conduct of its business which requires further enquiry.

LEGAL PROCEEDINGS

The undersigned is not aware of any legal proceedings pending or threatened at the date of liquidation.

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

Pursuant to their appointment the joint liquidators continued with the farming operation, which included inter alia:-

- Preparing and maintaining the orchids for this years harvest, and
- Continuing with the on-going operations of the packhouse.

The farming operations have been funded primarily from the proceeds of debtor collections and advances from one of the shareholders, which advances will be repaid as a first charge against the realisation of the assets of the Company.

The undersigned have now caused the immovable properties, moveable assets and inventories to be realised for an amount of R41,000,000.00 (excluding VAT, if applicable).

Other assets realised to date comprise:-

| | |
|-------------------------------|-----------------------------|
| - Pre-liquidation debtors | 1,937,465.32 |
| - Interest on Current Account | 144.88 |
| - VAT refundable | 22,949.22 |
| - Occupational interest | 50,000.00 |
| - Cash found in estate | <u>46,733.89</u> |
| | <u>R2,056,838.31</u> |

Claims received to date comprise:-

Secured Creditors

| | |
|------------|---------------|
| - Landbank | 13,574,002.11 |
|------------|---------------|

Preferent Creditors

| | |
|--|-----------|
| - Mario Nicolaas Laubscher (Arrear salary) | 12,000.00 |
|--|-----------|

| | |
|------------------------------------|---------------------|
| <u>Concurrent Creditors</u> | 2,604,287.32 |
|------------------------------------|---------------------|

| | |
|---|---------------------|
| - Mario Nicolaas Laubscher - (Arrear salary) | 4,000.00 |
| - Bergrivier Municipality - (Services rendered) | 41,050.79 |
| - Trade Creditors | <u>2,559,236.53</u> |

R16,190,289.43

LEASES

The only lease agreement in existence as at the date of provisional liquidation of which the undersigned are aware has been cancelled.

ESTIMATED DIVIDEND


It would appear that secured creditors, preferent creditors and concurrent creditors other than the shareholder loans should receive payment of their claims in full together with interest. The balance of the funds on hand, thereafter will be apportioned to the proved loan claims of the shareholders.

**DATED AT
THIS 22ND DAY OF
DECEMBER 2011**



**T P GLAUM
JOINT LIQUIDATOR**

**DATED AT
THIS 14TH DAY OF
DECEMBER 2011**



**S MOODLIAR
JOINT LIQUIDATOR**

**DATED AT
THIS 22ND DAY OF
DECEMBER**



**J BASSON
JOINT LIQUIDATOR**

STAWELKLIP ESTATES (PTY) LIMITED

(IN LIQUIDATION) - *"the Company"*

MASTER'S REFERENCE NO : C660/2011

RESOLUTIONS TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MAGISTRATE, PIKETBERG, ON WEDNESDAY 11 JANUARY 2012 AT 9H00

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