

Wednesday  
7 July 2010

Our Ref: SM/CMR/JULY2010/7-7/Autumn Star

## **TO ALL CREDITORS**

Dear Sir / Madam

### **AUTUMN STAR TRADING 96 (PTY) LIMITED (IN LIQUIDATION) MASTER'S REFERENCE NO: C910/2009**

I advise that the Statutory General Meetings of Creditors and Members have been convened to be held before the Magistrate, Wellington, on Wednesday 21 July 2010 at 9h00. I enclose the following documents relating thereto:-

1. Copy of the Liquidators' Report.
2. Copy of the proposed Resolutions to be submitted for adoption at the meetings.

Dividend prospects are dealt with on page 7 of the Liquidators' Report.

Yours faithfully

**S MOODLIAR**  
**JOINT LIQUIDATOR**

➤ Enclosure

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# **AUTUMN STAR TRADING 96 (PTY) LIMITED (IN LIQUIDATION) - *"the Company"* t/as KING PROPERTY FINANCE**

**MASTER'S REFERENCE NUMBER : C910/2009**

**LIQUIDATORS REPORT TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, WELLINGTON, ON WEDNESDAY 21 JULY 2010 AT 9H00 IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO 61 OF 1973, AS AMENDED.**

## **ORDERS OF COURT AND MEETINGS**

The Company was provisionally wound up by order of the Western Cape High Court, Cape Town, on 10 September 2009 which order was made final on 23 October 2009. The undersigned were appointed jointly as Provisional Liquidators by the Master of the Western Cape High Court, Cape Town, on 23 September 2009.

One claim amounting to R13,055,528.54 was admitted to proof at the First Meeting of Creditors which was held before the Magistrate, Wellington, on 24 February 2010. The undersigned were thereafter appointed as liquidators by the Master of the Western Cape High Court, Cape Town, on 12 May 2010.

## **FORMATION OF THE COMPANY**

The Company was incorporated on 4 March 2004 under Certificate of Incorporation Number 2004/005886/06.

## **CAPITAL STRUCTURE**

The authorised share capital of the Company is R1,000 divided into 1,000 ordinary shares of One Rand each, of which 100 have been issued and are held as follows:-

King Financial Holdings (Pty) Limited	99%
Investors	1%

## **REGISTERED OFFICE**

The registered office of the Company is at 42 Malherbe Street, Wellington.

## **DIRECTORS AND AUDITORS**

The directors of the Company as at the date of Provisional Liquidation were Adrian Warren King, Paul Reginald King (now deceased) and Stephen Robert King.

The Auditor of the Company was H C van Zyl.

## **NATURE OF THE BUSINESS OF THE COMPANY**

The Company is one of a number of companies forming part of the King Group of Companies. The ultimate holding company of the King Group is King Financial Holdings (Pty) Limited which was, itself, provisionally wound up by Order of the Western Cape High Court, Cape Town, on 21 July 2009. This company was previously known as Biz Africa 1332 (Pty) Limited and, together with its subsidiaries and associated companies, was engaged in the business of providing financial services and, more particularly, intermediary services in respect of the marketing and sale of financial products as defined in the Financial Advisory and Intermediary Service Act No 37 of 2002 (*"The FAIS Act"*).

The strategy implemented by the King Group was to purchase and/or develop properties which were then registered in one of the subsidiary companies. Another company within the King Group, A&S King Makelaars (Pty) Limited (also now in liquidation), was used to market and sell investments that were owned by the King Group. The financial products which A&S King Makelaars offered to its clients were shareholdings, shareholders' loans and investment products in the subsidiary companies.

The Company owns no immovable or movable property but appears to have substantial loan claims by and against fellow subsidiary companies within the King Group.

## **CAUSES OF THE FAILURE OF THE COMPANY**

As stated above the Company was but one of the companies within the King Group of Companies whose ultimate holding company was King Financial Holdings (Pty) Limited (formerly Biz Africa 1332 (Pty) Limited). King Financial Holdings (Pty) Limited was finally wound up pursuant to an application brought by one of the investors with the support of the Financial Services Board (*"FSB"*).

The failure of the holding company inevitably led to the failure of its subsidiaries and many other associated entities within the King Group. In December 2008 the FSB

conducted an inspection following the failure of A&S King Makelaars (Pty) Limited to submit the required statutory audit reports and financial statements. An extensive and complex inspection was performed and on 9 July 2009 a written report of the findings of the FSB was produced in which, inter alia, the following was stated:-

1. *"The King Group marketed and sold shares without registering prospectuses as required by the Companies Act.*
2. *The directors of SERVICES and HOLDINGS were aware of the fact that a prospectus was required.*
3. *The King Group sold more shares than it purported the company to be issuing and before it was converted to a public company.*
4. *In our opinion, the King Group has not acted in accordance with sections 20 and 75 of the Companies Act by selling shares that were not authorised whilst it had not been converted to a public company.*
5. *The King Group misrepresented available issued share capital and issued more shares in HOLDINGS than was initially presented to investors.*
6. *The King Group issued shares without the shares being paid up.*
7. *We are further of the opinion that the King Group contravened section 92(1), as well as section 93(3) of the Companies Act.*
8. *The King Group sold shares in HOLDINGS in blatant disregard of the requirements of the Companies Act due to financial problems.*
9. *The King Group exposed shareholders in HOLDINGS to risk by realising profits before completion of projects.*
10. *The King Group made misrepresentations in the "Share offering" used to market shares HOLDINGS to the public.*
11. *The King Group prejudiced some shareholders when the shares were reissued at a new price.*
12. *The King Group provided us with contradictory information with regard to its financial position and NAV.*
13. *The King Group misappropriated client investments.*
14. *The King Group is technically and commercially insolvent as it is unable to pay its creditors.*
15. *The concerns of the King Group's clients are not being addressed.*
16. *The King Group negated its undertaking to the FSB to discontinue marketing and selling shares in HOLDINGS.*
17. *The King Group provided inadequate and/or incorrect client disclosures.*
18. *SERVICES contravened its licence conditions."*

Accordingly the FSB concluded:-

1. *"We recommend that the Registrar consider exercising his powers in terms of sections 5 and 6 of the FI Act.*
2. *It is further recommended that the Registrar withdraw the FSP licence of SERVICES in terms of section 10 of the FAIS Act due to the numerous irregularities referred to in this report.*
3. *We recommend that the Registrar urgently investigate the actions of the representatives of SERVICES who recklessly sold products in contravention of the FAIS Act and Companies Act. In our view some of these representatives do not conform to the requirements of fitness and propriety and should not be authorised to render financial services in any capacity.*
4. *We also recommend that the Registrar disclose the inspection report to the NPA and the DTI in terms of section 9 of the Inspection Act."*

On 16 July 2009 the FSP licence of A&S King Makelaars (Pty) Limited was withdrawn in terms of the FAIS Act. The King Group could thereafter no longer function effectively.

The demise of the holding company led to a series of winding-up applications being brought against most of the King Group subsidiary companies including the Company.

## **ASSETS AND LIABILITIES**

Although the Statement of Affairs (Form CM 100) has not been submitted, from our own investigations we are able to report the approximate financial position of the Company as at the date of its provisional winding-up as follows:-

### **ASSETS**

- Loans to Subsidiary Companies	<b><u>R86,763,088</u></b>
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**The entities indebted to the Company by virtue of inter-company loan claims have been liquidated and at this stage it is not possible to estimate the extent of anticipated recovery relating thereto**

### **LIABILITIES**

<u><b>Secured Creditors</b></u>	NIL
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<u><b>Preferent Creditors</b></u>	Unknown
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#### **Concurrent Creditors**

- Inter-company loan claims	13,055,528
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- Investor loans (subject to verification)	<u>75,145,530</u>
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**R88,201,058**

## **REPORT TO THE MASTER**

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

## **LIABILITY OF DIRECTORS AND OFFICERS**

The undersigned are still investigating whether any director or officer or former director or officer of the Company or any other party can be held personally 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**

Investigations are on-going regarding the promotion, formation and failure of the Company and the conduct of its business.

## **LEGAL PROCEEDINGS**

The undersigned are not aware of any legal proceedings pending or threatened at the date of liquidation, other than in respect of the collection of outstanding rentals.

## **BOOKS AND RECORDS**

The undersigned are not yet in possession of all the records of the Company and are therefore, at this stage, unable to state with any certainty whether the provisions of Section 284 of the Act have been complied with.

## **PROGRESS AND PROSPECTS OF WINDING-UP**

We report as follows:-

As reported previously, the undersigned are still investigating the validity of investors' claims, investors' equity and the property allocation thereof. The investigation is time-consuming and complex and only once the undersigned are in receipt of all the relevant information relating to the King Group's dealings with investors (as also the internal allocation of investor funds), will they be able to obtain final legal opinion regarding the validity and allocation of claims and shares in relation to the Company.

## **LEASES**

The undersigned are not aware of any lease agreements entered into with the Company as lessee.

## **ESTIMATED DIVIDEND**

At this stage it is impossible for the undersigned to comment on the prospects of a return to creditors. Certain of the inter-company loans which the company enjoys against its subsidiaries may return a better dividend than others, and some may render no return at all. Accordingly it is not possible to anticipate the quantum of any potential recoveries in respect of these loans.

**DATED AT CAPE TOWN  
THIS            DAY OF  
JULY 2010**

**DATED AT STELLENBOSCH  
THIS            DAY OF  
JULY 2010**

**DATED AT STELLENBOSCH  
THIS            DAY OF  
JULY 2010**

**S MOODLIAR  
JOINT LIQUIDATOR**

**JF KLOPPER  
JOINT LIQUIDATOR**

**C ADRIAANSE  
JOINT LIQUIDATOR**

**AUTUMN STAR TRADING 96 (PTY) LIMITED  
(IN LIQUIDATION) - "*the Company*"  
t/as KING PROPERTY FINANCE**

**MASTER'S REFERENCE NO : C910/2009**

**RESOLUTIONS TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS AND  
CONTRIBUTORIES TO BE HELD BEFORE THE MAGISTRATE, WELLINGTON, ON  
WEDNESDAY 21 JULY 2010 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).

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**qq CREDITORS**

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**PRESIDING OFFICER**

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**qq MEMBERS**