

**MAKHOSI PROJECTS (PTY) LTD (IN LIQUIDATION)**  
**("the Company")**

**MASTER'S REFERENCE NUMBER : T504/00**

**REPORT OF THE JOINT LIQUIDATORS, J F KLOPPER OF HANS KLOPPER TRUSTEES (PTY) LTD. AND  
DR TREVOR GIDDEY OF TRANSVAAL BOARD OF TRUSTEES (PTY) LTD,  
IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO 61 OF 1973 AS AMENDED  
TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD  
BEFORE THE MASTER OF THE HIGH COURT THURSDAY 30 NOVEMBER 2000 AT 09:00**

**ORDER OF THE COURT AND MEETINGS**

- 1 We wish to advise that upon an urgent application, Makhosi Projects (Pty) Limited ("Makhosi") was placed in final liquidation by Order of the High Court of South Africa, Witwatersrand Local Division on 4 February 2000. The Master of the High Court appointed Johannes Frederick Kloppe and Dr T Giddey as joint provisional liquidators on 2 March 2000
- 2 The first meeting of creditors and contributories was held before the Master of the High Court on 17 August 2000. Several claims of creditors were submitted and proved at the meeting.
- 3 No voting took place at the first meeting of creditors and the Master of the High Court appointed Messrs J F Kloppe and Dr T Giddey as joint liquidators.

**History and information of the Company**

- 4 According to the Registrar of Companies the company was incorporated under registration number 97/03633/07.

**Registered Address**

- 5 The registered address of the company is Makhosi House, The Village 309 Glenwood Road Faerie Glen, Pretoria.

**Directors**

- 6 It appears from my investigations the following persons consented to serve as directors:
  - 6.1 M H Shehata
  - 6.2 Josiah F Nkosi
  - 6.3 C P Texeira
  - 6.4 W S Valentine
  - 6.5 K Maleke
  - 6.6 H F Ashry

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**Share Capital**

- 7 The authorised share capital of the company is R1000 divided into 1000 ordinary shares par value shares of R1 each.
- 8 The issued share capital of the company is 100 ordinary par value shares of R1 each.
- 9 It appears from information on hand that the shareholding as at the date of liquidation was as follows:
- 9.1 Kharafi Construction (Pty) Ltd (50%).
- 9.2 Makhosi Holdings (Pty) Ltd (50%)

**Business of the Company**

- 10 The main business of the company was that of construction.

**Auditors**

- 11 The auditors of the company are Deloitte & Touch, who also acted as Company Secretary.

**STATEMENT OF AFFAIRS**

- 12 We have not been provided with a Statement of Affairs (CM100) as required in terms of Section 363 of the Companies Act No 61 of 1973 as amended.

**SECTION 79(A) : FINANCIAL STATEMENT OF ASSETS AND LIABILITIES**

- 13 The following represents the assets and liabilities of the company at date of liquidation. Unless otherwise stated, these figures only represent estimates of the assets and liabilities and will change depending on the amounts of realisation of unsold assets and claims submitted for proof.

**ASSETS**

IMMOVABLE PROPERTY	NOTES	AMOUNT	AMOUNT
Nil			Nil
MOVABLE ASSETS			
Money found	(a)		158 747.61
Office furniture and Equipment	(b)		45 000.00
Debts (collected to date)	(c)		1,700.00
Various movable assets and Equipment	(d)		141,315.00
Assets located in foreign countries	(e)		180,000.00

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Uncompleted contracts	(f)		5,000,000.00
<b>TOTAL ASSETS</b>			<b>5,526,762.60</b>
<b>LIABILITIES</b>			
<b><u>Secured</u></b>			
None			
<b><u>Preferent Creditors</u></b>			
Receiver of Revenue		Unknown	
Salaries		Unknown	
<b><u>Concurrent Creditors</u></b>			
Trade Creditors		10 000 000.00	
<b>TOTAL LIABILITIES</b>		<b>10 000 000.00</b>	
<b>DEFICIT</b>			<b>4,473,238.00</b>

**NOTES**

The statement of assets and liabilities must be read in conjunction with the following notes:

**Money found**

- (a) The funds emanate from the company's accounts with Nedbank. The funds were received on 12 May 2000.

**Office Furniture & Equipment**

- (b) The liquidators sold all the office equipment and furniture of Makhosi to Makhosi Holdings (Pty) Ltd for R 45 000.00. Makhosi Holdings uplifted the furniture and equipment at their expense.

The assets were not subject to the landlord hypothec, as all account of the landlord was up to date, as at the date of the liquidation.

**Debts collected**

- (c) Debts collected to date total R 1 700.00.

This represents various deposits that have been returned.

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**Sale of Movable assets and equipment**

- (d) The remainder of the company's movable assets and equipment were sold by public auction 2 August 2000.

The net proceeds of the auction was R 141 315.00.

We are still investigating the whereabouts of the home furniture referred to in the company's asset register.

**Assets located in Foreign Countries**

- (e) A single Caterpillar Tele-handler was on lease in Botswana and has as yet not been returned to South Africa. The approximate value of this machine is R 180 000.00.

**Uncompleted contracts/ Claims in favour of the Estate**

- (f) Makhosi was party to various joint venture projects. The joint ventures are listed in detail below. The liquidators do not anticipate to recover more than R 5 000 000.00 from these various contracts:

**The Glen Shopping Centre:**

According to records of the company this contract has as yet not been finalised and an amount of **R16 622.01** is still due from the joint venture to Makhosi.

**Christiana Prison:**

The final certificate has not been issued in this instance and according to the records of the company an amount of **R104 250.54** is due to the estate.

**Blue Fin Court:**

According to our information this contract has been completed but the final account has not been finalised and an amount of **R80 654.39** is due to Makhosi.

**Baviaanspoort Prison:**

This contract has been finalised and the final account has also been completed and agreed and according to the records of the company an amount of **R16 560.57** is due to the estate as well as further issues such as a bursary allocation of **R250 000.00** which has not been accounted for.

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**Olifantsvlei:**

This contract has as yet not been finalised and neither has the final account. According to the records of the company an amount of **R531 002.07** is still due to Makhosi. We would have to add that this joint venture operated at a considerable loss.

**Knysna Court / Police Station**

This joint venture has also been finalised but the final account has as yet not been agreed. This joint venture has according to our records also run at a considerable loss but an amount of **R412 541.82** is still due to Makhosi.

**South African Reserve Bank:**

Makhosi was the 100% contractor on this project. Makhosi cancelled the contract after its liquidation whereafter their contract was completed by another contractor. Upon the completion of the final certificate by the new contractor the liquidator will be in a position to comment as to whether any monies are due to Makhosi.

**Sheraton Hotel:**

The dispute regarding payments due on this project seems to be the main reason for the liquidation of Makhosi. After its liquidation the liquidators employed the services of Mr Carl Hermansen to assist them to attend to the finalisation of a draft final account. The draft final account was submitted to the quantity surveyor, Schoombie Hartman on 6 March 2000.

According to our calculations an amount of approximately **R17 000 000.00** is due to the company in liquidation on this contract.

The liquidator has obtained the services of an expert in construction litigation who is at present assisting them with the claim in respect the Sheraton Hotel.

The liquidators anticipate that their final account will be disputed by the quantity surveyor. In such event the liquidators would have to, in terms of the building contract, resort to arbitration. The liquidators will more fully report to creditors once we have the quantity surveyor's formal notification in respect of the contract.

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A legal issue has been raised in respect of the other joint ventures referred to above. Each and every one of these joint ventures were partnerships between Makhosi and the other joint venture partners. On some of these joint ventures the project suffered serious losses which would in the normal course of events be distributed equally amongst the joint venture partners.

It has however come to the attention of the liquidators that Makhosi did certain work on these projects for which Makhosi invoiced the joint ventures. Makhosi did however not receive any payments as the payments were set off against the so-called loss of the joint ventures. The liquidators are at present investigating these affairs and will report to creditors at a later stage.

The matter is further compounded by the fact that in certain instances set off between different joint ventures had been applied and the liquidators will most certainly investigate these transactions as well.

The Liquidators have only recently been supplied with copies of these contracts and will now liaise with each and every joint venture partner.

***These figures do not take into account any costs of administration and are subject to change and/or modification.***

**CAUSES OF THE COMPANY'S FAILURE**

- 14 The Directors, with whom the liquidators have consulted, attribute the failure of the company to the dispute surrounding the Sheraton Hotel contract.

Without payment from this contract Makhosi was unable to meet its obligations to creditors and in fact had to abandon their latest contract, for the building of offices for the South African reserve Bank. This action prompted the application for the liquidation of the company.

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**REPORT TO THE MASTER IN TERMS OF SECTION 400 OF THE COMPANIES ACT**

- 15 It is not our intention at this stage to submit a report to the Master of the High Court. However, we are still investigating this aspect and if necessary, a detailed report will be submitted to the Master in due course.

**SECTION 402(d) : PERSONAL LIABILITIES OF DIRECTORS OR OFFICERS**

- 16 At this stage it is not known whether the former director or officer of the company can be held personally liable for the debts of the company. A report will be submitted, should it become necessary.

**LEGAL PROCEEDINGS**

- 17 We have no knowledge of any legal proceedings pending by or against the company.

**ENQUIRY**

- 18 The liquidators have initiated an enquiry in terms of the provisions of Section 417 and 418 of the Companies Act, which enquiry is at present proceeding.

**BOOKS AND RECORDS**

- 19 We have taken control of the books and records found at the offices of the auditors of the company.

**PROGRESS AND PROSPECTS OF WINDING UP**

- 20 The joint liquidators have sold all the movable assets, found to date, of the company. All cash on hand has been collected.

The joint liquidators will continue to investigate to whereabouts of the remaining movable assets referred to above.

The only remaining issues are those of the uncompleted contracts referred to above.

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**LEASES**

21 To the Knowledge of the liquidators no leases existed at the date of liquidation.

**ESTIMATED DIVIDEND**

22 As reported there seems to be no creditor with a secured claim over the proceeds of any of the assets. The liquidators have previously advised creditors to submit their claims. Obviously the extent of a dividend will largely depend on the outcome of the proceedings in respect of the uncompleted contracts.

**MATTERS REQUIRING THE FURTHER DIRECTIONS OF CREDITORS**

(f) Such directions as 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 continue.

SIGNED at ..... on this ..... day of ..... 2000.

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**J F KLOPPER**

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**D GIDDEY**

**JOINT LIQUIDATORS**



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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS HELD BEFORE THE MASTER OF THE HIGH COURT ON THURSDAY, 30 NOVEMBER 2000 at 09:00**

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**RESOLVED THAT:**

- 1 The report of Liquidator or Joint Liquidators, as the case may be, hereinafter referred to as (the Liquidator"), as submitted be received and adopted and all his actions referred to therein be and are hereby confirmed, ratified and approved.
- (g) All actions of whatsoever nature heretobefore taken by the Provisional Liquidator and/or Liquidator be and are hereby confirmed, ratified and approved.
- (h) The Liquidator 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 his sole and absolute discretion.
- (i) The Liquidator be and is hereby authorised in his sole and absolute discretion to:
  - i.1 Take legal advice on any question of law affecting the administration and distribution of the company;
  - i.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;
  - i.3 Hold any enquiry into the affairs of the company and/or any matter relating thereto;
  - i.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;

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- i.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.
- (j) The Liquidator be and is hereby authorised in his 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 insolvent 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.
- (k) The Liquidator be and is hereby authorised to collection 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 he in his 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 he in his sole discretion may deem to be irrecoverable.
- (l) The Liquidator be and is hereby authorised to dispose of any movable and immovable property of the company, whether in his possession or under his control now or to come into his possession or under his control in the future by public auction, private treaty or public tender upon such terms and conditions as he in his sole and absolute discretion shall determine and to abandon any such assets for which he 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 Liquidator 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.
- (m) The Liquidator be and is hereby authorised and empowered in his 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

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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 Liquidator, provided that proof thereof has been tendered at a meeting of creditors.

- (n) The Liquidator be and is 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.
- (o) The Liquidator be and is hereby authorised to perform any act or exercise any power for which he is not expressly required by the Companies Act No 61 of 1973, as amended, to obtain the leave of the Court.
- (p) The Liquidator be and is hereby authorised to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company.
- (q) The Liquidator be and is 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.
- (r) The Liquidator be and is 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.
- (s) The further administration of the affairs of the company be left entirely in the hands and at the discretion of the Liquidator.