

**BESTINVER COMPANY SOUTH AFRICA (PTY) LTD (IN LIQUIDATION)**

**MASTER'S REFERENCE NO C000100/2020**

**LIQUIDATORS' REPORT IN RESPECT OF THE PROVISIONS IN TERMS OF SECTION 402 OF THE COMPANIES ACT, NO 61 OF 1973 TO BE SUBMITTED TO THE SECOND AND GENERAL MEETING OF CREDITORS AND MEMBERS, TO BE HELD BEFORE THE PRESIDING OFFICER, MASTER OF THE HIGH COURT: CAPE TOWN ON 29 MARCH 2022 AT 09:00**

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**INTRODUCTION**

The above company was placed in provisional liquidation on 18 February 2021 by an order granted in the High Court of South Africa, Western Cape Division, Cape Town under case number: 22342/2019. The applicant in the liquidation proceedings was FirstRand Bank Limited, a secured creditor. The provisional liquidation order was confirmed on 17 June 2021. Cloete Murray, Shona Edna Le Roux-Marx, Brian Lulamile Mbolekwa, Adel Doreen McQuarrie and Tshepo Medupe were appointed provisional liquidators by the Master of the High Court, Cape Town on 26 February 2021. The first meeting of creditors was held on 7 December 2021 and the provisional appointment confirmed on 8 December 2021.

The liquidation proceedings emanated from a business rescue process, which failed because of the non-adoption of the business rescue plan during the meeting convened to consider and approve the plan. The company is one entity in the larger Baba group of companies and three of the related entities (all property owning and leasing businesses) are still in business rescue.

**REPORT**

The company was incorporated under registration number 1994/009380/07.

**Directors**

|                 |      |                 |
|-----------------|------|-----------------|
| Ahmadou         | Baba | 500101 8891 088 |
| Yasmina         | Baba | 880816 0880 082 |
| Zayd            | Baba | 900915 6087 084 |
| Moussa Danpoulo | Baba | 740610 6541 081 |

**Shareholders**

|                                     |      |                 |             |
|-------------------------------------|------|-----------------|-------------|
| Ahmadou                             | Baba | 500101 8891 088 | 10%         |
| Ahmadou Danpoulo                    | Baba | 710101 9066 082 | 10%         |
| Aminatou                            | Baba | 811129 0632 089 | 10%         |
| Hassan                              | Baba | 760625 5694 082 | 10%         |
| Houssene                            | Baba | 760625 5757 087 | 10%         |
| Lantana                             | Baba | 540811 0851 086 | 10%         |
| Maimouna                            | Baba | 790426 0302 084 | 10%         |
| Yasmina                             | Baba | 880816 0880 082 | 10%         |
| Zayd                                | Baba | 900915 6087 084 | 10%         |
| Moussa Danpoulo                     | Baba | 740610 6541 081 | 10%         |
| <b>Number of shares issued: 100</b> |      |                 | <b>100%</b> |

**Section 402 of the Companies Act, No 61 of 1973**

**Section 402(a) Issued Share Capital and Assets and Liabilities**

Authorised: 100 Ordinary shares @ R1.

Issued: 100 Ordinary shares @ R1.

|   |    | ASSETS       | LIABILITIES  |
|---|----|--------------|--------------|
| Fixed Property - Encumbered (Princess Crossing) | 1  | 250,000,000  |              |
| Fixed Property - Encumbered (Norton House)      | 2  | 196,800,000  |              |
| Fixed Property - Encumbered (Thibault Square)   | 3  | 34,600,000   |              |
| Fixed Property - Encumbered (Constantia)        | 4  | 10,000,000   |              |
| Fixed Property - Encumbered (Hyde Park)         | 5  | 8,000,000    |              |
| Claims Related Parties                          | 6  | 300,000,000  |              |
| Movable Assets - Encumbered                     | 7  | 230,000      |              |
| Cash in Bank Account                            |    |              |              |
| ~ Accrued Rentals                               | 8  | 18,700,000   |              |
| ~ RMB account number 62180386768                | 9  | 14,997,000   |              |
| Secured Creditors                               |    |              |              |
| ~ FirstRand Bank                                | 10 |              | 547,000,000  |
| ~ Absa Bank                                     | 11 |              | 5,700,000    |
| ~ Nedbank                                       | 12 |              | 13,500,000   |
| ~ Mercedes Benz Finance                         | 13 |              | 1,100,000    |
| Preferent creditors - SARS                      |    |              | 28,421,300   |
| Preferent creditors - Sec 98A Employees         |    |              | 138,000      |
| Concurrent Creditors - Employees                |    |              | 8,689,000    |
| Concurrent Creditors                            |    |              |              |
| ~ Related parties                               |    |              | 446,500,000  |
| ~ Sureties Absa Bank                            | 14 |              | 7,300,000    |
| ~ Other   |    |              | 2,500,000    |
| Shortfall before Section 89 costs               |    |              | -227,521,300 |
|   |    | R833,327,000 | R833,327,000 |

**Notes**

- Princess Crossing Shopping Centre (held under title deed T16264/2010) was sold after the provisional liquidators obtained the consent of the High Court in terms of Section 386 (2A) of the Companies Act. The transaction is subject to Competition Commission approval and the filing has been made and approval is being awaited. The property is subject to the mortgage bond (B26141/2016) in favour of FirstRand bank. See item number 10 under the liabilities.
- Norton House (held under title deed T117794/1997). Subject to Mortgage bond (B28524/2016) in favour of FirstRand Bank. See item number 10 under liabilities. Valuation dated 1 February 2022.
- Thibault Square is held in terms of a Notarial Deed of Lease K1235/97 in respect of Erf 141644 Cape Town. The Notarial Lease has been ceded to FirstRand Bank as security for the loan reflected in item 10 under liabilities. Valuation dated 1 February 2022.
- Constantia Property (held under title deed T21754/2010). This is a residential property which is being occupied by some of the shareholders. Subject to Mortgage bond (B12421/2010) in favour of Absa Bank See item number 11 under liabilities.
- Hyde Park Property (held under title deed T101509/1995). This is a residential property which is being occupied by some of the shareholders. Subject to Mortgage bonds (B84123/2000, BB35087/2011, B26944/2013, and B19738/2005) in favour of Nedbank See item number 12 under liabilities.
- These loans are unsecured, bear interest as agreed upon from time to time and have no fixed terms of repayment. The liquidators will demand payment of these loans as soon as possible after this meeting and the adoption of the enabling resolutions.
- GLE Coupe 450/43 AMG 4Matic Mercedes Benz motor vehicle which is subject to an Instalment Sale Agreement in favour of Mercedes Benz Finance. The directors/shareholders have refused to hand over the vehicle to date, which refusal constitutes a contravention of the Companies Act. This will be reported and legal action will be taken as soon as possible after this meeting. See item 13 under the liabilities.
- Proceeds of accrued rentals collected from the rental agents. These rentals are subject to a cession in favour of FirstRand Bank. See item 10 under the liabilities.
- RMB Wealth account. The shareholders/directors withdrew an amount of R14 mil from this account after the date of liquidation. This withdrawal was unlawful and constitutes a contravention of the Companies Act. This will also be reported under the reportable contraventions and legal steps will be taken to recover this amount.
- Proved claim no 8.
- Proved claim no 3.
- Proved claim no 1.
- Proved claim no 5.
- Proved claim no 2.

The following documents were used to collate the information reflected above:

- a. The information contained in the business rescue documents.
- b. The signed Annual Financial Statements for 2019 and 2020 and the management accounts for the periods ending 31 October 2021.
- c. Information contained in court papers in the various legal disputes in which the company was embroiled in, including but not limited to, the business rescue proceedings, liquidation application and the papers exchanged during the numerous court proceedings.

Although the liquidators have attempted to ensure that the figures are as accurate as possible, they cannot guarantee the accuracy of the figures. The directors did not submit the CM100. See what is stated below regarding the veracity of the financial information available.

**There does not seem to be a danger of contribution and creditors are advised to submit their claims.**

### **Section 402(b) Causes of Failure**

As stated above, the company became financially distressed in the latter part of 2019 and the board resolved to commence with business rescue proceedings in terms of section 131 of the Companies Act no 71 of 2008. The proposed Business Rescue Plan could not muster the requisite support from the affected persons at the meeting convened to consider the plan. This led to the winding up of the company. The business rescue documents are available on request. The particulars of the financial distress and the circumstances which led to the business rescue are contained in the documents.

### **Section 402(c) Reportable contraventions in terms of Section 400(2)**

- a. The directors of the company failed to submit a completed CM100 in terms of Section 363 of the Companies Act.
- b. The directors failed to disclose and hand over some of the assets of the company as they are obliged to do.
- c. The directors withdrew funds from a bank account of the company unlawfully after the date of liquidation.

### **Section 402(d) Personal liability of Directors in terms of Section 424**

At this stage, we have not yet determined whether any director or former directors of the company should be held liable for any damages to the company, or compensation for debt or liability by the company, as determined by law, be held responsible in terms of Section 424 of the Companies Act. The liquidators have not yet finalised their investigations into the affairs of the company. If the investigations reveal any information which shows that a director or former directors should or could be held liable in terms of this section, the liquidators will take the appropriate steps to enforce such personal liability against any director.

### **Section 402(e) Legal proceedings**

We are not aware of any pending legal action, save and except for matters relating to creditors suing for outstanding debts and the litigation in respect of the business rescue proceedings.

### **Section 402(f) Enquiry**

The liquidators have not taken a firm decision on the necessity of holding an enquiry but if the decision is taken, all concerned will be advised of the format, date and venue of such enquiry. There are a number of matters that may require an enquiry such as the contraventions mentioned earlier in the report, among others.

### **Section 402(g) Accounting records**

The liquidators were provided with management accounts as on 31 October 2020 and signed Annual Financial Statements for 2019 and 2020 by the erstwhile financial manager of the company. These accounts were reliable and accurate and were of assistance to the liquidators in establishing the financial position of the company. The company did comply with the applicable regulatory provisions in respect of the maintenance and submission of financial statements as contemplated in the Companies Act.

**Section 402(h) Progress and prospects of the winding up**

The liquidators have obtained the following court order since their provisional appointment:

1. Extension of Powers in terms of Section 386(5) and 386(2B) and other auxiliary relief in respect of the sale of Princes Crossing, the appointment of legal representatives etc. - Case number 13502/2021 – 13 August 2021.

The remaining assets will be disposed of in consultation with the holders of the security rights on such assets. The loan account claims will be prosecuted and collected. This includes the claims against two of the entities which are in business rescue where applicable steps will be taken to procure the handing over of the assets still in the possession of the directors/shareholders.

Once the liquidators have concluded their investigations into the affairs of the company and sufficient assets have been realised, the First Liquidation and Distribution Account will be drafted and lodged with the Master of the High Court. It is envisaged that more than one Liquidation and Distribution account will be lodged in due course.

**Section 402(i) Other matters or specific directions to the liquidators**

Creditors are requested to advise whether there are any specific matter that they wish the liquidators to investigate or to enquire about.

We request and recommend that creditors consider the report and adopt the attached resolutions to enable us to proceed with the matter.

For more information regarding this matter, please consult our website:

<http://www.sechaba.co.za/matters/982-bestinver-company-south-africa-pty-ltd>

**SIGNED at PRETORIA on this \_\_\_\_\_ day of February 2022**

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**CLOETE MURRAY  
CO-LIQUIDATOR  
C/o Sechaba Trust  
P O Box 11889  
TRAMSHED  
0126  
TEL: 012 340 0093**

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SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022

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**SHONA EDNA LE-ROUX-MARX  
CO-LIQUIDATOR  
C/o Sechaba Trust  
P O Box 11889  
TRAMSHED  
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TEL: 012 340 0093**

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SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022

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**BRIAN LULAMILE MBOLEKWA  
CO-LIQUIDATOR  
C/o Sechaba Trust  
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TEL: 012 340 0093**

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SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022

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**ADEL DOREEN MCQUARRIE  
CO-LIQUIDATOR  
C/o Sechaba Trust  
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TEL: 012 340 0093**

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SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2022

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**TSHEPO MEDUPE  
CO-LIQUIDATOR  
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P O Box 11889  
TRAMSHED  
0126  
TEL: 012 340 0093**



**BESTINVER COMPANY SOUTH AFRICA (PTY) LTD (IN LIQUIDATION)**

**MASTER'S REFERENCE NO C000100/2020**

**RESOLUTIONS SUBMITTED TO AND ADOPTED AT THE SECOND AND GENERAL MEETING OF CREDITORS, TO BE HELD BEFORE THE PRESIDING OFFICER, MASTER OF THE HIGH COURT: CAPE TOWN ON 29 MARCH 2022 AT 09:00**

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It is resolved:

1. THAT the report of the liquidators be hereby ratified, adopted and confirmed.
2. THAT the actions of the liquidators to the date hereof, be and are hereby confirmed.
3. THAT the actions of the liquidators in utilising the services of a representative for the purpose of tracing assets, taking stock and taking possession of assets, be and are hereby confirmed, his fees to be paid by the estate.
4. THAT the action of the liquidators in engaging the services of a chartered accountant and or bookkeeper for the purpose of investigating the affairs of the estate, to complete income tax and any other returns legally required, draft financial statements and to draft the liquidation and distribution account to, be and is hereby confirmed, his fees to be paid out of the estate.
5. THAT the liquidators be authorised to engage the services of a labour consultant for the purpose of negotiating and liaising with employees and/or their representatives as provided for in Section 38 of the Insolvency Act.
6. THAT the liquidators be authorised to engage the services of attorneys and/or counsel and/or shorthand writers for the purpose of :
  - a) taking any legal opinion that may be considered necessary in the interest of the estate;
  - b) by instituting or defending any action in respect of any matter affecting the estate in any court of law;
  - c) instituting an enquiry into the affairs of the estate;

all costs so incurred to be treated as administration charges against the estate.

7. THAT the liquidators be and are hereby authorised to dispose of all the assets in the estate, by public auction, public tender or private treaty, as they in their discretion may deem fit.
8. THAT the liquidators be and are hereby authorised to hand over the book debts of the estate for collection by an attorney, his fees and disbursements to be paid by the estate.

9. THAT the liquidators be authorised to engage the services of an information technology (IT) specialist for the purpose of obtaining copies of all electronic data of the company including the management and hosting of such data off-site and that the costs of the copying and management of the data be costs in the administration of the estate.
10. THAT the liquidators be and are hereby authorised to sell or abandon any book debts that they in their discretion considers to be bad and irrecoverable, or that they consider do not warrant the expense of legal proceedings.
11. THAT the liquidators be and are hereby authorised to dispose of any of the secured assets in the estate to the secured creditors on such terms and conditions as they may in their discretion decide, in order to settle their claims.
12. THAT the liquidators be and are hereby authorised to compromise any claim by or against the estate, without the necessity of asking creditors specifically for confirmation thereof.
13. THAT the liquidators be empowered to take over any of the lease assets, which they think may be to the advantage or the benefit of creditors and dispose of same, either by public auction, private treaty or public tender.
14. THAT the liquidators' actions in having placed advertisements in the press, prior to this meeting regarding the auction sale, be and is hereby confirmed.
15. THAT the liquidators' actions in having disposed of the assets, prior to this meeting, be and are hereby confirmed.
16. THAT the liquidators be and are hereby authorised to lodge a bond of security and that the premium thereof be treated as a cost of administration.
17. THAT all reasonable expenses incurred by the liquidators for their personal/employees' transport and accommodation in the performing of their statutory duties as liquidators be paid as costs of administration additional to the Liquidators' fees as soon as funds are available in the estate. Such expenses include hotel accommodation, air transport, vehicle rentals and travel costs at AA-tariffs.
18. THAT the liquidators are authorised and instructed to pay all the reasonable charges of services provided in assisting creditors in preparing and proving their claims against the estate.
19. THAT the further administration of the estate be left in the hands of the liquidators.

**CREDITORS:**

**PRESIDING OFFICER/ MASTER OF THE HIGH COURT**