

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case Number: 58950/2021

In the matter between:

THE PRUDENTIAL AUTHORITY

Applicant

and

3SIXTY LIFE LIMITED

First Respondent

**NATIONAL UNION OF METAL WORKERS OF SOUTH
AFRICA**

Second Respondent

RAM, YASHODA

Third Respondent (Intervening Party)

FIRST RESPONDENT'S APPLICATION TO STRIKE OUT

TAKE NOTICE THAT the first respondent intends to make application to this Honourable Court, at the hearing of this matter, for an order in the following terms:

1. That the following allegations contained in the applicant's supplementary replying affidavit are hereby struck out:

- 1.1. paragraphs 21 to 90 and 93 to 101;

1.2. paragraphs 104 to 106.40 and 122 to 133;

1.3. paragraphs 91 and 92;

1.4. the confirmatory replying affidavit deposed to by Kuben Naidoo.

2. The applicant is to pay the costs of this application, if opposed, including the costs of two counsel.

3. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of **KHANDANI MSIBI** deposed to on **21 March 2022** in response to the applicant's supplementary replying affidavit will be used in support of this application.

SIGNED AND DATED AT SANDTON ON THIS 21st DAY OF MARCH 2022.



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**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT**

**AND TO: EDWARD NATHAN SONNENBERGS INC
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RAM, YASHODA

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**FIRST RESPONDENT'S RESPONSE TO
THE APPLICANT'S SUPPLEMENTARY REPLYING AFFIDAVIT**

I, the undersigned,

KHANDANI MSIBI

do hereby make an oath and state that:

1. I am the Acting Chief Executive Officer of 3Sixty Life Limited ("**3Sixty**"), the first respondent in these proceedings. I have the authority to depose to this affidavit on behalf of 3Sixty in response to the applicant's supplementary replying affidavit filed by the applicant on the evening of 12 March 2022.



2. The facts to which I depose herein are within my own personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief, true and correct.
3. Any legal submissions that I may make are so made on the advice of 3Sixty's legal representatives and I believe them to be correct.
4. Where I do not directly deal with an averment in this response, all averments in the applicant's supplementary replying affidavit that are inconsistent with 3Sixty's case as articulated in the answering affidavit and supplementary answering affidavit must be taken as denied.

A. PURPOSE OF THIS AFFIDAVIT

5. I have read the applicant's supplementary replying affidavit. It is clear that the applicant attempts to take a second bite at the cherry against the provisional curator in circumstances where it failed the first time around. A court of law has already dismissed the applicant's application to remove the provisional curator and held that:

"[26] The basis of the complaint which founds the purported application for the variation of the curatorship order is that the curator misrepresented her formal qualifications and that the applicant has thus lost confidence in her integrity and ability to do the job. This is the high-water mark of the allegations which seek to found the removal. There [sic] are not the usual allegations which one expects in removal applications of fiduciaries; conflict of interest, bias, maladministration, fraud – are not present.

*...
[33] The urgency of this application is dependent on the applicant showing the prejudice to be suffered if Ms Ram is not removed urgently. It has shown none. The fact that Ms Ram may not be as qualified as the applicant believed her to be for whatever reason does not mean she is not performing her function properly."*

6. Much of what the supplementary replying affidavit addresses relates to matters between the applicant and Ms Ram, the provisional curator. But the purpose of the hearing scheduled for Tuesday 22 March 2022 is to decide whether the rule

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nisi that was issued on 21 December 2021 and extended on 4 February 2022 should be confirmed (and the provisional order of curatorship made final) or discharged (and the provisional order of curatorship **not** confirmed). It is not to determine a dispute between the applicant and Ms Ram. This court is not called upon to decide the suitability of the provisional curator who has in any event now submitted her final report in which she concludes that there are “**no findings that justify the provisional curatorship continuing**” and that 3Sixty “**clearly shows how the events of this particular curatorship have created more harm than good. This is not in the best interests of policyholders**”. The applicant’s attempt at removing Ms Ram as provisional curator was dismissed on 3 March 2022.

7. I have already demonstrated in the affidavits filed previously on behalf of 3Sixty why the applicant has failed to demonstrate that curatorship is appropriate in the circumstances of this case. I submit, as the curator has now concluded, that it will not be in the interest of policyholders, and indeed of justice, for the *rule nisi* to be confirmed and the curatorship continued.

B. NEW MATTER RAISED IN REPLY

8. I am advised that the rule of practice that an applicant must, generally speaking, stand or fall by his founding papers, is not one cast in stone and that the rule remains subject to the discretionary power of the court. A court may in the exercise of its discretion in exceptional cases allow new matter in a replying affidavit.
9. I submit that, on the facts of this case and when one has regard to the conduct of the applicant as a whole, fairness and justice does not dictate that the applicant be allowed to introduce new matters in reply.
10. The applicant has failed to act diligently and continues to mislead the Honourable Court. Such conduct materially prejudices 3Sixty and its policyholders.

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(i) The attack on 3Sixty's actuary


11. At paragraphs 91 to 92 of the applicant's supplementary replying affidavit, the applicant appears to suggest that 3Sixty's actuary is dishonest. In what appears to be a desperate attempt, it now seeks to attack the integrity of 3Sixty's actuary in terms that are scandalous, vexatious, irrelevant to the determination of the issue at hand, and without regard to clear facts. With callous disregard for Mr Mothapo's professional integrity, the applicant avers:

"91. I also attach as annexure "RA16.3" an email chain that Mr Mothapo (an actuary that consults to 3Sixty) had exchanged with Mr Msibi and copied to Ms Ram. The first email is dated 25 February 2022 and reads as follows

"Kindly find attached an invoice for actuarial consulting services for Feb – 22. The Jan – 21 QRT (sic) is yet to be delivered, but included in this invoice. So you can hold on the invoice (sic) until that deliverable is submitted."

92. On 1 March 2022, Mr Mothapo sends a further email, which is copied to Ms Ram and which reads as follows "Further to below, I have revised invoice to get as much as possible in 2022 financial year so that it does not appear to be a bad year. There were few late activities on NFS price increase I would like to include." This suggests that invoicing was being manipulated and there is no indication that Ms Ram raised concerns about this with Mr Mothapo. She certainly did not raise any issues about this with the Authority."

12. This serious and defamatory allegation calls for a response.
13. On 25 February 2022, 3Sixty's actuary sent an invoice for February 2022 in the amount of R141,123.75. The invoice included an item still to be delivered on 28 February 2022. 3Sixty's actuary requested that the invoice should not be paid before the deliverable.
14. On 1 March 2022, 3Sixty's actuary updated the invoice to include hours between 25 February 2022 and 28 February 2022 to reflect the actual services rendered. The additional amount invoiced (that is the difference between the two invoices for R167,085.00 and R141,123.75) was R25,961.25. This was

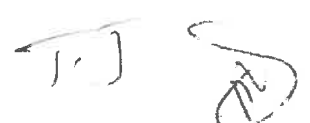
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done to avoid his financial year ending 28 February 2022 to appear as having less revenue than was the real position.

15. I submit that this cannot amount to dishonesty as the applicant appears to suggest. The applicant has not substantiated why the updated invoice so as to include the actual services rendered during 25 February 2022 to 28 February 2022 amounts to 'manipulation'. Timesheets were attached to the invoices to confirm the additional hours invoiced.
16. The allegation that 3Sixty's actuary is 'manipulating' invoices is therefore malicious, scandalous, defamatory, vexatious and detracts from what this court is here to decide. It is denied.
17. In any event, the invoice has not yet been paid and it is open to the provisional curator (or anyone else for that matter) to raise any concerns if any. She denies that there was any manipulation (**CL 063-48, para 126**).
18. The confirmatory affidavit of 3Sixty's actuary is annexed hereto marked "**KMFS1**". The respective emails and attachments thereto detailing the context of the invoices are annexed hereto as "**KMFS2**".
19. I am constrained to repeat what appears to be lost in the applicant's desperate attempt to fudge the issues: the purpose of the hearing on 22 March 2022 is to determine whether the rule *nisi* should be confirmed or discharged. 3Sixty's actuary's invoices are irrelevant in determining that question. So too, the suitability of the curator at this late stage and after that challenge has already been dismissed by a court of law.

(ii) The alleged governance failures


20. The applicant appears to raise, for the first time in reply, governance failures as a ground for curatorship.



21. The applicant states that *"It cannot be that the Authority's only concern was solvency and liquidity, when it was a symptom of systematic governance failures over a period of time – such time preceding Covid-19"*.
22. Governance (or mismanagement) was never raised as a ground for curatorship. It was not a basis on which Justice Crutchfield granted the provisional curatorship order. It cannot now serve as a basis for confirmation of the rule nisi. I have in any event already addressed the issues pertaining to the Deloitte report and the applicant's conduct in respect thereto.
23. There was no engagement by the applicant with 3Sixty in respect of the Deloitte report since it was issued.

C. SPECIFIC AVERMENTS OF THE SUPPLEMENTARY REPLYING AFFIDAVIT

24. I now turn to deal with the specific averments in the supplementary replying affidavit that require a direct response.
25. As a result of time constraints, I do not deal with each averment made. The applicant was supposed to have filed its supplementary reply by 10 March 2022; it did so 2 days later on 12 March 2022 and during a period when two of 3Sixty's counsel were involved in other court appearances on 14 and 15 March 2022, and lead counsel was detained in yet another court appearance on 16 and 17 March 2022. That meant that lead counsel was not available to settle this affidavit until the weekend of 19 and 20 March 2022. Had the applicant filed its affidavit in terms of the court order of 4 February 2022, that is by 10 March 2022, this affidavit could have been settled and uploaded on CaseLines by 12 March 2022. I thus ask that the delayed filing of this affidavit be condoned and that it be admitted into evidence.
26. All averments in the applicant's supplementary replying affidavit that are inconsistent with 3Sixty's case as articulated in the answering affidavit and supplementary answering affidavit must be taken as denied.

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27. **Ad paragraph 4**

27.1. Regrettably, the applicant's supplementary replying affidavit gives a flavour of what is to come by opening with a mendacious statement that my supplementary answering affidavit of 7 March 2022 "*exceeds 120 pages*".

27.2. This blatant untruth appears intended to justify filing its supplementary replying affidavit 2 days later than was ordered and on a Saturday.

27.3. My supplementary answering affidavit runs to 47 pages, without annexures necessitated by the applicant's rambling supplementary affidavit that raises new facts and fact-free allegations that are defamatory.

27.4. Regrettably, this is the theme of the supplementary replying affidavit now filed by the applicant.

28. **Ad paragraphs 10 to 15**

The contents of these paragraphs are unnecessary as this court has already been apprised by the applicant of the "statutory framework"

28.1. in its original founding affidavit (CL 003-7, para 22 to 003-10, para 30),

28.2. again in its replying affidavit (CL 019-10, para 38 to 019-11, para 40),
and

28.3. again in its first set of heads of argument (CL 030-17, para 5.1 to 030-20, para 5.5).

29. This repetition serves only to abuse the court process and burden the record of pleadings, thereby increasing costs.

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30. Ad paragraphs 21 to 101

- 30.1. While the order of Justice Fisher reads that the variation application was dismissed for lack of urgency, the judgment makes plain that, lying embedded in the lack of urgency is the lack of merit in the attempt by the applicant to remove Ms Ram. Justice Fisher found that the applicant failed to establish any conflict of interest, bias, maladministration, fraud on the part of Ms Ram. The Learned Justice also found that the applicant failed to show that Ms Ram failed to perform her functions properly as a curator.
- 30.2. These are issues that this court cannot revisit, ostensibly sitting as a review or appeal court, as the applicant now seems to invite it to do. They are all irrelevant for purposes of determining the question of whether or not the rule nisi ought to be confirmed as they raise matters on which Justice Fisher has already pronounced.
- 30.3. It is clear that the applicant now wants this court to overturn a decision of Justice Fisher in which the Learned Justice dismissed the applicant's application to remove Ms Ram. It asks this court (at paragraph 101) to **"remove [Ms Ram] from her position"** and **"recommends that Tinashe Mashoko from the BDO Actuarial Team be appointed as the curator"**. But this court cannot sit as a court of review or appeal to set aside the decision of Justice Fisher.
- 30.4. The entire narrative in these paragraphs is intended to achieve this purpose, is irrelevant to the purpose of these proceedings – which is either to confirm or to discharge the rule nisi – and should be struck out. A notice to strike out is served together with this affidavit.

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31. Ad paragraphs 104 to 106.40, 122 to 133

31.1. In these paragraphs the applicant is effectively re-arguing its case and adding allegations that it failed to make in its original founding affidavit in its *ex parte* application. I am advised that this is wholly impermissible. The applicant must stand or fall by its original grounds for seeking curatorship. It cannot be allowed to supplement its grounds (with, for example, considerations of governance that did not form part of the basis for its *ex parte* application) for purposes of supporting its case for confirmation of the rule nisi.

31.2. I ask that this court disallows this new case.

31.3. In any event, the applicant identifies what it says are **“three main issues as to why the provisional curatorship order ought to be made final”**. These are: (a) the Internal Recapitalisation Plan to resolve solvency issues; (b) the failure by 3Sixty to produce audited financial statements for 2020 and 2021; and (c) governance issues (CL 055-35, para 111). It then proceeds, in subsequent paragraphs to discuss each of these issues (CL 055-36, para 113 to 055-45, para 133). But the curator has made findings on each of these issues in her final report dated 18 March 2022 and found that none of them justifies continued curatorship (CL 066-36, para 3 to 066-38, para 3.7).

31.4. Anyway, the governance issue did not form part of the applicant’s basis for seeking the curatorship order from Justice Crutchfield. It was not a basis on which Justice Critchfield granted the provisional order. I am advised that it is impermissible and would be considerably prejudicial on 3Sixty for the applicant to be permitted to seek a confirmation of the rule nisi on a ground on which the provisional order was never sought or granted.

31.5. I pause here to mention that the applicant places much emphasis about the properties being encumbered. I have dealt with this issue extensively

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in the affidavits previously filed on behalf of 3Sixty. The applicant fails to meaningfully address the averments made.

32. **Ad paragraph 120.1**

- 32.1. The applicant continues to mislead the court by raising the same matter in a number of different ways.
- 32.2. As already dealt with in the answering affidavit, the change in management was as a result of the Board taking strong action against the management that was implicated in the irregularly incurred expenses which resulted in the reportable irregularity.
- 32.3. The applicant contradicts itself when it complains about management changes which were triggered by the reportable irregularity and on the other hand allege that nothing was done regarding the reportable irregularity.
- 32.4. For the reasons already advanced in my answering affidavit, I deny that management has not taken any steps to recover these funds.
- 32.5. Criminal charges were laid against the former Chief Executive Officer by management. Management opened a case against the former Chief Executive Officer with the South African Police Services in early September 2021. The investigation by the South African Police Services is ongoing.
- 32.6. I deny that it was the auditors who identified this reportable irregularity. All of the reportable irregularities the auditors reported to IRBA were matters which management identified and disclosed to the auditors. The Auditors were informed that management was working on rectifying these matters. As a result, management kept a progress tracker of the matters identified and an update on each matter was provided at the

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3Sixty Audit Committee meetings as well as at the 3Sixty Board meetings.

32.7. Management called a meeting with the Auditors on the 14th of May 2021 to inform them of the irregularly incurred expenses approved by the former Chief Executive Officer of 3Sixty amounting to approximately R14 million. Management identified the invoices which related to the irregularly incurred expenses for the auditors and was at all times transparent regarding this matter.

33. **Ad paragraph 120.2**

33.1. The reduction of share capital was reported by management to the applicant on the 17th of November 2021 and has already been addressed in my affidavits previously filed. For ease of reference the letter is annexed hereto as "KMFS3".

33.2. As appears from the letter, in 2018 Doves Group, the sole shareholder of 3Sixty, proactively made a capital injection of R7.47 million to 3Sixty in anticipation that 3Sixty would need additional capital to prevent a breach of its solvency requirements. When the solvency capital requirements showed signs of improvement, management considered it prudent to return the additional share capital to Doves Group. This decision was taken in 2020. This was approved by the 3Sixty Board on the basis that this was not a general reduction of 3Sixty's share capital, but a return of the specific capital that had previously been invested by the shareholder in exercise of caution against deteriorating levels of solvency.

33.3. The letter further states that 3Sixty's management was of the view that the transaction did not require the approval of the applicant. On objective facts, the share capital of 3Sixty was not reduced as it was R24 million prior to the capital investment and it remained R24 million post the return of capital to Doves Group.

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33.4. The letter confirms that 3Sixty Life management completed the required governance internal processes at the time of implementing the return of capital.


33.5. The applicant was therefore made aware of this by management in an effort to be transparent and to rectify the process followed by management at the time of implementing the transaction.

34. **Ad paragraph 122**

34.1. I draw the court's attention to the fact that, as appears from "RA17.3" Mr Kuben Naidoo states *"The PA hereby formally withdraws the link made between the allegations mentioned in paragraph 6 of our letter with the request to appoint an independent chair to the board of directors of 3Sixty Life Insurance Company Limited (3Sixty Life) as referred to in paragraph 7 of our letter."* The applicant further states *"We agree that the allegations made have not been substantiated by evidence."* This is an indication that the applicant has a tendency of making allegations without substantiated evidence as admitted by Mr Kuben Naidoo in "RA 17.3". I attach this letter for emphasis to the court as annexure "KMFS4".

34.2. The Board of NUMSA Investment Company (NIC), the ultimate shareholder of 3Sixty, accepted the recommendation raised by the applicant to appoint an independent chairperson. 3Sixty implemented the recommendation made and an independent chairperson was appointed within the timeframe given by the applicant.

34.3. The matters relating to the Deloitte report have been dealt with in detail in my affidavits already filed. I highlight, once again, that the applicant has had sight of the Deloitte report since early 2021 and no action was taken by the applicant regarding the findings raised in the Deloitte report. Clearly the findings did not warrant any regulatory action but corrective action on the part of 3Sixty which has been implemented as evidenced

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by the appointment of an independent chairperson. The appointment of an independent chairperson was acknowledged by the applicant.

34.4. In its founding affidavit, the applicant did not make mention of the findings in the Deloitte report, a report which the applicant had for almost a year at the time the applicant approached the court on an *ex parte* basis to place 3Sixty under provisional curatorship.

34.5. The Deloitte report was brought to the court's attention by 3Sixty. It appears that the applicant seeks to shift its case when it suits them.

34.6. I reiterate that alleged governance failure was never a ground for curatorship.

34.7. The applicant's averments made in this regard are clearly prejudicial to 3Sixty as the applicant's case keeps shifting. I ask this court to disallow this new ground for curatorship.

35. **Ad paragraph 123.1**

35.1. The statement made by the applicant is factually incorrect.

35.2. 3Sixty had 6 independent Board members prior to the Board being divested of its powers.

35.3. Ms Ellan Cornish is not a member of the Board as evidenced by the CIPC records.

35.4. The Board therefore consisted of a majority of independent members prior to the Board being divested of its powers.

35.5. Furthermore, 3Sixty was in the process of appointing members at the time the *rule nisi* was granted. The process was halted abruptly as the

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Board was divested of its powers. In any event, even with the vacancies, the Board remained with the majority of independent board members.

35.6. This is typical of the applicant seeking to mislead the court once again. Again this is new ground for curatorship and should not allowed.

36. **Ad paragraph 123.2**

36.1. The Head of Risk was appointed effective 1 December 2020. The supporting documentation was however submitted to the applicant on the 28th of October 2020. See annexure "KMFS5" in this regard.

36.2. It is, once again, factually incorrect and disingenuous of the applicant to state under oath that to date, the appointment of a Head of Risk does not appear to have been done.

37. **Ad paragraph 123.3**

37.1. Ellan Cornish is not reflected on the CIPC documents as a director of 3Sixty.

37.2. All resolutions taken by the Board are signed only by directors who are appointed on CIPC.

37.3. The applicant ought to have noted that Ellan Cornish is not a director of 3Sixty.

37.4. Once again, the applicant has failed to act diligently.

38. **Ad paragraph 123.4**

38.1. There is no legislation that indicates that management should not serve across multiple boards.

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38.2. Management is therefore not in contravention of any laws or regulations.

39. **Ad paragraph 123.5**

39.1. The applicant makes vague accusations and does not specify the key control functions which they claim remain vacant dating back to 2018.

39.2. Nonetheless, these allegations are denied as all key personnel's have been appointed per the 3Sixty organogram.

40. **Ad paragraph 123.6**


40.1. 3Sixty belongs to a group of companies and benefits from the strategic input of the group executives. Like other significant subsidiaries in the group, 3Sixty contributes towards the payment of group expenses.

40.2. The group has three significant revenue generating subsidiaries which contribute towards group costs. There is nothing untoward about 3Sixty contributing towards group expenses. This is the norm in many group companies.

41. **Ad paragraph 123.7**

41.1. 3Sixty responded to the BDO team on the 10th of March 2022 where 3Sixty clearly stated that all the claims which were identified by the BDO team were originally declined by 3Sixty but were subsequently overturned by the ombudsman.

41.2. 3Sixty therefore had to comply with the decision made by the ombudsman and payment of the claims therefore had to be made. 3Sixty received the email with this query from BDO on the 8th of March 2022.

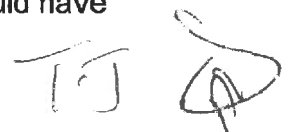
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42. Ad paragraph 123.8

- 42.1. In the email correspondence sent by 3Sixty to BDO dated the 10th of March 2022, 3Sixty clearly explains to BDO that the claim was paid in two parts. One part was paid to Doves Group, as the undertaker and the remaining balance was paid to the claimant. This happens with all undertaker claims where there is a split payment between Doves Group and the claimant.
- 42.2. The invoices received from Doves Group for the burial are sometimes less than the cover amount and the remaining balance of the cover amount is paid to the claimant directly. Therefore, if the two amounts paid over to Doves Group and the claimant are added together, the total would equal to the cover amount.
- 42.3. The reason why the BDO team identified differences is because they were taking one of the two payments and comparing them to the total cover amount. The BDO team should have followed up with 3Sixty for clarity if they were still unclear on this point which they failed to do.

43. Ad paragraph 123.9

- 43.1. It was explained to the BDO support team that the claims that were overpaid related to with-profit policies.
- 43.2. The cover amount reflected on the policy document is purely the cover amount and does not include the profit portion of the claim. The profit portion of the claim is calculated separately by the actuaries and is paid over and above the cover amount at the claim stage.
- 43.3. Therefore, naturally, the payment made will be higher than the amount stipulated on the policy document when taking into account the profit portion of the claim. Once again, the BDO support team should have



followed up with 3Sixty for clarity if they were still unclear on this point which they failed to do.

44. **Ad paragraph 124**

- 44.1. The FSCA's view that the premium increases of 1 February 2021 were not in line with PPRs is contested by 3Sixty.
- 44.2. What was not in line with PPRs was the reduction in benefits for policies that did not pay the increased premium and had claims between 13 March 2021 and 30 April 2021, for which an exemption was sought from the FSCA.
- 44.3. The FSCA is yet to return to 3Sixty with a final decision on the exemption application. Nonetheless, 3Sixty has already done the analysis to quantify the liability that may have occurred in the period 13 March 2021 to 30 April 2021 and found that there is no liability as there were no policyholders that were paid a reduced sum assured as a result of not taking up the increased premium during this time.

45. **Ad paragraph 125**

- 45.1. In the applicant's supplementary affidavit, the applicant claimed that no progress has been made regarding the governance matters and reportable irregularities identified in 3Sixty.
- 45.2. 3Sixty responded that the applicant was incorrect and that, in fact, progress had been made. 3Sixty never claimed that all matters have been addressed but management is actively working through an action tracker which lists the few remaining governance concerns with clear action items that will address the concern.

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46. Ad paragraph 137

46.1. The suggestion that the 3Sixty actuary who has consistently been advising on the internal recapitalisation plan does not believe in its efficacy is simply laughable and demonstrates the lengths to which the applicant will go on the irrationality scale to consign 3Sixty to permanent curatorship at any and all cost.

46.2. But even if the actuary suddenly had doubts, which is denied, the fact is that the provisional curator appointed by the court on the applicant's recommendation has issued a final report recommending the internal recapitalisation plan as a viable means to achieve solvency requirement levels. She says: "**3Sixty has presented an Internal Recapitalisation plan that will restore the MCR to regulatory required level**" (CL 066-36, para 3.1).

47. Ad paragraph 158

47.1. Again, regrettably, the applicant's mendacity and shifty disposition continues.

47.2. In paragraph 223 of its replying affidavit the applicant's condition for considering applying for the discharge of the rule nisi was "**if the provisional curator's report does not identify any significant issues or risks relating to the business of 3Sixty**". (CL019-40, para 223.4). The condition was **not** that the applicant (or "**the Authority**" as the applicant now puts it at **CL 055-50, para 158**) not identify any significant issues. The applicant is, again, seeking to mislead the court by misstating the contents of its own replying affidavit, under oath, which it made under oath. This is unacceptable and dishonest.

47.3. The curator has now in her final report to this court found no basis for the continued curatorship. That is the end of the matter.

T.J. 

D. APPLICATION TO STRIKE OUT PARAGRAPHS OF THE APPLICANT'S SUPPLEMENTARY REPLYING AFFIDAVIT

48. The purpose of the hearing on 22 March 2022 is to determine whether the rule *nisi* should be confirmed or discharged. Much of the material contained in the supplementary reply is irrelevant to the determination of that question and, where it is, introduces new allegations that did not form part of the basis for the *ex parte* curatorship application. I ask that these allegations be struck out for the following reasons:

48.1. These paragraphs relate to Ms Ram's suitability to continue as curator and matters that have already been determined by a court of law: **21 to 101.**

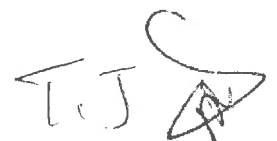
48.2. These paragraphs contain new allegations that did not form the basis for the *ex parte* application for provisional curatorship: **104 to 106.40 and 122 to 133.**

48.3. These paragraphs contain shamelessly scandalous and defamatory allegations about the consulting actuary for 3Sixty that are irrelevant for the determination of the question whether the rule *nisi* should be confirmed or discharged: **91 and 92.**

48.4. The confirmatory replying affidavit deposed to by Kuben Naidoo contains new allegations that did not form the basis for the *ex parte* application for provisional curatorship: **CL055-195 to 055-203.**

E. THE RULE OUGHT TO BE DISCHARGED

49. In paragraph 223 of its replying affidavit in this application (**CL 019-40**) the applicant told this court that it would apply for the discharge of the rule *nisi*, and therefore cancellation of the curatorship against 3Sixty, if



- 49.1. values of the 53 properties identified for recapitalisation of 3Sixty were verified;
 - 49.2. the sale proceeds of those properties met the MCR and SCR requirements;
 - 49.3. it would be easy to realise those properties; and
 - 49.4. the provisional curator does not identify any significant risks in relation to 3Sixty's business.
50. As the provisional curator's interim report has demonstrated (**CL 045-4**), all these conditions have been met, and the path was clear when that report was submitted on 21 February 2022 for the court to discharge the rule and cancel the curatorship. However, Justice Fisher considered it best that this question be determined by this court.
51. Specifically, the curator said the following in her interim report:
- 51.1. Should the sale transaction be permitted, 3Sixty will be solvent (**CL 045-10, para 2**)
 - 51.2. The applicant should have taken into the account the values that would have been realised from these properties before approaching the court for a curatorship order (**CL 045-11, para 3**). She identifies this as the most significant factor.
 - 51.3. For purposes of assessing 3Sixty's MCR as at 7 December 2021 when the property transaction was presented as an internal recapitalisation plan, it would have been reasonable for the applicant to consider the impact of the value of these properties to 3Sixty's solvency position at that time but there is no evidence of this being done by the applicant (**CL 045-13, paras 5.2.4 & 5.2.5**).

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- 51.4. The impact of the property transaction improves the MCR to a level that is above the required amount (CL 045-14, para 5.3.2.1).
- 51.5. The level of Own Funds post the transaction is at a level that would be sufficient to cover MCR (CL 045-14, para 5.3.2.2).
- 51.6. Had the applicant considered 3Sixty's internal recapitalisation plan on its merits when it was presented to it in December 2021, the curatorship order would not have been necessary on the basis of solvency alone (CL 045-19, para 1).
- 51.7. Continued curatorship "**should be opposed**" as "**it may have not been appropriate notwithstanding other allegations put forward by the Prudential Authority**" (CL 045-19, para 2).
52. The answer to each of the conditions laid by the applicant itself in its replying affidavit in this application for the discharge of the rule is this:
- 52.1. As regards paragraph 223.1, the values were recently verified in January and February 2022 by three independent valuers as follows: Peter Parfitt of Quadrant Properties as R111 300 000 (CL 045-144, para 12), Tsietsi Madonsela of Lutendo Group as R122 290 000 (CL 010-664) and Nathan Theron of Spectrum Valuations and Asset Solutions as R125 220 000 (CL 010-666).
- 52.2. As regards paragraph 223.2, Tsietsi Madonsela of Lutendo Group indicates that R65 840 000 of the properties can be easily sold within three to six months (CL 010-668).
- 52.3. As regards paragraph 223.3, the MCR Cover exceeds 1 in all three property valuation scenarios. The SCR Cover is 0.92 and 0.99 if the property is valued at R113 000 000 and R121 000 000 respectively. This is according to the report by Milliman based on the property value recapitalisation impact on 3Sixty solvency position looking at the different

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property values by the various valuers (CL 045-175 to 177). Using Spectrum Valuations and Asset Solutions value of R125 220 000 and Lutendo Group's value of R122 290 000, the SCR Cover will certainly exceed 0.99 and be more than 1. It is worth noting that the applicant had said *"The Prudential Authority will permit insurers that are experiencing conditions of financial unsoundness, that is, SCR ratios below 100% due only to the impact of COVID-19, to continue operations without exercising regulatory action. This will allow insurers that are experiencing financial distress as a result of COVID-19 to continue operating under these circumstances and to progressively recover to healthy SCR ratios (i.e. SCR ratios greater than 100%)"* (CL 010-708, para 5).

- 52.4. As regards paragraph 223.4, the curator did not identify any issues or significant risks relating to the business of the 3Sixty in her interim report.
53. For these reasons, the applicant should in good faith have sought the discharge of the rule as it had itself under oath undertaken it would do. It has not. Instead, it now digs in its heels, even in the face of the final report of the curator, who was appointed by the applicant in glowing terms, which says, in conclusion (CL 066-36, para 3 to 066-38, para 3.7):
- 53.1. **"There have been no findings that justify the provisional curatorship continuing"**.
- 53.2. **"[3Sixty] clearly shows how the events of this particular curatorship have created more harm than good"**.
- 53.3. **"This is not in the best interests of policyholders"**.
- 53.4. **"3Sixty Life has presented an Internal Recapitalisation plan that will restore the MCR to the regulatory required level"**.
- 53.5. **"The matters relating to the unaudited financial statements is one that can be resolved with the co-operation of the external auditor of**

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choice, as well as an increased focus on the accounting and finance function within 3Sixty”.

- 53.6. **“The alleged misappropriation of funds cannot be proven, nor justified”.**
- 53.7. **“The matters raised in relation to Governance, Risk Management, Control Functions required as per the GOIs and the soundness of the Board of Directors are noted, however the onus of the approval of appointment of these individuals has and will continue to rest with the authority themselves”.**
- 53.8. **“The Board of Directors had all been appointed in accordance with the requirements set out by the regulator, hence any concerns raised in this regard should be considered with discretion and with due care and does not constitute grounds for curatorship”.**
- 53.9. **“I put forward to this court the recommendation that [3Sixty] should adopt in order to rectify the challenges they, as all insurers face, and have shown in the Interim Report on the Internal Recapitalisation Plan that they have the opportunity to restore solvency should the Authority [the applicant] act in good faith and provide the necessary approvals for that transaction to proceed”.**
54. On the strength of this conclusion, coupled with the applicant’s own undertaking under oath in its replying affidavit (CL 019-40, para 223), there now remains no reasonable or rational basis for 3Sixty to be subjected to continued curatorship. The applicant’s persistence in it is simply malicious and not founded in good faith efforts to act in the best interests of policyholders.
55. As the curator has now confirmed in her latest affidavit (CL 063-24, para 53.2.11), since this matter last served before Justice Dippenaar on 3 February 2022 and Justice Fisher 22 February 2022, 3Sixty has since the received another termination notice from a provident fund. This no doubt is a direct result

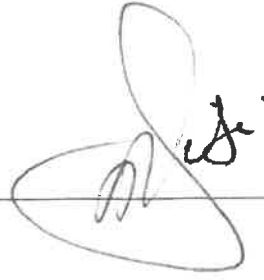
T.J. 

of the continued curatorship as clients have no certainty of the viability of the 3Sixty business when it continues to be under curatorship. This demonstrates the continuing prejudice to the 3Sixty business and policyholders that continued curatorship causes.

F. APPROPRIATE RELIEF AND COSTS

56. I stand by the submissions and averments made in my answering and supplementary answering affidavits in this and in the failed variation application, and I ask that they be taken into account.
57. I persist with the submission that the applicant has acted in haste and has not acted with due diligence or in the interest of the public and policyholders.
58. On the facts before this court, it will not be in the interest of justice and policyholders to confirm the *rule nisi*.
59. For all these reasons, I submit that the *rule nisi* ought to be discharged with costs including the costs consequent upon the employment of two counsel on an attorney and client scale and the costs of the employment of an actuary, both in this application and in the failed variation application before Justice Fisher.
60. I submit that there are no grounds for costs *de bonis propriis* against me. As I have demonstrated in this affidavit and in the affidavits previously filed on behalf of 3Sixty, opposition was necessary.
61. The applicant's supplementary replying affidavit is particularly abusive of this court's process, vexatious, irrelevant and scandalous. The applicant's conduct is deserving of the most severe censure.

T.J. 



DEPONENT

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at SANDTON on this the 21ST day of **MARCH** 2022 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.

TEBOGO J MALAT
COMMISSION OF OATHS

PRACTISING ATTORNEY (RSA)
FUTURE SPACE, 1ST FLOOR
61 KATHERINE STR, SANDTON
TEL: 011 484 4114



COMMISSIONER OF OATHS

ANNEXURE "KMFS1"

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case Number: 58950/2021

In the matter between.

THE PRUDENTIAL AUTHORITY

Applicant

and

3SIXTY LIFE LIMITED

First Respondent

**NATIONAL UNION OF METAL WORKERS OF SOUTH
AFRICA**

Second Respondent

RAM, YASHODA

Third Respondent (Intervening Party)

CONFIRMATORY AFFIDAVIT

I, the undersigned,


RANTI MOTHAPO

do hereby make oath and say that:

- 1 I am an adult male Actuarial Consultant, employed by Matlotlo Group, situated at 96 Protea Avenue, Atholl, Johannesburg, 2196.

 C L

2. I am a Fellow of the Actuarial Society of South Africa with over 17 years post-qualification experience
3. I have served as a non-executive director of two life insurance companies as well as non-executive director of three non-life insurance companies for a cumulative period of 23 years. During my tenors I have been a member of the actuarial, investment, risk, audit and remuneration committees, and had the opportunity to be the chairperson of the same committees.
4. I have taken responsibility for six annual comprehensive solvency assessment quantitative reporting templates as well as over 35 interim solvency assessment quantitative reporting templates to the Prudential Authority, involving determination of policyholder liabilities and statutory capital requirements of **primary life insurers**, not micro-insurers.
5. I have taken responsibility for seven annual comprehensive solvency assessment quantitative reporting templates as well as many interim solvency assessment quantitative reporting templates to the Prudential Authority, involving determination of policyholder liabilities and statutory capital requirements of **primary non-life insurers**, not micro-insurers.
6. I have had experience in dealing with the unusual issue of encumbrance of assets in terms of the Insurance Act with one of the insurers I service.
7. The facts to which I depose are within my personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief true and correct.

C. G. 

8 I have read the affidavit of **KHANDANI MSIBI** in response to the applicant's supplementary replying affidavit and confirm the contents thereof insofar as they relate to me.

9 I further confirm and make emphasis on specific averments in relation to the affidavits of Khandani Msibi that:

9.1 The occupation of the properties subject to 3Sixty Life's Internal Recapitalisation Plan by Doves does not result in the properties being encumbered in terms of the Insurance Act.

9.2 The properties can be fully recognised on 3Sixty Life's balance sheet at their determined fair values.

9.3 As I have advised since 7 December 2021, the Internal Recapitalisation Plan will therefore materially improve the financial soundness position of 3Sixty Life as contemplated in the capital adequacy requirements as set out under the Solvency Assessment and Management regulations.

9.4 In as far as my interactions with the auditors of 3Sixty Life regarding the annual financial statements as of 31 December 2020, I believe the auditors have frustrated and delayed the audit. The reluctance of the Prudential Authority for 3Sixty Life to change auditors as well as the involvement of BDO for the last three months has not assisted with any progress on finalisation of audit matters I am involved in.

9.5 Without completed annual financial statements since 31 December 2020, I believe the Internal Recapitalisation Plan is

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the only available viable recapitalisation for 3Sixty Life because it is capitalisation from its shareholder who does not require audited financial statements. External recapitalisation will most likely require audited financial statements and would therefore be extremely difficult to achieve under the current circumstances. In the unlikely scenario that external recapitalisation is achieved, it will be extremely delayed in resolving 3Sixty Life's financial soundness and thus prejudicial to 3Sixty Life's trading.

9.6 Since the second wave of Covid-19 infections in January 2021, 3Sixty Life has not had a liquidity strain. As of January 2022, 3Sixty Life is not projected to have a liquidity strain even under the worst-case risk scenarios for mortality, mass lapses and expenses.

9.7 I cannot find a sound basis and I am yet to come across actuarial analysis that the policyholders of 3Sixty Life are at risk.



RANTI MTHAPO

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit, which affidavit was signed and sworn to at Sandton SARS on this the 21 day of **MARCH** 2022 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982




COMMISSIONER OF OATHS

ANNEXURE "KMFS2"

From: Ranti Mothapo <ranti@matlotlo.co.za>
Sent: Friday, 25 February 2022 06:00
To: 'Khandani Msibi'; 'Ellan Cornish'; 'Nobuhle Nkosi'
Cc: 'Olu Luthaga'; 'Yashoda Ram'
Subject: MATLOTLO ACTUARIES & QUATS | INVOICE - 25 Feb 2022
Attachments: INVOICE_3SIX202202.pdf; Timesheet linked to INVOICE_3SIX202202-20220225.pdf

Hello Ellan,

Kindly find attached an invoice for actuarial consulting services for Feb-22. The Jan-21 QRT is yet to be delivered, but included in this invoice. So you can hold on the invoice until that deliverable is submitted. I trust you find this in order to process upon that delivery.

Best regards,

Ranti Mothapo
ACTUARY | QUANTITATIVE ANALYST
Mobile +27 73 250 7669
Tel +27 11 783 2380 (Ext: 110)
Email ranti@matlotlo.co.za
96 Protea Ave, Atholl, 2196, Johannesburg

Matlotlo Group (Pty) Ltd, an authorized financial services provider. FAIS licence number 30465.

TAX INVOICE

VAT #: 4060251180



Ref: Inv 3SIX202202

96 Protea Ave, Atholl, 2196, Johannesburg
t: +27 11 783 2380 | f: +27 86 515 2286 | e: info@matlotlo.co.za

Khandani Msibi / Ellan Cornish
Chief Executive Officer / Chief Finance Officer
3Sixty Life
9 Central Street
Houghton
2198

VAT No: N/A

25-Feb-2022

Assignment: Actuarial Services

Item	Description	Amount
	Predetermined/Recurring Fee Basis	R 42 400.00
1	Jan 2022 SCR QRT (100% of Ordinary Cost)	R 42 400.00
	Hourly Fee Basis	R 98 723.75
1	Product Development & Pricing	R 27 090.00
2	Curator Assistance	R 61 475.00
3	Other Meetings	R 10 158.75
Total (EXCL VAT)		R 141 123.75
VAT @ 15%		R 21 168.56
Total (INCL VAT)		R 162 292.31

PLEASE PAY INTO THE FOLLOWING BANK DETAILS:

Account Name MATLOTLO GROUP (PTY) LTD
Bank Investec Private Bank
Account Number 1001 1153 866
Branch Number 580105 (Sandton)
Account Type Cheque

Matlotlo Group (Pty) Ltd Reg. No. 2006/034191/07, an authorized financial services provider FSP No. 30465
Director: R Mothapo

Project	SLA Ref	Description	Resource Level	Hrs	Rate	Amount per resource	Amount per assignment		
Product Development & Pricing	5.h.	Price Increase - NFS Individual Products	Actuary (Director)	3.00	4 515	13 545.00			
		FSCA Premium Review Thematic Questionnaire	Actuary (Director)	1.00	4 515	4 515.00	27 090.00		
		Pricing – Product conversions from AN to Cow	Actuary (Director)	2.00	4 515	9 030.00			
Ad-hoc	5.h.	•Curator Assistance – Info for Impact of Recap Report	Actuary (Director)	0.50	4 515	2 257.50			
		•Curator Assistance – Meeting on Milliman Report	HAF	2.00	6 065	12 130.00			
		•Curator Assistance – Meeting on Milliman Report	Actuary (Director)	1.50	4 515	6 772.50			
		•Curator Assistance – Operational Expenses for Indep Assessment	Actuary (Director)	3.00	4 515	13 545.00			
		•Curator Assistance – Information requested for Indep Assessment	Actuary (Director)	0.75	4 515	3 386.25			
		•Curator Assistance – Initial Milliman Meeting	HAF	1.25	6 065	7 581.25	61 475.00		
		•Curator Assistance – Initial Milliman Meeting	Actuary (Director)	1.25	4 515	5 643.75			
		•Curator Assistance - Queries on 31-Dec QRT	Actuary (Director)	0.25	4 515	1 128.75			
		•Curator Assistance - CINPF Receivables Impact	Actuary (Director)	0.50	4 515	2 257.50			
		•Curator Assistance - Queries on Recap Plan Impact	Actuary (Director)	1.50	4 515	6 772.50			
		Other Meetings	5.h.	•Doves ARC Meeting - ORSA Report [24.2.2022]	Actuary (Director)	1.25	4 515	5 643.75	10 158.75
				•Sixty GSG Exco Meeting [11.2.2022]	Actuary (Director)	1.00	4 515	4 515.00	
						98 723.75	98 723.75		

From: Ranti Mothapo <ranti@matlotlo.co.za>
Sent: Tuesday, 01 March 2022 08:24
To: 'Khandani Msibi'; 'Ellan Cornish'; 'Nobuhle Nkosi'
Cc: 'Olu Luthaga'; 'Yashoda Ram'
Subject: RE: MATLOTLO ACTUARIES & QUATS | INVOICE - 25 Feb 2022
Attachments: INVOICE_3SIX202202.pdf; Timesheet linked to INVOICE_3SIX202202-20220225.pdf

Hello Ellan,

Further to below, I have revised invoice to get as much as possible in 2022 financial year so that it does not appear to be a bad year. There were few late activities on NFS price increase I would like to include.

Best regards,

Ranti Mothapo
ACTUARY | QUANTITATIVE ANALYST
Mobile +27 73 250 7669
Tel +27 11 783 2380 (Ext: 110)
Email ranti@matlotlo.co.za
96 Protea Ave, Atholl, 2196, Johannesburg

Matlotlo Group (Pty) Ltd, an authorized financial services provider. FAIS licence number 30465.

From: Ranti Mothapo <ranti@matlotlo.co.za>
Sent: Friday, 25 February 2022 06:00
To: 'Khandani Msibi' <khandani.msibi@3sixtylife.co.za>; 'Ellan Cornish' <ellan.cornish@3sixtylife.co.za>; 'Nobuhle Nkosi' <nobuhle.nkosi@3sixtylife.co.za>
Cc: 'Olu Luthaga' <olu.luthaga@3sixtygsg.co.za>; 'Yashoda Ram' <YRam@bdo.co.za>
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VAT #: 4060251180



Ref: Inv 3SIX202202

96 Protea Ave, Atholl, 2196, Johannesburg
t: +27 11 783 2380 | f: +27 86 515 2286 | e: info@matlotlo.co.za

Khandani Msibi / Ellan Cornish
Chief Executive Officer / Chief Finance Officer
3Sixty Life
9 Central Street
Houghton
2198

VAT No: N/A

25-Feb-2022

Assignment: Actuarial Services to 28 Feb 2022

Item	Description	Amount
	Predetermined/Recurring Fee Basis	R 42 400.00
1	Jan 2022 SCR QRT (100% of Ordinary Cost)	R 42 400.00
	Hourly Fee Basis	R 124 685.00
1	Product Development & Pricing	R 53 051.25
2	Curator Assistance	R 61 475.00
3	Other Meetings	R 10 158.75
Total (EXCL VAT)		R 167 085.00
VAT @ 15%		R 25 062.75
Total (INCL VAT)		R 192 147.75

PLEASE PAY INTO THE FOLLOWING BANK DETAILS:

Account Name MATLOTLO GROUP (PTY) LTD
Bank Investec Private Bank
Account Number 1001 1153 866
Branch Number 580105 (Sandton)
Account Type Cheque

Matlotlo Group (Pty) Ltd Reg. No. 2006/034191/07, an authorized financial services provider FSP No. 30465
Director: R Mothapo

Timesheet for Invoice Dated

25 Feb 22 Invoiced to 28 Feb 2022

Project	SLA Ref	Description	Resource Level	Hrs	Rate	Amount per resource	Amount per assignment		
Product Development & Pricing	5.h.	Price Increase - NFS Individual Products	Actuary (Director)	8.75	4 515	39 506.25			
		FSCA Premium Review Thematic Questionnaire	Actuary (Director)	1.00	4 515	4 515.00	53 051.25		
		Pricing – Product conversions from AN to Cow	Actuary (Director)	2.00	4 515	9 030.00			
Ad-hoc	5.h.	•Curator Assistance – info for Impact of Recap Report	Actuary (Director)	0.50	4 515	2 257.50			
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		•Curator Assistance - Queries on Recap Plan Impact	Actuary (Director)	1.50	4 515	6 772.50			
		Other Meetings	5.h.	•Doves ARC Meeting - ORSA Report [24.2.2022]	Actuary (Director)	1.25	4 515	5 643.75	10 158.75
				•3Sixty G5G Exco Meeting [1.1.2.2022]	Actuary (Director)	1.00	4 515	4 515.00	
						124 685.00	124 685.00		



ANNEXURE "KMFS3"

3SIXTY LIFE LIMITED

Reg No 1935/007508/06 FSP 15107

91 Central Street, Houghton, Johannesburg, Gauteng, 2198

PO Box 787352, Sandton, 2146

+27 (011) 483 1188 +27 (11) 783 3584

info@3sixtylife.co.za

www.3sixtylife.co.za

Date: 17 November 2021

Prudential Authority
P O Box 35655
Menlo Park
Pretoria
0102

Per email:

Dear Sir/Madam

NOTIFICATION OF RETURN OF CAPITAL TO A SHAREHOLDER

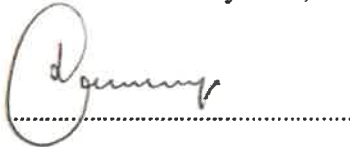
1. The above matter refers
2. 3Sixty Life Limited ("3Sixty Life") is a wholly owned subsidiary of Doves Group (Pty) Ltd ("Doves"). In or around September 2018, 3Sixty Life's management anticipated that it would need additional capital to prevent a breach of its solvency capital requirements. 3Sixty Life's board of directors proactively ("Board") resolved by an ordinary resolution that Doves should provide the needed capital in the form of a share subscription. In this regard, sufficient number of shares were issued to Doves in return for proceeds of R7,47 million.
3. Prior to entering into the above transaction in September 2018, the share capital of 3Sixty Life was R24 million. The reasons for the additional capital invested by Doves in the amount of R7,47 million was in response to solvency capital requirements. Subsequent to the additional capital investment, 3Sixty Life's share capital temporarily increased to R31 million.
4. When 3Sixty Life's level of solvency capital requirements showed signs of improvement, the management considered prudent to return the additional capital to Doves. This was approved by 3Sixty Life's Board on the basis that this was not a general reduction of 3Sixty Life's share capital, but a return of the 'specific' capital that had previously been invested by the shareholder in exercise of caution against deteriorating levels of solvency.
5. On 27 March 2021, 3Sixty Life's auditors reported to IRBA a reportable irregularity stating that the return of capital to the shareholder had reduced 3Sixty Life's capital in breach of section 38 of the Insurance Act, 2017 ("the Act"). At the time of the return of the capital to the shareholder, 3Sixty Life's management was of the view that the transaction did not require the approval of the Prudential Authority as, on objective facts, the share capital of 3Sixty Life was not reduced as it was R24 million prior to the capital investment and it remained R24 million post the return of capital.

Directors: Ms Neo Bodibe (Chairman), Mr Khandani Msibi (Acting Chief Executive Officer), Ms El'ian Cornish (Chief Financial Officer), Mr Dr Osborn Mahanjana (Non-Executive Director), Ms Olu Luthanga (Non-Executive Director), Mr Oupa Ralake (Non-Executive Director), Mr Robert Shaw (Non-Executive Director), Mr Bheki Mthethwa (Independent Non-Executive Director), Ms Gugu Ngcobo (Independent Non-Executive Director), Mr Leo Mlambo (Independent Non-Executive Director), Ms Karen Smith (Independent Non-Executive Director)

3Sixty Life Limited. Registration number 1935/007508/06 | An authorized financial services provider FSP 15107.

A subsidiary of 3Sixty Global Solutions Group.

6. It should be noted that, at the time of implementing the return of capital, 3Sixty Life's management had completed all the required governance internal processes which included the conducting of the liquidity and solvency tests, as well as obtaining the necessary Board's approvals.



Olu Luthaga
Group Chief Financial Officer

CC: Khandani Msibi, Neo Bodibe, Ellan Cornish

ANNEXURE "KMFS4"



South African Reserve Bank

Prudential Authority

Confidential

Ref.: 10/10/1/127

Professor K Kondlo
Chairperson
Numsa Investment Company (Pty) Limited
P O Box 787352
Sandton
2196

Dear Professor Kondlo

3Sixty Life Insurance Company Limited: Appointment of an Independent Chairperson to the Board of Directors

1. The following has reference:
 - a) The Prudential Authority's letter addressed to yourselves dated 25 November 2019; and
 - b) Your letter dated 19 December 2019.
2. The PA would firstly like to sincerely apologise for the delay in responding. We have considered the content of your abovementioned letter and would like to advise follows:
3. **Appointment of an independent chair**
 - a) The PA takes note of your responses to the content of paragraphs 6 and 7 of the PA's abovementioned letter. The PA hereby formally withdraw the link made between the allegations mentioned in paragraph 6 of our letter with the request to appoint an independent chair to the board of directors of 3Sixty Life Insurance Company Limited (3Sixty Life) as referred to in paragraph 7 of our letter.
 - b) We agree that the allegations made have not been substantiated by evidence. As you were advised at our meeting held on 6 December 2019, the PA intends to commission an independent review in detail to investigate the allegations. 3Sixty Life will shortly be provided with the details of this independent review.
 - c) The PA would however like to draw your attention to the Prudential Standards on Governance and Operational Standards for Insurers (GOI) and in particular GOI 2 – Governance of insurers. Section 6.1 of GOI 2 states that the chairperson of the board of directors of an insurer must be an independent director unless approved otherwise.

- d) The PA remains of the view that 3Sixty Life must appoint an independent chair to its board of directors. This is in light of the fact that, and confirmed by you in your letter, the group is highly interconnected and that 60% of 3Sixty Life's business is sourced from inside the group it belongs to. The appointment of an independent chair, in our view, would manage any potential conflict of interest that may arise.
- e) The PA notes that an attempt was made to appoint an independent chair, which unfortunately did not materialise. The PA therefore would still require the appointment of an independent chair to the board of directors of 3Sixty Life, but hereby extend the period of making such an appointment to 30 June 2020.
- f) Your attention is once again drawn to section 14 of the Insurance Act, 2017 (IA).

4. Appointment and resignation of key persons not submitted to the Prudential Authority (PA)

The PA would like to advise that:

- a) We have received the prescribed documentation for certain key persons but some or all the supporting documents required have not been received despite follow-ups done to request this;
- b) The PA is unsure as to whether we have been advised of all the key person appointments or resignation;
- c) In this regard the PA would like to draw your attention to the fact that as part of the process to convert the licence of 3Sixty Life from the Long-term Insurance Act (Act No 52 of 1998) to a licence issued under the IA, the PA needs to reassess the fitness and propriety of all key persons; and
- d) The PA will deal with this matter directly with 3Sixty Life.

5. Risk Management function

- a) The concerns of the PA around the risk management function at 3Sixty Life was raised in the PA's letter to 3Sixty Life dated 20 September 2019.
- b) In response to the PA's above letter, 3Sixty Life dated 30 October 2019, 3Sixty Life undertook to do a gap analysis on the risk management in comparison to the requirements in the IA and the Prudential Standards issued in terms of the IA. This gap analysis was going to be submitted before 31 December 2019. This is still outstanding but the PA will engage with 3Sixty Life on this.

Should you require any further information, you are welcome to contact Mr Mvelase Peter of the PA at telephone number 012 313 4104 or email mvelase.peter@resbank.co.za.

Yours sincerely,



Kuben Naidoo
Deputy Governor and CEO: Prudential Authority

Date: 2 MARCH 2020

Encl. 1



3Sixty Life Insurance Company Limited: Outstanding information

Applications for appointments of key persons		
Name	Position	Documents outstanding
Mr Khandani Msibi	Executive Director & Chairman of the Board	Application received. The following supporting documents are outstanding: <ul style="list-style-type: none"> • Declaration by a member of the Board of Directors (to be signed by any other board member apart from the appointee); • Declaration D3 (declaration by key person being appointed); • Declaration by the person submitting the form; • Certified copies qualifications¹; and • Credit report.
Ms Neo Bodibe	Independent Non-Executive Director	Application received. The following supporting documents are outstanding: <ul style="list-style-type: none"> • Declaration by a member of the Board of Directors (to be signed by any other board member apart from the appointee); • Declaration D3 (declaration by key person being appointed); • Declaration by the person submitting the form; • Certified copies of qualifications; • Credit report; and • Police clearance certificate (alternatively, MIE report reflecting criminal record).
Ms Karen Smith	Independent Non-Executive Director	Application received. The following supporting documents are outstanding: <ul style="list-style-type: none"> • Consent form; • Declaration by a member of the Board of Directors (to be signed by any other board member apart from the appointee); • Declaration D3 (declaration by key person being appointed); • Certified copies of qualifications; • Certified copy of ID document; • Credit report; and • Police clearance certificate (alternatively, MIE report reflecting criminal record).
Ms Prue Matthola	Chief Financial Officer	Application received. The following supporting documents are outstanding: <ul style="list-style-type: none"> • Certified copy of ID document; and • Certified copies of qualifications.
SNG Grant Thornton	Auditors	Supporting documents received. The following documents are outstanding: <ul style="list-style-type: none"> • Application form IF006.

¹ All certified documents must have been certified in the last three months;

ANNEXURE "KMFS5"

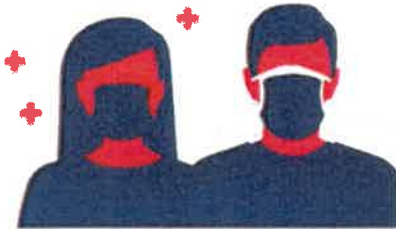
From: Nobuhle Nkosi <nobuhle.nkosi@3sixtylife.co.za>
Sent: Thursday, 17 March 2022 12:06
To: Olu Luthaga
Subject: FW: Email Received by the Prudential Authority for <Nelisiwe Mhlanga>
CRM:0001159
Attachments: Fw: The Head Of Risk Function



Regards,
Nobuhle Nkosi
Chief Operating Officer

Tel:
Ext:
Mobile: (+27) 083 704 0369
Email: nobuhle.nkosi@3sixtylife.co.za

HELP PREVENT THE SPREAD OF COVID-19



When in public, wear a mask over your mouth and nose.

Directors: Mrs Neo Bodibe (Chairman), Mr Khandani Msibi (Acting Chief Executive Officer), Ms Ellan Cornish (Chief Financial Officer), Ms Dr Osborn Mahanjana (Non-Executive Director), Ms Olu Luthanga (Non-Executive Director), Mr Oupa Ralake (Non-Executive Director), Mr Robert S (Independent Non-Executive Director), Ms Gugu Ngcobo (Independent Non-Executive Director), Mr Leo Mlambo (Independent Non-Executive Director), Ms Karen Smith (Independent Non-Executive Director)

From: Insurance Notifications <Insurance.Notifications@resbank.co.za>
Sent: Wednesday, 28 October 2020 12:02
To: pa.apps <pa.apps@3sixtylife.co.za>
Subject: Automatic Reply: Email Received by the Prudential Authority for <Nelisiwe Mhlanga> CRM:0001159

To Whom it May Concern

Please take note that your email with subject: Head Of Risk Supporting Documents, has been received by the Prudential Authority and will be attended to accordingly.

Kind Regards,

Prudential Authority

(Please take note that this is an automated email)

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kindly send an email to BSTD-ICT-ServiceDesk@resbank.co.za

----- *** Disclaimer *** -----

From: Julius Moila <julius.moila@brevityms.co.za>
Sent: Thursday, 17 March 2022 09:44
To: thobeka.hadebe@3sixtylife.co.za
Subject: Fw: The Head Of Risk Function

fyi

From: Julius Moila
Sent: 05 October 2020 14:56
To: Nelisiwe Mhlanga
Subject: RE: The Head Of Risk Function

Dear Nelisiwe,

Thank you so much.

We will submit the documents as required.

Regards;
Julius

From: Nelisiwe Mhlanga <Nelisiwe.Mhlanga@resbank.co.za>
Sent: Monday, 05 October 2020 13:43
To: Julius Moila <Julius.Moila@3sixtylife.co.za>
Subject: RE: The Head Of Risk Function

Dear Julius

Your email below, as well as our telephonic conversation refer.

I have had a word with Reuben and the conclusion is that you may submit the Notification for the appointment of the Head of the Risk Management Function, even though the start date is in December.

Please remember to submit all the supporting documents required, i.e.:

1. IF006 (please ensure that you download the form from our website as there were some amendments made to the Word and Excel forms);
2. Certified copies of the applicant's ID (certified within the past 3 months);
3. Verification report or certified copies of academic and professional qualifications (certified within the past 3 months);
4. Credit report (not older than 6 months); and
5. A police clearance certificate (obtained within four months of application).

May I also request that you pay attention to Section 4 of IF006. Please indicate where the compulsory attachments are attached. Please also provide detail of the other attachments in Section 4.2 of the Notification.

Kind regards,



South African Reserve Bank

Prudential Authority

Nelisiwe Mhlanga

Analyst
Banking, Insurance and FMI Supervision Department
Prudential Authority

P O Box 427 Pretoria 0001 South Africa
370 Helen Joseph Street (formerly Church Street) Pretoria 0002
Tel. +27 12 399 7972
E-mail: Nelisiwe.Mhlanga@resbank.co.za www.resbank.co.za/prudentialauthority

From: Julius Moila [<mailto:Julius.Moila@3sixtylife.co.za>]
Sent: 02 October 2020 08:46 PM
To: Nelisiwe Mhlanga < Nelisiwe.Mhlanga@resbank.co.za >
Subject: The Head Of Risk Function

CAUTION: This email originates from outside of the organisation. Do not click on links or open attachments unless you recognise the sender and know that the content is safe.

Dear Nelisiwe,

As per our telephonic conversation of earlier today, 3Sixty Life has completed the recruitment process of the Head of Risk function as recommended by the Authority's letter of 30th June 2020. The candidate has accepted the offer and he informed us that his current employer requires him to serve two calendar months' notice. Therefore, the candidate will only start on the 01st of December 2020.

Can we, in the meantime submit his fit and proper assessment forms to your office while he is still serving notice with his current employer?

Regards;
Julius

Julius Moila

Risk & Compliance
Executive

Tel: +27 (011) 4831188

email: Julius.Moila@3sixtylife.co.za

Physical Address: 91 Central Street,
Houghton
Johannesburg
2198
website: www.3sixtylife.co.za

CORONAVIRUS
(COVID - 19)

Hotline: 0800 029 999

Precautions:

- Wash your hands with soap for 20 seconds
- Cough or sneeze into a tissue or your elbow
- Avoid close contact with people who are sick

Directors: Ms Neo Bodibe (Independent Chairperson) Mr Leo Makgamathe (Chief Executive Officer) Mr Malebo Chadi (Chief F Mr Khandani Msibi (Non- Executive Director) Dr Osborn Mahanjana (Non-Executive Director) Mr Mahlubi Mazwi (Non-Executive Mr Oupa Ralake (Non-Executive Director) Mr Robert Shaw (Non-Executive Director) Mr Bheki Mthethwa (Independent Non-Exe Ms Gugu Ngcobo (Independent Non-Executive Director) Mr Leo Mlambo (Independent Non-Executive Director) Ms Karen Smitt Adv. Tebogo Moshakga (Group Company Secretary)

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