IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: 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

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APPLICANT'S SUPPLEMENTARY AFFIDAVIT

I, the undersigned

SUZETTE JEANNE VOGELSANG

state under oath that:

1. I am the Head of the Banking, Insurance and Financial Markets Infrastructure Supervision Department of the applicant (**the Authority**).

2. I deposed to affidavits previously filed in this matter on behalf of the Authority. I remain authorised to represent the Authority in these proceedings.

3. Unless the context indicates otherwise, I have personal knowledge of the facts set out in this affidavit and they are, to the best of my belief, true and correct.

BACKGROUND

4. On 21 December 2021, the Authority obtained an urgent ex parte order, placing 3Sixty under provisional curatorship.[1]"

5. Paragraph 8 of the 21 December 2021 court order provided for a return date of 12 April 2022.[2]

6. On 21 January 2022, directors of the first respondent anticipated the return date to 1 February 2022 and the second respondent applied to be joined as a party to the application. On 1 February 2022, at the anticipation hearing before the Honourable Justice Dippenaar, the matter stood down until 3 February 2022.

7. On 3 February 2022, the Honourable Justice Dippenaar, made the following order[3]:

7.1 The Applicant is to deliver its supplementary affidavit, together with an application for leave to file the supplementary affidavit by Monday, 21 February 2022;

7.2 The provisional curator will deliver an interim report regarding the Internal Recapitalisation Plan by Monday, 21 February 2022;

7.3 The First and Second Respondents are to deliver their supplementary affidavits together with an application for leave to file their supplementary affidavits by Monday, 7 March 2022 and the applicant shall reply thereto together with an application for leave to file their reply, if so advised, by 10 March 2022;

7.4 The parties are to exchange heads of argument by Monday, 14 March 2022;

7.5 The provisional curator is to deliver a report by Tuesday, 15 March 2022; and

[1] Caselines 007-1 to 7
[2] Caselines 007-5
[3] Caselines 007-8 to 9

7.6 The matter will be set down for hearing on Tuesday, 22 March 2022 to be heard by the Honourable Justice Dippenaar.

8. This supplementary affidavit is therefore delivered in accordance with paragraph 7.1 above but is delivered a day late. I will seek the above Honourable Court's condonation for the late filing of this affidavit and the application for leave for this affidavit to be admitted.

OVERVIEW OF THIS AFFIDAVIT

9. I will deal with the following issues in this affidavit:

9.1 Leave to file this supplementary affidavit;

9.2 A summary of certain relevant reports relating to the Internal Recapitalisation Plan and the disposal agreement contemplated under that plan;

9.3 A summary of the potential irregularities discovered at 3Sixty Life Limited (**3Sixty**) by the provisional curator; and

9.4 Whether the external auditors are responsible for the delays in regard to the audit of the annual financial statements of 3Sixty for the financial year ending 31 December 2020.

LEAVE TO FILE THIS SUPPLEMENTARY AFFIDAVIT

10. Given that the first and second respondents anticipated the return date to 1 February 2022, at the time of the delivery of my replying affidavit in the main application, it was not possible for me to comprehensively deal with a number of issues that are now dealt with in this supplementary affidavit earlier, as the report on the Internal Recapitalisation Plan had not been completed by the provisional curator.

11. The Authority was in essence given three court days within which to file its replying affidavit, despite the fact that 3Sixty and NUMSA took a month to deliver their notices of opposition and answering affidavits. The answering affidavits in the main application exceed 900 pages and I submit that the time periods imposed by 3Sixty and NUMSA were grossly unreasonable, if one has regard to the information that had to be gathered by the Authority and the consultations that to occur with the Authority's legal representatives as well as the provisional curator and her team.

12. In addition, some of the information provided in this affidavit only came to the attention of the Authority after the replying affidavit in the main application had been delivered.

13. The respondents will not be prejudiced by the filing of this affidavit, as they will have sufficient time before the hearing of this matter to respond to this affidavit given the directives issued by the Honourable Justice Dippenaar on 3 February 2022. By contrast, the Authority will be prejudiced if this affidavit is not admitted, as the matter will then be adjudicated without all the relevant facts being before the court.

14. The Authority accordingly seeks leave to file this further affidavit.

THE PROVISIONAL CURATOR'S REPORT ON THE INTERNAL RECAPITALISATION PLAN

15. An Internal Recapitalisation Plan was verbally presented to the Authority by 3Sixty at a meeting on 6 December 2021, after the Authority was advised that the investment by Salt EB, submitted previously as a recapitalisation plan to restore solvency, would not take place in 2021. Mr Msibi thereafter addressed the letter attached as annexure FA32 to the founding affidavit in the main application to the Authority stating that the 3Sixty Global Solutions Group has decided to cede Doves' properties to the value of R130 million to 3Sixty.

16. The Internal Recapitalisation Plan contemplated a transfer of 53 properties held by Doves Group (Pty) Ltd (**Doves**) to 3Sixty in terms of a Disposal Agreement. At the time, according to 3Sixty, the total property portfolio were said to be worth R180 million. The Authority was also advised that properties worth R50 million serves as security for a Doves obligation and must therefore be deducted from the R180 million.

17. The provisional curator's interim report regarding the Internal Recapitalisation Plan[4] was filed in the afternoon of 21 February 2022. The provisional curator draws the following conclusions:

17.1 the facts presented in her report together with the expert opinions she sourced showed that if the Authority had considered the disposal transaction prior to placing 3Sixty under curatorship, "the curatorship would not have been deemed necessary, based on solvency alone and the outcomes of the internal recapitalisation plan proposed at the time[5].";

17.2 notwithstanding other allegations put forward by the Authority, curatorship should be opposed[6];

17.3 one has to consider the motives of all parties concerned[7]; and

17.4 the various other matters alleged in the founding affidavit of the Authority have not been considered by the provisional curator[8].

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[4] Caselines 045-1 to 219
[5] Caselines 045-9 para 1
[6] Caselines 045-19 para 2
[7] Caselines 045-19 para 3
[8] Caselines 045-19 para 4

18. It will become apparent from what is set out below, that the urgent variation application to replace the curator has influenced her objectivity in the completion of the assessment of the Internal Recapitalisation Plan.

19. The curator is also mistaken when she suggests that the disposal transaction was not considered by the Authority. In paragraph 35.4.1 of my founding affidavit in the main application, I set out some of the concerns that the Authority had about the disposal transaction. In addition, at the time the provisional curatorship had been secured, it is common cause that 3Sixty did not meet the Minimum Capital Requirements (**MCR**) and Solvency Capital Requirements (**SCR**) cover requirements and had been in default of doing so for almost a year. In these circumstances, the curator's belated suggestion that 3Sixty ought not to have been placed in curatorship is disingenuous.

20. In addition to this, at the meetings on 28 and 29 January 2022, the curator mentioned on numerous occasions that even if the disposal transaction remedied the solvency issues that 3Sixty was facing, in her view, the business of 3Sixty was being mismanaged and therefore 3Sixty should remain under curatorship. She said at the time that she was busy compiling the relevant information to show that the business was being mismanaged and she would provide it to the Authority.

21. The curator has not done so, but neither has she in her discussions with the Authority, motivated for the lifting of the 21 December 2021 court order, or before the 21 February 2022 interim report, suggest that there was no need for the curatorship to continue. Instead, she supported the opposition of the anticipation of the rule nisi and she also filed a confirmatory affidavit in response to my replying affidavit.

22. In the 21 February 2022 interim report, she rather bizarrely records that various other matters alleged in the founding affidavit in the main application have not been

considered. If that is the case, I am astonished that she would suggest that the curatorship was not necessary. How can she draw that conclusion without properly considering the other issues?

23. The independent report on which the curator relies is the report of Milliman Proprietary Limited (the **Milliman Report**)[9].

24. The Milliman Report is based on base results provided by 3Sixty and Milliman has not provided an opinion on the accuracy or reliability of these results. During the meetings on 28 and 29 January 2022, the curator expressed discomfort about relying on 3Sixty's numbers particularly because the financial statements for the year ending 31 December 2020 had not been audited and because there were numerous instances in which payments were being made without supporting documentation.

25. It is therefore strange that the curator relies on the Milliman Report without making reference to the concerns that she had about the reliability of 3Sixty's actual financial position. The curator also does not place emphasis on the disclaimers and qualifications set out in the Milliman report.

26. Milliman also recognises that an asset which is encumbered needs approval from the Authority to be recognised as Eligible Own Funds (**EOF**) and the value at which it can be recognised. The Insurance Act, 2017 defines "encumbered" as any pledge, restriction or limitation (including any contractual obligation that must be fulfilled before a contractual right may be exercised) that limits access to, or the use or disposal of, an asset.

27. They also correctly point out that the lease back of the properties to Doves could be viewed as a limitation on the use or disposal of the properties. Doves controls 3Sixty.

[9] Caselines 045-145 to 178

Doves has an operational need to operate from the properties. The Authority may therefore consider the properties encumbered and not allow the full recognition of the properties, or possibly no recognition. This is just one example of various disclaimers contained in the Milliman Report.

28. The Milliman Report suggests that if a value of R121 million is used for the properties, 3Sixty's MCR cover will be 2.07 (which is above the minimum cover requirement) and the SCR cover will be 0.99 (which is below the minimum requirement).

29. If a property valuation of R113 million is utilised, then the MCR cover will be 1.85 (which is above the minimum requirement), but the SCR cover will be 0.92 (which is below the minimum requirement).

30. The Milliman Report, however, makes it clear that the encumbrance of the properties to be transferred could result in the MCR falling below 1, which is below the minimum requirement.

31. It is therefore clear from this report that it is premature for the curator, particularly in the absence of audited figures, to conclude that the curatorship ought not to have been proceeded with.

32. The Actuarial Team from BDO that has been assisting the curator had prepared the report attached as annexure "**SA1**". The curator suggests that she has not attached the opinion of experts from BDO because she was suspended and therefore she was not in a position to discuss or verify the findings with these experts. She is, however, being disingenuous when she says this. It was made clear to her by the fourth respondent's attorneys that she could have access to whatever she required in order to complete the interim report. Copies of the relevant emails from the fourth respondent's attorneys to the third respondent's attorneys are attached as annexures "**SA2.1.1 to SA2.1.4**".

33. The BDO Actuarial Team indicated in their opinion that the disposal agreement contemplated under the Internal Recapitalisation Plan potentially limits 3Sixty's ability to sell the properties or to put them up for rental at market value. Since Doves is the sole shareholder in 3Sixty, there is also a concern that Doves can possibly block any proposals to dispose of the properties or to put them up for rental at market value.

34. Therefore, the economic value that may transfer from Doves to 3Sixty on implementation of the disposal agreement is far less than the market value.

35. I pause to mention that from the Authority's perspective, the intention of the Internal Recapitalisation Plan as a whole is to provide solvency to 3Sixty and to ensure that 3Sixty obtains sufficient liquidity for 3Sixty to pay claims of policyholders.

36. The BDO Actuarial Team also correctly point out that the Authority's approval would be required in terms of section 5(4) of the Insurance Act, in order for 3Sixty to lease the properties as part of its business operations, because this constitutes business other than the business of insurance.

37. In view of the lease back of the properties to Doves, the BDO Actuarial Team opine that the full value of the assets will be impacted because the assets are encumbered.

38. The BDO Actuarial Team present results based on three scenarios:

38.1 the properties to be transferred are valued at nil because they are encumbered and no economic value is transferring between Doves and 3Sixty. In such event, 3Sixty will not meet the minimum MCR and SCR cover requirements;

38.2 the properties to be transferred are valued at R111 million, which is the valuation arrived by an independent property valuator appointed by BDO. In such event, 3Sixty will meet the minimum MCR cover requirements, but its SCR will be 0.90, which is below the minimum SCR cover requirement; and

38.3 the properties to be transferred are valued at R121 million, which is the valuation suggested by 3Sixty's management. In such event, the MCR amounts to 2.07, but the SCR will be 0.99, which is less than the minimum SCR cover requirements.

39. The BDO Actuarial Team identified the following risks that effect the accuracy of the base position used to do an impact assessment of the Internal Recapitalisation Plan:

39.1 the 2020 audit of the financial statements is not finalised;

39.2 the accounts used to calculate the base position at 31 December 2021 are unaudited; and

39.3 data limitations.

40. I am also advised by Tapiwa Maswera and Tinashe Mashoko (who were part of the BDO Team that were supporting the curator) that Tapiwa Maswera had in a meeting with the Head of the Actuarial Function (**HAF**) at 3Sixty asked him whether if 3Sixty were to get an injection of capital, 3Sixty would have governance, policies, controls and governance structures in place that are strict enough to ensure sound application of whatever assets are invested in the company, the HAF refused to comment on record. This suggests that the HAF is not confident that 3Sixty will remain financially sound if 3Sixty receives an injection of capital.

41. A team from BDO also analysed the implications of the disposal agreement in accordance with International Financial Reporting Standards (**IFRS**). This team concluded as follows:

"It is our view that 3Sixty does not have the ability to direct the use of the asset, or to prevent others from directing the use of the asset; nor is it obtaining substantially all of the remaining benefits from the asset, or to prevent others from obtaining benefits from the asset. Consequently, we are of the view that control of the Transfer Properties, as defined by IFRS, has not been passed from Doves to 3Sixty in the Disposal Agreement.

Since the transfer of the properties to 3Sixty is not a sale – Doves shall continue to recognise the Transfer Properties in their financial statements and 3Sixty cannot recognise the properties, despite legal ownership having passed to 3Sixty. Doves cannot recognise anything for the additional share received in 3Sixty, since they already own 100%, and no proceeds are received in cash. 3Sixty cannot recognise a financial asset as they are paying for the legal transfer by issuing another one of their own shares. Consequently, consideration is then given to whether this transaction is within the scope of IFRS 2 Share-based Payment.

In our view this transaction is within the scope of IFRS 2 Share-based Payment and constitutes an equity-settled share-based payment transaction (i.e. the transaction is settled through the issue of shares in the entity). Therefore, the goods received and the corresponding increase in equity are measured with reference to the fair value of the good received. In this instance the legal title to the Transfer Properties, excluding usufruct, would constitute the good. Should it not be possible to determine the fair value of just the legal title reliably, then the fair value is determined indirectly with reference to the fair value of the share issued, which is stated as R11.68 in the Disposal Agreement."

42. Consequently, from an accounting perspective, the view of the BDO team is that the disposal agreement will not remedy the solvency position that 3Sixty finds itself in. A copy of the BDO accounting report is attached as annexure "**SA2.1**".

43. BDO also sought a legal opinion in regard to the proposed disposal agreement. A copy of this opinion is attached as annexure "**SA3**". The attorney was of the view that the proposed transaction in its current form had serious concerns, which if not remedied immediately, could result in 3Sixty plunging into insolvency again.

44. The attorney was also of the view that the proposed transaction was onerous to 3Sixty and did not promote the rights and interests of policyholders.

45. Representatives from BDO's tax team also provided an opinion in regard to the proposed transaction. A copy of this opinion is attached as annexure "**SA4**". Representatives of the BDO tax team opined that 3Sixty will be obliged to register as a VAT vendor from the beginning of the month in which it signs the offer, being the month in which the total value of taxable supplies is to be made in terms of a contractual obligation in writing in the next succeeding 12-month period will exceed R1 million (however slightly). This would be a compulsory VAT registration, as opposed to a voluntary registration.

46. To the best of my knowledge, no efforts have thus far been made by 3Sixty to register as a VAT vendor.

47. Deeds Office search reports also suggest that at least six of the properties are bonded in favour of Absa Bank Limited or FirstRand Bank Limited. We were previously told that some of the properties served as security for a Doves obligation. Consequently, 3Sixty had deducted this from its valuation and if one deducts the R50 million from the R121 million, which was the value attributed to the properties by the independent valuer appointed by 3Sixty, it would have a material impact on 3Sixty's MCR and SCR covers and 3Sixty would not meet the minimum cover requirements.

48. The Authority is therefore not in agreement with the views of the curator regarding the Internal Recapitalisation Plan, given that the team of experts she employed to assist in the preparation of the reports arrived at different conclusions to the curator.

49. I have also been advised on 21 February 2022 by Bianca Earley (**Earley**) and Danielle Sauls (**Sauls**), who are from BDO and who were assisting the curator, that there were concerns raised about the retention of appropriate records and that 3Sixty were not complying with Policyholder Protection Rules (**PPR's**).

50. Earley and Sauls also reported on 21 February 2022 that, based on their provisional analysis of claims data, which covered the period from 1 January 2020 to 19 January 2022, the following has been noted:

50.1 A number of beneficiaries under certain policies received more than one payment. For example, there were twelve payments to Fundiswa Mfengu and there were ten payments to Alisia Mngcongo;

50.2 Claims that were not authorised were paid out. Claim rejection letters were sent out but there were still payments of these claims, this was specifically identified during the period 23 December 2021 and 18 January 2022;

50.3 There were instances in which claims were approved for payment, but confirmation that the payments had been made is still awaited;

50.4 There has not been an increase in the premiums being paid by NUMSA members which appears to be paying a premium of approximately R7.90 per month (for the compulsory scheme), whereas the cheapest premium in relation to for example, the Chemical Industries National Provident Fund Compulsory Funeral Scheme, was R15.60; and

50.5 There has been a number of instances identified where the amount paid is more than the sum insured and in other instances, the amount paid is less than the sum insured. In cases where the payments were less than the sum insured, these predominantly appeared to be related to Doves product lines.

51. The curator's team would need to complete their analysis and investigations in relation to the issues referred to above and then report to the Authority on what, if any, remedial steps need to be taken.

52. I also attach as annexure "**SA5**" a letter from the Financial Sector Conduct Authority (**FSCA**) addressed to the curator dated 7 February 2022, which outlines the failure of 3Sixty to comply with provisions of the PPR's.

ISSUES IDENTIFIED BY THE EXTERNAL AUDITORS OF 3SIXTY

53. Sizwe Ntsaluba Gobodo Grant Thornton Inc., 3Sixty's external audit firm (the **Auditors**) have delivered a separate affidavit. The Auditors record that:

53.1 They experienced challenges in obtaining audit information and samples of supporting documentation from 3Sixty for the conclusion of the audited financial statements for the financial year ending December 2020;

53.2 The audit of 3Sixty has been impeded by the lack of support provided by the management of 3Sixty. The Auditors have been unable to complete the evidence gathering procedures to support the audit opinion;

53.3 Instead of providing the support necessary for the completion of evidence gathering, the management of 3Sixty proposed to the Auditors how to go about auditing the accounts making up the financial statement line items;

53.4 In terms of International Auditing Standards to obtain reasonable assurance, auditors are required to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion. Insufficient and/ or inappropriate audit evidence naturally impacts the audit opinion on the financial statements;

53.5 The Auditors were also further impeded by management of 3Sixty seemingly constructing evidence to address audit queries. For example, the Group CFO referred to a subordination agreement that should be taken into account in the 31 December 2020 audit when the agreement had not been signed, even some 11 months after year end;

53.6 A further example, is the matter of the transfer of certain Doves properties to 3Sixty (the contemplated Internal Recapitalisation Plan). In an email the Group CFO refers to 3Sixty recognising the property upon signature date of the agreements and resolutions as opposed to when the Deeds Registry registers the transfer of the properties from Doves to 3Sixty, as this is when 3Sixty will have control of the properties; and

53.7 The Auditors deny Mr Msibi's version that the delay in finalising the audit of the financial statements of 3Sixty was caused by the Auditors.

CONDONATION

54. This affidavit ought to have been delivered by 21 February 2022. In anticipation of this deadline, the Authority's attorneys had checked with the curator when she expected to receive the independent valuation of the properties and when she would be in a position to report on her views about the Internal Recapitalisation Plan. She advised that she would be able to do so in the week of 14 February 2021 and consequently, the

Authority's attorneys blocked off 17 and 18 February 2022 to receive the report back from the curator and to then finalise this affidavit.

55. What was not anticipated at the time, was the need to launch an urgent application to replace the curator. This resulted in the 17 and 18 February 2022 being spent on reviewing Ms Ram and BDO's as well as Mr Msibi's explanatory affidavits in the urgent variation application and preparing the replying affidavit in the variation application.

56. The Authority's attorneys then met with representatives of the Authority (including myself) and with some representatives from BDO. Thereafter, they worked on the heads of argument to be delivered in the urgent variation application. A draft of this affidavit was then prepared and circulated to the Authority late in the evening on 21 February 2022.

57. I respectfully submit that the Authority did not intend to intentionally deliver this affidavit late and given that this affidavit is being a month before the hearing date, I respectfully submit that none of the respondents are prejudiced by the late filing of this affidavit.

CONCLUSION

58. For all the reasons set out in the founding, replying and this affidavit, the Authority prays for the confirmation of the rule nisi and for Mr Msibi to be ordered to pay the costs of this application.

DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Pretoria on this 22nd day of February 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

CHRISTO Van NIEKERK
COMMISSIONER OF OATHS
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"SA1"

ACTUARIAL OPINION ON THE INTERNAL RECAPITALISATION PLAN

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BDO

CONTENTS

ABBREVIATIONS

3Sixty Life - 3Sixty Life Insurance Company Limited

CINPF - Chemical Industries Pension Fund

Doves - Doves Group (Pty) Limited

EOF - Eligible Own Funds

FSCA - Financial Sector Conduct authority

FSI - Financial Soundness (Standards for) Insurers

GLA - Group Life Assurance

GOI - Governance and Operating (Standards for) Insurers

HAF - Head of Actuarial Function

ALM - Asset Liability Mismatch

IAT - Internal Actuarial Team

IRP - Property Recapitalisation Plan

MCR - Minimum Capital Requirements

NUMSA - National Union of Metal Workers of South Africa

ORSA - Own Risk Solvency Assessment

PA - Prudential Authority

QRT - Quantitative Reporting Template

RMF - Risk Management Fund

SAM - Solvency Assessment and Management

SCR - Solvency Capital Requirements

1. EXECUTIVE SUMMARY

Summary of Opinion

1.1 The terms of the property transfer contemplated under the IRP potentially limit 3Sixty Life from freely selling the properties or putting them up for rental at market value. As the sole shareholder of 3Sixty Life, Doves can possibly block any proposals to dispose of the assets or put them up for rental at market value. It is also important to note that the Doves properties and the purposes for which they are used are interlinked with the business of 3Sixty Life.

1.2 The economic value that is transferring from Doves to 3Sixty Life is therefore far less than the market value or the discounted value of the net of expenses market rental.

1.3 3Sixty Life could acquire the properties without PA approval, however PA approval would be required as per Section 5.4 of the Insurance Act in order for 3Sixty Life to lease the properties part of 3Sixty Life's business operations. The leasing out of commercial/residential property and the generation of rental income would constitute such business other than the business of insurance.

1.4 The disposal agreement requires that the properties be leased back to Doves as a pre-condition that should be met before the properties are transferred to 3Sixty Life. It is our understanding that the PA would need to assess whether an insurer could conduct such other business and it entails an impact assessment of such other business on the insurance business and the policyholders of the insurer, before it grants approval.

1.5 In terms of Section 36.6 of the Insurance Act 18 of 2017, the PA may prescribe requirements in respect of transactions that may increase, encumber or reduce assets or liabilities of an insurer. According to the Insurance Act "encumber" means any pledge, restriction or limitation (including any contractual obligation that must be fulfilled before a contractual right may be exercised) that limits access to, or the use or disposal of, an asset. The property transfer therefore requires the approval of the PA because the assets are encumbered, as described under paragraph 1.1 above. Prudential Standard for the Financial Soundness of Insurers (FSI) 2.1 sets that an insurer may not enter into a transaction that may encumber an asset without the PA's approval. If approval is given, then the PA will stipulate how such encumbered assets may be recognised. The full value of the assets for the use in the solvency calculations will be impacted as a consequence of the encumbrance described under paragraph 4.1 above.

MCR Verification

1.6 The MCR is a function of Technical Provisions, SCR, and operating expenses. 3Sixty Life's MCR is based on 25% of operating expenses and hence the expense assumption, and in particular the split of expenses between acquisition costs and maintenance or ongoing costs is significant. According to Prudential Standard FSI 3 paragraph 5.3, acquisition costs are excluded from the calculation of expenses used in the MCR calculation. We understand the guiding philosophy to be that operating expenses are defined as the costs of running the business, if it were to be closed to new business.

1.7 3Sixty Life's Internal Actuarial Team determined a MCR figure of R 35 million as at 31 December 2021. The assumed annual operating expenses in the calculation done by 3Sixty Life's Internal Actuarial Team was R141 million. We have not had sight of the actual allocations used by the IAT and in particular how expenses were split between acquisition costs and maintenance, and hence we could not independently verify the total operating expense amount used in the calculation.

1.8 Our view is that the operating expense amounts in the MCR calculation should be prudent, since this has a direct bearing on the minimum amount of capital that should be injected to recapitalise the business.

1.9 In addition, the following market conduct issues which were raised by the FSCA would worsen the solvency position of 3Sixty Life and should be taken into account when determining the recapitalisation amounts:

(a) Premiums increases that were not approved and therefore must be reversed
(b) Claims in respect of policyholders that were underpaid because they chose not to use Doves Services
(c) Joining fees that 3Sixty Life was not entitled to which still need to be refunded
(d) Data errors which could cause technical reserves to go up

Own Funds Scenarios

1.10 This section of the report presents that results of the Own Funds re-performance done by BDO Actuarial.

1.11 BDO Actuarial assessed the impact on own funds based on the following recapitalisation scenarios:

Scenario 1

Transfer properties valued at R 0.00, which is the position that assumes that the assets are encumbered and no economic value is transferring between Doves and 3Sixty Life. This is also the position that agrees with the recommendations of the expert accounting and legal advisory teams.

Scenario 2

Transfer properties valued at R 111 million, which is the position based on the value placed on the properties by independent property valuator appointed by BDO. Please note that this position is hypothetical and is based on the assumption that the assets can be unencumbered. This position is not supported by the expert accounting and legal opinions.

Scenario 3

Transfer properties valued at R 121 million, in accordance with the disposal agreement. Please note that this position is hypothetical and is based on the assumption that the assets can be unencumbered. This position is not supported by the accounting and legal opinions.

Please note further, that there is a difference of R 4 million between the disposal agreement and management independent valuation from Spectrum, which reflects the fair value at R 125 million.

1.12 Milliman assessed the impact of the IRP using two property valuation scenarios, one property valuation results of 121 million and the other with valuation results of 113 million. the scenarios used by Milliman are comparable to scenario 2 and 3 assessed by BDO actuarial.

1.13 Tabulated below is the impact on Own Funds, MCR and SCR based on the three scenarios assessed by BDO actuarial as described under paragraph 1.12 above:

Particulars	IAT (Base Position)	Scenario 1	Scenario 2	Scenario 3
Total Own Funds	12 331	12 331	123 631	133 331
EOF to meet MCR	(52 501)	(52 501)	63 621	73 321
EOF to meet SCR	(38 103)	(38 103)	76 392	86 448
MCR	35 486	35 486	35 486	35 486
SCR	63 838	63 838	85 137	87 510
MCR Cover	(1.48)	(1.48)	1.79	2.07
SCR Cover	(0.60)	(0.60)	0.90	0.99

Table 1: Results of the Own Funds re-performance

1.14 The transfer properties do not have an impact on the MCR since the MCR figure for 3Sixty Life is based on 25% of operating expenses. This is the financial position that is endorsed by the accounting and legal opinions.

1.15 In Scenario 1, the transfer properties do not have any impact on the financial position of 3Sixty Life.

1.16 In Scenario 2, the transferred properties are valued at R 111 million, increasing 3Sixty Life's total own funds from R 12 million to R 124 million upon transfer. Additionally, the EOF to meet MCR increases from negative R 52 million to R 64 million, and EOF to meet SCR increases from negative R 38 million to R 76 million. The MCR for 3Sixty Life remains constant at R 35 million whilst the SCR increases from R 64 million to R 85 million due to the introduction of the property shock in the market risk calculation. This is a hypothetical position which assumes that the properties can be unencumbered. The accounting and legal opinion do not endorse this position.

1.17 In Scenario 3, the transfer properties are valued at R 121 million and increases the total own funds of 3Sixty Life from R 12 million to R 133 million after the transfer. Additionally, the EOF to meet MCR increases to from negative R 52 million to R 73 million, and EOF to meet SCR increases from negative R38 million to R 86 million. The MCR for 3Sixty Life remains constant at R 35 million, whilst the SCR increases from R 64 million to R 88 million due to the introduction of the property shock in the market risk calculation. There will therefore be enough funds to cover both the MCR and SCR as required. This is a hypothetical position which assumes that the properties can be unencumbered. The accounting and legal opinion do not endorse this position.

1.18 Tabulated below is the impact on Own Funds, MCR and SCR as assessed by Milliman:

Particulars	Milliman[1](Base Position)	Scenario 1 - Property valued at R121 million	Scenario 2 - Property Valued at R113 million
Total Own Funds	12 331	133 593	125 541
EOF to meet MCR	(47 679)	(73 583)	65 531
EOF to meet SCR	(38 103)	(86 653)	78 307
MCR	35 486	35 486	35 486
SCR	63 838	87 131	85 170
MCR Cover	(1.34)	2.07	1.85
SCR Cover	(0.60)	0.99	0.92

1.19 The results obtained by Milliman are comparable to those of produced by BDO Actuarial Team. Both scenarios show that the property transaction, assuming that it is unencumbered, will result in eligible funds enough to cover MCR, but not enough to cover SCR.

Risks to the Base Position - BDO Actuarial

1.20 The following risks potentially affect the accuracy of the base position used to do an impact assessment of the IRP:

1.20.1 The accounts used to calculate the base position at 31 December 2021 are unaudited.
1.20.2 The 2020 audit of financial statements is not finalised.
1.20.3 Data limitations as cited by the IAT in the draft 2020 Actuarial Valuation report, the Audit Actuary in communication with the IAT on 14 December 2021 and by FSCA in their letter dated 2 September 2021, could affect the base position of technical provisions.

Risks to the solvency impact assessment - Milliman

1.21 Milliman identified the following risks as potentially impacting the solvency impact assessment as shown under paragraph 1.5 above:

1.21.1 Risks to the MCR and SCR cover:

1.21.1.1 Encumberence of the Doves properties;
1.21.1.2 Significant decrease in the valuation of the Doves properties
1.21.1.3 Valuation of HTG assets;
1.21.1.4 Inclusion of expenses within the MCR calculation - this only affects MCR cover;
1.21.1.5 Recognition of Deferred Tax Assets - this only affects the SCR cover
1.21.1.6 SCR treatment of current assets - this only affects SCR cover.

1.22 BDO actuarial team identified similar risks, and these are discussed throughout this report.

[1] *The base position used by Milliman is similar to that of the IAT with an adjustment in the starting own funds necessitated by a formula error in determining own funds in the QRT.*

Signed by:

Tapiwa M. Maswera

Tapiwa Maswera
Consulting Actuary
Reviewed by

Tinashe Mashoko
Director: BDO Actuarial Services

Assisted by:

David Chimsitu
Senior Actuarial Consultant

2. INTRODUCTION

2.1 This report is compiled by BDO Actuarial or 'we' in order to provide an actuarial opinion, based on actuarial and other related findings, on the impact of the proposed Property Recapitalisation Plan ('IRP') on the solvency position of 3Sixty Life Insurance Company ('3Sixty Life' or the 'Company').

2.2 The report is prepared in accordance with the Engagement letter - Curatorship Assistance Services for 3Sixty Life Limited.

2.3 3Sixty Life is a life insurer licenced to transact life insurance business. The company is wholly owned by Doves which is a subsidiary of NIC.

2.4 Subsequent to MCR and SCR breaches dating back to September 2020 and the failure to meet several recapitalisation deadlines as agreed with the PA, 3Sixty Life was placed under provisional Curatorship with effect from 21 December 2021.

Purpose

2.5 The main purpose of this report is to assess financial position as at the latest QRT date (31 December 2021) and express an opinion on the impact of the Property Disposal Agreement ("the transaction") on the solvency position of 3Sixty Life.

Scope

2.6 Our scope is limited to supporting the Curator, whose mandate is set out in the Court Order granted by the High Court on the 21st December 2021 and whose powers are outlined in Section 54 of the Insurance Act 18 of 2017.

Addressee

2.7 This report has been prepared exclusively for the Curator and may not be distributed to any third party without the joint permission and consent of the Curator and the BDO Actuarial Team.

2.8 This report cannot be used for any other purposes, apart from those stated in this report.

2.9 It is important that the report should be considered as a whole, and no section of the report be read in isolation or extracted out of context.

3. BACKGROUND

Background to the Curatorship

3.1 3Sixty Life was placed on Curatorship on 21 December 2021 by a court order. The court order also requires the Curator to investigate the business of 3Sixty Life and report any irregularities as well as file a report on the findings of this investigation by the return date.

3.2 We were appointed to investigate the actuarial aspects of 3Sixty Life's business and report to the Curator regarding any irregularities as part of the process of assisting the Curator to prepare their report. This Actuarial Opinion deposes the initial actuarial findings of the investigations by the Curator.

3.3 This actuarial opinion is based on the data and information availed to us by the date of its preparation. The quantitative deductions referred to in this actuarial Opinion rely heavily on the reports published by the internal actuary and HAF. We had not been able to access enough data from source which would have allowed us to validate the solvency and financial soundness of 3Sixty Life.

3.4 Notwithstanding the limitations of the data, the objective of this report aims to explore the impact of the property disposal on solvency. The outstanding data that we requested is still critical and is required for us to give a definitively opinion.

Background to the PA's Concerns

3.5 In its original application to the High Court in December 2021, the PA highlighted certain specific concerns that it had with regards to the way 3Sixty was being run as follows:

i. 3Sixty's failure to meet its regulatory capital requirements both on an SCR and MCR basis from 30 September 2020 and 31 December 2020 respectively;
ii. 3Sixty's failure to propose and subsequently implement a recapitalisation plan to rectify the situation as explained in the previous point; and
iii. The non-finalisation of the audit of 3Sixty Life's Annual Financial Statements as at 31 December 2020.

3.6 In addition, the PA was also aware of the FSCA's concerns 3Sixty Life's approach to market conduct related matters as communicated to it by the FSCA directly.

Remedial actions

3.7 It is our opinion that in order for these concerns to be addressed, it is necessary to investigate the following areas of 3Sixty Life's affairs:

iv. The factors that led to 3Sixty Life going into a financially unsound position in the first place, in particular:
v. The fundamentals of the business - whether it is viable let alone profitable or not.

vi. The governance structures in place, particularly how well (or otherwise) Board oversight is effective in ensuring the proper running of the company in light of the developments.
vii. What risk-management processes were in place.
viii. Whether or not these were implemented correctly or not.
ix. What management actions were instigated, if any, and how effective they were.
x. Whether there were any instances of fraud, embezzlement, or any other financial crime that led or contributed to this outcome.
xi. Whether the current Executive management, Board and any staff are fit and proper to run 3Sixty Life in a financially sound manner.
xii. What actions can be taken to restore 3Sixty Life to financial soundness, and
xiii. What measures can be taken to ensure that it remains so in future under normal business conditions that it can even survive abnormal business conditions as modelled in the SCR event.

3.8 It is our opinion that the proposed recapitalisation plan is therefore a part of the required process and, on its own, would not be a suitable measure to resolve the issues raised by the PA in its original application to the High Court in December 2021.

3.9 Notwithstanding the point above, the remainder of our report addresses the assessment of the impact of the proposed recapitalisation plan on 3Sixty Life's solvency position.

Background to the Solvency Regime

3.10 The regulatory regime in South Africa requires that a life insurance company's assets should exceed its liabilities ("technical provisions") at all times. Over and above having enough assets to meet its technical provisions, there are two other measures: The MCR and SCR which must also be covered in order for the company to be considered solvent. 3Sixty Life is currently in breach of both its MCR and SCR. In fact, both are currently negative and have been so for most of the last year.

3.11 The SCR is calculated from the underlying risk associated with the insurer's business based on the its assets, liabilities and its operational methods and practices. The SCR is calculated to be the extra capital over and above the liabilities which assures that the assets will dip below the liabilities with a probability of one in every 200 years. The SCR provides an early warning system to the regulator that the company is getting into trouble.

3.12 The MCR is calculated based on the same basic principle as the SCR but based on a reduced probability of the assets of the insurer dipping below the liabilities with a probability of one in every seven years. The MCR provides a floor which must be met at all times. When a company that fails to meet its MCR, the regulator intervenes using the strongest measures possible. After failing to comply with several deadlines set by the PA to restore its MCR over a period of almost a year, 3Sixty Life was placed under Curatorship.

3.13 The company is in breach of both the MCR and the SCR as per the monthly QRTs submitted to the PA.

Background to Previous Recapitalisation Plans

3.14 3Sixty Life put forward to the PA the recapitalisation plans outlined below in a bid to restore financial soundness;

Recapitalisation Plan	Description	Reasons for failure
Recapitalisation Plan A	• 3Sixty Global Solutions Group (Pty) Ltd (3Sixty GSG) to sell its 74.9% shareholding in its subsidiary Salt Employee Benefits (Salt EB also known as 3Sixty Employee Benefits) back to its previous shareholder (now 25.1% shareholder), Salt Holdings for R70 million. The sale proceeds are to be transferred as equity to 3Sixty Life; and • 3Sixty Health (a sister company to 3Sixty and a subsidiary of 3Sixty GSG) to obtain a loan of R40 million from Absa. R20 millions of these funds are to be loaned to Doves, which is 3Sixty Life's 100% shareholder and parent company, who would then invest the funds as equity into 3Sixty Life.	• The sale transaction was approved by the FSCA but did not materialise as per the detail on the 6 December 2021 meeting. • Absa raised concerns around the fact the 3Sixty Life's 2020 Annual Financial Statements were not yet signed and that the insurer is insolvent however, 3Sixty Life was still convinced that the overdraft would be granted. This part of the plan has also not materialised to date.
Recapitalisation Plan B	• Salt EB is ceded as an asset to 3Sxity Life at its NAV of R70 million; • The full 3Sixty Health overdraft of R40 million is ceded to 3Sixty Life.	• This plan has not materialised to date.
Recapitalisation Plan C or the Internal Recapitalisation Plan ('IRP')	• 3Sixty Life proposed a new recapitalisation strategy that involves the transfer of properties held by Doves to 3Sixty Life. The PA was informed that Doves has agreed to the property transfer; • This transaction will be done through an asset-for share-transaction as this is the most tax-efficient approach; • According to 3Sxity Life, the properties are worth R 180 million, however, they are aware that they cannot recognise the full amount of the properties. In addition, R 50 million of the total is a security for a Doves obligation and must therefore be deducted from the R 180 million.	• Viability of this plan and its impact on solvency is under review and is the purpose of the report on recapitalisation plan.

3.15 The company has failed to meet their capitalization deadlines, despite having committed to do so.

3.16 Under the IRP or Recapitalisation Plan C, on December 8 2022, 3Sixty Life proposed a property deal wherein 52 funeral parlours owned by Doves which they claim have a value of R122 million have been pledged to recapitalize 3Sixty Life. Doves is the sole shareholder of 3Sixty Life and the properties that were put forward by Doves are currently used by Doves in their day to day business.

3.17 The assets required to contribute towards EOF used to meet the MCR and SCR should be unencumbered. In our opinion the property asset is encumbered and needs approval by the PA before it can be recognised as contributing towards EOF.

4. DATA, RELIANCES AND LIMITATIONS

Data and Reliance

4.1 In drafting this report, we relied extensively on data supplied by 3Sixty Life and the PA to the Curator and the BDO Actuarial team upon request.

4.2 Reliance was placed but not limited to:

a) Actuarial Valuation Reports from 2016 to 2021
b) ORSA Reports from 2018 to 2020
c) Individual and Group policyholder claims data
d) Audited Financials for the financial years 2018 and 2019
e) Quarterly QRTs for the years 2018 to 2020;
f) Monthly QRTs for the period January 2021 to December 2021;
g) Draft monthly accounts from January 2021 to December 2021;
h) Founding Affidavit;
i) Court Orders;
j) Numsa Answering Affidavit; and
k) 3Sixty Life Answering Affidavit.

4.3 The data was subjected to various checks for accuracy, completeness, reasonability and consistency The accuracy of any values quoted in this report and the conclusions reached is limited to the accuracy of the underlying data and information (listed above) on which this report is based.

Limitations and Professional Guidance

4.4 The limitations as they relate to data, methodology and assumptions for this assignment have been discussed throughout in appropriate sections of this report. The process of assessing the financial position of 3Sixty Life as at 31 December 2021and the impact of the IRP on solvency includes inspection, investigation, analysis and computation of values in order to produce results/findings that are reliable

4.5 The report may need to be revised as new information becomes available.

4.6 This report has been prepared in line with the purpose of the assignment. Since this is a non-standard actuarial assignment, the report conforms to actuarial or professional guidance to which the actuarial professionals who prepared the report may be subjected. We have also followed international best practice.

4.7 Actuarial professional guidance requires the actuary to indicate the limitations to the conclusions reached when data is not complete or not available. We needed additional data and information from 3Sixty Life but had not receive it by the date of completion of this drafting report.

4.8 Our analyses were therefore limited to data availed to us.

5. ASSUMPTIONS AND METHODOLOGY FOR THE QUANTITATIVE ASSESSMENT

5.1 This section of the report presents the assumptions and methodology used to quantitatively assess the recapitalisation plan.

Overview of Required Capital

5.2 Under SAM framework, required capital is determined as the MCR and the higher measure of SCR and MCR.

5.3 MCR for 3Sixty Life is first calculated in accordance with a standard formula and then adjusted if necessary to fall within a corridor of 25% - 45% of SCR, subject to it being greater than 25% of the annualised operating expenses. The SCR for 3Sixty Life is calculated according to the standard formula.

Determination of Own Funds

5.4 Under the SAM framework, available capital is represented as assets in excess of liabilities and is referred to as Own Funds. The minimum required level and composition of 3Sixty Life's own funds is determined by reference to its SCR and MCR.

5.5 Own funds are divided vertically between "basic own funds" and "ancillary own funds" and horizontally between Tiers 1, 2 and 3.

5.6 Basic own funds are defined as assets minus liabilities subject to certain adjustments such as the deduction of intangible assets, cash and deposits held at a bank within a financial conglomerate, and deferred tax assets reclassified based on the future period on which they will be recognised.).

5.7 Ancillary own funds are capital instruments that can be called up to absorb losses, specifically including unpaid share capital, letters of credit, guarantees and any other legally binding commitment received by the insurer. This recognition of these assets and the value that can be placed on them is a subject to regulatory approval.

5.8 3Sixty Life does not have any ancillary own funds, and hence these were not taken into account in the determination of own funds.

5.9 Detailed guidance on determination of own funds is given under Prudential Standard FSI 2.3 as follows:

(i) **Mapping and Tiering of Own Funds of 3Sixty Life based on Prudential Standard FSI 2.3**

Own Funds Component	Classification by 1st line Actuarial	Classification by BDO Actuarial
Ordinary share capital (net of own shares)	Tier 1	Tier 1
Share premium account	Tier 1	Tier 1
Retained earnings including profits for the Quarter net of foreseeable dividends	Tier 1	Tier 1
Other reserves from accounting balance sheet	Tier 1	Tier 1
Reconciliation reserve	Tier 1	Tier 1
Adjustments to assets	Tier 1	Tier 1
Adjustments to technical provisions	Tier 1	Tier 1

Table 5. 1: Mapping and Tiering of Own Funds

(ii) **Deductions to Own Funds**

Adjustment Component	Classification by 1st line Actuarial	Classification by BDO Actuarial
Adjustment for intangible assets	Deducted goodwill from own funds	Deducted goodwill from own funds
Adjustments to basic own funds - Change of tier (minus/plus)		
Net deferred tax assets - relegate from Tier 1 to Tier 3	Relegated DTA from tier 1 to 3	Relegated DTA from tier 1 to 3
Other adjustments		Property asset is encumbered and needs prior approval by the Prudential Authority before it can be recognised as eligible to contribute towards EOF.

Table 5. 2:Deductions to own Funds

Determination of Own Funds - Milliman

5.10 Milliman determined own funds in accordance with Prudential Standard FSI 2.3. The approach adopted by Milliman is comparable to that taken by BDO actuarial. Additionally, BDO queried the nature of the HTG assets, and indicated that if assets within this class are reclassified as investment in own shares or in the group then this should be removed from the calculation of own funds. BDO actuarial agrees with this assessment and will investigate the nature of these holdings further.

Determination of Minimum Capital Requirement

5.11 MCR is the minimum capital requirement for an insurance company to write business. 3Sixty Life's MCR was calculated using the standard formula approach as specified by Prudential Standard FSI2.3 paragraph 5.3. The MCR is subject to an Absolute Minimum Capital Requirement ('AMCR')

(i) Steps in the calculation of 3Sixty Life MCR

5.12 The calculation of the MCR for 3Sixty Life followed 5 steps.

No.	Description	BDO Actuarial Comment
1	Calculation of the SCR and use it as an input	We were not able to complete the first three steps needed to calculate MCR due to data limitations. There was not enough data to determine technical provisions and hence the technical provisions information in the MCR formula were not independently verified.
2	Retrieve Net BE and Net Written Premiums. Apply percentages as in regulation to get the Linear MCR.	
3	Calculate the width of the corridor. That is 25% to 45% of the SCR, respectively.	
4	Find the Absolute Floor for the MCR (AMCR). This depends on the type of business the company has. $AMCR = max(R15million, 25\% \cdot Op\_Expenses)$	We noted that the Trial Balance provided by 3Sixty Life to shows very high expenses. We however did not have the information to allow us to validate the calculation of the component of MCR which depends on expenses
5	The final MCR is the linear MCR if it is within the corridor and above the absolute floor.	The MCR of 3Sixty Life is based on the Absolute floor amount. Thus, the determination of annual operating expenses of 3Sixty Life is a significant assumption.

Table 5. 3: Calculation of 3Sixty Life MCR

(ii) Determination of operational expenses

5.13 The following expenses are excluded in the calculation of operational expenses used in the determination of AMCR:

Expense Item	Treatment by BDO Actuarial
Acquisition expenses relating to the cost of acquiring new business;	We were not able to separate between acquisition and maintenance costs from the amount used to determine AMCR. We recommend that 1st line actuarial provide the splits used to allocate expenses between acquisition and maintenance as the expense assumption is crucial in the calculation of AMCR.
Depreciation of inventories to net realisable value;	We note the depreciation amounts which should be removed from the calculation of operational expenses
Depreciation of property, plant and equipment to recoverable amount and the reversal of such write-downs;	
The cost of restructuring the activities of the insurer and the reversal of any provisions for the cost of restructuring;	We noted all these costs, wherever applicable, which should be removed from the expenses for the purpose of calculating the operational expenses
The disposal of property, plant and equipment;	
The realisation of long-term investments;	
Gains and losses arising from natural disasters and expropriation; and	
Asset management and fund management fees directly related to linked policies	

Table 5.4: Expenses to be Excluded

Determination of Minimum Capital Requirement - Milliman

5.14 Milliman assessed the MCR calculated by IAT as reasonable but however, indicated that the operational expenses used in the calculation were a critical assumption which may result in an increase in MCR if the allocation of expenses between acquisition costs and maintenance costs changes. This position is aligned with the observations made by BDO actuarial on the treatment of acquisition costs and their impact on the base MCR position.

Determination of SCR

5.15 A SCR is the total amount of funds that insurance and reinsurance companies in South Africa are required to hold. SCR is a formula-based figure calibrated to ensure that all quantifiable risks are considered, including life underwriting; market, credit, operational, and counterparty risks.

5.16 The SCR covers existing business as well as new business expected over the course of 12 months. The SCR for 3Sixty Life was calculated based on the standard formula set out in Prudential Standard FSI 4 and Guidance Note FSI 4.

5.17 We were not able to independently verify life underwriting figures of the SCR calculation done by 1st line actuarial due to data limitations.

6. OUR QUALITATIVE ASSESSMENT OF THE IRP

Terms of the Disposal Agreement

6.1 The asset is part of the "capital assets" that Doves requires to continue to do business .3Sixty Life will not be able to sell the asset because Doves as the sole shareholder will block any proposal to sell the property assets. The economic value that is transferring from Doves to 3Sixty Life is therefore far less than the market value or the discounted value of the net market rental.

6.2 From a NUMSA Group point of view, the property transaction represents a repositioning of an asset that is already part of the group, but it does not inject any fresh economic value to the Group. If 3Sixty Life were regulated on a Group basis (which it should because 50% of 3Sixty life's business is from Doves), then this asset would not count because its already part of the assets available to support the ability of the Group to do business. 3Sixty Life is already benefiting from this arrangement.

Property Valuation Methodology

6.3 The Property Valuation methodology that was used assumes that the properties can be put up for rental at the market value. The disposal agreement says Doves will pay rentals of R85 000.00 which is far less than the market value that was used in the valuation. The economic value that is transferring between the two parties is therefore far less than the value placed on the properties.

6.4 If 3Sixty Life is neither able to sell the asset nor get a market related rental, then the economic value that is transferring between the parties cannot exceed the discounted value of the proposed rental after allowing for expenses. This economic value that is being transferred is about 8 million.

6.5 While the property valuator says his value is based on the value that would be paid between two independent knowledgeable parties, there is still concern that he then makes the assumption that Doves as a tenant will lease these properties for at least five years. This is a concern because Doves seems to be the only entity that would find these properties valuable. It's not clear fact that Doves is in a strong enough financial condition that allows it to afford this market rental.

6.6 These properties were bought 25 years ago and there is no evidence that they were new when they were bought. Given that the expected life time of residential property can be as small as 50 years and these properties are not well maintained, we have a concern around the assumption that the rent will be paid in perpetuity.

Quality of the Transfer Properties

6.7 To quote the Property Valuator "The properties are generally in a very poor condition with little or no evidence of reasonable upkeep". The condition of the properties is not too great and they are scattered throughout South Africa. They are not a particularly interesting portfolio for an insurance company which is more interested in properties that are easy to sell and are capable of generating regular, stable rental income.

6.8 This together with the specialized nature of these properties (they are mostly centrally located residential properties which were converted into funeral parlours) which means they are generally not amenable to other uses.

Encumbrance of the Transfer Properties

6.9 The Insurance Act (2017) states that an encumberment means any pledge, restriction or limitation (including any contractual obligation that must be fulfilled before a contractual right may be exercised) that limits access to, or the use or disposal of, an asset.

6.10 The fact that there is a lease of the properties to Doves, 3Sixty Life's parent, in the disposal agreement is a limitation on the use or disposal of the properties.

6.11 Doves controls 3Sixty Life as its parent company. Furthermore, Doves has a clear operational need for the properties involved. The lease proposed in the disposal agreement is a month-by-month lease, which means that a sale of the property to a third party could easily result in termination of the lease. Therefore, Doves has a vested interest and the capability to block such a sale should it be deemed necessary by 3Sixty Life.

6.12 The net rental yield of 0.84% per annum is quite low and baked into the disposal agreement. This suggests that the terms of the lease are commercially attractive to Doves and potentially not attractive to 3Sixty Life.

6.13 The points above suggest to us that the properties that Doves proposes to transfer to 3Sixty in exchange for ordinary equity of 3Sixty Life are encumbered.

6.14 An asset which is encumbered needs approval by the PA to be recognised as EOF as well as the value of the asset that can be recognised. The PA therefore needs to receive a formal application from 3Sixty Life for such approval which it will consider in due course and until such a process is done and concluded, the value that is being used as EOF in respect of these properties is purely speculative and non-binding.

6.15 The following table summarises the key matters at hand that affect encumbrance and our qualitative analysis against provisions of the disposal agreement:

No.	Matters at Hand		Description	Analysis
1	Property Valuation	Confirmation of the Market Value of the Transfer Properties	The disposal agreement does not address the issue of value that is being placed on the properties, which value will require sign off by Independent Valuators and the External Auditors. E.g. FSS and IFRS (13) standards require that the value placed be market value between two knowledgeable parties.	We note however that 3Sixty Life does not have the right to sell these properties. This is a very significant limitation since it also affects the economic value that is transferring between the parties.
2	Quality of Transfer Properties as an Asset	Loss absorbency	3Sixty Life intends to use the own funds arising upon receiving the transfer properties from Doves as capital to cover the MCR and SCR. This means that the features of the property as described in the Disposal Agreement should be such that the own funds arising after properties are transferred	We note that paragraph 5.2.5 of the Disposal Agreement mentions that 3Sixty Life will acquire the Transfer Properties for the purpose of letting them to Doves. Additionally, paragraph 4.2.3 of the Disposal Agreement specifies that Doves will hold a qualifying interest in 3Sixty Life following the transfer of the properties. Our view is that if the property is a high quality asset then it should be immediately available to

No.	Matters at Hand		Description	Analysis
			should be eligible to meet the capital requirements of 3Sixty Life.	meet claims when required and to fully absorb losses so as to allow the insurer to operate as a going concern. The following concerns regarding the availability of the property that is being transferred to 3Sixty Life: (a) Are the Transfer Properties available to be sold for cash in the event that 3Sixty Life requires funds to settle claims and other policyholder obligations? Given the fact that Doves holds a qualifying interest in the properties, the current structure l gives Doves the right(s) to block any decisions by 3Sixty to dispose the properties and use the proceeds to pay claims or reinvest the proceeds into assets that match the liability profile of 3Sixty Life. We therefore recommend that the Disposal Agreement does away with the requirement for properties to be leased back to Doves as part of transfer agreement. This would ensure that the transferred properties are immediately available to absorb losses as and when required by 3Sixty Life. If this is done, the property asset would be unencumbered and qualify to be recognized when determining EOF.
3		Subordination		We note that paragraph 9.3, 9.3.1, and 9.3.2 of the Disposal Agreement says that Doves shall- (a) for the entire duration of the Term of the 3Sixty Life Lease in respect of any particular Transfer Property, pay the Monthly Rental in respect of that Transfer Property, together with VAT thereon, to 3Sixty Life monthly in advance on the first day of each and every month; and (b) be entitled to set off the amount of that Monthly Rental (together with VAT thereon) against any amounts (including shareholder loans) from time to time owing to it by 3Sixty Life. The deductions in paragraph 9.3, 9.3.1, and 9.3.2 of the Disposal Agreement will be done upfront before 3Sixty Life would have had the opportunity to account for its profit and losses for the purposes of making dividend or shareholder loan repayments.

No.	Matters at Hand		Description	Analysis
				The Disposal Agreement does not subordinate payments to shareholders to the rights of policyholders as required by Prudential Standard FSI2.3. It is not clear from the disposal agreement if loans and other amounts owed to Doves as the shareholders will be subordinated to the policyholder obligations. We recommend that the Disposal Agreement be structured in a way that gives 3Sixty Life full discretion over payment of coupons or dividends or other similar payments. Additionally, the Disposal Agreement should not give preference to Doves as shareholders over the recovery of loans or dividends from the rental income generated by the Transfer Properties.
4		General Encumbrance of the property assets		Paragraph 4.2.3 of the Disposal Agreement specifies that Doves will hold a qualifying interest in 3Sixty Life following the transfer of the properties. Additionally, paragraph 4.2.5 mentions that Doves holds the Transfer Properties as capital assets and 3Sixty Life will acquire the Transfer Properties as capital assets. We note that a capital asset is property that is expected to generate value over a long period of time. Capital assets form the productive base of an organization. Thus, the requirement by Doves to hold qualifying interest in 3Sixty Life after transferring properties implies the need for Doves to continue protecting its business interests in the properties being transferred to 3Sixty Life. There is a conflict of interest between Doves interest in the properties and 3Sixty Life's interest. Doves requires that 3Sixty Life holds the transfer properties as Capital Assets which it can use to do business whereas 3Sixty Life may need to sell in order to pay claims. The requirement by Doves to hold a qualifying interest in 3Sixty Life following the transfer of some of its properties that used to be its capital assets presents an encumbrance risk for 3Sixty Life. 3Sixty Life is not at liberty to dispose of the properties for the purposes of meeting policyholder obligations or reinvesting them to in a manner that better matches its liability profile. We recommend that Disposal Agreement be re-structured in such a way that the transfer

No.	Matters at Hand		Description	Analysis
				properties are free from any encumbrances. They must not be connected with any other transaction which, when considered with the transfer properties, could undermine their availability to meet claims when required.
5	Recognition of transfer properties to meet own funds		3Sixty Life intends to use the own funds arising upon receiving transfer properties from Doves to cover its MCR and SCR. This means that the transfer properties should have qualities that allow it to be used to contribute towards EOF	In order for any asset to qualify to be used to meet EOF it must be free from any encumbrances. Based on the above analysis, the current structure of the Disposal Agreement encumbers the transfer properties and hence PA approval is sought before the properties can be recognised as meeting EOF. Pending PA approval and/or appropriate amendments to the Disposal Agreement, we were therefore are unable to classify the properties as qualifying to meet own funds of 3Sixty Life

Table 6.1: Analysis of Property Disposal Agreement

Concentration of Risk and Group Supervision

6.16 There is a potential concentration of risk implied in the transaction as Doves is already the sole shareholder of 3Sixty Life and Doves is also responsible for 50% of the business that 3Sixty Life's business.

6.17 In addition, Doves is already a part of 3Sixty Life's service delivery mechanism. If these entities were regulated as a group, then this asset would most likely already count towards current financial soundness.

6.18 The ability of Doves as the sole shareholder to inject capital and support the insurance business needs to be evaluated over and above the proposed IRP.

6.19 The property deal has the potential to further entangle the business of 3Sixty life into the business of Doves by then tying 3Sixty Life's assets in capital assets that supports Doves' business. Doves already supplies at least 50% of the business of 3Sixty Life and a key issue for consideration is whether 3Sixty Life can survive a 50% business shock, if Doves were to fail.

6.20 Another very important dimension of the concentration of risk and the inter-connectedness of the NUMSA Group management. Most managers of 3Sixty Life coming from Doves and NUMSA Investment Company.

Doves Financial Condition

6.21 The financial condition of Doves should be a key consideration in the recapitalization process. Doves Is the parent company of 3Sixty Life and holds 100% of the shares of 3Sixty Life. This alone is a source of risk.

6.22 We also need to check whether Doves can afford the market rental that was used to value the properties that are transferring to 3Sixty Life. Ultimately, the properties may have to be sold and Doves has to be able to find alternative business premises to continue to do business.

6.23 Finally, we need to check whether 3Sixty Life as a business could survive without the 50% of the business which comes from Doves. Given that Doves accounts for 50% of the business of 3Sixty Life, the solvency and financial condition of Doves is a very important input to this Curatorship.

Valuation of the Property Assets

6.24 The valuation is based on a market rental applicable to each property. However, the disposal agreement says 3Sixty Life will get a rental of R85 000 for all the properties. We believe the property valuation should thus take this into account as we are mostly concerned about the economic value that is transferring between the parties. The economic value is based on the rental that Doves will pay to 3Sixty Life not the market value?

6.25 The properties are not likely to attract a market related rental if they are not in good condition. What allowance was made for the condition of the properties and how can this be justified?

7. OUR QUANTITATIVE ASSESSMENT OF THE IRP

7.1 In this section, we investigate the impact of the property transfer properties on Own Funds, MCR, and SCR of 3Sixty Life. Additionally, an evaluation of 3Sixty Life's financial soundness is provided before and after the acquisition of the transfer properties.

7.2 Users of this report are reminded of the data limitations discussed in Section 3 and 4 when interpreting the results presented in this report. We have identified several areas of uncertainty or potential differences in the base calculation but we have determined that these are not material in my assessment of the impact of the proposed recapitalisation plan on 3Sixty's solvency cover ratios.

Summary of Financial Position

7.3 The following is a summary of 3Sixty Life's SAM balance sheet, as well as its regulatory capital and solvency position before the proposed IRP. This is based on 3Sixty Life's monthly QRT template as at 31 December 2021.

7.4 We are using these base position results provided by 3Sixty Life, purely for illustrative purposes and we are not providing an opinion on their accuracy or reliability. These have not been audited and it is our opinion that they cannot necessarily be relied upon. It is our intention is to carry out an extensive verification of the key inputs into this calculation should we be afforded the opportunity to do so.

7.5 We have also managed to identify a minor formula error in eligibility calculations which is shown in the figures in the table in the assessment section below. The impact is immaterial for MCR cover. The adjusted figures as shown in the table in the assessment section below are the ones used as the base position.

i. Assets

7.6 The 3Sixty Life Asset position as at 31 December 2021 is detailed below;

Asset Type	SAM Basis	IFRS Basis
	R'000	R'000
Intangible Assets	**13, 633**	**13,633**
Equipment	**1,165**	**1,165**
Total in Asset Holding Intermediary	**18,340**	**18,340**
Total Investments:	**348,660**	**348,660**
Investment Funds	278,374	278,374
Cash and Deposits	14,273	14,273
Mortgages and Loans	56,012	56,012
Deferred tax assets :	**46,376**	**46,376**
of which realisable in year 1	2,736	2,736
of which realisable after year 1	43,640	43,640

Asset Type	SAM Basis R'000	IFRS Basis R'000
Current assets	**27,851**	**27,851**
Other assets	-	**2 010**
Total assets	**456,025**	**458,035**

Table 7. 4: Asset Position

ii. **Liabilities**

7.7 A summary of 3Sixty Life's liability position on a SAM and IFRS Basis is set out below;

Liability Type	SAM Basis R'000	IFRS Basis R'000
Gross Technical provisions - life	347,792	350,095
Amounts due to holding company and subsidiaries	470	470
Payables (trade, not insurance)	26,292	26,292
Other liabilities	69,140	69,140
Total Liabilities	443,694	445,997

Table 7.5: Liability Position

Minimum Capital Requirement

7.8 The MCR is a function of Technical Provisions, SCR, and operating expenses. 3Sixty Life's MCR is based on 25% of operating expenses and hence the expense assumption, and in particular the split of expenses between acquisition costs and maintenance or ongoing costs is significant. According to Prudential Standard FSI 3 paragraph 5.3, acquisition costs are excluded from the calculation of expense used in the MCR calculation.

7.9 3Sixty Life's IAT determined a MCR figure of R35 million as at 31 December 2021. The assumed annual operating expenses in the calculation done by the IAT was R 141 million. We have not had sight of the actual allocations used by the IAT and in particular how salaries were split between acquisition costs and maintenance, and hence we could not independently verify the total operating expense amount used in the calculation.

7.10 Our view is that the operating expense amounts in the MCR calculation should be prudent, since this has a direct bearing on the minimum amount of capital that should be injected to recapitalise the business.

7.11 In addition, the following market conduct issues which were raised by the FSCA would worsen the solvency position of 3Sixty Life and should be taken into account when determining the recapitalisation amounts:

7.11.1 Premiums increases that were not approved and therefore must be reversed;
7.11.2 Claims in respect of policyholders that were underpaid because they chose not to use Doves' services;
7.11.3 Joining fees that 3Sixty Life was not entitled to which still need to be refunded; and
7.11.4 Data errors which could cause technical reserves to go up.

7.12 BDO Actuarial assessed operating expenses, based on the 31 December 2021 trail balance, to be approximately 209 million. This implies an MCR amount of R52 million as at 31 December 2021. The IAT used total operating expenses of R141 million, resulting in an MCR estimate of R35 million. BDO Actuarial was only not able to independently verify the MCR figures determined by the IAT since they were not provided with a split of the expenses between acquisition and maintenance costs used by the IAT and its rationalise.

7.13 3Sixty Life continues to incur commission costs despite the fact that it is now closed to new business. In the event that the commissions incurred after the company was closed to new business are reclassified from acquisition costs to maintenance or operational costs, then there will be further increases to the MCR estimate of 3Sixty Life.

7.14 Given the fact that the QRT produced by IAT was reviewed by the HAF, BDO Actuarial therefore adopted the MCR figures of 3Sixty Life as determined by IAT as the base position for assessing the impact of property transfers. However, it should be noted that if the 141 million annual expense amount is assessed to be unreasonable, then the base MCR position will be understated.

Analysis of impact on Own Funds, MCR and SCR

7.15 BDO actuarial assessed the impact on own funds based on the following recapitalisation scenarios:

7.15.1 Scenario 1 - Transfer properties valued at R 0.00;

7.15.2 Scenario 2 - Transfer properties valued at R 113 million; and

7.15.3 Scenario 3 - Transfer properties valued at R 122 million.

7.16 We have conducted our analysis on the assumption that the transfer properties satisfy the regulatory requirements set out in the Prudential Standard FSI 2.1, despite the fact that they are encumbered.

7.17 Following is a description of how the property values in each proposed scenario were derived:

Scenario	Description
1	Transfer properties valued at R 0.00, which is the position that assumes that the assets are encumbered and no economic value is transferring between Doves and 3Sixty Life. This is also the position that agrees with the recommendations of the expert accounting and legal advisory teams.
2	Transfer properties valued at R 111 million, which is the position based on the value placed on the properties by independent property valuator appointed by BDO. Please note that this position is hypothetical and is based on the assumption that the assets can be unencumbered. This position is not supported by the expert accounting and legal opinions.
3	Transfer properties valued at R 121 million, in accordance with the disposal agreement. Please note that this position is hypothetical and is based on the assumption that the assets can be unencumbered. This position is not supported by the accounting and legal opinions. Please note further, that there is a difference of R4 million between the disposal agreement and management independent valuation from Spectrum, which reflects the fair value at R 125 million.

Scenarios Assessed by Milliman

7.18 Milliman assessed the impact of the IRP using two property valuation scenarios, one property valuation results of 121 million and the other with valuation results of 113 million. the scenarios used by Milliman are comparable to scenario 2 and 3 assessed by BDO actuarial.

Impact Assessment - BDO Actuarial

7.19 Tabulated below is the impact on Own Funds, MCR and SCR based on the three scenarios described above:

Particulars	IAT (Base Position)	Scenario 1	Scenario 2	Scenario 3
Total Own Funds	12 331	12 331	123 631	133 331
EOF to meet MCR	(52 501)	(52 501)	63 621	73 321
EOF to meet SCR	(38 103)	(38 103)	76 392	86 448
MCR	35 486	35 486	35 486	35 486
SCR	63 838	63 838	85 137	87 510
MCR Cover	(1.48)	(1.48)	1.79	2.07
SCR Cover	(0.60)	(0.60)	0.90	0.99

Table 7.1: Results of the Own Funds re-performance

7.20 The transfer properties do not have an impact on the MCR since the MCR figure for 3Sixty Life is based on 25% of operating expenses. This is the financial position that is endorsed by the accounting and legal opinions.

7.21 In Scenario 1, the transfer properties do not have any impact on the financial position of 3Sixty Life.

7.22 In Scenario 2, the transferred properties are valued at R 111 million, increasing 3Sixty Life's total own funds from R 12 million to R 124 million upon transfer. Additionally, the EOF to meet MCR increases from negative R 52 million to R 64 million, and EOF to meet SCR increases from negative R 38 million to R 76 million. The MCR for 3Sixty Life remains constant at R 35 million whilst the SCR increases from R 64 million to R 85 million due to the introduction of the property shock in the market risk calculation. This is a hypothetical position which assumes that the properties can be unencumbered. The accounting and legal opinion do not endorse this position.

7.23 In Scenario 3, the transfer properties are valued at R 121 million and increases the total own funds of 3Sixty Life from R 12 million to R 133 million after the transfer. Additionally, the EOF to meet MCR increases to from negative R 52 million to R 73 million, and EOF to meet SCR increases from negative R38 million to R 86 million. The MCR for 3Sixty Life remains constant at R 35 million, whilst the SCR increases from R 64 million to R 88 million due to the introduction of the property shock in the market risk calculation. There will therefore be enough funds to cover both the MCR and SCR as required. This is a hypothetical position which assumes that the properties can be unencumbered. The accounting and legal opinion do not endorse this position.

Risks to the Base Position

7.24 The following risks potentially affect the accuracy of the base position used to do an impact assessment of the IRP:

7.24.1 The accounts used to calculate the base position at 31 December 2021 are unaudited.

7.24.2 The 2020 audit of financial statements is not finalised.
7.24.3 Data limitations as cited by the IAT in the draft 2020 Actuarial Valuation report, the Audit Actuary in communication with the IAT on 14 December 2021 and by FSCA in their letter dated 2 September 2021, could affect the base position of technical provisions.

Opinion: In BDO Actuarial's opinion the contribution of property to EOF must not be recognised before the properties are approved by the PA.

Impact Assessment - Milliman

7.25 Tabulated below is the impact on Own Funds, MCR and SCR as assessed by Milliman:

Particulars	Milliman[2](Base Position)	Scenario 1 - Property valued at R121 million	Scenario 2 - Property Valued at R113 million
Total Own Funds	12 331	133 593	125 541
EOF to meet MCR	(47 679)	(73 583)	65 531
EOF to meet SCR	(38 103)	(86 653)	78 307
MCR	35 486	35 486	35 486
SCR	63 838	87 131	85 170
MCR Cover	(1.34)	2.07	1.85
SCR Cover	(0.60)	0.99	0.92

7.26 The results obtained by Milliman are comparable to those of produced by BDO Actuarial Team. Both scenarios show that the property transaction, assuming that it is unencumbered, will result in eligible funds enough to cover MCR, but not enough to cover SCR.

Risks to the solvency impact assessment - Milliman

7.27 Milliman identified the following risks as potentially impacting the solvency impact assessment as shown under paragraph 1.5 above:
7.27.1 Risks to the MCR and SCR cover
7.27.1.1 Encumberence of the Doves properties;
7.27.1.2 Significant decrease in the valuation of the Doves properties
7.27.1.3 Valuation of HTG assets;
7.27.1.4 Inclusion of expenses within the MCR calculation - this only affects MCR cover;
7.27.1.5 Recognition of Deferred Tax Assets - this only affects the SCR cover
7.27.1.6 SCR treatment of current assets - this only affects SCR cover.

7.28 BDO actuarial team identified similar risks, and these are discussed throughout this report.

Minimum Capital Injection needed to meet MCR and SCR

7.29 Tabulated below is the estimated Tier 1 Capital needed to meet MCR and SCR of 3Sixty Life. Please note that the amounts shown in the table below do not take into account additional payments

[2] *The base position used by Milliman is similar to that of the IAT with an adjustment in the starting own funds necessitated by a formula error in determining own funds in the QRT.*

that need to be made to rectify additional liability arising from market conduct irregularities and repayment of the outstanding with profits loan.

	Before Property Transfer (R'000)	After Property Transfer (R'000)
Tier 1 Capital Required to meet MCR and SCR	150 000	150 000

Table 7. 3: Estimated Tier 1 Capital

8. RISKS TO THE IRP

8.1 The key risks associated with the proposed IRP are tabulated below:

Risk Identified	Risk Description
Redemption Risk	The risk is that 3Sixty Life cannot sell the properties or change the tenant (which is Doves) in order to obtain market related rental. Doves will be able to block any proposed future variations in the lease agreement or the sale of the properties. In terms of SARS rules, Doves has a qualifying interest which allows it to prevent the sale or re-letting of the properties.
Encumbrance Risk	Clause 9.5 also allows Doves to sublet the properties. This means Doves can in theory let properties for higher rentals (if these properties are in demand) than the rent that is payable to 3Sixty Life. 3Sixty Life will still be responsible for the costs of running and servicing the properties. The costs of running and servicing the properties are very likely to exceed the R85,000 monthly rentals. So 3Sixty Life is effectively encumbered from benefitting from any potential upside in both the rentals and the market value.
Subordination Risk	Policyholder interests are subordinated to Doves interests in the event of liquidation of 3Sixty Life in the property deal. In fact, the property agreement is more likely to benefit Doves shareholders than the 3Sixty Life policyholders.
Liquidity Risk	3Sixty Life cannot freely exercise its right to sell or let the properties in an open market. In addition, the properties are all of a specialised nature (parlours) which means finding a buyer may be difficult. The above results in a liquidity risk.
Mismatching Risk	We did not see a clause governing future increases in the monthly rental of R85,000. There is a high ALM risk given that the servicing costs will certainly increase with inflation, whereas the rental income is fixed at R85,000 per month. So over time, the deal could potentially be very bad for policyholders with the impact of compounding.
Expense Risk	3Sixty Life will receive rental income of R85 000 per month on the properties; Whilst clause 6.3.2 stipulates that Doves will pay the servicing costs, there is still a risk that the actual costs incurred in maintaining and running of the properties may be higher than the rentals received per month. This may further weaken 3Sixty Life's financial position, including its liquidity position.

Table 8. 1: key risks associated with the property disposal agreement

9. CONCLUSIONS AND RECOMMENDATIONS

9.1 The results provided by 3Sixty Life cannot necessarily be relied upon, and we are not providing an opinion on their accuracy or reliability. Verifying them is a key output of the Curatorship process.

9.2 Our view is that the proposed IRP is a part of the required process and, on its own, is not a suitable measure to resolve the issues raised by the PA in its original application to the High Court in December 2021 in their entirety.

9.3 Any impact of the proposed IRP on 3Sixty Life's liquidity will be limited and therefore would not be concerning.

9.4 If the properties that Doves proposes to transfer to 3Sixty Life in exchange for ordinary equity of 3Sixty Life under the proposed recapitalisation plan were to be considered to be encumbered by the PA, and evidence submitted to us suggests that they may be, then the impact of the proposed IRP on 3Sixty Life's solvency position would be little to none.

9.5 Otherwise, if the properties were to be considered to be unencumbered by the PA for whatever reason and as proposed by 3Sixty Life, then 3Sixty Life's MCR cover increases to well above 1.0x but its SCR cover remains below 1.0x. The proposed recapitalisation plan is therefore ineffective even to render 3Sixty Life into a financially sound solvency position.

9.6 We recommend that the Court Order as issued by the High Court on 21 December 2021 be upheld, and the Curatorship of 3Sixty Life continue under the original terms in order to allow all the issues raised to be resolved.

9.7 Specifically, the proposed IRP does not achieve the objectives for which the Order was issued in the first place and therefore does not provide reasonable grounds for its annulment.

Signed by:

Tapiwa M. Maswera

Tapiwa Maswera
Consulting Actuary
Reviewed by

Tinashe Mashoko
Director: BDO Actuarial Services

Assisted by:

David Chimsitu
Senior Actuarial Consultant

ANNEXURES

A1. ADDITIONAL ANALYSIS OF THE IRP

Issue	Description	Specialist Input Pending
The new paragraph 4.3 in the disposal agreement requires the Curator to have signed the offer by 15 January 2022, otherwise the offer lapses.	• A legal opinion is required to determine whether the Curator can sign an agreement with a Board that has no locus standi. • **Further, opinion on whether the Curator** can accept the offer without clearance from the FSCA, PA and possibly the High Court. E.g. Section 51(1) of the Insurance Act, and Section 10 of GOI 7 requires an insurer to obtain the approval of the PA prior to making a material acquisition or disposal of an asset.	Legal
Additionally, paragraph 4.4 (a) introduces a suspensive condition that the rule nisi, which has placed **3Sixty Life** under provisional Curatorship, is discharged on or before its return date. This would imply abandoning the Curatorship, including the court directives contained in section 9 and the powers in section 7 of the court order.	There appears to be a challenge with the Effective Date being on or before the return date of the rule nisi. We require legal opinion to understand: 1. The powers that the Curator is giving up by entering into this deal and whether it is legal to give up those powers in the first place. 2. Whether the Curator can enter into the deal without first establishing the latest solvency position of **3Sixty Life** and the possible implications of abandoning those investigations. The Failure to meet MCR and SCR was not the only reason why **3Sixty Life** was placed under Curatorship. The Court Order requires the Curator to investigate and report on any irregularities committed by **3Sixty Life**, its Directors, Key Individuals or Management and the contravention of any laws, codes of conduct or mandates in the conduct of **3Sixty Life business**. In **addition**, the Curator is required to report on the solvency of **3Sixty Life**.	Legal
The new paragraph 4.4 (b) in the disposal agreement introduces a new condition that the transaction should meet all requirements of the relevant statutory legislations and obtains all required approvals from the relevant regulatory bodies.	We require independent legal opinion on whether they should be stipulating conditions in order to fulfil its obligations to capitalize **3Sixty Life as** the sole shareholder. This is a very strange condition in the sense that solvency issues are under the PA while market conduct issues are under the FSCA and the Curator cannot bind them to an agreement. Further that Curatorship is now a matter before the courts and the agreement cannot pre-empt a court outcome.	Legal

Issue	Description	Specialist Input Pending
Protection of Policyholders	The transaction needs to protect policyholders and other creditor interests. The agreement seems to emphasize the protection of the interests of Doves Shareholders and does not do enough to protect identify and protect the best interests of policyholders. The property transaction terms handcuff **3Sixty Life and** fail to avail the assets required to protect policyholders. Consideration should be given to prioritizing repayment of the with profit policyholder loan with the proceeds of the property, given that the loan is due.	Actuarial, Legal, Audit
Obligations of the shareholders of **3Sixty Life**	Legal opinion is required as to: • whether Doves should be giving conditions for the injection of capital; and • whether Doves should not in law, be re-capitalizing **3Sixty Life and** taking all steps deemed necessary to protect policyholders without any pre-conditions.	Legal
Property Valuation	The agreement does not address the issue of the economic value that is being placed at Sixty Life's disposal as a result of the property transfers, which value will require sign off by Independent Valuators and the External Auditors. E.g. Prudential standard FSI 2.1 and IFRS (13) standards require that the value placed on the properties be economic value that would be transferred between two independent knowledgeable parties transacting at arm's length. We recommend external audit sign off in terms of what value is transferring between the parties and also of these value, how much contributes to solvency of 3Sixty Life.	Independent Audit
Quality of Property as Own Funds	The property should meet principles of EOF criteria if put to an eligibility test e.g. - is property encumbered, subordinated or does it have permanence features etc... We recommend an independent legal opinion that addresses this. Doves requires that the properties once transferred to **3Sixty Life should** be leased back to Doves as part of the transfer condition. Additionally, since Doves will be holding a qualifying interest in **3Sixty Life,**	Actuarial, Audit and Legal

Issue	Description	Specialist Input Pending
	it means that future changes to the lease agreement can only be made with the approval of Doves. Our view is that for an asset to qualify as capital for solvency purposes, it must be free from any encumbrances and be available to pay claims. The requirement for properties to be leased back to Doves as part of the transfer condition represents an encumbrance on the asset which dilutes its quality	
Quality of Capital	The property does not address the liquidity requirements of the company. 3Sixty Life has been struggling to pay claims for the better part of the last three years and there is a need to ensure that re-capitalization looks into the issue of liquidity and the capacity to pay claims.	Actuarial, Audit
Value of the Consideration Share versus the value of properties being transferred	Paragraph 5.2.3 states that the value of the consideration that **3Sixty Life will** give to Doves for the Transfer Properties will be equal to the open market value of the Consideration Share; and paragraph 5.2.4 states the open market value of the Consideration Share to be R11.68 (eleven Rand and sixty-eight Cents). We note that the value of the properties being transferred in exchange to the consideration share is R121m. There is a need to unpack this within the context of the fact that Doves as the sole shareholder of 3Sixty Life should be re-capitalizing its business without any conditions. It is not clear what role the consideration share will play in future governance and solvency of 3Sixty Life.	Legal; Audit; Actuarial
Issuance of Shares by the Provisional Curator	Paragraph 8.1.2 states that the issue of the Consideration Share by **3Sixty Life to** Doves has been authorized by the provisional Curator of **3Sixty Life and** all regulatory approvals required for the issue of that share including, without limitation, the approval required in terms of the Insurance Act, 2017, have been obtained.	Legal
Approval by the PA	Section 51(1) of the Insurance Act, and Section 10 of GOI 7 requires an insurer to obtain the approval of the PA prior to making a material acquisition or disposal of an asset. The purpose of requiring approval is the risk that such a transaction may pose to policyholders. Our view is that the proposed property transfer is material for the following reasons: i. It exceeds 5% of **3Sixty Life total** assets; ii. It increases intra-group exposure	Legal

Issue	Description	Specialist Input Pending
	of **3Sixty Life assets** in excess of 10%; iii. it impacts the risk profile of **3Sixty Life**; iv. it impacts the profitability of **3Sixty Life**; v. it impacts on the quality of the operational soundness framework of **3Sixty Life**, including **3Sixty Life ability** to manage its risks and meet its legal and regulatory obligations; and vi. it impacts the ability of the PA to monitor **3Sixty Life compliance** with its regulatory obligations - in this case, the proposed transfer deal requires the Curatorship to be set aside as a condition for the transaction.	
The proposed properties being transferred are capital assets of Doves, and Doves requires that it holds a qualifying interest in **3Sixty Life** after the transfer	Our view is that given the nature of the interest that Doves holds in the properties that it intends to transfer and the fact that it holds a qualifying interest in **3Sixty Life**, this raises questions of the permanence of the property transfer. Additionally, given the significance of the properties to the operations of Doves, Doves will be able to block any efforts by **3Sixty Life to** realign this asset with its business prerogatives where such realignment conflicts with Doves' business interests. We recommend that the property transfer agreement be structured in a way that ensures that the property vests fully in 3Sixty Life once they have been transferred.	Legal
Value to policyholders following property transfer	The transfer agreement requires that **3Sixty Life leases** back the properties solely to Doves. The rentals for all the properties is set at R85,000 per month. This represents a rental yield of 0.84% which is of the order of about a tenth of rental yields typical of this quality of property in South Africa. Additionally, **3Sixty Life will** be responsible for maintenance, rates and other related costs for each property. We noted that the actual rental per property translates to approximately R 1,350 per month. We are concerned the property transaction effectively transfers costs to **3Sixty Life which** in turn will continue to deplete the liquid resources of the company. The transfer is therefore not in the best interests of policyholders. In terms of the court order, the provisional Curator is mandated to protect policyholders and it is important to ensure that a deal like this, where the benefit to policyholders is not clear must, be scrutinized very carefully.	Actuarial; Audit

"SA2.1.1
"

Vishana Makan

From:	Kim Rew <Kim.Rew@webberwentzel.com>
Sent:	18 February 2022 07:35 AM
To:	Gregory Armstrong
Cc:	Dale Solomons; Zelmari Kern; Michelle Toxopeus; Tarin Page; Aslam Moosajee; Vishana Makan
Subject:	RE: URGENT APPLICATION / BDO / YASHODA RAM

Dear Gregory

BDO conforms that it will continue to provide whatever support and resources Yashoda Ram requires to fulfil her mandate as provisional Curator of 3SixtyLife Limited. The letter of suspension specifically states that she will be able to access BDO systems. Should she for whatever reason not be able to access the systems she should let us know immediately.

Ms Ram knows that she has a direct line to Mr Mark Stewart to assist her in any matters related to fulfilling her mandate. BDO is committed to assisting her in delivering her reports within the timeframes stipulated.

Kind regards,

Kim Rew | Partner | Webber Wentzel
T: +27214317354 | M: +27828137261 | kim.rew@webberwentzel.com | **www.webberwentzel.com**

From: Gregory Armstrong <Greg@KernAttorneys.co.za>
Sent: 17 February 2022 18:33
To: Kim Rew <Kim.Rew@webberwentzel.com>
Cc: Dale Solomons <Dale.Solomons@webberwentzel.com>; Zelmari Kern <Zelmari@KernAttorneys.co.za>; Michelle Toxopeus <michelle@KernAttorneys.co.za>; Tarin Page <tarin@KernAttorneys.co.za>
Subject: RE: URGENT APPLICATION / BDO / YASHODA RAM

Dear Kim,

1. The above matter and the email sent by Mr Aslam Moosajee refer.

2. As you are aware our client was 'suspended' from her duties late yesterday and this has been widely publicised in relevant news reports and on social-media. Our client will deal with her suspension and the publication thereof in the appropriate forum and at the appropriate time.

3. The purpose of this communication is to deal with the email sent by Mr Aslam Moosajee (you were copied into the correspondence).

4. As your client is well aware, our client has no access to her emails, the BDO platform, relevant information and the support team allocated to her (despite your clients undertaking to the contrary) in order to complete the report and in compliance with the court order. I therefore see two options available:

   4.1. Your client must withdraw its suspension of our client and allow our client to perform her duties (we trust that your client will notify the relevant stakeholders and media of same); or

   4.2. Our client will write to the Honourable Court and report that she has been suspended from service and will be unable to comply with the relevant court order. Our client will then furnish the Honourable Court with all the relevant documents too.

G Ml

5. We request that you obtain instructions from your client and revert before 09h00 on 18 February 2022, failing which we will assume that your client refuses to uplift the suspension and we will approach the relevant court, as recorded.

6. Our client reserves her rights in *toto*.

Kind regards,

Gregory Armstrong
LLB (Director)
083 738 0552
greg@kernattorneys.co.za

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Building 7, (TAG House), Albury Office Park, Cnr Jan Smuts & Albury Road, Hyde Park, JHB, 2196

"SA2.1.2"

Vishana Makan

From:	Kim Rew <Kim.Rew@webberwentzel.com>
Sent:	18 February 2022 12:44 PM
To:	Michelle Toxopeus; Gregory Armstrong
Cc:	Dale Solomons; Zelmari Kern; Tarin Page; Aslam Moosajee; Vishana Makan
Subject:	RE: URGENT APPLICATION / BDO / YASHODA RAM

Dear Michelle and Gregory

I refer to your email below. Given the time constraints, I will not address all of the arguments that you raise in relation to your client's suspension. I will do so in due course insofar as may be necessary.

Your client appears to be seeking to create the impression that she is only able to complete her report as curator if our client lifts her suspension. This is not correct because, as is set out below, our client has and continues to tender to facilitate whatever is necessary to enable your client to fulfil her obligations as curator of 3Sixty Life Ltd and to enable her to fulfil her duties to the court. Your client is reminded that her appointment as curator of 3Sixty Life Ltd is in her personal capacity and she is required in terms of the court order to file her interim report regarding the Internal Recapitalisation Plan, by Monday 21 February 2022.

It is not necessary for our client to lift your client's suspension to enable her to fulfil her duties.

We clarify the following for the purposes of your client carrying out her duties as curator of 3Sixty Life Ltd, your client is :

1. entitled to contact any employee of BDO.
2. permitted to enter into the premises of BDO
3. entitled to access to all IT systems

Insofar as your client may have any difficulties in accessing any of the above, or anything else she requires to enable her to complete her report, your client is invited to contact Mark Stewart or Pierre Jacobs directly. The BDO IT department has already attempted to make contact with your client both telephonically and via email, to assist with the activation issues relating to MS Word complained of. Mr Stewart / or Mr Jacobs will facilitate contact with any person or systems she requires access to. Alternatively, Nico Fourie, head of BDO IT, can be contacted on 082 901 2691.

Please advise if your client requires anything further in order to carry out her duties as the curator of 3Sixty Life Ltd.

Regards,

Kim Rew | Partner | Webber Wentzel
T: +27214317354 | **M:** +27828137261 | kim.rew@webberwentzel.com | **www.webberwentzel.com**

From: Michelle Toxopeus <michelle@KernAttorneys.co.za>
Sent: 18 February 2022 11:21
To: Kim Rew <Kim.Rew@webberwentzel.com>; Gregory Armstrong <Greg@KernAttorneys.co.za>
Cc: Dale Solomons <Dale.Solomons@webberwentzel.com>; Zelmari Kern <Zelmari@KernAttorneys.co.za>; Tarin Page <tarin@KernAttorneys.co.za>; zzExt-Aslam Moosaje <amoosajee@ensafrica.com>; Vishana Makan <vmakan@ensafrica.com>
Subject: RE: URGENT APPLICATION / BDO / YASHODA RAM

Dear Kim,

1. We take note of your client's undertaking below, but note with some concern that this has not been the case.

2. In terms of the suspension notice addressed to our client, she was instructed not to contact any other employee or client of the Company, nor was she required to render any services or enter the Company's premises. I have attached the notice for ease of reference and refer you in particular to points 3 and 5 in this regard.

3. In addition, our client attempted to access the Company's systems during the course of the day yesterday but she was unable to access the system, open Outlook on her laptop or open and/or work on a Word document. We have attached screenshots indicating that her access was denied.

4. In addition, our client has had to spend considerable time and costs to defend her good name and reputation in the media and in court arising from the allegations made by the PA and exacerbated by the improper suspension imposed by your client.

5. As you know, the purpose of a suspension is to suspend an employee's access to company systems, employees and clients pending an investigation into claims against such an employee.

6. Should your client wish to support our client in providing the necessary access to the systems, the team and in drafting the report, the underlying purpose of the suspension falls away.

7. As this is the case, our client requests clarity on your correspondence below in the following terms: is your client withdrawing the suspension or simply amending the terms of her suspension despite the fact that the purported and underlying purpose of the suspension has fallen away?

8. In either case, our client demands the following:

   a. That your client issues a media statement indicating that it has withdrawn the suspension, together with a public apology;
   b. That your client issue a written undertaking to our client that they will cover the wasted costs, including all legal and PR-related costs.

9. URGENT: Notwithstanding what is recorded above, your client has to make a decision on the suspension. Our client is either suspended, wherein she cannot complete her duties in terms of the court order, alternatively, the suspension must be lifted so that she can complete her duties. We need this answer in the next 1 (one) hour, as each hour that passes, results in our client being prejudiced in completing the report, and expending time on dealing with questions on her suspension.

10. In this regard, please note that our client is still unable to access Word on her laptop, which she would require to finalise the report.

11. We trust the above is in order and await your reply.

12. Our client's rights remain reserved.

Kind regards,

Michelle Toxopeüs
BA LLB LLM (Environmental Law & Governance)
079 786 4912
michelle@kernattorneys.co.za

From: Kim Rew <Kim.Rew@webberwentzel.com>
Sent: Friday, 18 February 2022 07:35
To: Gregory Armstrong <Greg@KernAttorneys.co.za>
Cc: Dale Solomons <Dale.Solomons@webberwentzel.com>; Zelmari Kern <Zelmari@KernAttorneys.co.za>; Michelle Toxopeus <michelle@KernAttorneys.co.za>; Tarin Page <tarin@KernAttorneys.co.za>; zzExt-Aslam Moosaje <amoosajee@ensafrica.com>; Vishana Makan <vmakan@ensafrica.com>
Subject: RE: URGENT APPLICATION / BDO / YASHODA RAM

Dear Gregory

BDO conforms that it will continue to provide whatever support and resources Yashoda Ram requires to fulfil her mandate as provisional Curator of 3SixtyLife Limited. The letter of suspension specifically states that she will be able to access BDO systems. Should she for whatever reason not be able to access the systems she should let us know immediately.

Ms Ram knows that she has a direct line to Mr Mark Stewart to assist her in any matters related to fulfilling her mandate. BDO is committed to assisting her in delivering her reports within the timeframes stipulated.

Kind regards,

Kim Rew | Partner | Webber Wentzel
T: +27214317354 | **M:** +27828137261 | kim.rew@webberwentzel.com | **www.webberwentzel.com**

From: Gregory Armstrong <Greg@KernAttorneys.co.za>
Sent: 17 February 2022 18:33
To: Kim Rew <Kim.Rew@webberwentzel.com>
Cc: Dale Solomons <Dale.Solomons@webberwentzel.com>; Zelmari Kern <Zelmari@KernAttorneys.co.za>; Michelle Toxopeus <michelle@KernAttorneys.co.za>; Tarin Page <tarin@KernAttorneys.co.za>
Subject: RE: URGENT APPLICATION / BDO / YASHODA RAM

Dear Kim,

1. The above matter and the email sent by Mr Aslam Moosajee refer.

2. As you are aware our client was 'suspended' from her duties late yesterday and this has been widely publicised in relevant news reports and on social-media. Our client will deal with her suspension and the publication thereof in the appropriate forum and at the appropriate time.

3. The purpose of this communication is to deal with the email sent by Mr Aslam Moosajee (you were copied into the correspondence).

4. As your client is well aware, our client has no access to her emails, the BDO platform, relevant information and the support team allocated to her (despite your clients undertaking to the contrary) in order to complete the report and in compliance with the court order. I therefore see two options available:

4.1. Your client must withdraw its suspension of our client and allow our client to perform her duties (we trust that your client will notify the relevant stakeholders and media of same); or

4.2. Our client will write to the Honourable Court and report that she has been suspended from service and will be unable to comply with the relevant court order. Our client will then furnish the Honourable Court with all the relevant documents too.

5. We request that you obtain instructions from your client and revert before 09h00 on 18 February 2022, failing which we will assume that your client refuses to uplift the suspension and we will approach the relevant court, as recorded.

6. Our client reserves her rights in *toto*.

Kind regards,

Gregory Armstrong
LLB (Director)
083 738 0552
greg@kernattorneys.co.za

Office: 010 109 1055 | Fax: 086 613 1709 | Web: www.kernattorneys.co.za

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Building 7, (TAG House), Albury Office Park, Cnr Jan Smuts & Albury Road,
Hyde Park, JHB, 2196

"SA2.1.3"

"C"

Subject: Yashoda Ram Access to BDO systems [WW-WS_JHB.FID2453858]
Date: Sunday, 20 February 2022 at 19:37:52 South Africa Standard Time
From: Kim Rew
To: Gregory Armstrong
CC: Zelmari Kern, Michelle Toxopeus, Tarin Page, Dale Solomons
Attachments: image001.jpg

Dear Gregory

1. We understand that your client has indicated that she has been unable to access her email account from her laptop as she alleges that her laptop has been fully deactivated. This is not correct. The reason she is not receiving her emails on her laptop appears to be due to the fact that her MS Office licence needs to be re-validated. This happens from time to time.

2. Following receipt of the screenshots that you sent on Friday 18 February 2022, Nico Fourie, the BDO IT director, sent an email to your client at 12h08 advising her that Benolo Mgwasheng of the BDO IT support team will contact her to assist her with the MS Office activation notification that she was receiving.

3. Bonolo Ngwasheng contacted your client at around 14h15 of Friday 18 February 2022 and your client advised that she was too busy to deal with this support matter.

4. This afternoon, Nico Fourie was then contacted by you to enquire whether BDO had deactivated her laptop. He advised you that the profile and laptop was still active. He advised you that your client's MS Office needed to be re-activated by clicking the button that says "Activate Office". The fact that your client is still receiving emails on her phone means that her profile is still active on the BDO system.

5. As per our email of 18 February 2022, your client has also been invited to contact either Mr Stewart to facilitate any access she requires. Mr Stewart has confirmed that she has made no contact.

6. We again reiterate that should she require any assistance in accessing her emails, or any other programs on her laptop, she is again invited to contact Mr Fourie who is on standby to assist. His mobile number is 082 901 2691.

Regards,

Kim Rew | Partner | Webber Wentzel
T: +27214317354 | M: +27828137261 | kim.rew@webberwentzel.com | www.webberwentzel.com

"SA2.1.4"

"H"

Subject: RE: Yashoda Ram
Date: Monday, 21 February 2022 at 14:00:59 South Africa Standard Time
From: Nico Fourie
To: Tarin Page, Yashoda Ram
CC: Gregory Armstrong, Michelle Toxopeus, Zelmari Kern, Kim Rew
Attachments: image005.png, image006.png, image007.jpg, image008.png, image009.png, BDO restriction of access.eml

Good Day Tarin and Yashoda,

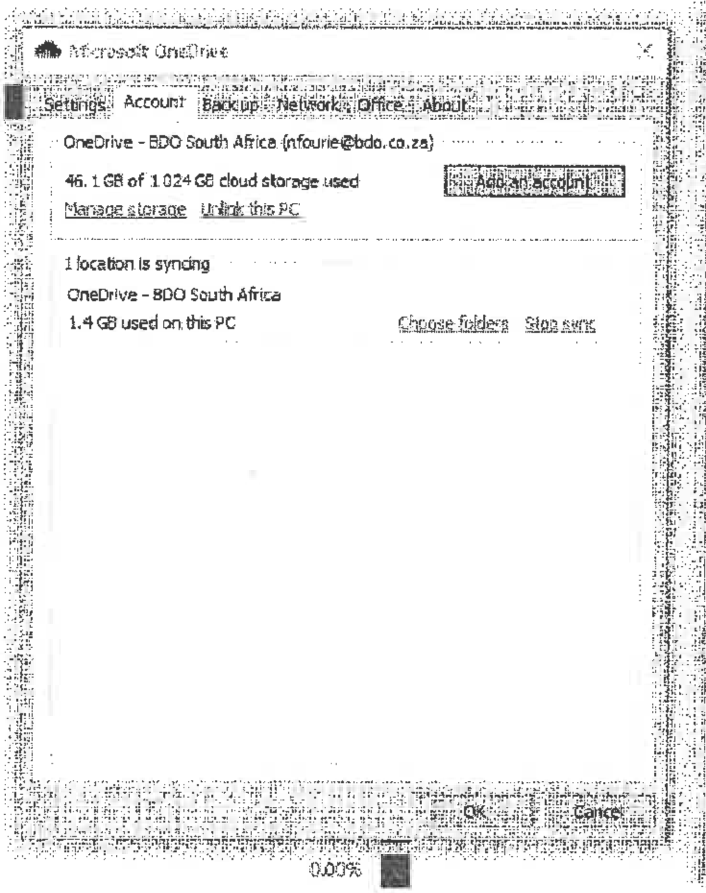
Yasoda Ram is an active BDO employee. I've assigned Bonolo Ngwasheng (+27 81 036 3023) to immediately assist with the IT issues being experienced. I understand they did make verbal contact on Friday 18 February. Bonolo will try and make contact with Ms Ram again. MS Ram is invited to call her anytime. As communicated Ms Ram's BDO profile is active and I've confirmed that no Office 365 licensing changes occurred on her profile. The issues being experienced are IT support matters and not related to any profile restrictions.

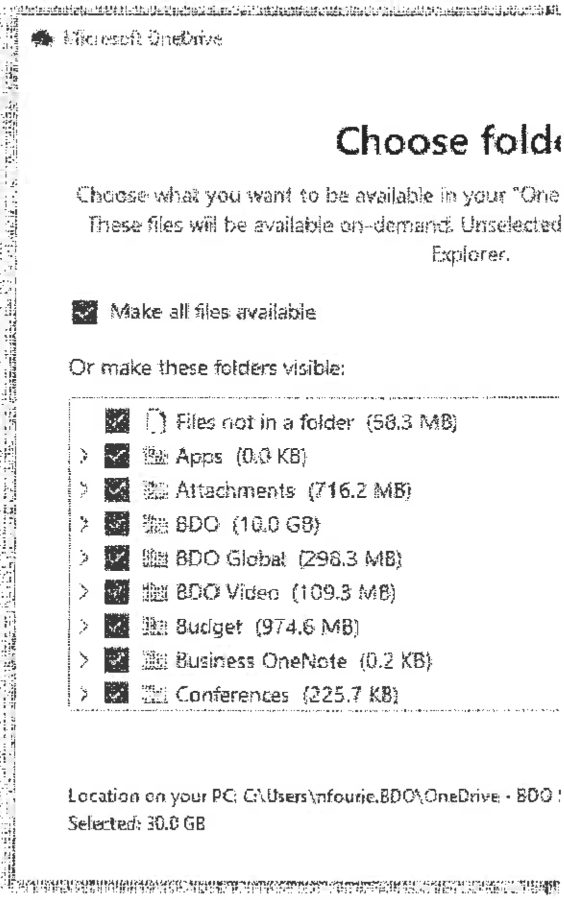
In respect of the Mimecast Large File Send query, the fastest and easiest way for Ms Ram to get the file would be to log onto her Mimecast.com "Access my Email" profile and retrieve the Large File Send file under her active Mimecast personal profile. Should this not work, please let us know.

In respect of the Screenshot Queries; Please find detailed responses below with Bonolo happy to provide IT support.

Screenshot 1 - as at 20 February 2022 my Desktop has been completely deleted
Solution 1: This could be caused by the fact that the Desktop is linked to Ms Ram's OneDrive for Business (OfB). if OneDrive for Business stops syncing due to a file error, it could remove files from the desktop. Making sure that OneDrive for Business syncs correctly needs to be the IT Support investigation.
Solution 2: Accidental deletion of the desktop could've occurred. Check recycle bin and recover deleted Desktop items.
Screenshot 2 - although the "inactive" status I have shared on various other screenshots to date has been removed, it is clear that the last received mail in my inbox is on Thursday
Solution: On the screenshot I can see that Outlook is in an Offline State. Changing the Outlook status to Online/Connected will allow emails to sync to Outlook Desktop.
Workaround: Please note that two workarounds are available:
1) Connect to Office.com to see the Online version of Ms Ram's mailbox
2) Mimecast.com access to view Ms Ram's backup archive mailbox.
Screenshot 3 - in an attempt to attach a file even to gmail from my BDO laptop it is clear I have no access to the C: drive (primary document repository)
Solution: This is linked to the fact that Ms Ram's OneDrive for Business is not syncing. I can't see the OneDrive status icon but clicking on that might indicate the reason why OneDrive is not syncing. Common problems are; 1) Broken files that won't sync 2) OneDrive is signed out and needs to sign in.
Workaround: Log onto Office.com and access OfB online, all Ms Ram's files should be available online.
Screenshot 4 - in an attempt to save a document I am unable to access documents
Solution and Workaround: Same as Screenshot 3
Screenshot 5 - in an attempt to access folders I created before Thursday (in this instance one I created for documents relating to Kern Attorneys) access is denied
Solution and Workaround: Same as Screenshot 3

I suspect that Ms Rams's laptop lost connection to her online Office 365 profile for a period of time (network issues being the most common) which is causing some of the application and desktop anomalies. Also note that some attachment types can be problematic for OneDrive and should be checked regularly via the Onedrive icon in the Windows taskbar. If they are left unattended it could cause file syncing issues. Onedrive should also be singed-in to work and if left unattended for a period of time can cause syncing issues. Onedrive also has an option under Help & Settings that manages folders and back-up: See screenshot below: Bonolo can assist with these options to make sure they work as intended.





Kind regards,

Nico Fourie
National ICT Director
Information Technology
Direct: +27 (11) 488 1999
Mobile: +27 82 901 2691
nfourie@bdo.co.za

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Ms Suzette Vogelsang
Head: Banking, Insurance & FMI Supervision Department
Prudential Authority
370 Helen Joseph Street
Pretoria
0002

The Curator
3Sixty Life Limited
91 Central St
Houghton Estate
Johannesburg
2198
By e-mail

21 February 2022

Dear Suzette and Yashoda

In accordance with Engagement letter - Curatorship Assistance Services for 3Sixty Life Limited signed on or about 19 February 2022, we have analysed the accounting implications of the proposed Disposal Agreement between 3Sixty Life Limited and Doves Group Proprietary Limited in accordance with International Financial Reporting Standards (IFRS) in effect for years ending on 31 December 2021.

Our accounting opinion is issued solely for use by you as the duly appointed curator of 3Sixty Life Limited, unless otherwise agreed to in writing.

The following documents were reviewed:

- Electronic copy of the Disposal Agreement (received on 26 January 2022)
- Valuation report prepared by Spectrum Valuations & Asset Solutions (dated 18 January 2022)
- Group structure as per https://www.doves.co.za/index.as x?Pa eld=10263

1. BACKGROUND

A. OVERVIEW OF THE TRANSACTION

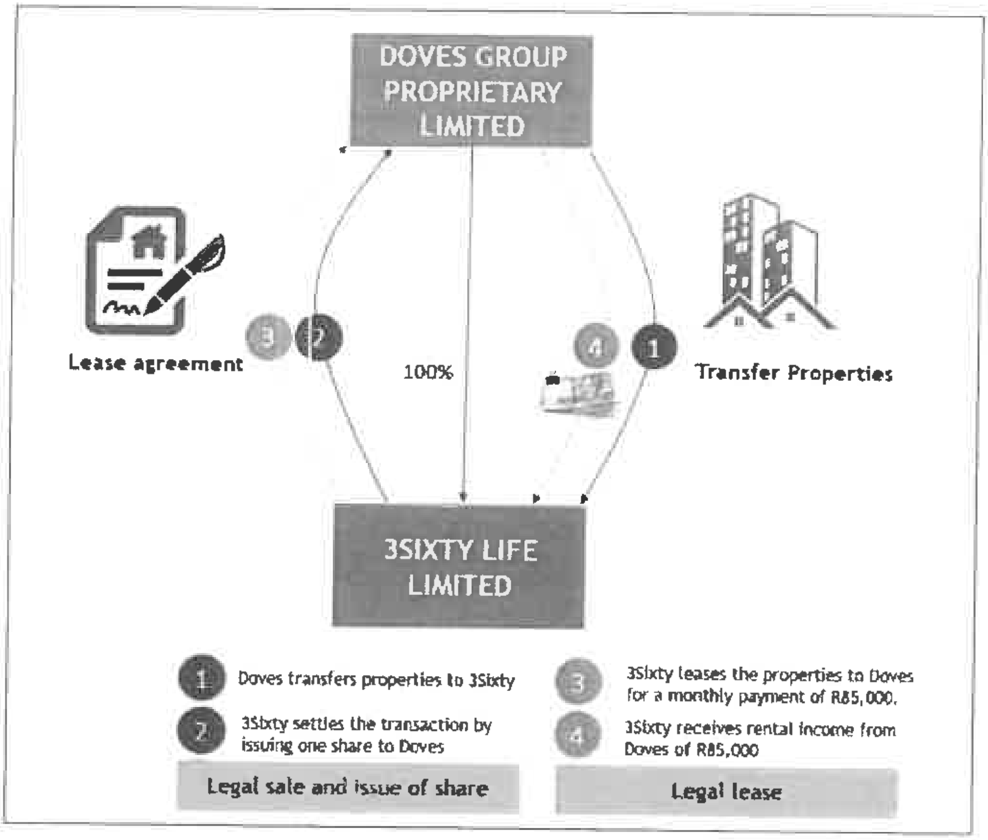
3Sixty Life Limited (herein after referred to as '3Sixty') is a wholly owned subsidiary of Doves Group Proprietary Limited (herein after referred to 'Doves'). 3Sixty and Doves are proposing to enter into a Disposal Agreement wherein Doves disposes of Transfer Properties [1] to 3Sixty, in return for consideration in shares[2]. 3Sixty will thereafter lease the Transfer Properties back to Doves.

Continue to the next page for a diagram of the proposed transaction.

[1] The properties listed in Appendix 1 of the Disposal Agreement - 53 properties for which the total value is listed as ZAR 121 261 654. The nature of these properties are not stated in the agreement. We understand that these properties are either vacant land or general use commercial properties. We understand that none of these properties are specialised in nature. Should our understanding not be supported by facts, our accounting views may change.

[2] One ordinary share in the issued share capital of 3Sixty with a market value (as stated in the agreement) of R11.68.

Diagram summarizing the proposed transaction:



B. KEY CLAUSES NOTED IN THE DISPOSAL AGREEMENT

Description	Reference
Doves to dispose of the Transfer Properties to 3Sixty as part of an 'asset for share **transaction"**.	4.1
The value of the consideration that 3Sixty will give to Doves for the Transfer Properties will be equal to the open market value of the Consideration Share - **the open market value** of the Consideration Share is an amount of **ZAR 11.68**.	5.2.3 5.2.4
3Sixty Life will acquire the Transfer Properties for the **purpose of letting them to Doves.**	5.2.5
The lease shall commence on the effective date and **automatically be renewed** annually until terminated by either Party on the giving of 1 Calendar Month's written notice to the other Party.	9.2.
The profit and loss in and to each **Transfer Property** shall pass to 3Sixty Life with effect from the Effective Date and, from that date, **3Sixty Life shall be entitled to any income** of any nature whatsoever derived from any Transfer Property. ***Observation:*** *We understand this clause to indicate that 3Sixty is entitled to the rental income from these properties to be paid by Doves and not the income Doves generates from these properties when used in its operations.*	6.3.1
3Sixty Life will become liable for all costs of any nature including, without limitation, any **municipal rates, taxes and service charges, repairs and maintenance and insurance, in respect of the Transfer Properties** with effect from the Effective Date. One of the terms of the lease of the Rental Properties by 3Sixty Life to Doves will be that **Doves will pay these costs** with effect from the Effective Date. Doves hereby **indemnifies 3Sixty** Life and holds 3Sixty Life harmless against any claim that may be made against it arising out of any non-payment of any such costs by Doves.	6.3.2
The cost of municipal rates, taxes and service charges, repairs and maintenance, insurance, is factored in arriving at the **monthly rental income of R 85 000**, excluding VAT. ***Observation:*** *Property rates are set and charged by each respective municipality in which the properties are located. Property rates are calculated with reference to the market value of the properties (as established by the municipalities) and quoted as a "rate in the rand". Based on publically available information[3], the rate in the rand for commercial properties can vary between 0.007768 and 0.0305. Using the property values in Appendix 1 to the agreement as a proxy for the municipal valuations, the monthly property taxes can vary between R78 497 and R308 207.[4]*	6.3.2
Doves may sublet the properties with the prior written consent from 3Sixty Life.	9.5
3Sixty Life give no warranties of any nature whatsoever to Doves in relation to any Transfer Property.	9.7
The open market value of the Consideration Share is an amount of **R11.68** (eleven Rand and sixty eight Cents)	5.2.4

[3] https://www.mosselbay.gov.za/storage/documents/documents/2122%20FINAL%20TARIFF%20LIST.pdf; https://resource.capetown.gov.za/documentcentre/Documents/Financial%20documents/Valuations_Property_Rates.pdf; https://www.joburg.org.za/documents_/Documents/TARIFFS/2021-22%20Tariffs/DRAFT%20PROPERTY%20RATES%20POLICY%202021-2022.pdf; https://www.ekurhuleni.gov.za/menu-testyyy/tariffs/2021-22/5138-schedule-1-property-rates-2021-22/file.html; https://www.rustenburg.gov.za/wp-content/uploads/2019/07/Tariff-book.pdf

[4] Approximation calculation is as follows: R121 261 654 x 0.007768 / 12 = R78 497; R121 261 654 x 0.0305 / 12 = R308 207. Please note this is determined as an estimate and not an indication of actual values. https://www.derebus.org.za/calculating-the-levying-of-municipal-property-rates/

2. Accounting Considerations

The proposed Disposal Agreement has been structured as a sale and leaseback agreement from a legal perspective, consequently, we have applied the guidance in IFRS 16 *Leases* to determine the appropriate accounting treatment.

Our understanding is that the Transfer Properties are a combination of general use commercial properties (currently being used by Doves to carry out their business) and vacant land. We understand that these properties are the premises from which Doves have been operating and have been branded accordingly. These premises were therefore integral to the operations of Doves.

IFRS 16 prescribes the accounting treatment for transactions in which an entity (the seller-lessee) transfers an asset to another entity (the buyer-lessor) and leases that asset back from the buyer-lessor. Both the seller-lessee and the buyer-lessor shall account for the transfer contract and the lease in accordance with IFRS 16.99-103. This type of transaction is commonly referred to as a "sale and leaseback" transaction.

In determining the appropriate accounting treatment for the sale and leaseback arrangement, IFRS 16 first requires an assessment of whether the transfer of the asset (i.e. the sale of the Transfer properties from Doves to 3Sixty) is a sale in accordance with International Financial Reporting Standards by determining when a performance obligation is satisfied as specified in IFRS 15 *Revenue from Contracts with Customers*.

A. DETERMINING WHETHER THE TRANSFER IS A SALE (IFRS 15)

"An entity shall recognise revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service (i.e. an asset) to a customer. An asset is transferred when (or as) the customer obtains control of that asset."[5]

An entity shall only recognize revenue when control is obtained - therefore the Disposal Agreement detailing the transfer of the properties from Doves to 3Sixty needs to demonstrate that control (as defined in IFRS) of the properties is being transferred regardless of the transfer of legal ownership.

Control Assessment

"Control of an asset refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset. Control includes the ability to prevent other entities from directing the use of, and obtaining the benefits from, an asset. The benefits of an asset are the potential cash flows (inflows or savings in outflows) that can be obtained directly or indirectly..." [6]

Control consists of two components, namely:

1. The ability to direct the use of the asset, or to prevent others from directing the use of the asset; and
2. Obtaining substantially all of the remaining benefits from the asset, or to prevent others from obtaining benefits from the asset.

In the Disposal Agreement, the Transfer Properties are sold to 3Sixty with the requirement to lease these same properties back to Doves for an indefinite period. Although the agreement does provide for a one month notice period by either party, we do question 3Sixty's practical ability to terminate the lease agreement, given that it is wholly owned by Doves and hence under the control of Doves.

In addition, it is stipulated that Doves is already using these properties in their operations and hence Doves are directing the use of the Transfer Properties on a daily basis. Apart from when Doves wants to sub-let the Transfer Properties, Doves does not require any approval from 3Sixty in how they use the Transfer Properties.

Apart from own use and leasing the property, another possible way in which to direct the use of the Transfer Properties, is the decision on whether or not to sell these properties. The agreement is silent on whether or not 3Sixty will be allowed to dispose of the Transfer Properties acquired. As indicated above, since 3Sixty is wholly owned by Doves and under its control, Doves can prevent such a disposal to an independent third party by virtue of their 100% ownership of 3Sixty. Given that these properties are already an integral part of the operations of Doves, it is highly unlikely that Doves will consent to 3Sixty disposing of these properties to another third party.

[5] IFRS 15.31
[6] IFRS 15.33

The following are possible ways in which benefits can be obtained from a property:

- Own use in operations to generate income or reduce costs;
- Earning rental income through leasing it;
- Disposing of the property in exchange for cash, another asset or a reduction in a liability.

As indicated above, the Disposal Agreement is compelling 3Sixty to lease the Transfer Properties back to Doves and hence it is not possible for 3Sixty to use the Transfer Properties in its own operations. Further, it is unlikely that 3Sixty will be allowed to sell the Transfer Properties, as noted above.

3Sixty is therefore only left with obtaining benefits from the property through earning rental income. The monthly combined rental for all of the 53 properties listed in Appendix 1 to the agreement is stated as a total of R85 000, excluding VAT. In addition, the Disposal Agreement states that 3Sixty is liable for the costs associated with owning the properties from the effective date. However, it also states that Doves will pay these costs as part of the monthly rental payment. It is specifically stated that these costs have been factored in, in arriving at the monthly rental of R85 000. The monthly rental is therefore inclusive of the (partial / full) reimbursement for the cost incurred. Based on the going property rates (refer Observation in Section 1 B above) and the other property related costs listed, it is unlikely that 3Sixty will be left with a net income from the leasing.

Based on the above analysis, it is our view that 3Sixty does not have the ability to direct the use of the asset, or to prevent others from directing the use of the asset; nor is it obtaining substantially all of the remaining benefits from the asset, or to prevent others from obtaining benefits from the asset. Consequently we are of the view that **control** of the Transfer Properties, as defined by IFRS, **has not been passed from Doves to 3Sixty** in the Disposal Agreement. Consequently the criteria for a sale, as defined in IFRS 15 (and referenced in IFRS 16) have not been met.

B. TRANSFER OF THE ASSET IS NOT A SALE

Since it is our view that the transfer of the properties from Doves to 3Sixty does not meet the requirements of a sale, the following requirements of IFRS 16 have to be considered:

IFRS 16.103 states:

"If the transfer of an asset by the seller-lessee does not satisfy the requirements of IFRS 15 to be accounted for as a sale of the asset:

a) The seller-lessee shall continue to recognise the transferred asset and shall recognise a financial liability equal to the transfer proceeds. It shall account for the financial liability applying IFRS 9.

b) The buyer-lessor shall not recognise the transferred asset and shall recognise a financial asset equal to the transfer proceeds. It shall account for the financial asset applying IFRS 9."

It is important to note that the above references to "financial liability" and "financial asset" are included in the context that sale and leaseback transactions normally include the flow of cash. In the instance of the Disposal Agreement, no cash was exchanged, but rather an additional share in 3Sixty was issued to Doves. The additional share in 3Sixty does not change Doves shareholding in 3Sixty, since it already owns 100% of 3Sixty.

Since the transfer of the properties to 3Sixty is not a sale - Doves shall continue to recognise the Transfer Properties in their financial statements and 3Sixty will not recognise the properties, despite legal ownership having passed to 3Sixty. Doves will not recognise anything for the additional share received in 3Sixty, since they already own 100%, and no proceeds are received in cash. 3Sixty will not recognise a financial asset as they are paying for the legal transfer by issuing another one of their own shares. In the latter instance, it should be considered whether this transaction is then within the scope of IFRS 2 *Share-based Payment*.

Share-based payment

A share-based payment transaction is defined as *"a transaction in which the entity*

(a) receives goods or services from the supplier of those goods or services (including an employee) in a share-based payment arrangement, or

(b) incurs an obligation to settle the transaction with the supplier in a share-based payment arrangement when another group entity receives those goods or services".[7]

It can be argued that the only good that 3Sixty is receiving in exchange for the share issued, is the legal ownership of the Transfer Properties, but not the usufruct.

For an equity-settled share-based payment transaction (i.e. the transaction is settled through the issue of shares in the entity), the goods received and the corresponding increase in equity are measured with reference to the fair value of the good received. In this instance the legal title to the Transfer Properties, excluding usufruct, would constitute the good. Should it not be possible to determine the fair value of just the legal title reliably, then the fair value is determined indirectly with reference to the fair value of the share issued, which is stated as R11.68 in the Disposal Agreement. [8]

3. CONCLUSION

It is our view that 3Sixty does not have the ability to direct the use of the asset, or to prevent others from directing the use of the asset; nor is it obtaining substantially all of the remaining benefits from the asset, or to prevent others from obtaining benefits from the asset. Consequently we are of the view that control of the Transfer Properties, as defined by IFRS, has not been passed from Doves to 3Sixty in the Disposal Agreement.

Since the transfer of the properties to 3Sixty is not a sale - Doves shall continue to recognise the Transfer Properties in their financial statements and 3Sixty will not recognise the properties, despite legal ownership having passed to 3Sixty. Doves will not recognise anything for the additional share received in 3Sixty, since they already own 100%, and no proceeds are received in cash. 3Sixty will not recognise a financial asset as they are paying for the legal transfer by issuing another one of their own shares. Consequently consideration is then given to whether this transaction is within the scope of IFRS 2 *Share-based Payment*.

In our view this transaction is within the scope of IFRS 2 *Share-based Payment* and constitutes an equity-settled share-based payment transaction (i.e. the transaction is settled through the issue of shares in the entity). Therefore the goods received and the corresponding increase in equity are measured with reference to the fair value of the good received. In this instance the legal title to the Transfer Properties, excluding usufruct, would constitute the good. Should it not be possible to determine the fair value of just the legal title reliably, then the fair value is determined indirectly with reference to the fair value of the share issued, which is stated as R11.68 in the Disposal Agreement.

Disclosure and taxation

The disclosures as required by the appropriate IFRS have not been considered as part of this technical accounting opinion. The accounting treatment outlined above does not negate the requirement for full disclosure under the relevant IFRS. In addition, the normal taxation implications (and any deferred taxation consequences) have not been considered.

[7] IFRS 2, Appendix A
[8] IFRS 2.10

6 [illegible]

Concluding comments

The ultimate responsibility for the decision on the appropriate application of IFRS for the finalised transaction rests with you as the preparers of the financial statements. Our judgement on the appropriate application of IFRS for the described specific transactions is based solely on the facts, circumstances, and assumptions provided to us as described herein and on the IFRS that is currently applicable.

Should the facts, circumstances, or assumptions differ from those described, or should the applicable IFRS change, our conclusions might change.

Should you have any queries please do not hesitate to contact us.

Yours sincerely,

BDO Advisory Services (Pty) Ltd

Shehnaaz Suleman

Per Shehnaaz Suleman

Director

Head of BDO Technical Accounting Group, Financial Services

"SA3"

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Dear Sir/Madam

THE PRUDENTIAL AUTHORITY // 3SIXTY LIFE LIMITED & THE NATIONAL UNION OF METAL WORKERS OF SOUTH AFRICA

INTRODUCTION

1. This opinion deals with the issues arising from the pending urgent *ex parte* application that was brought by The Prudential Authority **("the PA")** on the 21st of December 2021 against 3Sixty Life Limited **("3Sixty")**.

2. An Interim Curatorship Order was granted with immediate effect pending the return date of 12th April 2022. 3Sixty filed its Answering Affidavit on the 21st of January 2022, and in compliance with the Interim Order. Certain allegations were made in this Answering Affidavit most of them directed specifically at

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the Curator and the PA. On the same day, the National Union of Metal Workers of South Africa **("NUMSA")** and anticipating a return date on the 1st of February 2022, filed a Notice in terms of rule 6(8) seeking to be joined in the proceedings, and further sought that the rule *nisi* be discharged with the order placing 3Sixty under provisional curatorship being set aside.

3. On the 1st of December 2022 the Court granted an order requesting the Curator to file a Recapitalization Plan by Monday 21 February 2022.

4. It is in light of this order that BDO Advisory, who are the support Team to the Curator, have sought an opinion on the following:

   4.1 The Disposal Agreement; and

   4.2 The proposed submission to the PA on the proposed Recapitalization Plan of 3Sixty.

5. Our advice is set out below.

THE DISPOSAL AGREEMENT

6. We have been provided with a copy of the Disposal Agreement between Doves Group Property Limited **("Doves")** and 3Sixty. In addition to this Disposal Agreement, we have also been provided with various reports and in particular, the property valuation reports from Quadrant and Spectrum, an

accounting report from BDO, together with an actuarial opinion also from BDO. We have also been requested to consider these reports and provide our views.

7. 3Sixty is a wholly owned subsidiary of Doves which has agreed to dispose of certain properties to 3Sixty in return for the issue of shareholding in 3Sixty. The transaction is permissible in terms of section 42 of the Income Tax Act of 1962 **("the ITA")** and in terms of which a group of companies seeks to restructure or move assets to different companies or reporting lines within the group. Upon transfer of the properties, Doves shall rent from 3Sixty these properties.

8. It is important to note that the nature of this transaction is not unique and as stated above is permissible in terms of the ITA. However, various concerns have been raised by a number of experts and which issues may affect the transaction. Of these experts, we have been provided with the Accounting, Tax and Actuarial Reports prepared by BDO, property valuation reports from Quadrant Properties (Pty) Limited **("Quadrant")** and Spectrum Valuations & Asset Solutions (dated 18 January 2022) **("Spectrum").**

9. It is on the basis of the findings in these reports that a legal opinion has been sought. This opinion shall be limited to providing a legal view on questions raised in these reports with regards the Disposal Agreement and the Recapitalization Plan with a particular focus on the financial soundness of the proposed transaction.

FINANCIAL SOUNDNESS

10. One of the questions raised by the experts is whether or not the transaction shall be capable of resolving the problems that has brought 3Sixty under curatorship or provide the necessary financial soundness as envisaged by the Insurance Act 18 of 2017 **("the Insurance Act")**?

11. The question has been raised with particular reference to a number of clauses within the Disposal Agreement which appear to be onerous or creating a burden to the financial soundness of 3Sixty, Doves and/or the group. These included but not limited to clause 5 and 6 which is particularly at the heart of this transaction. While it has been accepted that this transaction is ordinarily permissible in law, and requires that Doves transfer properties to 3Sixty, the question is whether this transfer as contemplated in this clause 6 is fair, for value and capable of turning around the financial position of 3Sixty and or maintain the necessary financial soundness as contemplated in the Insurance Act? This is additionally considered light of Curator's existing duties in law and Court Order and need to protect the interest of policyholders.

    11.1 Firstly, the Disposal Agreement is premised on the assumption that for the purposes of the ITA, the market value of the properties exceeds the base cost. Accepting that the value of the properties is key to this transaction, it would be important that such value is appropriately confirmed in order for the transaction to satisfy the requirements of financial soundness.

11.1.1 We have noted in this regard that the two valuation reports provided to us, provide different values of the properties, and in some instances, very significant differences. In some instances, either of the reports provides a significantly higher or lower value than the other. This brings to question the true value of the property and questions whether there should not be a need for the Curator to sanction his/her own valuation report.

11.1.2 We have not been able to establish whether any of these reports was independently sanctioned by the Curator and specifically for the purpose of this transaction, and in order to give reliance to one or the other. Our view would therefore absent an independent valuation report with the specific view to ascertain the true and correct value of these properties, for the purposes of this urgent court proceedings, the lower of the two values could be relied upon in order to minimize risk and possibly arrive at a fair value.

11.1.3 Our overall view remains that proper due diligence should be conducted on the value of these properties given the importance of such value to the transaction.

11.2 Secondly, we have noted that the Quadrant Report provides more details with regards for example, the projected revenue and expenses of each property. It appears from this report that the projected income of these properties is significantly higher than the proposed R85,000 rental amount offered by Doves in respect of the Disposal Agreement as rental.

11.2.1 Our concern is obviously that the lease arrangement results in 3Sixty being unable to realize any meaningful value from these properties. We are concerned that the Disposal Agreement may in as far as it places an obligation on 3Sixty to only lease these properties back to Doves that would result in a significant loss of income had these been leased to third parties.

11.2.2 Our view is if these properties were to be leased on the open market, it would appear from the Quadrant Report that at the very least 3Sixty would stand to benefit and possibly remedy its insolvency woes. As the transaction stands, the amount of R85,000 appears to be way below the market value that could be offered bringing into question whether this transaction is for value or not.

11.2.3 With such an arrangement, it would also appear that 3Sixy shall not utilize such an amount (R85,000) to remedy its solvency crisis, but on the contrary, rather result in the further depletion of its value. The Quadrant Report suggest that the value of maintaining these properties to be way over the proposed R85,000. Our view is that it seems highly irregular that such an amount could defray operational cost.

11.2.4 Additionally, the proposed amount does not take into account the cost of management of the properties by 3Sixty. We recommend that a management fee be factored into this cost.

11.3 Thirdly, we have noted that the lease arrangement would be subject to a month's termination notice, a possibility that 3Sixty could terminate the lease agreement and replace Doves with a third party who may be letting the property for value.

11.4 It would however again appear to us that given the relationship between 3Sixty and Doves, and also the fact that these properties are already being used by Doves, it would be very unlikely that 3Sixty would lease them for value to any third party for various reasons:

11.4.1 Doves is already a 100% shareholder of 3Sixty. The shareholding gives Doves control over 3Sixty;

11.4.2 Because of this transaction, Doves has seemingly increased its influence on 3Sixty and could in our view, rather remain on these properties for as long as possible. There is clearly no incentive for Doves to be rather incurring high expenses while there is a cheaper option. It would also appear to us that upon review of the lease agreements and in particular rentals increase, an auditor should rather be appointed to assist with ascertaining market related amounts.

11.5 Fourthly, it is assumed further that as a consequence of this transfer, Doves would hold a value of over 10% equity of shares "qualifying interest" in 3Sixty. While the Disposal Agreement makes provisions for the tax roll-over relief in respect of asset-for-share transactions as defined section 42, we are however uncertain whether the assets are indeed held by Doves as capital assets to comply with section 42. Our concern is obviously that asset-for-share transactions can create an opportunity for a person holding assets as trading stock, to dispose of such assets to a company by way of an asset-for-share transaction, and subsequently sell the shares as capital assets.

11.5.1 Our view is that the proposed transaction must be investigated by relevant experts in this regard.

11.5.2 We have seen conditions provided in section 5(4) of the

Insurance Act which could potentially raise problems with the PA. Accordingly, an insurer may not, without the approval of the PA, conduct any business other than insurance business in the Republic, including any insurance business performed on behalf of another person. It appears to us that by its nature, this transaction entails that 3Sixty shall be involved in another business (property management) in order to meet the solvency requirement's. Such would in our view require approval by the PA.

11.6 Fifthly, we also take the view that the period within which the properties must be transferred by Doves to 3Sixty should be ascertained.

11.6.1 There is a risk that the wording of clause 6 of the Disposal Agreement could be subject to abuse once the transaction has been approved in principle. While we accept the difficulty for setting a date upon which transfer would be effected, our view is however that there should be at least ascertainable periods attached to this condition.

11.6.2 Should the time period not be specified, we find the clauses relating to the rental of the properties to be problematic as far as calculation of the rental is concerned. Currently, the rental appears to be fixed at R85,000. There seem not to be any provision for review of this amount in line with market treads.

11.6.3 Our view is that the problem could be resolved by appointing an auditor regularly review the lease agreement.

11.7 Lastly, we have noted the concerns raised in the Tax Opinion with regards the value of shares offered by Doves to 3Sixty. We support the view that the transfer of the 53 properties would need to be done in exchange for the issue of at least 53 equity shares by 3Sixty (as opposed to only 1 equity share) for section 42 relief to apply.

11.7.1 We accept the interpretation of section 42 as provided to mean that disposal of "an" asset in exchange for the issue of "an" equity share.

11.7.2 Additionally, we are in agreement with the concern that should only 1 equity share be issued, it is uncertain on which date Doves will be deemed to have acquired such share (given that such date will be determined by the date on which Doves originally acquired the properties, which were likely acquired on different dates).

12. According to section 36.6 of the Insurance Act, the PA may prescribe requirements in respect of transactions that may increase the insurer's financial soundness. Our views above, conclude that the property transfer therefore requires the approval of the PA given the nature of the transaction and amount of control Doves seemingly maintains on the properties. While various acts provide a different definition of "encumber" the Insurance Act defines "encumber" as any **pledge, restriction or limitation** (including any contractual obligation that must be fulfilled before a contractual right may be exercised) that limits access to, or the use or disposal of, an asset.

12.1 It appears to us from the above that the lease arrangement in its current form amounts to a pledge by Doves to only pay R85,000 in rental regardless of the market value;

12.2 Similarly, clause 6.3.2 seem to restrict 3Sixty from seeking alternative tenants who could lease the property for value; and

12.3 Additionally, this clause 6 in its current form imposes a contractual obligation on 3Sixty to accept the amounts and conditions as set.

13. We have taken the view that such definition fits with provisions of clause 6 as set out above. While Doves financial position is particularly not under investigation for the purpose of the transaction, the proposed transaction

may result in reduced financial strength of Doves or the group due to removal of the property asset from its balance sheet. We have already noted with concern the amount of influence Doves could have on 3Sixty. Such influence may add to the increase in group risk as evidenced by the reliance of the group on 3Sixty in the financing of its activities.

14. Our view is therefor that the proposal in its current form has serious concerns which if not remedied immediately, could result in 3Sixty plunging into insolvency again in the short term. We are not certain if the above concerns as raised herein could be cured before the return date in order for the Curator to accept the proposal and recommend to the Court on the viability of the transaction. Our view is obviously that the Court shall provide guidance how to proceed in light of these recommendations. We also take the view that the PA could also approve the transaction conditionally or subject to certain conditions being met within specified periods.

15. It may however be expected that the PA would ordinarily have a different position based on the information at their disposal and from previous dealings with 3Sixty. We have noted some communication between the PA and 3Sixty in this regard which seem to suggest that 3Sixty has continually failed to remedy its insolvency crisis.

16. While the Curator is ordinarily required to liaise with the PA and the Financial Sector Conduct Authority **("the FSCA")** in carrying out his/her ordinary duties, it appears to us that the Curator's mandate does not stretch beyond that. The

Curators' independence and partiality is key especially in as far as his/her reporting to Court is concerned.

17. Our view with regards this specific transaction is that the Curator ought to make an independent assessment of this transaction and issue his/her independent views. Obviously, section 51(1) of the Insurance Act, and section 10 of the Prudential Standard GOI 7 requires the Curator to obtain the approval of the PA prior to making a material acquisition or disposal of an asset. It again appears to us that this transaction is one such that the approval is required. Again it appears from the trail of communication and other supporting documents that have been provided to us that, regardless of the Curator's own recommendation in his/her report, the PA may have to object to consent on the basis of other outstanding issues affecting the solvency of 3Sixty and the approval sought in line with section 51(1) has not been granted.

18. The next question we assume would be at what stage shall the Curator have to seek the approval from the PA? Our view is that at any point the Curator can share his/her report with the PA to seek the approval. There seem to be also an obligation to provide fortnightly reports to the PA at which point the PA may take the opportunity to set out its position.

19. Should the approval not be granted, upon submission of the report to Court, the PA shall take an opportunity to deal with it or at least indicate their position in response to the court process. We would assume that upon reading this report, the PA shall formally communicate their position to Court and afford

the Court an opportunity to make a decision, for example, should they not be in agreement with the Curator or grant permission.

RECOMMENDATIONS AND CONCLUSION

20. We have taken the view that the Disposal Agreement in its current form is not capable of resolving the problems that has brought 3Sixty under curatorship or provide the necessary financial soundness as envisaged by the Insurance Act. There seem to be, in our view, a need for the Curator to obtain additional information on key aspects of the transaction, and in particular, in respect of clauses 5 and 6 of the Disposal Agreement. These would be amongst others:

20.1 the need to ascertain the true value of the properties by way of an independent valuation;

20.2 the need to apply a marked related lease arrangement which benefits 3Sixty;

20.3 the question whether the amount of R85,000 as consideration for rental could reasonably defray municipal rates, taxes and service charges as contemplated in clause 6.3.2;

20.4 the question whether the transaction has not created an opportunity for Doves holding the assets as trading stock, to dispose of such assets to 3Sixty by way of an asset-for-share transaction, and subsequently sell the shares as capital assets;

20.5 that the Disposal Agreement be amended to reflect the issuing of 53 ordinary shares by 3Sixty, rather than the issuing of just 1 ordinary share; and

20.6 that the transaction lacks specific time frames regulating, for example, the transfer of the property from Doves to 3Sixty.

21. Currently, the transaction on the face of it appears problematic given, amongst other issues, the amount of control that Doves continues to have with regards the use and consideration payable to 3Sixty. We are not certain the transaction as it stands would enhance the solvency position of 3Sixty and whether the PA shall grant consent on some of the issues highlighted herein. The conditions set out in the Disposal Agreement appears onerous to 3Sixty and not promoting the rights and interests of policyholders. There is therefore a real possibility of clause 6 being interpreted or amounting to being a pledge or encumbrance resulting in amongst other concerns, the reduction of assets of 3Sixty as contemplated in section 36 of the Insurance Act.

22. We recommend that changes be made to the Disposal Agreement in this regard in order to resolve the issues raised above.

Yours faithfully

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21 February 2022

THE CURATOR OF 3SIXTY LIFE LIMITED
BDO Advisory Services (Pty) Ltd

Dear Curator

TAX ADVICE IN RELATION TO THE ACQUISITION OF PROPERTIES BY 3SXITY LIFE

Thank you for your request for tax advice. The purpose of this document is to set out the South African tax consequences for 3Sixty Life of the anticipated acquisition of properties by 3Sixty Life Limited from Doves Group (Pty) Ltd.

Our instruction and the advice below is provided in terms of the BDO Advisory Services (Pty) Ltd engagement letter for curatorship assistance services issued to the Prudential Authority dated 19 February 2022.

Unless otherwise stated, references below are to the Income Tax Act 58 of 1962 ('the Act') and the Value-Added Tax Act 89 of 1991 ('the VAT Act').

Our advice is based on our understanding of the facts as set out below. Please contact us if our understanding is incorrect in any respect as this may materially affect the advice. Our advice is also based on relevant law and practice, and our interpretation thereof, which are likely to change over time. Such changes may affect our analysis and opinions. We, therefore, recommend that you keep abreast of developments and consult us again if necessary.

FACTS AND ASSUMPTIONS

We set out below our understanding of the relevant facts and assumptions made for the tax opinion:

1. 3Sixty Life Limited ('3Sixty') is a company incorporated and tax resident in South Africa.
2. 3Sixty conducts business as a registered life insurance company and is accredited to underwrite life and assistance policies for groups and individuals.

3. 3Sixty is a wholly-owned subsidiary of Doves Group Proprietary Limited ('Doves').
4. Doves is a company incorporated and tax resident in South Africa and is registered as a vendor in terms of the VAT Act.
5. 3Sixty was placed under provisional curatorship by the High Court in terms of a decree nisi issued on 21 December 2021 on the grounds, *inter alia*, that it failed to maintain its "minimum capital requirement" and its "solvency capital requirement" as envisaged in section 6 of the Insurance Act, 2017 ('the Insurance Act').
6. In order to assist 3Sixty to restore its capital, Doves has offered, subject to certain suspensive conditions, to dispose of 53 properties valued at R121,261,654 ('the properties') to 3Sixty in terms of an "asset-for-share" transaction as envisaged in section 42 of the Act.
7. Doves currently conducts business as, *inter alia*, a funeral provider from the properties and will, once the properties have been transferred, lease the properties from 3Sixty for the purposes of conducting business from the properties as before.
8. We have been provided with a Disposal Agreement (or rather, an offer) between Doves and 3Sixty which was signed on behalf of Doves on 15 January 2022 but not on behalf of 3Sixty ('the offer'). Our advice proceeds on the terms included in this offer - please contact us again if subsequent versions are negotiated on terms that differ materially from the 15 January 2022 version.
9. The offer states that the properties will be disposed of in return for the issue of one ordinary share by 3Sixty Life as an "asset for share transaction" as envisaged in section 42 of the Act.
10. The offer includes express confirmation by the parties that, for purposes of section 42 of the Act:
    a. *the market value of the Transfer Properties exceeds the base cost of those properties in the hands of Doves;*
    b. *as envisaged in paragraph 13 of the Eighth Schedule to the [Act], the disposal of the Transfer Properties by Doves to 3Sixty Life will take place on the Effective Date;*
    c. *at close on the Effective Date, Doves will hold a "qualifying interest", as defined in section 42(1) of the [Act] in 3Sixty Life (in other words an interest of more than 10% (ten percent) of the equity shares and the voting rights in 3Sixty Life);*
    d. *3Sixty Life is a resident as envisaged in the [Act];*
    e. *Doves holds the Transfer Properties as capital assets and 3Sixty Life will acquire the Transfer Properties as capital assets; and*
    f. *Doves and 3Sixty Life have not elected (and will not elect) that section 42 will not apply to the disposal of the Transfer Properties by Doves to 3Sxity Life (so that the provisions of section 42(8A)(a) of the [Act] will not become relevant),*

    with the result that the tax consequences of the disposal of the Transfer Properties by Doves to 3Sxity Life will be governed by sections 42(2), 42(3) and 42(3A) of the [Act].

11. We assume that the ordinary share capital of 3Sixty consists of 'equity share[s]' as defined in section 1 of the Act in that those shares do not carry a limited right to participate beyond a specified amount in a distribution of dividends or returns of capital.
12. In relation to VAT, the offer states that:
    a. *the disposal of the Transfer Properties by Doves to 3Sixty Life does not amount to the supply of an enterprise or part of an enterprise as a going concern so that neither the provisions of section 8(25) nor the provisions of section 11(1)(e) of the VAT Act will apply to that disposal;*
    b. *in the circumstances the disposal of the Transfer Properties by Doves to 3Sxity Life will be subject to VAT at the standard rate;*
    c. *as envisaged in section 10(3) of the VAT Act, the value of the consideration that 3Sixty Life will give to Doves for the Transfer Properties will be equal to the open market value of the Consideration Share;*
    d. *the open market value of the Consideration Share is an amount of R11.68 (eleven Rand and sixty-eight Cents);*
    e. *3Sixty Life will acquire the Transfer Properties for the purpose of letting them to Doves and, in the circumstances (i) 3Sixty Life will register as a VAT vendor and will be entitled to deduct any VAT that it pays to Doves in respect of the supply of the Transfer Property to it, as an "input tax" under section 16(3) of the VAT Act, and (ii) accordingly the provisions of section 10(4) of the VAT Act do not apply; and*
    f. *the amount of the Disposal VAT will accordingly be calculated on the open market value of the Consideration Share.*
13. The offer states further that:
    a. *If for any reason, the Disposal VAT exceeds VAT calculated on the standard rate on the open market value of the Consideration Share, 3Sixty Life will pay that VAT to Doves within 60 (sixty) days of receipt of a written demand for such payment (and 3Sxity Life will then be entitled to claim the VAT paid by it to Doves as an "input tax" under section 16(3) of the VAT Act).*
14. The offer also incorporates a lease agreement in terms of which Doves will lease all the properties from 3Sixty for a total consideration of R85 000 excluding VAT per month for the first year, which amount will be renegotiated each following year.
15. We assume that 3Sixty will use the properties solely to make taxable supplies by supplying commercial accommodation to Doves under the lease agreement.
16. We understand that 3Sixty has an assessed loss for income tax purposes.
17. We further assume that 3Sixty has and will continue to earn income from its trade carried on as a life insurance company during all tax years. It should however be confirmed whether the Prudential Authority suspended 3Sixty's license to operate as a life insurance company before

appointing a provisional curator. If so, it should further be investigated whether this prevented 3Sixty from conducting a trade during all relevant tax years.

Please contact us if our understanding of the facts is incorrect in any respect as this may materially affect the advice.

SCOPE OF THE WORK

Our scope of work is for a tax opinion addressing the South African tax implications from 3Sixty's perspective of the contemplated acquisition of the properties, specifically:

1. Confirmation as to whether section 42 of the Act will apply to the disposal, as well as high-level consequences of section 42;
2. The VAT consequences of the disposal, specifically whether the VAT consequences will be as seemingly intended in the offer; and
3. Whether 3Sixty's assessed loss will be "tainted" in terms of section 103(2) of the Act.

EXECUTIVE SUMMARY

The executive summary below should be read in conjunction with the rest of this document.

Income tax consequences

- On the face of the wording included in the offer (which we have not verified for accuracy), the disposal of the properties seems to comply with most of the requirements of section 42 of the Act. However, in our view, the transfer of the 53 properties would need to be done in exchange for the issue of at least 53 equity shares by 3Sixty (as opposed to only 1 equity share) for section 42 relief to apply.
- From 3Sixty's perspective, the company should refrain from disposing of the properties within 18 months of the asset-for-share transaction to avoid potential adverse tax consequences.
- Provided 3Sixty has and will continue to earn income from its trade carried on as a life insurance company during all tax years, it should satisfy the requirements of section 20. Given the appointment of a provisional curator which may or may not have resulted in the suspension of 3Sixty's license, further investigation is needed to conclude on this issue. If 3Sixty failed to carry on a trade during any year of assessment, it will forfeit the right to carry forward its balance of assessed loss under section 20 of the Act.
- Provided 3Sixty is able to discharge the burden of proof resting on it, its assessed loss should not be "tainted" in terms of section 103(2) of the Act. While we cannot presuppose what decision SARS or a court will reach regarding the objective purpose of the offer/agreement, it is submitted that on a balance of probabilities it can be proven that the objective, main purpose of the

agreement is not to utilise the balance of assessed loss but rather to restore 3Sixty's minimum capital and solvency capital requirements as required by the Insurance Act, so as to enable the company to continue trading as a life insurance company.

VAT consequences

- 3Sixty will be obliged to register as a VAT vendor from the beginning of the month in which it signs the offer, being the month in which the total value of taxable supplies is to be made in terms of a contractual obligation in writing in the next succeeding 12-month period will exceed R1 million (however slightly). This would be a compulsory VAT registration, as opposed to a voluntary registration.
- As a registered vendor which predominantly supplies exempt 'financial services', 3Sixty will need to properly apportion any input VAT claims that it seeks to make. Please contact us again if you require assistance in this regard.
- In terms of a recent amendment to section 8(25) of the VAT Act, provided 3Sixty registers as a vendor, Doves and 3Sixty will for purposes of the supply of the properties, be deemed to be one and the same person. Therefore no VAT needs to be accounted for by Doves on the supply, provided 3Sixty registers as a VAT vendor (which 3Sixty will be obliged to do on signing the offer).

DETAILED ADVICE

We set out below our detailed advice in support of the conclusions reached in the executive summary above.

1. Section 42 "asset-for-share transaction"

1.1 Requirements of section 42

Section 42 of the Act contains a corporate rollover rule which, in certain circumstances, provides for the tax neutral transfer of assets where the acquiring party is a company that issues one or more equity shares in exchange for the asset transferred. Where the requirements of section 42 are met, the provisions of the section apply automatically to the transaction unless the parties agree to opt out of section 42 in writing.

On the face of the wording included in the offer (which we have not verified for accuracy), the disposal of the properties seems to comply with most of the requirements of section 42 of the Act, since:

- 3Sixty, a resident company, will acquire the properties from Doves in exchange for the issue of an equity share to Doves (see note below);

- The market value of the properties on the effective date of the transaction will exceed the base costs of those properties in Doves' hands;
- Doves will hold a qualifying interest (at least 10% of the equity shares and voting rights) in 3Sixty at the close of the day on which the properties are disposed of;
- The properties are held as capital assets by Doves and will be acquired as capital assets by 3Sixty; and
- The parties have expressly agreed that they will not opt out of the application of section 42.

In our view the transfer of the 53 properties would need to be done in exchange for the issue of at least 53 equity shares by 3Sixty (as opposed to only 1 equity share) for section 42 relief to apply. This is based on a strict reading of the words of section 42 which mention the disposal of "an" asset in exchange for the issue of "an" equity share. Further from a practical point of view, if only 1 equity share is issued, it is uncertain on which date Doves will be deemed to have acquired such share (given that such date will be determined by the date on which Doves originally acquired the properties, which were likely acquired on different dates).

1.2 High-level consequences of section 42

Below is a summary of the more important tax consequences of a section 42 "asset-for-share" transaction.

Doves will not realise a capital gain on the disposal of the properties to 3Sixty because section 42 deems Doves to have disposed of the properties at their respective base costs.

The equity shares acquired by Doves in terms of this transaction will be deemed to have been acquired by Doves on the same date and for the same base cost at which Doves originally acquired the properties (other than for purposes of section 9C of the Act).

3Sixty will be deemed to have acquired the properties on the same date and for the same base costs at which the properties were originally acquired by Doves. Any capital gains tax valuations of the properties carried out by Doves are deemed to have been carried out by 3Sixty. In effect 3Sixty "steps into the shoes" of Doves in respect of the income tax history of the properties.

For purposes of the definition of "contributed tax capital" in section 1 of the Act, 3Sixty will be deemed to have received or accrued Doves' base cost in the properties as consideration for the equity shares issued to Doves in terms of this transaction.

Section 24BA should not apply to attract adverse tax consequences in the present scenario as Doves will hold all the shares in 3Sixty immediately after the transaction.

No securities transfer tax ('STT') will be payable on the issue of the ordinary shares by 3Sixty to Doves as the issue of a security does not represent a 'transfer' as contemplated in section 1 of the Securities Transfer Tax Act 25 of 2007.

No donations tax will apply to the disposal of the properties because section 56(1)(r) of the Act provides an exemption from donations tax for donations occurring between companies in the same group of companies as defined in section 1 of the Act.

As a transaction subject to VAT, the transfer of the properties should not give rise to Transfer Duty in terms of the Transfer Duty Act 40 of 1949. A detailed discussion of the VAT consequences is included below.

1.3 Post-rollover restrictions

There are various post roll-over restrictions that apply to transactions entered into in terms of section 42 of the Act which may result in negative tax consequences for the parties.

3Sixty should refrain from disposing of the properties within 18 months of the asset-for-share transaction in order to avoid potential adverse tax consequences. Any capital gain or loss on the disposal of the properties, up to an amount not exceeding the capital gain that would have been derived on the disposal at market value at the beginning of the 18-month period, will be ring-fenced. Consequently, any other capital gains, capital losses or assessed losses of 3Sixty will not be available for set-off against the capital gain or loss realised on the disposal of the properties.

If Doves ceases to hold a qualifying interest in 3Sixty within 18 months of the transaction, the shares in 3Sixty acquired by Doves, if still on hand, after Doves ceases to hold the qualifying interest, will be deemed to have been disposed of at the market value thereof at the beginning of the 18-month period and immediately re-acquired at that same market value. This will crystallise the full gain that was rolled over and which arose on implementation of the transaction in Doves' hands.

2. Assessed loss considerations

We understand that 3Sixty has an assessed loss for income tax purposes. This necessitates a consideration of sections 20 and 103(2) of the Act.

2.1 Section 20

The term "assessed loss" is defined in section 20(2), and refers to the tax loss that arises in the current year of assessment after deducting the admissible deductions in section 11 from the income against which they are admissible.

A "balance of assessed loss" refers to the assessed loss that is brought forward from the preceding year of assessment.

Before a company can carry forward its assessed loss from the immediately preceding year of assessment (the "balance of assessed loss"), it must have carried on a trade during the current year of assessment. If it fails to do so, it will forfeit the right to carry forward its balance of assessed loss under section 20(1)(a).

It needs to be confirmed whether the Prudential Authority suspended 3Sixty's license to operate as a life insurance company before appointing a provisional curator. If so, it should further be investigated whether this prevented 3Sixty from conducting a trade during all relevant tax years.

The relevant portions of section 20(1)(a) read as follows:

> "**20. Set-off of assessed losses.**—(1) For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person—
>
> > (a) any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment:"

SARS's Interpretation Note 33[1] summarises the statutory principles of section 20, South African case law and SARS's views and practices on the interpretation of this section. The basic rule in terms of section 20(1)(a), in SARS's view, is that a company that fails to earn income from a trade during the whole of a tax year forfeits the right to bring forward, into that year of assessment, the balance of an assessed loss from the immediately preceding tax year. In such circumstances, the ability of the company to carry forward an assessed loss is permanently forfeited.

As stated in the Interpretation Note, SARS is of the view that section 20 contains a 'trade' requirement and an 'income from trade' requirement, both of which must be satisfied before an assessed loss may be carried forward.

[1] Issue 5 dated 5 May 2017.

Provided 3Sixty has and will continue to earn income from its trade carried on as a life insurance company during all tax years, it should satisfy the requirements of section 20. As noted above, given the appointment of a provisional curator which may or may not have resulted in the suspension of 3Sixty's license, further investigation is needed to conclude on this issue. If 3Sixty failed to carry on a trade during any year of assessment, it will forfeit the right to carry forward its balance of assessed loss under section 20 of the Act.

2.2 Section 103(2)

The relevant portions of section 103(2) read as follows (underlining added for emphasis):

> "(2) Whenever the Commissioner is satisfied that—
>
> (a) any agreement affecting any company or trust; or
>
> (b) any change in—
>
> (i) the shareholding in any company; ...
>
> as a direct or indirect result of which—
>
> (A) income has been received by or has accrued to that company or trust during any year of assessment; or
>
> (B) any proceeds received by or accrued to or deemed to have been received by or to have accrued to that company or trust in consequence of the disposal of any asset, as contemplated in the Eighth Schedule, result in a capital gain during any year of assessment,
>
> has at any time been entered into or effected by any person solely or mainly for the purpose of utilising any assessed loss, any balance of assessed loss, any capital loss or any assessed capital loss, as the case may be, incurred by the company or trust, in order to avoid liability on the part of that company or trust or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof—
>
> (aa) the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed;
>
> (bb) the set-off of any such assessed loss or balance of assessed loss against any taxable capital gain, to the extent that such taxable capital gain takes into account such capital gain, shall be disallowed; or
>
> (cc) the set-off of such capital loss or assessed capital loss against such capital gain shall be disallowed."

This provision is aimed at defeating anti-avoidance schemes or arrangements that seek to traffic in assessed tax losses. In interpreting this provision, South African courts have adopted interpretations that achieve a remedy that suppresses this mischief.[2]

In terms of section 103(2), where any agreement affecting a company (or change in the shareholding of a company) directly or indirectly results in income being received by that company and the sole or main purpose of the agreement (or change in shareholding) is to utilise the assessed tax loss of that company, then the set-off of the resulting income against the assessed loss of the company is prohibited.

In its opening words, section 103(2) states "[w]henever the Commissioner is satisfied that...". These words have the effect that SARS must be satisfied that the change in shareholding or an agreement affecting a company resulted in income that had the effect of a company deferring or avoiding a tax liability through the utilisation of its assessed loss.

This section targets income derived by a company as a direct or indirect result of an agreement affecting a company or the change in shareholding. As noted in ITC 1123, whether the potentially tainted income arises as a direct or indirect result of a change in shareholding is a question of fact.[3] It is submitted that whether tainted income is received directly or indirectly as a result of an agreement, is similarly a question of fact. In ITC 1888 the Tax Court followed an approach set out in the following excerpt to identify whether tainted income existed to which the section could apply: [4]

> "[71] Section 103(2), however, limits SARS's power to disallow such assessed loss to such income. It is therefore important to identify:
> 71.1 The unbroken chain (unbroken causation); and
> 71.2 The tainted income (such income)."

Furthermore, from the following excerpt from the judgement in ITC 1123, section 103(2) may apply to income diverted to a company and also to income produced by the company's own activities (underlining added for emphasis):

> "That the section was intended to apply where income was diverted from another person to a company in order to avoid liability for tax on the part of that person is clear from its very language. But its wording is wide and there is no warrant for limiting its application to such cases. It refers in the first place to 'income ... received by or ... accrued to that company

[2] *Glen Anil Development Corp Ltd v SIR* 37 SATC 319.
[3] 31 SATC 48 at 52.
[4] 79 SATC 23 at 35.

during any year of assessment ...'. That is wide enough to include income produced by its own activities in contradistinction to income diverted to it. Secondly, the section speaks of avoiding liability for tax 'on the part of that company' in addition to and in contradistinction to avoiding liability for tax 'on the part of ... any other person'; that shows that not only diverted income but income produced by the company's own activities can fall within the ambit of the section if its other requirements are fulfilled."[5]

The provision, therefore, has a broad ambit in relation to the source of the potentially tainted income.

While the range of income that could fall within the application of section 103(2) is wide, in order for the section to apply in the case of an agreement, the sole or main purpose of entering into that agreement must be to utilise the assessed loss of the company in order to reduce the company's income tax liability. Therefore, where it is shown that the main or sole purpose of the agreement is a purpose other than utilising the assessed loss, then the section will not apply. However, once it is shown that an agreement results in the avoidance or postponement of a tax liability on the part of a company, then it is presumed that the sole or main purpose of the agreement was the utilisation of the assessed loss until proven otherwise.[6] Therefore, where SARS is satisfied that income arising from an agreement has the effect of reducing a tax liability of the company through the utilisation of tax losses, then the taxpayer bears the burden of proving that the sole or main purpose of the agreement is not to utilise the assessed loss. Any submission made by a taxpayer regarding the sole or main purpose for an agreement will be tested against the background facts and circumstances. Where good commercial reasons for the agreement (other than utilisation of the assessed loss) are proven which outweigh the use of the assessed loss, a taxpayer should be successful in meeting this burden and overcoming the application of section 103(2).[7]

As a direct result of 3Sixty entering into the agreement (on acceptance of the offer), income will be received by or accrue to 3Sixty - in the form of rental income and future proceeds on the disposal of the properties. Any rental income and capital gains arising from a potential future disposal of the properties could therefore be subject to the application of section 103(2) of the Act.

In order to protect against the application of section 103(2), it is necessary for the taxpayer to show sufficient facts to support a contention that the sole or main purpose behind the agreement is a purpose other than utilising 3Sixty's assessed loss.

[5] 31 SATC 48 at 52.
[6] Section 103(4) of the Act.
[7] Refer to ITC 983 25 SATC 55, ITC 989 25 SATC 122, ITC 1347 44 SATC 33 and ITC 1888 79 SATC 23.

It is submitted that the following facts and circumstances, if proved to the satisfaction of a court, provide substantial support for the contention that the sole or main purpose for the agreement (pursuant to the offer) is not the utilisation of 3Sixty's tax loss:

- 3Sixty was placed under provisional curatorship on the grounds, *inter alia*, that it failed to maintain its "minimum capital requirement" and its "solvency capital requirement" as envisaged in section 6 of the Insurance Act.
- There is presumably a reputational risk to Doves, should its wholly-owned subsidiary not meet the minimum capital and solvency capital requirements of the Insurance Act.
- Given the above, the sole or main purpose of the offer seems to be to assist 3Sixty to restore its capital as required under the Insurance Act, so as to enable 3Sixty to continue trading as a life insurance company (which is currently in danger).
- The initial monthly rental of R85 000 excl VAT per month seems like a modest sum given the number and market value of the properties - thus it hardly seems that the monthly rental received by or accrued to 3Sixty is aimed at diverting funds to 3Sixty.

A factor that may count against 3Sixty's case is that the earning of rental income on leasing fixed properties will be a new stream of income resulting from embarking on a different trade in addition to the life insurance trade which it has carried on to date.

In our opinion, despite the earning of a new stream of income, the above facts and circumstances support a contention that the sole or main purpose of the agreement (pursuant to the offer) is to assist 3Sixty to restore its capital as required by the Insurance Act, not to utilise the company's assessed losses for the purpose of reducing the company's tax liability. Were it not for the provisional curatorship, the parties would presumably never have contemplated the transfer of the properties to 3Sixty.

While we cannot presuppose what decision SARS or a court will reach regarding the objective purpose of the offer / agreement, it is submitted that on a balance of probabilities it can be proven that the objective, main purpose of the agreement is not to utilise the balance of assessed loss but rather to restore 3Sixty's minimum capital and solvency capital requirements as required by the Insurance Act, so as to enable the company to continue trading as a life insurance company.

3. VAT consequences of the disposal

As a registered VAT vendor, Doves will be required to levy VAT at the standard rate on any taxable supply of goods or services in the course or furtherance of its enterprise. The taxable supply of goods by a vendor includes the supply of its enterprise or a part thereof. The disposal of the properties will therefore constitute a taxable supply of goods by Doves in the furtherance of its enterprise, which would ordinarily trigger output VAT at the standard rate of 15%.

VAT is levied on the value of the supply, which in terms of section 10(3) of the VAT Act is generally:

- to the extent that the consideration is a consideration in money, the amount of the money; and
- to the extent that the consideration is not a consideration in money, the open market value of that consideration.

The open market value of the ordinary shares which Doves will receive as consideration for the properties, according to the offer, is said to be R11.68 per share (which we have not verified for accuracy).

Section 10(4) of the VAT Act however applies to determine the value of certain supplies between 'connected persons'. The provision states that where:

(a) a supply is made by a person for no consideration or for a consideration in money which is less than the open market value of the supply or the consideration cannot be determined at the time of supply;
(b) the supplier and recipient are connected persons in relation to each other; and
(c) if a consideration for the supply equal to the open market value of the supply had been paid by the recipient, he would not have been entitled under section 16(3) to make a deduction of the full amount of tax in respect of that supply,

the consideration in money for the supply is deemed to be the open market value of the supply.

Doves will be disposing of the properties for a consideration expressed as an amount of R11.68 in money to a connected person, which is far less than the value of the supply (namely the properties). However, provided 3Sixty registers as a VAT vendor and further on the understanding that 3Sixty will apply the properties wholly for the purposes of making taxable supplies, section 10(4) of the VAT Act should not apply.

3.1 Registration as a VAT vendor

Under the compulsory VAT registration criteria, a person that carries on an enterprise in South Africa (or partly in South Africa) is obliged to register as a VAT vendor at the end of a month if the total value of taxable supplies for the preceding 12-month period has exceeded R1 million or from the commencement of a month if the total value of taxable supplies to be made in terms of a contractual obligation in writing in the next succeeding 12-month period will exceed R1 million.

A person may also voluntarily register as a VAT vendor if, *inter alia*, that person:

- Carries on an enterprise and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R50 000; or
- Intends to carry on any enterprise from a specified date, where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or part of the enterprise which will be supplied has exceeded R50 000 in the preceding period of 12 months.

It is understood that 3Sixty is currently not able to register as a VAT vendor as its supplies are limited to 'financial services' as envisaged in section 2 of the VAT Act, which includes, *inter alia*:

> "the provision, or transfer of ownership, of a life insurance policy, the provision or transfer of ownership of reinsurance in respect of any such policy: Provided that such an activity shall not be deemed to be a financial service to the extent that it includes the management of a superannuation scheme".

The supply of 'financial services' is an exempt supply in terms of section 12 of the VAT and as such do not constitute taxable supplies for VAT purposes.

In terms of the offer which incorporates the lease agreement, 3Sixty would be under a contractual obligation in writing to lease the properties to Doves for a consideration of R85 000 per month, i.e. R1 020 000 per year.

The supply of the properties by 3Sixty under the lease agreement to Doves, not being the provision of residential accommodation by way of a letting and hiring of a 'dwelling', will not be an exempt supply for VAT purposes. Therefore 3Sixty Life will in future be making taxable supplies of leasing commercial properties in addition to its existing exempt supplies of 'financial services'.

3Sixty will be obliged to register as a VAT vendor from the beginning of the month in which it signs the offer, being the month in which the total value of taxable supplies is to be made in terms of a contractual obligation in writing in the next succeeding 12-month period will exceed R1 million (however slightly). This would be a compulsory VAT registration, as opposed to a voluntary registration.

As a registered vendor which predominantly supplies exempt 'financial services', 3Sixty will need to properly apportion any input VAT claims that it seeks to make. Please contact us again if you require assistance in this regard.

3.2 Going concern / section 8(25)

Section 11(1)(e) of the VAT Act provides for the supply of an enterprise or part thereof, which is capable of separate operation, to a registered vendor, to be subject to VAT at the zero-rate, subject to certain requirements. However, since the properties, in this case, are not currently being rented in terms of any rental agreement, the disposal of the properties would not represent the transfer of an income-earning activity. SARS will therefore not regard the transfer of the properties as the transfer of a going concern and zero-rating in terms of section 11(1)(e) will not apply.

On the other hand, the requirements of section 8(25) of the VAT Act are not as strict. This provision has the effect that for purposes of certain supplies between vendors under the corporate rollover rules, the supplier and recipient are deemed to be one and the same person. In that case, no VAT needs to be accounted for. Since the provisions of section 42 of the Act will be complied with and provided 3Sixty registers as a vendor, Doves and 3Sixty will for purposes of the supply of the properties, be deemed to be one and the same person. This is in part due to a recent amendment to section 8(25) which now provides that the provisions of section 8(25) will also apply to corporate reorganisation transactions effected under section 42 or section 45 of the Act if the supply is of fixed property and the supplier and recipient have agreed in writing that immediately after the supply, the supplier will lease the fixed property from the recipient.

Therefore, pursuant to section 8(25), no VAT needs to be accounted for by Doves on the supply, provided 3Sixty registers as a VAT vendor (which 3Sixty will be obliged to do on signing the offer).

CONCLUSION

For a summary of the views expressed in this document, the executive summary is provided at the beginning of the advice section of this document for your ease of reference.

Please note that our advice is subject to the caveats and limitations as set out in **Annexure A** to this document. In addition, our advice is subject to the following qualifications:

1. Tax law is complex, mostly untested and often without precedent. So, although the views we express in this opinion are our firm and considered views, we cannot guarantee that a court or regulator will share the views in all respects.
2. We have no duty to update this opinion.

We trust that our advice will prove helpful to you. Please contact us if any matters require further clarification.

Yours sincerely
BDO Tax Services (Pty) Ltd

Marcus Botha

Marcus Botha	**Esther van Schalkwyk**
Tax Director	**Senior Tax Manager**

Annexure A - Caveats and limitations

The analysis, comments, views and opinions in this document are based on:

- The above facts and background information and our interpretation thereof. If such interpretation is incorrect or incomplete, please let us know as this may affect our analyses and opinions.
- Our knowledge and interpretation of the relevant law and practice, which are likely to change over time. Such changes may affect the analysis and opinions.

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Ms Yashoda Ram
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Dear Ms Ram

PROVISIONAL CURATORSHIP OF THE BUSINESS OF 3SIXTY LIFE LIMITED (3SIXTY LIFE) - R70 MILLION DOWNDRAWN: CONTRAVENTION OF RULE 1.4.(C), 1.4(E), 1.4(F) & RULE 17.8.8 OF THE POLICYHOLDER PROTECTION RULES (PPRS) TO THE LONG-TERM INSURANCE ACT 52 OF 1998

1. The introductory meeting held on 21 January 2021 following your appointment as curator, refers.

2. The Financial Sector Conduct Authority (Authority) would like to convey its appreciation for the constructive manner in which the aforementioned meeting was conducted. As undertaken during the meeting, the Authority hereby shares its market conduct concerns relating to downdrawn of approximately R70 million by 3Sixty Life from funds reserved for the With-Profit policyholders (R70 million drawdown) and all the documents relating to this matter.

3. On 16 April 2021, the Prudential Authority (PA) shared a report from the external auditors of 3Sixty Life, i.e. SNG Grant Thornton dated 6 April 2021(**Annexure A**). The PA brought this matter to the attention of the Authority for further investigation. Please see email attached dated 16 April 2021. As to the report by SNG Grant Thornton, your attention is invited to the following statement as contained on page 02(last paragraph of the report): *"...The WP policyholders are*

potentially prejudiced as the drawdown was utilized for purposes other than policyholders for whom those funds were earmarked. This together with the current financial position of the insurer makes it unlikely that the WP policyholders will be put back in the position that they would have been in, before the drawdown (of R70m), and is potentially prejudicial to the WP policyholders...".

4. The Authority wrote to 3Sixty Life on 28 April 2021 to obtain a better understand of the reasons for the drawdown and the type of policies affected by the drawdown, with the view to establish whether there were breaches of regulatory provisions (**Annexure B**).

5. On 27 May 2021, 3Sixty Life responded to the Authority's letter of 28 April 2021 (**Annexure C**).

6. Having considered the report by SNG Grant Thornton and 3Sixty Life's response, the Authority identified the following applicable provisions:

   Rule 1.4.(c) states that:

   "...1.4 An insurer must have appropriate policies and procedures in place to achieve the fair treatment of policyholders. The fair treatment of policyholders encompasses achieving at least the following outcomes:(c) policyholders are given clear information and are kept appropriately informed before, during and after the time of entering into a policy;

   Rule 1.4(e) and (f) of the PPRs states that:

   "...1.4 An insurer must have appropriate policies and procedures in place to achieve the fair treatment of policyholders. The fair treatment of policyholders encompasses achieving at least the following outcomes:
   (e) policyholders are provided with products that perform as insurers or their representatives have led them to expect, and the associated service is both of an acceptable standard and what they have been led to expect;
   (f) policyholders do not face unreasonable post-sale barriers to change or replace a policy, submit a claim or make a complaint..."

   Rule 17.8.8 of the PPRs states that:

   ..." When an insurer makes a final payment or offer of settlement to a claimant, the insurer must explain to the claimant what the payment or settlement is for and the basis used for the payment or settlement...".

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7. On 18 November 2021, the Authority conducted sampling and noted that claim payments were made to the sampled policyholders. However, when we tested whether the insurer provided the policyholders with necessary disclosures as required by the rule 1.4(c) of the PPRs, the insurer confirmed that it did not give policyholders an indication, in advance, of the payout that they could expect to receive (**Annexure D**). In the view of the Authority, the insurer contravened PPR 1.4(c) as the policyholders were not provided with this vital information, before, during and after taking out the policy.

8. The Authority further tested compliance with rules 1.4 (e) and (f) to assess whether the policyholders were updated regarding the payout they could expect to receive and to confirm whether the policyholders were provided with settlement letters explaining how the profit was calculated. The insurer responded to the Authority's queries and stated that *"...Policyholders were not updated regarding the payout that they could expect to receive. However, we have rectified this error, going forward we will update policyholders regarding the payout on the anniversary or settlement of their policies and no settlement letters were sent to the policyholders. Going forward, we will provide policyholders with such settlement letters..."* (**Annexure D**). In the view of the Authority, the insurer also breached PPR 17.8.8 as it did not provide policyholders with settlement letters as required in the rule . See attached response.

9. During the Authority's engagements with the insurer, it indicated that if solvency issues arise again, in future, it would consider a further drawdown. In this regard, attention is invited to an extract from the insurers letter dated 27 May 2021: "...*The insurer does not guarantee that similar drawdowns will not be made in future due to the unpredictable nature of the Covid-19 pandemic...*". This conduct is of concern as the Authority is not satisfied that policyholders are provided with products that perform as insurers or their representatives have led them to expect, as required in terms of Rule 1.4(e). Similarly, the Authority is not satisfied that the claims payments made to date were accurate and aligned to the promises made to the affected policyholders.

10. The Authority has finalised its investigation into the R70 million drawdown. Based on its findings (discussed above), and under normal circumstances, the Authority would consider taking regulatory action against 3Sixty Life and commence due process proceedings as a result.

11. However, in light of the current status of the 3Sixty Life, the Authority deems it appropriate to engage with yourself regarding its findings in respect of the R70 million drawdown having been given the mandate to take control of, manage and investigate 3Sixty's business, with the aim to set into motion remedial steps (by agreement) which will give consideration and effect to the best interests of affected policyholders. The remedial steps are discussed next.

12. Your office is requested to provide a detailed action plan with milestones and timelines detailing how the concerns identified as a result of the R70 million drawdown will be mitigated. In this regard, the Authority holds the view that the following should be considered (and inform) the action plan:

    12.1. Whether all claims amounts paid to date were accurate and correct and where instances of non-compliance were identified, steps how those matters will be remediated;

    12.2. Whether the funds in respect of future claims were correctly projected and properly ring-fenced and governance processes adequately mitigate the risk of the future claims from the policyholders not being adequately disclosed, fully paid and timeously honoured;

    12.3. Any other material measures that you deem necessary to mitigate the risks highlighted in this communication.

13. In addition to the action plan mentioned in the previous paragraph, it would be greatly appreciated if your Office can provide the Authority with the following information:

    13.1. Sample copies of the updated disclosure letters to the policyholders at the various stages of the policy life cycles;

    13.2. Confirmation that the remediation measures have been embedded into the insurer's claims processes (for example, updated claims manual / process).

14. May we invite your response to the matters raised herein at your earliest convenience.

Yours faithfully,

____

MAKGOMPI RAPHASHA
DEPARTMENTAL HEAD
INSURERS AND RETIREMENT FUND BENEFIT ADMINISTRATORS SUPERVISION
FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY