

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

Case No:

In the *ex parte* application of:

THE PRUDENTIAL AUTHORITY

Applicant

In re:

3SIXTY LIFE LIMITED

FOUNDING 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 am authorised to bring this application on its behalf, as appears from the delegation of authority issued in terms of section 48(2)(a) of the Financial Sector Regulation Act 9 of 2017 (**FSR Act**) by the Chief Executive Officer of the Authority and Deputy Governor of the South African Reserve Bank (**Reserve Bank**), Mr Kuben Naidoo (**Mr Naidoo**). A copy of the delegation is attached hereto marked "**FA1**".
3. I have, on the Authority's behalf, through my role and official capacity, been personally and actively involved in the interactions with, and decisions pertaining to, 3Sixty Life Limited (**3Sixty**) as set out in this affidavit. I also have access to the official information and documentation that form part of the records of the Authority.



4. 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. Where I rely on information provided to me by named individuals in the office of the Authority, their confirmatory affidavits will accompany this application. Where I make legal submissions, I do so on the advice of the Authority's legal advisors.

OVERVIEW OF THIS APPLICATION

5. 3Sixty is a licensed life insurance company specialising in life and funeral products for groups and individuals. As such, it insures its policyholders, and any beneficiaries who may benefit under such policy, ("policyholders") against the risk of loss (including loss of life), and is obliged to pay them out in the event of such loss.
6. It is essential – both to policyholders and the public at large – that insurers are kept in a sound financial position such that they are able to meet the obligations under their policies as and when they fall due. To that end, the Insurance Act, 18 of 2017 (**Insurance Act**) imposes certain minimum capital and solvency requirements (and other requirements) on insurers. The Authority is charged with the oversight over such institutions under the Insurance Act and the FSR Act. I deal with the relevant provisions below.
7. The Authority has been in ongoing engagements with 3Sixty in the hope that 3Sixty could restore its financial position and bring itself into compliance with the regulatory regime. However:
- 7.1. 3Sixty has produced monthly management accounts since December 2020 reflecting a precarious and at times an insolvent position. The Authority also questions the accuracy of these accounts.



- 7.2. Despite being afforded until 31 May 2021 – and beyond – to restore itself to financial soundness, 3Sixty has, even to date, failed to comply with the minimum capital and solvency capital requirements prescribed in section 36 of the Insurance Act. Its most recent management account (which was submitted to the Authority, for the month ending 31 October 2021 (attached as “FA2.1”), reflects a minimum capital requirement (**MCR**) of minus (-)1.70 and a solvency capital requirement (**SCR**) of minus (-) 0.66 measured against 3Sixty’s eligible own funds, as defined in section 1 of the Insurance Act. The management accounts submitted to the Authority by 3Sixty for months ending December 2020 to September 2021 are also attached as annexures “FA2.2” to “FA2.2.11”.
- 7.3. Section 36 of the Insurance Act prescribes that insurers must hold eligible own funds that are at least equal to the MCR or SCR, whichever is the greater. In other words, each of them should be at least 1.
- 7.4. Although 3Sixty have proposed numerous plans to the Authority to secure a capital injection into its business, none of them have come to fruition, and 3Sixty has not rectified its financially unsound position. 3Sixty has so far been unable to re-capitalise its business – and its current financial state makes it increasingly difficult to do so.
- 7.5. The Authority is also concerned about complaints received from policyholders where 3Sixty have refused to pay out claims. Further details will be provided regarding these complaints later in the affidavit.
8. The Authority no longer has faith that 3Sixty’s management can remedy its financial position without external assistance. It therefore applies to have 3Sixty placed under curatorship in terms of section 54(1)(a) of the Insurance Act read with section 5 of the

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Financial Institutions (Protection of Funds) Act, 2001 (**Financial Institutions Act**). The Authority proposes that Ms Yashoda Ram of BDO South Africa (Pty) Ltd (**BDO**) be appointed as curator.

9. Because the Authority has brought the application on an ex parte basis, its notice of motion provides for curatorship to be granted and undertaken on a provisional basis, and a rule nisi to be issued inviting 3Sixty (and other interested parties) to show cause why the provisional curatorship should not be confirmed.
10. The reason this application is requested to be heard *in camera* or in chambers and to keep the court file away from public consumption is to avoid the risk of 3Sixty taking steps to misappropriate funds, or otherwise act improperly or unlawfully upon gaining knowledge that a curator is on her way. There may be records and other critical information also destroyed in order for the curator not to have sight of these. This is therefore one of those rare occurrences where the practice of an open court be departed from on the basis that 3Sixty should only gain knowledge of the appointment of a curator once one has been appointed (even on a provisional basis). If it is done in this manner, 3Sixty would have less of an opportunity to execute the feared aforementioned conduct. However, the Authority ultimately remains in the hands of the above Honourable Court, to deal with the matter in a manner that it deems appropriate to safeguard against this apprehension, in accordance with its inherent jurisdiction.

THE PARTIES

The applicant

11. The applicant is the **PRUDENTIAL AUTHORITY**, a statutory juristic person established and operating within the administration of the South African Reserve Bank (**Reserve Bank**) in terms of section 32 of the FSR Act. The applicant has its principal place of

business at 370 Helen Joseph Street, Pretoria. For reference and throughout the remainder of this affidavit I refer to the applicant interchangeably as the applicant or the "Authority".

12. The Reserve Bank is an independent institution established in terms of section 22 of the Constitution. It is responsible for enhancing financial stability through, among others, managing systemic risk. If an adverse systemic event has occurred or is imminent, the Reserve Bank is responsible for restoring or maintaining financial stability.
13. The Authority's objects and functions include:
 - 13.1. promoting and enhancing the safety and soundness of financial institutions that provide financial products and security services;
 - 13.2. promoting and enhancing the safety and soundness of market infrastructures;
 - 13.3. regulating and supervising financial institutions that provide financial products or securities services;
 - 13.4. protecting financial customers against the risk that financial institutions may fail to meet their obligations; and
 - 13.5. assisting in maintaining financial stability.
14. In relation to insurers, in particular, the Authority must:
 - 14.1. implement a regulatory framework that gives effect to the provisions of the Insurance Act, including supervising and enforcing compliance with its terms; and
 - 14.2. take such steps as it considers necessary to protect policyholders in their dealings with insurers.

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Standing

15. The Authority brings this application in its own interest, as the regulator of financial institutions (including insurers). It also brings it in the interests of 3Sixty's policyholders, and in the public interest. It is manifestly in the public interest that the Authority takes steps to safeguard the financial position and business of an insurer where its financial health and continued viability is not being properly managed and secured.
16. The remedy of curatorship is an effective regulatory tool to protect the interests of investors, depositors and/or policyholders, as the case may be, in circumstances where such parties could not do so effectively acting on their own. It provides a mechanism through which the business of an insurer is afforded an opportunity to get its affairs in order, and thus avoid potential liquidation.
17. The Authority is expressly empowered by section 54 of the Insurance Act to bring applications to court to place an insurer under curatorship.
18. Although not necessary for these proceedings, I note that the Financial Sector Conduct Authority (**FSCA**) supports and concurs in this application. The request from the Deputy Governor and Chief Executive Officer of the Authority, Mr Kuben Naidoo to the FSCA requesting it to confirm its support or otherwise for the proposed regulatory action against 3Sixty, together with the FSCA's letter of support is attached as "**FA3.1**" and "**FA3.2**" respectively. The Authority will cause a copy of the rule nisi to be served on the FSCA, if it is granted.

The target of the application

19. The target of the curatorship application is 3Sixty, a licensed insurer licensed as such in terms of the Insurance Act. It is a limited liability public company incorporated in terms

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of the laws of the Republic of South Africa with registration number 1935/007508/06, with its registered address and principal place of business, situated within the jurisdiction of the above Honourable Court at 91 Central Street, Houghton, Johannesburg. 3Sixty is a wholly owned subsidiary of Doves Group (Pty) Ltd (**Doves**), which is in turn a wholly owned subsidiary of 3Sixty Global Solutions Group (Pty) Ltd (**3Sixty Group**).

20. A copy of the license certificate granted to 3Sixty by the Authority to conduct the business of a licensed life insurance company in terms of the Insurance Act is attached as **'FA4'**
21. 3Sixty focuses on life and funeral products for groups and individuals. It mainly provides insurance solutions to organised, structured and legally constituted groups such as corporations, retirement funds, employee benefit intermediaries, trade unions, professional associations, parastatals, funeral parlours and other government institutions. These are the policyholders that are currently at risk.

LEGISLATIVE FRAMEWORK APPLICABLE TO INSURERS

22. Because of the financial services and products that they provide, insurers are closely regulated under the Insurance Act and are supervised by the Authority. The Insurance Act – and the provisions outlined below – came into operation on 1 July 2018.
23. Section 36(1) of the Insurance Act requires insurers to maintain their business in a financially sound condition by holding eligible own funds, that are at least equal to the prescribed MCR or SCR, whichever is the greater.
24. The Authority has prescribed financial soundness standards for insurers, an extract of which is attached as **"FA5"**. Section 36(1) of the Insurance Act, read with the financial

soundness standards, require that Sixty maintain a MCR of 1, and SCR of 1 (regardless of whether it is treated as an insurer or an insurance group).

25. The purpose of the minimum capital and solvency capital requirements is, in simple terms, to ensure that an insurer is always in possession of sufficient funds to pay out insured parties' insurance obligations as and when they fall due.
26. In terms of section 39 of the Insurance Act, an insurer must have procedures in place to identify deteriorating financial soundness. It must notify the Authority, without delay, if it fails to meet any of the financial soundness requirements, as well as the reasons for the failure and the measures to be implemented to bring it into compliance. It must also notify the Authority if there is a risk, at any time, that it may in the following three months fall short of its MCR or solvency requirement.
27. The Authority may, in terms of section 36 of the Insurance Act, read with section 39 of the Insurance Act, take any measures it considers appropriate to address financial soundness failures by an insurer. These include:
 - 27.1. directing the insurer to procure an independent review, at its own cost, of any principle, method, assumption, technique, adjustment, calibration, parameter, calculation or model of an insurer or controlling company used or applied in respect of its financial soundness;
 - 27.2. directing the insurer to amend, strengthen or improve any principle, method, assumption, technique, adjustment, calibration, parameter, calculation or model of an insurer or controlling company used or applied in respect of its financial soundness;



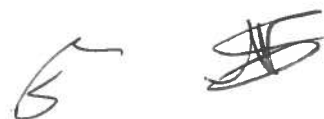
- 27.3. directing a capital add-on for an insurer if the Authority reasonably believes that the risk profile of the insurer deviates significantly from the assumptions underlying the SCR calculation;
- 27.4. where the Authority is notified that the insurer is at risk of falling short of its MCR or SCR, directing the insurer to submit, within not more than 2 months, a re-capitalisation scheme for approval setting out measures to be taken, within a period not exceeding six months, to restore its eligible own-funds to at least the level of its MCR, or to reduce its risk to comply with its SCR. (That 6-month time period can be extended by the Authority if the circumstances warrant it); or
- 27.5. in appropriate circumstances, suspending or withdrawing the insurer's licence.
28. Insurers are also obliged, under section 44 of the Insurance Act, to provide the Authority with any information it may reasonably require in the form, manner and intervals determined by the Authority, for the purposes of supervision and enforcement under the Act. They are also required to prepare annual financial statements in accordance with the Companies Act, 2008 and the International Financial Reporting Standards (IFRS), which is the international accounting framework developed by the International Accounting Standards Board (IASB), and annually to disclose publicly prescribed quantitative and qualitative information in full. An insurer must, in terms of section 45(1) of the Insurance Act, publically disclose certain prescribed qualitative and quantitative information within four months of its financial year-end. Audited annual financial statements must be filed within six months of the insurer's financial year-end (which in the case of 3Sixty, which has a year-end of 31 December each year, is by 30 June each year).



29. In terms of section 38 of the Insurance Act, an insurer may not authorise any additional shares, issue securities other than shares, reduce its share capital or provide a loan or financial assistance to a director, without the approval of the Authority.
30. Against that background, I turn to address the events that triggered this application.

3SIXTY'S FINANCIAL CONDITION

31. As previously stated, it first came to the Authority's attention that 3Sixty had breached the abovementioned solvency requirements in November 2020 and the Authority and 3Sixty have been in ongoing engagements since then.
32. The correspondence exchanged in the course of these discussions is voluminous and I do not disclose it all here. The Authority understands that it is obliged to disclose any materially relevant facts to this Court in this *ex parte* application and, to the best of my belief, has done so.
33. For present purposes, I emphasise that the Authority brings this curatorship application on the following grounds, all related to concerns about 3Sixty's financial soundness:
- 33.1. First, 3Sixty's management accounts reveal that it is insolvent or marginally solvent (but we suspect that 3Sixty's Auditor's concerns regarding the financial statements of 3Sixty may result in adjustments to the financial statements and it is therefore possible that even though the management accounts reflect 3Sixty as being marginally solvent, in reality, that might not be the case.)
- 33.2. Second, 3Sixty's SCR are below the requisite level of 1. 3Sixty's most recent management accounts and quantitative return as at 31 October 2021 submitted to the Authority reflects a SCR of minus (-) 0.66. Despite 3Sixty having proposed different funding arrangements over the intervening period to restore its financial



position, none have come to fruition and 3Sixty has proved unable to re-capitalise and to restore itself to financial soundness.

33.3. Third, to date, the audit of 3Sixty's results for the 2020 financial year had not been concluded, mostly as a result of 3Sixty not being able to provide information timeously. A brief summary of this issue is set out below:

33.3.1. Sizwe Ntsaluba Gobodo Grant Thornton Inc., 3Sixty's external audit firm (the **Auditors**), had indicated that the audit will be finalised by 31 October 2021. However, the Auditors were experiencing challenges in obtaining audit information and samples of supporting documentation from 3Sixty. The Auditors also anticipated that a number of adjustments would have to be made to the numbers produced in 3Sixty's trial balance and also raised concerns on the continuation of 3Sixty as a going concern.

33.3.2. Furthermore, the Auditors had during the course of the year while performing the 31 December 2020 year end audit, raised a number of Reportable Irregularities (**RI's**) which have been reported to both the Independent Regulatory Board for Auditors and the Authority. I attach copies of letters from the Auditors dated 24 March 2021, 6 April 2021 and 28 July 2021, and addressed to IRBA and the Authority as annexures "**FA5.1**" to "**FA5.5**". Some of these RI's included irregularly incurred expenses, approved by the then Chief Executive Officer of 3Sixty, with no value having been received by the entity and 3Sixty reducing its share capital without the prior approval of the Authority, in contravention of section 38 of the Insurance Act.



- 33.3.3. On 8 October 2021, the Auditors indicated that they did not foresee that the 3Sixty December 2020 year-end audit would be concluded by the end of October 2021 due to a number of outstanding items from 3Sixty.
- 33.4. Fourth, the Authority is concerned about the high executive staff turnover rate at 3Sixty, with new Chief Executive Officers and Chief Financial Officers being appointed in both 2019 and 2020. The last Chief Executive Officer appointed at 3Sixty was dismissed as a result of committing fraudulent activities.
- 33.5. Fifth, the Authority has received complaints regarding 3Sixty's unwillingness or inability to pay claims. For example:
- 33.5.1. The Authority received a complaint from the Dignity Group Family Funeral Plan (**Dignity**) on 13 August 2021. Dignity advised the Authority that it holds a binder agreement with 3Sixty from 1 December 2020 and 3Sixty was unable or had refused to settle policy holders claims. Dignity confirmed that it had unpaid claims as from 3 August to 11 August 2021 which amounted to R1.7 million and that claimants and their families visited its offices crying and wanting the money to bury their loved ones. Despite engaging 3Sixty, Dignity had not received any response. A copy of this email is attached as annexure "FA6". This matter was referred to the FSCA for urgent intervention.
- 33.5.2. On or about 26 October 2021, a complaint addressed to the FSCA was sent to both the FSCA and the Authority by members of the Chemical Industries National Provident Fund (**CINPF**), a 3Sixty group scheme, with effect from 1 March 2021. The complaint related to non-payment



of claims by 3Sixty and alleged that 3Sixty owed the fund members R36 million in unpaid Group Life Insurance and Permanent Disability Claims. The complaint letter also mentioned a number of market conduct related matters that the FSCA would need to look into. A copy of this complaint is attached as annexure "FA7".


34. The Authority believes that it cannot responsibly allow 3Sixty's management to continue to operate the business, and that the time has come for regulatory intervention in the form of a curatorship.

35. I now set out the chronology of events giving rise to the grounds of this application.

35.1. In November 2020, the Authority became aware that 3Sixty had breached its SCR after it reported an SCR cover of 0.77 for the quarter ended 30 September 2020. 3Sixty informed the Authority that the decrease in SCR cover was due to higher than usual claims experienced as well as a shortfall in its budgeted premium income as a result of the Covid-19 pandemic and related lockdown restrictions.

35.2. On 13 November 2020, 3Sixty applied for an extension to submit its returns for the quarter ended 30 September 2020. 3Sixty explained that the negative impact on solvency caused by the Covid-19 pandemic necessitated additional work to be performed in order to attempt to remedy the situation. 3Sixty further confirmed that its management was in the process of documenting its plan to address the low solvency levels. A copy of this extension request is attached as annexure "FA8".

35.3. On or about 15 December 2020, 3Sixty submitted a presentation to the Authority outlining its engagements with the Authority on the solvency issue. Some of the



management interventions proposed by 3Sixty included a reversal of bonus provisions, improving controls on claims processes and a capital injection by its shareholder. A copy of this presentation is attached as annexure "FA9".

35.4. On 16 December 2020, the Authority responded to 3Sixty's application dated 13 November 2020 and advised 3Sixty of its concerns regarding the deteriorating level of SCR cover. The Authority informed 3Sixty that it was required to:

35.4.1. report to the Authority on a monthly basis regarding its financial soundness position; and

35.4.2. submit a formal notification in the form of an IF012 form for failing to meet the minimum or SCR together with a plan of action as to how 3Sixty would address the failure to meet its SCR supported by projections.

35.5. A copy of this letter is attached as annexure "FA10".

35.6. On 31 January 2021, 3Sixty submitted the plan of action with the following steps towards achieving solvency:

35.6.1. obtaining a capital injection of R25 million from Doves to meet the MCR;

35.6.2. the shareholder raising an additional R63 million to meet SCR;

35.6.3. increasing premiums with effect from 1 February 2021; and

35.6.4. investigating future mortality risk to inform potential premium increases effective from 1 April 2021.



- 35.7. Together with the plan, 3Sixty submitted the IF012 notification together with the requisite declarations. A copy of the plan is attached as annexure “**FA11**” and the IF012 notification together with the declarations are attached as annexures “**FA12**” to “**FA16**”.
- 35.8. At the time of submitting the above plan of action, no time frame had been set for the capital injection as 3Sixty was yet to have a board meeting which would lead to the discussions regarding the need for the capital injection. At that stage, the intention was for Doves to raise a loan with Absa Bank Limited (**Absa**) in order to inject the funds into 3Sixty as an equity investment.
- 35.9. On 5 March 2021, the Authority’s Frontline Supervision Team (**FST**) and the Head of the Actuarial Function (**HAF**) of 3Sixty held a meeting with the management of 3Sixty, during which the Authority was informed of the following:
- 35.9.1. it had negative Own Funds since January 2021;
 - 35.9.2. its claims ratio was approximately 65.5% as a result of Covid-19 related claims which were in excess of R40 million;
 - 35.9.3. the mortality assumptions used were 10% above South Africa’s assumption of Covid19 related deaths; and
 - 35.9.4. a total R78 million needed to be raised in order to meet the MCR, sparked by a deterioration in the insurer’s solvency position as a result of the impact of the second Covid-19 wave.
- 35.10. 3Sixty Life also informed the FST that the meeting with the shareholder had taken place and that the intention was for Doves to provide the capital injection by April 2021.



- 35.11. In April 2021, a follow-up meeting was held with 3Sixty, in which the FST was informed that 3Sixty Group would raise the capital by selling its 74.9% shareholding in an entity in the group, Salt Employee Benefits (RF) (Pty) Ltd (**Salt EB**), which shareholding was acquired in 2019 from Salt Invest Holdings (Pty) Ltd (**Salt Invest**).
- 35.12. On 31 May 2021, 3Sixty addressed a letter to the Authority citing a delay in the conclusion of the transaction of the sale of Salt EB due to unforeseen delays in the finalisation of the conditions precedent recorded in the Sale of Shares and Claims Agreement (the **Agreement**) between 3Sixty Group, Salt Invest, and 3Sixty Employee Benefits (the entity interposed between 3Sixty Group and Salt EB to hold the shares). 3Sixty therefore requested the Authority to extend the timelines for the implementation of the recapitalisation plan to the end of June 2021. A copy of this letter is attached as annexure "**FA17**".
- 35.13. On 11 June 2021, the Authority responded to 3Sixty's above-mentioned letter noting the new developments regarding the plan to recapitalise 3Sixty and stating the Authority's intention to consider taking regulatory action against 3Sixty in terms of sections 39(9) and/or 39(11) of the Insurance Act, should the shareholders of 3Sixty fail to recapitalise 3Sixty by 30 June 2021. A copy of this letter is attached as annexure "**FA18**".
- 35.14. Section 39 of the Insurance Act deals with an insurer's failure to maintain a financially sound position. Section 39(9) empowers the Authority to restrict or prohibit certain activities or transactions of an insurer, controlling company or insurance group until the capital requirements are complied with and the financial soundness of the insurer or insurance group has been restored.



- 35.15. 3Sixty responded to the Authority on 17 June 2021 advising that the sale had been concluded and that the buyer, Salt Invest, was in the process of raising funding with Absa.
- 35.16. 3Sixty stated further that it was unable to provide a clear indication of when the transaction would be concluded. Its intention was to finalise the transaction by the end of June 2021. 3Sixty also requested a meeting with the Authority in order to obtain clarity on the Authority's intention to possibly take regulatory action against it in the event that it was not capitalised by the end of June 2021. A copy of this letter is attached as annexure "FA19".
- 35.17. In accordance with the above request, a meeting was held between the FST and 3Sixty on 28 June 2021 during which the following was discussed:
- 35.17.1. the Authority had no intention of rushing into withdrawing 3Sixty's licence. 3Sixty was reminded that the Authority had granted various relief measures for insurers in response to the impact of the Covid-19 pandemic. It was noted that 3Sixty had, at that point, been granted sufficient time to improve its financial position;
 - 35.17.2. previous communication from 3Sixty indicated that the capital injection would occur in April 2021 and an extension had since been requested and granted by the Authority;
 - 35.17.3. 3Sixty indicated that the Agreement was due to be finalised in mid-August. However, Salt Invest had requested Absa to fast-track the financing process due to the immediate need for funding;

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- 35.17.4. Absa had raised concerns regarding the terms and conditions of the preference shares that form part of the Agreement;
- 35.17.5. 3Sixty would be applying for further extension on the implementation of the recapitalisation plan; and
- 35.17.6. 3Sixty Group had applied for an additional loan through another entity within the Group, 3Sixty Health, for approximately R40 million. The intention was to transfer R20 million to 3Sixty.
- 35.18. Following the meeting, 3Sixty addressed a further letter to the Authority on 2 July 2021, formally requesting an extension of the implementation of the recapitalisation plan until 31 August 2021.
- 35.19. 3Sixty also provided detail on a possible restructuring of the Group. This possible restructure entailed moving the life insurance and funeral services entities within the Group (i.e. 3Sixty, Doves Group, NFS, 3Sixty Client Solutions (Pty) Ltd and Independent Crematorium SA) into one sub-group within the 3Sixty Group. 3Sixty advised that the 3Sixty Group Board resolved to find a shareholder for this sub-group, and the proceeds would be used primarily to further recapitalise 3Sixty. A copy of this letter is attached as annexure "FA20".
- 35.20. In a letter dated 16 July 2021, the Authority agreed to extend the deadline for the recapitalisation of 3Sixty until 31 August 2021 on the understanding that the only outstanding matter is the finalisation of the funding agreement between the Purchaser and Absa, which was indicated to be finalised by 16 August 2021. A copy of this letter is attached as annexure "FA21".



35.21. On 23 August 2021, 3Sixty Life called a meeting with the Authority to discuss the report by FSCA on the activities of SALT EB before it was acquired by 3Sixty Global. 3Sixty was of the view that the actions of the FSCA posed a material risk to the transaction not occurring. 3Sixty requested the Authority to talk to the FSCA about the possible impact of the report. On or about 26 August 2021, the Authority had a meeting with the FSCA, during which it came to Authority's attention that the Insurers and Retirement Fund Benefit Administrators Supervision Department of the FSCA was not aware of the intended sale transaction of Salt EB. This was concerning because the sale transaction is subject to FSCA approval as it amounts to a change in the control of the benefit administrator.

35.22. On 2 September 2021, the FSCA addressed a letter to the Authority relaying the FSCA's concerns about 3Sixty's market conduct related matters and its intention to take further regulatory action against 3Sixty.

35.23. The FSCA's concerns were exacerbated by the fact that it had reason to believe that 3Sixty was not currently in a solvent position which may lead to further undesirable outcomes for policyholders.

35.24. The FSCA requested feedback from the Authority as to whether the Authority had reasonable prospects to believe that 3Sixty may return to a solvent state in due course, and in the absence of such prospects, whether the Authority may be considering regulatory action on its part. A copy of this letter is attached as annexure "FA22".

35.25. The Authority, together with the FSCA, alerted 3Sixty to the fact that the FSCA had no knowledge of the Salt EB transaction in a meeting held on 8 September



2021. In addition, during this meeting, Mr Khandani Msibi (**Mr Msibi**), the acting Chief Executive Officer of 3Sixty alluded to the possibility of further delays in the sale of Salt EB due to regulatory action that the FSCA was pursuing against Salt EB.

35.26. On 4 October 2021, the Authority addressed a letter to 3Sixty prohibiting 3Sixty from writing any further new business and entering into any new insurance obligations as contemplated in section 39(9) of the Insurance Act. 3Sixty was given until 5 October 2021 to make representations as to why the Authority should not proceed with the prohibition. A copy of this letter is attached as annexure "**FA23**".

35.27. 3Sixty responded on the same day emphasising its cooperation with the Authority and pleading that it should be allowed to accept new business from internal channels to the extent it did not result in additional risk. The objective of this exemption was to ensure that 3Sixty maintained its reduced revenues and did not suffer a loss of operating leverage. A copy of this letter is attached as annexure "**FA24**".

35.28. On 18 October 2021, 3Sixty Group notified the Authority that a decision had been taken to terminate the Salt EB transaction. The reason provided for the termination of the transaction was the investigation by the FSCA into Salt EB which caused the purchaser, Salt Invest, to delay the transaction. This in turn caused Absa, who was funding the transaction, to become "jittery" as a result of delays in the fulfilment of suspensive conditions. 3Sixty also advised that it was convening with its Actuarial Team, the Board of NUMSA Investment Company and 3Sixty on a way forward. A copy of this letter is attached as annexure "**FA25**".



35.29. The Authority responded to 3Sixty on 20 October 2021 noting the termination of the Salt EB transaction and requesting an urgent meeting with 3Sixty's board of directors to have a discussion on alternative plans to recapitalise the entity. 3Sixty was requested to provide details on how an alternative plan would improve its MCR, SCR, cash and liquidity. A copy of this letter is attached as annexure "FA26".

35.30. On 25 October 2021, the Authority met with the FSCA in order to understand the FSCA's investigation report which had allegedly impacted the Salt EB sale transaction. The FSCA advised the Authority that there were no attempts to stop the sale of Salt EB by 3Sixty Group.

35.31. 3Sixty management had been informed in a meeting held with the Authority and the FSCA that an application was required in order to consider the sale transaction. However, no application had been received by the FSCA by the date of that meeting. Copies of correspondence between the FSCA and 3Sixty Group regarding the Salt EB transaction dated 20 and 25 August 2021 are attached as annexures "FA27" and "FA28" respectively.

35.32. On 28 October 2021, a meeting was held with a number of the 3Sixty board members including the acting Chief Executive Officer of 3Sixty, Mr Msibi, who notified the FST of the following:

35.32.1. 3Sixty was initially not aware that Salt Invest had terminated the transaction as a result of an investigation report prepared by the FSCA.



- 35.32.2. According to Mr Msibi, Salt Invest failed to sign documents requested by Absa and failed to submit an application for a change in shareholding of Salt EB to the FSCA;
- 35.32.3. Mr Msibi was of the view that Salt Invest's discomfort in continuing with the transaction was based on the possible outcomes of any regulatory action that may be taken by the FSCA.;
- 35.32.4. 3Sixty Group addressed a letter to Salt EB on 18 October 2021 advising it of the intention to halt the transaction. Subsequently an agreement had been reached to reconsider the sale transaction;
- 35.32.5. Salt EB thereafter sent a change in shareholding application on the 26 October 2021 to the FSCA. A copy of this application is attached as annexure "FA29";
- 35.32.6. the deadline for the finalisation of the sale transaction had been moved to 30 November 2021;
- 35.32.7. in the event of the transaction not being finalised by 30 November 2021, 3Sixty would implement its alternative plan ("Plan B"), which was to cede Salt EB from 3Sixty Group to 3Sixty as an asset, the value of which was R70 million. The 3Sixty actuaries were in the process of performing calculations to determine the impact of the intended cession;
- 35.32.8. the intention following the cession was for 3Sixty to, at a later stage, sell Salt EB to 3Sixty Health (a subsidiary of 3Sixty Group);

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- 35.32.9. 3Sixty Health would acquire Salt EB from 3Sixty with a R40 million loan from Absa, which loan was in the final stages of approval, and a payment of R3 million per month until such time that payment has been made in full;
- 35.32.10. Should the approval and finalisation of the Salt EB sale transaction succeed, 3Sixty would meet the MCR from date of receipt of the funds from the sale;
- 35.32.11. Should it be necessary to implement Plan B, Mr Msibi indicated Plan B would be implemented by 1 December 2021 and 3Sixty would be fully capitalised by 31 May 2022; and
- 35.32.12. 3Sixty Group had commenced with the implementation of Plan B, irrespective of the outcome of Salt EB sale transaction, and had already started engaging Absa, as a preference shareholder in Salt EB.
- 35.33. In addition, during the meeting on 28 October 2021, 3Sixty indicated that it would be able to meet their obligations without the need for support from the 3Sixty Group, with claims having stabilised during the month of October. It also had a planned premium increase that it would be implementing during the first quarter of 2022 and therefore it did not foresee a significant impact as a result of the fourth wave of the Covid-19 pandemic.
- 35.34. On 9 November 2021, the Authority informed 3Sixty that if the recapitalisation plan had not materialised by 1 December 2021, 3Sixty would be prohibited from taking on any new insurance business. In addition, 3Sixty was informed of further



regulatory action that may be taken should the recapitalisation fail. A copy of this letter is attached as annexure "FA30".

35.35. On 12 November 2021, the FSCA approved the application for the change in shareholding and directorship structures in Salt EB, without conditions. A copy of this approval is attached as annexure "FA31".

35.36. On 26 November 2021, a meeting was held with 3Sixty, during which the FST requested an update on the recapitalisation of 3Sixty as well as progress on the 2020 audit. The following information was provided to the FST:

35.36.1. significant progress had been made in the conclusion of the Salt EB transaction. The plan was to have a signed agreement by 30 November 2021;

35.36.2. The Agreement provided the parties with two days to finalise the conditions precedent after which, R70 million would be paid to 3Sixty Group through a loan to Salt Invest for purchasing the shares in Salt EB and thereafter, transferred to 3Sixty;

35.36.3. When asked about the funds possibly not reaching 3Sixty by 1 December 2021, a request was made for the Authority to grant 3Sixty a few days to allow for the flow of funds. 3Sixty was requested to submit a formal application to the Authority. As at 7 December 2021, no such application was submitted to the Authority;

35.36.4. In addition to the R70 million from the sale of Salt EB, 3Sixty Health had applied for an overdraft facility of R40 million with Absa. R20



million of these funds would be loaned to Doves, who would then invest the funds as equity into 3Sixty; and

35.36.5. Absa raised concerns around the fact that 3Sixty's 2020 annual financial statements were not yet signed and that 3Sixty is insolvent. However, 3Sixty was still convinced that the overdraft would be granted. The FST did not agree with this view and was of the view that this transaction would not occur based on the concerns raised by Absa.

35.37. On 30 November 2021, 3Sixty informed the FST that due to unforeseen circumstances, the Salt EB transaction was cancelled and would no longer materialise.

35.38. 3Sixty was now dependent on the R20 million funding from 3Sixty Health, which would in no way make any material difference to 3Sixty's already deteriorating MCR and which, in the FST's view, would also not materialise, and in fact has not materialised to date.

35.39. A further meeting was held with 3Sixty on 6 December 2021, in which the following update was provided:

35.39.1. Salt EB informed 3Sixty that an investor in Salt EB no longer wanted to be part of the transaction, leaving them with no funds to finalise the Salt EB transaction;

35.39.2. Resultantly, Salt Invest would no longer have the R70 million required to fund the transaction and therefore 3Sixty Group would not be able to channel these funds into 3Sixty;



- 35.39.3. 3Sixty advised that the Salt EB transaction was not “cancelled”, but that there would be a delay in receiving the funds until “sometime” in 2022. Salt Invest had guaranteed that R40 million of the R70 million would be paid to 3Sixty Group by May 2022 and an additional R40 million on condition that the contract between Salt EB and the Private Securities Sector Provident Fund was renewed;
- 35.39.4. 3Sixty Life proposed a new recapitalisation strategy which involved the transfer of properties held by Doves to 3Sixty. The FST was informed that Doves had agreed to the property transfer;
- 35.39.5. According to 3Sixty, the properties are worth R180 million. 3Sixty is aware or ought to be aware that it cannot recognise the full amount of the properties, as there is a strong likelihood following the Covid 19 pandemic, that commercial property is less attractive than before. In addition, even if the Authority accepted that the properties are worth R180 million, properties worth R50 million serves as security for a Doves obligation and must therefore be deducted from the R180 million;
- 35.39.6. Doves had agreed to carry the costs of the transfer transactions as well as the rates and taxes on the properties;
- 35.39.7. 3Sixty maintained that its current liquidity resources are sufficient to ensure a positive cash balance until the end of December 2021; and
- 35.39.8. 3Sixty was requested to provide cash projections until March 2022, as well as the impact of the transfer of the properties to 3Sixty.

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35.40. On 7 December 2021, 3Sixty responded to the Authority's letter dated 9 November 2021, which recorded the following:

35.40.1. acknowledging that 3Sixty was yet to resolve its regulatory SCR as of 1 December 2021 and therefore would be implementing the following with a view of not increasing its insurance liabilities and exposures:

35.40.1.1. 3Sixty accepts that it will not write any new business that will result in an increase of the current exposure levels;

35.40.1.2. 3Sixty intends to continue with the reinstatement and renewal of existing policies because they are of the view that these are not the same as new business and do not bring about new liabilities; and

35.40.1.3. 3Sixty Life not enter new insurance contracts with the exception of prudently entering into new insurance contracts through internal channels such as Doves, Numsa Financial Services and 3Sixty Client Solutions for purposes of replacing policies that would ordinarily lapse.

35.40.2. 3Sixty Group had decided to cede Doves' properties to the value of R130 million to 3Sixty. While 3Sixty Group has engaged its Actuarial Consultant to provide a determination of what impact this will have on the solvency of 3Sixty, this report will only be available by end of business day 7 December 2021 and an indulgence to await the report was requested. A copy of this letter is attached as annexure "FA32".



35.41. The Authority does not believe that the transfer of Doves' properties will materially change the financial position of 3Sixty for the following reasons:

35.41.1. The transfer of immovable property will not assist 3Sixty's liquidity crisis;

35.41.2. 3Sixty proposes that the properties will be transferred by the end of January 2022. Given that it is mid-December, it seems highly improbable that transfer by 31 January 2022 will be realised; and

35.41.3. Most of the properties are commercial properties, the values of which have decreased since March 2020. The Authority is therefore not convinced that the values of the properties provided by 3Sixty are an accurate reflection of their current true value.

35.42. On 8 December 2021, the FST recommended to the Authority's Regulatory Action Committee that an application is made to the High Court on an urgent basis and on an ex-parte basis to have 3Sixty placed under curatorship in order to, at least, protect the interests of the With Profit Policyholders.

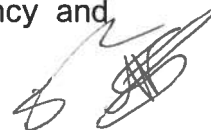
JUSTIFICATION FOR PLACING 3SIXTY UNDER CURATORSHIP

36. The Authority accepts that since the Authority first started engaging 3Sixty in November 2020, 3Sixty has taken a number of steps to attempt to bring itself into compliance with the regulatory regime. However, despite this, its financial soundness has not been restored.

37. 3Sixty has, over the relevant period, presented no less than three anticipated funding arrangements to the Authority but none has come to fruition. In the meantime, 3Sixty continues to fall short of the SCR and its most recent unaudited monthly management

accounts suggest that its position is worsening. That, in turn, makes it increasingly difficult for 3Sixty to procure the funding that it requires.

38. At this stage, the management team of 3Sixty has not succeeded in restoring financial soundness to the company, and appears unable to do so.
39. At this stage, the Authority believes that there is a very real risk that, unless the business of 3Sixty is brought quickly in hand, it may well default on its insurance obligations to policyholders or reach a point where its liquidation is inevitable.
40. The Authority cannot risk allowing 3Sixty to continue operating as it presently does. Regulatory intervention is necessary.
41. The Authority believes that the appointment of a curator is appropriate at this stage, for the following reasons:
 - 41.1. Although 3Sixty has so far proved unable to procure the funding it requires to restore its financial position, it is possible that appropriate funding arrangements could yet be made.
 - 41.2. A curatorship would preserve the current financial position of 3Sixty and provide an opportunity to source funding, whilst preventing further erosion of its solvency capital cover.
 - 41.3. Curatorship may therefore serve to forestall 3Sixty's ultimate liquidation (which at this stage is a real risk). The Authority wishes to avoid liquidation, the risk of value destruction and prejudice to policyholders that a liquidation entails, unless less restrictive measures do not have the desired effect. .
 - 41.4. Additionally, a curator will be able to properly and independently investigate 3Sixty's affairs, its past transactions and expenditure and its solvency and



minimum capital requirements. This will facilitate an objective and comprehensive analysis of 3Sixty's affairs. It may also reveal other avenues of recourse and potential recovery for the business.

42. The appointment of a curator is consequently appropriate and in the best interest of the 3Sixty's business, its policyholders and the public at large.

The proposed curator

43. The Authority has identified a suitable candidate for appointment as curator, and proposes the appointment of Ms Yashoda Ram of BDO.
44. As she confirms in the accompanying affidavit, Ms Ram is the Head of Actuarial Services and has 16 years' experience in the insurance industry. She is a member of the Actuarial Society of South Africa (**ASSA**), the Chair of the Actuarial Women's Committee of South Africa and a Member of the ASSA Transformation Council. She is also a member of the Short-Term Insurance Committee of South Africa (**STIC**) and the Chair of the Market Conduct Committee for the STIC. In addition to advisory and audit experience, Ms Ram also gained experience from working within insurers in various senior roles. A copy of Ms Ram's short resume is attached as annexure "**FA33**".
45. Ms Ram is willing and available to serve as the curator of 3Sixty.
46. The proposed curator will be remunerated in accordance with the norms of her profession, on a basis agreed with the Authority.

Ex parte application

47. Section 5(1) of the Financial Institutions Act states that "*the registrar [that is, the FSCA] may, on an ex parte basis, apply to a division of the High Court having jurisdiction for*



the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.”

48. The FSCA is thus expressly empowered to bring a curatorship application on an *ex parte* basis. The usual notice requirements applicable in motion proceedings do not apply.
49. That is clearly a legislative choice. Prior to its amendment by the Financial Services Laws General Amendment Act 45 of 2013, section 5 provided that “*the registrar may, on good cause shown, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution*”. In other words, the amendment expressly introduced the ability to apply *ex parte* and dispensed with the ordinary notice requirements.
50. The Authority enjoys an equivalent power to the FSCA under section 54(1)(a) of the Insurance Act, which expressly refers to the power of the Authority to apply to court to have a curator appointed in respect of any insurer in terms of section 5 of the Financial Institutions Act, which includes the power to apply on an *ex parte* basis
51. In any event, there are sound reasons not to give notice of this application to 3Sixty:
- 51.1. The application is brought in the interests of 3Sixty’s policyholders and in the public interest, to avoid a real and imminent risk of default on their insurance obligations. It is respectfully submitted that this application requires swift intervention by this Court.
- 51.2. The relief sought by the Authority in this application is of a regulatory, not of an adversarial, nature. Indeed, the Authority hopes that 3Sixty can be restored to a sound financial position, regulatory compliance quickly and with as little



interruption as possible. However, to achieve that, it is essential that the Authority procures an accurate and complete picture of 3Sixty's financial affairs. It needs an external curator to make that assessment – preferably without 3Sixty first having an opportunity to interfere with or change its internal documents.

51.3. The *ex parte* relief is sought only on a provisional basis. The order provides for the issue of a *rule nisi* and an opportunity for the full exchange of papers, as well as a report from the curator, before any final orders are made. 3Sixty (and other interested parties) will consequently have an appropriate opportunity to be heard and will suffer no procedural prejudice in these proceedings. In the meantime, its business and any funding negotiations can proceed under the care and guidance of the provisional curator.

52. The Authority is also concerned that if prior to the hearing of the rule nisi order, 3Sixty is given notice, it will start to withdraw funds from 3Sixty's bank accounts and also try concealing some of the assets of 3Sixty.

Urgency

53. This matter is inherently urgent. This is particularly so as it has recently become clear that 3Sixty is unrealistically able to recapitalise, and urgent intervention is required.

54. As stated above, 3Sixty has, over the relevant period, presented no less than three anticipated funding arrangements to the Authority but none has come to fruition. If this situation is permitted to continue, 3Sixty continues to fall short of the SCR and faces a worsening situation.

55. At this stage, the Authority believes and submits to the above Honourable Court that there is a very real risk that, unless there is the urgent intervention of the above



Honourable Court granting this application, that it may well default further on its insurance obligations to policyholders or reach a point where its liquidation is inevitable.

56. There is therefore self-evident urgency to place 3Sixty into curatorship with utmost urgency in order to salvage its position, and provide an opportunity to source funding, whilst preventing further erosion of its solvency capital cover.
57. If this is not done, liquidation which has been explained above may be inevitable. Liquidation will have a devastating effect on policy holders. If the curatorship can have a realistic chance of averting liquidation, then it should be granted at the earliest opportunity before further damage is done to 3Sixty's liquidity.
58. Additionally, in order to ensure that assets of 3Sixty are not misappropriated and policyholders are protected, it is necessary for this application to be heard urgently now that its recapitalisation has failed,
59. Lastly, it is in the interest of the public and litigants in general for this matter to be heard on an urgent basis, above other matters that are waiting to be heard in due course. This is because this application serves a public interest. As stated at the outset of this application, it is essential – both to policyholders and the public at large – that insurers are kept in a sound financial position such that they are able to meet the obligations under their policies as and when they fall due. 3Sixty is already in a position that may render it unable to meet such obligations. However, if this urgent intervention of curatorship is not granted, the situation will only be exacerbated, and the potential free fall 3Sixty faces ought to be arrested without any further delay.
60. It is clear from what is set out earlier in this affidavit that 3Sixty was afforded numerous indulgences by the Authority, in order to meet the relevant solvency requirements and



a sound cash flow and liquidity position, but this has not materialised. Therefore, urgent outside intervention is necessary.

61. The problems with 3Sixty have been ongoing for several months, and it was afforded every opportunity to remedy its situation and obviate the need for this application and the relief sought herein.
62. However, the Authority had to draw a line in the sand. It did so on 9 November 2021 when it informed 3Sixty that if the recapitalisation plan had not materialised by 1 December 2021, further action may be taken. This urgent application and the relief sought herein was part of that contemplated action. 3Sixty were in essence placed on terms, and were afforded until 1 December 2021 to recapitalise.
63. Since placing 3Sixty on terms, the Authority has been active in both engaging 3Sixty to find a solution, as well as taking steps in the furtherance of this application. The Authority has therefore not been dilatory in prosecuting this application. This is illustrated below.
64. As already canvassed above, by 26 November 2021 3Sixty indicated that an extension was needed beyond 1 December 2021. They were invited to bring a formal application for such. As at 7 December there was none. Financial statements were also still not submitted.
65. One day prior to the deadline of 1 December 2021, being 30 November 2021, 3Sixty made it apparent that they would not meet this deadline, that the Salt EB transaction was cancelled and would no longer materialise, and that it may only do so in May 2022.
66. On 7 December 2021, 3Sixty presented an alternate arrangement pertaining to the transfer of Doves' properties. This was not deemed sustainable by the FST who on 8



- December 2021 recommended to the Authority's Regulatory Action Committee that an application is made to the High Court on an urgent basis.
67. The Authority's Regulatory Action Committee met on 8 December 2021 and decided to proceed with this application. Members of the Authority then arranged to meet with the Authority's attorneys in the afternoon of 8 December 2021.
68. During the meeting between the Authority and its attorneys, the attorneys identified the relevant information that they needed to prepare this application.
69. The relevant information was collated by the employees of the Authority and made available to the Authority's attorneys by Friday, 10 December 2021.
70. Even though the Authority's lead attorney in this matter was out of town from 10 to 12 December 2021, the Authority's attorneys immediately started working through the documents and preparing the application papers.
71. The preparation of the draft was finalised by the Authority's attorney shortly before 13h00 on 14 December 2021.
72. The relevant employees from the Authority then considered the contents of the draft notice of motion and founding affidavit and providing input in relation to the draft.
73. A version was finalised by 15 December 2021 and shortly thereafter these papers were issued at court.
74. In these circumstances, I respectfully submit that the Authority did not delay in instituting this application.



Service of rule nisi

75. To ensure that the *rule nisi* is brought to the attention of interested parties, the notice of motion makes provision for it to be served on 3Sixty and the FSCA, and to be published in the Government Gazette, as well as each of the Business Day and Citizen newspapers, as well as on the Applicant's official website.

The powers of the curator

76. Section 54(2) of the Insurance Act stipulates the powers and functions that may be conferred on a curator. The Authority seeks, in prayer 7 of its notice of motion, for the curator to be afforded all of the powers that she will require to effectively manage and operate the 3Sixty's business, and simultaneously to divest 3Sixty's current management and directors of those powers and functions.
77. Wide powers are proposed to enable the curator to take full control of the business, to manage its affairs, to probe into irregularities and to engage the assistance of consultants and other persons after consultation with the Authority. Those powers will be exercised subject to the ultimate oversight of the Authority.
78. The intention at this point is for the curator to arrest the situation, and to preserve the business rather than to wind it down, if possible. In her discretion and where possible, the curator may continue to honour existing policy commitments and make payments to policyholders.
79. The notice of motion also makes provision for the curator to investigate and report to the Court on 3Sixty's affairs, as well as recommended further steps, prior to the return date. That will enable the Court to consider the appropriateness of granting the final relief sought on a complete conspectus of the facts.



COSTS


80. This application is necessitated by the conduct and failures of 3Sixty. However, and to protect policyholders, the Authority will bear the costs of this application, unless 3Sixty (or any other interested party) opposes the relief sought – in which event the Authority will seek costs against the opposing party.
81. The costs of the curatorship, including any investigations and professional services the curator requires, are ultimately costs of the 3Sixty business and should be paid by 3Sixty or settled from its assets.
82. On the return date, the Authority will seek costs orders to this effect.

CONCLUSION

83. For all the reasons set out above, the Authority prays for an order in terms of the Notice of Motion to which this affidavit is attached.

WHEREFORE the applicant prays for the orders as set out in the notice of motion.

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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 15th day of December 2021, 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:

