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

Case Number: 58950/2021

In the matter between:

THE PRUDENTIAL AUTHORITY Applicant

and

3SIXTY LIFE LIMITED Respondent

FILING NOTICE

KINDLY TAKE NOTICE THAT the Respondent hereby files the following:

DOCUMENT: Respondent's answering affidavit

DATE ON ROLL: Not yet allocated.

SIGNED AND DATED AT **SANDTON THIS 21ST DAY OF JANUARY 2022.**

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TO:

THE REGISTRAR OF THE ABOVE

HONOURABLE COURT

JOHANNESBURG

TO:

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RESPONDENT'S ANSWERING AFFIDAVIT

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I, the undersigned,

KHANDANI MSIBI

do hereby make an oath and state that:

A. INTRODUCTION

1. I am the Acting Chief Executive Officer of 3Sixty Life Limited (**"3Sixty"**), the respondent in these proceedings. I have the authority to oppose this application and to depose to this affidavit on behalf of 3Sixty. A resolution of the board of directors to this effect is attached hereto marked **"KM1"**.

2. 3Sixty is a registered life insurance company and accredited to underwrite life and assistance policies. It was established in 1993 as HTG Life. The name was changed to Union Life in January of 2008 and subsequently re-branded as 3Sixty Life in 2018 to align with its parent company, 3Sixty Global Solutions Group.

3. In my position as Acting Chief Executive Officer my primary responsibilities include managing the operations and resources of the company.

4. The facts to which I depose herein are within my own personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief, true and correct. At all material times prior to and in opposition to this application, 3Sixty appointed and consulted with Mr Ranti Mothapo as its actuary (**"3Sixty's actuary"**). A confirmatory affidavit by 3Sixty's actuary is annexed hereto marked **"KM2"**.

5. Any legal submissions that I may make are so made on the advice of 3Sixty's legal representatives and I believe them to be correct.

B. STRUCTURE OF THIS AFFIDAVIT

6. For the court's convenience I structure my response to the applicant's founding affidavit as follows:

6.1. First, I lay out the summary of 3Sixty's case in response.

6.2. Secondly, I show why the rule cannot, on legal grounds, reasonably be confirmed for failure to disclose material facts and misleading the Court. In this regard, I address each of the five grounds on which the applicant obtained the provisional curatorship order and demonstrate that each of them does not sustain a case therefor and must, on the anticipated return day, be discharged.

6.3. Thirdly, I address the additional ground of alleged risk to policyholders.

6.4. Fourthly, I deal specifically with the financial soundness question.

6.5. Fifthly, I explain the undesirability of curatorship in the factual circumstances of this case.

6.6. Finally, I address the specific averments in the founding affidavit to the extent necessary.

C. SUMMARY OF 3SIXTY'S CASE

7. On 21 December 2021, this Court granted an interim curatorship order on an *ex parte* and urgent basis against 3Sixty with immediate effect pending the return date of 12 April 2022.

8. The order was, regrettably, granted in circumstances where:

8.1. the applicant had failed to make full disclosure of material facts to the Honourable Court as is the duty of an *ex parte* applicant;

8.2. the applicant failed to demonstrate any reasonable basis for not giving notice of the application to 3Sixty;

8.3. the applicant failed to make out a case for urgency.

9. The provisional *ex parte* order materially prejudices 3Sixty and has dire effects on its policyholders, direct and indirect jobs as well as shareholders. Some of these policyholders are also the beneficial owners of 3Sixty.

10. 3Sixty has over the years made significant contributions to the benefit of workers, including providing insurance products at affordable premiums. 3Sixty, an underwriter of life insurance and funeral policies, is ultimately owned by the investment arm of the National Union of Metal Workers of SA (**"NUMSA"**), the NUMSA Investment Trust (**"the Trust"**). 3Sixty, in the main, insures the clients of Doves Group (Pty) Ltd (**"Doves"**) and members of NUMSA who account for 49% and 26%, respectively, of 3Sixty's policyholders by premium income. Since Doves is ultimately owned by the Trust, its services are extensively marketed to NUMSA members.

11. In this affidavit, 3Sixty will demonstrate that the order for provisional curatorship is an unjustified, egregious and considerably prejudicial interference by the Prudential Authority with the business of 3Sixty. Not only is this interference prejudicial to rights and interests of 3Sixty's shareholders; it is also prejudicial to the rights and interests of the very policyholders the Prudential Authority claims to represent by this application. The order ought therefore to be discharged.

12. 3Sixty further submits that, while the launching by the Prudential Authority of its application was far from urgent, the final adjudication of this matter is, nevertheless,

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urgent. This is because the ongoing material prejudice suffered by 3Sixty and its policyholders in circumstances where the applicant failed to make a full disclosure to the Honourable Court is not in the interest of justice. 3Sixty will suffer irreparable harm if the final adjudication of this matter is heard at a later stage. By the time April 2022 rolls in, there may be no business left to salvage. 3Sixty will therefore seek to have this matter heard by the urgent court on 1 February 2022 thereby affording the applicant considerably more notice to file its reply (if any) and prosecute its case in open court than it is entitled.

13. As a result of the absence of *audi alteram partem* to 3Sixty when the provisional order was made, and the actual and potential prejudice to it, 3Sixty is forced to approach the Honourable Court on an urgent basis to ensure that the imbalance, injustice and oppression flowing from the order granted in its absence is redressed.

14. I am advised that the law is settled on the requirements for an *ex parte* order. In summary, it is this:

    14.1. A full disclosure of all material facts which *might* influence a court must be made.

    14.2. The failure of full disclosure of such facts, or suppression of such facts, may result in rescission of the *ex parte* order whether such failure was wilful or negligent.

    14.3. That the *ex parte* applicant does not believe the respondent's version of facts that have been conveyed to the applicant, or believes the respondent's defence to be ethereal, is not a valid basis for suppressing or not disclosing it.

14.4. The duty of full and fair disclosure is imposed because orders granted without notice to affected parties are a departure from a fundamental principle of the administration of justice, namely, *audi alteram partem*.

14.5. The law sometimes allows a departure from the *audi alteram partem* principle in the interests of justice but, in those exceptional circumstances, the *ex parte* applicant assumes a heavy responsibility in order to neutralise the prejudice that the affected party suffers by his or her absence.

14.6. The *ex parte* applicant must also speak for the absent party by disclosing all relevant facts that s/he knows or reasonably expects the absent party would want placed before the court.

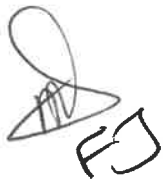
14.7. The *ex parte* applicant must disclose and deal fairly with any defences of which s/he is aware or which s/he may reasonably anticipate.

14.8. In particular, the *ex parte* applicant must disclose all relevant adverse material that the absent party might have put up in opposition to the order. In this respect, s/he must exercise due care and make such enquiries and conduct such investigations as are reasonable in the circumstances before seeking *ex parte* relief.

14.9. Even where the *ex parte* applicant has endeavoured in good faith to discharge his or her duty as an *ex parte* applicant, s/he will be held to have fallen short of the required standard if the court finds that matter s/he regarded as irrelevant was sufficiently material to require disclosure.

14.10. The test is objective.

14.11. The court has a discretion, which must be exercised judiciously, when confronted with non-disclosure of material facts.



14.12. An *ex parte* order may be set aside for non-disclosure or suppression of material facts even if the same relief could be obtained in a subsequent application by the same applicant on the same facts against the same respondent.

15. 3Sixty submits that the applicant failed to make a full and fair disclosure and falls short of the settled requirements as I shall demonstrate. For that reason alone, the rule falls to be discharged.

16. In seeking an order placing 3Sixty under provisional curatorship, the applicant approached the Honourable Court on (1) an urgent and (2) and *ex parte* basis. The applicant therefore had to comply with the following two requirements.

16.1. First, a case for urgency had to be established; and

16.2. Second, the applicant had to act in good faith and make a full and proper disclosure of material facts to the court even if it considered those facts to be irrelevant.

17. The applicant has satisfied neither requirement. To mislead the court as to either the urgency or to obtain an *ex parte* order by way of non-disclosure of material facts constitutes an abuse of court process which a court should not countenance.

18. The applicant claims that there is *"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... 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. 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".

19. Quite apart from the fact that this representation by the applicant bears no relation to the material facts that the applicant has failed to disclose, the applicant lays no foundation for contending that provisional curatorship will (1) salvage the position of 3Sixty; (2) provide 3Sixty with an opportunity to source funding; (3) prevent *"further erosion"* of its solvency capital; (4) provide a *"realistic chance of averting liquidation"*; and (5) ensure that the assets of 3Sixty are not misappropriated. Not a shred of even *prima facie* evidence is provided that tends to show a predilection by me or 3Sixty's management to misappropriate assets. In fact, the claim is defamatory and should not have been made without substance.

20. For these reasons, the rule *nisi* ought therefore to be discharged.

D. MATERIAL FACTS NOT DISCLOSED IN THE NARRATIVE OF SEEKING AN EX-PARTE APPLICATION

21. The applicant had information that there is no predilection by me or 3Sixty's management to misappropriate assets. It has failed to disclose this information to the Court. Instead, it misled the Court with defamatory statements in seeking a provisional order by the extraordinary route of *ex-parte* proceedings which are ordinarily reserved for exceptional circumstances nowhere demonstrated in the applicant's founding affidavit.

22. For example, the applicant had the following information that disprove their *"suspicion"* that 3Sixty Management and Board have the propensity to conceal and act in the criminal manner suggested:

    22.1. As soon as 3Sixty started forecasting operational losses due to the impact of Covid-19, it removed the allowance to reduce the Solvency Capital Requirement (**"SCR"**) by the Loss Absorbing Capacity of Deferred Taxes

(**"LACDT"**). The applicant is aware of this. Annexure "**KM3**" contains the SCR statement of the September 2020 Quantitative Report Template (**"QRT"**) submitted to the applicant where the LACDT of R14 million that reduced the SCR in the previous quarter (June 2020 QRT) was set to zero, having an impact of increasing the SCR. This more conservative approach was applied to all QRTs since September 2020. In the face of difficulties of financial soundness, 3Sixty did not seek to be aggressive and conceal the potential extent of the challenge, but in good faith took a more conservative view in reporting its affairs to the applicant. I respectfully submit to this Honourable Court that these cannot be actions of Management and Board that is prone to acting improperly concealing information as libellously suggested by the applicant.

22.2. In September 2021, the Management and Directors of 3Sixty incorrectly thought the business had a liquidity strain. They arranged a meeting with the applicant on 23 September 2021 in order to discuss the state of the business (see Annexure **"KM4"**). Annexure **"KM5"** is an email from the Actuary of 3Sixty to the applicant clarifying that there was actually no liquidity strain that would warrant a further loan from the With-Profit Policyholder funds. A meeting was held between the Actuary, Independent Head of Actuarial Function and the applicant in order to explain the matter on 5 October 2021. I respectfully submit to this Honourable Court that these cannot be actions of Management and Board that is prone to acting improperly and concealing information as libellously suggested by the applicant.

22.3. In 2020 the applicant appointed an independent auditor, Gerdus Dixon of Deloitte, to investigate the affairs of 3Sixty for the 2017, 2018 and 2019 financial years. There were no material adverse findings from this investigation. The applicant did not take any action against 3Sixty as a consequence of that report. Contrary to its defamatory statement, the applicant actually had recent evidence that negated any suggestion of

improper business practices on the part of 3Sixty. I respectfully submit to this Honourable Court that the applicant could only have been motivated by malicious intent and to defame the Management and Directors of 3Sixty in making these defamatory statements about them in this application.

22.4. In implementing the premium adjustment of 1 February 2021, 3Sixty realised that it had omitted in its communication to inform policyholders what would happen if they continued to pay the old premiums and not the new premiums. 3Sixty resolved to reduce benefits of those policyholders that rejected the premium increase, but at the same time approached the Financial Sector Conduct Authority (**"FSCA"**) on 10 March 2021 to inform the FSCA of this as well as to discuss and appeal to the FSCA to speedily consider 3Sixty's application for exemption. Annexure **"KM6"** contains details of the meeting of 10 March 2021, which included the applicant, and Annexure **"KM7"** is the letter dated 23 March 2021 applying for exemption to the FSCA. Once again, I respectfully submit to this Honourable Court that these cannot be actions of Management and Board that is prone to acting improperly and concealing information as libellously suggested by the applicant.

22.5. 3Sixty is part of a group of companies with global aspirations and with businesses that are regulated by different regulators. The regulators include the applicant, the FSCA, the Council for Medical Schemes (**"CMS"**) and South African Health Products Regulatory Agency (**"SAHPRA"**) to name a few. The global strategy of the group was presented to the applicant. The applicant is aware that it would not be in the interest of 3Sixty to act in a criminal manner in any market given its diverse global strategy.

22.6. Through its "fit and proper" requirements for "key individuals" of insurers, the applicant requires that the Management and Directors of 3Sixty must comprise people of integrity and honesty. Had the applicant held the view that the Board and Management of 3Sixty were inclined to act in a criminal manner, then the applicant would not have approved their appointments or

should have immediately removed the affected persons from positions of trust. This is yet another important consideration demonstrating that the applicant knows (and knew at the time of launching this application on an *ex parte* basis) that the Management and Board of 3Sixty are people of integrity who are not capable of acting, and have not acted, in a manner that would compromise the interests of 3Sixty, its policyholders and the Group of Companies.

23. In seeking the curatorship, the applicant approaches the Honourable Court on an urgent basis. One of the reasons submitted to support the urgency is that "*unless there is urgent intervention of the above Honourable Court granting this Application, that 3Sixty may well default **further** on its insurance obligations to policyholders*". This statement was misleading to the Honourable Court as it presupposes that 3Sixty has **already** defaulted on its insurance obligations to policyholders. The insinuation is false and was misleading to the Honourable Court.

24. The applicant avers that 3Sixty produced monthly management accounts since December 2020 reflecting a precarious and at times an insolvent position and has failed to restore itself to financial soundness. It therefore applies to have 3Sixty placed under curatorship in terms of section 54(1)(a) of the Insurance Act, 18 of 2017 (**"the Insurance Act"**) read with section 5 of the Financial Institutions (Protection of Funds) Act, 28 of 2001 (**"Financial Institutions Act"**) on the basis that 3Sixty has failed to comply with section 36(1), 38, 39 and 44 of the Insurance Act. It founds its application on five grounds, namely:

24.1. First, that 3Sixty's management accounts reveal that it is insolvent or marginally solvent and that even though the management accounts reflect that 3Sixty is marginally solvent, in reality that might not be the case because of concerns raised by 3Sixty's auditor regarding the audit of the financial statements as of 31 December 2020. From these concerns, the

applicant says it suspects that the financial soundness position of 3Sixty might be worse than 3Sixty has reported to the applicant.

24.2. Second, that 3Sixty's Solvency Capital Requirement (**"SCR"**) and Minimum Capital Requirement (**"MCR"**) are below the statutory threshold, and that 3Sixty is unable to re-capitalise and to restore itself to financial soundness.

[Minimum Capital Requirement (**"MCR"**) is essentially the amount of money, as determined through the applicant's Standard Formula to insurers, that the shareholder must, at minimum, have in the business. This is meant to cover three months' operational expenses and is further set to be at an absolute minimum of R15 million. Solvency Capital Requirement (**"SCR"**) is the amount of money, as determined through the applicant's Standard Formula to insurers, that the shareholder must have in the business so that, if the estimated most extreme risk events applying to insurers were to happen, the insurer would remain solvent after such an event. It is therefore the required capital that the insurer must have in order to ensure that it is solvent after being shocked by extreme risk, that is imagined to happen at a ratio of 1-in-200 years]

24.3. Third, that the audit of 3Sixty's results for the 2020 financial year had not been concluded as a result of it not being able to provide audit information timeously.

24.4. Fourth, that 3Sixty's high executive staff turnover rate has contributed to its financial soundness challenges.

24.5. Fifth, that the applicant has received complaints about 3Sixty's unwillingness or inability to pay claims.

25. Each of these five grounds is speculative, unreasonable and/or misleading and for that reason should be rejected.

(i) *Dismissal of the first ground – the applicant's failure to fairly assess 3Sixty's financial soundness and to disclose to the Court that the impact of concerns raised to the Auditor had been addressed*

26. The applicant refers to Management Accounts without reference to the Quantitative Reporting Template (**"QRT"**) through which its own Standard Formula is applied for purposes of submitting information on solvency assessment of insurers to the applicant.

27. This is problematic as the actual tool for solvency assessment is the statement OF1 in the QRT and not Management Accounts. By not referring to the QRTs the applicant has made misleading statements to the Honourable Court.

28. It is common cause and best practice that actuaries are regarded as the professionals best competent on matters pertaining to solvency assessment and QRTs. It would have been prudent for the applicant to confirm any suspicions on 3Sixty's financial soundness with actuaries, including its own actuarial team. Regrettably this does not seem to be the case and instead, the applicant placed all reliance on the Auditor's suspicions based on incomplete work in approaching this Honourable Court.

29. The most significant concern of the Auditor is on recognition of a Deferred Tax Asset. 3Sixty's actuary clarified this to the applicant in a meeting held on 6 December 2021 referring to the solvency assessment QRT for October 2021 as submitted to the applicant that the Deferred Tax Asset had no impact on solvency assessment. See in this regard annexure **"KM8"** hereto. The applicant simply ignored this and failed to engage its own actuarial team to clarify the issue. It is therefore unsurprising that the statements the applicant makes to this Honourable Court in this regard are, at best, ill-informed and misleading.

30. The next significant concern of the Auditor led to a write-off of the premium receivables. The impact of this on financial soundness position of 3Sixty was shared with the applicant with the submission of 7 December 2021 on the impact of Internal Recapitalisation Plan on 3Sixty's financial soundness. See in this regard annexure **"KM9"** hereto.

31. Furthermore, despite 3Sixty indicating to the applicant the impact of the Auditor's concerns on financial soundness, the applicant acted with haste to use these concerns as a ground for the application for curatorship. The applicant has not acted on facts but rather founds its application on *"suspicion"* which is ill-informed and benefits no one. The applicant decided to found its application on *"suspicion"* rather than on facts presented to it that it could have easily verified with its own actuarial team.

32. I address the financial soundness position of 3Sixty in more detail below under the rubric *"3Sixty's Financial Soundness"*.

33. In summary, the applicant's *"suspicion"* that 3Sixty's financial soundness may be worse than reported is irrational as it simply ignored representations by 3Sixty on the impact of the Auditor's concerns on 3Sixty's financial soundness. These representations were made at the meeting of 6 December 2021, just 2 days before the applicant decided to launch *ex parte* proceedings and, in bad faith, failed to disclose that fact. For these reasons, the first ground advanced for curatorship falls to be dismissed and the rule discharged.

(ii) *Dismissal of the second ground – the applicant's failure to reasonably assess 3Sixty's internal recapitalisation plan and to disclose that it has received the impact of such plan on 3Sixty's financial soundness*

34. The applicant contends that 3Sixty has proven unable to recapitalise. This is simply false. 3Sixty has proved able to recapitalise, but the applicant has not adequately considered the Internal Recapitalisation Plan submitted to it.

35. Having presented the Internal Recapitalisation Plan to the applicant in a meeting of 6 December 2021, the applicant received details of the Internal Recapitalisation Plan and impact thereof on solvency on 7 December 2021 but nevertheless decided the following day, on 8 December 2021, to launch urgent proceedings to place 3Sixty under curatorship. The acknowledgment by the applicant of the submission of 3Sixty's Internal Recapitalisation Plan is annexed hereto as **"KM10"**. The actual submission is annexed hereto as **"KM9"**.

36. I submit that the applicant could not have seriously, in good faith, and adequately considered and processed the Internal Recapitalisation Plan within such a short period of time. In fact, this is demonstrated by the applicant's misrepresentation (at worst) or misconception (at best) of what was presented to it. It tells this Court that even if the properties are worth R180 million, R50 million worth of those properties serve as security for Doves' obligation and must therefore be deducted from the R180 million. But 3Sixty did not rely on the R180 million value of the properties in question. It relied on the R122 million value and expressly conveyed this to the applicant at the meeting of 6 December 2021 and accordingly included as such in the impact of the Internal Recapitalisation Plan on financial soundness of 3Sixty as submitted to the applicant on 7 December 2021. Now the applicant creates the impression to this Court that it has caught 3Sixty in a lie of inflating the amount available for recapitalisation. This is egregious bad faith. R122 million (not R180 million) was more than adequate for internal recapitalisation purposes. The applicant obtained its provisional curatorship order by withholding and misrepresenting facts in this regard.

37. The bases upon which the applicant claims it *"does not believe"* that the Internal Recapitalisation Plan will materially change 3Sixty's financial position are speculative and, quite simply, wrong.

    37.1. It says the transfer of property will not assist 3Sixty's *"liquidity crisis"*. 3Sixty does not have a *"liquidity crisis"*, as demonstrated by the payment of claims in excess of R8 million in September 2021 even without receipt

of any premiums for the month of September 2021 in respect of the business conduct with Dignity. The applicant knew this or should reasonably have made enquiries before rushing to Court for an extraordinary order by way of an extraordinary process reserved only for exceptional circumstances that did not exist in this case. In any event, the applicant provides absolutely no facts to back up its extraordinary conclusion that the Plan *"will not assist"*.

37.2. It says *"it seems highly improbable"* that transfer of the properties would occur by 31 January 2022, it then being mid-December 2021. Again, this is highly speculative. Firstly, the Plan was presented to the applicant on 6 December, not in *"mid-December"*. Secondly, the applicant also fails to take into account that once the agreement has been signed, and the transaction is irreversible, the economic benefit transfers to 3Sixty immediately and significantly improves 3Sixty's financial soundness. It is not the registration of the transfer of the properties at the Deeds Office that would trigger economic benefit to 3Sixty; it is the signature of the agreement by both parties to the disposal agreement. 3Sixty even obtained legal advice to this effect. But even if the legal advice is, according to the applicant, wrong, it was duty bound as an *ex parte* applicant to disclose this fact to the Court or, if it was not aware, to enquire from 3Sixty. Its rushing to court on an *ex parte* basis for an extraordinary order in these circumstances suggests bad faith on its part.

37.3. The applicant says because most of the properties in question are commercial properties *"the values of which have decreased since March 2020"*, it is *"not convinced"* that the values provided are an accurate reflection of their current true value. Again, this is speculative. The applicant provides no factual evidence of what it claims. In any event, these properties comprise mostly mortuaries which were (macabre as this may appear) positively impacted by Covid-19 in light of the increase in

demand owing to increase in deaths attributed to the virus. In fact, 2 properties were sold in Cape Town at higher values than their book value. In fact, the most recent three independent valuations disprove the speculation that the properties decreased in value and point to an increase in the value of these properties. I attach the valuation reports as **"KM11"**. There is simply no truth in the applicant's unsupported claim that the values of these properties had decreased since March 2020. It is speculative, false, and falls to be rejected.

38. 3Sixty submits that the Internal Recapitalisation Plan is viable in significantly improving 3Sixty's financial soundness as confirmed by its actuary to the applicant. The applicant's failure to disclose the true facts to the Court is sufficient ground for discharging the rule.

(iii) *Dismissal of the third ground – the alleged failure to provide documents cannot be a reasonable ground for curatorship*

39. The third ground on which the applicant relies for curatorship relates to matters pertaining to the audit of the financial statements of 3Sixty as of 31 December 2020. These are: (1) the delayed finalisation of the audit, (2) concern about going concern status of 3Sixty and (3) reportable irregularities about which the auditor was informed by 3Sixty.

40. An application for curatorship is an inappropriate response in this regard. Failure to submit audited financial statements within the stipulated times is ordinarily dealt with by way of warnings and penalties. I have knowledge of insurers that were allowed periods of more than 12 months to submit annual financial statements to the applicant without being placed under curatorship.

41. The applicant is wrong in averring, as it does, that outstanding items from 3Sixty are contributing to the delay in finalising audited of financial statements.

42. The delays, if any, were caused by the Auditor who seemed hostile to 3Sixty and kept demanding information already submitted to him. 3Sixty's Actuary submitted a report on the valuation of insurance contract liabilities to the Auditor on 21 September 2021. In this regard, I refer to annexure **"KM12"**. Within the same annexure, there is email from Management of 3Sixty to the Auditor resubmitting the same report to the Auditor on 18 October 2021 following the Auditor indicating that the report was outstanding.

43. On 22 October 2021, Management of 3Sixty informed the auditors that no queries on review of the report were received. Several information pertaining to this review was submitted to the Auditors as agreed since 17 July 2021 and final submission of the report on 21 September 2021. The delay, at least from 21 September to 22 October 2021, is attributable to the Auditor and not 3Sixty.

44. Another example of delay in the audit that cannot be attributed to 3Sixty is the submission of various intermediary agreements to the Auditor. Various agreements were shared with the Auditor from 19 October 2021 to 26 October 2021. The Auditor queried these as outstanding on 7 December 2021. The details of this are contained in annexure **"KM13"**. Once again, the delays in this regard are attributable to the Auditor and not 3Sixty.

45. As far the auditor's concern of continuation of 3Sixty as a going concern, the applicant could have waited for the audit to be finalised to establish the final view of the Auditor. Additionally, the applicant could have consulted the independent Head of Actuarial Function, as it was entitled to do, on his review of the risk and solvency assessment projections of 3Sixty in respect of the going concern status of 3Sixty. Whilst the report of the Auditor is still outstanding, I submit an actuarial report, independently reviewed by independent Head of Actuarial Function, that sheds light on the going concern status of 3Sixty in 2022. Please refer to Annexure **"KM14"**.

(iv) *Dismissal of the fourth ground – the applicant's concerns about high executive staff turnover rate cannot be a ground for curatorship*

46. High Executive turnover is not uncharacteristic for small insurance companies that act as training grounds for bigger insurance companies. 3Sixty has had challenges with high executive turnover for several years and in those years, it did not encounter financial soundness challenges. It can only be that the applicant is attempting to mislead the Honourable Court with its strange attempt to form a relationship with recent executive replacements with financial soundness challenges. 3Sixty's financial soundness challenges were caused by the Covid-19 pandemic catastrophe.

47. The applicant says 3Sixty's Chief Executive Officer was appointed in 2019 only to be dismissed in 2021. By the applicant's own admission, there was irregular expenditure by the Chief Executive Officer. Such an executive could not be retained by a responsible Board, otherwise the Board would have been negligent, not acting in the interest of the company and putting policyholders at risk. 3Sixty should not be punished with curatorship for acting appropriately but should be commended for discovering the irregularities and acting on them.

48. The applicant also says 3Sixty's Chief Financial Officer was appointed in 2020 only to be removed in 2021. Although the Chief Financial Officer was not a suspect in fraudulent conduct, the Board felt he could have done better to safeguard 3Sixty. So, it removed him on the basis of the breakdown of trust. 3Sixty should not be punished with curatorship for discovering irregularities and taking appropriate action.

49. I submit with respect that this cannot be a ground for curatorship. Again, the applicant failed to disclose these material facts in its zealous endeavours to place 3Sixty under curatorship. This is sufficient ground for the discharge of the rule.

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(v) *Dismissal of the fifth ground – the applicant's failure to prove "unwillingness" or "inability" by 3Sixty to pay claims*

50. As regards the applicant's allegation of *"unwillingness"* or *"inability"* to pay claims, the applicant refers to a complaint by Dignity in respect of claims of R1.7 million that were raised on 13 August 2021. The unpaid claims are construed as due to solvency or liquidity challenges.

51. The delay in paying these claims was, however, not related to solvency but to suspicions on the business conduct of Dignity as a binder-holder (that is, a person with whom an insurer has concluded a binder agreement/a person who interacts with parties on behalf of the insurer) which 3Sixty had to investigate in the best interest of both the company and the policyholders.

52. In addition to the R1.7 million there was R8.2 million in claims that were paid in September 2021 following termination of the Dignity scheme on 31 August 2021. These outstanding claims were paid without any premium for the month of September 2021. It cannot be that a company that could pay R8.2 million in outstanding claims liabilities without corresponding premium income has a liquidity crisis or is unable to pay claims. Annexed hereto marked **"KM15"** are details of the complaint, directive and list of payments by 3Sixty in this regard.

53. The complaints and delay in paying these claims was not related to financial soundness, but suspicions that these outstanding claims were uncharacteristically high. 3Sixty had to investigate these to act in the best interest of the both the company and the policyholders.

54. The applicant also refers to a complaint by members of the Chemical Industries National Provident Fund (**"CINPF"**). It is disappointing that the applicant puts forward an incoherent letter from a single member as evidence to the Honourable Court. The CINPF is regulated by the FSCA and the applicant could have requested

the FSCA to verify the allegations before bringing them to the Honourable Court. The applicant presents the single member as representing members of the CINPF. There is no affidavit obtained from this member to legitimise the relevance of the evidence with respect to this application, nor does it appear that the applicant has done anything to verify with the CINPF the allegations contained in the letter. This is extremely disappointing from an organisation such as the applicant: a regulator.

55. The applicant asked 3Sixty whether there were issues regarding payment of claims to CINPF members. 3Sixty correctly indicated that there were no issues. The applicant however simply decided to outright doubt the integrity of 3Sixty and proceed to place reliance on an unverified source without verifying the alleged claims with the legitimate representatives of the CINPF members, being the Trustees of the CINPF.

56. The applicant acted irresponsibly, without due care on a potentially serious matter of unpaid benefits to potential policyholders. Had the applicant acted responsibly and honourably, it would have uncovered the following facts:

56.1. There is no policy of insurance for Group Life Insurance and Permanent Disability between 3Sixty and CINPF members. There could therefore not be any money owing by 3Sixty in respect of Group Life Insurance and Permanent Disability benefits.

56.2. The claim that there is potentially R36 million due from 3Sixty to CINPF members for Group Life Insurance and Permanent Disability benefits is unfounded.

56.3. CINPF self-insures Group Life Insurance and Permanent Disability on its balance sheet and has no policy with 3Sixty in this regard.

56.4. There is a policy of insurance between 3Sixty Life and CINPF in respect of funeral assistance benefits and temporary disability benefits.

56.5. The ability of 3Sixty to pay claims in respect of funeral assistance benefits and temporary disability benefits for CINPF members despite delays in receiving premiums does not support the unsubstantiated claims by the applicant that 3Sixty is unable to pay claims and could be facing a liquidity crisis. As at the time of deposing to this affidavit CINPF owes 3Sixty unpaid premiums and fees of R9.6 million.

57. I therefore ask the Court to reject all the applicant's grounds for placing 3Sixty under curatorship and discharge the rule.

E. THERE IS NO RISK TO POLICYHOLDERS

58. In addition to the five primary grounds upon which the applicant founds its case, the applicant alleges that there are risk to policyholders and With-Profit Policyholders in particular.

59. The applicant however fails to provide any evidence that the interests of With-Profit Policyholders are at risk.

60. 3Sixty considers the Independent Head of Actuarial Function as the custodian of the interests of With-Profit Policyholders and the Independent Head of Actuarial Function has the same understanding. The applicant has discussed the matter of the interests of With-Profit Policyholders on at least two occasions on 21 April 2021 and 5 October 2021 with 3Sixty's Actuary and the Independent Head of Actuarial Function. It was explained to the applicant that the interests of the With-Profit Policyholders are not at risk. Again, the applicant has failed to disclose this fact when seeking curatorship on an *ex parte* basis. Had notice been given to 3Sixty, this

fact would have been placed before Court and the provisional order would most likely not have been granted. Once again, this is another factor that is enough to discharge the rule.

61. Between 5 October 2021 and the date of the founding affidavit (15 December 2021), the applicant had not consulted further with 3Sixty's Actuary and the Independent Head of Actuarial Function on the interests of With-Profit Policyholders.

62. The second wave of Covid-19 infections had a devastating impact. I wish to point out to the Honourable Court that the applicant's Standard Formula used to measure financial soundness, including liquidity shortfall indicators, has spectacularly failed to anticipate the mortality and catastrophic risks brought about by the Covid-19 Pandemic. At the peak of the second wave of Covid-19 infections, 3Sixty experienced a liquidity strain (not crisis). To alleviate this and avoid defaulting on claims to policyholders, a loan of R70 million was obtained from the With-Profit Policyholders. This loan was drawn on 21 January 2021. Annexure **"KM16"** hereto contains a resolution in respect of this loan which was taken at a Board meeting of 25 February 2021. The Independent Head of Actuarial Function confirmed that the terms of the loan were acceptable for managing the assets supporting the benefits due to With-Profit Policyholders and agreed that the recoverability of the loan and impact on With-Profit Policyholders will be performed with the Own Risk and Solvency Assessment (**"ORSA"**) projections. 3Sixty has already repaid R14 million towards this loan and the Independent Head of Actuarial Function believes that the outstanding R56 million is recoverable from the projected business operations of 3Sixty. The Independent Head of Actuarial Function is therefore not opposed to the loan being rolled over on the same terms for a further period of 12 months. Lastly, it is noted from the latest opinion of the Independent Head of Actuarial Function, annexed hereto as **"KM17"**, that the reasonable benefit expectations of the With-Profit Policyholders are not at risk.

63. The applicant's assertion that the interests of With-Profit Policyholders are at risk is therefore misleading to the Honourable Court.

64. The applicant says the application is *"at least to protect the interest of With-Profit Policyholders"*. It is reasonable to deduce from this statement that according to the applicant, the biggest concern for the application in as far as it relates to protection of policyholders, has to do with protecting the interest of With-Profit Policyholders. Having disproved that the interests of With-Profit Policyholders are at risk, it then follows that the risk to the interest of other policyholders, which risks are less than that of With-Profit Policyholders, are also not at risk.

65. I now turn to set out the facts regarding the financial soundness of 3Sixty.

F. 3SIXTY'S FINANCIAL SOUNDNESS

66. In what follows, I demonstrate the attempts made in good faith by 3Sixty with the applicant and the FSCA to ensure that the financial soundness of 3Sixty is assured. The applicant has however, despite its own shortcomings, been dismissive of these attempts, and this has resulted in the precarious situation in which 3Sixty now finds itself. I submit that if the applicant meaningfully engages in good faith with 3Sixty on these issues, the financial soundness of 3Sixty can be assured.

(i) The applicant's financial soundness standards

67. The applicant has prescribed financial soundness standards for insurers. More specifically, the applicant has prescribed a Standard Formula which is to be applied by insurers in determination of the Solvency Capital Requirement (**"SCR"**) and the Minimum Capital Requirement (**"MCR"**). The formulae for determination of the SCR and MCR is referred to in this affidavit as the Standard Formula.

68. I would like to point out the following about the Standard Formula that the applicant prescribes:

68.1. The Standard Formula is meant to ensure that insurers remain able to pay claims in the face of 99.5% of extreme risk events. This is equivalent to allowing the Standard Formula to fail to provide for enough funds to cover claims only in one (1) year out of 200 years.

68.2. The Standard Formula anticipates that the extreme risk event for increased mortality is deaths increasing by 15% from expected levels.

68.3. The Standard Formula also anticipates that a catastrophic pandemic event would last for three (3) months.

69. It is common cause that the impact of the Covid-19 Pandemic has been much worse than the Standard Formula anticipated. Death rates increased by more than 15% from normal levels for most times since the Covid-19 Pandemic affected South Africans. Furthermore, the duration of the Covid-19 Pandemic catastrophe has lasted longer than the Standard Formula's three (3) months. The Covid-19 Pandemic catastrophe has been ongoing for more than 21 continuous months in line with the national state of disaster declared on 15 March 2020.

70. The Standard Formula, the prescript of the applicant to insurers, has failed in the face of the Covid-19 Pandemic.

71. At the beginning stages of the Covid-19 Pandemic, the applicant and FSCA jointly issued a statement dated 16 April 2020 and titled *"Joint Communication 1 of 2020 COVID-19: Regulatory response"*, annexed hereto marked **"KM18"**. The following appears from the Joint Statement:

71.1. The Prudential Authority will permit insurers that are experiencing conditions of financial unsoundness, that is, SCR ratios below 100% due only to the impact of COVID-19, to continue operations without exercising regulatory action.

71.2. Minimum Capital Requirement (MCR) ratios below 100% will not be tolerated and will be met with stringent supervisory intervention by the Prudential Authority.

72. However, in allowing lower SCR ratios and not allowing lower MCR ratios means that the applicant had not really allowed the relief it purported to provide to insures who experience financial unsoundness due to the impact of the Covid-19 Pandemic because in the ordinary course of its conduct, the applicant had allowed insurers to have lower SCR ratios for some time and had not allowed lower MCR ratios.

73. The applicant failed to conduct itself in good faith in assisting the insurance industry. The relief communicated to the industry was therefore false.

74. It is common cause that on the date of the Joint Statement by the applicant and FSCA, the impact of Covid-19 Pandemic on mortality was underestimated by many, including the applicant. This is evidenced by the assertion in the Joint Statement that the Covid-19 pandemic is also expected to put a strain on underwriting activities, although arguably not to the severity envisaged in the SCR calibration. The applicant therefore thought that the failures of the Standard Formula would not happen.

75. What followed is that the published relief, false as it may be, to the insurance industry for purposes of coping with the Covid-19 Pandemic catastrophe by the applicant and FSCA that was based on a view that deaths would not increase by more than 15% and that the catastrophe will not be longer than three (3) months,

had no chance of being adequate given what we have come to know about the Covid-19 Pandemic catastrophe.

76. It was an error of judgment and prudential authority that, as more information became known about the dire effects of the Covid-19 Pandemic on mortality, the applicant and FSCA did not seek to review their position and publish an updated Joint Communication on their regulatory response to the COVID-19 Pandemic. The applicant and FSCA failed to take responsibility to:

76.1. Admit that the Standard Formula has failed in the face of the Covid-19 Pandemic catastrophe.

76.2. Consider the necessity of relief to the insurance industry, including allowing lower MCR Cover ratios, extending the time within which affected insurers needed to resolve the challenges and the need to facilitate funding or liquidity for affected insurers.

77. As a result of the applicant's and FSCA's inaction at a time of a great crisis that significantly threatens the insurance sector, 3Sixty and other insurance institutions are left in an invidious and precarious financial position.

78. The applicant itself acknowledged in the Joint Communication in relation to the regulatory response to the COVID-19 Pandemic that *"insurers may experience lower SCR ratios during this crisis as a result of the broader COVID-19 impact and second-order effects"*.

79. Larger insurers with diversified risks, insuring both longevity and mortality, benefited from increased deaths amongst pensioners in their annuity books and were thus cushioned from the impact of Covid-19 on their financial soundness. Ability to diversify risks comes with maturity and size of insurers. It therefore cannot be reasonably expected that smaller, emerging insurers should have been able to

diversify risks of mortality and with longevity. In any event, the Standard Formula is supposed to consider diversification of risks in determining solvency capital requirements of insurers.

80. In its founding affidavit, the applicant states that a period of six (6) months is provided for an insurer to restore eligible own funds to at least the level of MCR. The six-month period may be extended by the applicant if the circumstances warrant it. The applicant asserts that it has engaged with 3Sixty since November 2020 regarding bringing itself to financial soundness in accordance with regulatory regime and believes that such period of engagement was sufficient.

81. Our engagement with the applicant on a remedial plan to restore financial soundness started on 31 January 2021 after the December 2020 QRT revealed that the MCR had been breached. At the time of the application, 10 months had elapsed since the turnaround plan had been submitted to the applicant. The discussion the applicant refers to from November 2020 had to do with failure to meet the SCR. 3Sixty was yet to breach the MCR at that time. 3Sixty did not anticipate the misery to be brought upon our country by the second wave of Covid-19 deaths that peaked in January 2021 and caused the MCR to be breached. It is therefore misleading to the Honourable Court for the applicant to suggest, to the extent that it does, that 3Sixty started its recapitalisation plans in November 2020. There were other actions to restore financial soundness that were implemented then, but these were not recapitalisation plans.

82. If it is legislated that the MCR should be met within six (6) months of breach, and a longer period should the circumstances warrant, we submit with respect that the applicant has been unreasonable in not providing a longer period for 3Sixty to recapitalise this in **circumstances that absolutely warranted** a significant extension to the legislated time frames. This is particularly so given that the life insurance business became considered high-risk on a medium-term perspective for

as long as there was no clarity on the risk of the Covid-19 Pandemic. This environment still exists to date.

83. The applicant has not taken responsibility for its failed Standard Formula and has not acted in good faith to resolve serious financial issues experienced by the insurance industry which were brought about by a very unfortunate global catastrophe of unprecedented proportions, but is with head in the sand, applying ordinary timelines in extraordinary times.

(ii) *The SALT transaction*

84. The FSCA was informed by 3Sixty of 3Sixty Group's intention to dispose of shares in SALT Employee Benefits (**"SALT"**), which is an administrator of retirement funds, for purposes of recapitalising 3Sixty.

85. This preferred transaction would have led to full compliance with MCR and SCR requirements. Just prior to the transaction being concluded, the FSCA attacked SALT and one of its clients on allegations against SALT that occurred prior to acquisition of SALT by 3Sixty Group.

86. The conduct of the FSCA led to a collapse of the transaction as it raised concerns for the potential investors that intended buying interest of 3Sixty Group in SALT.

87. 3Sixty respectfully submits that the FSCA's conduct in this regard was reckless and action by the FSCA in this regard against SALT is yet to be taken. This failure suggests that the FSCA may have been motivated by a desire to frustrate the SALT transaction so that 3Sixty fails in its recapitalisation efforts.

88. The SALT transaction was not concluded because the investors were spooked by the FSCA's attack on SALT which the investors considered as a risk event that could either result in the SALT EB license being cancelled or SALT being prejudiced from renewing its contract with its main clients. By its attack on SALT, the FSCA placed itself where it appears to have a vested interest in the award of the contract. The FSCA has appointed a Statutory Manager at the Private Security Sector Provident Fund (PSSPF) and has been there for longer than 3 years. It appears that at the time of the adjudication of the tender the Statutory Manager, who reports to the FSCA, will have sway over the decision to award the contract. The FSCA has thus established itself as a player and referee in this contract and is biased against SALT.

89. These developments created a situation where the investors did not want to take on the risk and wanted to use 3Sixty to hedge their play. But 3Sixty was forced to

terminate the transaction. 3Sixty owns 74.9% of SALT and the other party did not want to assume 100% of a company that has FSCA risk. The latest transaction signed for the disposal of SALT is a watered-down version where 3Sixty gets paid 50% of the proceeds of the sale in May 2022 and the balance upon the renewal of the PSSPF contract due to the Purchaser's other funders losing interest in the transaction citing FSCA risk. It is 3Sixty's intention to claim the losses against the FSCA should SALT lose the PSSPF contract if the FSCA retained the Statutory Manager 6 months prior to the award of the contract. The FSCA is acting on behalf of industry players. It is competing with SALT and is intent on destabilizing SALT EB to ensure it does not get the renewal.

90. I attach as **"KM19"** the transcript of my WhatsApp communication with Mr Olano Makhubela expressing my dismay that the FSCA has attacked SALT EB knowing very well that the proceeds from the sale of SALT EB would be used to recapitalise 3Sixty. I also attach as **"KM20"** a letter following on the meeting between 3Sixty, the FSCA and the applicant on the subject of the FSCA torpedoing the SALT transaction.

91. It is thus clear that the FSCA's irregular and *mala fide* interference with the SALT transaction has prevented 3Sixty in its recapitalisation efforts chiefly, it appears, because it is in competition with SALT. This glaring conflict of interest, of a regulator competing with businesses that it is supposed to regulate, is egregious and plainly irregular.

(iii) *The Internal Recapitalisation Plan*

92. Central to the argument of the applicant in bringing this application is that 3Sixty is unable to recapitalise without assistance of curatorship.

93. 3Sixty is however able to receive a portfolio of properties owned and occupied by its shareholder, Doves, as capital (**"Internal Recapitalisation Plan"**). Once this

Internal Recapitalisation Plan is implemented, as it will be with the discharge of the rule *nisi*, 3Sixty's financial soundness will be immediately resolved.

94. The applicant has dismissed this plan as not desirable in this application but has failed to provide such feedback to 3Sixty before approaching this Honourable Court. 3Sixty learns for the first time that the applicant is rejecting the plan in its founding affidavit. Had it conveyed its concerns with the plan to 3Sixty before launching this application, 3 Sixty would have explained to the applicant why the reasons lack merit. By rushing to court without notice, it would seem that the applicant's intention may have been to deny 3Sixty that opportunity. This is an abuse of the court process and litigation in bad faith.

95. I submit that the applicant has not acted in good faith.

96. By proving to the Honourable Court that the Internal Recapitalisation Plan is valid, and the concerns of the applicant are speculative and unsubstantiated, it should be clear that the applicant has acted with undue haste and recklessness to place 3Sixty under curatorship.

97. Before outlining the merits of the Internal Recapitalisation Plan, I wish to summarise the following:

97.1. 3Sixty Group explored raising funds from banks and institutional investors to fund 3Sixty. Given the heightened risk in the life insurance sector due to the unknown impact of Covid-19, these attempts were not successful. This included funds that were meant to assist businesses distressed by Covid-19 that were to be accessed through the banks, with some guarantees from Government.

97.2. 3Sixty Group undertook to divest out of one of its investments to recapitalise. This transaction (the SALT transaction) was frustrated by the FSCA and was delayed.

97.3. 3Sixty thought it best to first try to raise external funding before using internal means of recapitalisation. The idea was to preserve internal means of recapitalisation as funding of last resort, which needed to be preserved for the future given the uncertainty pertaining to Covid-19.

97.4. It must be emphasised to the Honourable Court that the 3Sixty Group was never unwilling to recapitalise 3Sixty.

98. The Internal Recapitalisation Plan was discussed with the applicant on 6 December 2021 after other means of funding had not been successful by 1 December 2021. The applicant says that the impact on solvency of the Internal Recapitalisation Plan was to be submitted to it by end of business day on 7 December 2021. The founding affidavit is however silent on the applicant receiving the impact of financial soundness on the Internal Recapitalisation Plan. This appears to be a deliberate attempt to mislead the Honourable Court by not indicating that the impact of the recapitalisation plan on financial soundness was received by the applicant on 7 December 2021 as was promised. In this regard, I annex as annexure **"KM10"** an acknowledgement by the applicant of the submission. The actual submission being referred to is in annexure **"KM9"** hereto. The applicant did not provide feedback to 3Sixty on these submissions.

99. The proposed recapitalisation indicates that the MCR would be exceeded by 44%. The applicant disregarded this recapitalisation plan which is easily achievable. Failure by the applicant to inform this Honourable Court that it did indeed receive the impact report of the Internal Recapitalisation Plan is material.

100. According to the Joint Statement by the applicant and FSCA, this should be acceptable given 3Sixty's financial soundness challenges are due to the Covid-19 Pandemic.

101. The submission now made by the applicant that it *"does not believe that the transfer of Dove's properties will materially change the financial position of 3Sixty"* is unsubstantiated for, among others, the following reasons:

101.1. It was submitted to the applicant that the Internal Recapitalisation Plan would have an impact of improving the MCR and SCR cover to 144% and 75%, respectively. Both are significant improvements. The applicant has not indicated to the Honourable Court why it thinks improving the MCR and SCR cover to 144% and 75%, respectively, is not a significant improvement. This is a sufficient basis for discharging the rule.

101.2. The latest ORSA projections of 3Sixty, covering the 2022, 2023 and 2024 financial years is contained in Annexure **"KM14"**. These have been reviewed by the Independent Head of Actuarial Function. Contrary to the baseless speculations of the applicant, these projections indicate that the Internal Recapitalisation Plan improves 3Sixty's financial soundness, with no liquidation and default on insurance obligations even under some foreseeable and relevant material risks scenarios. The "justification" that there is a real risk of default by 3Sixty Life on insurance obligations to policyholders, or of 3Sixty reaching a point where liquidation is inevitable, is unsubstantiated and must accordingly also be dismissed.

102. The view of the applicant that the transfer of immovable property *"will not assist 3Sixty's liquidity crisis"* as it will take long to realise cannot be sustained for the following reasons:

102.1. Firstly, 3Sixty does not have a *"liquidity crisis"* as explained earlier in this affidavit.

102.2. Secondly, 3Sixty continues to pay claims and has not defaulted in this regard.

102.3. Thirdly, the reduction of the loan from With-Profit Policyholder Fund by R14 million is inconsistent with a company facing a liquidity crisis.

102.4. Fourthly, 3Sixty last experienced a liquidity strain (not crisis) in January 2021 in the peak of the second wave of Covid-19 infections. Since then, it has always had the ability to pay claims. Financial projections of 3Sixty's ORSA for financial year 2022 do not anticipate a liquidity crisis. See annexure **"KM14"** hereto in this regard.

102.5. Fifth, there are 53 individual properties most of which are valued between R1 million and R3 million spread out around the country and can be sold separately.

102.6. Sixth, an independent property valuator has indicated that over 50% of the value of the properties could be realised within 3 months. I annex hereto as annexure **"KM11"** a report on the valuation of the properties.

103. The view of the applicant that it is *"highly improbable that the transfer by 31 January 2022 will be realised"* was misleading and speculative for the following reasons:

103.1. Once the sale agreements are concluded, the transaction is irreversible and the economic benefit transfers to 3Sixty immediately and significantly improving 3Sixty financial soundness. In this regard, I attach a legal opinion as annexure **"KM21"** and an accounting opinion as annexure **"KM22"**.

103.2. Had the provisional curatorship not been granted, the economic interest in the properties could have been transferred before 31 December 2021 when 3Sixty would have countersigned the disposal agreement already signed by Doves.

103.3. The provisional curator has however allowed the offer to lapse. In this regard I refer to annexure **"KM23"** hereto.

103.4. Following the provisional curator's failure to accept the properties, Doves renewed the offer to transfer the properties to 3Sixty through the Board of Directors of 3Sixty. The Board of 3Sixty has resolved to accept the offer and will be bound by this decision as soon as the provisional curatorship is lifted, and as such the lifting of provisional curatorship has an immediate impact of significantly improving 3Sixty's financial soundness. In this regard I refer to annexure **"KM24"** hereto.

104. The allegation that the properties are commercial, the values of which have *"decreased since March 2020"* and that the applicant is *"not convinced"* that the values of the properties provided by 3Sixty are an accurate reflection of their current true value is again speculative. The following considerations are important and material:

104.1. The applicant should not have dismissed the proposed transaction on the basis of its uninformed conclusion that the properties have declined in value since March 2020. The applicant should have acted reasonably and requested updated independent valuation reports indicating the current value of the properties before approaching the Honourable Court.

104.2. Doves obtained valuation reports on the properties from three independent sources. All reports disprove the applicant's statement that the properties have reduced in value since March 2020.

104.3. The first recent independent report is as at 31 December 2020 for Doves' annual financial statements. As per Doves' accounting policy, the properties are valued on a cycle of three years. A third of the properties that were most recently valued were valued as at 31 December 2020. This is after the March 2020 date the that applicant speculates the properties

values would have declined. The 31 December 2020 valuations amount to R41 million compared to R37 million as at 31 December 2017, indicating that the properties have not declined in value and that the valuations of the properties may be relied upon. The same conclusion can be reached about other properties that were last valued as at 31 December 2018 and 31 December 2019.

104.4. A second independent valuation report of the properties as at 31 December 2021 indicates that the value of the properties is R122 million.

104.5. A third independent valuation report of the properties as at 31 December 2021 indicates that the value of the properties is R125 million.

104.6. The applicant ought to have acted responsibly and have followed a similar process before approaching the Court which the applicant failed to do.

G. THE UNDESIRABILITY OF CURATORSHIP

105. Since 2009, the regulator of insurance companies has placed six (6) insurance companies under curatorship. Annexure **"KM25"** contains articles and statements on these curatorships.

106. Four (4) of the six (6) companies placed under curatorship since 2009 were ultimately liquidated. These are; Saxum Insurance (2016), Nzalo Insurance Services (2019), Bophelo Life Insurance (2019) and Nestlife Assurance (2021).

107. The fifth of the companies placed under curatorship since 2009, New Era Life Insurance, received several bailouts from the State as it was partly State-owned. Now it is wholly owned by the State. The curatorship was destructive, and despite the bailouts from the State, the company remains a shadow of its former self when it was placed under curatorship in 2009. Curatorship was not successful in maintaining the business of that company. Jobs were lost and policyholders were frustrated. Had it not been for the State bailout, the number of liquidations would have increased to five (5) out of the six (6) companies that were placed under curatorship since 2009.

108. The sixth of the companies placed under curatorship since 2009, Resolution Life, had a change in shareholding and became part of another insurer.

109. From the above facts, it is clear that curatorship is most likely to lead to the liquidation of 3Sixty or to its acquisition (probably on the cheap) by a larger insurer thereby substantially preventing or limiting competition in the life insurance market, something that is specifically prohibited by the Competition Act which states as one of its purposes the promotion of *"a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons"*. This curatorship will be devasting and disempowering to workers who are both

policyholders and beneficial owners of 3Sixty. It will also result in liquidation of 3Sixty or the decrease in the ownership stakes of historically disadvantaged persons in the life insurance market.

110. Since the court order granting provisional curatorship, I have been contacted by people who are part of operations in the insurance sector offering help. It appears the curatorship of 3Sixty is a perfect opportunity for its acquisition. This is in line with the observations made about curatorship in the insurance sector.

111. For the above reasons, there is a reasonable possibility that the curatorship of 3Sixty will ultimately result in 3Sixty's liquidation or absorption into a larger insurer or entity not majority-owned by black people.

112. The applicant claims that curatorship will preserve the current position of 3Sixty, provide an opportunity to source funding, prevent *"further erosion"* of SCR, forestall 3Sixty's ultimate liquidation, is in the best interest of 3Sixty's business, its policyholders and the public at large. This is patently false and deliberately misleading. As clear evidence shows, curatorship has a five (5) out of six (6) (i.e. 83%) likelihood of resulting in liquidation. The argument that curatorship will forestall liquidation cannot be sustained. Instead of the applicant being ashamed of this record, it has decided to mislead the Honourable Court to attempt to perpetuate a destructive regulatory tool. The likely outcomes of curatorship, being liquidation of 3Sixty or acquisition of 3Sixty by whomever has funds will not be in the interest of the public at large as this move will be against the economic transformation trajectory of this country as well as reduced competition in the insurance sector. It should be common cause that the lack of racial economic transformation in the country and worse, its reversal, is a significant risk to the aspirations of this country that should not be taken lightly.

113. The many jobs that are supported by 3Sixty will be at risk due to curatorship.

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114. Since provisional curatorship was granted, 3Sixty has experienced the following signs that curatorship will be detrimental to financial soundness and has caused disruptions and inconvenienced policyholders:

114.1. 3Sixty was terminated by a retirement fund client. This is 10% of its premium income in 2022. 3Sixty is concerned that more retirement fund clients may follow the same approach. Curatorship is therefore not preserving the business of 3Sixty as the applicant seeks to argue. Rather, it is bringing about destruction.

114.2. The Curator's role has resulted in instances of delays in payment of claims and service provider invoices. This has caused anxiety and panic amongst stakeholders about the future of 3Sixty.

114.3. The curator has failed to countersign the agreement to recapitalise 3Sixty with property assets, having been provided over two (2) weeks to consider the transaction.

115. Curatorship is undesirable in the circumstances. It is, in fact, destructive of value.

116. The applicant's dogged determination, supported by the FSCA, to keep 3Sixty under curatorship in these circumstances seems suspicious. I say so because over the years, there have been allegations of improper motives against regulators in the financial sector. Some of these allegations have been from people who were employed by these regulators. In this regard I refer to annexure **"KM26"** hereto. I do not make these allegations likely. However, because of the inexplicable (and suspicious) conduct of the applicant and the FSCA in the face of glaring evidence showing that curatorship is not an appropriate regulatory intervention in this case, I consider it necessary to bring these allegations to the Court's attention.

H. DISMISSAL OF OTHER "JUSTIFICATIONS" FOR APPLICATION FOR CURATORSHIP AND AVAILABILITY OF ALTERNATIVE REMEDIES

117. The applicant says curatorship is justified because financial soundness has not been restored since engagements in November 2020. Tthe Applicant repeats this *"justification"* by saying that Management of 3Sixty appears unable to restore financial soundness. This *"justification"* should be rejected as misleading the Honourable Court for the following reasons:

117.1. A workable Internal Recapitalisation Plan was presented to the applicant and is being unfairly and irrationally dismissed.

117.2. The plan would have been executed already had it not been for provisional curatorship since the Curator has failed to execute the transfer agreement. These are the first signs of how detrimental the curatorship will be. Nonetheless, the Board of 3Sixty has accepted the properties pending the discharge of the rule *nisi*.

117.3. Restoring financial soundness through recapitalisation in terms of the narrow view of the applicant would not be possible unless a halt is put to operational losses. Halting operational losses avoids worsening of the financial soundness position and puts a business on a better footing to attract funding. Management has been successful in implementing the following in restoring financial soundness:

117.3.1. Since engaging with the applicant in November 2020, 3Sixty took a decision to increase premiums as the future mortality risk covered by the insurance policies had increased. Policyholders were notified in December 2020 of increases that would take effect on 1 February 2021. This premium and

benefit review was successfully and fully implemented by 1 May 2021.

117.3.2. The operational expenses, excluding commission, of 3Sixty averaged R18 million per month for the financial year ending 31 December 2021. An intensive cost cutting exercise was implemented in 2021. According to the Management accounts, the average expenses for the six (6) months to 30 November 2021 were R15 million per month, reflecting a 17% reduction in expenses. Whilst the full benefits of these reductions in operating expenses will be felt in 2022, I submit that this is a significant contribution to restoring financial soundness.

117.3.3. The risk exposures 3Sixty was taking were reduced effective September 2021. The impact was a reduction of premium income by 17%.

117.3.4. The absence of the actuaries of the applicant from this application that is premised on financial soundness is strange. It demonstrates that the applicant did not apply due care and diligence in dealing with this matter and rushed into many inaccurate conclusions on financial soundness, failing to get appropriate advice. Despite being informed of other plans to restore financial soundness other than recapitalisation, the applicant does not seem to have considered these in assessing the ability of the Management of 3Sixty in restoring financial soundness.

118. The applicant says curatorship is "justified" because the most recent unaudited accounts show the position is "worsening", thus in turn making it difficult for 3Sixty to procure the funding it requires. This statement is false and must be rejected since

the applicant outright misleads the Honourable Court. As per the OF2 statement, annexed hereto as **"KM27"**, QRTs for July 2021, August 2021, September 2021 and October 2021, which the applicant had in its possession by the time of launching this application, contained the "unaudited accounts" that the applicant refers to in the column "IFRS Basis". The shareholders' funds of 3Sixty are "Assets less Liabilities", which is "Basic Own Funds". This is R29 million (for July 2021), R19 million (for August 2021), R19 million for (September 2021) and R23 million (for October 2021). The Basic Own Funds reduced in August 2021 from R29 million to R19 million, remained unchanged in September 2021 at R19 million, and improved to R23 million in October 2021. It is therefore patently false for the applicant to contend, as it does, that the most recent audited accounts, being the October 2021 accounts at the time of the application, suggest the position is "worsening".

119. Furthermore, it is common cause that in measuring financial soundness one must consider the eligible Basic Own Funds in relation to the MCR and SCR and not just the unaudited accounts. The applicant has not taken due care and diligence in this regard. Once again, it becomes evident that the applicant has not consulted its own actuaries, who should be the experts in their team when it comes to measurement of financial soundness.

120. I stress again that the Honourable Court should find that the submissions of the applicant on financial soundness in this application are ill-advised and unreliable.

121. Turning to appropriate measures of financial soundness, the OF1 statement, annexed hereto as **"KM28"**, QRTs for July 2021, August 2021, September 2021 and October 2021, which the applicant had by the time of the application as well as the OF1 statement for the November 2021 QRT is also included. The MCR Cover of 3Sixty is -1.42 for July 2021, -1.47 for August 2021, -1.76 for September 2021 and -1.70 for October 2021. Whilst this deteriorated from July 2021 (-1.42) to September 2021 (-1.76), there was an improvement from the September 2021 return (-1.76) in the October 2021 return that the applicant had in its possession at the time of the

application (-1.70). The position improved further with the November 2021 solvency assessment QRT.

122. The SCR Cover of 3Sixty is -0.47 for July 2021, -0.50 for August 2021, -0.69 for September 2021 and -0.66 for October 2021. Whilst this deteriorated from July 2021 (-0.47) to September 2021 (-0.69), there was an improvement in the latest return (October 2021, being -0.66) that the applicant had in its possession at the time of launching this application. The position improved further with the November 2021 solvency assessment QRT.

123. The applicant's allegation that curatorship is justified because there is a real risk of default by 3Sixty on insurance obligations to policyholders or of reaching a point where liquidation of 3Sixty is inevitable is unjustified and irresponsible speculation by the applicant.

124. The applicant has published, as regulations, Prudential Standard GOI 3.1 (**"the Prudential Standard"**) which require Own Risk and Solvency Assessment (ORSA) for insurers. One of the key requirements of the Prudential Standard is that the ORSA must assess the current, and likely future, financial soundness of the insurer across a range of scenarios. According to Prudential Standard, the ORSA must be subject to robust verification by appropriately qualified, independent persons. Paragraph 10.1 on the Prudential Standard requires that an insurer must submit a report on each ORSA, and the methods used in that ORSA, to the applicant within two weeks of approval by the board of directors. It therefore follows that the ORSA is an important tool for insurers and the applicant in forming a view about the future financial soundness of an insurance company. I would have thought the applicant would have relied on its own standards and regulatory framework and considered the ORSA of 3Sixty in making assertions about 3Sixty defaulting on policyholder obligations or reaching a point where liquidation is inevitable. Sadly, the applicant has shown disregard for its own regulations and standards for governance of insurers and ventured into speculations about 3Sixty.

125. In the course of engagements with the applicant since November 2020, 3Sixty submitted two reports of ORSA projections to the applicant. The reports were dated 8 March 2021 and 13 May 2021. The projections did not reveal that there was any risk of default on insurance obligations to policyholders or of reaching a point where liquidation of 3Sixty is inevitable. The applicant has not queried these reports, nor has it sought to request a revised report on ORSA projections before making speculations about the future of 3Sixty. The applicant has acted unreasonably and in bad faith in this regard.

126. The latest ORSA projections of 3Sixty, covering the 2022, 2023 and 2024 financial years is contained in annexure **"KM14"**. These have been reviewed by the Independent Head of Actuarial Function. Contrary to the baseless speculations of the applicant, these projections point to an improved financial soundness and liquidity of 3Sixty, with no liquidation and default on insurance obligations even under some foreseeable and relevant material risks scenarios. The "justification" that there is a real risk of default by 3Sixty on insurance obligations to policyholders or of reaching a point where liquidation of 3Sixty is inevitable is accordingly unsubstantiated and without any basis.

127. The applicant says curatorship is "justified" because it is in the interest of all stakeholders, to preserve current position of 3Sixty Life, source funding for 3Sixty Life and forestall ultimate liquidation of 3Sixty Life. These justifications must be dismissed as misleading. I have addressed the implications of curatorship above. I have also addressed the unfounded prophesy on 3Sixty's liquidation, in the absence of curatorship, above.

128. The applicant says curatorship is "justified" because the curator will properly and independently investigate past transactions, expenditure, SCR and MCR of 3Sixty and facilitate an objective and comprehensive analysis of 3Sixty's affairs. This

"justification" unreasonably undermines the professional integrity of the **Independent Professionals** contracted by 3Sixty in terms of the Insurance Act.

129. In terms of the Insurance Act, 3Sixty appoints an **Independent External Auditor** and **Independent Head of Actuarial Function**. The applicant should first advance concerns about the independence of these functions before undermining their ability to discharge their functions.

130. The SCR and MCR of 3Sixty are independently reviewed by the Independent Head of Actuarial Function. There is no valid justification for a curator to contend with the role of the Independent Head of Actuarial Function.

131. The past transactions and expenditure of 3Sixty are reviewed by the Auditor. The current Auditor has reviewed the transactions and expenditure of 3Sixty since the 2019 financial year. There is no valid justification for a curator to contend with the role of the independent external Auditor.

132. In addition to the above, in 2020, the applicant appointed an independent auditor, Gerdus Dixon of Deloitte, to investigate the affairs of 3Sixty for the 2017, 2018 and 2019 financial years. There were no material adverse findings from this investigation. It is not clear why the applicant has not appointed an independent auditor, as it did in 2020. Instead, the applicant seeks an extreme remedy of placing 3Sixty under curatorship, causing unnecessary interference and instability for 3Sixty's policyholders, employees, business partners and shareholders.

133. Despite the availability of alternative remedies as demonstrated above, including statutory management in terms of section 5A of the Financial Institutions Act, when regard is had to the allegations put forth by the applicant in support of its application in circumstances where the applicant has disregarded information submitted to it, has failed to consult actuaries that are independent on complex matters of financial

soundness, has made speculative accusations without verification, it becomes clear that the applicant is not acting in good faith.

134. Furthermore, the applicant has identified Yashoda Ram (**"Ms Ram"**) as the curator. Whilst 3Sixty holds nothing against Ms Ram, 3Sixty does not believe she is a suitable candidate to assist 3Sixty with the challenges the applicant says Management and the Board of 3Sixty were not able to resolve. 3Sixty has observed that both Ms Ram and her support team are out of their depth. She is unfortunately caught up in the applicant's reckless approach and consequently let down by the applicant. In appointing a suitable curator, regard must be had to:

134.1. Extensive experience in operations of a life insurance company.

134.2. Extensive experience in participating in the governance structures of a life insurance company.

134.3. Extensive experience in capital requirements and financial soundness of a life insurance company.

134.4. Experience in capital raising or corporate finance.

135. There is no evidence that Ms Ram has this experience. The applicant has failed to act responsibly with care and diligence on this important matter thus putting the business of 3Sixty at great risk.

136. Ms Ram's conduct in refusing to sign an agreement that would have had 3Sixty receive capitalisation in the form of properties from its shareholder, Doves, is evidence that she is not suitable for the task, and accordingly demonstrates the applicant's irresponsibility in bringing the application. Annexure "**KM23**" contains correspondence that demonstrate that 3Sixty went to great lengths to address the concerns, as invalid as they are, raised by Ms Ram very late in the period provided

to her to consider accepting the properties as capitalisation of 3Sixty. The following order of events demonstrates her bizarrely supine approach to her role, a matter of which the applicant should have been aware had the applicant not approached this application as recklessly as it did.

136.1. 3Sixty Board resolved to recommend that Ms Ram accepts the properties from Doves as capitalisation, on the understanding she is duly authorised to act on behalf of 3Sixty.

136.2. Ms Ram received the disposal agreement, providing her 14 days to consider and countersign the agreement for acceptance of the properties as capital of 3Sixty.

136.3. Ms Ram requested a two-day extension to 14 January 2022 to finalise a review of municipal accounts.

136.4. On 13 January 2022, a day before she was scheduled to have signed the agreement, Ms Ram raised concerns that the disposal agreement must say that she is duly representing 3Sixty. This was an inconsequential issue.

136.5. Nonetheless, Ms Ram's request was agreed to by the directors of 3Sixty at a meeting on 14 January 2022. The amended draft agreement was immediately sent to her at 14:22 during the meeting, with a revised deadline of 15 January 2021. Since the amendment was specific as requested by Ms Ram, it should not have taken long for her to countersign. She committed at the meeting that she would be able to conclude by 17:00 on 14 January 2022, which was sooner that the revised deadline of 15 January 2021.

136.6. Instead of signing the agreement as she had undertaken, Ms Ram then sent a series of incoherent emails relating to her need for the directors of 3Sixty

to express in writing that the amendment was agreed to. She also questioned the urgency of the recapitalisation. This was flabbergasting as one would have thought that it is common cause that recapitalisation was required urgently.

136.7. On 15 January 2022, the chairman of the Board meeting confirmed in writing to Ms Ram that the Board was agreeable to the amendments, as discussed at the meeting.

136.8. Ms Ram then sent an email saying the drafts with the particular amendment must be revoked and she will immediately sign the initial agreement. She had the initial agreement with her, which she could sign, or she could have deleted the amendment from the latest agreement and sign for purposes of immediate recapitalisation of 3Sixty. She elected not to do so.

136.9. Ms Ram then sent an email on 15 January 2022 at 09:23 saying since Nobuhle Nkosi was listed as a contact person (to receive notices to 3Sixty in terms of the disposal agreement), she (Nobuhle Nkosi) must sign the agreement and that she (being Ms Ram) would send a separate letter acknowledging the transaction. But being a contact person and having signatory powers is not the same thing. This is flabbergasting.

136.10. On 15 January 2022 at 10;14 the disposal agreement was sent to Ms Ram removing the name of the contact person so that she could insert her name as contact person and then be in a position to sign the disposal agreement.

136.11. Instead of signing the disposal agreement, Ms Ram raised, on 15 January 2022, new matters not previously raised, which she had ample time to raise in the initial 14 days provided to her to consider the disposal agreement. This conduct was unreasonable. Nonetheless, the new matters raised were

immediately addressed on 15 January 2022, but Ms Ram still allowed the offered recapitalisation to lapse.

136.12. The concerns raised by Ms Ram were not matters of substance that could have compromised recapitalisation of 3Sixty. Ms Ram therefore acted unreasonably and in contradiction of her mandate by this Honourable Court to assist 3Sixty resolve its financial soundness position.

I. FSCA AS UNREASONABLE AND MISLEADING THE HONOURABLE COURT

137. In its founding affidavit, the applicant says although it is not necessary for the proceedings, it notes that the FSCA supports this application and submits in Annexures FA3.1 and FA3.2 of the founding affidavit the FSCA's support for curatorship of 3Sixty Life.

138. I submit that the Honourable Court should not place any reliance on the support of the FSCA for the application. It should rather dismiss such support as the FSCA submission is misleading to the Honourable Court. The FSCA is not reasonable in its regulatory responses and, as I have pointed out above, its support for this application should be viewed with suspicion in light of its conduct toward SALT EB and its entering the fray to compete with the very businesses it is supposed to regulate. I present the following evidence to support the dismissal of the FSCA support as reliable evidence:

138.1. The FSCA claims that 3Sixty increased premiums by at least 28.5% on 1 February 2021. The FSCA knew of these increases through a 3Sixty's application for exemption as included in Annexure **"KM24"** to this affidavit, wherein it is patently clear that the increase is **at most** 28.5% and not *"at least"* 28.5%. This cannot be reasonably accepted as an

ordinary error by the FSCA, but malicious intent to paint 3Sixty in a negative light. The FSCA has been dishonest in this regard.

138.2. The FSCA complains at length in its submission about 3Sixty's failure to comply with Policyholder Protection Rules ("PPRs"), in its premium and benefit reviews of 1 February 2021. Firstly, the FSCA is misrepresenting facts to paint a picture that 3Sixty has widely disregarded PPRs. The truth is that there was one particular area of oversight by 3Sixty, and in remedying this, 3Sixty approached the FSCA in good faith with an application for exemption. Secondly, the FSCA is not acting in good faith in failing to disclose that it became aware of the particular oversight due to 3Sixty's honesty in approaching the FSCA and not because of any work and effort on the part of the FSCA. These omissions are material and thus cannot be considered innocent. They are malicious on the part of the FSCA in order to undermine the business of 3Sixty. The FSCA is yet to formally decline the application for exemption, nine (9) months since the application for exemption was made.

138.3. The FSCA also fails to indicate the proportion of reduced sums assured, for which an exemption application was made, which is limited to a small number of claims within a short-time period. The shortfall that 3Sixty Life has provisioned to top up benefit payments to these policyholders should the FSCA decline the application for exemption is insignificant. Once again, by failing to disclose the materiality of the matter, the FSCA is deliberately misleading and painting 3Sixty in a bad light. It cannot be accepted by the Honourable Court that the FSCA needs to be taught about the application of materiality.

138.4. Following the application for exemption on benefit reduction of a limited number of affected policyholders, the FSCA says it intends to direct 3Sixty to reverse all its premium increases of 1 February 2021 despite an

overwhelming majority of policyholders finding no problem with these increases. The FSCA suggests this course of action despite its knowledge of 3Sixty's financial soundness position as this was set out in 3Sixty's application for exemption as in Annexure **"KM24"**. This action will clearly worsen the financial position of 3Sixty and put policyholders at risk. It appears to be irrational and not constructive for a regulator to even contemplate such disastrous actions. The FSCA is demonstrating that it prefers to destroy smaller insurers than intervene in a way that will result in their sustainability. The FSCA therefore seems intent on prejudicially supporting anything that seems aimed at destroying and undermining the business of 3Sixty.

138.5. As pointed out earlier, the FSCA as regulator of retirement funds was informed by 3Sixty of the 3Sixty Group's intention to dispose of shares in SALT Employee Benefits, which is an administrator of retirement funds, for purposes of recapitalising 3Sixty. This preferred transaction would have led to full compliance with MCR and SCR requirements. Just prior to the transaction being concluded, the FSCA attacked SALT and one of its clients on allegations against SALT that occurred prior to acquisition of SALT by 3Sixty Group (Through a 29 July 2021 report by FSCA that seems to have also been leaked to the media at the same time). The conduct of the FSCA led to a collapse of the transaction as it raised concerns for the potential investors that were ready and willing to buy interest of 3Sixty Group in SALT. The FSCA's conduct in this regard was reckless and inconsiderate to the need to protect policyholders of 3Sixty given that there was no urgency on the report as the investigation started a long time ago and that since its release, no action has yet been contemplated by the FSCA. Given that the FSCA knew of the importance of the 3Sixty Group's disposal of SALT, the timing of the FSCA's conduct is reckless and once again suspiciously raises concern about the FSCA's preference to be destructive.

138.6. The FSCA had intentions of fining 3Sixty R10 million for isolated incidents where some Doves policyholders were not paid cash claim in lieu of a Doves burial. This fine was suspended by the FSCA upon appeal by 3Sixty. Please refer to Annexure **"KM29"** which is the original notice of intent to fine 3Sixty Life R10 million and the revised fine after the appeal. Not only was the FSCA's fine of R10 million grossly disproportionate to the offence, but such a fine could have put the interest of policyholders at risk and contributed to the destruction of 3Sixty. The Honourable Court should therefore find it doubtful (to put it mildly) that the FSCA is reasonable in acting in the best interest of policyholders as it purports to do. There may well be other intents pursued by the FSCA to prejudice 3Sixty.

138.7. The FSCA has been accused of improper motives, some of them emanating from its former employees. These accusations, although not independently verified, cannot be completely ignored in the face of questionable conduct from the FSCA. See Annexure **"KM26"** for an example of such accusations.

138.8. The FSCA letter of support for the applicant which is signed by its Commissioner, Mr Unathi Kamlan, bemoans the changes in management at 3Sixty, of which the applicant is aware. Mr Kamlan omits to inform the applicant that he and the dismissed former CEO of 3Sixty used to work together at the Reserve Bank and are close friends. When the dismissed former CEO of 3Sixty was identified as the perpetrator of fraud and in recognition of the relationship that existed between Mr Kamlan and the dismissed former CEO of 3Sixty, I phoned Mr Kamlan to inform him about the event. Mr Kamlan visited my office on Sunday 23 July 2021 where he was furnished with the details of the misconduct by the dismissed former CEO of 3Sixty. Mr Kamlan consented that he had noticed a change

in expense and consumption patterns by the dismissed former CEO of 3Sixty and was also wondering if our group pays that much for him to afford the opulence he was displaying. It therefore follows that Mr Kamlan knew the reason for the action that had to be taken. It is therefore disingenuous of him to bemoan change of management at 3Sixty.

139. The Honourable Court is therefore asked to dismiss the deliberately misleading, irrational, and destructive input of the FSCA in this matter on the basis that the FSCA is unreliable as demonstrated in its inclination to bend the truth and its propensity to be excited by anything destructive.

J. SPECIFIC AVERMENTS OF THE FOUNDING AFFIDAVIT

140. I now turn to deal with the specific averments in the founding affidavit to the extent necessary.

141. **Ad paragraph 4**

As I demonstrate throughout this affidavit, I deny that the contents of the founding affidavit are true and correct. The contents are notable more for omissions of material facts than for what is stated. Even some of the facts averred are largely a misrepresentation of the true facts.

142. **Ad paragraphs 7 to 9**

142.1. The contents of these paragraphs have already been addressed elsewhere in this affidavit.

142.2. Furthermore, our courts, I am advised and believe, have deprecated the conduct of litigants seeking to jump the trial queue by proceeding on motion in matters that are not suitable for that method of litigating, in the

hope that the matter will be referred to oral evidence. As a Judge of the High Court has pointed out, motion proceedings for final relief are appropriate only where it is not foreseeable that there will be material disputes of fact in the affidavits. A failure to heed this basic proposition should result in the application being dismissed when disputes on material issues were foreseeable.

142.3. There are material disputes of fact that render motion proceedings an unsuited form of litigation in this case.

142.4. In addition, the urgency with which this application was initially brought was vexatious, frivolous and manifestly inappropriate and an abuse of this Court's process.

143. **Ad paragraph 10**

143.1. The applicant fails to make out a *prima facie* case and fails to show any reasonable apprehension that funds would be misappropriated and/or records and critical information destroyed if notice of the application were given to 3Sixty.

143.2. None of this is supported by any evidence. The Court is expected simply to take the applicant's word for it.

143.3. The claim that I, or any member of the executive or management of 3Sixty, may *"misappropriate funds"* or embark upon any of the conduct described by the applicant, without a scintilla of even *prima facie* evidence, is defamatory in the extreme.

144. **Ad paragraphs 13 and 14**

As I have already demonstrated above, I respectfully submit that the applicant has failed to act in a reasonable, *bona fide*, and responsible manner in bringing this application in the manner that it has, or at all, and in making the wild and unsubstantiated allegations in its founding affidavit.

145. **Ad paragraph 15**

145.1. For the reasons already advanced, I deny that this application has been brought in the interest of policyholders and the public at large.

145.2. I further deny the bald allegation that 3Sixty's financial health and continued viability is not being properly managed and secured. Throughout this affidavit, 3Sixty has demonstrated the steps it has taken and continues to ensure its continued viability.

145.3. 3Sixty is wholly owned by the NUMSA Trust the beneficiaries of which are NUMSA members and employees. Neither NUMSA members nor policyholders in the interests of whom the applicant claims to act support this application.

146. **Ad paragraphs 16 and 17**

For the reasons already demonstrated, I deny that curatorship is an effective regulatory tool in the circumstances of this case. I have set out reasons why curatorship is not appropriate on the facts of this case and why the applicant has failed to make out a case for this relief.

147. **Ad paragraph 18**

I have already addressed the reasons why the FSCA's submissions are misleading.

148. **Ad paragraph 21**

For the reasons already advanced, I deny that 3Sixty's policyholders are at risk.

149. **Ad paragraphs 24 to 27**

149.1. I have already demonstrated why the applicant's Standard Formula is unrealistic and of no assistance under the Covid-19 pandemic.

149.2. If it is legislated that the MCR should be met within six (6) months of breach, and a longer period should the circumstances warrant, I submit with respect that the applicant has been unreasonable in not providing a longer period for 3Sixty to recapitalise this in circumstances that absolutely warranted a significant extension to the legislated timeframes.

149.3. Nestlife Assurance was afforded a period of more than 2 years to recapitalise, only 5 months of which fell within the Covid-19 period. It is thus not unreasonable for 3Sixty to harbour suspicion of bad faith on the part of the applicant being so keen to place 3Sixty under curatorship.

150. **Ad paragraph 31**

3Sixty's engagement with the applicant on a remedial plan to restore financial soundness started on 31 January 2021 after the December 2020 QRT revealed that the MCR had been breached. Before then, there had been no breach of the MCR. The applicant deliberately omitted to mention this fact to the Court as it sought to create the impression that 3Sixty was already in breach of the MCR in November 2020. Bad faith is the only reasonable explanation for such egregious conduct.

151. **Ad paragraph 32**

As already demonstrated, the applicant has woefully failed to disclose material facts to the Honourable Court. I am advised and believe that the applicant applies the wrong standard of disclosure, and that even if an *ex parte* applicant considers a fact *"irrelevant"*, that fact must still be disclosed to the Court as it is the Court that decides the relevance or materiality of a fact in *ex parte* applications.

152. **Ad paragraph 33**

I deny that the applicant has made out a case for the relief it seeks. The applicant fails to show good cause and/or that it is desirable that a curator be appointed. I have already addressed the grounds advanced by the applicant for curatorship. I do so below for emphasis.

153. **Ad paragraph 33.1**

153.1. The first ground should be dismissed as speculative and misleading as it raises invalid suspicions, not facts, that the solvency of 3Sixty could be significantly worse than reported to the applicant.

153.2. By the applicant's own admission, it is acting on a *"suspicion"*. I have already detailed the undesirable impact of curatorship, pointing to the unfortunate fate of 6 smaller insurers that have been placed under curatorship since 2009. Given that record, I respectfully submit that it would be particularly unwise and unreasonable of the Honourable Court nonetheless to confirm the rule *nisi* on the basis of the applicant's suspicions. Proven facts should trump mere suspicion.

153.3. Although the applicant has shared the concerns of the Auditor with 3Sixty, the applicant has ignored 3Sixty's responses to those concerns before applying for curatorship. The applicant is unreasonable in not seeking to fully understand and establish the facts of the impact of the Auditor's concerns and has elected rather to act on suspicion.

153.4. The applicant seems to refer to Management Accounts without reference to the QRTs through which its Standard Formula is applied to submit information on solvency assessment of insurers to the applicant. This is problematic as the actual tool for solvency assessment is the QRTs and not Management Accounts. By not referring to the QRTs the applicant has ended up making inaccurate statements to the Honourable Court.

154. **Ad paragraph 33.2**

154.1. I deny that 3Sixty is unable to recapitalise. The applicant itself is aware of this fact.

154.2. 3Sixty has proved able to recapitalise, but the applicant has failed to adequately consider the Internal Recapitalisation Plan submitted to it.

154.3. Having been informed of the Internal Recapitalisation Plan during the meeting of 6 December 2021, the applicant received details of the Internal Recapitalisation Plan and impact thereof on solvency on 7 December 2021. A day later, however, on 8 December 2021, the applicant mysteriously decided that the plan was not viable.

154.4. It is improbable that the applicant could have adequately applied its mind to, and processed all the information with respect to this plan within that short period of time.

155. **Ad paragraphs 33.3 to 33.3.3**

155.1. As already discussed, these are hardly sufficient grounds for curatorship. Once again, the applicant acted with haste without gathering necessary facts to support its case. This is not prudent conduct expected of a regulatory authority.

155.2. I deny that the delay in finalising the audit of financial statements of 3Sixty was due to 3Sixty failing to provide information.

155.3. The significant delays were caused by the Auditor as already demonstrated above. In any event, I respectfully submit that the failure to submit audited

financial statements on time is ordinarily dealt with by issuing a warning and/or penalty. Curatorship is certainly not an appropriate action.

155.4. As regards the Auditor's concerns, these have since been remedied which include:

155.4.1. The Auditor raised a reportable irregularity that dismissal of the Chief Executive Officer on grounds of alleged criminal conduct was not reported to the police. 3Sixty was still compiling evidence before approaching the police and has since done so. Annexure **"KM30"** hereto contains the details of the case with the police.

155.4.2. The reduction in share capital without prior notification of the applicant was remedied. I refer in this regard to Annexure **"KM31"**. Whilst 3Sixty regrets this oversight on our part, this contravention is once again ordinarily dealt with a warning or a penalty, not curatorship.

155.5. For the rest I refer to what I have already said above in dealing with this alleged ground for seeking curatorship.

156. **Ad paragraph 33.4**

156.1. I deny that the applicant has laid a foundation for why executive turnover has contributed to financial soundness challenges of 3Sixty. 3Sixty has had challenges with high executive turnover for several years and in those years, it did not encounter financial soundness challenges.

156.2. By the applicant's own admission there was irregular expenditure by the Chief Executive Officer and this was the basis for his dismissal. Such an executive could not be retained by a responsible Board, otherwise the

Board would have been negligent, not acting in the interest of the company and putting policyholders at risk of a dishonest employee.

156.3. 3Sixty should not be punished with curatorship for acting appropriately but should be commended for discovering the irregularities and acting on them.

156.4. The applicant also indicates that the dismissed Chief Financial Officer was appointed in 2020 only to be removed in 2021. Although the Chief Financial Officer was not a suspect in the fraud, the Board felt he could have done better to safeguard 3Sixty and removed him on the basis of breakdown of trust.

157. **Ad paragraphs 33.5 to 33.5.2**

The contents of these paragraphs are denied for the reasons already advanced above in this affidavit.

158. **Ad paragraph 34**

For reasons already advanced, I deny that the applicant has made out a case for the relief it seeks. The applicant fails to show good cause and/or that it is desirable that a curator be appointed.

159. **Ad paragraphs 35.1 to 35.42**

159.1. The contents of these paragraphs have already been addressed above and I ask that they be read as specific responses here.

159.2. I summarise here some of the responses out of abundance of caution and apologise in advance for material that is being repeated for emphasis.

159.3. 3Sixty's engagement with the applicant on a remedial plan to restore financial soundness started on 31 January 2021 after the December 2020 QRT revealed, for the first time, that the MCR is breached. The applicant's obscuring of the fact that there was no breach of the MCR until 31 December 2020 is dishonest and in bad faith. This is a material fact that the applicant was obliged, as an *ex parte* applicant, to state categorically as it may have created a different and more positive impression of 3Sixty's financial position than the precarious one the applicant sought (and did manage) to create. The Court could have looked more favourably upon 3Sixty if told categorically that 3Sixty was not in breach of the MCR even though it was in breach of the SCR. Then, in addition, the applicant was duty-bound to explain to the Court, as an *ex parte* applicant, the factors that inured to the benefit of 3Sixty in its assessment of the SCR. Its failure to do this is sufficient for this Court to discharge the rule.

159.4. The discussion the applicant refers to from November 2020 had to do with failure to meet the SCR. 3Sixty was yet to breach the MCR at the stage. 3Sixty did not anticipate the misery to be brought upon our country by the second wave of Covid-19 deaths that peaked in January 2021 and caused the MCR to be breached. It is therefore misleading to the Honourable Court for the applicant to suggest, to the extent that it does, that 3Sixty started its recapitalisation plans in November 2020. There were other

actions to restore financial soundness that were implemented then, but these were not recapitalisation plans.

159.5. Since engaging with the applicant in November 2020, 3Sixty took a decision to increase premiums as the future mortality risk covered by the insurance policies had increased. Policyholders were notified in December 2020 of increases that were to take effect from 1 February 2021.

159.6. In implementing the premium adjustment of 1 February 2021, 3Sixty realised that it had omitted in its communication to inform policyholder what would happen if they continued to pay the old premiums and not the new premiums. 3Sixty resolved to reduce benefits of those policyholders that rejected the premium increase, but at the same time approached the FSCA on 10 March 2021 to inform the FSCA of this as well as to discuss and appeal for the FSCA to speedily consider 3Sixty application for extension.

159.7. The premium and benefit review was successfully and fully implemented by 1 May 2021.

159.8. An intensive cost cutting exercise was implemented in 2021 and 3Sixty last experienced a liquidity strain (not crisis) in January 2021 in the peak of the second wave of Covid-19 infections. Since then, it has always had the ability to pay claims.

159.9. In the course of engagements with the applicant since November 2020, 3Sixty submitted two reports of ORSA projections to the applicant. The reports were dated 8 March 2021 and 13 May 2021. The projections did not reveal that there was a risk of default on insurance obligations to policyholders or reach a point where liquidation of 3Sixty is inevitable.

The applicant has not queried these reports, nor has it sought to request revised report on ORSA projections.

159.10. The FSCA as regulator of retirement funds was informed by 3Sixty of the 3Sixty Group's intention to dispose of shares in SALT Employee Benefits, which is an administrator of retirement funds, for purposes of recapitalising 3Sixty. This preferred transaction would have led to full compliance with MCR and SCR requirements. Just prior to the transaction being concluded, the FSCA attacked SALT and one of its clients on allegations against SALT that occurred prior to acquisition of SALT by 3Sixty Group (Through a 29 July 2021 report by FSCA that seems to have also been leaked to the media at the same time). The conduct of the FSCA led to a collapse of the transaction as it raised concerns for the potential investors that were interested in buying interest of 3Sixty Group in SALT. The FSCA's conduct in this regard was reckless and inconsiderate to the need to protect policyholders in 3Sixty Life given that there was no urgency on the report as the investigation started a long time ago and that since release, no action is yet to be contemplated by the FSCA. Given the FSCA knew of the importance of the 3Sixty Groups disposal of SALT, the timing of the FSCA's conduct is reckless and once again suspiciously raises concern about the FSCA's preference to be destructive.

159.11. The FSCA had intentions of fining 3Sixty R10 million for isolated incidence where some Doves policyholders were not paid a cash claim in lieu of a Doves burial. I annex hereto as annexure **"KM29"** the initial notice of intent to fine 3Sixty. This fine was suspended by the FSCA upon appeal by 3Sixty. Not only was the FSCA's fine of R10 million grossly disproportionate to the offence, but such a fine could have put the interest of policyholders at risk and contributed to the destruction of 3Sixty.

159.12. As regards the allegations pertaining to the sale of properties, this has already been addressed above in this affidavit. 3Sixty is able to receive a portfolio of properties owned and occupied by its shareholder Doves as capital ("Internal Recapitalisation Plan"). The applicant has dismissed this plan as not desirable but has failed to provide such feedback to 3Sixty before approaching this Honourable Court.

159.13. It was submitted to the applicant that the Internal Recapitalisation Plan would have an impact of improving the MCR and SCR cover to 144% and 75% respectively. Both of these are significant improvements.

159.14. It should be noted that the applicant has failed to provide any evidence that the interests of With-Profit Policyholders are at risk, hence the speculative nature of its statement to the Honourable Court.

159.15. 3Sixty considers the Independent Head of Actuarial Function as the custodian of the interests of With-Profit Policyholders.

159.16. In September 2021, the Management and Directors of 3Sixty incorrectly thought the business had a liquidity strain. They arranged a meeting with the applicant on 23 September 2021 to discuss the state of the business. See in this regard annexure **"KM4"** hereto. I further attach hereto as annexure **"KM5"** an email from the 3Sixty's actuary to the applicant clarifying that there is no liquidity strain that would warrant a further loan from the With-Profit Policyholder funds.

159.17. The applicant has discussed the matter of the interests of With-Profit Policyholders on at least two occasions at meetings held on 21 April 2021 and 5 October 2021 with 3Sixty Life's Actuary and Independent Head of Actuarial Function whereby they explained to the applicant that the interests of the With-Profit Policyholders are not at risk. Between 5 October 2021 and the date of the founding affidavit (15 December 2021),

the applicant had not consulted further with 3Sixty Life's Actuary and Independent Head of Actuarial Function on the interests of With-Profit Policyholders. It is for this reason that the applicant's assertion that the interests of With-Profit Policyholders are at risk is misleading the Honourable Court.

159.18. I have demonstrated that no liquidity crisis exists.

160. **Ad paragraphs 36 to 40**

160.1. Again, I have already addressed these averments comprehensively above and ask that those submissions be read into these paragraphs. Nevertheless, and again out of an abundance of caution, I repeat some of the submissions already made.

160.2. In paragraph 36 of the founding affidavit, the applicant says curatorship is justified because financial soundness has not been restored since engagements in November 2020. In paragraph 38 the applicant repeats this "justification" by saying that Management of 3Sixty appears unable to restore financial soundness.

160.3. There is however no justification in these assertions. A workable Internal Recapitalisation Plan was presented to the applicant but was speciously rejected.

160.4. I have included the OF2 statement QRTs for July 2021, August 2021, September 2021 and October 2021, which the applicant had in its possession by the time of the application in December 2021. The OF2 statements contain "unaudited accounts" that the applicant refers to in the column "IFRS Basis".

FJ

160.5. The shareholders' funds of 3Sixty Life are "Assets less Liabilities", which is "Basic Own Funds". This is R29 million for July 2021, R19 million for August 2021, R19 million for September 2021 and R23 million for October 2021.

160.6. The Basic Own Funds reduced in August 2021 from R29 million to R19 million, remained unchanged in September 2021 at R19 million but improved to R23 million in October 2021.

160.7. It is therefore misleading to contend, as the applicant does, that the most recent audited accounts, being the October 2021 accounts at the time of the application, suggest that 3Sixty's position is worsening.

160.8. It is common cause that measurement of financial soundness must consider the eligible Basic Own Funds in relation to the MCR and SCR and not the just unaudited accounts. The applicant has not taken due care and diligence in advancing this point.

160.9. The MCR Cover of 3Sixty Life was -1.42 for July 2021, -1.47 for August 2021, -1.76 for September 2021 and -1.70 for October 2021. Whilst this had deteriorated from July 2021 to September 2021, there was an improvement in the latest (October 2021) return the applicant had in its possession at the time of the application. The position improved further with the November 2021 solvency return.

160.10. The SCR Cover of 3Sixty Life was -0.47 for July 2021, -0.50 for August 2021, -0.69 for September 2021 and -0.66 for October 2021. Whilst this had deteriorated from July 2021 to September 2021, there was an improvement in the latest return (October 2021) that the applicant had in its possession at the time of launching this application. The position improved further with the November 2021 solvency return.

160.11. The applicant has published, as regulations, a Prudential Standard which requires Own Risk and Solvency Assessment (ORSA) for insurers. ORSA is an important tool for insurers and the applicant in forming a view about the future financial soundness of an insurance company. The applicant should have relied on its own standards and regulatory framework and considered the ORSA of 3Sixty in making assertions about 3Sixty defaulting on policyholder obligations or reaching a point where liquidation is inevitable. It did not but instead elected to venture into baseless speculations about 3Sixty.

160.12. In the course of engagements with the applicant since November 2020, 3Sixty submitted two reports of ORSA projections to the applicant. The reports were dated 8 March 2021 and 13 May 2021. The projections revealed no possible risk of default on insurance obligations to policyholders or of reaching a point where liquidation of 3Sixty Life is inevitable. The applicant has not queried these reports, nor has it sought to request revised report on ORSA projections before making speculations about the future of 3Sixty. The applicant has acted unreasonably and in bad faith towards 3Sixty.

160.13. The latest ORSA projections of 3Sixty Life, covering the 2022, 2023 and 2024 financial years have been reviewed by the Independent Head of Actuarial Function. Contrary to the baseless speculations of the applicant, these projections point to an improved financial soundness and liquidity of 3Sixty Life, with no liquidation and default on insurance obligations even under some foreseeable and relevant material risks scenarios.

160.14. The justification that there is a real risk of default by 3Sixty on insurance obligations to policyholders or of reaching a point where liquidation of 3Sixty is inevitable is unsubstantiated and must accordingly be dismissed.

160.15. For the reasons already advanced, I deny that curatorship is justified.

161. **Ad paragraphs 47 to 52**

161.1. The contents of these paragraphs have already been addressed above in this affidavit.

161.2. I submit that the applicant has failed woefully to discharge the onus placed upon it as an *ex parte* applicant.

162. **Ad paragraphs 53 to 74**

162.1. For the reasons already advanced, I deny that the application was urgent and that the application was brought in the public interest.

162.2. As a result of the applicant's failure to disclose all material facts to the Honourable Court and as a result of the applicant's failure to demonstrate good cause in placing 3Sixty under curatorship, it was necessary for 3Sixty to oppose this application.

162.3. None of the grounds advanced for urgency are in fact factually true, as I have already demonstrated. In summary there is no truth to the assertion:

162.3.1. that 3Sixty is unable to recapitalise as I have already demonstrated. It is the applicant and the FSCA that have unreasonably and bloody-mindedly frustrated 3Sixty's perfectly legitimate and viable efforts to do so;

162.3.2. that 3Sixty *"faces a worsening [financial or SCR] situation"*;

162.3.3. that *"there is a very real risk"* that 3Sixty *"may well default further on its insurance obligations to policyholders or reach a point where its liquidation is inevitable"*. In fact, real evidence

since 2009 shows that it is this curatorship that poses a real risk of 3Sixty facing inevitable liquidation;

162.3.4. that the urgency of curatorship will salvage 3Sixty's position, provide an opportunity to source funding, and prevent *"further erosion"* of its SCR. In fact, this curatorship has had the opposite effect of what the applicant claims in that the curator has failed to sign off on a property transaction that would have recapitalised 3Sixty by some R122 million this January 2022. Instead of acting independently, she seems to be taking her marching order from the applicant which was opposed to this transaction from the very beginning;

162.3.5. that urgent curatorship ensures that 3Sixty's assets are not misappropriated and that policyholders are protected. In fact, policyholders have expressed no unhappiness with the management of 3Sixty assets and their investment. Importantly, NUMSA, the ultimate beneficiary and owner of 3Sixty, opposes this application. The suggestion that I or senior management of 3Sixty may misappropriate funds is fact-free and defamatory. The applicant has laid absolutely no factual foundation for it;

162.3.6. that urgent curatorship is in the public interest. The applicant has laid no factual basis for its claim whatsoever;

162.3.7. that 3Sixty was invited to bring a formal application for an extention of the engagement period with the applicant beyond 1 December 2021, and that as at 7 December 2021 no such application had been received. The truth is that there was no such extension sought by 3Sixty because on 6 December 2021

there was a meeting and on 7 December 2021 3Sixty provided an Internal Recapitalisation Plan to the applicant which the applicant acknowledged but nonetheless resolved the very next day (8 December 2021) to launch this application, clearly without seriously considering the Plan in good faith and conveying to 3Sixty why it was unviable. I learn about its reason for rejecting the Plan for the first time in its founding affidavit.

162.4. There is no basis for urgency.

163. **Ad paragraph 75**

163.1. As I have already pointed out, the provisional order and its publication had had devastating effect on the business of 3Sixty. It has already lost 10% of its revenue source and stands to lose more for as long as this Sword of Damocles hangs over it.

163.2. I have already shown the track record of what has happened to insurers that have been placed under curatorship since 2009. Of the six (6) in total that were placed under curatorship, four (4) have been liquidated and one has been bailed out by the state which is its 100% owner.

K. CONCLUSION

164. For all these reasons, I submit that the rule *nisi* be discharged with costs including the costs consequent upon the employment of two counsel on an attorney and client scale as well as the costs of the expert actuary. As appears from the contents of this affidavit and the confirmatory affidavit of the actuary, Mr Ranti Mothapo, the expert input of the actuary has been pivotal in the preparation of these affidavits. The respondent should not be out of pocket in relation to the costs of procuring the actuary's expert advice in the matter.

165. This application is not only an abuse of the Court process; it is also brought in bad faith and is malicious and vexatious.

166. The effect of the discharge of the rule should be that the prohibition imposed on 3Sixty from taking on new business is lifted, the Internal Recapitalisation Plan through the disposal agreement between 3Sixty's Directors and Doves becomes effective and has immediate impact of resolving 3Sixty's financial soundness.

DEPONENT

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

COMMISSIONER OF OATHS

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