

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

Case No: 58590/2021

In the matter between:

**THE PRUDENTIAL AUTHORITY**

Applicant

And:

**3SIXTY LIFE LIMITED**

First respondent

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

Second respondent

**YASHODA RAM**

Third respondent

**BDO ADVISORY SERVICES (PTY) LTD**

Fourth respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned

**SUZETTE JEANNE VOGELSANG**

state under oath that:

1. I am the Head of the Banking, Insurance and Financial Markets Infrastructure Supervision Department of the applicant (**the Authority**).
2. I deposed to affidavits previously filed in this matter on behalf of the Authority. I remain authorised to represent the Authority in these proceedings.
3. Unless the context indicates otherwise, I have personal knowledge of the facts set out in this affidavit and they are, to the best of my belief, true and correct.

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## PARTIES

4. 3Sixty Life Limited (**3Sixty**), the first respondent, is a licensed life insurance company specialising in life and funeral products for groups and individuals.
5. The National Union of Metal Workers of South Africa (**NUMSA**), the second respondent, is a registered trade union, registered in terms of the Labour Relations Act, No. 66 of 1995.
6. Ms Yashoda Ram (**Ms Ram**), the third respondent, is the Head of Actuarial Services at BDO Advisory Services (Pty) Ltd (**BDO**). As elaborated on below, Ms Ram is currently the appointed provisional curator of 3Sixty and the Authority wishes to replace her.
7. BDO is the fourth respondent in this application, as Ms Ram is an employee of BDO and it is cited in this application because it may have an interest in the outcome of this application. Save in the event of BDO opposing this application, no relief is sought against BDO.

## BACKGROUND

8. On 21 December 2021, the Authority obtained an urgent ex parte order, placing 3Sixty under provisional curatorship.
9. Paragraph 4 of the 21 December 2021 court order granted by the Honourable Acting Justice Crutchfield stated that “Yashoda Ram is provisionally appointed as curator of 3Sixty, and is absolved from furnishing security.” A copy of this court order is attached as annexure “**FA1**”.
10. Paragraph 8 of the court order provided for a return date of 12 April 2022.

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11. On 21 January 2022, directors of the first respondent anticipated the return date to 1 February 2022 and the second respondent applied to be joined as a party to the application. On 1 February 2022, at the anticipation hearing before the Honourable Justice Dippenaar, the matter stood down until 3 February 2022.
12. On 3 February 2022, the anticipation hearing proceeded before the Honourable Justice Dippenaar, who made the following order:
  - 12.1. The Applicant is to deliver its supplementary affidavit, together with an application for leave to file the supplementary affidavit by Monday, 21 February 2022;
  - 12.2. The provisional curator will deliver an interim report regarding the Internal Recapitalisation Plan by Monday, 21 February 2022;
  - 12.3. The First and Second Respondents are to deliver their supplementary affidavits together with an application for leave to file their supplementary affidavits by Monday, 7 March 2022 and the applicant shall reply thereto together with an application for leave to file their reply, if so advised, by 10 March 2022;
  - 12.4. The parties are to exchange heads of argument by Monday, 14 March 2022;
  - 12.5. The provisional curator is to deliver a report by Tuesday, 15 March 2022; and
  - 12.6. The matter will be set down for hearing on Tuesday, 22 March 2022 to be heard by the Honourable Justice Dippenaar.
13. A copy of the court order handed down by the Honourable Justice Dippenaar, dated 4 February 2022, is attached as annexure "**FA2**".
14. It has recently come to the Authority's attention that Ms Ram's credentials were misrepresented to the above Honourable Court. In paragraphs 43 to 46 of my founding



affidavit in the curatorship application, I set out the Authority's reasons as to why the Authority believed that Ms Ram was a suitable candidate for the position of provisional curator. Attached as annexure FA33 to the curatorship application was a short resume of Ms Ram.

15. On the strength of Ms Ram's resume (provided by BDO) as well as Ms Ram's profile on BDO's website, the Authority was comfortable with appointing Ms Ram as the provisional curator and sought an order from the above Honourable Court for her appointment as provisional curator of 3Sixty.
16. However, the Authority's enquiries with the Actuarial Society of South Africa (**ASSA**) recently revealed that Ms Ram had not completed an Actuarial Science degree, and was only a student member of ASSA. Contrary to what is recorded in the resume attached as annexure FA33 to the founding affidavit in the curatorship application, Ms Ram has not completed the Certified Enterprise Risk Actuary (**CERA**) course in 2016. Under these circumstances, the Authority no longer has faith in the integrity of Ms Ram.
17. The Authority therefore seeks to replace Ms Ram with Mr Tinashe Frank Mashoko (**Mr Mashoko**) as the provisional curator of 3Sixty. Mr Mashoko is an Actuarial Specialist at BDO and worked closely with Ms Ram and the BDO team during the provisional curatorship. Mr Mashoko is therefore well acquainted with matters relevant to 3Sixty Life and his appointment ought not to delay the 22 March 2022 hearing date.
18. The brief resume of Mr Mashoko is attached as annexure "**FA3**". Mr Mashoko is an active fellow of ASSA and is a fellow of the Institute of Actuaries in the United Kingdom. Copies of Mr Mashoko's ASSA's membership certificate and letter of good standing are attached as annexures "**FA4**" and "**FA5**" respectively. A copy of Mr Mashoko's certificate from the Institute of Actuaries in the United Kingdom is attached as annexure "**FA6**".



19. For the reasons set out above, the purpose of this application is to seek a variation of paragraph 4 of the 21 December 2021 court order, so that the words “Yashoda Ram”, are replaced with “Tinashe Mashoko”.

### **URGENCY**

20. I respectfully submit that this application is by its very nature urgent.
21. It is undesirable to allow Ms Ram to continue to be the provisional curator when the Authority no longer has faith in her integrity. The appointment of a new provisional curator would allow him to take over and ensure that the business of 3Sixty is not prejudiced in any way. The new provisional curator needs to be appointed urgently so that the necessary investigations relevant to whether 3Sixty should remain in curatorship can be completed without delay and he can file a report timeously in accordance with the 3 February 2022 court order.
22. In circumstances where the Authority no longer has complete trust in Ms Ram, the Authority would be failing in its duty if it did not urgently file this application.
23. The confirmatory affidavit of Mr Mashoko will be filed in support of this application.

### **CONCLUSION**

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

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

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**DEPONENT**

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 15<sup>TH</sup> day of FEBRUARY 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.


**COMMISSIONER OF OATHS**

Full names:

**LIAM PETER JAMES GROOME**

Address:

Commissioner of Oaths / Kommissaris van Ede  
Practising Attorney/Praktiserende Prokureur R.S.A

Capacity:

**RW ATTORNEYS**Walker Creek Office Park  
90 Florence Ribeiro Avenue  
Muckleneuk, Pretoria  
P.O. Box 36603  
Menlo Park  
0102  
+27 12 452 4000

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21/12/2021.

ATZ. "FA1"

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

Case No.: 58950/2021

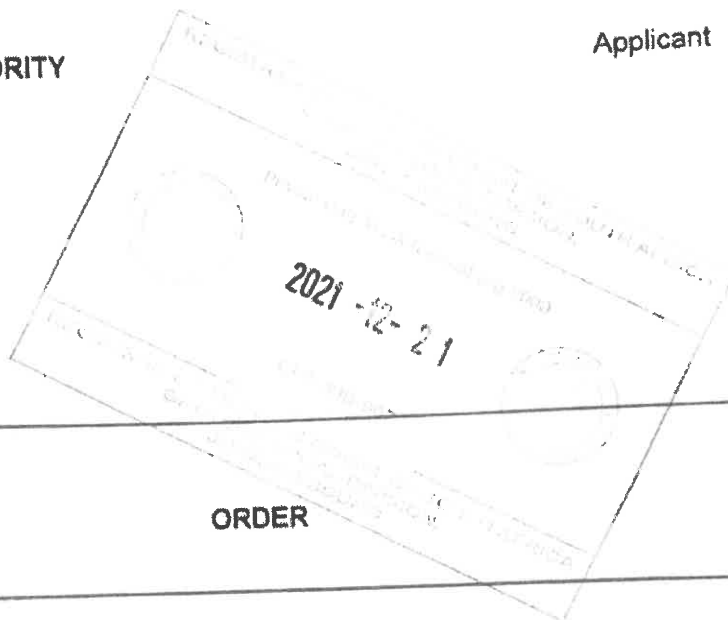
In the *ex parte* application of:

THE PRUDENTIAL AUTHORITY

Applicant

and

3SIXTY LIFE LIMITED



ORDER

Having heard counsel for the parties, the following order is made:

**IT IS ORDERED THAT:**

1. The ordinary forms and service provided for in the Rules of the High Court are dispensed with and this application is heard on an urgent basis in terms of the provisions of Rule 6(12)(a) of the Uniform Rules of Court.
2. This application is heard :
  - 2.1 on an *ex parte* basis;

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2.2 in camera; and

2.3 authorising and directing the registrar of the Court to retain the file opened in respect of this application in his or her custody and control and to take all reasonable steps to ensure that, pending the execution of the Order, no person should have any knowledge of this application or disclose to any other person any fact relating to the application.

3. 3Sixty Life Limited's (3Sixty's) business, is placed under provisional curatorship in accordance with the provisions of this order.

4. Yashoda Ram is provisionally appointed as curator of 3Sixty, and is absolved from furnishing security.

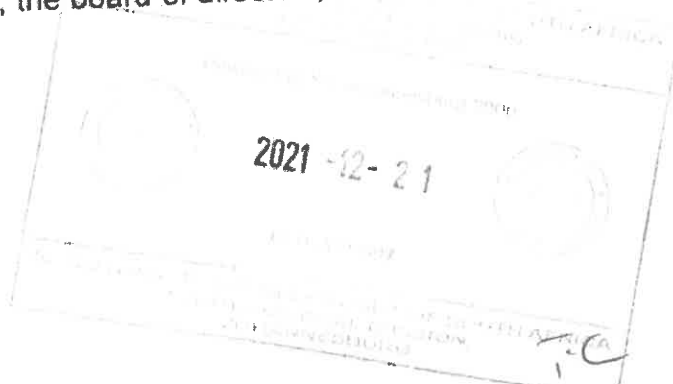
5. Any other person (including but not limited to directors) now vested with management of 3Sixty, be and is hereby provisionally divested thereof.

6. Pending the return day of this order, all actions, proceedings, the execution of all writs, summonses and other processes against 3Sixty be stayed and not instituted or proceeded with, unless and until leave is given by this Court.

7. Pending the return date specified hereunder, the curator be and is hereby:

7.1 authorised to take immediate control of, manage and investigate 3Sixty's business, together with all assets and interests relating to such business, such authority to be exercised subject to the control of the applicant in accordance with the provisions of section 5(6) of the Financial Institutions Act, and with all such rights and obligations as may be pertaining thereto;

7.2 vested with all executive powers which would ordinarily be vested in, and exercised by, the board of directors, members or managers of 3Sixty, whether by law or by



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virtue of its memorandum of incorporation, and the present directors, members or managers of 3Sixty shall be divested of all such powers in relation to 3Sixty;

7.3 directed to give consideration to the best interests of the policyholders whose insurance policies are held and/or administered by and through 3Sixty;

7.4 directed to exercise the powers vested in her with a view to conserving the business of 3Sixty and not without the leave of the Court to alienate or dispose of any of the property of 3Sixty, save to the extent and for the purposes set out hereunder;

7.5 authorised, in her discretion and subject to available resources to make payments to policyholders in terms of legitimate claims in accordance with policyholders' insurance policies held by and through 3Sixty;

7.6 directed to take custody of the assets including cash, cash investments, stocks, shares and other securities held or administered by 3Sixty, and of other property and effects belonging to or held by or on instructions of 3Sixty or any entity directly or indirectly controlled by 3Sixty;

7.7 authorised to conduct any investigation with a view to locating assets belonging to and/or administered and/or controlled by 3Sixty, including such assets held by way of securities or in cash and with a view to verifying the liabilities;

7.8 authorised to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of 3Sixty and its operations, and to pay same from the assets held, administered or under the control of 3Sixty;

7.9 permitted to engage, after consultation with the applicant, such assistance of a legal, accounting, administrative, or other technical nature as she may reasonably

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deem necessary for the performance of her duties in terms of this order, and to defray the reasonable expenses and charges thus incurred from the assets held or under the control of 3Sixty;

7.10 authorised to institute or prosecute any legal proceedings on behalf of 3Sixty and to defend any litigation brought against 3Sixty;

7.11 authorised to invest such funds as are not required for the immediate purposes of 3Sixty's business, with a registered bank;

7.12 authorised to take control of and to operate or freeze existing bank accounts of 3Sixty, and to open and operate any new banking accounts for the purposes of the curatorship;

7.13 directed and authorised, at any time during the term of her office, to report to the applicant should she deem it necessary or expedient that application be made to this court for the liquidation of 3Sixty, or for any relief as envisaged in section 6 of the Financial Institutions Act against 3Sixty, or any of its directors, members or managers;

7.14 authorised to claim all costs, charges or expenses reasonably incurred by the curator in the execution of her duties in terms of this order, including her own remuneration, as administration costs, in the event of the liquidation of 3Sixty ensuing;

7.15 authorised to pay the applicant's costs, should they be granted as envisaged in paragraph 8 below.

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8. A rule nisi is hereby issued calling upon 3Sixty or any other interested party to show cause to this Honourable Court at 10h00 on \_\_12 April 2022\_\_ why a final order should not be made in the following terms:

8.1 confirming and rendering final the orders referred to in paragraphs 3,4 and 5 above and finally conferring on the curator the powers and duties set out in paragraph 7 above;

8.2 directing that, whilst the curatorship exists, all claims, actions, proceedings, the execution of all writs, summonses and other proceedings against 3Sixty shall be stayed and not instituted or proceeded with, unless and until leave is granted by this Court;

8.3 Sixty shall pay, alternatively the curator shall pay from the assets held by or under the control of 3Sixty:

8.3.1 the costs of these proceedings only in the event of 3Sixty's opposition of this application;

8.3.2 the costs of any investigation into the affairs of 3Sixty; and

8.3.3 the costs and remuneration of the curator.

9. The curator is directed:

9.1 to compile a statement reflecting the overall financial position of 3Sixty and its financial soundness, and to report thereon to this Honourable Court on the return day;

9.2 to report to this Court on any irregularities committed by 3Sixty, its directors, key individuals or management and the contravention of any laws, codes of conduct or mandates in the conduct of 3Sixty's business;

2021-12-21

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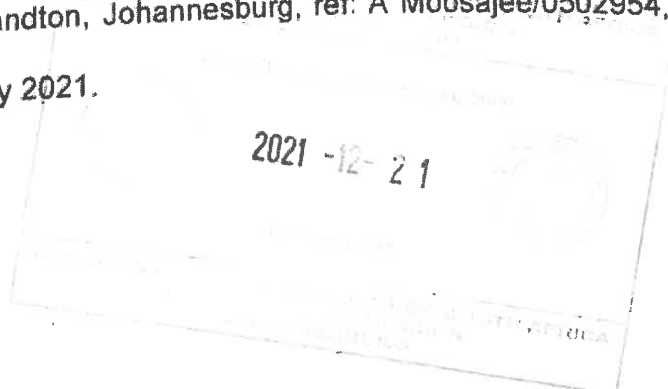
9.3 to conduct an investigation into the reinsurance held for policyholder funds including the soundness and viability of such reinsurance, and to report thereon to the Honourable Court on the return day;

9.4 to recommend to the Honourable Court on the return day what further steps should be taken and by whom, in order to protect the interests of policyholders and other creditors of 3Sixty;

9.5 to furnish the applicant with progress reports on the curatorship on a fortnightly basis, and to file her report to the court with a copy to the applicant by not later than two weeks before the return date.

10. Within 5 days of its grant, the applicant is directed to serve a copy of the rule nisi on 3Sixty and the Financial Sector Conduct Authority at their respective registered addresses, and to take steps to cause it to be published in one issue of the Government Gazette, and in one issue of each of the Business Day and the Citizen newspapers, as well as on the Applicant's and 3Sixty's websites. The notice of the order published on 3Sixty's website shall be in plain and comprehensible English and translated versions in isiZulu, isiXhosa and Sesotho.

11. In the event that 3Sixty or any other interested party wishes to oppose the confirmation of the rule, it must lodge notice of such intention to oppose, together with an affidavit in support of such opposition, with the Registrar of this Honourable Court and serve copies thereof on the applicant's attorneys, Edward Nathan Sonnenbergs Inc at [amoosajee@ensafrica.com](mailto:amoosajee@ensafrica.com) and [vmakan@ensafrica.com](mailto:vmakan@ensafrica.com) or the Marc, Tower 1, 129 Rivonia Road, Sandton, Johannesburg, ref: A Moosajee/0502954, by no later than Friday, 21 January 2021.



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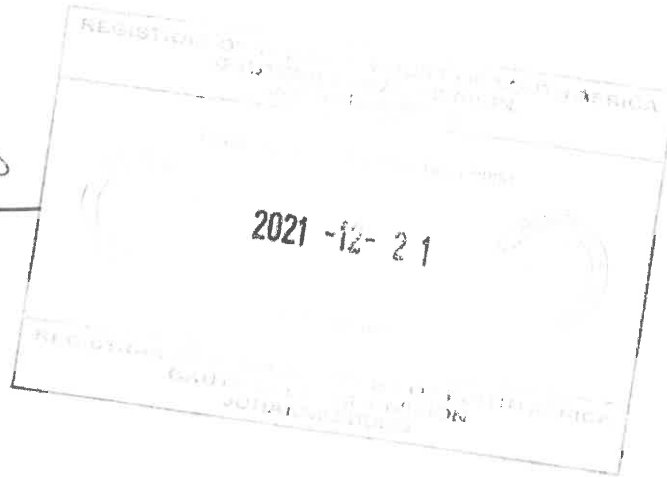
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BY ORDER

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Registrar



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04/02/2022

"FA2"

Case No.: 58950/2021

Applicant

### First Respondent

### Second Respondent

## ORDER

**IT IS ORDERED THAT:**

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2. The provisional curator will deliver an interim report regarding the Internal Recapitalisation Plan by Monday, 21 February 2022;
3. The First and Second Respondents are to deliver their supplementary affidavits together with an application for leave to file their supplementary affidavits by Monday, 7 March 2022 and the applicant shall reply thereto together with an application for leave to file their reply, if so advised, by 10 March 2022;
4. The parties are to exchange heads of argument by Monday, 14 March 2022;
5. The provisional curator is to deliver a report by Tuesday, 15 March 2022;
6. The matter will be set down for hearing on Tuesday, 22 March 2022 to be heard by the Honourable Justice Dippenaar;
7. The costs of 3 February 2022 are reserved for determination at the hearing on 22 March 2022; and
8. Nothing in this order prevents a party from opposing the application for leave to file further affidavits or to raise any other issues in relation to the matter.

**BY ORDER**



**Registrar**




## APPENDIX A CONT.

"FA3"

## TEAM CV's CONT.



**TINASHE MASHOKO**  
 ACTUARIAL SPECIALIST  
 E tmashoko@bdo.co.za

**Experience and Industry knowledge:** Tinashe is an actuarial specialist in BDO Financial Services and has over 25 years' experience in the Insurance, Employee Benefits and Investment Banking sectors. Tinashe has global experience gained from working in London, Johannesburg and Cape Town.

He consults on Actuarial, Risk & Regulatory Change to Financial Institutions and Insurance Regulators across Africa. As Program Director of ZICARP, he is currently leading implementation of Solvency 2 in Zimbabwe, in addition to being the Statutory and Consulting Actuary to a range of insurers and reinsurers across Southern and West Africa. Tinashe was previously a Director at one of the big 4 firms and was responsible for Actuarial Risk & Quants services across the Rest of Africa, as well as a Director at SkXPotiviti responsible for Actuarial & Insurance Services. He spent 7 years at one of the largest insurers in South Africa, the last 4 of which he was Chief Risk Officer responsible for Treasury, Capital, Risk Management, Compliance and Forensics across South Africa, Rest of Africa, Asia and Latin America, this after having spent time as a Senior Life Actuary in London. In this capacity, he also led and sponsored the group wide Integrating Capital, Risk and Finance Transformation project ('iCRAFT') in addition to serving on Exco and on a number of boards and key committees.

In addition, he spent 7 years at one of the largest financial services providers across Africa, the last 3 of which he was Managing Director of the Rest of Africa Financial Services operations. He previously worked in the Corporate Finance and Investment Banking team at one of the largest listed banks, specialising in Financial Services industry deals across Africa.

Tinashe is formerly a member of the Finance and Investment Subcommittee of the Institute and Faculty of Actuaries. He has previously served on the FSB SAM Steering Committee, the Pillar 2 Steering Committee and the SAM Stress and Scenario Testing task group. He is formerly a member of the ASSA Alternative Investment Sub-Committee.

**Key client experience:** Due to POPIA regulations, we have not included our client experience. Should you require additional information, please contact us.

## QUALIFICATIONS, MEMBERSHIPS AND TRAINING COMPLETED

- ▶ Bachelor of Business Science (Actuarial Science)
- ▶ Fellow of the Institute of Actuaries (UK)
- ▶ Fellow of the Actuarial Society of South Africa
- ▶ CFA Charterholder

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"FA4"



This is to certify that, having successfully completed the prescribed examinations and met the requirements relating to the profession of Actuary,

*Tinashe Mashoko*

was admitted as a

Fellow Member of the Actuarial Society

in 2000

and has agreed to uphold the standards of professionalism as required by the Society.

I, the undersigned, MARTHA FRANCINA CLAASSENS, CA (SA) FSA, IRBA reg. no. 496936, ID no. 720722 0203 081, (EX OFFICIO COMMISSIONER OF OATHS (RSA), of 225 Bell Drive, Noordheuwel Krugersdorp, 1756, do hereby certify that this document is a true copy of the original.

*[Signature]*

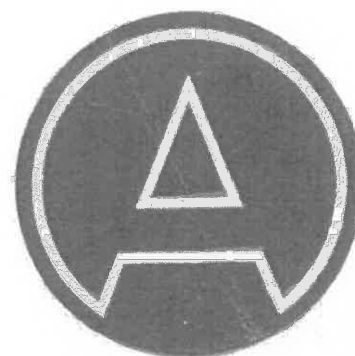
President

1 September 2009

Date

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*[Signature]*



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## Letter of Good Standing

**Member Number:** MASH00001

**Name:** Tinashe Frank Mashoko

Membership Type: **Fellow**

Date: **14 Feb 2022**

Membership Status: **Active**

Status: **In Good Standing**

To Whom It May Concern

### CONFIRMATION OF MEMBERSHIP

This is to certify that **Tinashe Frank Mashoko** successfully completed the prescribed examinations and met the requirements relating to the profession of Actuary through the Actuarial Society of South Africa. He qualified as a Fellow in 2014 with The Actuarial Society of South Africa.

As of the 14 February 2022, we confirm that **Tinashe Frank Mashoko** is an active member in good standing who has agreed to uphold the standards of the professionalism as required by The Actuarial Society of South Africa; and that he has not been found guilty of unprofessional conduct in terms of the disciplinary procedures of The Actuarial Society of South Africa.

Yours sincerely

A handwritten signature in black ink that reads 'Michelle Abrahams'.

Michelle Abrahams  
Member Engagement Executive  
[memberservices@actuarialsociety.org.za](mailto:memberservices@actuarialsociety.org.za)

Handwritten initials in black ink, consisting of a large 'G' and the letters 'LG'.



Established 1848  
Incorporated by Royal Charter 29 July 1884

*This is to Certify that after due Examination in subjects appertaining to the profession of Actuary and having satisfied such other requirements as are prescribed in the Charter and Bye-laws*

Tinashe Frank Mashoko

was on the Thirtyfirst day of March  
two thousand admitted a



*In Witness whereof the Common Seal of the Institute has hereunto been affixed this*

Eight day of May two thousand

By order

Paul Nthunutu President

Members of

the Council



undersigned, MARTHA FRANCINA GLAASSENS, CA (SA) RA,  
RSA reg. no. 496936, ID no. 720722 0203 081, (EX OFFICIO)  
COMMISSIONER OF OATHS (RSA), of 225 Bell Drive, Noordheuwel,  
Kroonstad, 1756, do hereby certify that this document is a  
true copy of the original.

Datum/Date: .....

*[Signature]*

*B LG*