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

REPLYING AFFIDAVIT (VARIATION APPLICATION)

I, the undersigned

SUZETTE JEANNE VOGELSANG

state under oath that:

- I am the Head of the Banking, Insurance and Financial Markets Infrastructure
 Supervision Department of the applicant (the Authority).
- I deposed to affidavits previously filed in this matter on behalf of the Authority. I remain authorised to represent the Authority in these proceedings.
- 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.



OVERVIEW OF THIS AFFIDAVIT

- 4. The first respondent contends that this application (the variation order application) constitutes an abuse and undermining of the court process. The Authority denies this and this affidavit will demonstrate that it is duty bound to bring the facts relevant to this application to the above Honourable Court's attention and to seek the removal of the provisional curator.
- 5. The first respondent also contends that the court should deal with all the issues, including the suitability of the provisional curator at the hearing of the main application set down for 22 March 2022. This is an astonishing suggestion, bearing in mind that the first respondent has contended and continues to contend that the provisional curator is not suitable to manage the business of 3Sixty Life Limited (3Sixty).
- 6. The first respondent argues that the variation order application is not urgent, but there is no merit to this argument. If the Authority's concerns about the provisional curator are well-founded, then the Authority is duty bound to ensure that the provisional curator does not continue in that role for at least another month.
- 7. The first respondent attacks the suitability of Mr Mashoko, the alternative person suggested by the Authority to be appointed as the provisional curator, but the Authority will, with reference to information in the founding affidavit and this affidavit, demonstrate that Mr Mashoko is suitable for appointment as provisional curator.
- 8. The first respondent contends that the granting of the provisional curatorship order is not justified and the rule nisi ought to be discharged. For the purposes of the variation order application, these allegations are irrelevant. The issues relating to the granting of the provisional curatorship order and whether or not the rule nisi ought to be discharged,

are issues that will be argued before Ms Justice Dippenaar on 22 March 2022 and need not detain the urgent court on 22 February 2022.

- The Authority will also demonstrate in this affidavit that the third respondent has been less than candid with both the Authority and the above Honourable Court.
- 10. The Authority denies the third respondent's suggestion that the Authority feels that she is not qualified appropriately to be the provisional curator. That was not the Authority's concern. Instead, the Authority is concerned about the third respondent's lack of integrity and this will be dealt with in greater detail below.
- I have had approximately 24 hours to consider the first and third respondents' explanatory affidavits and to consult with the Authority's attorneys, provide instructions, cause a replying affidavit to be prepared, considered, finalised and signed. It has not been possible in the very short time available to me to deal comprehensively with each allegation contained in the explanatory affidavits of the first and third respondents.
- 12. To the extent that any allegation in the explanatory affidavits of the first and third respondents have not been expressly addressed, it should not be taken to be admitted. Any allegation that is not dealt with and is inconsistent with the allegations in this affidavit and the founding and replying affidavits in the main application, is denied as if expressly traversed.

FIRST RESPONDENT'S EXPLANATORY AFFIDAVIT

Ad paragraph 1

13. I deny that Mr Msibi has the requisite authority to depose to the explanatory affidavit and oppose these proceedings in his capacity as an "Acting Chief Executive Officer".

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14. The 21 December 2021 court order divested the Board of 3Sixty and the acting CEO of the previous powers that they had.

Ad paragraph 2

- 15. Doves Group in about 1959, through a series of transactions, acquired industry respected funeral directing companies and pursuant to these acquisitions, Homes Trust Funeral Services was formed and was part of the Metropolitan Life stable.
- 16. In 1989, the senior management team purchased Metropolitan Life's shareholding and changed the name of the company to HTG Group. It formed its own life insurance company in 1993, which became known as HTG Life.
- 17. The name of this entity subsequently changed to Union Life, then to 360 Life Insurance Company Limited and subsequently to 3Sixty Life Limited.
- 18. Doves owns 100% of the shares in 3Sixty Life Limited. 3Sixty Global Solutions Group (Proprietary) Limited owns 100% of Doves and NUMSA Investment Company owns 100% of 3Sixty Global Solutions Group (Proprietary) Limited.

Ad paragraph 3

19. I deny that Mr Msibi is currently entitled to manage the operations of 3Sixty and it seems that he does not appreciate the consequences of the 21 December 2021 court order. Even if he contends that the 21 December 2021 court order ought not to have been granted, it remained binding on Mr Msibi and his fellow directors, until such time as it is set aside.

Ad paragraph 4

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20. I deny that the allegations contained in the first respondent's explanatory affidavit are all true and correct.

Ad paragraph 5

21. I deny that all the legal submissions made in the explanatory affidavit of the first respondent are correct.

Ad paragraph 6

22. The Authority disputes that the information contained in the first respondent's answering affidavit in the main application is irrelevant.

Ad paragraph 7

- 23. In the answering affidavit in the main application, Mr Msibi alleged: "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."
- 24. The Authority is therefore now surprised that having challenged the provisional curator's credentials, 3Sixty now do not support the variation of the court order. This demonstrates Mr Msibi's mala fides, as in effect he is now asking the above Honourable Court to keep a provisional curator in place, who on his version is not suitably qualified and who did not timeously correct the incorrect information that was contained in her resume attached to the founding affidavit as annexures FA33.

Ad paragraphs 9 to 13

25. These allegations are irrelevant to the relief claimed in the urgent application that is scheduled to proceed on 22 February 2022.

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26. These allegations are admitted.

Ad paragraph 15

- 27. It is interesting to note that the first respondent persists with its contention that Ms Ram is not suitable to assist it with the challenges that 3Sixty faced.
- 28. The applicant denies that in applying for the provisional curatorship order and the appointment of Ms Ram as the provisional curator, it acted hastily, recklessly and irresponsibly. To the contrary, the Authority gave 3Sixty about 12 months to remedy its financial position relating to its Minimum Capital Requirements (MCR) and Solvency Capital Requirements (SCR), and only after 3Sixty's failure to remedy this, the application for provisional curatorship was launched.
- 29. For reasons set out in the founding and replying affidavits in the main application I previously deposed to, the Authority respectfully submits that it was under a legal obligation to place 3Sixty under curatorship.

Ad paragraph 16

- 30. I deny that there is any merit to Mr Msibi's concern and that the attempt to replace Ms Ram is an abuse of the court.
- Despite adopting the position more than once, that Ms Ram is not a suitable candidate to be the provisional curator, Mr Msibi will now have the above Honourable Court believe Ms Ram should remain the provisional curator for another month at least, despite the concerns that the Authority has about Ms Ram's integrity and Mr Msibi has about her suitability to act as provisional curator.

- 32. On 21 December 2021, when the rule nisi in this matter was granted pursuant to a virtual hearing, Ms Ram had joined the hearing via MS Teams.
- 33. Her Ladyship Acting Justice Crutchfield specifically asked the applicant's counsel to address her in regard to Ms Ram's suitability to be appointed as the provisional curator.
- 34. Counsel for the Authority highlighted paragraph 44 of the founding affidavit, which included a reference to the fact that Ms Ram was a member of the Actuarial Society of South Africa (ASSA). He also referred her Ladyship Justice Crutchfield to annexure FA33 (003-163).
- 35. Even if Ms Ram did not study annexure FA33 to the founding affidavit and the contents of paragraph 44 of the founding affidavit, by 21 December 2021, it should have been clear to Ms Ram that incorrect information had been provided to the above Honourable Court. She was not a full member of ASSA, but only a student member. In addition, she had not completed her Certified Enterprise Risk Actuary (CERA) qualification. This was her first opportunity to bring the correct facts to the attention of the Authority or the above Honourable Court.
- 36. After the order was granted on 21 December 2021, the Authority and its attorneys met with Ms Ram to discuss next steps. During this meeting, again Ms Ram did not correct the mistaken impression that the Authority and its attorneys were labouring under. This was the second opportunity that Ms Ram had to correct the position.
- 37. The Authority and its attorneys met with, amongst others Ms Ram and her team members, on 28 and 29 January 2022 for most of the day.

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- 38. During the meeting on 29 January 2022, based on information which Ms Ram provided, the draft of the replying affidavit read as follows: "The provisional curator is Head: Actuarial, Predictive Analytics and Insurance Innovation at BDO Advisory Services (Pty) Ltd (BDO). She completed a BSC Actuarial Science degree at the University of Pretoria in 2005. She also read for an Executive Development Programme at GIBS. She is currently completing a BSC (Social Sciences and Psychology degree) through the University of South Africa."
- 39. When this drafting was taking place in her presence, she did not advise the Authority's attorneys or any other representative of the Authority that she was only a student member of ASSA. This was the third opportunity that she had to correct the Authority and its attorneys and she did not do so. In fact, apart from not correcting the Authority's attorneys, in response to a question from Mr Moosajee of the Authority's attorneys, about when she completed the Actuarial Science degree, she mentioned, in, amongst others, my presence, the Authority's lead legal counsel and Mvelase Peter's presence, that she did so in 2005.
- 40. During the meeting, Ms Ram was not keen on providing sufficient detail in relation to paragraphs 134 and 135 of the answering affidavit. She contended that the Court was satisfied with her credentials when the provisional order had been granted and therefore the allegations made about her suitability for appointment need not be dealt with.
- 41. The Authority's attorneys disagreed and persisted with obtaining information from her in regard to her qualifications and experience relating to insurance companies.
- 42. The Authority's attorneys obtained the information that ultimately ended up being in paragraphs 268 to 279 of the replying affidavit.

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- 43. If Ms Ram was as honourable as she is suggesting she is, she would have at that stage made it clear that she had no undergraduate degrees. She did not do so. This was the fourth opportunity for Ms Ram to correct the incorrect information that served before the above Honourable Court.
- 44. I note that Ms Ram put up a copy of the email from her to the Authority's attorneys on Sunday, 30 January 2022, in which she expressed discomfort with the response to paragraph 134 of the answering affidavit. The said email appears as annexure YR2 to her affidavit. In response, the applicant's attorney recorded, amongst others, the following:

"Dear Yashoda

I will adopt your suggested wording if the Prudential Authority requests me to do so, but I respectfully disagree with you. The issue is not whether Ranti is more qualified than you, but whether you have the necessary expertise to fulfil the role of curator. All that we have included in vesterday's draft, helps us show that you are more than qualified."

- 45. Ms Ram did not respond to the applicant's attorney to indicate at that stage that she did not have a BSC degree in Actuarial Science. This email was the fifth opportunity of Ms Ram to correct the inaccuracies which appeared in the founding affidavit and the misapprehension that the Authority was labouring under.
- 46. She could have easily advised the Authority's attorneys that she did not have an undergraduate degree in actuarial science and she was not a full member of ASSA, but only a student member. She did not respond to the Authority's attorneys email of 30 January 2022 and did not take up the sixth opportunity to correct the inaccurate information previously provided to the above Honourable Court.

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- The Authority's lead legal counsel also agreed with the Authority's attorneys' views expressed in the above-mentioned email and recorded this in an email dated 30 January 2022. A copy of the email chain of 30 January 2022 is attached as annexure "RA1".
- 48. On the morning of the 31 January 2022, the Authority's lead legal counsel spoke to Ms Ram and indicated to her that the paragraph containing the sentences referred to in paragraph 38 above, should in his view be left in. She nodded and yet again did not correct the inaccuracies. This was the seventh opportunity Ms Ram had to correct the inaccuracies.
- 49. Later on Monday, 31 January 2022, while the Authority's attorneys were finalising the replying affidavit, Ms Ram advised the Authority's lead legal counsel and me, that she did not complete a BSC Actuarial Science degree, as stated by her on 29 January whilst the Applicants' attorneys were drafting the replying affidavit.
- 50. This was shortly before the replying affidavit had to be signed and there was some pressure in finalising the replying affidavit, as the matter had been set down by Mr Msibi who tried to anticipate the return date to 1 February 2022. At that stage, the Authority's lead legal counsel amended the draft affidavit so that the portion set out above did not include the sentences set out in paragraph 38 above.
- The Authority's attorney was focused on completing the rest of the replying affidavit and did not study the comment which appears at 034-37. The Authority's attorney was concerned about the time and did not canvass with the Authority's lead legal counsel why the sentences referred to in the quoted paragraph above were deleted.
- 52. When the Authority's attorney joined Ms Ram and the representatives from the Authority with the finalised replying affidavit and with her confirmatory affidavit, she at that stage had not corrected the inaccuracies by drawing this to the Authority's attorneys' attention.

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This was the eighth opportunity that she had to correct the inaccuracies and she did not do so.

- 53. On 1 February 2022, the matter stood down until 3 February 2022. On 3 February 2022, after the order had been granted, the Authority's attorneys met with representatives of the Authority, Ms Ram and members of her team. During this meeting, she still did not correct the inaccuracies with the Authority's attorneys. This was her ninth opportunity to do so.
- 54. Thereafter, there were various internal meetings held at the Authority, in order to decide what to do in relation to the incorrect information that had previously been provided to the above Honourable Court.
- 55. I also had to decide in conjunction with my colleagues whether Ms Ram was still suitable to be the provisional curator or whether there had to be an application to court to replace her as the provisional curator.
- On 9 February 2022, the Authority's lead legal counsel established from ASSA that Ms Ram was not a full member, but only a student member of ASSA. In addition, she had not completed the CERA qualification as suggested in annexure FA33.
- Consequently, the Authority's lead legal counsel and I arranged a call with Pierre Jacobs (**Mr Jacobs**), the fourth respondent's Head of Financial Services. I advised Mr Jacobs that the information that was previously received from the fourth respondent in regard to Ms Ram was not correct, in that she did not have a BSC degree in Actuarial Science, she did not have the CERA qualification, was only a student member of ASSA and not a full member.

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- 58. This took Mr Jacobs by surprise. I mentioned to Mr Jacobs that if the information that I shared was incorrect, it would be necessary for the Authority to go back to court and reveal this to the above Honourable Court. Mr Jacobs understood and indicated that he would investigate and revert to the Authority. He explained that he needed to look into it and talk to his EXCO.
- On the morning of 11 February 2022, the Authority's attorneys were requested to attend a meeting urgently with the Authority. The Authority's attorneys were in urgent court on the day and therefore, could only meet late in the afternoon.
- 60. At the late afternoon meeting on Friday, 11 February 2022, the information regarding the previous inaccuracies was shared with the Authority's attorneys and they were instructed to prepare urgent papers for the replacement of Ms Ram as the provisional curator.
- The variation order application papers were finalised, served and filed by Tuesday, 15 February 2022.
- 62. Save as set out above, these allegations are denied.

- 63. The issue relating to whether or not a final curatorship order should be granted is very different to the issue of whether Ms Ram should be allowed to continue to act as the provisional curator.
- 64. The Authority remains of the view that it was inappropriate on 3 February 2022 to determine whether or not the provisional curatorship order should be made final.

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- 65. Having previously challenged the suitability of Ms Ram to be the provisional curator, I am now very surprised that the first respondent is suggesting that she remain the provisional curator until 22 March 2022.
- 66. It seems that the first respondent is keen to ensure that the matters relating to 3Sixty are not properly investigated, which is the likely result, now that Ms Ram's integrity has been questioned by the Authority and it seems that she is now acting in concert with Mr Msibi, as will be evident from what is set out later in this affidavit.

- 67. The Authority denies that Ms Ram had engaged an independent firm of actuarial experts. Ms Ram had engaged Milliman South Africa (Milliman), which was previously her employer. She did not request consent from the Authority to appoint Milliman.
- 68. The Authority has asked Ms Ram to complete the report that needs to be filed by 21 February 2022, as per the 3 February 2022 court order, as is evident from annexure "RA2".
- 69. Prior to 17 February 2022, the Authority did not even know that Milliman had prepared a draft report.
- 70. The authority was also surprised to see that Ms Ram was going to be "offline" from 16 February 2022. She did not receive the Authority's consent to be "offline" and neither did she, nor BDO, discuss this with the Authority.
- 71. Save as aforesaid, the above-mentioned allegations are denied.

- 72. The Authority had no reason to doubt the information it received from BDO, a reputable firm of professionals. It is therefore denied that the Authority neglected to do due diligence on Ms Ram's credentials.
- 73. The Authority has no desire to prevent Ms Ram to conclude the report due from her on 21 February 2022.
- 74. The remaining allegations contained in this paragraph are denied.

Ad paragraph 21

- 75. The issue relating to the discharge of the rule nisi is not set down for hearing on 22 February 2022 and therefore it is improper for Mr Msibi to request a discharge of the rule nisi at the hearing on 22 February 2022.
- 76. Mr Msibi provides no justification for why he is now saying that Ms Ram should remain the provisional curator until at least 22 March 2022, when on his own version, she is not suitable to be the provisional curator.

Paragraphs 22 to 32

- 77. At the time that I deposed to the founding and replying affidavits in the main application, I was satisfied that Ms Ram was suitably qualified. If one has regard to the facts set out earlier in this affidavit, it is clear that I now have a legitimate basis to question Ms Ram's integrity.
- 78. As set out in my replying affidavit in the main application, the retirement fund that 3Sixty lost was not due to the provisional curatorship and there is no merit to the suggestion

that there is a serious risk of termination of other funds by other clients. Over two months have lapsed since the 21 December 2021 court order and no other fund clients have terminated their relationship with 3Sixty.

79. Even if it was true that the Authority acted recklessly in appointing Ms Ram (which is denied), that is not a basis for denying the relief claimed by the Authority in this application.

Paragraphs 33 to 35

- 80. I note that the first respondent does not deny that Ms Mashoko worked closely with Ms Ram and the BDO team during the provisional curatorship.
- 81. It is incorrect for Mr Msibi to suggest that the Authority has relied on a brief resume and profile of Mr Mashoko.
- 82. Before launching this application, the Authority satisfied itself that Mr Mashoko was a full member and a fellow of ASSA and a fellow of the Institute of Actuaries of the United Kingdom as is evident from annexures FA4 and FA5 that were attached to the founding affidavit in the application to vary the court order.
- 83. In addition, Mr Mashoko:
 - 83.1. Was between 2009 to 2012 involved in Solvency Assessment Management (SAM) working groups at Old Mutual and leading the Integrating Capital and Risk programme which was implementing SAM for Old Mutual;
 - 83.2. In January 2022, assisted with the completion of the SAM return of Nyarndzo Financial Services Limited, which is also a licenced insurer;

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- 83.3. Previously assisted with the completion of the SAM return of KGA Life Limited, which is also a licenced insurer in South Africa; and
- 83.4. Is a director of the Project implementing the Capital and Risk programme which aims to enhance the implementation of SAM principles in Zimbabwe.
- The experience referred to above is not an exhaustive list of Mr Mashoko's experience but are examples to demonstrate his experience with insurance companies and in particular solvency issues at such companies.
- 85. Save as set out above, the remaining allegations are denied.

- 86. There are good reasons for ensuring that an alternative candidate is from BDO.
- 87. BDO, in its first discussions with the Authority about the incorrect information that had been provided to the Authority, indicated that they did not know that Ms Ram:
 - 87.1. Is not a full member of ASSA; and
 - 87.2. Does not have an undergraduate degree in actuarial science.
- 88. The Authority therefore has no reason to believe that BDO was responsible for the misrepresentation.
- 89. The first respondent has not disputed that Mr Mashoko worked closely with Ms Ram and the BDO team during the provisional curatorship.
- 90. This, coupled with the fact that nobody from PWC, Deloitte, KPMG, EY and SNG would have been suitable (either because they currently or previously audited 3Sixty, investigated, at the instance of the Authority, the affairs of 3Sixty and also as some of

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them performed outsourced control functions on behalf of 3Sixty), is a clear indication that the Authority acted responsibly in seeking Ms Ram to be replaced by Mr Mashoko.

- 91. Mr Mashoko has knowledge of the affairs relevant to 3Sixty's provisional curatorship and it is also clear from what is set out earlier in this affidavit that he has the necessary qualifications and experience to play the role of provisional curator.
- 92. Save as set out above, these allegations are denied.

Ad paragraph 37

93. If one has regard to the paragraphs 135 to 136 of 3Sxity's answering affidavit in the main application (010-50 to 010-52), it is clear that even though the first respondent suggested that Ms Ram and her support team were out of their depths, no criticism was levelled against the support team, but only Ms Ram. Rather curiously, Mr Msibi is now suggesting that Ms Ram should remain in place until at least 22 March 2022.

Ad paragraph 38

- 94. Mr Msibi exaggerates the experience that is needed by someone to act as a provisional curator.
- 95. I respectfully submit that Mr Mashoko has the necessary experience to be the curator of 3Sixty.

Ad paragraph 39

96. While Mr Mothapo may have vast experience, no explanation is provided as to why for a period of over 14 months, remedial steps were not taken by 3Sixty to ensure that it meets the requisite MCR and SCR cover requirements and it has not become financially sound.

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Ad paragraphs 40 to 43

- 97. These allegations are denied.
- 98. The first respondent also ignores the fact that the only issue before the court on 22 February 2022 is whether Ms Ram should be replaced by Mr Mashoko.

Ad paragraph 44

99. The Authority denies that it failed to make a full and fair disclosure and that the rule nisi falls to be discharged. In any event, the issue of disclosure or material non-disclosure is not an issue before the court on 22 February 2022.

Ad paragraph 45

- 100. It is correct that the Authority placed incorrect information before the above Honourable Court when the provisional order was granted, but there was no intention on the part of the Authority or me to mislead the above Honourable Court.
- 101. I refer to what it is set out earlier in this affidavit, from which it is clear that the Authority was unaware of the true state of affairs when the founding papers were signed and delivered.

Ad paragraph 46

- 102. The first respondent makes sweeping generalised statements which are incorrect. The allegations contained in this paragraph are denied.
- 103. I highlight that no employees have been retrenched and they continue to receive their salaries. In addition, valid claims are being paid by the provisional curator's team and the payment patterns are better than the patterns that were in place prior to the provisional curatorship order.

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104. The first respondent is trying to run away from its own previous concession that it has a liquidity crisis. I deny that that 3Sixty does not have a liquidity crisis.

Ad paragraph 48

- 105. This issue is irrelevant to the question of whether the provisional curator should be replaced.
- 106. The Authority is waiting for the provisional curator's report in regard to the Internal Recapitalisation Plan and will only be able to comment on its viability, once the Internal Recapitalisation Plan is received.
- 107. The remaining allegations are denied.

Ad paragraph 49

- 108. These allegations are denied.
- 109. Despite regular meetings with the provisional curator, she has not at any stage suggested to the Authority that the Internal Recapitalisation Plan "is valid in covering the MCR two times". To the contrary, the view that she shared with the Authority in the presence of its attorneys, was that even if 3Sixty's property valuation of R122 million was accepted, that would still not be sufficient to return 3Sixty to financial soundness or remedy the MCR situation.

Ad paragraph 50

110. These allegations are denied.

Ad paragraph 51

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- 111. These allegations are denied. I am advised by Marnus Fourie, a chartered accountant and Head of Insurance at BDO, that valid claims are being paid timeously and so are service providers with sufficient appropriate support for the payments provided. Mr Fourie was tasked by Ms Ram from 18 January 2022 with releasing payments that were due by 3Sixty. Prior to that Ms Ram was releasing the payments.
- 112. I note that no specific details are provided by Mr Msibi in this paragraph and they are denied.
- 113. Ms Ram's reasons for previously failing to counter-sign the disposal agreement have been dealt with in the replying affidavit in the main application, but in any event, are not relevant to the issue to be decided on 22 February 2022.

114. These allegations are denied. If 3Sixty had competent professionals and actuaries overseeing the business and managing its financial soundness, 3Sixty would not have been in a position where for over 14 months it is not in a financially sound position and it cannot meet MCR and SCR cover requirements.

Ad paragraph 53

115. I note that there is no indication of what 3Sixty's SCR and MCR cover is currently, as determined by the Independent Head of Actuarial Function. I respectfully submit that there is good reason for this. The current SCR and MCR cover requirements are not met by 3Sixty and this is not disclosed to the above Honourable Court by 3Sixty.

Ad paragraphs 55 to 62

- 116. The question of the discharge of the rule nisi is not relevant to the determination of the issue before the above Honourable Court on 22 February 2022. Therefore, the information contained in these paragraphs are irrelevant, but in any event has been dealt with extensively in the replying affidavit in the main application.
- 117. To the extent that the allegations are inconsistent with what is set out in my replying affidavit in the main application, they are denied.

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118. If one has regard to irrelevant allegations contained in the explanatory affidavit of Mr Msibi, one can infer that 3Sixty is trying to take the Authority's attention away from filing an application for leave to file a supplementary affidavit, which is due on 21 February 2022. in these circumstances, the Authority respectfully requests the above Honourable Court to order Mr Msibi to personally pay the costs of the variation application, alternatively the costs of this variation application be costs of the curatorship.

THE THIRD RESPONDENT'S EXPLANATORY AFFIDAVIT:

Ad paragraphs 2 and 3

119. I deny that all the facts and references to law and legal arguments contained in Ms Ram's explanatory affidavit are correct.

Ad paragraph 6

120. I refer to what is set out earlier in this affidavit and deny that the Authority deliberately made a misrepresentation to the above Honourable Court.

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121. Ms Ram had numerous opportunities, as outlined above, to correct the information that was previously provided to the above Honourable Court, but she failed to promptly bring this information to the attention of the Authority or its attorneys.

Ad paragraph 7

122. I deny that were falsehoods contained in the affidavit filed in support of the variation order.

Ad paragraph 8

- 123. Ms Ram cannot have her cake and eat it. She either abides by the decision of the above Honourable Court, or she is opposing the application, even if it is only in relation to the question of urgency.
- 124. To the extent that Ms Ram has representatives appearing for her on 22 February 2022 to argue that the matter should be struck from the roll or not enrolled on the urgent roll, she is opposing the Authority's variation application and she should be ordered to pay costs in her personal capacity, if the above Honourable Court agrees that the order of 21 December 2021 should be urgently varied.

Ad paragraph 9

125. I deny that Ms Ram's affidavit is all true and correct and that the Authority has levelled "scurrilous, unsubstantiated allegations against her".

Ad paragraph 10

126. Bearing in mind that Ms Ram is the Head: Actuarial, Predictive Analytics and Insurance Innovation, one would have expected her to have at least a bachelor's degree in actuarial science.

- 127. She fails to point out that the resume that was provided to the Authority in annexure FA33, does not reflect her as only a student member of ASSA. It suggests that she is a full member of ASSA and that she had completed the CERA qualification.
- 128. She was present when counsel made submissions on 21 December 2021 for the granting of the provisional order and when counsel referred to the information contained in paragraph 44 of the founding affidavit. She did not express any discomfort soon after those proceedings that counsel communicated that she was a member of ASSA.
- 129. I am also surprised by her suggestion that her resume does not misrepresent the facts.

 If she was only a student member, one would have been expected that to have been reflected in the resume.
- 130. I also refer to what is set out earlier and the nine different opportunities she had to advise the Authority and its attorneys that she did not have a bachelor's degree in actuarial science and that she was only a student member of ASSA and did not complete the CERA qualification, until she made the disclosure late on 31 January 2022.
- 131. Save as aforesaid, these allegations are denied.

- 132. I deny that Ms Ram brought to the Authority's attention on 28 January 2022, that she did not have a bachelor's degree in actuarial science.
- 133. There was a meeting on 28 January 2022, at which the relevant information was gathered by the Authority's attorneys for the purposes of preparing the replying affidavit in the main application.
- 134. That meeting continued on 29 January 2022, and I refer to what is set out earlier in this affidavit in that regard.

- 135. I also refer to the correspondence exchanged on 30 January 2022, which is referred to above. It is clear that at no stage, up to 31 January 2022, had Ms Ram advised the Authority that she did not have a degree in actuarial science and she was not a member of ASSA.
- 136. To the contrary, the information that she provided to the Authority's attorney on 29 January 2022, she explicitly stated that she had such a degree. She then tried to backtrack on that version by way of the emails exchanged on 30 January 2022, but it is clear from those emails that she does not spell out that she did not have a bachelor's degree in actuarial science.
- 137. Based on the information that she had provided when BDO submitted its proposal and the additional information provided by Ms Ram on 29 January 2022 which is set out in paragraphs 267 to 282 of the replying affidavit in the main application (019-50 to 019-51), the Authority at the time remained satisfied that she was suitable to act as the curator.
- 138. It is only after the Authority fully digested the information that she relayed on 31 January 2022 and the information it gathered from ASSA, that the Authority became concerned about her integrity and thereafter the decision was made to institute the variation application.
- 139. The Authority's lead legal counsel had advised Ms Ram on 31 January 2022 that there is no legal requirement that the curator of an insurance company has to be an actuary.
- 140. That, however, is not the concern of the Authority. The concern of the Authority is that Ms Ram had numerous occasions, as outlined above, to set the record straight, and she failed to do so.

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- 141. In addition, at the meeting with the Authority's attorneys and the Authority on 29 January 2022, Ms Ram advised that she had a BSC in actuarial science. She then tried to move away from this as is evident from the emails exchanged on 30 January 2022, without expressly confirming in writing that she did not complete a BSC in actuarial science.
- 142. Ms Ram only disclosed this in the afternoon of 31 January 2022.
- 143. Save as aforesaid, these allegations are denied.

144. These allegations are denied.

Ad paragraph 16

- 145. Ms Ram misses a crucial point. The Authority is not concerned about her advisory and audit experience with insurers. If she was candid from the outset, it would not have concerned the Authority that she was not an actuary.
- 146. The issue that concerns the Authority is that she had numerous opportunities as outlined above, to correct the inaccuracies provided to the above Honourable Court, and she did not do so. It is also clear from the confirmatory affidavit of Ms Ram attached to the founding affidavit that she had read the founding affidavit, which includes the resume attached as annexure FA33, but she did not bother at the time to correct the inaccuracies in the resume.
- 147. Save as aforesaid, the allegations are denied.

Ad paragraph 18

148. It is correct that the Honourable Acting Justice Crutchfield raised questions about Ms Ram's qualifications and experience.

- 149. I deny, however, that counsel for the Authority was aware that she did not have a bachelor's degree in actuarial science or that the nature of the actuarial studies are such that board exams supersede an undergraduate degree. Counsel made no reference at all to this. Instead, counsel drew the Honourable Acting Justice Crutchfield's attention to paragraph 44 of the founding affidavit and annexure FA33.
- 150. I attach a copy of an extract from the ASSA handbook as annexure "RA3", and it is clear from paragraphs 122 and 123 that a bachelor's degree is a prerequisite for admission as an associate or fellow of ASSA. Being an associate or fellow of ASSA entitles one to use the title "actuary".
- 151. Save as aforesaid these allegations are denied.

- 152. I deny that Ms Ram informed the Authority at meetings on 28 and 29 January 2022 that she did not complete an undergraduate degree. She only did so in the afternoon on 31 January 2022, shortly before the replying affidavit was finalised and signed.
- 153. There was significant pressure at the time to finalise the replying affidavit which was prepared under very tight timelines and at a time when the anticipation of the return date was scheduled to be heard on 1 February 2022.
- 154. I note that Ms Ram conveniently omits the Authority's attorneys' response to her email on 30 January 2022, and she provides no explanation for why the email of 30 January 2022 did not expressly record that she did not have an undergraduate degree in actuarial science. One would have expected her to do so when she had specifically advised the Authority's attorneys on 29 January 2022 that she had a BSC degree in actuarial science.

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- 155. It is correct that in the afternoon of 31 January 2022, Ms Ram advised the Authority's lead legal counsel and me that she did not have an undergraduate degree in actuarial science.
- 156. At that stage the Authority was focused on urgently finalising the replying affidavit. The draft replying affidavit had been amended to make sure that it was factually correct, but neither I nor the Authority's lead legal counsel had analysed carefully the revelation from Ms Ram in the afternoon of 31 January 2022 that she did not have an undergraduate degree in actuarial science.
- 157. The full gravity of this revelation was only appreciated in the course of meetings that were held after the 3 February 2022 order had been granted. Once the Authority fully appreciated the implications of Ms Ram's revelation on the afternoon of 31 January 2022, it occurred to the Authority that Ms Ram had an opportunity to disclose the truth on numerous occasions, but she failed to do so.
- 158. The Authority therefore had serious concerns about her integrity and that is what served as a catalyst to this variation application.

Ad paragraph 25

159. I deny that it was clear to the Authority as early as 29 January 2022 that Ms Ram did not have an actuarial degree.

Ad paragraph 26

160. The CV's of Ms Ram which forms part of annexure YR3 to Ms Ram's explanatory affidavit, were not provided to the Authority. The CV that was provided to the Authority was attached as annexure FA33 to the founding affidavit.

161. I note that the email that Ms Ram addressed to Mark Stewart and Pierre Jacobs did not expressly record that she did not have an undergraduate degree in actuarial science.

162. Save as aforesaid, these allegations are denied.

Ad paragraph 27

163. It is unfortunate that Ms Ram chooses to omit the email she sent to me, on 8 February 2022, which places the Authority's lead legal counsel's reply to her in proper context. I attach as annexure "RA4" the complete email exchange between Ms Ram and the Authority's lead legal counsel on 8 February 2022.

Ad paragraph 28

164. I refer to what is set out earlier in this affidavit and deny these allegations.

Ad paragraph 30

165. The court order was granted on 3 February 2022, but only signed by the Honourable Ms Justice Dippenaar on 4 February 2022.

Ad paragraph 31

166. These allegations are admitted and I attach the emails exchanged between the Authority's attorneys and Ms Ram's attorneys on 17 February 2022 as annexure RA2.

Ad paragraphs 33 to 34

167. These allegations are denied. Ms Ram did not make full and frank disclosure promptly and therefore it was not possible at the time of filling of the replying affidavit to fully appreciate that there are major concerns about her integrity.

Ad paragraph 35

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- 168. These allegations are denied.
- 169. Ms Ram is quick in accusing the Authority of making unjustified and scurrilous allegations, yet she makes these allegations, despite the information set out above, from which it is clear that she has not been honest with the Authority or the above Honourable Court.
- 170. I am surprised by her suggestion that the Authority ought never to have placed 3Sixty under curatorship. The Authority had numerous meetings with Ms Ram since 21 December 2021 and not at one of these meetings, did she indicate that she does not believe that 3Sixty should have been placed under curatorship.
- 171. If Ms Ram believed that 3Sixty should never have been placed under curatorship, one would have expected Ms Ram to have advised the Authority of that position in writing. To date, the Authority has not received such an indication from Ms Ram. In addition, if Ms Ram genuinely held that belief when there was the attempt to anticipate the return date by Mr Msibi to 1 February 2022, one would have expected Ms Ram to have supported that and to have also supported the discharge of the rule nisi at the hearing on 3 February 2022.
- 172. I note the reference to the four independent experts, but to date Ms Ram has not shared any of those independent expert reports with the Authority. In addition, if those independent experts are from Milliman, the Authority disputes that they are independent, as she was previously employed by Milliman.
- 173. Even if it ultimately turns out that Milliman did an excellent job and were not influenced in any way by Ms Ram, she cannot dispute that:

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- 173.1.3Sixty's MCR and SCR cover at the time of the launch of the provisional curatorship application was less than 1 and had been so for more than 12 months;
- 173.2. 3Sixty had conceded to the financial strain it was under; and
- 173.3. 3Sixty was given an opportunity for over a year to rectify its financial position and it failed to do so.
- 174. Under these circumstances, it is rather strange that Ms Ram now belatedly goes out on a limb and suggests that the Authority wants to remove her in order to ensure that the Authority would not be embarrassed for having placed 3Sixty under curatorship.
- 175. If the Authority had such ulterior motives as suggested by Ms Ram, the Authority would not be recommending that Ms Ram be replaced by her colleague, Mr Mashoko. She has not attacked Mr Mashoko's credibility and therefore the above Honourable Court can accept that Mr Mashoko will give an independent view regarding whether or not the curatorship should continue.
- 176. Over and above that, at the meetings on 28 and 29 January 2022, Ms Ram had on numerous occasions indicated that even if it turns out that the disposal agreement results in 3Sixty becoming financially sound, she was still of the firm view that the curatorship needed to continue because the business of 3Sixty had been mismanaged. In particular, she referred to the Deloitte report and the failure of 3Sixty to take steps to implement the recommendations to remedy the issues identified in that report. The report appears at page 019-179 to 219 on Caselines.

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177. I also find it incredibly coincidental that 3Sixty and Ms Ram elect to abide by the decision in regard to the variation order but both of them file "explanatory affidavits" and both of them challenge urgency.

Ad paragraph 36

178. I deny these allegations.

Ad paragraphs 37 to 44

179. For the purposes of this application, I do not dispute the allegations in paragraphs 37 to 44 of Ms Ram's affidavit, but for reasons set out earlier, it is not Ms Ram's qualifications that are of concern. Instead, her integrity is of concern to the Authority.

Ad paragraphs 45 to 51

- 180. I am surprised that Ms Ram challenges the urgency of the variation application.
- 181. One would have expected her to support the need for the variation application to be urgently decided so that there is clarity not only to her, but also the Authority as to whether she should continue as provisional curator.
- 182. She attempts to suggest that the Authority has not dealt with the fact that it would not be afforded substantial redress in due course. This is denied. It is self-evident that if somebody lacks the necessary integrity, the Authority is duty bound to apply to court to replace that person as a provisional curator.

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- 183. The variation order application raises a crisp point, namely whether Ms Ram remains suitable to be the provisional curator. Bearing that in mind, I deny that she was afforded inadequate time to file an answering affidavit.
- 184. The remaining allegations are denied.

- 185. I deny that at the meeting on 29 January 2022, Ms Ram advised the Authority and its legal representatives that she did not have an undergraduate degree in actuarial science. She advised the Authority on 29 January 2022 that she still had an exam to write to become a fellow of the Actuarial Society in General Insurance, but had communicated that she had a BSC degree in actuarial science. It was on that basis that the relevant sentences referred to above in paragraph 38 were included in the draft replying affidavit circulated on 29 January 2022. It was only in the afternoon of 31 January 2022 that Ms Ram informed myself and the Authority's lead legal counsel that she did not have a degree in actuarial science.
- 186. Annexure YR8 is not what the Authority received from BDO.
- 187. Ms Ram fails to disclose exactly when she reconsidered annexure FA33 and why, on upon reconsideration, she did not bring the inaccuracies in FA33 immediately to the Authority's attention or the attention of the Authority's attorneys, with whom she had been communicating directly.
- 188. It is incorrect to refer to a spelling error between "completed" and "completing", when the reference to Certified Enterprise Risk Actuary, does not include either words in annexure FA33. In fact, in FA 33, it states "Certified Enterprise Risk Actuary (CERA)

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ASSA | 2016", which implies she obtained the CERA qualification in 2016, whereas she has to date not completed the course.

189. She appears to put the blame on an employee of BDO for the error on her resume, but gives no indication of what steps she took to hold that employee accountable for providing the Authority with incorrect information. Save as aforesaid, these allegations are denied.

Ad paragraphs 58 to 61

- 190. It is correct that the Authority's lead legal counsel had advised Ms Ram that she was appointed on the strength of her experience and not simply because she was an actuary.
- 191. For the purposes of this variation application, I do not deny the contents of paragraph60 of Ms Ram's affidavit.
- 192. In the rush to finalise the variation order application, I did not pick up that paragraph 15 is not entirely correct. I apologise for this. Ms Ram is correct that we did not check BDO's website before she was appointed. After she had disclosed that she did not have a bachelor's degree, we went onto BDO's website and saw that it reflected Ms Ram as having two undergraduate degrees. AttachedAed as annexure "RA5" is an extract of what appeared on BDO's website. These references have since been removed.

Ad paragraphs 62 and 63

193. I note the concession from Ms Ram that she is only a student member of ASSA and she provides no explanation as to why she did not previously refer to the fact that she was only a student member (as opposed to a full member).

Ad paragraphs 66 and 67

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194. These allegations are denied.

Ad paragraph 68

- 195. Ms Ram is correct that the Authority only makes a recommendation and it is for the court to make the appointment.
- 196. She is, however, incorrect in stating that the allegations in the founding affidavit had no effect in the Honourable Acting Justice Crutchfield agreeing to her appointment.
- 197. Even if that was so, her lack of integrity cannot be ignored.
- 198. The Authority has highlighted to the above Honourable Court Ms Ram's lack of integrity not only by failing to make prompt disclosure, but also by being adamant at the meetings of 28 and 29 January 2022 that the directors and managers of 3Sixty were incompetent. Now suddenly, she is suggesting that her report will reveal that 3Sixty should never have been placed under curatorship. I invite Ms Ram to produce her report on 21 February 2022 and to confirm in that report that she found no irregularities in regard to:
 - 198.1. The timeous payment of claims by 3Sixty;
 - 198.2. The valid rejection of claims by 3Sixty;
 - 198.3. The payments being made by 3Sixty to associated companies and whether there were supporting documents in regard to those payments;
 - 198.4. The payments being made to directors of 3Sixty; and
 - 198.5. The payments being made to Doves and NUMSA Financial Services.
- 199. I also invite Ms Ram to indicate what steps 3Sixty had taken to implement the Deloitte report recommendations.

200. At the meetings on 28 and 29 January 2022, the Authority was advised by Ms Ram that it was necessary for the curatorship to continue even if the disposal transaction resolved the issues relating to MCR and SCR cover. This was communicated at the 28 and 29 January 2022 meetings at which, amongst others, the Authority's lead legal counsel, the Authority's attorneys and persons from the curator's team were present. The confirmatory affidavits of Messrs Moosajee, Benn, Peter, Steynberg and Ms Makan are filed together with this affidavit.

Condonation

- 201. The Authority requests condonation for the shortened form of the confirmatory affidavits. The Authority was keen to file this affidavit and the confirmatory affidavits on Friday, 18 February 2022, in order to ensure that the matter could still be ripe for hearing on 22 February 2022. Therefore, the Authority is not filing comprehensive confirmatory affidavits.
- 202. Insofar as may be necessary, I also seek consent for the late filing of this affidavit. The Authority had requested any respondent that opposed the application to file its affidavit by Wednesday, 16 February 2022 at 16h00. Mr Moosajee from the applicant's attorneys spoke to Mr Gregory Armstrong on 16 February 2022, and he indicated that Ms Ram's draft answering affidavit had already been prepared and would be filed later in the evening or early in the morning on 17 February 2022.
- 203. Consequently, Mr Moosajee arranged to meet with the Authority in the morning of 17 February 2022, but Mr Msibi's affidavit was only received at 12h06 and Mr Ram's affidavit was only received at 12h34 on 17 February 2022.
- 204. It was therefore not possible to file this affidavit on Thursday, 17 February 2022. Upon the receipt of Mr Msibi's affidavit, the Authority's attorneys immediately took instructions

in regard to Mr Msibi's affidavit and thereafter took instructions in relation to Ms Ram's explanatory affidavits. They then during the course of the evening of 17 February and the morning of 18 February 2022 prepared the first draft of this affidavit. It was then sent to the Authority for consideration. It was thereafter, finalised and signed.

- 205. I respectfully submit that there has been no attempt to delay the filing of this affidavit by the Authority. By virtue of when Mr Msibi and Ms Ram affidavits were delivered, it was not possible to deliver this affidavit by midday on 17 February 2022.
- 206. I also submit that by virtue of what is set out in the founding affidavit in the variation application and this affidavit, the Authority has reasonable prospects of success in the variation application and therefore a proper case for condonation for the late filing of this affidavit has been made out.

WHEREFORE the applicant prays for an order in terms of the notice of motion dated 15 February 2022.





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 Product on this 18th day of Political 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names:

Address:

Cammissioner of Oaths
Practising Attorney
Gildenhuys Malatji Attorneys
Gild House, Herlequins Office Park
164 Totius Street, Groenkloof, Pretoria

Capacity:

Subject:	FW: [EXTERNAL] RE: 0502954; 3Sixty
From: Yashoda Ram <\ Sent: 30 January 2022	04:13 PM
<pre><vmakan@ensafrica.co <="" cc:="" mashoko="" pre="" tinashe=""></vmakan@ensafrica.co></pre>	TMashoko@bdo.co.za>; Suzette Vogelsang <suzette.vogelsang@resbank.co.za>; Leon in1@resbank.co.za>; Mvelase Peter <mvelase.peter@resbank.co.za></mvelase.peter@resbank.co.za></suzette.vogelsang@resbank.co.za>
	now what you decide. I personally do not feel we address 134.1 to 134.4 which makes me grounds to then confirm 135.
Let's discuss once you	are done with your call at 5
Yashoda Ram Head of Actuarial, Pre Financial Services Tec Direct: Mobile: +27 81 734 156 YRam@bdo.co.za	
Wanderers Office Park Johannesburg, 2196 South Africa Tel: +27 11 488 1700	, 52 Corlett Drive, Illovo
FST	
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From: Dean Benn < Dean.Benn@resbank.co.za> Sent: Sunday, 30 January 2022 14:54
To: Aslam Moosajee <amoosajee@ensafrica.com>; Yashoda Ram <yram@bdo.co.za>; Vishana Makan vmakan@ensafrica.com</yram@bdo.co.za></amoosajee@ensafrica.com>
Cc: Tinashe Mashoko <tmashoko@bdo.co.za>; Suzette Vogelsang <suzette.vogelsang@resbank.co.za>; Leon Jordaan1 <leon.jordaan1@resbank.co.za>; Mvelase Peter <mvelase.peter@resbank.co.za></mvelase.peter@resbank.co.za></leon.jordaan1@resbank.co.za></suzette.vogelsang@resbank.co.za></tmashoko@bdo.co.za>
Subject: RE: EXTERNAL RE: 0502954: 3Sixty
This email was sent from someone outside of BDO South Africa. Always use caution when opening attachments or clicking links from known and unknown senders or when receiving unexpected emails.
<u>Hi All.</u>
I agree with Aslam on the points raised below.
I am busy working through the document and will tweak where I see fit for your consideration. We are meeting at 5 as the PA and we will discuss this.
Regards, Dean
-
Dean Benn
Lead Legal Counsel Legal Services Department
P O Box 427 Pretoria 0001 South Africa
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From: Aslam Moosajee <amoosajee@ensafrica.com>

Sent: 30 January 2022 02:47 PM

To: Yashoda Ram < YRam@bdo.co.za>; Vishana Makan < vmakan@ensafrica.com>

Cc: Tinashe Mashoko < TMashoko@bdo.co.za >; Dean Benn < Dean.Benn@resbank.co.za >; Suzette Vogelsang

<Suzette.Vogelsang@resbank.co.za>; Leon Jordaan1 < Leon.Jordaan1@resbank.co.za>; Mvelase Peter

<Mvelase.Peter@resbank.co.za>

Subject: RE: [EXTERNAL] RE: 0502954: 3Sixty

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

Dear Yashoda

I will adopt your suggested wording if the Prudential Authority requests me to do so, but I respectfully disagree with you. The issue is not whether Ranti is more qualified than you, but whether you have the necessary expertise to fulfil the role of curator. All that we have included in yesterday's draft, helps us show that you are more than qualified. The contents of your paragraph 1 is completely irrelevant as the court did not have an opposing version from 3Sixty and only heard from our counsel. Having experience in financial investigations is not sufficient to run an insurance company. The 80 years' experience in 4 matters is also on its own not sufficient. I am also concerned that the contents of your paragraph 4 is too vague to satisfy a court that you have the necessary expertise.

Let's wait to hear what Suzette, Peter, Dean and Leon think and we can if necessary discuss further tomorrow.

Kind regards

Aslam Moosajee

Executive

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From: Yashoda Ram < YRam@bdo.co.za> Sent: 30 January 2022 01:31 PM

To: Aslam Moosajee amoosajee@ensafrica.com; Vishana Makan vmakan@ensafrica.com>

Cc: Tinashe Mashoko < TMashoko @bdo.co.za >

Subject: Re: [EXTERNAL] RE: 0502954: 3Sixty [ENS-ENS.FID5494419]

Dear Aslam and Vishana

I am not comfortable with para 134 in totality because of the following fact pattern and my understanding of both the individuals who drafted the Answering Affidavit, they are seeking to make this a paper based comparison on which grounds Ranti will have achieved what he set out to by putting down those points. We also do not directly address the 5 points put forward in para 134, which opens a plausible loophole on what grounds we deny the fact that the curator is not suitable.

On paper, Ranti is "more qualified" than I and the Judge would not have the character profile as clear in her mind as we do, hence the various other paragraphs that speak to the "Expert Actuary of 3SL" would be seen "more appropriate than the views of the curator"

We need to keep the response as brief as possible as I know this is his personal attack on me, to which I reserve the right to not defend in public.

The information supplied, as contested by all in the room yesterday is open to interpretation – having not experienced my work ethic or the basis on which the various roles I filled were left – one may conclude that I indeed to not have the depth of experience from moving around so much.

A judge would not know that serving at 3 of the big 4 audit firms provides exactly the experience required to be discerning and objective in financial investigation.

However, mentioning them may raises questions about the cases against KPMG (VBA, Steinhoff, Guptas etc), the independence of the Deloitte report and the reasons PwC had a clean audit yet SNG found errors.

In hearing the range of interpretation from the room I revoke my verbal contributions from yesterday.

I therefore will not feel comfortable with signing the confirmatory affidavit if these paragraphs remain, equally all of this information is on Linkedin and the Judge did interrogate same on granting the order.

We are providing grounds for further, unfounded conclusions to be arrived at so I would like to suggest we answer the allegations systematically and revert to the facts that the appropriateness of my selection have been vetted, hence these allegations are denied.

This questions the lack of respect the respondent has for due process and the integrity of the Judiciary.

The opening statement is they have nothing against the curator but believe I am not a suitable candidate, to which we have to respond to the points they set down. They further mention that I have been "let down by the applicant"

Please see below suggested changes:

Ad paragraphs 134 to 135

- The selection, appointment and suitability of the curator were deemed appropriate by the
 High Court in granting of the order, these allegations are therefore denied.
- 2. The provisional curator has 17 years of experience in relation to financial investigations having served at 3 of the 4 Big 4 Audit Firms. The role of a curator is aligned to work performed by the very firms at which she has served and has therefore equipped her for the undertaking. The allegations that the curator is not suitable are therefore denied.
- 3. The team supporting the curator have a combined over 80 years' experience in the 4 matters set down (see Annexure) these allegations are therefore denied.
- 4. Further, the Applicant has had sight of the work performed by the curator on regulatory, solvency and capital matters and is more than satisfied that she has consistently delivered exceptional work and performs all tasks with due diligence. The allegations that the applicant failed to act responsibly in appointing the chosen curator are denied.



The wording of the above is not as perfect as Aslam's but this is the crux of the matter here – it should not be belaboured, as opposing curatorship at this stage is not about who the curator is, it is about the denial of being insolvent and the vengeance they seek for peripheral matters. Let me know if there are any questions.
Thanks! Yashoda
Yashoda Ram Head of Actuarial, Predictive Analytics and Insurance Innovation Financial Services Technology Direct: Mobile: +27 81 734 1566 YRam@bdo.co.za
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Vishana Makan

From:

Aslam Moosajee

Sent:

17 February 2022 05:41 PM

To:

Gregory Armstrong

Cc:

Michelle Toxopeus; Tarin Page; Zelmari Kern; Inathi Mpapa; Kim Rew; Dale

Solomons; Aslam Moosajee; Vishana Makan

Subject:

RE: 0502954: YASHODA RAM // IN CASE NO. 58590/2021

Dear Greg

As I pointed out in my earlier email, my client has been advised that your client does have access to the information that she requires to complete the report. If this is not correct, I suggest that you liaise with BDO's attorney, who is copied on this email, so that her access can be restored immediately.

The fact that your client was suspended does not mean that your client's fiduciary duties ended as provisional curator. On your client's own version, she remains the provisional curator until such time as the court varies the order granted on 21 December 2021.

We are taking steps to ensure that the matter is on the roll for 22 February 2022. Instead of your client taking technical points, one would have expected your client to welcome a hearing on 22 February 2022 by ensuring that the matter can be heard on the said date so that your client has clarity in regard to her personal position.

Yours sincerely

From: Gregory Armstrong < Greg@KernAttorneys.co.za>

Sent: 17 February 2022 05:34 PM

To: Aslam Moosajee <amoosajee@ensafrica.com>

Cc: Michelle Toxopeus <michelle@KernAttorneys.co.za>; Tarin Page <tarin@KernAttorneys.co.za>; Zelmari Kern

<Zelmari@KernAttorneys.co.za>; Inathi Mpapa <impapa@ensafrica.com>; Kim Rew

<Kim.Rew@webberwentzel.com>; Dale Solomons <Dale.Solomons@webberwentzel.com>

Subject: RE: 0502954: YASHODA RAM // IN CASE NO. 58590/2021

Dear Aslam,

- 1. The above matter and your email under reply refer.
- 2. As you are well aware and correctly recorded, our client has been suspended from her employment with BDO (as now widely published by several media outlets), the result of which is that she has no access to her emails, the BDO platform and support team. Consequently, our client is hamstrung from completing her duties, in terms of the court order, and she will notify the Honourable Court regarding same.
- 3. Furthermore, our client's suspension is based on your client's spurious allegations recorded in the urgent application. Had your client proceeded with some foresight, our client would not be in this position and we will inform the Honourable Court of same. In the event that BDO lifts our client's suspension and grants her the relevant access to the information and to the support team that she requires, our client will then be in a position to comply with the court order. However our client has received no further communication regarding her suspension or the duration thereof.
- 4. Lastly, we place on record that your client has not complied with the relevant practice manual, and note that no date has been recorded on the caselines platform. Our client reserves her right to demand a punitive cost order, when this matter is set down for hearing, should it be found that that the relevant practice manual was not complied with. Please advise if your client is proceeding with the urgent application, and what steps it is taking to comply with the relevant practice manual.
- 5. Our clients rights remain strictly reserved.

Kind regards,

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

Office: 010 109 1055 | Fax: 086 613 1709 | Web: www.kernattorneys.co.2a





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From: Aslam Moosajee <amoosajee@ensafrica.com>

Sent: Thursday, 17 February 2022 16:30

To: Gregory Armstrong < Greg@KernAttorneys.co.za>

Cc: Michelle Toxopeus <michelle@KernAttorneys.co.za>; Tarin Page <tarin@KernAttorneys.co.za>; Zelmari Kern

<Zelmari@KernAttorneys.co.za>; Inathi Mpapa <impapa@ensafrica.com>; Aslam Moosajee

<amoosajee@ensafrica.com>; Kim Rew <Kim.Rew@webberwentzel.com>; Dale Solomons

<Dale.Solomons@webberwentzel.com>

Subject: 0502954: YASHODA RAM // IN CASE NO. 58590/2021

Dear Greg and Michelle

I refer to paragraph 31 of your client's affidavit of 17 February 2022.02.17

Your client is correct that as things presently stand, she remains the provisional curator. In these circumstances, we trust that your client will comply with the 3 February 2022 court order and will file her interim report.

We understand that your client has been suspended by BDO, but this does not detract from her obligation to comply with the 3 February 2022 court order. In addition, BDO cannot instruct your client to act in breach of a court order. Such an instruction would not be lawful.

We understand from BDO that despite your clients' suspension from BDO she has access to all of the information she requires to complete the report.

Kind regards

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www.actuarialsociety.org.za



dream big

the A1 and A2 levels as well as the Foundation APP Normative skills course. With reference to our by-laws, the term "actuary" may only be used by Associate [AMASSA] and Fellow [FASSA] members.

beyond the minimum requirement for TASSA. However, until such time as they qualify and apply for Associate [AMASSA] or Fellow [FASSA] membership, they will be We appreciate that many of our members have progressed their academic career recognised as a TASSA member.

1.2.2 Associate of the Actuarial Society (AMASSA)

The Associateship training provides a general background in financial risk management and will enable members to apply their toolkit of actuarial techniques in a wide variety of areas. It is particularly useful for those who are not working in one of the traditional practice areas for actuaries, such as life insurance or retirement funds. The Associateship designation does not, however, entitle the holder to perform statutory roles in South Africa, such as being the valuator of a pension fund or the statutory actuary of a life insurer. The requirements for admission to the AMASSA designation are:

- A Bachelor's degree is a pre-requisite before being admitted as an AMASSA
- . Complete all the requirements for the TASSA designation
- Actuarial Professional Practice modules of the Normative Skills Programme. successfully complete all the requirements for subject N311, i.e. the Core Successfully complete the exams for subject A311 and N211 as well as

1.2.3 Fellow of the Actuarial Society (FASSA)

actuarial judgement. The Fellowship designation is required for statutory roles in areas. There is further development in higher-order thinking skills, particularly in The Fellowship training builds on the foundation of subjects required for the Associateship and provides an in-depth specialisation in any one of the main practice South Africa. The requirements for admission to the FASSA designation are:

- A Bachelor's degree is a pre-requisite before being admitted as a FASSA
- Complete all the requirements for the AMASSA designation
- successfully complete all the requirements for subject N411, i.e. the Fellowship Actuarial Professional Practice modules of the Normative Skills Programme. Successfully complete two (2) F1 and one (1) F2 level exam as well as

The AMASSA and FASSA designations entitle the member to use the title: Actuary.

1.2.4 Chartered Enterprise Risk Actuary (CERA)

award the CERA designation, which allows actuaries to apply their acquired skills The Actuarial Society has also been awarded international signatory status to as Enterprise Risk Management practitioners. The requirements for admission to the CERA designation are as follows:

- Complete all the requirements for either the Associateship or Fellowship of the Actuarial Society (including all the Professional Skills requirements)
- Pass: F106 Enterprise Risk Management
- Completion of the two-day ERM seminar (C100).







2.1 MEMBER ENGAGEMENT

by the team in the Actuarial Society office and includes administration surrounding examinations, exemptions, courses, counselling, Normative Administration of the member profile and education activities is performed Skills and other ASSA activities and events.

fou can contact the ASSA Office via the website:

https://www.actuarialsociety.org.za/contact-details/

2.2 OFFICE HOURS

Monday to Friday from 08:30 to 16:30.

2,3 OTHER SOURCES OF INFORMATION

Apart from the Student Handbook, further information is provided throughout the

- The ASSA website: https://www.actuarialsociety.org.za/student-zone
- Email weekly Newsbytes newsletter.
- Social Media: Facebook / Twitter / Linked In

2.4 PERSONAL DETAILS

You must update all changes to your contact and personal, and employer details online via your member profile.

2.5 STUDENT RECORDS

- Confirmation of Good Standing letter
 - Summary and Full Academic Record
- Progress reports for Normative Skills
- TASSA Certificate
- Finance related documents e.g. invoices and statements

Non-members will need to pay a fee for an official Academic Record to be sent to them,

Vishana Makan

From: Yashoda Ram <YRam@bdo.co.za>

Sent: 08 February 2022 05:03 PM

To: Dean Benn; Aslam Moosajee; Vishana Makan

Cc: Suzette Vogelsang; Tinashe Mashoko

Subject: RE: [EXTERNAL] 3Sixty Life | Professionalism Matter

Hi Dean

Thanks for this. We note the below and will simply ignore any of these messages going forward.

100% agree on the role of a curator being something entirely different to that of an actuary, which makes his use of the ASSA Code of Conduct inappropriate at best.

Regards Yashoda

Yashoda Ram

YRam@bdo.co.za

Head of Actuarial, Predictive Analytics and Insurance Innovation Financial Services Technology Direct: Mobile: +27 81 734 1566

Wanderers Office Park, 52 Corlett Drive, Illovo

Johannesburg, 2196 South Africa

Tel: +27 11 488 1700

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BM



From: Dean Benn < Dean.Benn@resbank.co.za>

Sent: Tuesday, 08 February 2022 16:55

To: Yashoda Ram <YRam@bdo.co.za>: Aslam Moosajee <amoosajee@ensafrica.com>: Vishana Makan vmakan@ensafrica.com>

Cc: Suzette Vogelsang <Suzette.Vogelsang@resbank.co.za>; Tinashe Mashoko <TMashoko@bdo.co.za> Subject: RE: [EXTERNAL] 3Sixty Life | Professionalism Matter

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Hi Yashoda.

I do not believe it is necessary for you to spend time in engaging with Mr. Mothapo. The line of questioning is not a surprise to us and it comes with the territory of being appointed as a Curator, so does media attacks and ill-informed opinions on media platforms.

Do not engage him further on these matters and let him continue with the actions he has lined up with ASSA. It is the PA's prerogative to appoint a curator that we deem suitable for the job. We do not necessarily have to appoint an actuary - It can be anyone we deem fit to achieve what we set out to do. Mr Mathopo forgets that you were not appointed by the PA to perform actuarial services, but to act as a curator – two very different roles.

Your response to him below is sufficient and you can point him to that going forward.

Regards, Dean

Dean Benn

Lead Legal Counsel Legal Services Department

6 Africa

⊕P O Box 427 Pretoria 0001 South Africa
 ⊕370 Helen Joseph Street Pretoria 0001



R+27 12 313 4008 / +27 83 784 1434

👰 Dean, Benn @resbank, co. za

<u>∰www.resba</u>nk∃co.za

SOUTH AFRICAN RESERVE BANK

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From: Yashoda Ram < YRam@bdo.co.za> Sent: 08 February 2022 04:14 PM

To: Dean Benn < Dean.Benn@resbank.co.za >; Aslam Moosajee < amoosajee@ensafrica.com >; Vishana Makan

<vmakan@ensafrica.com>

Cc: Suzette Vogelsang <<u>Suzette.Vogelsang@resbank.co.za</u>>; Tinashe Mashoko <<u>TMashoko@bdo.co.za</u>>

Subject: FW: [EXTERNAL] 3Sixty Life | Professionalism Matter

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Dear Dean and legal team

Please note the below, this is ongoing harassment from the initial email addressed to me on matters that in my opinion have been resolved and answered in the Responding Affidavit.

Kindly advise if there is any further response required to Mr. Mothapo

Thanks Yashoda

Yashoda Ram

Head of Actuarial, Predictive Analytics and Insurance Innovation Financial Services Technology Direct:

Mobile: +27 81 734 1566 YRam@bdo.co.za

Wanderers Office Park, 52 Corlett Drive, Illovo Johannesburg, 2196

South Africa Tel: +27 11 488 1700

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From: Yashoda Ram

Sent: Tuesday, 08 February 2022 16:11

To: Ranti Mothapo <ranti@matlotlo.co.za>; Tinashe Mashoko <TMashoko@bdo.co.za>

Subject: RE: [EXTERNAL] 3Sixty Life | Professionalism Matter

Dear Ranti

I don't believe your questioning of the curator's support team is appropriate or constructive as we are working with due diligence and care on the matters at hand.

May I please request that this harassment is put to an end so we may focus our attention and professional energy on the tasks required for the next return date to court.

As a contracted service to the license that is now under the care of the curator and team it is further not within your SLA to be investing time billed to the license in side matters. I will gladly engage ASSA openly and transparently myself should it be required.

I trust you will fulfil the role in which you are appointed for as first line actuarial and take departure from the untoward nuances that lean towards defamation of character to my team.

Regards Yashoda

From: Ranti Mothapo < ranti@matlotlo.co.za > Sent: Tuesday, 08 February 2022 16:04
To: Tinashe Mashoko < TMashoko@bdo.co.za >

Cc: Yashoda Ram < YRam@bdo.co.za>

Subject: RE: [EXTERNAL] 3Sixty Life | Professionalism Matter

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Hello Tinashe,

E M

These questions were directed to you and having indicated that the discussion with Yashoda wasn't constructive, I really would have appreciated a response from you. I really wish to not have to report these matters. The code of conduct does place some responsibility on me, given the prima facie evidence (e.g. the last few day's questions on premium and risk reserve risk, operational expenses for AMCR, need to disclose components of spread and counterparty default risk on QRT, and more from before last few days). Your assistance is greatly appreciated.

Best regards,

Ranti Mothapo

ACTUARY | QUANTITATIVE ANALYST

Mobile +27 73 250 7669

Tel +27 11 783 2380 (Ext 110)

Emaianti matlotic co za

96 Protea Ave Atholi, 2196, Johannesburg

Matlotlo Group (Pty) Ltd, an authorized financial services provider FAIS |

From: Tinashe Mashoko < TMashoko @bdo.co.za >

Sent: Tuesday, 08 February 2022 14:18

To: Ranti Mothapo < ranti@matlotlo.co.za > Cc: Yashoda Ram < YRam@bdo.co.za >

Subject: RE: [EXTERNAL] 3Sixty Life | Professionalism Matter

Dear Ranti,

Thank you for your email.

I copy in Yashoda who will respond should she deem it necessary.

Many thanks

Tinashe

Tinashe Mashoko
Consulting Actuary
Financial Services
Direct:

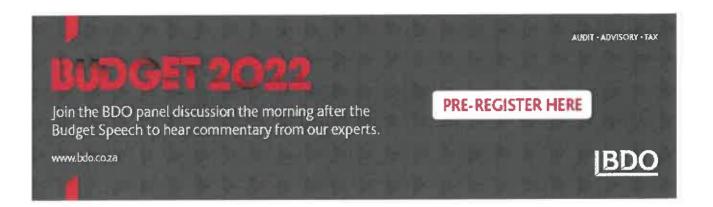
Mobile: +27 74 646 7132 TMashoko@bdo.co.za

Tel:

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From: Ranti Mothapo [mailto:ranti@matlotlo.co.za]

Sent: Saturday, 05 February 2022 06:10

To: Tinashe Mashoko < TMashoko@bdo.co.za>

Subject: [EXTERNAL] 3Sixty Life | Professionalism Matter

This email was sent from someone outside of BDO South Africa. Always use caution when opening attachments or clicking links from known and unknown senders or when receiving unexpected emails.

Hello Tinashe,

I hope this email finds you well in these stressful times due to this curatorship matter. The Actuarial Society's code of conduct requires that "a member shall perform only those professional services for which the member is competent and appropriately experienced in".

I sought clarity with Yashoda about her acceptance of the role to act as curator of 3Sixty Life, but that engagement was not constructive. It appears you are a critical actuarial resource that she may point to as being appropriately experience to support her role. In this regard, may you kindly clarify for me the following matters:

- (1) Are you the most senior and experienced actuarial resource in life insurance at BDO team supporting Yashoda? If not, who is?
- (2) How many solvency assessment QRT's (SAM) of life insurers you have taken responsibility for (i.e. signed on as person responsible for completing)?
- (3) Have you been part of successful capital raising in the financial services sector in the last five years?

(4) If so, how much capital raising was achieved in the last five years? Please indicate the number of transactions and combined value of such transactions.

Kindly note that I am asking these in terms of the code of conduct's requirement that I must discuss the matter with you with the view of obtaining clarity, with the expectation that the discussion will be constructive. The code of conduct also places a responsibility on members to report instances where the code of conduct is broken. I therefore appeal for your cooperation in this regard. May you kindly get back to me with clarity by close of Monday 7 Feb 2022?

Best regards,

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

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Experience

Yashada is the Head of Actuarial Services and has 16 years of insurance experience which she brings to out Insurance Sector team.

developments and thought leadership through her roles on the ASSA Short Term Insurance committee as well as serving on multiple working groups and task teams during the early implementation phases of SAM, and Yashoda has extensive insurance regulatory and oversight experience having been involved in Industry more recently, having been involved in various IFRS 17 task teams.

Yashoda has worked at 3 of the Big 4 firms, and notably is her experience in insurance product development and pricing. In addition, Yashoda served as the CMO to a local (neurTech and was the CIO to software development stark-

Qualifications

- BA, Actuarial Science
 BASc. Psychology

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, JOHANNESBURG

Case No: 58950/2021

In the matter between:

THE PRUDENTIAL AUTHORITY

Applicant

and

3SIXTY LIFE LIMITED

First respondent

NATIONAL UNION OF METAL WORKERS OF SOUTH

Second respondent

AFRICA

YASHODA RAM

Third respondent

BDO ADVISORY SERVICES (PTY) LTD

Fourth respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

ROELOF JOOSTE STEYNBERG

state under oath that:

- 1. I am an adult male actuary, employed by the applicant.
- 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.
- 3. I have read the replying affidavit of **SUZETTE JEANNE VOGELSANG** in the variation application and confirm the following:
 - 3.1. I was present at the meetings held on 28 and 29 January 2022;



N

- 3.2. The matters set out in the replying affidavit in the variation application about the28 and 29 January 2022 meetings are correct; and
- 3.3. Ms Ram said a few times during the 28 and 29 January 2022 meetings that even if the disposal transaction resolved the issues that 3Sixty had in meeting the MCR and SCR cover requirements, there would still remain a need for 3Sixty to be under curatorship because the business of 3Sixty had been mismanaged.

DEPONENT

the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at on this 19th day of day of 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names:

Address:

Reham Shamout
Commissioner of Oaths
Practising Attorney
Gildenhuys Malatil Attorneys
GMI House, Harlequins Office Park
154 Totius Street, Groenkloof, Pretoria

Capacity:

E Ky