

X M. Vulliamy

26/7/22

05-1

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

Case No.: 7177/2022

In the *ex parte* application of:

THE PRUDENTIAL AUTHORITY

Applicant

In re:

CONSTANTIA INSURANCE COMPANY LIMITED

Applicant's counsel:

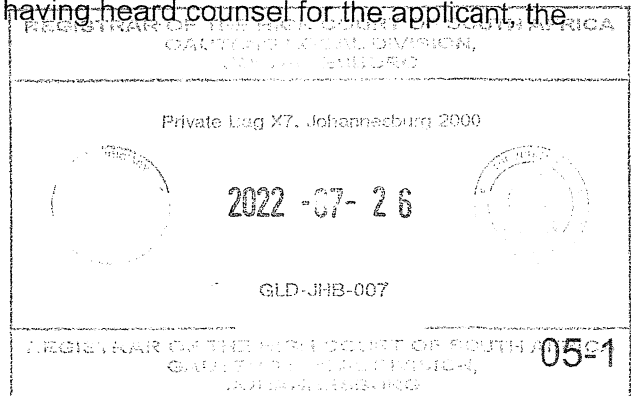
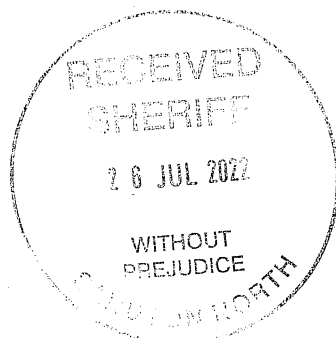
Adv. Mohammed Chohan SC (chohan@counsel.co.za)

Adv. Realeboga Tshetlo (tshetlo@counsel.co.za)

~~DRAFT COURT ORDER~~ N

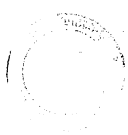
Having read the pleadings filed of record and having heard counsel for the applicant, the

Court makes the following orders:



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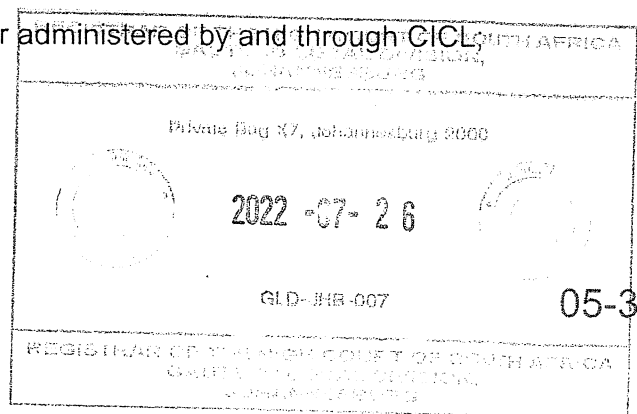
1. The ordinary forms and service provided for in the Rules of the High Court are dispensed with and this application is heard on an urgent basis in terms of the provisions of Rule 6(12)(a) of the Uniform Rules of Court.
2. The whole of the business of providing insurance, as contemplated in the Insurance Act 18 of 2017 (**Insurance Act**), of Constantia Insurance Company Limited (**CICL**), be placed under provisional curatorship in accordance with the provisions of this order.
3. Mr Ashish Desai of Deloitte be provisionally appointed as curator of the business of CICL and that he be absolved from furnishing any security.
4. Mr Gerdus Dixon of Deloitte be provisionally appointed as alternate curator of the business of CICL, and take over as curator from Mr Ashish Desai, in the event that Mr Ashish Desai is for any reason unable to continue to fulfil his duties and obligations as curator and further, that Mr Gerdus Dixon, be absolved from furnishing any security.
5. Any other person (including but not limited to directors and senior managers) now vested with the management of the business of CICL, be and is hereby provisionally divested thereof.

THE HIGH COURT OF SOUTH AFRICA JOHANNESBURG P.O. BOX 103, JOHANNESBURG 2000	
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G.L.D.-JMB-007	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG PROVINCE, JOHANNESBURG	

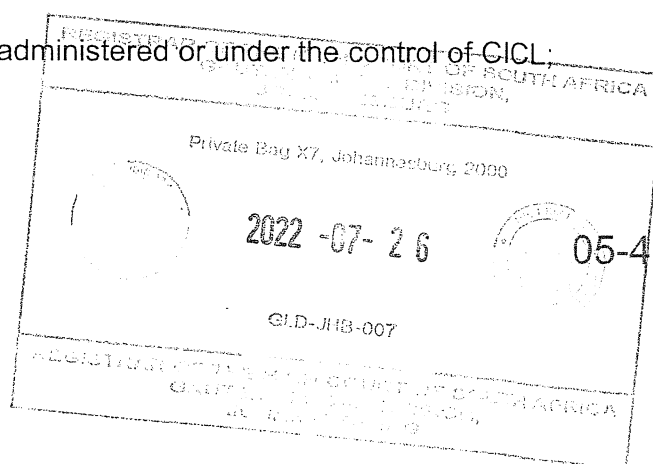
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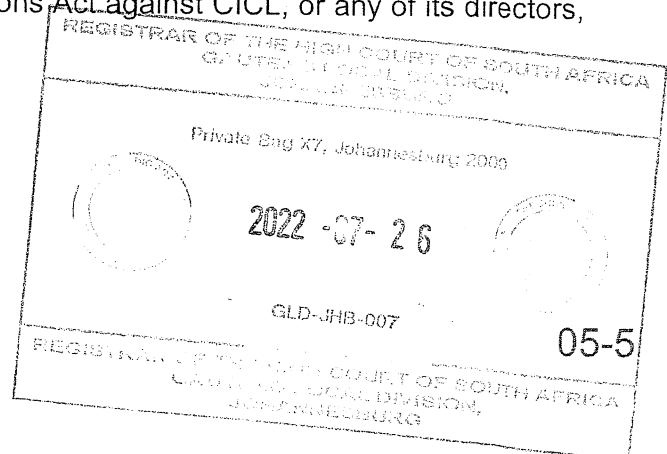
6. Pending the return day of this order, all actions, proceedings, the execution of all writs, summonses and other processes against CACL be stayed and not instituted or proceeded with, unless and until leave is granted by this Court.
7. Pending the return date specified hereunder, the curator or alternate curator be and are hereby:
- 7.1. authorised to take immediate control of, manage and investigate the business and operations of CACL, 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 senior managers of CACL, whether by law or by virtue of its memorandum of incorporation, and the present directors, members or senior managers of CACL shall be divested of all such powers in relation to the business;
- 7.3. directed to give consideration to the best interests of the policyholders whose insurance policies are held and/or administered by and through CACL;



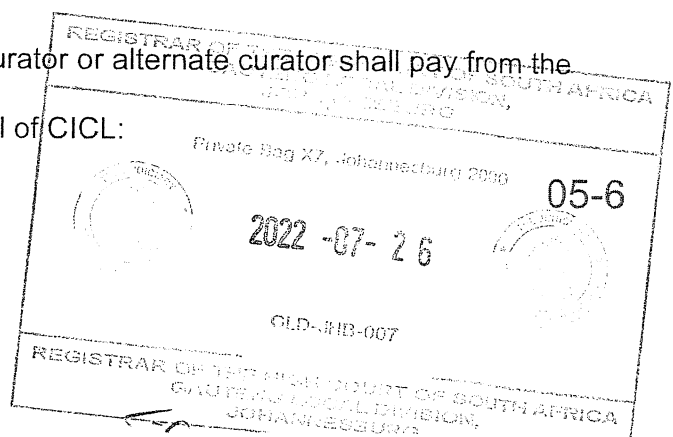
- 7.4. directed to exercise the powers vested in him with a view to conserving the business and not, without leave of the applicant, alienate or dispose of any of the property of CICL, save to the extent and for the purposes set out hereunder;
- 7.5. authorised, in his discretion and subject to available resources to make payments to policyholders in terms of legitimate claims in accordance with policyholders' insurance policies held by and through CICL;
- 7.6. directed to take custody of the cash, cash investments, stocks, shares and other securities held or administered by CICL, and of other property and effects belonging to or held by or on instructions of CICL or any entity directly or indirectly controlled by CICL;
- 7.7. authorised to conduct any investigation with a view to locating assets belonging to and/or administered and/or controlled by CICL, including such assets held by way of securities or in cash;
- 7.8. authorised, after consultation with the applicant and after approval by the applicant, to incur such reasonable expenses and costs as may be necessary or expedient for the curatorship and control of CICL and its operations, and to pay same from the assets held, administered or under the control of CICL;



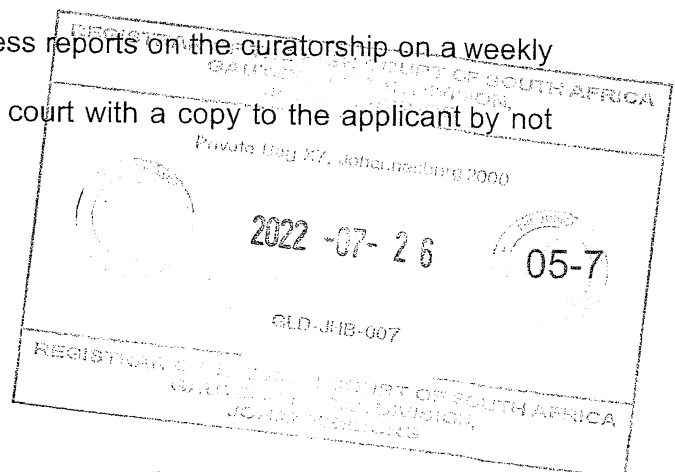
- 7.9. permitted to engage, after consultation with the applicant and after approval by the applicant, such assistance of a legal, accounting, administrative, or other technical nature as he may reasonably deem necessary for the performance of his duties in terms of this order, and to defray the reasonable expenses and charges thus incurred from the assets held or under the control of CICL;
- 7.10. authorised to institute or prosecute any legal proceedings on behalf of CICL and to defend any litigation brought against CICL;
- 7.11. authorised to invest such funds as are not required for the immediate purposes of the business, with a registered bank;
- 7.12. authorised to take control of and to operate or freeze existing bank accounts of CICL, 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 his office, to report to the applicant should he deem it necessary or expedient that application be made to this court for the liquidation of CICL, or for any relief as envisaged in section 6 of the Financial Institutions Act against CICL, or any of its directors, members or senior managers;



- 7.14. authorised, after consultation with the applicant and after approval by the applicant, to claim all costs, charges or expenses reasonably incurred by the curator and/or alternate curator in the execution of their duties in terms of this order, including their own remuneration, as administration costs, in the event of the liquidation of CICL ensuing; and
- 7.15. authorised to pay the applicant's costs, should they be granted as envisaged in paragraph 8 below.
8. A *rule nisi* is hereby issued calling upon CICL or any other interested party to show cause to this Honourable Court at 10h00 on **6 December 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 2 to 6 above and finally conferring on the curator and/or alternate 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 CICL shall be stayed and not instituted or proceeded with, unless and until leave is granted by this Court;
- 8.3. CICL shall pay, alternatively the curator or alternate curator shall pay from the assets held by or under the control of CICL:



- 8.3.1. the costs of these proceedings only in the event of CICL's opposition of this application;
 - 8.3.2. the costs of any investigation into the affairs of CICL; and
 - 8.3.3. the costs and remuneration of the curator or alternate curator.
9. The curator or alternate curator are directed:
- 9.1. to compile a statement reflecting the overall financial position of CICL 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 CICL, its directors, key individuals or management and the contravention of any laws, codes of conduct or mandates in the conduct of the business;
 - 9.3. 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 CICL; and
 - 9.4. to furnish the applicant with progress reports on the curatorship on a weekly basis, and to file his report to the court with a copy to the applicant by not later than **21 November 2022**.



10. Within 5 days of its grant, the applicant is directed to serve a copy of the *rule nisi* on CICL 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 CICL's website.



BY ORDER OF THE COURT

