

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

CASE NO: /2022

In the *ex parte* application of:

THE PRUDENTIAL AUTHORITY

Applicant

In re:

CONSTANTIA INSURANCE COMPANY LIMITED

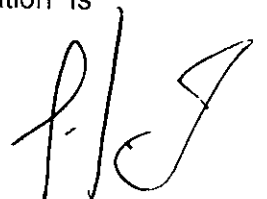
FOUNDING AFFIDAVIT

I, the undersigned

JOHAN WILHELM HEYNEKE

state under oath that:

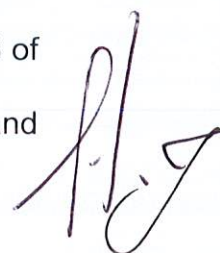
1. I am the Divisional Head of the Insurance, Banking and FMI Supervision Department of the applicant, the Prudential Authority (**'the Authority'**) of the South African Reserve Bank (**'the Reserve Bank'**).
2. I am authorised to depose to this affidavit and to bring this application on behalf of the Authority, as appears from the delegation of authority issued in terms of section 48(2)(a) of the Financial Sector Regulation Act 9 of 2017 (**'FSR Act'**) by the Chief Executive Officer of the Authority and Deputy Governor of the Reserve Bank, Ms Fundi Tshazibana (**'Ms Tshazibana'**). A copy of the delegation is attached hereto marked **"FA1"**.



3. I have, on the Authority's behalf, through my role and official capacity, been personally and actively involved, together with other members of the Authority, in the interactions with, and decisions pertaining to the respondent, Constantia Insurance Company Limited ('CICL'). I also have access to the official information and documentation that form part of the records of the Authority.
4. Unless the context indicates otherwise, I have personal knowledge of the facts set out in this affidavit and they are, to the best of my belief, true and correct. Where I rely on information provided to me by named individuals in the office of the Authority, their confirmatory affidavits will accompany this application. Where I make legal submissions, I do so on the advice of the Authority's legal advisors.

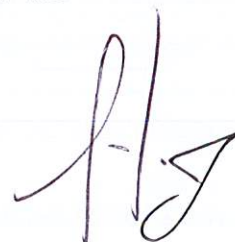
PURPOSE OF THE APPLICATION

5. The purpose of this application is to urgently place CICL under curatorship.
6. CICL is a licensed non-life insurance company that provides a range of insurance solutions sold predominantly through underwriting management agencies. It offers various insurance products including, *inter alia*, property, motor, guarantee, accident and health, liability, transport and other miscellaneous lines of business. CICL's particular focus is the medical malpractice insurance business. It insures its policyholders, and any beneficiaries who may benefit under such policies ('**policyholders**') against the risk of loss, and is obliged to pay them out in the event of such loss.
7. It is essential – both to policyholders and the public at large – that insurers are kept in a sound financial position such that they are able to meet the obligations under their policies, as and when they fall due. To ensure this, the Insurance Act 18 of 2017 ('**Insurance Act**') imposes minimum capital requirements ('**MCR**') and

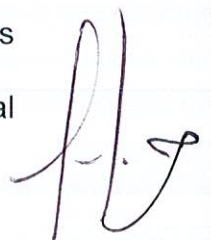


solvency capital requirements ('**SCR**') on insurers, as prescribed in section 36 of the Insurance Act (and other requirements) on insurers. The Authority has the statutory oversight responsibility over such insurers, under the Insurance Act and the FSR Act.

8. Section 36 of the Insurance Act prescribes that an insurer must hold eligible own funds that are at least equal to the MCR or SCR, whichever is the greater. In other words, for an insurer to be financially sound, as per section 36 of the Insurance Act, the MCR and SCR should be at least equal to 1 or greater than 1.
9. CICL has been and is currently in breach of these capital requirements. In fact, as of 11 July 2022, CICL reflected a MCR of minus (-) 1.12 and a SCR of minus (-) 0.17, measured against CICL's eligible own funds.
10. For a period of 3 years, the Authority has been in ongoing engagements with CICL in an attempt to get it to restore its financial position and bring itself into compliance with the regulatory regime. To this end:
 - 10.1 Initially, CICL produced monthly (and later, weekly) solvency and financial information since June 2019 that continue to reflect a financially unsound position.
 - 10.2 To avoid placing CICL under business rescue or liquidation, the Authority afforded it numerous extensions including up to 30 June 2022 to restore itself to financial soundness. Despite the numerous indulgences over a period of time, none of which constituted a waiver of the Authority's remedial measures under statute, CICL still does not comply with the minimum prescribed MCR and SCR.



- 10.3 CILC's most recent weekly submission (which was submitted to the Authority in the week of 11 July 2022 (attached as "**FA2.1**")), reflects a MCR of minus (-) 1.12 and a SCR of minus (-) 0.17, measured against CILC's eligible own funds.
- 10.4 CILC's historical monthly and weekly submissions are attached as annexures "**FA2.2.1 – FA2.2.12**".
- 10.5 CILC's plan to the Authority to secure a capital injection into its business was the identification of an investor to recapitalise it. To date, none of the proposals submitted have yielded any results. CILC has still not rectified its financially unsound position.
11. On 20 June 2022, CILC submitted an application for a further extension of time to recapitalise its business, after the last recapitalisation plan submitted to the Authority, and approved by the Authority, did not come to fruition. The Authority considered the application for extension. However, given the failure of all of CILC's proposals to date, and the seriously negative MCR and SCR, the Authority declined the application for a further extension. The Authority informed CILC of the outcome of the application on 14 July 2022 and reserved its rights to take any regulatory actions provided to the Authority under the Insurance Act. The letter to CILC is attached as "**FA2.3**".
12. Given the number of extensions provided to CILC, and the fact that it now has a negative MCR and SCR, the Authority reasonably believes that a curator should be appointed to protect the interests of policyholders and the public at large.
13. Accordingly, the Authority applies to have CILC placed under curatorship in terms of section 54(1)(a) of the Insurance Act, read with section 5 of the Financial



Institutions (Protection of Funds) Act 28 of 2001 ('**Financial Institutions Act**').

The Authority proposes that Mr Ashish Desai of Deloitte & Touche be appointed as a curator and that Mr Gerdus Dixon of Deloitte & Touche be appointed as an alternate curator, in the event that Mr Ashish Desai is unable to perform any of his functions for any reason.

14. Given that the Authority brings this application on an *ex parte* basis, its notice of motion provides for curatorship to be granted and undertaken on a provisional basis, and that a rule nisi be issued inviting CICL (and other interested parties) to show cause why the provisional curatorship should not be confirmed.
15. This curatorship application is brought to protect CICL's business and its policyholders. Accordingly, the Authority requests that this application be heard in *camera* (under such conditions as the court may direct) and further that the court file be kept confidential and under lock and key by the Office of the Registrar. This is to avoid the contents of this affidavit finding their way into the public domain, which if it does may compromise CICL's business and negatively affect policyholders. If the contents of this affidavit become public knowledge before the curatorship is confirmed, there is a real risk of policy flights, which would further significantly reduce CICL's cash and liquidity position and its ability to meet claims as and when they fall due. This, therefore, is one of those rare circumstances where the practice of an open court should, with leave of this Court, be departed from in CICL's interests and the interests of justice. Given the provisional nature of the order and the *rule nisi* sought, there is no irremediable prejudice that would be suffered by CICL.

THE PARTIES

The applicant

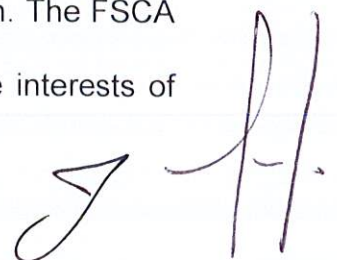
16. The Authority is a statutory juristic person established and operating within the administration of the Reserve Bank in terms of section 32 of the FSR Act. The applicant has its principal place of business at 370 Helen Joseph Street, Pretoria.
17. The Reserve Bank is an independent institution established in terms of section 22 of the Constitution. It is responsible for enhancing financial stability through, among others, managing systemic risk. If an adverse systemic event has occurred or is imminent, the Reserve Bank is responsible for restoring or maintaining financial stability.
18. The Authority's objects and functions include, *inter alia*:
 - 18.1. promoting and enhancing the safety and soundness of financial institutions that provide financial products and security services;
 - 18.2. promoting and enhancing the safety and soundness of market infrastructures;
 - 18.3. regulating and supervising financial institutions that provide financial products or securities services;
 - 18.4. protecting financial customers against the risk that financial institutions may fail to meet their obligations; and
 - 18.5. assisting in maintaining financial stability.
19. In relation to insurers, in particular, the Authority must:

A handwritten signature in dark ink, appearing to be 'H.J.', is located in the bottom right corner of the page.

- 19.1. implement a regulatory framework that gives effect to the provisions of the Insurance Act, including supervising and enforcing compliance with its terms; and
- 19.2. take such steps as it considers necessary to protect policyholders in their dealings with insurers.

Standing

20. The Authority brings this application in its own interest, as the regulator of financial institutions (including insurers). It also brings it in the interests of CICL, its policyholders and in the public's interest. It is manifestly in the public interest that the Authority takes steps to safeguard the financial position and business of an insurer where its financial position and continued viability is not being properly managed and secured.
21. The remedy of curatorship is an effective regulatory tool that can be deployed to protect the interests of investors, depositors and/or policyholders, as the case may be, in circumstances where such parties could not do so effectively acting on their own. Curatorship provides a mechanism through which the business of an insurer is afforded an opportunity to get its affairs in order, and thus avoid potential business rescue or liquidation.
22. The Authority is expressly empowered by section 54 of the Insurance Act to bring applications to court to place an insurer under curatorship.
23. Albeit not a legal requirement, it is apposite to state that the Financial Sector Conduct Authority ('FSCA') supports and concurs in this application. The FSCA was established as a market conduct regulator to also protect the interests of

A handwritten signature in dark ink, consisting of a stylized 'J' followed by a vertical line and a horizontal stroke, resembling 'J.H.' or a similar monogram.

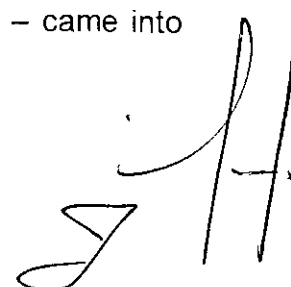
investors, depositors and/or policyholders and the public at large, as the case may be, from unfair market conduct practices. The request from the Deputy Governor and Chief Executive Officer of the Authority to the FSCA requesting it to confirm its support or otherwise for the proposed regulatory action against CICL, together with the FSCA's letter of support is attached as "FA3.1" and "FA3.2" respectively. The Authority will cause a copy of the *rule nisi* to be served on the FSCA, if it is granted.

The target of the application

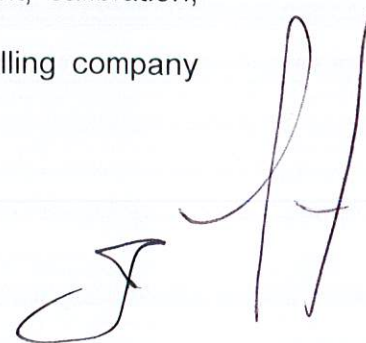
24. The target of the curatorship application is CICL, a licensed non-life insurer in terms of the Insurance Act. It is a limited liability public company incorporated in terms of the laws of the Republic of South Africa with registration number 1952/001514/06, with its registered address and principal place of business, situated within the jurisdiction of the above Honourable Court at Nicol Main Office Park, 2 Bruton Road, Bryanston Gauteng. CICL is a wholly owned subsidiary of Constantia Risk and Insurance Holdings Limited ('**CRIH**'), which is in turn a wholly owned subsidiary of Conduit Capital Limited ('**Conduit**').
25. A copy of the license certificate granted to CICL by the Authority to conduct the business of a licensed non-life insurance company in terms of the Insurance Act is attached as "FA4".

LEGISLATIVE FRAMEWORK APPLICABLE TO INSURERS

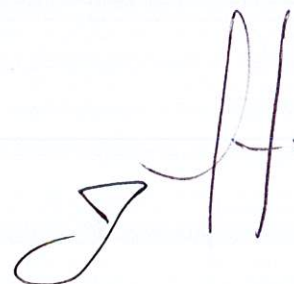
26. Insurers are closely regulated under the Insurance Act and are supervised by the Authority. The Insurance Act – and the provisions outlined below – came into operation on 1 July 2018.

A handwritten signature in black ink, appearing to be 'G. H.', is located in the bottom right corner of the page.

27. Section 36(1) of the Insurance Act requires insurers to maintain their business in a financially sound condition by holding eligible own funds, that are at least equal to the prescribed MCR or SCR, whichever is the greater.
28. The Authority has prescribed financial soundness standards for insurers, an extract of which is attached as “**FA5.1**”. Section 36(1) of the Insurance Act, read with the financial soundness standards, require that CICL maintain a MCR of 1, and SCR of 1.
29. The purpose of the MCR and SCR is to ensure that an insurer is always in possession of sufficient funds to pay out insured parties’ insurance obligations, as and when they fall due.
30. In terms of section 39 of the Insurance Act, an insurer must have procedures in place to identify deteriorating financial soundness. It must notify the Authority, without delay, if it fails to meet any of the financial soundness requirements, as well as the reasons for the failure and the measures to be implemented to bring it into compliance. It must also notify the Authority if there is a risk, at any time, that it may in the following three months fall short of its MCR or SCR.
31. The Authority may, in terms of section 36 of the Insurance Act, read with section 39 of the Insurance Act, take any measures it considers appropriate to address financial soundness failures by an insurer. These measures include:
- 31.1. directing the insurer to procure an independent review, at its own cost, of any principle, method, assumption, technique, adjustment, calibration, parameter, calculation or model of an insurer or controlling company used or applied in respect of its financial soundness;

A handwritten signature in black ink, consisting of a stylized 'J' followed by a long, sweeping vertical stroke and a horizontal crossbar.

- 31.2. directing the insurer to amend, strengthen or improve any principle, method, assumption, technique, adjustment, calibration, parameter, calculation or model of an insurer or controlling company used or applied in respect of its financial soundness;
- 31.3. directing a capital add-on for an insurer if the Authority reasonably believes that the risk profile of the insurer deviates significantly from the assumptions underlying the SCR calculation;
- 31.4. where the Authority is notified that the insurer is at risk of falling short of its MCR, directing the insurer to submit, within one month, a short term re-capitalisation scheme for approval setting out measures to be taken, within a period not exceeding three months, to restore its eligible own-funds to at least the level of its MCR, or to reduce its risk to comply with its MCR. (That three-month time period can be extended by the Authority if the circumstances warrant it);
- 31.5. where the Authority is notified that the insurer is at risk of falling short of its SCR, directing the insurer to submit, within not more than two months, a re-capitalisation scheme for approval setting out measures to be taken, within a period not exceeding six months, to restore its eligible own-funds to at least the level of its SCR, or to reduce its risk to comply with its SCR. (That six-month time period can be extended by the Authority if the circumstances warrant it); or
- 31.6. in appropriate circumstances, suspending or withdrawing the insurer's licence.

A handwritten signature in dark ink, consisting of a stylized 'J' followed by a tall, thin vertical stroke and a horizontal crossbar.

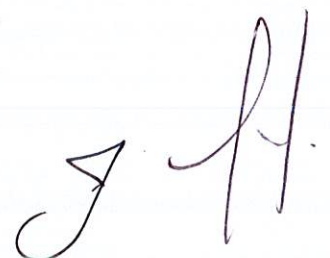
32. Insurers are also obliged, under section 44 of the Insurance Act, to provide the Authority with any information it may reasonably require in the form, manner and intervals determined by the Authority, for the purposes of supervision and enforcement under the Act. They are also required to prepare annual financial statements in accordance with the Companies Act, 2008 and the International Financial Reporting Standards ('IFRS'), which is the international accounting framework developed by the International Accounting Standards Board ('IASB'), and annually to disclose publicly prescribed quantitative and qualitative information in full. Audited annual financial statements must be filed within six months of the insurer's financial year-end (which in the case of CICL, which has a year-end of 30 June each year, is by 31 December each year).

33. Against that background, I turn to address the events that triggered this application.

CICL'S COMPROMISED FINANCIAL POSITION AND CONTINUED BREACH OF STATUTORY MINIMUM REQUIREMENTS

34. As previously stated, it first came to the Authority's attention that CICL had breached the abovementioned solvency requirements at the end of June 2019 and the Authority and CICL have been in ongoing engagements since then with a view to getting CICL back to compliance with those requirements.

35. The correspondence exchanged during this period is voluminous and I do not attach same to avoid unduly burdening the papers. I am advised that the Authority is obliged to disclose any materially relevant facts to this Court in this *ex parte* application and, to the best of my belief, has done so.



36. The Authority brings this curatorship application on the following grounds, all related to concerns about CICL's financial soundness:

36.1 CICL's SCR is below the prescribed level of 1. CICL's most recent weekly submission to the Authority for the week 11 July 2022 reflects a SCR of minus (-) 0.17. The table below details the SCR for CICL as at 11 July 2022 with prior period comparatives:

CICL Solvency Cover	4-Jul incl IGM write-down and audit adjustments (Excl run-off)	11-Jul incl IGM write-down and audit adjustments (Excl run-off)	11-Jul excl IGM write-down and audit adjustments (Excl run-off)	11-Jul incl IGM write-down and audit adjustments (Incl run-off)
SCR ratio	(0.06)	(0.09)	0.12	(0.17)
MCR ratio	(0.75)	(0.84)	(0.12)	(1.12)
Basic Own Funds	58 768	51 749	68 749	6 749
Eligible for SCR	(24 179)	(33 534)	46 746	(65 934)
Eligible for MCR	(84 420)	(94 187)	(13 907)	(126 587)
SCR	380 805	380 653	392 122	379 685
MCR	112 763	112 763	112 763	112 763

36.1.1. CICL's basic own funds deteriorated due to year-end audit adjustments and the significant impact of the InsureGroup Managers Limited ('IGM') asset write-down. With the conclusion of the 2021 annual audit, material adjustments to the financial position included the write-down of the IGM debtor and equity investments. The combined impact of this write-down was a R94 million deterioration in basic own funds (0.29 adverse effect on SCR). There is uncertainty around the recoverability of the

IGM asset, thus, a prudent approach has been applied in impairing the full outstanding amount relating to IGM.

36.1.2. CICL is financially unsound with a SCR ratio of minus (-) 0.17 and a MCR ratio of minus (-) 1.12.

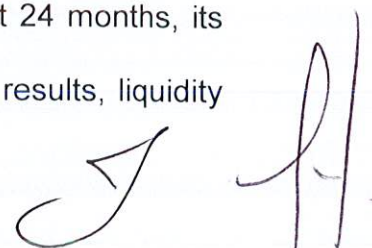
36.1.3. For CICL to be financially sound, on both a SCR and MCR basis (level equal to 1), a capital injection of R445.6 million is necessary on an SCR basis and an amount of R239.3 million on an MCR basis.

36.1.4. The Authority recognises that on an IFRS basis, the CRIH group is solvent as can be seen below:

CRIH GROUP	YTD Actual Mar 2022	YTD Actual Jun 2021
<u>ASSETS</u>		
Non-Current assets	609	601
Current assets	994	842
Total Assets	1 603	1 443
<u>EQUITY</u>		
Share capital & premium	1 017	1 017
Equity loan	76	76
Retained income/loss	(1 010)	(1 020)
Total Equity	84	74
<u>LIABILITIES</u>		
Non-Current Liabilities	91	98
Current Liabilities	1 428	1 271
Total Liabilities	1 519	1 369
Total Equity and Liabilities	1 603	1 443

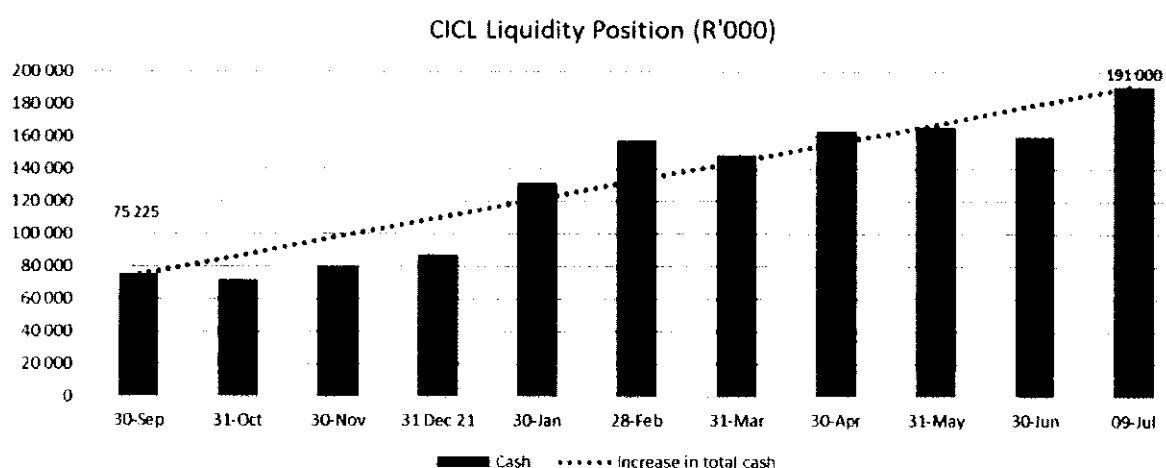
36.1.5 The CRIH group is solvent with equity of R84 million as at March 2022.

36.2 The Authority is also cognisant of the fact that CICL has maintained a positive trend in key areas of operations. Over the past 24 months, its business has continually returned positive underwriting results, liquidity



cash assets have nearly doubled, operational expenses reduced by approximately 17% and measures were put into place to reduce the volatility on the equity portfolio. This resulted in a R145 million improvement in FY2021 operating result.

36.3 The liquidity position of CICL, measured as at 9 July 2022, has continued to improve and cash balances have shown a positive trend as per the graph below.



36.4 CICL's improvement in liquidity can be gleaned from the table below, which details the liquidity available within CICL estimated as at 9 July 2022 with prior period comparatives.

Liquidity available (R'000)	9 Jul	30 Jun	31 May	30 Apr	30 Dec	30 Nov	Dec 20
Cash in bank	191 000	159 644	166 382	163 406	87 280	79 270	62 203

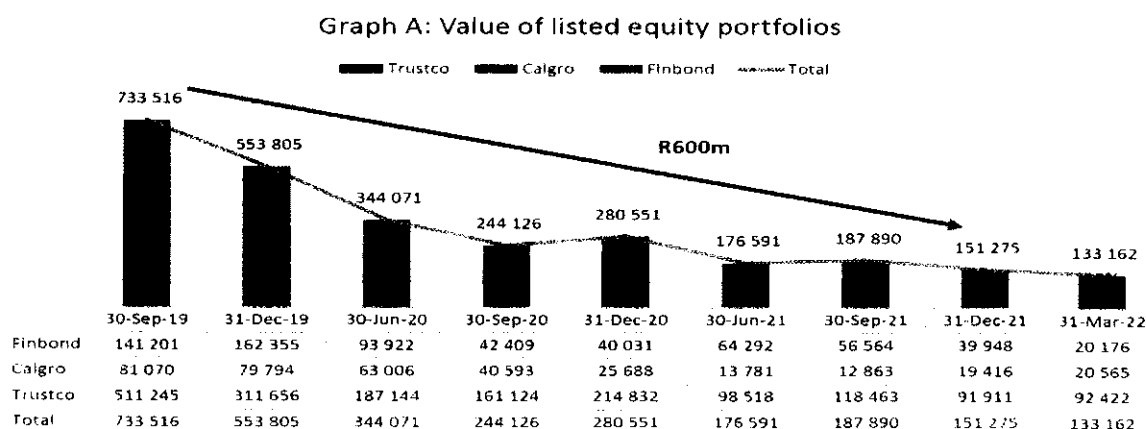
36.5 Despite these positive aspects, CICL continues to fall below the statutory prescribed minimum thresholds for MCR and SCR.

36.6 The table below details the value of the CICL listed equity portfolio as at 11 July 2022 with prior period comparatives and movements between these periods. The movement is unrealised profits/losses due to the movement in market value.

Equity portfolio	11 Jul	31 Mar	30 Dec	30 Oct	Dec 2020	Jun 2020	Dec 2019
------------------	--------	--------	--------	--------	----------	----------	----------

Value (R'000)		177 958	217 650	232 519	303 926	379 996	560 190
Movement (R'000)		(39 692)	(14 869)	(71 407)	(59 632)	(180 194)	

36.7 The CICL listed equity portfolio is concentrated amongst 3 investments being Trustco Group Holdings Limited ('TrustCo Holdings'), Finbond Group Limited ('Finbond') and Conduit. As at 31 March 2022, these portfolios combined accounted for approximately 90% or R157 million of the R178 million listed equity portfolio. The movement in the investments are reflected below:



37. To date, the Authority has granted extensions of time on 5 (five) different occasions (until 30 June 2021, 30 September 2021, 31 December 2021,

30 March 2022 and lastly until 30 June 2022), for CACL to comply with the requirement to recapitalise. It has failed to do so.

THE CHRONOLOGY OF EVENTS

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

38.1 CACL has reflected a financially unsound position with an SCR of 0.95 for the quarter ended 30 June 2019 and was instructed not to declare or pay a dividend to its shareholders, as it has failed to comply with section 36 of the Act. The Honourable Court is referred to "**FA5.2**" in this regard.

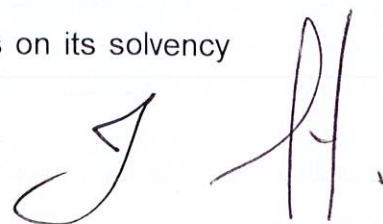
38.2 In terms of the recapitalisation plan submitted on 5 June 2019, which was acknowledged in Annexure "**FA5.2**", the Authority noted the following:

38.2.1 Short-term actions (up to 3 months): Rehabilitative operational and underwriting measures which include cash generation.

38.2.2 Medium-term actions (up to 12 months): Growth aspiration and shareholder capitalisation.

38.2.3 Long-term actions (longer than 12 months): Investment strategy changes to support the solvency as well as the identification of an investor to recapitalise CACL.

38.3 Within the medium-term action and long-term actions, CACL embarked on corporate action to identify an investor to re-capitalise CACL, as the current shareholder Conduit did not have any appetite to capitalise CACL. CACL was further instructed to provide weekly updates on its solvency position until such time that CACL was capitalised.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a vertical line and a small flourish.

38.4 The Authority, approved Trustco Life Limited, an entity registered and licensed in Namibia, to acquire 32.2% of the shareholding of CICL, and the life insurers indirectly via the holding company, CRIH. Trustco Life Limited is a related party to TrustCo Holdings. The approval was granted on 14 December 2020 and is attached as "**FA6**". The Authority approved the transaction with, amongst others, the following conditions:

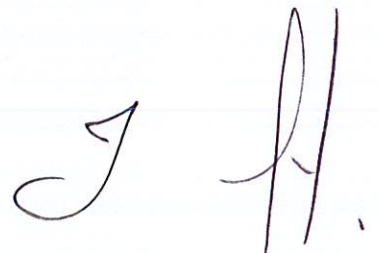
38.4.1 CICL to restore its SCR to a minimum of 1.20 by injecting Tier 1 capital on its balance sheet on or before 31 March 2021.

38.4.2 Weekly reporting was still required to monitor the impact of the underwriting and investment experience on the solvency position of CICL.

38.5 On 12 March 2021, CICL formally advised the Authority of the reasons for not pursuing the TrustCo transaction, thereby requesting the withdrawal of the approval granted for that transaction.

38.6 As a result, CICL remained uncapped and its solvency requirements not cured. The letter addressing the solvency position of CICL is attached as "**FA7**".

38.7 With the withdrawal of the approval, CICL was reflecting a SCR ratio of 0.36 as at 1 April 2021. CICL was reminded not to declare or pay a dividend to its shareholders, as it has failed to comply with section 36 of the Act. CICL was instructed to ensure that it was recapitalised equal to a SCR coverage ratio of 1.20 as at 30 June 2021.

A handwritten signature in dark ink, consisting of a stylized 'J' followed by a vertical line and a small dot.

38.8 CICL then advised the Authority of a proposed transaction with Athena Capital (Pty) Limited (**'Athena'**) as a prospective investor. The deal was described as a cash deal wherein Athena would subscribe for new shares in CICL to the amount of R400 million.

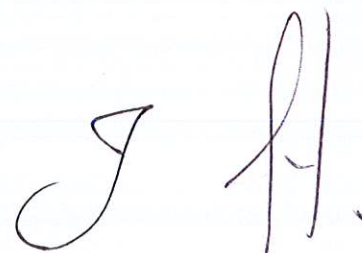
38.9 In light of this, the Authority granted CICL a further extension until 30 September 2021 to comply with the instruction to recapitalise. The following conditions had to still be met:

38.9.1 CICL providing the Authority with a two weekly progress update on the proposed transaction including, but not limited to, the outcome of the due diligence, agreements to be drafted and irrevocable guarantees from the proposed new shareholder.

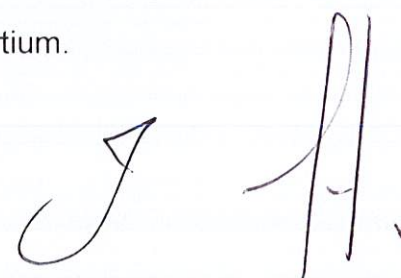
38.9.2 The current weekly solvency, profitability, and liquidity reporting by CICL remained in place. The approval letter is attached marked **"FA8"**.

38.10 CICL was unable to meet the Authority's requirements by 30 September 2021 and accordingly sought a further extension until 31 December 2021.

38.11 The Authority, appreciative that the transaction would take time to be completed and potentially would not be completed by its earlier deadline, granted CICL a further extension until 31 December 2021 to comply with the instruction to recapitalise. I refer to **"FA9"**, being the approval letter in this regard.

A handwritten signature in dark ink, consisting of a stylized 'J' followed by a vertical line and a small flourish.

- 38.12 CICL was, however, still unable to recapitalise by 31 December 2021 and sought a further extension of time until 31 March 2022.
- 38.13 The Authority again granted CICL the further extension until 31 March 2022 to comply with the instruction to recapitalise. The stated conditions for the approval were extended to 31 March 2022. I refer to “**FA10**”, being the approval letter in this regard.
- 38.14 At this stage, the Authority was advised by CICL that following numerous engagements with Athena, and Mmuso Capital (Pty) Limited (**‘Mmuso’**), it was decided that Mmuso would be best placed to be the lead investor in the transaction, at a Conduit level. This, the Authority was told, would result in CICL being a majority owned B-BBEE insurance entity, which would support the transformation and financial inclusion initiatives within the insurance market.
- 38.15 The Authority accordingly granted CICL the further extension until 30 June 2022 to comply with the instruction to recapitalise. The stated conditions for the approval were extended to 30 June 2022. I refer to “**FA11**” being the approval letter in this regard.
- 38.16 The Authority thereafter received an application in terms of section 158(2) of the FSR Act from Mmuso Capital Hybrid Fund I Proprietary Limited, (**‘Mmuso Capital’**) a company incorporated under the laws of South Africa with registration number 2012/097458/07, having its registered address at 114 West Street, Katherine and West, Suite 9, 1st Floor, Sandton, 2196 on behalf of the Mmuso Consortium.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a vertical line and a small dot.

38.17 In a SENS announcement on 20 December 2021, Conduit entered into a binding term sheet with Mmuso Capital on behalf of the Mmuso Consortium, in terms of which Mmuso Consortium would, subject to certain conditions, subscribe for a new class of shares in Conduit, being redeemable convertible participating preference shares, in an aggregate value of R500 million.

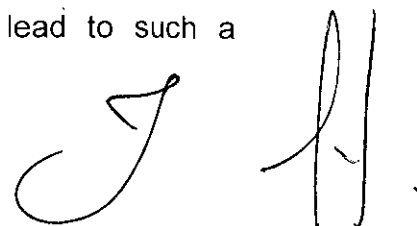
38.18 The Authority understood that Conduit would remain the 100% ordinary shareholder of CICL (indirectly through CRHL) and that the Mmuso Consortium would have no voting rights but would have the option to convert the preference shares within a period of 3 to 5 years.

38.19 With regards to good financial standing, section 7(2) of Prudential Standard GOI 4, Fitness and Propriety of Key Persons and Significant Owners of Insurers ('GOI 4'), issued in respect of the Insurance Act, stipulates that, in the case of a significant owner that is legal person, any of the following constitutes *prima facie* evidence that a significant owner may not be in good financial standing:

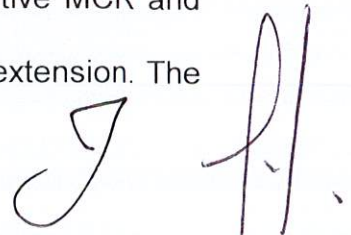
38.19.1 The significant owner does not have adequate financing or funding and future access to capital.

38.19.2 The significant owner is not able or likely to be able to meet any of its financial obligations (including debts) as they fall due.

38.19.3 The significant owner has been subject of a civil judgement in respect of an unpaid debt, which debt remain unpaid, or is the subject of pending proceedings which may lead to such a judgement.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a vertical line and a small dot.

- 38.20 CICL was unable to produce financial statements or financial information for the parties to the Mmuso Consortium for the assessment of the financial standing of the Mmuso Consortium, nor could it explain the flow of funds to understand the characteristics of the capital investment on the balance sheet of CICL. A meeting was held with CICL to express the Authority's concerns and queries on the application as well and the impact that the non-submission might have on the recommendation of the application. The meeting was held on 13 June 2022.
- 38.21 On 15 June 2022, the CEO of CICL, Mr Peter Todd informed Johan Heyneke that CICL did not receive any of the outstanding information for the significant owner application from the Mmuso consortium, and instead received a letter from the Mmuso consortium, withdrawing from the transaction.
- 38.22 On 17 June 2022, the CEO of CICL further informed me that CICL had engaged its lawyers on the withdrawal by the Mmuso consortium from the transaction due to its failure to meet the deadline for submission of the appropriate documentation and proof of funds.
- 38.23 Given these events, CICL once again applied on 20 June 2022, for the further extension of time to recapitalise. It now postulated that there may be several other prospective investors who may be interested but no firm or concrete proposal was identified to recapitalize it.
- 38.24 The Authority considered the application for extension, and given the failure of all proposals until now, and the seriously negative MCR and SCR, the Authority declined the application for a further extension. The

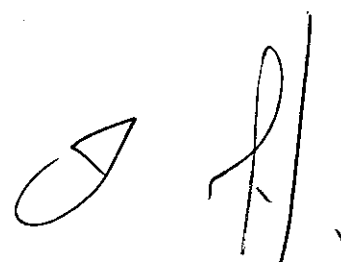
A handwritten signature in dark ink, consisting of a large, stylized 'J' followed by a vertical line and a small dot.

Authority informed CACL of the outcome of the application on 14 July 2022, reserving its rights to take any regulatory actions provided to the Authority under the Insurance Act. The letter to CACL is attached as **“FA2.3”**.

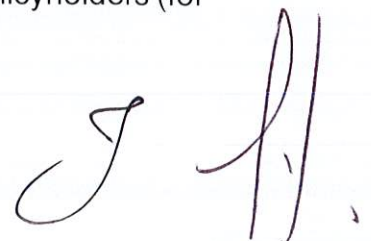
38.25 The Authority also formed the view that it cannot responsibly allow CACL further extensions for it to continue to operate its business with a negative SCR and MCR. It is for this reason (and the above context) that the Authority resolved to apply for regulatory intervention in the form of a curatorship.

JUSTIFICATION FOR PLACING CACL UNDER CURATORSHIP

39. The Authority accepts that since the Authority first started engaging CACL in June 2019, CACL has taken a number of steps in an effort (futile as it may be) to bring itself into compliance with the regulatory regime. However, despite this, its financial soundness, as per legislative requirement, has not been restored.
40. CACL has, over the relevant period, presented no less than three proposed investors to the Authority for its recapitalisation but none has come to fruition. In the meantime, CACL continues to fall short of the SCR and MCR and its most recent unaudited weekly submission suggest that its position has worsened.
41. The management team of CACL has self-evidently not succeeded in restoring financial soundness to CACL despite a number of indulgences, none of which constituted a waiver, granted to them by the Authority.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a vertical line and a small flourish.

42. There is a very real risk that, unless the business of CACL is placed under curatorship, it may well default on its current and future insurance obligations to policyholders or reach a point where business rescue or liquidation is inevitable.
43. The Authority cannot risk allowing CACL to continue operating as it presently does, absent regulatory intervention.
44. The Authority believes that the appointment of a curator is appropriate at this stage, for the following reasons:
- 44.1 Although CACL has so far proved unable to procure an investor it requires to restore its financial position, it is possible that appropriate funding by a potential investor could yet be made.
- 44.2 A curatorship would preserve the current financial position of CACL and provide an opportunity to identify a potential investor, whilst preventing further erosion of its solvency capital cover.
- 44.3 Curatorship may therefore serve to forestall CACL's ultimate liquidation (which at this stage is a real risk). The Authority wishes to avoid liquidation, the risk of value destruction and prejudice to policyholders that a liquidation entails, unless less restrictive measures do not have the desired effect.
- 44.4 Additionally, a curator will be able to identify potential investors and their fit and properness to be considered as significant owners of CACL to recapitalise the business of CACL. It may also reveal other avenues of recourse that will be necessary to protect the interest of policyholders (for

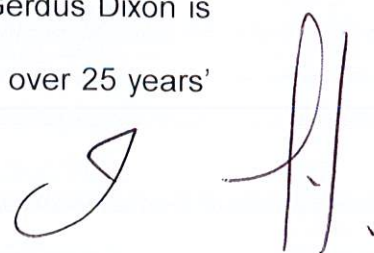
A handwritten signature in dark ink, consisting of a stylized 'J' followed by a vertical line and a small flourish.

example the transfer of books of business to other insurers to protect policyholders).

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

The proposed curator and alternate curator

46. The Authority has identified a suitable candidate for appointment as curator and proposes the appointment of Mr Ashish Desai of Deloitte & Touche.
47. As he confirms in the accompanying confirmatory affidavit, Mr Ashish Desai is the Insurance Sector Leader at Deloitte & Touche and has 28 years' experience in the insurance industry. He is a member of the Actuarial Society of South Africa (**ASSA**). A copy of Mr Ashish Desai's short resume is attached to his confirmatory affidavit.
48. Mr Ashish Desai of Deloitte & Touche is willing and available to serve as the curator of CICL.
49. The proposed curator will be remunerated in accordance with the norms of his profession, on a basis agreed with the Authority.
50. In the event that Mr Ashish Desai is for any reason unable to continue to fulfil his duties and obligations as curator, the Authority has identified a suitable candidate for the appointment as an alternate curator and proposes the appointment of Mr Gerdus Dixon of Deloitte & Touche.
51. As he confirms in the accompanying confirmatory affidavit, Mr Gerdus Dixon is an Insurance Sector Audit Leader at Deloitte & Touche and has over 25 years'

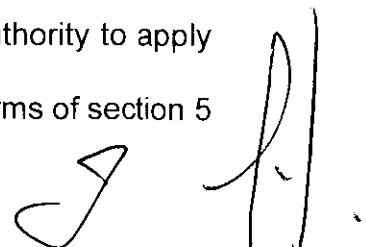


experience in the insurance industry. A copy of Mr Gerdus Dixon's short resume is attached to his confirmatory affidavit.

52. Mr Gerdus Dixon is willing and available to serve as the alternate curator of CICL.
53. The proposed alternate curator will be remunerated on a similar basis as the curator.

Ex parte application

54. Section 5(1) of the Financial Institutions Act states that "*the registrar [that is, the FSCA] may, on an **ex parte basis**, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution.*
55. The registrar is thus expressly empowered to bring a curatorship application on an *ex parte* basis. The usual notice requirements applicable in motion proceedings therefore do not apply.
56. That is a legislative policy choice. Prior to its amendment by the Financial Services Laws General Amendment Act 45 of 2013, section 5 provided that "*the registrar may, on good cause shown, apply to a division of the High Court having jurisdiction for the appointment of a curator to take control of, and to manage the whole or any part of, the business of an institution*". In other words, the amendment expressly introduced the ability to apply *ex parte* and dispensed with the ordinary notice requirements.
57. The Authority enjoys an equivalent power to the FSCA under section 54(1)(a) of the Insurance Act, which expressly refers to the power of the Authority to apply to court to have a curator appointed in respect of any insurer in terms of section 5

A handwritten signature in black ink, consisting of a stylized 'J' followed by a vertical line and a small flourish.

of the Financial Institutions Act, which includes the power to apply on an *ex parte* basis.

58. There are sound reasons not to give notice of this application to CICL:

58.1 The application is brought in the interests of CICL's policyholders and in the public interest, to avoid a real and imminent risk of default on their insurance obligations. It is respectfully submitted that this application requires swift intervention by this Court.

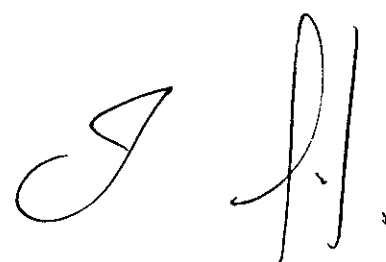
58.2 The relief sought by the Authority in this application is of a regulatory, not of an adversarial, nature. Indeed, the Authority hopes that CICL can be restored to a sound financial position, regulatory compliance swiftly and with as little interruption as possible. It needs an external curator to identify potential investors and consider their fit and properness to be considered as significant owners of CICL to recapitalise the business of CICL and to restructure the business of CICL in a manner that would protect the interests of policyholders and the public.

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

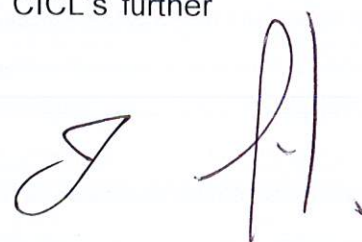
A handwritten signature in black ink, consisting of a stylized 'J' followed by a vertical line and a small flourish.

Urgency

59. This application is inherently urgent.
60. It is clear that CICL is conducting business in circumstances where its MCR and SCR are negative, in breach of capital adequacy requirements and without any means to recapitalise. Urgent intervention is therefore required.
61. As stated above, CICL has over the relevant period presented no less than three proposed investors to the Authority to recapitalise, none of which has come to fruition. The Authority can no longer perpetuate a situation where CICL continues to do business with a negative SCR and MCR.
62. There is a very real risk that, unless there is the urgent intervention of the above Honourable Court granting this application, CICL's SCR and MCR may further be eroded and that it may default on its current and future insurance obligations to policyholders or reach a point where its liquidation is inevitable.
63. There is therefore self-evident urgency to place CICL into curatorship to salvage its financial position, and provide an opportunity to source funding, whilst preventing further erosion of its SCR cover.
64. If this is not done, business rescue or liquidation, which has been explained above, may be inevitable. Liquidation would have a devastating effect on CICL and policy holders. If curatorship can have a realistic chance of averting this, then, it should be granted at the earliest opportunity before further damage is done to CICL's liquidity.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a vertical line and a small dot.

65. Additionally, to ensure that policyholders are protected, it is necessary for this application to be heard urgently now that the third attempt at recapitalisation has failed.
66. Lastly, it is in the interests of the public and litigants in general for this matter to be heard on an urgent basis. This is because this application serves a public interest. As stated at the outset of this application, it is essential – both to policyholders and the public at large – that insurers are kept in a sound financial position such that they can meet their obligations under their policies as and when they fall due. CICL is already in a position that may render it unable to meet such obligations.
67. It is clear from what is set out earlier in this affidavit that CICL was afforded numerous indulgences by the Authority, to meet the relevant solvency requirements but this has not materialised. CICL's recent weekly report has indicated that it now has a negative MCR and SCR. This necessitates urgent regulatory intervention and the Honourable Court's assistance.
68. CICL's capital solvency challenges have been ongoing for quite sometime, and it was afforded every opportunity to remedy its situation and obviate the need for this application and the relief sought herein. It constantly provided the Authority with motivations and assurances that it would be recapitalised through investor funding. The Authority, in good faith relied thereon.
69. However, once the Authority was informed by CICL that the Mmuso consortium had withdrawn and when its weekly submissions reflected a negative SCR and MCR at the end of June 2022, the Authority whilst considering CICL's further

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large, looped 'A'.

application for extension resolved to urgently apply for it to be placed under curatorship.

70. As already canvassed above, by 20 June 2022, CICL indicated that an extension was needed beyond 30 June 2022. They brought a formal application for such. There was no indication of the time required for the further extension and there was nothing concrete that was placed before the Authority that indicated that CICL would be able to satisfy its capital solvency requirements. The Authority accordingly rejected this request for an extension and conveyed its decision to CICL on 14 July 2022 as is evident from annexure “**FA2.3**” attached hereto.

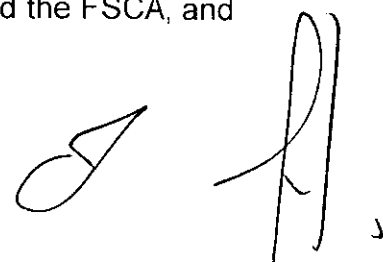
71. The Authority had in the interim engaged with its attorneys to obtain advice and a consultation was urgently arranged with counsel on 13 July 2022 and following its conveyance of its decision to reject the application for extension on 14 July 2022, these papers were finalised and the application launched as soon as possible thereafter.

72. The relevant employees from the Authority then considered the contents of the papers settled by counsel and providing their input thereon.

73. In this regard, the period between 14 July to 20 July (when these papers were finalized) is not, I submit, inordinately long given the information that had to be collated and considered. These papers were issued at court shortly thereafter.

Service of rule nisi

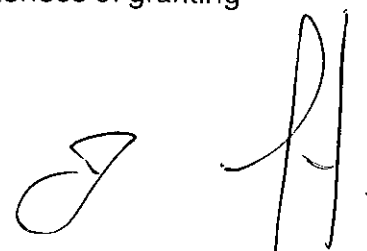
74. To ensure that the *rule nisi* is brought to the attention of interested parties, the notice of motion makes provision for it to be served on CICL and the FSCA, and

A handwritten signature in black ink, consisting of a stylized 'S' followed by a vertical line and a small flourish.

to be published in the Government Gazette, as well as each of the Business Day and Citizen newspapers, as well as on the Authority's official website.

The powers of the curator and/or alternate curator

75. Section 54(2) of the Insurance Act stipulates the powers and functions that may be conferred on a curator and/or alternate curator. The Authority seeks, in prayer 8 of its notice of motion, for the curator or alternate curator to be afforded all of the powers that Mr Ashish Desai, Mr Gerdus Dixon and Deloitte & Touche will require to effectively manage and operate CICL's business, and simultaneously to divest CICL's current management and directors of those powers and functions.
76. Wide powers are proposed to enable the curator to take full control of the business, to manage its affairs, restructure the business, to identify potential investors and their fit and properness to be considered as significant owners of CICL to recapitalise the business of CICL after consultation with the Authority. Those powers will be exercised subject to the ultimate oversight of the Authority.
77. The intention at this point is for the curator to arrest the situation, and to preserve the business rather than to wind it down, if possible. In the curator's discretion and where possible, the curator may continue to honour existing policy commitments and make payments to policyholders.
78. The notice of motion also makes provision for the curator to investigate and report to the Court on CICL's affairs, as well as recommended further steps, prior to the return date. That will enable the Court to consider the appropriateness of granting the final relief sought on a complete conspectus of the facts.


A handwritten signature in black ink, consisting of a stylized 'J' followed by a vertical line with a small hook at the top.

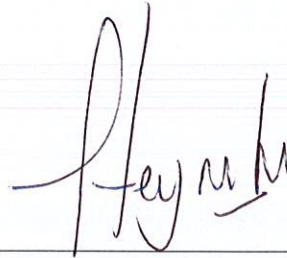
COSTS

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

CONCLUSION

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

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a vertical line and a small dot.



JOHAN WILHELM HEYNEKE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at **PRETORIA** on ^{20th} **JULY 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: *M. C. Theron*

Address: *Unit 2, Equity Estates*

Capacity: *Attorney RSA*



MC Theron
Commissioner of Oaths
Practising Attorney RSA
Van Greunen & Associates Inc
Unit 2 Equity Estate, Charles De Gaulle
Crescent, Highveld, Centurion

