

Mr Ashish Desai  
Provisional Curator  
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18 August 2022

Ms Fundi Tshazibana  
Chief Executive Officer  
Prudential Authority  
370 Helen Joseph Street  
Pretoria  
0002

Care of Mr Johan Heyneke  
[Johan.heyneke@resbank.co.za](mailto:Johan.heyneke@resbank.co.za)

Dear Ms Tshazibana

## **PROVISIONAL CURATORSHIP OF CONSTANTIA INSURANCE COMPANY LIMITED**

### **PROVISIONAL CURATOR'S RECOMMENDATIONS**

1. I confirm that:

- 1.1 I was appointed as the provisional curator of Constantia Insurance Company Ltd (**CICL** or **the Company**) on 26 July 2022, with Mr Gerdus Dixon as my alternate, in terms of an order of the High Court of South Africa, Gauteng Local Division at Johannesburg, under case number 7177/2022 (**the Court Order**).
- 1.2 In accordance with the Court Order, among my other powers and responsibilities as set out in paragraphs 7.1 to 7.15 and 9.1 to 9.4 of the Court Order:
  - 1.2.1 I have taken control of, managed and investigated the business and operations of CICL (**the Business**), together with all assets and interests relating to such Business, subject to the control of the Prudential Authority (**the Authority**) (in terms of and in accordance with paragraph 7.1 of the Court Order);
  - 1.2.2 I have consistently given consideration to the best interests of the Company's policyholders (in terms of and in accordance with paragraph 7.3 of the Court Order);
  - 1.2.3 I have exercised the powers vested in me with a view to conserving the Business (in terms of and in accordance with paragraph 7.4 of the Court Order);

- 1.2.4 I have – up to the date of this letter - made payments of policyholders' claims subject to the available resources of the Company (in terms of and in accordance with paragraph 7.5 of the Court Order);
- 1.2.5 I have furnished the Authority with progress reports on a weekly basis, specifically on 5 August 2022 and 12 August 2022.
- 1.3 Upon assuming office, I motivated to the Authority not to suspend the license of the Company in terms of section 27 of the Insurance Act, and I indicated in meetings with the Authority (on and around 27 July 2022) that I considered it important to receive permission from the Authority to issue new policies in order to have a reasonable prospect of conserving the Business in accordance with the Court Order. My motivations in this respect were set out in my letter to the Authority, dated 29 July 2022. My motivations were made on the basis of the understood position of the Company and the Business as set out in the Founding Affidavit that was filed in the Authority's application for the Court Order.
- 1.4 The earliest provisional results of my team's investigation of the financial position of the Company, as conveyed to the Authority on 5 August 2022, suggested that the Company's financial position might be worse than contemplated in the Founding Affidavit. As communicated to the Authority at the time, I still had legitimate concerns regarding unqualified reliance on those results given that, among other things, I only had access to unaudited data; the results had not yet been tested with the Company's head of actuarial function; and I had not yet received an explanation of the Company's treatment of the applicable solvency quota share arrangements.
2. Since reporting to the Authority on 12 August 2022, and in light of further investigation and fact checking on my part since then:
- 2.1 I am of the view that it is responsible and appropriate to rely on the available unaudited data provided by the Company's management given the reasonable analysis applied by my team to that data and to prior years' audited results;
- 2.2 The available data procured by me from the Company's head of actuarial function record a markedly worse financial position, as contained in my report to you dated 12 August 2022, including that the current solvency capital requirement (**SCR**) is approximately R909 million, and the SCR cover ratio is 0.00, while the minimum capital requirement (**MCR**) is approximately R227 million, and the MCR cover ratio is -0.50;
- 2.3 The calculation of the MCR and SCR ratios include potentially encumbered cash to the value of approximately R154 million;

- 2.4 While we have not had the opportunity to interrogate the valuation of the Company's unlisted investment portfolio, we have formed the view that there is a low likelihood of full recovery of related party loan assets, and have observed further deterioration of the illiquid listed equity portfolio since 30 June 2022;
- 2.5 It is now confirmed that the solvency quota share reinsurance treaty has not been renewed for the current financial year commencing on 1 July 2022;
- 2.6 My projections at this stage indicate that the Business is unlikely to have sufficient cash flow to enable it to operate until the return day of the Court Order, even if the potentially encumbered cash, which I have ring-fenced for the time being, were to become available. The Company does not have any realistic options to borrow to fund its inevitable cash shortfall.
- 2.7 The suspended executive management of the Company have not disputed my assessment of the Company's balance sheet position despite having been afforded an opportunity to correct or supplement my view.
3. As at today's date, having taken actuarial, financial and legal advice from my team and consultants, I am of the view that:
- 3.1 There is no merit in seeking to write new policies, and to do so would expose new and existing policyholders unduly, and conversely, would not remedy the cash flow concerns of the Business, nor serve as a sufficient incentive to attract new investors in the Company;
- 3.2 The revised view of the financial position of the Company means that I have been unable to persuade any formerly tentative investors to commit to recapitalize the Company, and has made it impossible to attract any additional potential investors, with the result that efforts to conserve the Business, as mandated by the High Court, are not feasible
- 3.3 I am compelled to exercise my discretion as contemplated in paragraph 7.5 of the Court Order, to cease paying any further claims with immediate effect;
- 3.4 The Company has no prospects of achieving compliance with section 36 of the Insurance Act in the foreseeable future, if at all;
- 3.5 There is virtually no prospect of the Business being capable of conservation until the return day stipulated in the Court Order, even if the potentially encumbered cash of approximately R154 million were made available as own funds.
4. In the circumstances, in accordance with the Court Order, as read with section 5 of the Financial Institutions (Protection of Funds) Act and section 54 of the Insurance Act:

- 4.1 I deem it necessary (alternatively, reasonably expedient) that application be made to the High Court for the liquidation of the Company (as directed and authorized in terms of paragraph 7.13 of the Court Order);
- 4.2 I shall exercise my discretion to cease to pay claims with immediate effect, pending an application for liquidation of the Company;
- 4.3 I propose that any affidavit to be filed by me in the proposed liquidation application should be substituted for the submissions required of me in terms of paragraphs 9.1 to 9.4 of the Court Order, with leave of the High Court;
- 4.4 I recommend, as directed and authorized in paragraph 7.13 of the Court Order, that the Authority consider appropriate steps to investigate the conduct of the directors and management of the Company in relation to:
  - 4.4.1 their knowledge of the status of the solvency quota share reinsurance arrangements in the period leading up to the Authority's application for the Court Order;
  - 4.4.2 the appropriateness of their interpretation and communication of the financial effect of such arrangements to the Authority.
5. I am of the view that it is in the interests of policyholders and employees of the Company that the proposed liquidation be sought on an expedited basis if possible. Please note that in seeking to conserve and manage the Business in compliance with the Insurance Act and other applicable law, I have considered it prudent to treat the potentially encumbered cash as such, in the absence of any application by the suspended management of the Business or by me, to have such cash released for the general purposes of the Business. This accords with the objectives of treating all policyholders fairly. If such cash were to be regarded as unencumbered, then the cash flow position of the Company would be materially ameliorated, however, that in itself does not change my view that liquidation of the Company remains necessary (alternatively expedient). Accordingly, my recommendation in this respect remains unchanged.
6. I wish to draw to the Authority's attention that an unavoidable consequence of the Court Order and the concomitant suspension of the Company's license has been that underwriting management agencies (UMAs) contracted to the Company have been, and still are, actively seeking alternative binder holder arrangements. I understand this to be aimed at protecting the interests of new and renewing policyholders. A commercial consequence is that any run-off liabilities that remain with the Company will not be covered by sufficient assets given the insolvent position of the Company. In my capacity as provisional curator there is nothing that can be done to arrest this process, which ultimately serves to potentially prejudice current

policyholders, other than to desist from seeking to prevent new carriers from taking on renewals and of course new business. In the circumstances, and in the interests of policyholders, I am of the view that the Financial Sector Conduct Authority (FSCA) should waive the requirement of 30 days' notice of a proposed binder arrangement in order to facilitate the protection of affected policyholders, and I am preparing communication to UMAs and brokers regarding my position. I also seek any other assistance or intervention that the Authority or FSCA can recommend to compel or persuade other insurers that are attracting such business to take transfer of at least a meaningful proportion of the associated liabilities (without the guarantee of any commensurate transfer of assets). In my view this is necessary to facilitate, within this sub-sector, the achievement of a stable financial system that works in the interest of financial customers, that supports balanced and sustainable economic growth, and promotes the efficiency and integrity of the financial system and confidence in the financial system, as contemplated in section 7 of the Financial Sector Regulation Act, 9 of 2017.

7. I look forward to your urgent response, and if the Authority agrees with my recommendations, to working with you on an expedited basis to securing the best interests of policyholders and employees in the short term.



Ashish Desai

Curator –Constantia Insurance Company Limited