



The Guardrisk Update

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Incorporating Life Update

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LAST year the number of complaints to the FAIS ombudsman grew 27,5% to 5720 (*Business Day, 20 Oct*). 486 cases were resolved and 1218 cases dismissed. 18 determinations were issued and settlements related to those cases amounted to just over R14m.

THE depreciation of the rand is set to drive up the cost of vehicle replacement parts and insurance claims (*Business Report, 24 Nov*). Locally manufactured vehicles have an average local parts content of 35%, so almost two-thirds, by value, of parts fitted to all vehicles after accidents are imported.

THE marketing of insurance products via affinity groups is growing rapidly (*Business Day, 23 Oct*). There is general recognition among insurers that the conventional distribution chains, essentially brokers, cannot serve the low-margin, high-volume end of the market adequately.

MORE and more heavily indebted South Africans are cashing in their insurance policies or taking the risk of no insurance (*Business Report, 19 Nov*). The debt-burden of SA households has increased by 21% and those earning more than R500 000 a year are the most heavily indebted.

SA's top 50 companies spent R144,8m to comply with the tax laws last year (*Business Day, 8 Oct*). This included R64,2m on salaries and related overheads and R80,6m paid to external tax service providers.

THE storage and retrieval of e-mails has become a big headache, especially now that good governance and no fewer than five local acts prescribe the need to store all e-mails for up to 10 years (*Workplace, 17 Oct*). The number of e-mails sent per day is estimated to be around 210-billion.

Will anyone still want to be a company director?

The once sought after position of 'company director' may soon be a difficult spot to fill: when the new Companies Bill comes into effect South African company directors will be personally liable for breaches of their fiduciary duties and may be sued for loss and damages caused to the company's creditors, employees or shareholders. The Bill also applies to officers of the company and "deemed" directors (members of the audit committee and board committees) who have no voting rights yet carry the same accountability and liability as that of official members of the board.

The Bill – which is expected to be passed into law early next year – will, for the first time, set out a codified regime of directors' duties, including 'a fiduciary duty and a duty of reasonable care'. Directors' roles in board meetings will become far more meaningful and a brief look through the board pack prior to the meeting will no longer suffice. The Bill carries with it an expectation – indeed a requirement – that directors understand the provisions of the Bill and conduct themselves accordingly.

While the Bill doesn't really change many of the common law concepts that have governed directors in the past, it does clearly define their responsibilities, which in itself creates a more onerous environment. It also introduces the American doctrine known as the "business judgement rule", which basically means that a director making a decision in good faith, with care and on an informed basis, and with reasonable belief that it is in the interest of the company, cannot incur liability in respect of that decision. But directors may incur criminal or civil liability if they are deemed to be in breach of their duties.

Under the new legislation, directors may be declared delinquent or placed on probation as a result of certain conduct. In such an event an application would have to be made to court by the company, a shareholder, the company secretary, a registered trade union or representatives of employees of the company.

Thus directors could be:

- declared delinquent if they grossly abused their position or caused intentional harm to the company; and
- placed on probation if they improperly supported a resolution contrary to the solvency and liquidity test, or otherwise acted in a manner which is inconsistent with the duties of directors.



There is some concern though that these procedures could be open to abuse since they can be initiated by a wide category of persons, some of whom may have their own agendas. To circumvent this, the DTI has suggested that the Companies Ombud (to be established by the Bill) first consider such applications to determine whether they have any merit.

While there are certainly still some 'T's to cross and 'I's to dot in terms of the legislation, one thing about which there is no doubt is that, in the wake of the new Bill, directors' duties will be much more onerous and some may well rethink their appointments. Those choosing to stay on board will no doubt be keen to take advantage of the provisions of the Bill that entitle the company to take out insurance to protect both the liability of the company and the director personally.

Risk Barometer

SOVEREIGN wealth funds are choosing to invest in more risky sectors, such as banking, over the re/insurance industry, leaving industry leaders frustrated (*The Review*, 1 Oct).

A global pandemic could have a significant impact on insurers and hit a range of classes of insurance business, rather than just life and health insurance says a Lloyd's of London study (*Business Insurance*, 3 Nov). It says that a pandemic is inevitable, since it has historic recurrence rates of 30 to 50 years, and that it would be prudent to assume that a pandemic will occur sometime in the future.

AS the credit crisis deepens, more UK businesses are turning to trade credit insurance to cover against uncertainties surrounding payments (*Insurance Day*, 14 Oct). Businesses are really starting to feel the pinch with business debt of those with trade credit insurance increasing by 36% and the value of claims increasing by 31% from the same period last year.

DISASTER claims that total tens of billions of dollars and the financial markets meltdown have effectively turned the reinsurance market on its head, which is likely to mean that prices will be forced up across the board in the upcoming end-of-year renewals (*Business Insurance*, 3 Nov).

RISK managers have welcomed the decision by the European Commission to assign captives a special status under the planned Solvency II framework (*Insurance Day*, 13 Oct). Elsewhere, though, there have been warnings that UK insurers may struggle to react to external events such as the existing economic turmoil under new Solvency II governance rules outlined by the Financial Services Authority.

NEARLY 90% of US corporations are said to be engaged in some type of litigation, with billion-dollar companies fighting as many as 150 cases at any one time (*Insurance Day*, 10 Nov). Product recalls are now a regular occurrence. The globalisation of markets, rapid growth of production centres in developing countries and fears of consumers keen to exercise their rights are all fuelling the growth of liability risk.

Life Update

Life Barometer

THE rate at which South Africans default on life insurance policies has risen 260% in six months (*Business Day*, 25 Oct). This analysis is based on consumers who have taken up life policies through an online financial comparison website's insurance partners (which include "some of SA's top insurers"), but have defaulted on premiums within two years of their policy. They say they are used to seeing a default rate of 15%-20% in the first two years of a policy's existence but default rates are now closer to 40%. That is a staggering increase of 260%.


LIFE-STAGE investment portfolios have gained prominence in SA over the past decade due to the conversion of retirement funds to the defined contribution model, but they may pose a threat to the long-term wealth of fund members (*Business Day*, 30 Oct). The life-stage model requires a planned retirement date, and it is based on the assumption that all, or the major part, of the retirement benefit will be used to purchase a guaranteed annuity from a life insurer. If an employee invests in a life-stage portfolio and one or both of these prerequisites do not apply, he may fundamentally endanger his ability to generate sufficient retirement savings to maintain his lifestyle after retirement. Retiring early means he is exposed to both market risk and interest-rate risk when buying a life annuity. Retiring later than planned means being invested in a cash portfolio for too long.

BENEFICIARY funds are to replace umbrella trusts on January 1 as the savings vehicle trustees can choose for lump sum benefits paid on the death of a retirement fund member (*Business Day*, 30 Oct). These funds will fall under the Pension Funds Act, bringing both protection and recourse to the pension funds adjudicator and the Financial Services Board for stakeholders.

LONG-TERM pension fund investment managers benefit from cyclical trends, and the underlying growth of the economy as reflected in the earnings achieved by companies with strong management and robust models (*Business Day*, 8 Nov). These factors underpinned average annualised capital growth of the index (excluding dividends) over 40 years of 14%, similar growth over 20 years, 15% over 10 and 22% over five years.


ON January 1, a new commission system will be introduced, which means that instead of receiving all commission upfront in the first 13 months, insurance brokers will get 50% of the commission spread over the life of the policy (*Financial Mail*, 28 Nov).





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4th floor, Alexander Forbes Place, 90 Rivonia Road, Sandton, 2196
PO Box 786015, Sandton, 2146

Telephone: (+27 11) 669-1000 Fax: (+27 11) 669-1931 Website: www.guardrisk.com