



The Guardrisk Update

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Incorporating Life Update

April 2005

SOUTH Africans are working long hours but over a third of them are spent unproductively (*Business Times, 10 Apr*). Ineffective meetings, procrastination and lack of team communication are the main culprits for wasted time.

PEOPLE who have concluded an employment contract, but have not yet started work, are now protected by the same rights as other employees, says a landmark Labour Appeal Court Ruling (*Sunday Times, 17 Apr*). This after an individual whose contract was terminated before he started work alleged unfair dismissal.

COMPANIES guilty of corrupt practices will in future be blacklisted under resolutions adopted at the second anti-corruption conference recently (*Business Report, 24 Mar*). The conference also resolved to strengthen legislation to protect whistleblowers and the capacity of law enforcement agencies.

THE Road Accident Fund is facing a serious financial crisis with debts exceeding assets to the tune of R18-billion, and a loss of R3-billion in 2003/4 (*The Star, 20 Apr*).

OVER 40% of SA's listed companies are lagging in their implementation of International Financial Reporting Standards (*Business Report, 6 Apr*). One reason for this might be simply that resistance to accounting standard implementation is common throughout organizations.

SHAREHOLDER activism has received a boost from the courts over the past few years, and a judgement last year has legalized litigation as a powerful tool against "negligent" company directors (*Financial Mail, 29 Apr*). The groundbreaking judgment opens the way for more class actions and contingency fee arrangements in SA.

Think before you hit that delete button!

Email is undoubtedly a valuable and indispensable tool, but it also presents several challenges and many risks for businesses. There are more than 570 million email boxes in the world and more than 600 billion emails are produced each year! Archiving electronic documents is a challenge, not least because of the ever increasing volumes: one report – ominously entitled “Titanic 2020” – claims that by around 2010 the volume of electronic documents worldwide will double, every sixty minutes!

Email has about it an air of informality, which is deceptive when one considers that email is admissible legal evidence. Important business records – which need to be properly preserved and archived – are pouring into users' mailboxes at an astonishing rate (the average employee receives between 650 and 1500 emails a month and it is estimated that up to 60% of business-critical information is stored in e-mail systems). This effectively makes of every employee – regardless of their competence or level of seniority – a record keeper.

Employees need to be educated in terms of what type of records must be archived and the correct method of doing this. However, ultimately, the entire process is dependant on the individual's discipline in carrying out the task and discernment in terms of identifying which records must be preserved.

One of the biggest challenges in terms of effective email archiving arises when the employee's mailbox capacity and daily work pressures collide. By necessity, all IT administrators impose mailbox size restrictions and this means that users inevitably have to deal with “mailbox full” warnings, which require that they have to decide which email to keep and which to delete, often when they are under pressure and do not have the time to evaluate each message properly.

Missing email records are not only inconvenient but could have significant legal implications for a company, as well as resulting in directors being accused of not meeting corporate governance requirements. This is especially relevant in certain industry sectors where regulatory requirements necessitate that information records are archived for a stipulated time and are able to be produced on request.



All companies – large and small – should consider instituting a formal email archiving system and the company's email storage policy should be communicated effectively throughout the organization.

The type of email correspondence that will be archived and the expected retrieval rate will influence the type of storage system to be used. Another important factor to be considered is the length of time that the records will have to be kept. The longevity of electronic records is controlled in part by the software industry's ongoing innovation, creating the need for users to continuously update software. This means that updated software may or may not accommodate opportunities for backward and forward migration, which could in the long-term affect access to documents.

Risk Barometer

A Wall Street banker who was insulted and belittled by her boss has been awarded more than \$29-million in damages (*Sunday Times*, 10 Apr). The jury decided that the company mistreated her because she was a woman and fired her when she complained.

THE insurance sector – and the financial services sector as a whole – is set to grow substantially over the next 15 years (*Insurance Day*, 29 Apr). Although structurally it is unlikely to continue in its current form with new technologies, wealth generation, emerging markets and consolidation all being key factors.

LOYD's underwriters believe that pricing is still the number-one consideration for insurance buyers in 2005, following a year in which rates in the US commercial insurance industry declined steadily for the first time since 1998 (*Insurance Day*, 20 Apr).

MANY underwriters are still refusing to cover digital risks and say that the biggest barrier to underwriting digital risks is underwriters' inability to quantify potential losses (*Insurance Day*, 19 Apr). The second-biggest barrier is the lack of reinsurance capacity.

A NEW UK law is expected to boost demand for D&O cover (*Insurance Day*, 6 Apr). Under the act directors face criminal sanctions including up to two years in prison and an unlimited fine for failing to provide full information to auditors not just about what they know but what they should know.

NON-LIFE insurers have lost £3bn for their shareholders through poor underwriting (*Insurance Day*, 27 Apr). The UK is likely to be one of the slowest-growing non-life markets during the next decade and as rates start to fall insurers could face sharp falls in earnings.

A US Supreme Court decision holding that employees over the age of 40 do not have to prove bias in order to pursue age discrimination claims could mean new headaches for employers (*Business Insurance*, 4 Apr). Employment law experts agree that the ruling – one of the most significant age-discrimination rulings in decades – is not good news for employers.

Life Update

Life Barometer

CONFIDENCE in the life assurance industry remains high, despite challenges facing the industry (*Business Day*, 12 May). Growing consumerism, an ongoing focus on costs and a static employment pool from which assurers could draw premium income are among the issues facing the industry. While premium income continues to increase, the rate of growth is declining.

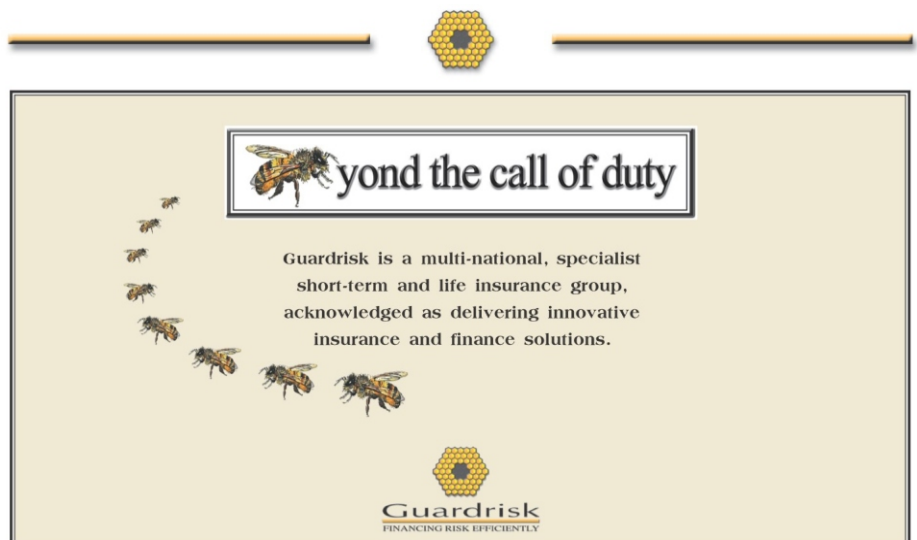
ALL retirement funds need to consider appointing an independent trustee (*Financial Mail* 18 Mar). Few boards of trustees, unless they operate in the financial services sector, will have any in-house expertise in the retirement fund industry or even any investment expertise. Of course, boards can employ consultants to help them deal with the complexity. But consultants are usually paid by the hour, giving them an incentive to make issues seem as complicated as possible, rather than explaining them simply and clearly. And they often have conflicts of interest.

THE Life Offices Association (LOA) has welcomed the news that 'mini' complaints being reviewed by the Ombudsman for Long Term Insurance fell by 33 percent in 2004 (*Business Report*, 98 Apr). The ombudsman says the decrease in mini cases can at least be partly attributed to the introduction in 2003 by the LOA of a Code on Complaints Resolution for the industry and the formation of a Complaints Resolution Committee.

IT would surprise many South Africans to discover that collective investments are probably the pre-eminent method of saving for retirement in many developed countries – and indeed in a number of emerging economies as well (*Business Report*, 18 Apr). In the US, 401(k) plans which are offered by employers are one of the most popular forms of saving for retirement. Voluntary individual retirement accounts (IRAs) are also sought after. One out of every four dollars invested in the US retirement market is through an IRA. The UK offers tax-exempt special savings vehicles and individual savings accounts, which run along similar lines to the IRAs and have also encouraged saving hugely in the UK.

SA's pension fund administrators have come in for criticism from the Financial Services Board (FSB), which says it will place this sector under closer scrutiny (*Business Report*, 28 Apr). The FSB described the approach of most of SA's 220 pension fund administrators as "sloppy" and expressed its dissatisfaction with the large number of funds that had not submitted actuarial valuations by December 2004 as required by law, despite not being valuation-exempt.

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