



# The Guardrisk Update

Volume 14 Issue 1

Incorporating Life Update

March 2008

**DIRECTORS** of companies that violate competition laws will face jail time if SA follows international trends (*The Times*, 4 Mar). Sentences for breaches of the US's Sherman Act last year involved a record of nearly 40 000 jail days and more than \$630-million in fines.

**BETWEEN** 1996 and 2007, Business Against Crime South Africa's national vehicle crime projects managed to reduce vehicle theft and hijacking by 16,5% (*The Star*, 4 Mar). The current ratio for stolen and hijacked cars is just under 10 per 1 000 registered cars – a drastic decrease compared to the 17 per 1 000 cars in 1996.

**THE** ombudsman for short-term insurance recovered R84m on behalf of complainants last year, the highest amount since the office was set up seven years ago (*Business Day*, 27 Mar). The number of complaints received by the office rose more than 100% over the past five years to more than 12 000, with motor complaints and building-related claims topping the list.

**THE** third King report on corporate governance, to be made available in the second part of this year, will require company directors to consider alternative dispute resolution, including mediation, before resorting to litigation (*Business Day*, 25 Mar).

**AN** impasse between the various stakeholders in the Financial Sector Charter Council has so far prevented the charter being gazetted (*Business Day*, 17 Mar). And unless it happens by August, the charter could fall away. That would leave the industry covered only by the generic provisions of the black empowerment codes of good conduct, so that it would no longer be bound by industry-specific commitments.

## 'Cool' entertainment could land you in hot water!

**“T**hese practices appall me and, if such measures are being resorted to by our captains of industry, the court must set its face most resolutely against that” – this from a High Court judge in a restraint of trade matter. And what practices was he referring to – bribery, corruption, industrial espionage? No, he was talking about one of the most common business practices around: customer entertainment and gifts! According to Judge Chris Nicholson wining and dining customers, handing out gifts and entertaining them at sports events is, on the face of it, “clear-cut corruption”.

Andrew Pike, an attorney at Andrew Pike & Associates, warns that the practice of entertaining clients could fall foul of the very wide provisions of the Prevention and Combating of Corruption Act. “This case sounds a loud warning to all businesses against lavish entertainment and corporate gifts,” says Pike.

At the heart of the issue is the definition of the word 'gratification', which Pike says is so wide that it includes just about anything you provide to a customer in the form of entertainment or a gift. So, something as innocuous as a theatre ticket or a gift could potentially land you in hot water.

According to the Act, gratification could come from any of the following: 'money, whether in cash or otherwise; ... any donation, gift, loan, fee, reward, valuable security,... or any other similar advantage;... any agreement to give employment or render services in any capacity and residential or holiday accommodation;... any other service or favour or advantage of any description;... any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;... any right or privilege...'

While, according to Pike, 'moderate' entertainment or gifts to reward customer loyalty are unlikely to cause problems, corporates are going to have to carefully examine their gift giving and entertainment practices to ensure that they don't fall foul of the Act. Not only should the lavishness of the gift or the entertainment be examined but also its purpose: “if the intention behind the corporate entertainment or gifts is to achieve any unfair or biased result, or more importantly is an improper inducement to do or not do anything, then it is corrupt,” says Pike. And, if that's not enough to frighten the bravest of marketers, the Act says that: 'any person who, directly or indirectly accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or is guilty of the offence of corruption'.



From the company's point of view, one of the most difficult things about this issue is that there's a lot of interpretation required. When is a gift lavish or not? When is an intention honourable or not? It seems that the only thing that's crystal clear is the fact that the net is extremely wide and that companies who don't want to get caught up in it are going to have to keep themselves above reproach, ensuring that their offerings, and the intentions behind them, are able to stand up to the strictest scrutiny.

## Risk Barometer

**LLOYD'S** of London has insured the nose and sense of smell of a leading European wine maker and taster for €5 million (*Business Report*, 26 Mar).

**THE** number of US insurance companies placed under regulatory supervision continues to decline, hitting its lowest point in a decade in 2007 (*Business Insurance*, 31 Mar). Standard and Poor's reported 10 insolvencies for 2007, down from 11 in 2006, 16 in 2005 and 19 in 2004.

**SERIOUS** fraudsters are continuing to get away with insurance fraud as many in the industry continue to focus on detecting the less complicated claims such as motor fraud, carried out by unsophisticated new criminal entrants (*Insurance Day*, 14 Mar).

**IDENTITY** theft and data security breach incidents are on the rise, but many companies are not prepared to deal with this risk (*Business Insurance*, 3 Mar). The US Federal Trade Commission estimates that as many as 9 million Americans have their identities stolen each year; identity thieves steal \$48 billion from businesses and \$5 billion from consumers annually.

**COMMERCIAL** property/casualty insurers continue to report favourable underwriting results despite the softening market, boosted by both the absence of major catastrophes and the impact of past rate hikes (*Business Insurance*, 31 Mar). But next year could be a turning point amid softening rates, observers say.

**LONDON** market insurers have received a stark warning that large environmental liability cases are still possible in the US after being told that they will face part of a \$730m US pollution bill (*Insurance Day*, 19 Mar).

**FRAUD** is a rapidly growing problem for UK businesses (*Insurance Day*, 10 Mar). In the decade up until 2002, the number of fraud cases each year averaged around 60. By 2006 there were around 280 cases; between Jan and Jun 2007 more than 100 fraud cases worth \$1.19bn reached court in the UK.

# Life Update

## Life Barometer

**LIFE** offices will not be able to charge any kind of surrender penalties if a policyholder that has been contributing to a retirement annuity or endowment for at least five years stops contributions (*Financial Mail*, 21 Mar). This is one of the proposals from national treasury on the reform of commission scales and minimum early termination values. Even after one year, life companies will be able to charge only a 15% penalty on accumulated fund value, compared with up to 35% permitted under the 2005 statement-of-intent agreement. The life offices are by no means taking all the pain. Intermediaries will see a substantial change to their remuneration structure. Now, 75% of commission is paid in the first year and the balance in the second year. From August 1, only half can be paid in the first year, with the rest spread over the life of the policy.

**IN** the US the future of retiree health care plans – once thought to be dying because of their escalating costs – may be improving (*Business Insurance*, 31 Mar). After sharp declines throughout the 1990s, the percentage of large U.S. employers offering retiree health care has been stable in the past few years and even rose slightly last year. A key driver in offering retiree health care plans, experts say, are corporate concerns that, without such programmes, employees will work longer than they or their employers want because the employees can't afford to buy coverage on their own, potentially keeping unproductive workers on the job and blocking advancement of talented younger employees.

**MANY** US owners of long-established captives have grown comfortable with expanding the risk profiles of their captives, pulling third-party risks such as employee benefits into their facilities as well as retaining much more of their own risk (*Business Insurance*, 3 Mar). Writing benefits business has attracted many owners of captives with a solid record of retaining risk, because writing enough of that third-party business enables a captive owner to deduct the cost of its premiums for its own risk. In addition, that coverage – typically long-term disability and group life insurance – is a non-volatile risk, experts say.

**LEGISLATION** designed to curb rocketing private healthcare costs will be introduced within the next two months (*The Star*, 14 Mar). The Minister of Health says the situation needs government intervention. "We cannot sustain unregulated private healthcare service delivery in this country and at the same time regulate the medical schemes industry."



yond the call of duty

Guardrisk is a multi-national, specialist short-term and life insurance group, acknowledged as delivering innovative insurance and finance solutions.

Guardrisk  
FINANCING RISK EFFICIENTLY

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](http://www.guardrisk.com)