



# Insurance Law Alert



Weekly Insurance Law Alert: 8 March 2022

## Highlights

### Financial Services Tribunal Decision

- [Hlongwane v Pension Funds Adjudicator and Others \(PFA85/2021\) \(2 March 2022\)](#)

### New Publication

- Nkhwashu, Nkateko. The advocate's journey into financial services regulatory law. – 2022.

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## BUSINESS INTERRUPTION INSURANCE

*Media Comment*

### **West, Edward. Santam pays out special dividend following CBI claims certainty.**

2022 March 4 IOL News

“Chief financial officer Hennie Nel said they had paid the special dividend because capital had built up from no dividend payments due to the uncertainty surrounding the Contingent Business Insurance (CBI) claims that arose through the pandemic. However, the court had ruled on these claims and good progress had been made to settle the claims, which had left the group with higher than optimal levels of capital, thus a special dividend was paid out to shareholders, he said.”

<https://www.iol.co.za/business-report/companies/santam-pays-out-special-dividend-following-cbi-claims-certainty-a8bcd071-1e51-48e2-b5bb-12ea41edb920>

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## CRYPTOCURRENCIES / ASSETS

*Internet Article*

### **Laurent, Lionel. When war hits, even crypto can't stay neutral.**

2022 March 4 Tech Central

“When Russia began its invasion of Ukraine, cryptocurrency fans appeared to be trapped in a decadent fantasy. A batch of CryptoPunk NFTs (blockchain collectibles) had just been yanked from auction at Sotheby's amid fading enthusiasm and a broader market selloff... Just as crypto fans are feeling forced to choose sides, crypto exchanges are also being asked to confront their freewheeling, patchily regulated past. While the likes of Kraken CEO Jesse Powell insist that crypto is about making “arbitrary lines on maps” meaningless, governments are prodding exchanges to make sure it's not being used to evade sanctions. Finance ministers from the Group of Seven and European Union are working on a “maximum” sanctions toolkit that includes crypto assets, while US financial regulators are probing whether NFT offerings run afoul of their rules.

<https://techcentral.co.za/when-war-hits-even-crypto-cant-stay-neutral/208457/>

*Media Comment*

### **Kharpal, Arjun. The Russia-Ukraine conflict has thrust crypto into the spotlight and raised 3 big questions.**

2022 March 4 CNBC Africa

“The role of cryptocurrencies like bitcoin has been a key talking point during Russia's invasion of Ukraine and the enacting of sanctions and subsequent financial market turmoil. And it has thrown up three big questions about how it is being used and what its future looks like... After its invasion of Ukraine, Russia has been hit with a number of economic sanctions aimed at cutting the country off from the global financial system... This has led to a debate about whether cryptocurrencies, especially bitcoin, could be a way for those on sanctions lists to evade the restrictions.”

<https://www.cnbc africa.com/2022/the-russia-ukraine-conflict-has-thrust-crypto-into-the-spotlight-and-raised-3-big-questions/>

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## CYBER ATTACKS / THREATS

*Internet Articles*

### **Aon South Africa. Cyber risks facing the retirement industry.**

2022 March 4 FA News

“Contending with the intensity and frequency of cyber threats to business operations is a 24/7/365 challenge. While the banking sector has intensified its cyber defences, threat actors have set their sights on the retirement industry. Not only is the financial quantum at risk huge, but the wealth and sensitivity of personal data sitting within retirement funds places the employers, administrators and trustees of retirement plans at significant risk in an environment that is increasingly litigious. The retirement industry is governed by a strict set of fiduciary responsibilities when it comes to the administration of personal and financial data.”

<https://www.fanews.co.za/article/risk-management/32/general/1218/cyber-risks-facing-the-retirement-industry/34005>

### **Stokes, Gareth. Cyber the next battle line for your business.**

2022 March 8 FA News



“Cyber incidents stand out as the top risk facing businesses, no matter which way you slice the date. The threat of data breach, cybercrime and information technology failures or outages took top position on the 2022 Allianz Risk Barometer whether presented globally; for Africa and the Middle East only; or for of individual Africa markets such as Kenya, Nigeria and South Africa... Commenting during the launch of the comprehensive survey, Senzile Ndlozi, Business Development Manager at Allianz Global Corporate & Specialty (AGCS) Africa identified ‘business interrupted’ as a dominant theme for both global and local risk environments.”

<https://www.fanews.co.za/article/short-term-insurance/15/commercial/1006/cyber-the-next-battle-line-for-your-business/34015>

#### Law Firm Article

#### **Bracher, Patrick. Insuring cyber risks: remember its OT as well as IT.**

2022 Mar 7 Financial Institutions Legal Snapshot

“The buzz about the Internet of Things of a few years ago has died down but the cyber world and its things are becoming increasingly interconnected. When considering insuring cyber risks, insurers must remember it is not only IT (Information Technology) but also OT (Operational Technology) that needs to be evaluated.”

<https://www.financialinstitutionslegalsnapshot.com/2022/03/insuring-cyber-risks-remember-its-ot-as-well-as-it/>

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## FINANCIAL ADVISORS

#### Media Release

#### **Financial Sector Conduct Authority. Public warning against Rothschild Capital SA (Pty) Ltd impersonating Rothschild and Co South Africa (Pty) Ltd. 2 March 2022.**

“The Financial Sector Conduct Authority (FSCA) warns the public against doing any financial services related business with Rothschild Capital SA (Pty) Ltd which is impersonating Rothschild and Co South Africa (Pty) Ltd, an authorised financial services provider. Rothschild Capital SA is using Rothschild and Co South Africa (Pty) Ltd’s logo, name and trademarks to defraud unsuspecting financial customers. This has been done in order to mislead the public by creating a false association between Rothschild Capital (Pty) Ltd and Rothschild and Co SA (Pty) Ltd.

[https://www.fsca.co.za/News%20Documents/FSCA%20Press%20Release\\_Public%20warning%20against%20Rothschild%20Capital%20SA%20\(Pty\)%20Ltd%20impersonating%20Rothschild%20and%20Co%20South%20Africa%20\(Pty\)%20Ltd\\_02%20March%202022.pdf](https://www.fsca.co.za/News%20Documents/FSCA%20Press%20Release_Public%20warning%20against%20Rothschild%20Capital%20SA%20(Pty)%20Ltd%20impersonating%20Rothschild%20and%20Co%20South%20Africa%20(Pty)%20Ltd_02%20March%202022.pdf)

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## FINANCIAL INCLUSION

#### Media Comment

#### **Fatah, Iftin. Are central bank digital currencies the key to unlocking financial inclusion in Africa?**

2022 March 3 CNBC Africa

“More recently, the advent of central bank digital currencies (hereafter CBDC), presents a transformative opportunity for the global financial sector. New analysis shows over 90 percent of global economy exploring a CBDC. According to The Atlantic Council’s CBDC Tracker, nine countries have now fully launched a digital currency. Nigeria is the latest country to launch a CBDC, the e-Naira, the first outside the Caribbean. The e-Naira is expected to boost cross-border trade and financial inclusion, make transactions more efficient as well as improve monetary policy, according to the Central Bank of Nigeria.”

<https://www.cnbcfric.com/2022/are-central-bank-digital-currencies-the-key-to-unlocking-financial-inclusion-in-africa/>

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## FINANCIAL MARKETS

#### Internet Article

#### **Narker, Mansoof. The Russian invasion of Ukraine: What does it mean for the markets?**

2022 March 7 FA News

“Major western nations have responded by announcing sanctions, mainly targeted at Russia’s financial sector, politicians and wealthy oligarchs connected to Putin. While it is too soon to know exactly how the situation will play out, the impact has already been felt across global financial markets. With the global economy already fragile after the onslaught of the COVID-19 pandemic, supply chain disruptions and restarting of economies leading to a synchronised rise in inflation - the latest crises will certainly add fuel to the fire. Brent crude oil prices have spiked to over



\$100/barrel, reaching highs last seen in 2014, while liquified natural gas (LNG) prices have also risen to near record highs amid an already tight market.”

<https://www.fanews.co.za/article/investments/8/general/1133/the-russian-invasion-of-ukraine-what-does-it-mean-for-the-markets/34012>

*Law Firm Article*

**Van Staden, Charles. A short summary of the Exchange Control Circulars issued by the Financial Surveillance Department on 23 February 2022.**

2022 Mar 1 Cox Yeats Attorneys

“With reference to the February 2022 Budget Speech of the Minister of Finance, wherein further exchange control reforms were announced in Annexure F of the Budget Review, the Financial Surveillance Department issued the undermentioned Exchange Control Circulars to amend the Currency and Exchanges Manual for Authorised Dealers in foreign exchange.”

<https://www.coxyeats.co.za/LegalUpdates/View/20165/A%20short%20summary%20of%20the%20Exchange%20Control%20Circulars%20issued%20by%20the%20Financial%20Surveillance%20Department%20on%2023%20February%202022>

*Media Comments*

**Ryan, Ciaran. FSCA issues licences as part of move to clean up online trading.**

2022 March 8 Moneyweb

“As part of a move to clean the previously unregulated online trading market, the Financial Sector Conduct Authority (FSCA) has issued a batch of licences to online brokers offering over-the-counter derivatives products (ODPs). Among the non-bank players to receive ODP licences are QuickTrade, Khwezi Trade and IG Markets SA. The FSCA says it is currently considering 32 ODP licence applications consisting of both bank and non-bank entities.”

<https://www.moneyweb.co.za/investing/fsca-issues-licences-as-part-of-move-to-clean-up-online-trading/>

**Senekal-De Wet, Adri. The recent JSE censures are showing a distinct bias and lack of consistency.**

2022 March 2 IOL News

“Much like South Africa’s judicial system when it comes to sentencing, where discretion still comes into play, although there are mandatory minimum sentences for specific severe offences (which would account for discrepancies in sentencing in certain cases), the Johannesburg Stock Exchange (JSE) appears to exercise a similar power of preference as to how it metes out its “punishment” on offenders. A curious case in point is that of the bourse’s decision to impose a severe five-year ban on two former directors of embattled tech company AYO Technology Solutions.”

<https://www.iol.co.za/business-report/opinion/the-recent-jse-censures-are-showing-a-distinct-bias-and-lack-of-consistency-c7c82627-b8b2-44d5-8fed-51b62093e2fc>

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## FINANCIAL SERVICES

*Law Firm Article*

**Britton, Nicole and Van der Vyver, Ernie. The FSCA releases draft strategy for supporting transformation in the financial sector.**

2022 Mar 2 Clyde & Co

“The primary aims of the [draft strategy](#) is to adopt a two phased approach for promoting financial transformation, namely: Phase I: In terms of which the FSCA outlines its approach to promoting financial sector transformation limited to the existing policy framework, including the Financial Sector Regulation Act 9 of 2017 and the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of the Broad-Based Black Economic Empowerment Act, 2003. Phase II: In terms of which the FSCA seeks to outline an approach for the FSCA to promote transformation under the future Conduct of Financial Institutions Act (once promulgated).”

<https://www.clydeco.com/en/insights/2022/02-1/the-fsca-releases-draft-strategy-for-supporting-tr>

*Media Comments*

**Gumede, Michelle. Oceana investors could get answers on forensic probe this week.**

2022 March 6 Business Live

“Investors in Oceana are hoping their patience in Africa’s largest fishing group will be rewarded this week with the publication of its delayed annual financial results and the findings of a forensic investigation into allegations of accounting irregularities at its US subsidiary. The probe was prompted by a tip-off from a whistle-blower about dubious



financial activities related to the accounting treatment of the group's 25% shareholding in Westbank Fishing that is held by Daybrook Fisheries, a subsidiary of Oceana..."

<https://www.businesslive.co.za/bd/companies/industrials/2022-03-06-oceana-investors-could-get-answers-on-forensic-probe-this-week/>  
(Subscription Needed)

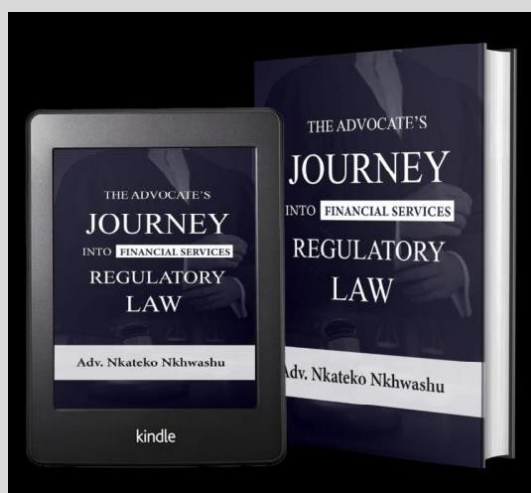
### **Jamal, Urooba. Russian firms are scrambling to open Chinese bank accounts in response to sanctions — report.**

2022 March 3 Business Insider US

"As far as financial sanctions are concerned, we do not approve of these, especially the unilaterally launched sanctions, because they do not work well and have no legal grounds," Guo Shuqing, chairman of the China Banking and Insurance Regulatory Commission, told a news conference on March 2, Reuters previously reported. "We will not participate in such sanctions. We will continue to maintain normal economic and trade exchanges with relevant parties," Shuqing was also reported as saying."

<https://www.businessinsider.co.za/russian-firms-scrambling-open-chinese-bank-accounts-2022-3>

#### *New Publication*



### **Nkhwashu, Nkateko. The advocate's journey into financial services regulatory law. – 2022.**

"In this book, the author endeavours to share his personal journey as such relates to various developments within South Africa's financial sector regulatory framework. This is being done while also acknowledging the evolutionary nature of the legal profession or rather looking at potential or emerging areas of specializations within (tied to various financial sector laws). Such narrative emanates from first-hand experiences by having been closer to some of these key developments within this space. The formal adoption of the Twin Peaks regulatory framework and other supervisory approaches forms the basis of discussion. The author has been closer to these while working within the relevant policy-maker, industry representative body and currently regulatory and supervisory body.

Thus, the narrative is quite interesting and educational as it follows the same sequence which also mirrors that related to the ideal legislative process which ultimately results in the promulgation of legislation. Discussions are informed by, amongst others, the Financial Sector Regulation Act, 2017, the Financial Intelligence Centre Amendment Act, 2017, Financial Advisory and Intermediary Services Act, 2003, Conduct of Financial Institutions Bill, 2018, draft Conduct Standard for Banks, 2019 and the World Bank's Retail Diagnostic report, 2018. The author goes on to narrate personal experiences and lessons learned while within the consulting space. The author goes on to discuss other not-so court related areas of specialization within the legal profession. Most importantly, the author further goes on to adopt a futuristic outlook as regards conduct regulation of financial institutions, banks to be specific. This is one area which was never regulated before and or written quiet substantially about. This is the very area in which the author argues to present countless opportunities for the those with relevant expertise including that of interpreting legislation, compliance and risk management. Finally, the author looks at some of the relevant reports and their findings with the intention of pre-empting where the entire financial sector regulatory frameworks is headed especially as regards conduct regulation of banks and many more."

Price: R280 all inclusive (delivery via Paxi). To order a copy kindly contact the author via call or WhatsApp on 082 841 7455.

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## **INSURANCE**

### *Internet Article*

### **Intermed Marketing. Brokertools CRM game changer is expanding into new industries.**

2022 March 7 BizCommunity





“According to the CTO, Dinesh Copoosamy, this system is the first of its kind and applications were specifically designed for healthcare intermediaries with compliance in mind. FAIS, POPI, CMS and TCF regulatory requirements have been integrated into every step of the advice process. The Brokertools suite of products enables insurance intermediaries, their compliance officers, corporate and individual clients to seamlessly interface via various applications such as compliance, member and employee portals.”

<https://www.bizcommunity.com/Article/196/1/225715.html>

*Journal Article*

### **Huneberg, Samantha. Promoting financial inclusion in the South African insurance industry: Is insurtech the missing link?**

2022 85(1) Feb Tydskrif vir Hedendaagse Romeins-Hollandse Reg p1

“In this article I shall conceptualise the notions of insurtech, microinsurance, and financial inclusion, and then consider the impact of the recent developments in the regulation of the insurance industry in dealing with these issues. I shall also undertake a brief comparative study of related Indian legislation to assess what measures that jurisdiction has introduced to combat financial exclusion in the insurance industry... Ultimately, in this article I seek to assess whether digital technologies and insurtech may be the missing link in providing access to microinsurance products with the ultimate aim of promoting financial inclusion.”

*Media Comment*

### **‘We thought it’d take three years to rebound, it took two’ – FNB CEO.**

2022 March 4 Moneyweb

“The banking group has been scaling up its insurance and investment operations to ensure it isn’t wholly reliant on transactional revenue and interest income. Already, these contribute R5.6 billion in income annually. This equates to 12% of annual non-interest revenue. It’s doubling down on these two areas “given [the] pressure on transactional revenue from increased competition and potential regulatory intervention”.”

<https://www.moneyweb.co.za/news/companies-and-deals/we-thought-itd-take-three-years-to-rebound-it-took-two-fnb-ceo/>

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## INVESTMENTS

*Media Comment*

### **Evans, Julia. Mantashe says ANC had ‘foresight’ to invest in Shell-affiliated Batho-Batho Trust to get R15-million payout.**

2022 March 4 Daily Maverick

“ANC chairperson Gwede Mantashe, who is the country’s Energy and Mineral Resources Minister, has defended the ruling party’s R15-million donation it received from Batho Batho Trust, which has investments in Shell’s exploration business. He said it was a ‘dividend’ the party received from their long-term investment in the trust.”

<https://www.dailymaverick.co.za/article/2022-03-04-mantashe-says-anc-had-foresight-to-invest-in-shell-affiliated-batho-batho-trust-to-get-r15-million-payout/>

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## LAND AND PROPERTY LAW

*Media Comment*

### **New Property Practitioners Act needs clarity.**

2022 March 6 Bedfordview and Edenvale News

“Property developers will now be known as property practitioners and will have additional compliance requirements... “Included in the new legislation is a much broader and clearer definition of who a property practitioner is, but there is currently debate on whether mortgage or bond originators will fall under the definition. “The PPA defines a property practitioner to be any person including a ‘bond broker’, but excluding any person contemplated in the definition of ‘financial institution’ in section one of the Financial Services Board Act (FSBA). The FSBA has since been repealed, and as such the reference to that repealed Act is understood to be a reference to its replacement Act, namely the Financial Sector Regulations Act (FSRA).”

<https://bedfordviewedenvalenews.co.za/488562/new-property-practitioners-act-needs-clarity/>

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## LONG-TERM INSURANCE

### Media Comments

#### **Gumede, Michelle. 3Sixty group says Prudential Authority did not do its homework.**

2022 March 7 Business Day

“Financial services group 3Sixty Global Solutions Group (3Sixty GSG) has laid into the Prudential Authority (PA), the regulator of financial services firms, for its “desperate” attempt to have the provisional curator of underwriter 3Sixty Life, which it chose itself, removed. 3Sixty GSG welcomed the high court in Johannesburg’s dismissal of the application by the PA to have BDO SA’s suspended head of actuarial services, Yashoda Ram, removed...”

<https://www.businesslive.co.za/bd/companies/financial-services/2022-03-07-3sixty-group-says-prudential-authority-did-not-do-its-homework/>  
(Subscription Needed)

#### **Koka, Mpho. Reserve Bank bid to remove curator for Numsa firm dismissed.**

2022 March 3 Sowetan Live

“The high court in Johannesburg has dismissed an application by the SA Reserve Bank to remove a curator it appointed to take care of the affairs of 3Sixty Life Ltd — a subsidiary of the National Union of Metalworkers of SA investment arm. Last month, the Reserve Bank through the Prudential Authority (PA) sought to remove curator Yashoda Ram after it found out that she did not complete her degree.”

<https://www.sowetanlive.co.za/news/south-africa/2022-03-03-reserve-bank-bid-to-remove-curator-for-numsa-firm-dismissed/>

#### **Kruger, Adriaan. Cash-strapped municipality fails employees.**

2022 March 4 Moneyweb

“The effects of delays in the payment of pension fund contributions and the non-payment of life cover premiums became evident after two employees of the Maluti-a-Phofung municipality in the Harrismith area of the Free State passed away. Their dependants approached the office of the Pension Fund Adjudicator (PFA) – in two separate complaints – after Sanlam, the pension and provident fund provider, did not pay out the life cover claims... Sanlam cancelled the life insurance that had been part of the pension package – for all of the employees of the municipality – ages ago because the municipality did not pay the risk premiums.”

<https://www.moneyweb.co.za/news/south-africa/cash-strapped-municipality-fails-employees/>

#### **Numsa rejects reports of factional battles over 3Sixty Life curatorship.**

2022 March 4 The Citizen

“The National Union of Metalworkers of South Africa (Numsa) has dismissed media reports of tension and factional battles within the union emanating from the curatorship of one of its companies. This week, GroundUp and amaBhungane published stories based on-court action by the Reserve Bank’s Prudential Authority to place Numsa Investment Corporation (NIC) – owned life insurance company 3Sixty Life, under curatorship.”

<https://www.citizen.co.za/business/business-news/3040862/numsa-rejects-reports-factional-battles-over-3sixty-life-curatorship/>

#### **NUMSA responds to our report.**

2022 Mar 4 GroundUp

“The National Union of Metalworkers of South Africa (NUMSA) has published a statement criticising the reports published by GroundUp and amaBhungane about the role of NUMSA officials in financial transactions at 3Sixty Life, a life insurance company. The National Union of Metalworkers of South Africa (NUMSA) has noted the article published by [James Stent in GroundUp](#) and the article written by [Micah Reddy of amaBhungane](#). The articles are making reference to court documents which are being used as part of the application for provisional curatorship of 3Sixty Life.”

<https://www.groundup.org.za/article/numsa-response-to-our-report/>

#### **Political tensions brewing around Numsa Investment Company, Irvin Jim.**

2022 March 3 The Citizen

“Tensions are brewing within the ranks of South Africa’s largest union Numsa (National Union of Metalworkers of South Africa). According to a report by amaBhungane, Numsa boss Irvin Jim and his relationship with Numsa Investment Company (NIC) CEO Khandani Msibi is at the heart of growing discontent at the union.”

<https://www.citizen.co.za/business/business-news/3040300/political-tensions-brewing-around-numsa-investment-company-irvin-jim/>

#### **Reddy, Micah. Numsa at war with itself over investment company.**

2022 March 2 Daily Maverick

“Financial difficulties facing a business owned by the National Union of Metalworkers of South Africa (Numsa) have exposed tensions in the country’s largest union. They pit general secretary Irvin Jim against those in the union who question the role of his ally, Numsa Investment Company boss Khandani Msibi.”

<https://www.dailymaverick.co.za/article/2022-03-02-numsa-at-war-with-itself-over-investment-company/>



**Stent, James. Millions of rands siphoned from NUMSA's insurance company, report shows.**

2022 March 4 GroundUp

"Millions of rands in insurance premiums paid by members of the National Union of Metalworkers of SA (NUMSA) were siphoned from life insurer 3Sixty Life to prop up other NUMSA-owned companies between 2017 and 2019. The Prudential Authority, a financial regulator, placed the insurer under curatorship in December 2021, after a year of operating in an insolvent position. This decision is being challenged by the board of 3Sixty Life, including acting CEO Khandani Msibi."

<https://www.groundup.org.za/article/millions-rands-syphoned-off-from-numsa-insurance-company-report-shows/>

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## MEDICAL AID / INSURANCE

### Council for Medical Schemes

#### *Circulars*

#### **Council for Medical Schemes**

- Circular 17 of 2022: Notice to medical schemes regarding annual general members' meetings and trustee elections (4 March 2022).

<https://www.medicalschemes.co.za/download/3617/2022-circulars-current/25341/circular17of2022.pdf>

- Circular 18 of 2022: Statement of cash flows (7 March 2022).

<https://www.medicalschemes.co.za/download/3617/2022-circulars-current/25359/circular18of2022.pdf>

### Denel

#### *Media Comment*

#### **Denel confirms access to medical benefit trust funding.**

2022 March 4 Defence Web

"Denel employees and pensioners need not fear benefits from a company medical trust are in jeopardy following a High Court ruling and a ministerial pronouncement to the effect that the beleaguered State-owned company (SOC) will receive just on a billion Rand... It reads, in part, "the High Court granted an order varying the trust deed of the Denel Medical Benefit Trust (DMBT). The court order was obtained on the application of Denel. The order is one requirement for implementation of the alternative offer in the form of individual annuities to beneficiaries"."

<https://www.defenceweb.co.za/featured/denel-confirms-access-to-medical-benefit-trust-funding/>

### Discovery and Ping An Health Insurance

#### *Media Comment*

#### **Visser, Jaco. Discovery's empire building doesn't come cheap.**

2022 March 3 Business Live

"Discovery's Chinese foray has more than a few analysts worried. The sudden slowdown in new business growth at Ping An Health Insurance, in which Discovery holds a 25% stake, unsettled markets last week for the second time in six months..."

<https://www.businesslive.co.za/fm/money-and-investing/2022-03-03-discoverys-empire-building-doesnt-come-cheap/>

(Subscription Needed)

### National Health Insurance

#### *Media Comments*

#### **5 new laws planned for South Africa to look out for in the coming months.**

2022 March 4 Business Tech

"South Africa's Parliament is expected to deal with several important pieces of legislation in the coming year, including issues around land expropriation and healthcare... National Health Insurance: Parliament concluded its public hearings on the planned National Health Insurance Bill in February, with consideration of the bill expected to enter the next phase. This includes a study tour to the United Kingdom to examine how its national health insurance system works. The National Health Insurance (NHI) is a health financing system designed to pool funds to provide access to quality





affordable personal health services for all South Africans based on their health needs, irrespective of their socio-economic status.”

<https://businesstech.co.za/news/government/565048/5-new-laws-planned-for-south-africa-to-look-out-for-in-the-coming-months/>

### **Wild, Stephanie [et.a]. Mixed views and scepticism continue to obstruct pathway of NHI Bill.**

2022 Mar 1 Daily Maverick

“While much has been made of support expressed for the introduction of the National Health Insurance, a closer assessment of presentations on the NHI Bill during parliamentary hearings suggests that a number of concerns still need to be addressed.”

<https://www.dailymaverick.co.za/article/2022-03-01-mixed-views-and-scepticism-continue-to-obstruct-pathway-of-nhi-bill/>

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## **PENSION LAW**

### **Denel**

*Media Comment*

#### **Denel confirms access to medical benefit trust funding.**

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“Denel employees and pensioners need not fear benefits from a company medical trust are in jeopardy following a High Court ruling and a ministerial pronouncement to the effect that the beleaguered State-owned company (SOC) will receive just on a billion Rand...It reads, in part, “the High Court granted an order varying the trust deed of the Denel Medical Benefit Trust (DMBT). The court order was obtained on the application of Denel. The order is one requirement for implementation of the alternative offer in the form of individual annuities to beneficiaries”.”

<https://www.defenceweb.co.za/featured/denel-confirms-access-to-medical-benefit-trust-funding/>

### **Divorce**

*Case*

#### **BH v CTM (A54 / 2020) [2022] ZAMPMBHC 8 (18 February 2022)**

Divorce action – Appeal against order that pension interest held by defendant be paid to defendant – Appeal against part of order that prescribed date on which pension calculations should commence – Appellant contended that order should have been that 50% of pension interest as at date of divorce should be paid to appellant – No legal basis upon which court ordered that pension interest should be calculated from date of marriage – Appellant was denied fair share of entitlement as she was married in community of property – Upheld.

<http://www.saflii.org/za/cases/ZAMPMBHC/2022/8.pdf>

### **Increase of Benefits**

*Government Gazette*

#### **Occupational Diseases in Mines and Works Act 78 of 1973**

Increase of pension benefits.

GN1839 GG 46000 p194 4Mar2022

<https://bit.ly/3KkPMVr>

### **Jurisdiction**

*Financial Services Tribunal Decision*

#### **Hlongwane v Pension Funds Adjudicator and Others (PFA85/2021) (2 March 2022)**

Application for reconsideration of Pension Funds Adjudicator’s (PFA) decision dismissing complaint – Jurisdiction of PFA over non-participating employer – Pension Funds Act 24 of 1956, s 30A – Definition of “complaint” in s 1 – Labour matter – Dismissed.

<https://www.fsca.co.za/Enforcement-Matters/Publications%20and%20Documents/Decision%20-%20Erick%20Sibusiso%20Hlongwane%20v%20PFA%20and%20Others.pdf>

### **Maluti-a-Phofung Municipality**



*Media Comment*

**Kruger, Adriaan. Cash-strapped municipality fails employees.**

2022 March 4 Moneyweb

“The effects of delays in the payment of pension fund contributions and the non-payment of life cover premiums became evident after two employees of the Maluti-a-Phofung municipality in the Harrismith area of the Free State passed away. Their dependants approached the office of the Pension Fund Adjudicator (PFA) – in two separate complaints – after Sanlam, the pension and provident fund provider, did not pay out the life cover claims... Sanlam cancelled the life insurance that had been part of the pension package – for all of the employees of the municipality – ages ago because the municipality did not pay the risk premiums.”

<https://www.moneyweb.co.za/news/south-africa/cash-strapped-municipality-fails-employees/>

**Public Protector**

*Report*

**Public Protector of South Africa. Report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa 1996 and section 8(1) of the Public Protector Act 1994. Report No: 97 of 2021/22: Report on an investigation into allegations of improper conduct and maladministration relating to failure to register Mr Israel Mogoaladi as a member of the provident fund and pay all contributions due on his behalf between 31 July 2014 and 31 March 2016 and pay him for accumulated leave days, by the Masilonyana Local Municipality. 28 February 2022.**

[http://www.publicprotector.org/sites/default/files/legislation\\_report/Report%2097%20of%202021.22%20-%20Mogoaladi%20-%20Masilonyana%20Mun%20%28FB%20adopted%29.pdf](http://www.publicprotector.org/sites/default/files/legislation_report/Report%2097%20of%202021.22%20-%20Mogoaladi%20-%20Masilonyana%20Mun%20%28FB%20adopted%29.pdf)

**Public Servants Wage Increases**

*Case*

**National Education Health and Allied Workers Union v Minister of Public Service and Administration and Others; South African Democratic Teachers Union and Others v Department of Public Service and Administration and Others; Public Servants Association and Others v Minister of Public Service and Administration and Others; National Union of Public Service and Allied Workers Union v Minister of Public Service and Administration and Others (CCT 21/21, 28/21, 29/21, 44/21) [2022] ZACC 6 (28 February 2022)**

Constitution, s 213, s 215 and s 216 – Public Service Regulations, Reg 78 and 79 – Collective bargaining – Leave to appeal granted – Clause of collective agreement invalid and unlawful – Appeal dismissed.

Judgment: <http://www.saflii.org.za/za/cases/ZACC/2022/6.pdf>. Media summary: <http://www.saflii.org.za/za/cases/ZACC/2022/6media.pdf>

*Media Comment*

**Malatswane, Phumzile. ConCourt deals civil servants a blow.**

2022 March 2 Sowetan Live

“A huge blow was dealt to SA’s 1.2-million public servants when the Constitutional Court decided to uphold the finance minister’s decision not to grant government workers their annual increase since 2018...What is more detrimental with this case is that for the past two years there have been no increase on the government pension fund. It means workers were earning a salary that in not pensionable. The government pension fund contribution is also stagnant.”

<https://www.sowetanlive.co.za/opinion/letters/2022-03-02-concourt-deals-civil-servants-a-blow/>

**Taxation**

*Internet Article*

**Lancefield, Victoria and Lobban, Thomas. Budget shows SA expats remain top priority for Sars.**

2022 March 7 Moneyweb

“The third key area – the treatment of pension funds of non-residents – has already been in place since March 1, 2021. South Africans who have ceased their tax residency are still able to withdraw their retirement funds (or any other SA policy) in full from South Africa, if they can show an unbroken period of three years as a tax non-resident.”

<https://www.moneyweb.co.za/mymoney/moneyweb-tax/budget2022-south-african-expats-remain-top-priority-for-sars/>

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## PERSONAL INJURY

*Law Firm Article*

### **Bracher, Patrick. Insurance contamination exclusion upheld as unambiguous and properly located in policy (US).**

2022 Mar 3 Financial Institutions Legal Snapshot

“Faced with an unambiguous lead contamination exclusion, a damages claimant, alleging personal injury to a child from ingesting lead from the paint in a rented property, unsuccessfully contended that the exclusion was unenforceable because it was allegedly hidden 30 pages into the policy.”

<https://www.financialinstitutionslegalsnapshot.com/2022/03/insurance-contamination-exclusion-upheld-as-unambiguous-and-properly-located-in-policy/>

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## ROAD ACCIDENT FUND

*Case*

### **Van Pletzen v Road Accident Fund (5610/2018) [2022] ZAFSHC 21 (10 February 2022)**

Claim for damages arising from injuries sustained in motor vehicle accident – Determination of quantum of past and future loss of earnings – Discrepancies in plaintiff’s evidence casting doubt on contention that, in addition to pension, he had another stream of income generated through chauffeur business and has been unable to work – Claim for damages relating to past and future loss of earnings dismissed – Plaintiff awarded R360 000.00 in respect of general damages.

<http://www.saflii.org/za/cases/ZAFSHC/2022/21.pdf>

*Journal Article*

### **Van Staden, Marius. When is the obvious not so obvious? A discussion on regs 2(1)(b) and 2(2) of the Road Accident Fund Regulations.**

2022 Mar De Rebus p17

“In [Legal Practitioners Indemnity Insurance Fund NPC v The Minister of Transport and The Road Accident Fund \(GP\) \(unreported case no 26286/2020, 21-6-2021\)](#)... the Gauteng Division of the High Court declared the provisions of regs 2(1)(b) and 2(2) of the Road Accident Fund Regulations, 2008... to be inconsistent with the Constitution and invalid, as well as, to the extent that the regulations relate to minors and persons under curatorship, be set aside. The court also declared that s 23(2) of the Act is to be read as ‘including minors and persons under curatorship who claim in terms of s 17(1)(b) of the Act’... In this article the fundamental reasoning contained in the judgment, will be discussed, and an answer to the question will be proposed.”

<https://www.derebus.org.za/when-is-the-obvious-not-so-obvious-a-discussion-on-regs-21b-and-22-of-the-road-accident-fund-regulations/>

*Law Firm Article*

### **Wood, Deanne. Demerits en voyage: AARTO’s ‘iron fist’ jab at road traffic offenders and its insurance implications.**

2022 Mar 1 Fasken

“The Administrative Adjudication of Road Traffic Offences Act (AARTO) and the AARTO Amendment Act, have sought to introduce a controversial demerit system... Assuming that provincial government proceeds with a demerit system, there are a few important points to note from an insurance perspective.”

<https://www.fasken.com/en/knowledge/2022/03/demerits-en-voyage>

*Media Comments*

### **Broughton, Tania. High Court cautions curators against “cultural imperialism”.**

2022 March 4 GroundUp

“The High Court has cautioned curators bonis not to act imperially and assume they know better when managing the affairs of people entrusted to them. The case involved a woman with a lack of formal education who had a R2.2-million payout after a road accident. She had been presumed incapable of managing such a large estate and her financial choices were disparaged. The judge criticised the curator for not understanding the social context of how she chose to spend her money.”

<https://www.groundup.org.za/article/high-court-cautions-curators-against-cultural-imperialism/>



**Cokayne, Roy. RAF making great strides in its turnaround strategy, claims chair.**

2022 March 7 Moneyweb

“The Road Accident Fund (RAF), which has been technically insolvent since 1981, has made great strides towards addressing its legacy challenges in the two financial years since the launch of its five-year turnaround strategy. This is the view of RAF chair Thembelihle Msibi, who said on Friday that this includes the significant reduction in administrative costs in the fund’s 2020/21 financial year, particularly the more than 40% reduction in legal costs to R3.9 billion from R7 billion in the 2018/2019 financial year.”

<https://www.moneyweb.co.za/news/south-africa/raf-making-great-strides-in-its-turnaround-strategy-claims-chair/>

**Government developing new road accident rules in South Africa.**

2022 March 4 Business Tech

“The government is developing new policies to restructure the existing Road Accident Fund (RAF) scheme and how money is paid out... The compensation is to provide relief to those whose livelihoods have been disrupted, or lives lost as a consequence of a crash on the country’s roads, said transport minister Fikile Mbalula in a media briefing on Friday (4 March). However, Mbalula noted that the fund has experienced significant fiscal problems in recent years due to costly litigation battles, steep administration costs, and the high number of accidents seen on the country’s roads.”

<https://businesstech.co.za/news/motoring/565144/government-developing-new-road-accident-rules-in-south-africa/>

**Makhafola, Getrude. Law firms on warpath against RAF over new payment system.**

2022 March 4 The Citizen

“The law firms that were used to rake in billions in Road Accident Fund claims are up in arms against the new payment mechanism implemented to improve finances and stop corruption, the entity said on Friday. The entity seeks to pay claimants directly through the Road Accident Benefit Scheme Bill (RABS) that is before Parliament’s portfolio committee on transport. The new processes haven’t been well received by the law firms that lodge claims on behalf of road accident victims.”

<https://www.citizen.co.za/news/3041007/law-firms-on-warpath-against-raf-over-new-payment-system/>

**Nkosi, Ntombi. RAF names and shames law firms that milked it to the tune of billions but paid out little.**

2022 March 7 IOL News

“The Road Accident Fund (RAF) has named law firms that have over the years made a fortune from the entity while poor people who had been injured in accidents get little or no compensation. CEO of the RAF Collins Letsoalo said they were serious about turning around the entity. saying the agency wanted to prioritise victims to be compensated on time.”

<https://www.iol.co.za/news/politics/raf-names-and-shames-law-firms-that-milked-it-to-the-tune-of-billions-but-paid-out-little-6a3bd3b7-da2b-4d6a-898f-23d4a991b5c1>

**Watch | RAF denies hiding over R300bn debt.**

2022 March 4 eNCA

“The Road Accident Fund (RAF) says it respects and will cooperate with the Auditor-General. This is despite a legal battle over its annual audit. It intends to ask the court to review the audit and set it aside. While the report has not been released, court proceedings show the RAF has liabilities of over R300bn. The fund denies this, saying it only amounts to about R30bn.”

<https://www.enca.com/news/raf-denies-hiding-r300bn-debt>

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## SHORT TERM INSURANCE

*Bulletin*

**South African Insurance Association. Promoting a trusted and sustainable non-life insurance industry for South Africa. 5 March 2022.**

<https://www.saia.co.za/index.php?id=2288>

*Internet Articles*

**PSG Insure. Prestigious wine auction highlights need for specialist insurance for consumable investment assets.**

2022 March 1 FA News



“Bertus Visser, Chief Executive of Distribution at PSG Insure, advises: “It is of particular importance that these types of consumable alternative assets be counted as part of an individual’s accumulated wealth, and to protect the assets accordingly.”...Visser elaborates on his point by way of an example. A former Officer of Regulatory Policy tells the story of a man who insured his collection of expensive cigars against fire damage. He then proceeded to smoke all the cigars and put in an insurance claim for fire cover. The insurer rejected the claim, but because the wording of the policy did not preclude smoking the cigars as a form of fire damage, the man was able to sue the insurer successfully and won the case. However, when the man withdrew the payout, the insurer went on to sue him for multiple cases of arson.”

<https://www.fanews.co.za/article/short-term-insurance/15/general/1217/prestigious-wine-auction-highlights-need-for-specialist-insurance-for-consumable-investment-assets/33980>

#### **Your questions answered.**

2022 March 3 IOL News

“In regard to your alarm, if a burglary takes place during load shedding and it states in your insurance policy that you are a client of an armed response company, it is your responsibility to ensure that the alarm remains functional and connected to the alarm company. For the alarm to remain operational during load shedding, you will have to install a back-up battery. It’s important to regularly check the batteries to ensure they are charged and functional at all times. All policy conditions must be adhered to for an insurance claim to be considered.”

<https://www.iol.co.za/personal-finance/my-money/your-questions-answered-fd375998-df92-4ffd-93fd-be8a6de2e418>

#### *Media Comments*

#### **Magubeni, Coceka. Court blocks tender award.**

2022 March 7 Sunday World

“The Joburg High Court has ordered the Emfuleni local municipality to re-advertise the multimillion-rand tender it awarded to Kunene Makopo Risk Solutions without following the tender process. Emfuleni was taken to court by Opulentia Insurance Services, a company that had been providing insurance services to the municipality for the past 18 months.”

<https://sundayworld.co.za/politics/court-blocks-tender-award/>

#### **Maromo, Jonisayi. Johannesburg police arrest a man who opened robbery case, then changed his story.**

2022 March 2 IOL News

““The suspect opened a false case of cellphone theft. He alleged that he was robbed of his cellphone, a Huawei Blush Gold Nova 8, worth R11 000, at corner Albert and Main Street, on the February 28, 2022, at 6.30am,” said Johannesburg Central police spokesperson Captain Xoli Mbele. ..“He then changed his story and told the police he was robbed at the corner Marshall and Eloff Street...Preliminary investigations by the police have since revealed that the 28-year-old opened a similar case of cellphone theft last year, in November, and claimed from his insurance.”

<https://www.iol.co.za/news/south-africa/gauteng/johannesburg-police-arrest-a-man-who-opened-robbery-case-then-changed-his-story-fafdd862-762d-46e6-a345-30e361724a8e>

#### *Opinion*

#### **Maggs, Jeremy. When nitpicking consumers get a lemon from the Advertising Regulatory Board.**

2022 March 3 Daily Maverick

“Anjse du Plessis, who took Dotsure Pet Insurance to task for a television commercial that saw a dog licking its owner in what I imagine was a gesture of canine gratitude now that it has comprehensive cover. A nasty dose of biliary is always just a walkie away. She went straight for the jugular, claiming: “Such an action was unacceptable when there exists the possibility of the transfer of diseases and sickness, and even death, as the result of receiving a lick to the face by a dog.” Then, with Trumpian logic, she says this was taking place when there is an “awareness of Covid”.”

<https://www.dailymaverick.co.za/opinionista/2022-03-03-when-nitpicking-consumers-get-a-lemon-from-the-advertising-regulatory-board/>

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## **SOCIAL GRANTS**

#### *Media Comments*

#### **Joseph, Raymond. Network of corruption exposed in Lottery probe.**

2022 March 3 GroundUp

“SIU says it has already identified R300 million in misappropriated grants...Key findings of the investigation so far were:





- Identifying the modus operandi used to syphon money from the NLC through various non-profit organisations and non-profit companies;
- “Collusion” between NLC officials and non-profit companies;
- “Collusion” between some board members and non-profit companies;
- Abuse of non-profit companies, including the hijacking of dormant ones;
- Ineffective auditing of projects;
- Maladministration in the approval of grants; and
- Abuse of the NLC’s proactive funding process, which the SIU believed should be reviewed.”

<https://www.groundup.org.za/article/network-corruption-exposed-in-lottery-corruption-probe/>

### **Mahlaka, Ray. Bosasa’s spending and shopping spree – corrupt state contracts worth over R2bn and bribes exceeding R75m.**

2022 March 2 Daily Maverick

“Bosasa targeted the Department of Correctional Services and public entities including the South African Post Office and Airports Company South Africa, enabling it to benefit handsomely from unlawful state contracts...For example, in order to win security contracts at Sapu’s pay points (including those that process social grants to beneficiaries), Bosasa paid for protection services to senior Sapu former executives. These executives included Siviwe Mapisa, the former head of Sapu’s security (and brother of Nosiviwe Mapisa-Nqakula, the National Assembly Speaker), and Maanda Manyatshe, the former Sapu CEO.”

<https://www.dailymaverick.co.za/article/2022-03-02-bosasas-spending-and-shopping-sprees-corrupt-state-contracts-worth-over-r2bn-and-bribes-exceeding-r75m/>

### **Makhafola, Getrude. Sassa clerk in hot water for faking lover’s disability, pocketing R140k in grants.**

2022 March 4 The Citizen

“The state is seeking to recoup R140,000 from an administrative clerk at the SA Social Security Agency (Sassa) after she fraudulently registered a disability grant for her lover nine years ago. An investigation was carried out by Public Protector Busisiwe Mkhwebane after an anonymous complaint was lodged with her office in 2019.”

<https://www.citizen.co.za/news/south-africa/government/3040820/sassa-clerk-in-hot-water-over-r140k-grant-fraud-4-march-2022/>

### **'Mother of four' charged with defrauding Sassa out of child grant cash.**

2022 March 4 Times Live

“A woman who allegedly duped the SA Social Security Agency (Sassa) into paying her four child support grants over a period of 13 years has been arrested and charged with fraud in the Eastern Cape. Suthukazi Buqili, 50, appeared in the Mthatha specialised commercial crimes court on Thursday. “It is alleged that in 2002, Buqili applied for four child birth certificates from the department of home affairs and succeeded. Then she proceeded to Sassa to apply for child support grants which were also successful,” said Hawks spokesperson Warrant Officer Bonnie Nxumalo.”

<https://www.timeslive.co.za/news/south-africa/2022-03-04-mother-of-four-charged-with-defrauding-sassa-out-of-child-grant-cash/>

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## TAXATION

### *Internet Articles*

### **Lancefield, Victoria and Lobban, Thomas. Budget shows SA expats remain top priority for Sars.**

2022 March 7 Moneyweb

“The third key area – the treatment of pension funds of non-residents – has already been in place since March 1, 2021. South Africans who have ceased their tax residency are still able to withdraw their retirement funds (or any other SA policy) in full from South Africa, if they can show an unbroken period of three years as a tax non-resident.”

<https://www.moneyweb.co.za/mymoney/moneyweb-tax/budget2022-south-african-expats-remain-top-priority-for-sars/>

### **Tax Consulting SA. Hell hath no fury like a tax collector scorned.**

2022 March 3 FA News

“It is clear from Finance Minister Enoch Godongwana’s 2022 Budget Speech is that SARS will strongly enforce the law against wealthy taxpayers...A major benefit of relief sought through the VDP, is that it covers all tax types (income tax, employees’ taxes such as Pay-as-You-Earn, Unemployment Insurance Fund contributions and the Skills Development Levy, as well as Value-Added-Tax). The only taxes that are not covered are customs and excise duties.”

<https://www.fanews.co.za/article/tax/16/tax/1016/hell-hath-no-fury-like-a-tax-collector-scorned/33998>

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## TERROR FINANCING

*Opinion*

### **SA in danger of being grey-listed for terror financing.**

2022 March 4 Business Live

“Alarms raised by the global money-laundering and terrorist-financing watchdog about the gaping weaknesses in SA’s system of combating these activities were substantiated this week. Four alleged SA-based, Islamic extremist organisers were sanctioned by the US for financially facilitating terrorist activities in the continent from this country. It is an indictment of our law-enforcement agencies that it was left to the US to identify and sanction the four rather than this being done here. The US treasury department’s Office of Foreign Assets Control designated the four as financial facilitators of Islamic State of Iraq and Syria (Isis) and Isis-Mozambique (Isis-M), both groups regarded by the US as terrorist organisations...”

<https://www.businesslive.co.za/bd/opinion/editorials/2022-03-04-editorial-sa-in-danger-of-being-grey-listed-for-terror-financing/>

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## UNEMPLOYMENT INSURANCE

*Internet Article*

### **Tax Consulting SA. Hell hath no fury like a tax collector scorned.**

2022 March 3 FA News

“It is clear from Finance Minister Enoch Godongwana’s 2022 Budget Speech is that SARS will strongly enforce the law against wealthy taxpayers...A major benefit of relief sought through the VDP, is that it covers all tax types (income tax, employees’ taxes such as Pay-as-You-Earn, Unemployment Insurance Fund contributions and the Skills Development Levy, as well as Value-Added-Tax). The only taxes that are not covered are customs and excise duties.”

<https://www.fanews.co.za/article/tax/16/tax/1016/hell-hath-no-fury-like-a-tax-collector-scorned/33998>

*Media Comments*

### **64 contravention notices issued to non-complying establishments in Limpopo.**

2022 Mar 4 EB News Daily

“Several establishments in Limpopo have been found to be non-compliant with labour legislation following mega blitz inspections by the Department of Employment and Labour in the province. The mega blitz inspections started on Monday this week focusing on the hospitality, road freight and logistics sectors. The inspections are expected to conclude today... The department said the inspections uncovered noncompliance in as far as the Occupational Health and Safety Act, Basic Conditions of Employment Act, Unemployment Insurance Act and Compensation for Occupational Injuries and Diseases Act.”

<https://www.ebnewsdaily.co.za/2022/03/64-contravention-notices-issued-to-non-complying-establishments-in-limpopo.html>

### **Shipalana, Tintswalo. R3.2 billion Ters paid in Limpopo.**

2022 March 3 Letaba Herald

“The Department of Employment and Labour has paid R3.2 billion in Temporary Employment Relief scheme (Ters) funds in Limpopo so far. Out of the R40 billion budget for the scheme which was effective from March 2020, a total of R66 billion has been paid in the last 20 months nationwide. In the period between April 2021 and January 2022, R1.5 billion has been paid in the province.”

<https://letabaherald.co.za/110268/r3-2-billion-ters-paid-in-limpopo/>

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## VEHICLE INSURANCE

*Internet Article*

### **9 Tips for booking a car for your next trip.**

2022 March 3 Africa.com

“Before completing the booking, ensure you understand the different insurance options and pick the one most appropriate for your needs. Most car rentals will include a Collision Damage Waiver (CDW) as part of the full cost of the booking. This means that, although you will be subject to any excess payments in the event of a crash or accident, the company cannot charge you more than the excess specified. You can also opt for a Loss Damage Waiver, which



includes both a CDW and Theft Protection policies, so the cost for the replacement of the vehicle will be covered if it gets stolen.”

<https://www.africa.com/9-tips-for-booking-a-car-for-your-next-trip/>

*Media Comment*

**Shahini, Alex. Previously written-off cars will now be avoidable by used car buyers.**

2022 March 1 Car Mag

“The South African Insurance Association which controls the vehicle salvage database has agreed to make information regarding accident-damaged cars accessible to the public in an attempt to curb previously written-off and poorly repaired vehicles from re-entering the used market.”

<https://www.carmag.co.za/news/industry-news/previously-written-off-cars-avoidable/>

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