

**THE FINANCIAL SECTOR CONDUCT AUTHORITY**

**CASE NO:1/2020**

In the matter between:

**FINANCIAL SECTOR CONDUCT AUTHORITY**

and

**MARLVERN TRADING CC t/a MARLVERN GUARANTEES**

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**ORDER IN TERMS OF SECTION 167 OF THE FINANCIAL  
SECTOR REGULATION ACT NO.9 OF 2017**

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**Introduction**

1. The Financial Sector Conduct Authority is a juristic person established in terms of section 56 of the Financial Sector Regulation Act, No.9 of 2017. The office of the FSCA is situated at Riverside Office Park, Block B, 41 Matroosberg Road, Ashlea Gardens.
2. The functions of the FSCA are *inter alia* to regulate and supervise the conduct of financial institutions in accordance with the financial sector laws. The Financial Sector Regulation Act has empowered financial sector regulators with more regulatory powers, the FSCA is statutorily enjoined to apply the remedies at its disposal with the

overarching aim of achieving the objective of protecting financial customers.

### **The Facts**

3. Marlvem Trading CC is a close corporation duly incorporated in the Republic of South Africa with registration number 2009/101005/23. The CIPC's records reflect Mr Khuphukile Dube (Dube) as its sole member.
  
4. Marlvem is not authorised under the Short-term Insurance Act No 53 of 1998 ("STIA") or any other legislation administered by the Financial Sector Conduct Authority ("FSCA"). On 7 November 2011, Marlvem registered as a credit provider with the National Credit Regulator ("NCR") under NCRCP no. 5031.
  
5. Marlvem issued guarantee policies to a number of contractors between April 2015 until October 2017 which guarantee policies constituted short-term insurance policies as contemplated in the STIA. Marlvem is not licensed as a short-term insurer. It therefore contravened section 7(1) of the STIA.

### **The administrative and regulatory action Imposed**

6. The FSCA duly considered all the evidence obtained during the investigation. Dube and Marlvern were afforded the opportunity to make submissions on the proposed administrative and regulatory action imposed, however they failed to provide any submissions.
  
7. Based on the evidence, the Authority is satisfied that Marlvern contravened a financial sector law in a material way, more specifically section 7 (1) of the STIA.

### **The Decision**

8. The Authority imposes the following administrative and regulatory action:
  - 8.1. A Directive in term of section 144 of the FSR Act is issued directing that;
    - 8.1.1. Marlvern notify its clients that Marlvern is not an authorised Short-term insurer;
  
    - 8.1.2. Marlvern must immediately cease engaging in and not to engage in the practice of issuing guarantees policies;

**8.1.3. Marvern must notify its clients that they are currently without the cover of a guarantee policy and are exposed to risk; and**

**8.1.4. Marvern must notify its clients that they must obtain alternative insurance cover with a licensed and authorized insurer or underwriter.**

**8.2. A penalty of R25 million is imposed on Marvern in terms of section 167 of the FSR Act for contravening section 7 of the STIA, i.e. conducting unregistered short-term insurance business.**

**8.3. Dube is debarred for a period of 10 (ten) years, with immediate effect, in terms of section 153(1)(a) of the FSR Act. A copy of the debarment order is attached which will be published by the Authority in terms of section 153(7) of the FSR Act. Dube is prohibited from providing, or being involved in the provision of financial services as defined in the FAIS Act.**

**9. Further Take note that:**

**9.1. If Marvern fails to pay the administrative penalty within 3 months, in terms of section 169 of the Act, interest, at the rate prescribed for the time being in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975),**

will be payable in respect of any unpaid portion of administrative penalty until it is fully paid.

9.2. Failure to comply with this order and notice will result in the provisions of section 170 of the Act being invoked, which reads as follows:

*“(1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if:-*

- (a) the amount payable in terms of the order has not been paid as required by the order; and*
- (b) either:-*
  - (i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal’s decision, has been lodged by the end of the period for making such applications; or*
  - (ii) if such an application has been made, proceedings on the application have been finally disposed of.*

*(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court."*

9.3. In terms of section 230 of the Act a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal (Tribunal). An application for reconsideration must be made –

- (a) in accordance with the Tribunal rules; and
- (b) within the time periods set out in section 230(2) of the Act.

You may contact the secretary of the Tribunal at (012) 428 8012 or per electronic mail at [LEG.Tribunal@fsc.co.za](mailto:LEG.Tribunal@fsc.co.za).

Signed at Pretoria on the 20<sup>th</sup> day of February 2020.



Ms C da Silva  
FOR THE FINANCIAL CONDUCT AUTHORITY