

THE FINANCIAL SECTOR CONDUCT AUTHORITY

CASE NO:2/2020

In the matter between:

FINANCIAL SECTOR CONDUCT AUTHORITY

and

GKF FINANCE (PTY) LTD

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

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 Facts

3. GKF is a private company registered in the Republic of South Africa with company registration number 2013/150026/07, with its registered address at 17 Laurel Street, Meyersdale Estate, Meyersdale, Gauteng, 1447. but during the investigation operated its business at 14 Heuwelsig, Johan Gertzen Crescent, Meyersdal.
4. Ms Morwesi Rose Masiu (Ms Masiu) and Mr Mashure Sikhumbuzo Mutangadura (Mr Mutangadura) are listed as the directors of GKF. . Ms Mutangadura was the company administrator and issued the guarantees.
5. In terms of the Financial Sector Conduct Authority's (FSCA) records, GKF, Ms Masiu and Mr Mutangadura are not authorised nor are representatives of a Financial Services Provider (FSP). .
6. GKF issued guarantee policies to a number of contractors, which guarantee policies constituted short-term insurance policies as contemplated in the Short-term Insurance Act No 53 of 1998. GKF is not licensed as a short-term insurer. GKF is not authorised as a short-term insurer. It thereby contravened section 7(1) of the Short-term Insurance Act.

The administrative and regulatory action imposed

7. The FSCA duly considered all the evidence obtained during the investigation, as well as the written response and comments received from GKF, Ms Masiu, Mr Mutangadura and Ms Mutangadura.

The Decision

8. The Authority imposes the following administrative and regulatory action:

8.1. Ms Masiu, Mr Mutangadura and Ms Mutangadura are 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 orders are attached which will be published by the Authority in terms of section 153(7) of the FSR Act.

8.2. Ms Masiu, Mr Mutangadura and Ms Mutangadura are prohibited from providing, or being involved in the provision of financial services as defined in the FAIS Act.

8.3. A penalty of R5 million is imposed on GKF in terms of section 167 of the FSR Act for contravening section 7 of the STIA, i.e. conducting unregistered short-term insurance business.

8.4. The Authority, in terms of section 144(1)(d)(i) of the FSR Act, hereby directs and orders GKF, Ms Masiu, Mr Mutangadura and Ms Mutangadura to immediately cease issuing guarantee policies.

8.5. GKF must in consultation with its clients and product suppliers concerned, take reasonable steps to ensure that any outstanding or unconcluded business is transferred to another authorised FSP in the best interest of the clients.

9. Further Take note that:

9.1. If GKF fails to pay the administrative penalty within three months of this order, 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.

The licensee may contact the secretary of the Tribunal at (012) 428 8012 or per electronic mail at LEG.Tribunal@fsc.co.za.

Signed at Pretoria on the 20th day of February 2020.



Ms C da Silva
FOR THE FINANCIAL CONDUCT AUTHORITY.