

**ENFORCEABLE UNDERTAKING MADE BY BASFOUR 3773 (PTY) LTD
TRADING AS OINVEST, AND MS JANE ENGELBRECHT, IN TERMS OF
SECTION 151(1) OF THE FINANCIAL SECTOR REGULATION ACT, NO. 9 OF
2017**

BACKGROUND TO THE ENFORCEABLE UNDERTAKING

1. The Financial Sector Conduct Authority (“the FSCA”), established in terms of section 56 of the Financial Sector Regulation Act, No.9 of 2017 (“the FSR Act”), is a financial sector regulator as defined in the FSR Act, whose objectives are to enhance and support the efficiency and integrity of financial markets; protect financial customers and assist in maintaining financial stability.
2. Basfour 3773 (Pty) Ltd trading as Oinvest (“Basfour”) is a private company duly incorporated in terms of the laws of the Republic of South Africa with registration number 2010/002719/07, and was an authorised financial services provider with FSP number 42020.
3. Ms Jane Engelbrecht, an adult female (“Engelbrecht”) was the sole employee, director, key individual (as contemplated in section 1 of the FAIS Act) and representative (as contemplated in section 1 of the FAIS Act) of Basfour until the licence of Basfour was withdrawn by the FSCA on 14 October 2020.
4. The FSCA commenced an investigation into the activities of Basfour after having received several complaints from members of the public.
5. Following the investigation, the FSCA found that Basfour materially contravened:
 - 5.1. section 7(1)(a) and (b) of the FAIS Act;



- 5.2. section 13(3) of the FAIS Act;
 - 5.3. condition 3 of Basfour's licence;
 - 5.4. section 2 of the General Code; and
 - 5.5. section 11 of the General Code.
6. FSCA also found that Engelbrecht, as the key individual, was involved in and/or was the cause of the contraventions.
 7. The clients of Basfour, for the period 1 January 2018 to 30 August 2019, suffered losses of at least R58 608 810.
 8. On 14 October 2020 the FSCA therefore:
 - 8.1. Imposed an administrative penalty of R58 608 810 on Basfour in terms of section 167(1)(a) of the FSR Act ("the penalty");
 - 8.2. Withdrew the licence of Basfour (license number 42020); and
 - 8.3. Debarred Engelbrecht in terms of section 153 of the FSR Act, for a period of 10 years ("the debarment").
 9. Basfour and Engelbrecht ("the incumbents") applied to the Financial Services Tribunal ("the Tribunal") for the reconsideration of the penalty and the debarment;
 10. The application is pending before the Tribunal.



THE ENFORCEABLE UNDERTAKING

11. The incumbents hereby undertake, in terms of section 151(1) of the FSR Act, to:

11.1. take all reasonable steps within their control, timeously, to execute and achieve the individual undertakings ("the undertakings") as set out hereunder, to take all steps to ensure the achievement of such undertakings, to co-operate fully with any person or entity, including the FSCA, and to support, assist, and aid each other to achieve the undertakings.

11.2. without delay, bring an application to the High Court for the liquidation of Basfour ("the liquidation application");

11.3. provide their complete and unconditional assistance to the attorney responsible for lodging the liquidation application ("the liquidation attorney"), or the liquidator, as the case may be, to transfer any funds held by any party that Basfour or its liquidator are entitled to; to the liquidation attorney's trust account or the liquidator;

11.4. without detracting from the generality of the previous paragraph, such funds shall include:

11.4.1. the sum of R8,980,000 currently held by Werksmans Attorneys in its trust account on behalf of Basfour (which amount has already been released by Payfast);

11.4.2. the remaining funds in the sum of R1,000,000 held by Payfast on behalf of Basfour (less any amount legitimately claimed by Payfast from the funds held by it); and



- 11.4.3. the funds held by the South African Reserve Bank ("SARB") which are the subject of a hold order issued by SARB, in terms of the Exchange Control Regulations 22A and/or 22C (less any amount legitimately claimed by SARB);
- 11.5. ensure that an amount of R1,490,000, in addition to the amounts referred to in paragraphs 11.4.1 to 11.4.3 above, is paid into the trust account of the attorneys responsible for the liquidation of Basfour, or to the appointed liquidator(s), on demand.
12. Engelbrecht hereby undertakes, in terms of section 151(1) of the FSR Act, to agree to the draft consent order **attached herewith** ("the order") being made an order of the Tribunal;
13. Engelbrecht hereby further undertakes, if reinstated as key individual of Personal Portfolio Management CC ("PPM"), and irrespective of whether the draft order is made an order of the Tribunal, to:
- 13.1.1. Not apply to be a key individual of any other FSP except PPM;
- 13.1.2. Ensure that there will at all times be an additional key individual appointed to PPM, who will have the same area of responsibility as Engelbrecht for a period of three years from signature of this undertaking. In this regard, Ms Engelbrecht has identified Mr Mark John Sinclair to be appointed as an additional key individual, who will lodge his/her application to be appointed as such shortly;

 BT
Page | 4

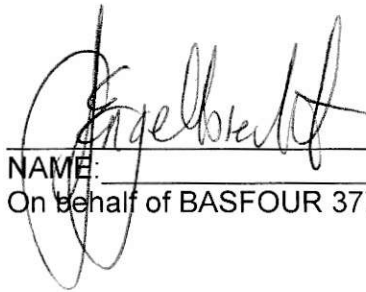
- 13.1.3. whilst she is a key individual of PPM, she will ensure that PPM will not apply for any additional licences, extensions of the existing licence or amendments of any conditions under the licence;
- 13.1.4. ensure that PPM will at all times engage an external compliance officer, irrespective of its internal compliance function;
- 13.1.5. ensure that the external compliance officer will submit to the FSCA, a full compliance report on PPM, twice a year, specifically certifying that PPM did not exceed its licencing parameters in any manner;
- 13.1.6. ensure that PPM will not hold, keep in safe custody, control, directly administer or deal directly with any client assets, including cash funds;
- 13.1.7. not apply for a relaxation of these conditions within the next 10 years.

14. The Respondents acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

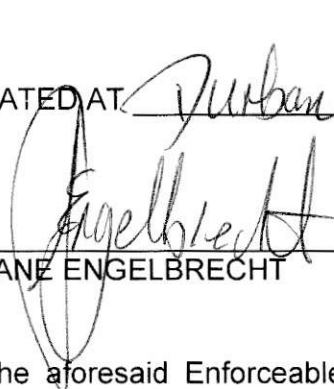
15. This undertaking is in full and final settlement of all claims, issues and disputes between FSCA, on the one hand, and Engelbrecht, Basfour and its associated or affiliated companies on the other hand, arising out of the subject matter of and relating to the penalty, withdrawal of Basfour's licence and Debarment Orders of 14 October 2020.

BT 

DATED AT Durban ON THIS 31st DAY OF March 2021


NAME: _____
On behalf of BASFOUR 3773 (PTY) LTD, duly authorised to sign.

DATED AT Durban ON THIS 31st DAY OF March 2021


JANE ENGELBRECHT

The aforesaid Enforceable Undertaking is accepted by the Financial Sector Conduct Authority in terms of section 151(1) of the FSR Act.

DATED AT Pretoria ON THIS 31st DAY OF March 2021


BRANDON TOPHAM
Divisional Executive

For the Financial Sector Conduct Authority