

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF
SECTION 10(3), READ WITH SECTION 10A OF THE FINANCIAL
SERVICES BOARD ACT, 97 OF 1990**

CASE NO: **13/2016**

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE

Applicant

AIRBORNE INSURANCE CONSULTANTS (PTY) LIMITED Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B (7) (a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened section 8 (2) (d) of the Short-Term Insurance Act, 52 of 1998 read with Directive 149. Av and impose a penalty of R150 000 (One hundred and fifty thousand rand).

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the ^{5^m}..... day of **AUGUST 2016**.



C F Eloff

Chairperson of the Enforcement Committee

IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10 (3) OF THE FINANCIAL SERVICES
BOARD ACT, NO. 97 OF 1990

CASE NUMBER: 13/2016

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE	Applicant
and	
AIRBORNE INSURANCE CONSULTANTS (PTY) LIMITED	Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7) (a) OF THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO. 28 OF 2001

1. PARTIES TO THE AGREEMENT

1.1 The Applicant is the Registrar of Short-term Insurance (the Registrar) herein represented by Mr Jonathan Ian Dixon in his capacity as the Deputy Registrar of Short-term Insurance and the Deputy Executive Officer for Insurance.

and

1.2 The Respondent is Airborne Insurance Consultants (Pty) Limited (the Respondent), a company registered and incorporated in accordance with the company laws of the Republic of South Africa bearing registration number: 2005/017491/07. The Respondent is herein represented by Mr Scott Smith, Managing Director of the Respondent who warrants that he has been duly authorised by the Respondent to enter into this agreement.

1.3 The Respondent has its business address at Unit 5, Lancaster Park, Electron Lane, Lanseria Corporate Estate, Pelindaba Road, Lanseria, Johannesburg. The Respondent is an authorised financial services provider in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002. The Respondent is licenced under FSP licence No. 22150.

2. THE CONTRAVENTION OF SECTION 8(2)(d) OF THE SHORT-TERM INSURANCE ACT, No. 53 OF 1998 READ WITH DIRECTIVE 149. A.v.

2.1. It is agreed between the parties that during the period from 1 April 2015 to 27 August 2015 the Respondent operated a fleet arrangement scheme under the name and style of Blades of Glory Rotor Wing Fleet Insurance Facility (Blades of Glory). Under the aforementioned scheme the Respondent arranged

and placed short-term insurance cover for aircrafts outside the borders of South Africa without obtaining the requisite approval from the Registrar and without adherence to the strict procedure required by Directive 149 A.v. regarding placing insurance business offshore.

3. THE MITIGATING CIRCUMSTANCES

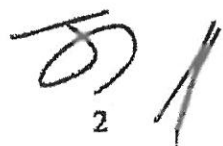
- 3.1. It is agreed that *inter alia* the following mitigating factors are relevant to the matter:
- 3.1.1. The contravention was due to a misunderstanding of the law. The Respondent held a *bona fide* belief that it had complied with the applicable legislation when it submitted a single application for the Blades of Glory scheme. The contravention occurred because the Respondent incorrectly believed that additional aircrafts placed under the aforementioned scheme fell under the initial approval by the Registrar;
- 3.1.2. The Respondent admitted the contravention and acted promptly by rectifying the non-compliance immediately after becoming aware of it;
- 3.1.3. The Respondent did not intend to prejudice policyholders. The Applicant is not aware of any complaints from policyholders who were covered under the aforementioned scheme;
- 3.1.4. The Respondent has expressed sincere remorse for its conduct that led to this contravention; and
- 3.1.5. The contravention committed by the Respondent lasted for a period of about five (5) months.

4. THE AGGRAVATING CIRCUMSTANCES

- 4.1 It is agreed that *inter alia* the following aggravating factors are relevant to this matter:
- 4.1.1 The conduct of the Respondent was not strictly consistent with the legislative framework in that the Respondent failed to conduct itself in accordance with sound insurance principles and practice in the public interest;
- 4.1.2 The domestic market was being prejudiced by virtue of the fact that the Respondent did not obtain the Registrar's approval for each individual application; and
- 4.1.3 The Respondent has been penalised before in relation to Section 8(2)(d) for a late submission.

5. THE AGREED PENALTY

- 5.1. In light of the above, and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties have agreed that the Respondent will pay a penalty of R150 000 (One Hundred and Fifty Thousand Rand).


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6. OTHER CONDITIONS

- 6.1 This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement. If the Enforcement Committee declines to make this agreement an order, then in such event this agreement will be null and void.
- 6.2 Should the Respondent not comply with the terms of this agreement and it becomes necessary for the Registrar and/or the Financial Services Board (FSB) to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the Registrar and/or the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 6.3 No leniency or postponement given by the Registrar to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties. Any leniency or postponement granted by the Registrar or any amendment to this Agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.
- 6.4 Any receipt of a payment by the Registrar and/or the FSB after the due date, which date shall be outlined in an invoice for payment of the penalty shall be without prejudice to any of the rights of the Registrar and/or the FSB.
- 6.5 This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 6.6 This agreement is in full and final settlement only in respect of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 6.7 The parties choose as their *domicillum citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However the notice contemplated in terms of section 6E of the FI Act may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

The Applicant
Financial Services Board:
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext. 6
Pretoria
0081

The Respondent:
Unit 5, Lancaster Park,
Electron Lane, Lanseria Corporate Estate,
Pelindaba Road,
Lanseria, Johannesburg
E-mail: scott@airborneinsurance.co.za



6.8 The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B (7) (b) of "the FI Act".

Signed at PRETORIA on 21 July 2016 on behalf of the FSB and the Registrar of Short-term Insurance.

J I Dixon

Signed at Breda on 22 July 2016 on behalf of the Respondent.

S Smith