
**ENFORCEABLE UNDERTAKING IN TERMS OF SECTION 151(1) OF THE
FINANCIAL SECTOR REGULATION ACT, NO. 9 OF 2017 ("FSR ACT")**

INTRODUCTION

1. Ithala SOC Limited ("**Ithala**"), with registration number 2001/007427/30, is a state-owned company with limited liability and principal place of business situated at 303 Dr Pixley KaSeme Street, Old Mutual Building, Durban. Ithala is licenced under section 8 of the FAIS Act to act as a category 1 and category 4 financial services provider ("**FSP**"). The licensee also operates as a bank under an exemption in terms of the Banks Act 94 of 1990, since 1 July 1998.
2. The Financial Sector Conduct Authority ("**Authority**"), a financial sector regulator, was established in terms of section 56 of the FSR Act. The Authority's objectives are to enhance and support the efficiency and integrity of financial markets; protect financial customers and assist in maintaining financial stability. Furthermore, to achieve its objectives, the Authority must regulate and supervise, in accordance with the financial sector laws for which it is the responsible authority, the conduct of financial institutions, such as Ithala.
3. Ithala is desirous to make an Enforceable Undertaking under section 151(1) of the FSR Act regarding its future conduct following its non-compliance with the following provisions, after same were identified by the Authority in the exercise of its functions:
 - 3.1. Section 19(3) of the Financial Advisory and Intermediary Services Act No 37 of 2002 ("FAIS Act) – details to follow; and

- 3.2. Section 10(1)(d) of the General Code of Conduct for Authorised financial Services Providers and Representatives, Board Notice 80 of 2003, as amended ("General Code of Conduct").

CONTRAVENTIONS FORMING THE SUBJECT OF ITHALA'S ENFORCEABLE UNDERTAKING

4. As an FSP, Ithala is required to comply with the FAIS Act, and its subordinate legislation.
5. In terms of section 19(3) of the FAIS Act: *"The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the registrar by notice on the official web site for different categories of financial services providers- (a) the amount of money and financial products at year end held by the provider on behalf of clients; (b) that such money and financial products were throughout the financial year kept separate from those of the business of the authorised financial services provider, and report any instance of non-compliance identified in the course of the audit and the extent thereof; and (c) any other information required by the registrar."*
6. Section 10(1)(d) of the General Code provides that: *"Subject to the provisions of any other applicable Act, a provider who receives or holds financial products or funds of or on behalf of a client must account for such products or funds properly and promptly and open and maintain a separate account, designated for client funds, at a bank"*
7. Ithala failed to submit a report in terms of section 19(3) of the FAIS Act for the 2019 and 2020 financial years. Further, the Authority found that Ithala did not make use of separate designated bank accounts for short- and long-term insurance. Even

though, separate bank accounts had been opened for long- and short-term insurance (Long-term Insurance account (4079156775), Short-term Insurance account (4079156636), Short-term Insurance Claims account (4099406439) and Short-term Insurance Premiums account (4099409576)). The accounts were not specifically used and ring-fenced for premium receipts and payments of net premiums. Depending on the type of insurance product and payment method the premium received from the policyholder ended up in various bank accounts. The premiums received in these various accounts were not subsequently transferred to one of the designated insurance bank accounts.

8. Based on the above, Ithala contravened section 19(3) of the FAIS Act, as well as section 10(1)(d) of the General Code.
9. Ithala has rectified the contravention in respect of section 10(1)(d) of the General Code, as it has started utilising the separate bank accounts to receive and hold clients' funds. Even though Ithala submitted the report in terms of section 19(3) of the FAIS Act for the 2021 and 2022 financial years, the report remains outstanding for 2019 and 2020 financial years. Ithala is therefore still in contravention of section 19(3) of the FAIS Act in respect of the 2019 and 2020 financial years.
10. Ithala relayed to the Authority the circumstances that prevented it from submitting reports in terms of section 19(3) of the FAIS Act in respect of the 2019 and 2020 financial years. Based on this, the Authority decided not to pursue regulatory action against Ithala for its failure to submit a report in terms of section 19(3) of the FAIS Act in respect of the 2019 and 2020 financial years, provided Ithala complies with the terms of this Enforceable Undertaking.

ENFORCEABLE UNDERTAKING

11. The contraventions mentioned in the previous paragraphs are common cause. Ithala is desirous to make undertaking in terms of section 151(1) and (2) of the FSR Act regarding its future conduct in respect of its compliance with section 19(3) of the FAIS Act and section 10(1)(d) of the General Code of Conduct. Ithala undertakes the following:

11.1. **With reference to section 19 of the FAIS Act:** to ensure that a report in terms of section 19(3) of the FAIS Act is always submitted timeously, as and when they become due.

11.2. **With reference to section 10(1)(d) of the General Code of Conduct:** to submit additional proof, within 30(thirty) days of the signing of this Enforceable Undertaking, that it has rectified this non-compliance, being bank statements in respect of the separate accounts indicating that clients premiums are now received in these accounts, as well as a letter confirming that clients premiums are received only in the separate accounts.

12. Ithala acknowledges that it is familiar with the provisions of section 151 of the FSR Act, and more specifically section 151(4), that reads as follows:

'If a financial institution licensed under a financial sector law that gave an enforceable undertaking breaches a term of the undertaking, the responsible authority may suspend or withdraw the licence.'

DATED AT Durban..... ON THIS DAY 17th.....OF AUGUST 2023

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Dr D T Vilakazi

(On behalf of Ithala SOC Limited)

This Enforceable Undertaking is accepted by the Authority in terms of section 151(1) of the FSR.

DATED AT Pretoria ON THIS DAY 28th OF
AUGUST 2023



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MS K DIKOKWE (FOR THE AUTHORITY)