

**[TO BE PUBLISHED BY THE FSCA]**

**Case No: 1277**

**In the matter between:**

**The Financial Sector Conduct Authority**

And

**Mr Mike Dube**

**Mr Nkosana Mhlanga**

**Ingugama Risk Solutions (Pty) Ltd**

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**ENFORCEABLE UNDERTAKING IN TERMS OF SECTION 151(1) OF THE FINANCIAL  
SECTOR REGULATION ACT, 2017**

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**DEFINITIONS**

1. For purposes of this undertaking, the following definitions shall apply:
  - 1.1. “**Ingugama**” means **Ingugama Risk Solutions (Pty) Ltd**, a private company with limited liability, duly incorporated and registered in accordance with the Companies Act No. 71 of 2008 of the Republic of South Africa, under registration number 2014/024600/07, with its principal place of business situated at 16 Rockridge, 7 Gordon Terracce, New Doornfontein, Johannesburg, 2094.
  - 1.2. “**Effective Date**” means the date on which this undertaking becomes enforceable which is upon signature by a duly authorised officer acting on behalf of the Authority.
  - 1.3. “**Enforceable Undertaking**” means this undertaking duly signed and concluded between the Authority and Ingugama.

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**Executive Committee:**

**Commissioner:** U. Kamlana | **Deputy Commissioners:** A. Ludin | K. Gibson | F. Badat

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- 1.4. **“FAIS Act”** means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended.
- 1.5. **“The Authority”** means the Financial Sector Conduct Authority.
- 1.6. **“FSR Act”** means the Financial Sector Regulation Act No. 9 of 2017, as amended.
- 1.7. **“Dube”** means Mr Mike Dube, a director of Ingugama.
- 1.8. **“Mhlanga”** means Mr Nkosana Mpinda Mhlanga
- 1.9. **“Tribunal”** means the independent Financial Services Tribunal, a statutory body established in terms of section 219 of the FSR Act, with its principal place of business at Kasteel Office Park, Orange Building, 546 Jochemus street, Erasmuskloof, Pretoria, Gauteng.

## **COMPLAINT**

2. The Authority is the market conduct regulator of financial institutions that are licensed or required to be licenced in terms of financial sector laws. The FSR Act empowers the Authority to supervise and enforce compliance with financial sector laws.
3. The Authority received information that Ingugama was issuing performance guarantees to the construction companies (insurance business) without been authorised or having an insurer, which was a contravention of section 5 of the Insurance Act 18 of 2017 (the Insurance Act).
4. Dube and Mhlanga has confirmed that from 1 January 2019 to 30 April 2022, Ingugama issued performance guarantees to a total of **...14.** contractors, collected a total amount of **... R1 659 784.51..** in premiums and settled a total number of **...0...** claims valued R**...0.....**
5. Dube and Mhlanga further confirmed that **...14..** clients of Ingugama advised, were never placed with any licensed insurer.



## **INVESTIGATION AND CONTRAVENTIONS**

6. On 20 May 2022, the Authority commenced an investigation into the conduct of Ingugama as well as Dube and Mhlanga, in terms of section 135 of the FSR Act. The investigation was in respect of their conduct during the period 1 January 2019 to 30 April 2022, to determine whether there was a contravention of:
  - 6.1. Section 5(1) of the Insurance Act which states that no person may conduct insurance business in the Republic unless that person is licensed under the Insurance Act; The investigation revealed that during the period from 1 January 2020 to 30 April 2023, Ingugama as well as Dube and Mhlanga issued...27.. performance guarantees without a licensed insurer in contravention of Section 5(1) of the Insurance Act.
  - 6.2. The investigation revealed that during the period from 1 January 2019 to 30 April 2022, Ingugama as well as Dube and Mhlanga advised, collected R1 659 784.51.... premiums and settled ...0 claims valued R...0... on behalf of policyholders.
7. Dube and Mhlanga did not dispute his knowledge and/or involvement in the conduct of Ingugama and as a result, he caused and/or permitted Ingugama to contravene sections 5(1) of the Insurance Act.
8. Ingugama as well as Dube and Mhlanga have cooperated with the Authority and admitted all the facts and contraventions in respect of this investigation.

## **ENFORCEABLE UNDERTAKING**

9. Ingugama as well as Dube and Mhlanga tender the following Enforceable Undertaking to the Authority in terms of section 151(1) of the FSR Act:
  - 9.1. In order to comply with section 5(1) of the Insurance Act, Ingugama as well as Dube and Mhlanga will move all the guarantees business to a licenced underwriter of their choice within 90 working days, from the date of the signature of this Enforceable undertaking;
  - 9.2. In order to comply with section 7(1)(b) of the FAIS Act, Ingugama as well as Dube and Mhlanga will ensure that they and all their representatives are registered as juristic representatives/ representatives of an authorised FSP,

within 14 working days from the date of the signature of this Enforceable undertaking;

- 9.3. Ingugama as well as Dube and Mhlanga will ensure that at all relevant times their clients' insurance business is placed with a licensed insurer;
- 9.4. Ingugama as well as Dube and Mhlanga will submit proof within 90 working days from the date of the signature of this Enforceable undertaking, that paragraph 9.1 and 9.2 above was complied with; and
- 9.5. Ingugama as well as Dube and Mhlanga will ensure that at all relevant times they and all its representatives are registered as juristic representatives /or representatives of an authorised FSP.

#### **NON-COMPLIANCE WITH THE UNDERTAKING**

10. Ingugama as well as Dube and Mhlanga understands that if any term contained in this Enforceable Undertaking is breached or contravened, the Authority:
  - 10.1. may impose an administrative penalty against Ingugama and/or Dube and Mhlanga, on the basis of joint and several liability;
  - 10.2. may debar Ingugama as well as Dube and Mhlanga; and/or
  - 10.3. may approach the Tribunal to make certain orders in respect of the Enforceable Undertaking.
11. Ingugama as well as Dube and Mhlanga acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

DATED AT JOHANNESBURG ON THIS 23rd DAY OF NOVEMBER 2023.



Mr Mike Dube

(On behalf of Ingugama)





Mr Nkosana Mpinda Mhlanga

(On behalf of Ingugama)



Mr Mike Dube

(In his personal capacity)



Mr Nkosana Mpinda Mhlanga

(In his personal capacity)

The aforesaid Enforceable Undertaking is accepted by the Financial Conduct Authority in terms of section 151(1) of the Financial Sector Regulation Act, 2017

DATED AT PRETORIA ON THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023.



Gerhard van Deventer

(For the Authority)