

**FSCA Press Release**

**26 September 2023**

**FSCA update on Brite Advisors South Africa (Pty)Ltd**

The Financial Sector Conduct Authority (FSCA) notified the public on 30 May 2022 that it had imposed an administrative penalty of R10 million on Brite Advisors South Africa (Pty) Ltd (Brite) (FSP No 23719). This followed an investigation that revealed that Brite, formerly known as deVere Investments South Africa (Pty) Limited, during the period 22 February 2010 to 1 August 2015, contravened various financial sector laws. In addition, the FSCA decided to withdraw Brite's FSP license, under FSP No. 23719 (Category I and II), in terms of section 9(1) of the Financial Advisory and Intermediary Services Act No. 37 of 2002 (FAIS Act).

The FSCA found that the Brite had contravened various financial sector laws, including:

- Section 65(3) of the Collective Investments Schemes Control Act No 45 of 2002, and Condition 6 of deVere's licensing conditions imposed in terms of section 8(4) of the FAIS Act [promoting and soliciting unapproved collective investments schemes]
- Regulation 3 of the Financial Advisory and Intermediary Services Regulations Government Notice 879 in Government Gazette 25092 of 13 June 2003 [not disclosing fees to clients] and
- Sections 2 [excessive fees], 3A(b)((ii),3()(1)(a)(vii),3(1)(b) [conflict of interest], 7(1)(c)(iii)(bb) [record- keeping] and 21 [waiver of rights] of the General Code of Conduct for Authorised Financial Services Providers and Representatives.

Following the FSCA's final decision on the matter, it duly informed Brite of its right to apply for reconsideration of the decision to the Financial Services Tribunal (the Tribunal). On 26 July 2022, Brite lodged an application for such reconsideration of the decision, together with an application to suspend the penalty and the withdrawal of the

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license, pending the outcome of the reconsideration application. The suspension application was duly granted.

Brite's reconsideration application was limited to the penalty that was imposed. Initially, in terms of the reconsideration application, Brite did not place in dispute the findings made by the FSCA to the effect that Brite contravened several financial sector laws; it restricted its reconsideration application to the penalty.

Prior to the matter being set down for hearing before the Tribunal, the FSCA entered into discussions with Brite regarding the sanctions imposed. Taking into account the representations from Brite, the FSCA agreed to the setting aside of the withdrawal of the licence and the reduction of the administrative penalty from R10 million to R3 665 748. This was mainly because the management team of the entity had been completely replaced and the FSCA is not aware of any transgression of a financial sector law since new management were appointed. In addition, the offensive product was discontinued.

Brite then sought to introduce new evidence and to challenge the merits of the FSCA findings. On 16 August 2022 the Tribunal found that the new points that Brite sought to raise lacked merit and found that the relevant financial sector laws have been contravened by Brite.

The Tribunal duly ordered the setting aside of the withdrawal of Brite's License and the reduction in the penalty to R3 500 000. In addition, the Tribunal ordered Brite to pay the FSCA's costs (including the costs of two counsel).

The judgment confirmed some important principles:

Firstly, the decision confirms the FSCA's view that the representatives of Brite solicited investments in foreign unapproved collective investment schemes when it interacted with its clients in South Africa. These contraventions cannot be cured by interfacing products or entities between the customer and the offending collective investment scheme.

In the present matter one of the risks is clearly illustrated – the clients were exposed to material conflicts of interest in the decision-making process.

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Secondly, notwithstanding a strong opposing view from Brite, the judgment entrenches the principle of vicarious liability - Brite attempted to distance itself from the actions of its CEO. The Tribunal was clear on the point *that “The company is vicariously liable for the acts of its directors. That is what the FSCA had found and what the Applicant had conceded. The surprising submission was that this trite principle does not apply in administrative law. Had that been the position the whole administrative action against the Applicant would have been misplaced.”*

The FSCA welcomes the decision of the Tribunal and the confirmation that Brite had contravened several financial sector laws.

Of significance is the fact that this case highlights the importance of the prohibition against South African financial services providers soliciting investments in foreign collective investment schemes that are not approved by the FSCA.

It also highlights the risk and potential harm when a financial services provider, its shareholders or management place themselves in a material conflict of interest with their clients.

The FSCA will now proceed with the execution of its decision against Brite.

**END**

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