

FSCA Press Release

09 June 2025

FSCA warns contractors, state entities and municipalities to be cautious when accepting performance guarantee policies from unlicensed entities

During recent years the Financial Sector Conduct Authority (FSCA) has received numerous complaints regarding various entities that were issuing performance guarantees (guarantees). Municipalities and government departments (State Entities) require performance guarantees from successful bidders for infrastructure projects. The performance guarantee is requested by the State Entity in terms of the General Code of Contractors, which is issued by the National Treasury. These entities are often licenced under the National Credit Act and/or holds a financial services provider licence from the FSCA.

Based on these complaints, investigations were conducted, the outcome of which has been that numerous entities were found to have been conducting unauthorised insurance business. A licence issued under the National Credit Act, and a financial services provider licence issued by the FSCA, is not sufficient to render the conduct of insurance business lawful.

The FSCA is concerned about the risk posed in such cases because:

- Guarantees falling within the ambit of the Insurance Act and issued by persons who are not insurers, may not be enforceable in law by the client.
- The object of the Insurance Act is to regulate the insurance market for the benefit and protection of policyholders, and to establish a legal framework for the prudential regulation of insurers and the integrity of the insurance market.
- Beneficiaries of such guarantees also do not have the protection afforded by the prudential regulation of licenced insurers.

Executive Committee:

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

For these reasons, the FSCA cautions contractors and State Entities, before accepting performance guarantees, to:

- make certain that these guarantees comply with their requirements;
- obtain independent legal advice as to whether the guarantee offered constitutes insurance business and, if so, to check with the FSCA whether the entity issuing the guarantee is registered as an insurer on the FSCA [Website](#)

The FSCA further points out that there is currently a High Court case pending wherein the applicant seeks a declaratory order to the effect that guarantees described in the application fall under the National Credit Act and do not constitute insurance products under the Insurance Act. The FSCA is opposing the application, which is currently proceeding in the Gauteng Division, Pretoria of the High Court under Case Number: 020740/2023.

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