

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case no.: 2023-009838

In the matter between:

FINANCIAL SECTOR CONDUCT AUTHORITY

Applicant

and

FINANCIAL SERVICES TRIBUNAL

First Respondent

LOUIS HARMS N.O.

Second Respondent

JAY PEMA N.O.

Third Respondent

MICHELLE LE ROUX N.O.

Fourth Respondent

VICEROY RESEARCH PARTNERSHIP LLC

Fifth Respondent

FRASER JOHN PERRING

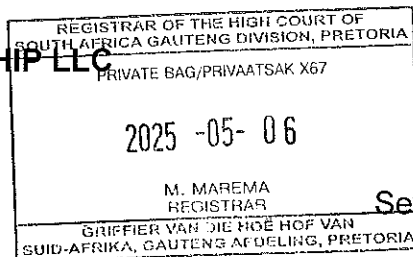
Sixth Respondent

AIDEN LAU

Seventh Respondent

GABRIEL BERNARDE

Eighth Respondent



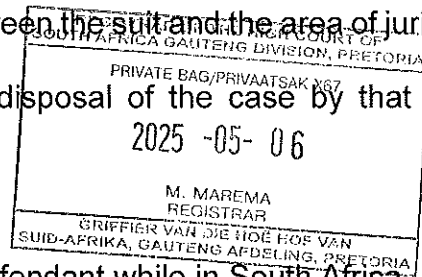
NOTICE IN TERMS OF UNIFORM RULE 16A

BE PLEASED TO TAKE NOTICE THAT the following constitutional issue is raised in this application.

1. The Financial Sector Regulation Act 9 of 2019 (**FSRA**) establishes financial sector regulators. In terms of section 167 of the FSRA, such regulators may impose penalties for, amongst others, contraventions of financial sector laws.

2. In the proceedings in the Financial Services Tribunal (**Tribunal**) giving rise to the present application for judicial review in this Honourable Court, the Tribunal found, by a majority, that such regulators may exercise such penal jurisdiction in relation to foreign *peregrini* only if the following two requirements of the common law for civil proceedings in a South African court against such *peregrini* for orders sounding in money, as restated in *Bid Industrial Holdings (Pty) Ltd v Strang and Others* 2008 (3) SCA 355 (SCA) (**Strang**) paras 56 and 59, are met –

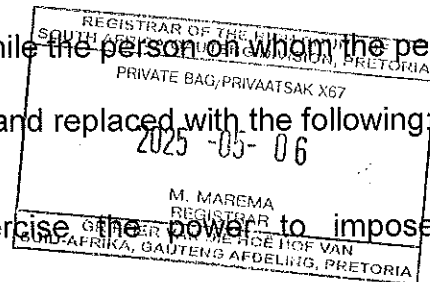
2.1. there is sufficient connection between the suit and the area of jurisdiction of the court concerned so that disposal of the case by that court is appropriate and convenient; and



2.2. the summons is served on the defendant while in South Africa.

3. In the present application the above-mentioned applicant, the Financial Sector Conduct Authority (**FSCA**), which is a financial sector regulator, imposed an administrative penalty on the above-mentioned sixth to eighth respondents, who are foreign *peregrini*. The FSCA did so not by serving on them, while they were in South Africa, the notice of its intention to impose the administrative penalty and the resulting administrative penalty order. Instead, the FSCA sent those documents by email to South African attorneys appointed by them to represent them in their dealings with the FSCA.
4. Although the FSCA's principal argument in the present application is that the majority of the Tribunal erred materially in finding that whether the FSCA has jurisdiction to impose a penalty on a foreign *peregrinus* depends on the question whether a superior court would, under common law, have jurisdiction

in a suit by the FSCA claiming money from the foreign *peregrinus*, the last of the FSCA's alternative arguments is that this Honourable Court should develop the common in terms of section 173 of the Constitution so that, in the specific context of an administrative penalty under section 167(1) of the FSRA, the requirement of service of the 'summons' while the person on whom the penalty is imposed is in South Africa, is abolished and replaced with the following:



"A financial sector regulator may exercise the power to impose an administrative penalty, conferred on it by section 167(1) of the Financial Sector Regulation Act 9 of 2017 in relation to a foreign *peregrinus* if the connection between the conduct of the foreign *peregrinus* and South Africa is sufficiently close to make it appropriate and convenient for the regulatory power to be exercised, in which event the regulator shall notify the person concerned, by any means which is effective in conveying the contents of the notice to them, including electronic or digital means, of its intention to impose the penalty and of their right to make representations as to why it should not do so; and, if the regulator thereafter decides to impose the penalty, the regulator shall serve the penalty order on the person concerned by any means which is effective in conveying the contents of the order to them, including electronic or digital means."

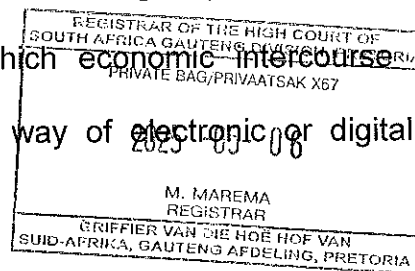
5. The FSCA seeks such development of our common law because:

5.1. the strict application of a requirement of physical service on the person concerned while in South Africa, will mean that the financial sector regulators established by the FSRA will not be able to impose administrative penalties in terms of section 167(1) of the FSRA for

contraventions, however serious, of our financial sector laws committed by foreign *peregrini* who never set foot in South Africa or (in the case of juristic persons) have no presence in South Africa;

5.2. a requirement of physical service on a foreign *peregrinus* while in South Africa may defeat the objects of the FSRA as set out in section 7 thereof; and

5.3. the availability of electronic or digital service in the place of the personal service in South Africa required by *Strang* will enable our financial service regulators to confront the challenges posed by our global economy and the manner in which economic intercourse is now frequently conducted globally by way of electronic or digital media targeting domestic markets.



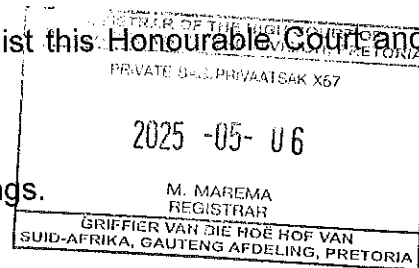
TAKE NOTICE FURTHER that any interested party may, with the written consent of all parties to the proceedings and within 20 days of this notice being published by the Registrar of the above Honourable Court on the notice board designated for that purpose, be admitted herein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE NOTICE FURTHER that the written consent referred to above shall, within 5 days of its having been obtained, be lodged with the Registrar of the above Honourable Court. The *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of the written argument.

TAKE NOTICE FURTHER that the terms and conditions agreed upon may be amended by the above Honourable Court.

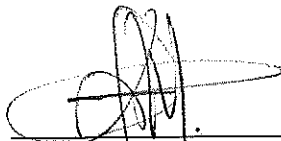
TAKE NOTICE FURTHER that if an interested party is unable to obtain the written consent as contemplated above, they may, within 5 days of the expiry of the 20-day period mentioned above, apply to this Honourable Court to be admitted as *amicus curiae* in the proceedings. Such application shall—

- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
- (b) clearly and succinctly set out the submissions which shall be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist this Honourable Court and are different from those of other parties; and
- (c) be served upon all parties to the proceedings.



TAKE NOTICE FURTHER that any interested party wishing to be admitted as *amicus curiae*, and making application to the above Honourable Court to be so admitted, shall serve a copy of that application upon all parties to these proceedings; any party to these proceedings shall be entitled to oppose such application by filing an answering affidavit within 5 days of the service of the application upon them; and the answering affidavit shall clearly and succinctly set out the grounds of such opposition.

DATED AT **PRETORIA** ON THIS THE 5TH DAY OF MAY 2025.


CHUENE MAHLO INC
Applicant's Attorneys

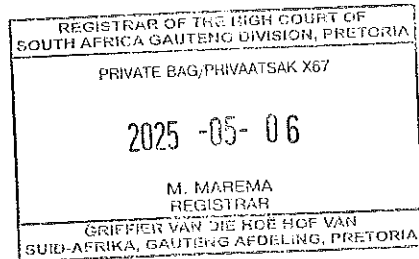
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TO: **THE REGISTRAR OF THE ABOVE COURT
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AND TO: **SNAID & MORRIS INC**
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