

FSCA Press Release

09 April 2026

HIGH COURT CONFIRMS FUSION GUARANTEES (PTY) LTD (“FUSION”) ARE CONDUCTING UNREGISTERED INSURANCE BUSINESS AND INTERDICTS IT FROM ISSUING ITS CONSTRUCTION GUARANTEES

The Financial Sector Conduct Authority (FSCA) welcomes the judgment delivered by the Gauteng Division of the High Court on 23 March 2026, which interdicted Fusion from issuing its construction guarantees and confirmed the FSCA’s longstanding position that registration under the **National Credit Act 34 of 2005** (“NCA”) by a party issuing guarantees does not exclude the application of the **Insurance Act 18 of 2017** (“Insurance Act”) to those guarantees. Whether a guarantee falls under the Insurance Act depends on the facts of each guarantee, measured against the meaning of insurance business under the Act.

In this matter, before the High Court, Gauteng Decision: Pretoria, Fusion, which had been the subject of various investigations by the FSCA (former FSB) for unregistered insurance business, joined forces with a Financial Services Provider (“FSP”) **Elasah Risk Consultants (Pty) Ltd** (“Elasah”), to unsuccessfully seek declaratory relief that the construction guarantees issued by Fusion and described by Elasah do not constitute insurance, but rather amount to money-lending or credit agreements under the National Credit Act.

In dismissing the applications, reasons for which will follow, the Court found that Fusion’s application was an attempt to evade the obligations imposed by the Insurance Act.

Court’s reasons for dismissing Fusion & Elasah applications

The Court dismissed the application brought by Elasah and Fusion seeking declaratory orders that their guarantees do not fall under the Insurance Act. Importantly:

- Elasah was found to lack legal standing, as it only arranges guarantees and does not issue them.
- Fusion's arguments that its guarantees are credit agreements regulated only under the National Credit Act were rejected.

The Court confirmed that the guarantees issued by Fusion exhibit all essential characteristics of a **non-life insurance policy**, including:

- the payment of premiums (regardless of terminology used),

Executive Committee:

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

- an undertaking to meet insurance obligations,
- indemnification of loss suffered by the employer (beneficiary), and
- reliance on the occurrence of an uncertain event—typically contractor default.

Court confirmed the FSCA’s longstanding position and previous precedents

The Court reaffirmed prior decisions in **Becker** (2017) and **Fern Finance** (2022), holding that the repeal of the Short-term Insurance Act did not change the position in **Becker** (2017) where it was made clear that the NCA does not exclude the ambit of the Insurance Act. In respect of **Becker** (2017), the Court noted that Fusion was an applicant in that matter, and not a stranger to the issue determined.

The judgment emphasised that:

“Providers of non-life insurance in the form of construction guarantees are required by law to be licensed under the Insurance Act. This is not merely the ‘official view’; it is, in fact, the law.”

Fusion interdicted from issuing guarantees

In granting the FSCA’s counter-application, the Court issued the following orders:

1. Fusion’s guarantees are declared to be non-life insurance policies.
2. Fusion’s issuing of such guarantees constitutes unlicensed insurance business, in breach of section 5(1) of the Insurance Act.
3. Fusion is interdicted from issuing construction guarantees going forward.
4. The guarantees referenced by Elasah are similarly declared to be insurance policies.
5. Costs were awarded against Fusion and Elasah.

FSCA Statement

This press release must be read together with the FSCA’s Press Release issued on *9 June 2025*. In that notice, the FSCA warned contractors, state entities, and municipalities to exercise caution when accepting guarantee policies from entities that are not licensed. Before accepting any guarantee, the FSCA advised all parties to ensure that the guarantee complies with FSCA requirements. It also urged them to obtain independent legal advice to determine whether the guarantee offered constitutes insurance business. If it does, the FSCA further recommended verifying on its website whether the entity issuing the guarantee is registered as an insurer.

The FSCA welcomes this judgment, which strengthens regulatory certainty and protects policyholders, contractors, municipalities, and the wider public from the risks associated with unlicensed insurance activities.

This ruling:

- safeguards the integrity of South Africa's insurance sector,
- ensures fair treatment of customers, and
- upholds the objectives of the Twin Peaks financial regulatory model.

The FSCA will continue to monitor compliance and take action where entities issue insurance products without proper authorisation.

ENDS

Enquiries: Financial Sector Conduct Authority
Email address: communications@fsca.co.za
Telephone: 0800 203 722