

FSCA Press Release

30 May 2022

FSCA imposes administrative penalties on Brite Advisors South Africa (Pty) Ltd and Mr Nigel Green

The Financial Sector Conduct Authority (FSCA) has imposed administrative penalties of R10 million on Brite Advisors South Africa (Pty) Ltd (FSP No 23719) (Brite) and R2.5 million on Mr Nigel James Green (Mr Green). The investigation revealed that Brite which was formerly known as deVere Investments South Africa (Pty) Limited, and deVere SA Acuma (Pty) Ltd, during the period 22 February 2010 to 1 August 2015 contravened various financial sector laws.

The FSCA after having considered representations from Brite decided to impose an administrative penalty of R10 million in terms of section 167(1)(a) of the Financial Sector Regulation Act No.9 of 2017 (the FSR Act) alternatively, section 6A of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 (FI Act) and withdraws Brite's FSP licence, 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 (the FAIS Act).

The investigation also revealed that Mr Green was a director of Brite from 2008 until 2015 and in his capacity as a director, he caused and/or permitted the contraventions by Brite. This resulted in the FSCA finding that Mr Green contravened / failed to comply with various financial sector laws which impacts on his fitness and propriety.

The FSCA after having considered representations from Mr Green decided to impose an administrative penalty of R2.5 million on Mr Green, in terms of section 167(1) of the FSR Act, alternatively, section 6A of the FI Act, and debar Mr Green for a period of 5 years in terms of section 153 of the FSR Act from rendering financial services, alternatively in terms of section 14A(1) of the FAIS Act.

ENDS

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

Executive Committee:

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

THE FINANCIAL SECTOR CONDUCT AUTHORITY

In the matter between:

Case No: I15032

The Financial Sector Conduct Authority

and

Brite Advisors South Africa (Pty) Ltd

ADMINISTRATIVE PENALTY ORDER

1. The Financial Sector Conduct Authority (“the Authority”) is a juristic person established in terms of section 56 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”).
2. The functions of the Authority are *inter alia* to regulate and supervise the conduct of financial institutions in accordance with the financial sector laws.
3. The Authority found that **Brite Advisors South Africa (Pty) Ltd (Brite)** formerly known as deVere Investments South Africa (Pty) Limited, and deVere SA Acuma (Pty) Ltd, during the period 22 February 2010 to 1 August 2015 contravened:
 - 3.1. section 65(3) of the Collective Investment Schemes Control Act 45 of 2002;
 - 3.2. condition 6 of its licensing conditions imposed in terms of section 8(4) of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (“FAIS Act”);
 - 3.3. regulation 3(a) of the Financial Advisory and Intermediary Services Regulations Published under Government Notice 879 in Government Gazette 25092 of 13 June 2003; and

- 3.4. sections 2, 3A(1)(b)(ii), 3(1)(a)(vii), 3(1)(b), 7(1)(c)(iii)(bb), 9(1)(a)-(d) and 21 of the General Code of Conduct for Authorised Financial Services Providers and Representatives.
4. In terms of section 167(1)(a) of the Financial Sector Regulation Act No.9 of 2017 ("the FSR Act") alternatively, section 6A of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 –
- a. The Authority hereby imposes an administrative penalty of **R10 million** (inclusive of costs) on Brite;
 - b. The penalty is payable within 30 days from the date of this order.
5. Should Brite fail to pay the administrative penalty within the period prescribed, in terms of section 169 of the FSR Act, interest, at the rate prescribed in terms of Prescription Rate Act 55 of 1975 will be payable in respect of any unpaid portion of administrative penalty until it is fully paid.
6. Without providing an exhaustive narration of all the factors that the Authority considered in determining an appropriate penalty for the above contraventions, the Authority took into consideration the need to deter the offending conduct, the degree to which Brite co-operated, the submissions received, the nature, duration, seriousness and extent of the contraventions, previous contraventions or the lack thereof, any loss or damage suffered, and any financial or commercial benefit derived.
7. Failure to comply with this order will result in the provisions of section 170 of the FSRA being invoked, which reads as follows:
- (1) *The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if:-*
 - (a) *the amount payable in terms of the order has not been paid as required by the order; and*
 - (b) *either:- (i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal's decision, has been lodged by the end of the*

period for making such applications; or (ii) if such an application has been made, proceedings on the application have been finally disposed of.

(2) The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.

8. In terms of section 230 of the FSRA a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal ("the Tribunal"). An application for reconsideration must be made —
- a. in accordance with the Tribunal rules; and
 - b. within the time periods set out in section 230(2) of the FSRA.
9. You may contact the secretary of the Tribunal at (012) 741 4302 or per electronic mail at Applications@fstribunal.co.za.

Signed at **PRETORIA** on the 27th day of **May 2022**



Brandon Topham
Divisional Executive

DEBARMENT ORDER

FINANCIAL SECTOR CONDUCT AUTHORITY

DEBARMENT OF MR NIGEL JAMES GREEN

**DEBARMENT ORDER IN TERMS OF SECTION 153 OF THE FINANCIAL SECTOR
REGULATION ACT, NO. 9 OF 2017**

With immediate effect, the Financial Sector Conduct Authority debars NIGEL JAMES GREEN for a period of five (5) years from rendering financial services.

ALTERNATIVELY

**DEBARMENT ORDER IN TERMS OF SECTION 14A(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT NO 37 of 2002**

With immediate effect, the Financial Sector Conduct Authority debars NIGEL JAMES GREEN for a period of five (5) years from rendering financial services as contemplated in the FAIS Act.



Brandon Topham

**Divisional Executive
for the Financial Sector Conduct Authority**

DATE OF NOTICE: 27 May 2022

THE FINANCIAL SECTOR CONDUCT AUTHORITY

In the matter between:

Case No: I15032

The Financial Sector Conduct Authority

and

Nigel James Green

Administrative Penalty Order

1. The Financial Sector Conduct Authority ("the Authority") has imposed administrative sanctions against Mr Nigel James Green ("Mr Green").
2. The administrative sanctions arise out of evidence that Brite contravened the following financial sector laws:
 - 2.1. section 65(3) of the Collective Investment Schemes Control Act 45 of 2002 ("CISCA");
 - 2.2. condition 6 of its licensing conditions, imposed in terms of section 8(4) of the FAIS Act;
 - 2.3. regulation 3(a) of the Financial Advisory and Intermediary Services Regulations Published under Government Notice 879 in Government Gazette 25092 of 13 June 2003 ("FAIS regulations"); and
 - 2.4. sections 2, 3A(1)(b)(ii), 3(1)(a)(vii), 3(1)(b), 7(1)(c)(iii)(bb), 9(1)(a)-(d) and 21 of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("the General Code").
3. Mr Green was a director of Brite from 2008 until 2015. In his capacity as director, he caused and/or permitted the contraventions mentioned in paragraph 2 by deVere SA in contravention of the provisions described in paragraph 4 below.

4. Mr Green contravened / failed to comply with the following financial sector laws:
 - 4.1. section 2(a) of the FI Act in that he failed to observe utmost good faith and/or to exercise proper care and diligence whilst being a director of Brite;
 - 4.2. by causing and/or permitting the contraventions mentioned in paragraph 2 by deVere SA he was in breach of his duty under section 2(a) of the FI Act, this impacted section 8(1A)(a) and 8(1A)(c) of the FAIS Act read with sections 8(1)(a), 8(10)(a)(i) and 8A of the FAIS Act and Part II and section 8 of Part VIII of the Determination of Fit and Proper Requirements for Financial Services Providers 2008 in that he was not fit and proper and did not satisfy (or no longer satisfied): *i)* the personal character qualities of honesty and/or integrity; and/or *ii)* operational ability requirements contemplated in those provisions, as required by these provisions at the time.
5. In terms of section 167(1)(a) of the Financial Sector Regulation Act No.9 of 2017 (the FSR Act) alternatively section 6A of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 –
 - 5.1. The Authority hereby imposes an administrative penalty of **R 2 500 000** (inclusive of costs) on Mr Green.
 - 5.2. The penalty is payable within 30 days from the date of this order.
6. Should Mr Green fail to pay the administrative penalty within the period prescribed, in terms of section 169 of the FSR Act, interest, at the rate prescribed in terms of Prescription Rate Act 55 of 1995 will be payable in respect of any unpaid portion of administrative penalty until it is fully paid.
7. Without providing an exhaustive narration of all the factors that the Authority considered in determining an appropriate penalty for the above contraventions, the Authority took into consideration the need to deter the offending conduct, the degree to which Mr Green co-operated, the

submissions received, the nature, duration, seriousness and extent of the contraventions, previous contraventions or the lack thereof, any loss or damage suffered, and any financial or commercial benefit derived.

8. Failure to comply with this order will result in the provision of section 170 of the FSRA being invoked, which reads as follows:

(1) *The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the order if:-*

(a) *the amount payable in terms of the order has not been paid as required by the order; and*

(b) *either:- (i) no application for reconsideration of the order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal's decision, has been lodged by the end of the period for making such applications; or (ii) if such an application has been made, proceedings on the application have been finally disposed of.*

(2) *The order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court.*

9. In terms of section 230 of the FSR Act a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Financial Services Tribunal ("the Tribunal"). An application for reconsideration must be made –

9.1. in accordance with the Tribunal rules; and

9.2. within the time periods set out in section 230(2) of the FSR Act.

10. You may contact the secretary of the Tribunal at (012) 741 4302 or per electronic mail at Applications@fstribunal.co.za

Signed at **PRETORIA** on the 27th day of May 2022



Brandon Topham
Divisional Executive