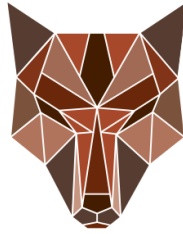


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ATTORNEYS
SWVG INC
Swartz | Weil | Van der Merwe | Greenberg

YOUR REF :
OUR REF : JOSHUA GREENBERG/jd/MG00134
DATE : 20 DECEMBER 2023

**GLENEAGLES B.V.
JOHAN VAN WALBEECKPLEIN 24
CURAÇAO**

**URL's - www.golden-winners.com;
www.playlive.co.za; www.jackpot.co.za;
www.spinza.co.za**

PRIVATE AND CONFIDENTIAL

Dear Sirs,

RE: GLENEAGLES B.V. // ADVICE

1. We refer to the above matter as well your instruction received in regard to the clarification of whether your company (a Curacao licensed company, herein after referred to as **"the client"**) can offer its services to customers in South Africa, with reference to local South African laws and regulations.
2. In South Africa, these services are governed and regulated by the Financial Services Conduct Authority (**"FSCA"**) in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 (**"FAIS Act"**) and the Financial Markets Act 19 of 2012 (**"the Financial Markets Act"**).
3. We shall briefly explain two of the main financial license categories that the client must consider when wanting to commence with its basket of services to onboard potential South African customers (i.e. the trading of commodities, Forex, CFDs, and Cryptocurrencies etc).
4. **Category I:** This license granted by the FSCA (upon application by the client) authorises the respective Financial Services Provider (**"FSP"**) to give advice and/or offer intermediary services in relation to financial products without using their own discretion. In this regard, the instructions on the purchase and/or sale of any financial products have to come from the customer. Most FSP's in South Africa fall under this category.

Chairman : David Swartz

Directors: Rachael Weil Chalmers | Etienne van der Merwe | Joshua Greenberg | Gabriella Hodes

Associates: Lauren Brabant | Jordan Dias



5. The license allows the client to act as an intermediary service provider (“**intermediary**”) between customers and the requisite product supplier. The client shall accordingly provide assistance and support to the customers of the product supplier and the client cannot issue, buy or sell any financial instruments on behalf of any customers.
6. We were recently advised by the FSCA that certain FSPs are currently ‘*piggy- backing*’ on their Category 1 licences to issue contracts for difference (“**CFDs**”) and other over-the-counter derivatives and are therefore potentially trading in OTC derivatives illegally.
7. **Category II:** These are Discretionary FSPs. These FSPs render intermediary services using their discretion on which financial product to buy/dispose of on behalf of their customers e.g. investments or pension funds. This is a highly skilled field as the FSP does not have to consult the customer when investment decisions are made as they use their own discretion to decide where to invest the customer’s funds (by having the appropriate written mandate and power of attorney signed by the customer) but without implementing any bulking.

THE FAIS ACT AND THE FINANCIAL MARKETS ACT

8. The Category 1 licence is issued under the provisions of the FAIS Act and any company seeking authorisation as an OTC derivative provider (“**ODP**”) must apply for a licence which will be issued under the provisions of the Financial Markets Act. The provision of ODP services by an unlicensed ODP or an ODP which does not fall within the transitional provisions can result in harsh penalties for the unlicensed ODP. A contravention of this nature could result in a fine not exceeding R15 million or imprisonment not exceeding 10 years, alternatively both a fine imprisonment.
9. Although this penalty only applies to the unlicensed ODP conducting business as principal (and not to the agent acting on such principal’s behalf), the provision of ODP services by an unlicensed ODP risks the underlying transaction(s) being declared void by a competent court



or tribunal in South Africa. We can provide citations of recent South African case law upon request by yourselves / the client.

10. ODPs have been prescribed as regulated persons in terms of Regulation 5 of the Financial Markets Act Regulations (“**the FMAR**”), published under Government Notice R98 on 09 February 2018 (“**the regulations**”).
11. An “OTC derivative” is described as an unlisted derivative instrument that is executed, whether confirmed or not confirmed, excluding foreign exchange spot contracts and physically settled commodity derivatives.
12. Furthermore, in terms of Regulation 1 of the FMA, an “OTC derivative provider” is defined as a person who as a regular feature of its business and transacting as principal – (a) originates, issues, or sells OTC derivatives; or (b) makes a market in OTC derivatives.
13. The Regulations define an “OTC derivative provider” as a person who as a regular feature of its business and transacting as principal: -
 - 13.1. originates, issues or sells OTC derivatives; or
 - 13.2. makes a market in OTC derivatives.
14. The client could also consider acting as an intermediary for their respective product supplier (we are unsure of the current company structure of the client and at this moment, we are unable to advise the client in this regard).
15. The client is therefore not a market maker, or a product issuer and acts solely as an intermediary in terms of the FAIS Act between the customers and the product supplier, thereby rendering only an intermediary service. In other words, the client does not provide any financial advice,

nor will it buy or sell on behalf of the customers. The client's personnel shall engage with customers via telephone, email or online chat.

16. Regulation 2(1)(a) provides that a person may not act as an ODP or advertise or hold itself out as an ODP, unless authorised by the Authority in terms of section 6(8) of the Financial Markets Act. Therefore, any person who performs these services would be required to obtain an ODP licence in terms of the Financial Markets Act.
17. Accordingly, no market making will be conducted in relation to derivative products offered by the client's intended product supplier . Under these circumstances, the client cannot therefore act as the principal or the counterparty in any of the business transactions. All transactions entered into between the customers being referred to by the client (as agent) and the product supplier will be in the capacity of principal and the client will not be party to such transaction.
18. Any marketing or advertising of derivative products would fall within the definition of an intermediary service on the foundation that it is an act, the result of which an onboarded customer enters into a transaction in respect of a financial product with the intended product supplier.
19. It is our advice that the passing of client trades to an ODP would likewise fall within this definition on the basis that it is an act performed by the client with a view to dealing in, managing or administering a financial product purchased by a customer from a p or in which the client has invested.

FICA COMPLIANCE AND KYC

20. The Financial Intelligence Centre Act No. 38 of 2001 ("**the FICA**") established the Financial Intelligence Centre ("**the FIC**"), an institution which was formed to monitor and identify financial



transactions and the proceeds of crime, to combat money laundering, the proliferation of weapons of mass destruction and the financing of terrorism.

21. The FIC applies to '**accountable institutions**' which are described in Schedule 1 of the FICA.
22. The primary document for confirmation of a customer's identity is the bar-coded South African national identity document or identity card (smart card) or a passport or a valid driving licence. To onboard a customer, the customer will need to provide an approved document containing their name and physical address or stand number and suburb as proof of their residential address.
23. Other documents that may be presented by a potential customer as proof of their residential address is a utility bill for municipal water and lights or a property managing agent statement. A bank statement, municipal councillor's letter, a tax certificate or a recent active lease or rental agreement may also be used.
24. A risk-based approach must be adopted, where the client must gain a proper understanding of how their intended services shall work and how the client could be exposed to, for example, potential money laundering issues and the like, the client must understand fully how to mitigate such risk.
25. Accordingly, the customer's due diligence is necessary in order to know who the client is doing business with, and the client must have proper records of each customer in this instance. The necessary screening when onboarding customers must also be done.
26. Policy documents, procedures, systems and controls must also be developed, documented, maintained and implemented by the client.



27. It must be noted that the FIC is the only entity which is authorised to receive data from all accountable institutions, which each have a mandatory reporting obligation. The client must therefore register with the FIC's goAML software system, which is an online portal that allows accountable institutions to report transactions which are in turn dispatched to the FIC who are notified of the transaction.
28. One of the control measures which the FIC requires, as described above, is the requirement for accountable institutions to report any transaction beyond a specific threshold together with any transaction they deem as "suspicious".

TERMS AND CONDITIONS AND KYC COLLECTION

29. The client must take reasonable measures and adopt a risk-based approach as to the identity of the potential customer by ensuring that the customer submits his/her identity document prior to a trading account being registered and opened. Upon the customer wanting to withdraw funds from his/her trading account, the customer must submit a valid proof of address alternatively a sworn affidavit confirming the customer's residential address prior to any funds being paid out to the client.
30. The client must also establish the source of funds of the customer and conduct enhanced ongoing monitoring of the business relationship.
31. However, the client will not be required to verify the information about the customer's source of wealth and source of funds, but it will have to include this information in its customer profile which will be used as the basis for enhanced ongoing monitoring.
32. If any cash deposits above R25 000.00 are made into the client's bank accounts, these cash deposits **must** be reported to the FIC.



33. The FIC advises that Section 28 of the FICA makes it obligatory for all accountable and reporting institutions to report cash transactions (meaning transactions involving domestic and foreign notes and coins, and travellers' cheques) above the prescribed limit of R25 000.00. An electronic reporting mechanism is provided through the Centre's webpage from where you will be able to acquire secure login credentials. For further information, please visit <https://www.fic.gov.za/Default.aspx>.

CLIENT DISCLOSURE TO THE ODP

34. Does the client have an obligation to disclose to their clients that they are acting as an agent on behalf of the product supplier?
35. A well-known doctrine of South African law relating to this issue is known as the “**undisclosed principal**”. In order for a third party-agent-principal relationship to come into effect, it is not a requirement that the identity of the principal be disclosed as it is accepted that where an agent informs the third party that he/she acts on behalf of a principal whose identity he/she refuses to disclose, and the third party is prepared to contract on that basis, the subsequent contract will be solely between the third party and the unnamed principal.
36. The South African law of contract is based on common law. Common law rights and obligations can expressly be limited by the terms of an agreement between contracting parties. It is therefore important that, when entering into transactions which involve agents and undisclosed principals, the parties must consider their rights and responsibilities cautiously to prevent any difficulties should a dispute arise in the future.

HEDGING

37. As it seems from your instruction that the client only intends providing intermediary services, we are of the opinion that if the client conducted these type of trades (hedging), it would amount to



conducting business of an OTP. Without a Category 2 license, the client would not be able to offer such services.

CONCLUSION

38. In conclusion, we trust this correspondence assists the client in exploring its options to commence business in South Africa with their services of onboarding customers and the like.
39. Our offices are furthermore able to assist the client in the administration of applying for a financial license and the administration of involved in same.
40. We trust you find the above in order and shall make ourselves available to discuss any further issues you may have.

Yours Faithfully,

SWVG INC
PER: JOSHUA GREENBERG
DIRECTOR

[dispatched electronically and therefore unsigned]