



Financial Sector
Conduct Authority

P.O. Box 35655
Menlo Park
0102

Tel. +27 12 428 8000
Toll free. 0800 20 3722
Fax. +27 12 346 6941
Email. info@fsca.co.za
Website. www.fsca.co.za

ENQUIRIES:	Charl Geel	DIALLING NO:	(012) 367 7890
OUR REF:	FSP 43453	E-MAIL:	Charl.geel@fsca.co.za
DATE:	21 November 2023		

Mr. Theuns Vosloo
Theuns Vosloo Financial Advisory Services CC
31 Van Zyl Street
Universitas
Bloemfontein
9301

By email: theuns@vosfinadvice.co.za

Dear Sir

NOTICE OF ADMINISTRATIVE SANCTIONS

1. The Financial Sector Conduct Authority (FSCA) is satisfied that Theuns Vosloo Financial Advisory Services CC (TVFAS), an authorised financial services provider and an accountable institution as envisaged in terms of item 12 of schedule 1 of the FIC Act, has failed to comply with the Financial Intelligence Centre Act 38 of 2001 (FIC Act). Accordingly, the FSCA hereby issues this Administrative Sanctions Notice (the Notice).
2. On 25 and 26 January 2023, and as part of its supervisory duties, the FSCA conducted a virtual inspection in terms of section 45B of the FIC Act on TVFAS. The inspection found that TVFAS is non-compliant with the FIC Act.
3. **Nature of Non-compliance:**

3.1. Risk Management and Compliance Programme (RMCP)

- 3.1.1. In terms of section 42(1) and (2) of the FIC Act, an accountable institution must develop, document, maintain and implement a programme for anti-money laundering and counter-terrorist financing risk management and compliance.

Executive Committee:

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

- 3.1.2. At the time of the inspection, TVFAS provided a RMCP to the FSCA. However, the RMCP was found to be defective as it did not set out the process to comply with various provisions of the FIC Act as required by section 42(2). Furthermore, TVFAS failed to implement the RMCP.
- 3.1.3. Accordingly, TVFAS had failed to develop, document, maintain and implement an RMCP as required in terms of section 42(1) and 42(2) of the FIC Act.

3.2. Customer due diligence (CDD)

- 3.2.1. In terms of section 20A of the FIC Act, an accountable institution may not establish a business relationship or conclude a single transaction with an anonymous client or a client with an apparent false or fictitious name.
- 3.2.2. In terms of section 21(1) of the FIC Act, when an accountable institution engages with prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establish that business relationships and in accordance with its RMCP establish and verify the identity of the client.
- 3.2.3. TVFAS failed to comply with section 21(1) of the FIC Act. At the time of the inspection, TVFAS had not implemented its RMCP and as a result none of its clients have been identified and verified in accordance with the RMCP.

3.3. Targeted financial sanctions (TFS)

- 3.3.1. In terms of section 28A read with section 26A – 26C of the FIC Act, accountable institution is required to scrutinise (screen) client information to determine whether their clients are listed in terms of section 25 of Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (POCDATARA)

and listed by the Security Council of the United Nations contemplated in a notice referred to in section 26A (1) of the FIC Act.

- 3.3.2. TVFAS did not screen its clients when on-boarding them. TVFAS only started to screen its clients when it received the notice of inspections. At the time of the inspection, 30% of the clients sampled were not screened and/or no evidence of screening was submitted to the FSCA.

4. Reasons for imposing the administrative sanctions:

- 4.1. TVFAS non-compliance as detailed above is a serious violation of the provisions of the FIC Act.
 - 4.1.1. By understanding and managing money laundering and terrorist financing risks, as illustrated in RMCPs, accountable institutions not only protect and maintain the integrity of their business but also contribute to the integrity of the South African financial system.
 - 4.1.2. The importance of a risk-based approach is underscored by the fact that this is the very first recommendation of the Financial Action Task Force. Non-compliance with section 42(1) and (2) of the FIC Act is no minor issue. It breaches one of the core principles of the FIC Act, i.e. a risk-based approach to all the compliance elements of the FIC Act.
 - 4.1.3. Customer due diligence is one of the most important provisions of the FIC Act. Understanding who your client is important to identify any suspicious transactions and activity that the client may be engaged in.
 - 4.1.4. The screening of clients is also important because a client may appear on a targeted financial sanction list and accountable institutions are then required to take certain action against that client. If no screening is done, the accountable institution would not know if it has a client on the targeted financial sanction list.
- 4.2. All accountable institutions were given 18 months to implement the amended provisions of the FIC Act. TVFAS has been found to be non-compliant with the provisions of the FIC Act for the failure to develop its RMCP, risk rating of clients and screening of clients against the TFS list since the effective date of the FIC Act Amendment on 02 April 2019. From the sampled client list, the clients were on-boarded from 2007 – 2022.

4.3. The FSCA has no record of a previous non-compliance with any law by TVFAS.

4.4. The sanction to be imposed must be effective, proportionate and dissuasive.

4.5. If it wasn't for the FSCA's inspection, TVFAS would still be non-compliant with the FIC Act.

4.6. The FSCA took into account the representations from TVFAS and specifically that:

4.6.1. TVFAS did not wilfully commit non-compliance, but *bona fide* mistakes occurred;

4.6.2. the RMCP was updated subsequent to the inspection;

4.6.3. TVFAS started to screen its clients against the lists issued by the Security Council of the United Nations;

4.6.4. TVFAS's financial position to pay a possible fine;

4.6.5. TVFAS has improved its application of the risk-based approach and customer due diligence; and

4.6.6. TVFAS does not stand for crime.

5. **Particulars of the administrative sanctions:**

5.1. In terms of section 45C(1), read with sections 45C(3)(c) & (e), and 45C(6)(a) of the FIC Act, the FSCA hereby imposes the following administrative sanctions on TVFAS:

5.1.1. A directive to conduct the following activities on or before 31 December 2023:

5.1.1.1. amend its RMCP to include processes for compliance with various provisions of the FIC Act as required by section 42(2);

5.1.1.2. implement the revised RMCP, including risk rating all its clients in terms of ML and TF risks. This also includes obtaining the necessary customer due diligence information as required by the FIC Act and revised RMCP; and

5.1.1.3. screen all its clients against the TFS lists and retain proof of such screening done.

5.1.2. a financial penalty of R300 000 for non-compliance with section 42(1), 42(2) read with section 21(1) of the FIC Act.

5.1.3. a financial penalty of R100 000 for non-compliance with section 28A read with section 26B of the FIC Act.

5.2. TVFAS is directed to pay the financial penalty of R200 000 on or before **31 December 2023**.

5.3. The payment of the remaining R200 000 of the total financial penalty is hereby suspended for a period of 3 years from the date of this Administrative Sanction, on condition that TVFAS complies with the directive issued in paragraph 5.1.1 above and remains fully compliant with sections 42(1) and (2), section 21(1) and section 28A read with section 26 of the FIC Act.

5.4. Should TVFAS be found to be non-compliant with provisions of the FIC Act detailed on paragraph 5.3. above, within the 3 years suspension period, the suspended penalty of R200 000 becomes immediately payable.

5.5. The financial penalty is payable via electronic fund transfer to:

Account Name	:	NRF – FIC Act Sanctions
Account Holder	:	National Treasury
Account Number	:	80552749
Bank	:	South African Reserve Bank
Code	:	910145
Reference	:	FIC Sanction – Theuns Vosloo Financial Advisory Services CC

5.6. Proof of payment must be submitted to the FSCA at Charl Geel (Charl.geel@fsca.co.za).

6. Right of appeal:

6.1. In terms of section 45D of the FIC Act, read with Regulation 27C of the Regulations promulgated in terms of GN R1595 in GG 24176 of 20 December 2002 as amended, TVFAS may lodge an appeal within 30 days, from the date of receipt of the Notice. The notice of appeal and proof of payment of the mandatory appeal fee must be-:

6.1.1. hand delivered to:

The Secretary: The FIC Act Appeal Board
Byls Bridge Office Park, Building 11
13 Candela Street
Highveld Extension
Centurion

6.1.2. sent via electronic mail to:

The HOD: Office of General Counsel
FSCA
Attention: Mr S Rossouw (Stefanus.Rossouw@fsc.co.za)

6.2. The Secretary of the FIC Act Appeal Board may be contacted at AppealBoardSecretariat@fic.gov.za and telephonically at (012) 641-6243 should TVFAS require further information regarding the appeal process. Details of the appeal process can also be found on the FIC's website at www.fic.gov.za.

7. Failure to comply with the administrative sanctions:

7.1. In terms of section 45(C)(7)(b) of the FIC Act, should TVFAS fail to pay the prescribed financial penalty in accordance with this notice and an appeal has not been lodged within the prescribed period, the FSCA may forthwith file with the clerk or registrar of a competent court a certified copy of this notice, which shall thereupon have the effect of a civil judgement lawfully given in that court in favour of the FSCA.

8. Publication of sanctions:

8.1. The FSCA will make public the decision and the nature of the sanctions imposed in terms of section 45C(11) of the FIC Act.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', written over a horizontal line.

**Unathi Kamlana
Commissioner**