

## **FSCA Imposes Administrative Sanction on Du Toit Advisors CC (FSP 22020)**

The Financial Sector Conduct Authority (FSCA) has imposed an administrative sanction of R473 000 on Du Toit Advisors CC (DTA) for failing to comply with certain provisions of the Financial Intelligence Centre Act, No. 38 of 2001 (FIC Act).

DTA is a licensed Financial Services Provider (FSP) under the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act) and an accountable institution under the FIC Act. The FSCA is responsible for supervising and enforcing compliance of FSPs with the FIC Act. The objective of the FIC Act is, among other things, to help combat money laundering, the financing of terrorism and other related criminal activities. All accountable institutions designated under the FIC Act must comply fully with its requirements.

On 26 January 2023 the FSCA, as part of its ongoing supervisory activities, conducted an inspection on DTA in terms of section 45B of the FIC Act. The inspection revealed DTA to be in breach of the following provisions of the FIC Act:

- Sections 42(1) and (2): Accountable institutions must develop, document, maintain and implement a risk management and compliance programme (RMCP) for anti-money laundering and counter-terrorist financing. The RMCP must set out the manner and the processes by which the institution will mitigate its money laundering and terrorist financing risks as well as comply with the provisions of the FIC Act. Although DTA did develop an RMCP, the RMCP was found to be defective as it failed to set out the processes to comply with various provisions of the FIC Act. In addition, DTA failed to implement the RMCP.
- Section 21(1): When an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution

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**Executive Committee:**

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

must, in the course of concluding that single transaction or establishing that business relationship, establish and verify the identity of the client, in accordance with its RMCP. At the time of the inspection, DTA had not implemented an RMCP and as a result the authority of persons acting on behalf of some of its clients had not been identified and verified accordingly.

- Section 21A: When an accountable institution engages with a prospective client to establish a business relationship as contemplated in section 21, the institution must obtain information to reasonably enable the accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the institution's knowledge of the prospective client. The information must include a description of the nature of the business relationship concerned and the source of the funds that the prospective client expects to use in concluding transactions in the course of the business relationship.

At the time of the inspection DTA did not, in respect of some clients, obtain the relevant information required, including information describing:

- the nature of its business relationship with prospective clients;
  - the intended purpose of these business relationship; and
  - the source of funds which the prospective clients expected to use in concluding transactions in the course of the business relationship.
- Section 21B: When a client is a legal person, trust or similar arrangements between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its RMCP, establish the nature of the client's business and the ownership and control structure of the client. At the time of the inspection, DTA did not:
    - establish the ownership and control structure in respect of some clients; and
    - failed to establish and verify the identity of the beneficial owner of one client.
  - Section 21C: An accountable institution must, in accordance with its RMCP, conduct ongoing due diligence in respect of a business relationship and keep information obtained for the purpose of establishing and verifying the identities of clients pursuant to sections 21, 21A and 21B of the FIC Act, up to date. At the time of the

inspection, DTA failed to evidence conducting of ongoing customer due diligence in respect of some of its clients.

The FSCA views the above as serious violations of the FIC Act. The requirement to understand and mitigate money laundering and terrorist financing risks through the implementation of an RMCP is vital not only because it assists accountable institutions to protect and maintain the integrity of their own businesses but also because it helps contribute to the integrity of the South African financial system as a whole.

Proper customer due diligence of clients is also crucial to help identify and mitigate against suspicious and criminal elements from infiltrating the financial system.

Of the total imposed financial penalty, R223 000 has been suspended for a period of three years, on condition that DTA fully complies with a directive to remediate the deficiencies identified and remains fully compliant with sections 42(1) and (2), section 21(1), section 21A, section 21B and section 21C of the FIC Act during this period.

The sanction imposed by the FSCA serves as a reminder that non-compliance with the FIC Act will not be tolerated. All accountable institutions are urged to continue reviewing and strengthening their anti-money laundering and terrorist financing risk and control environments. Failure to do so will result in firm regulatory action.

**ENDS**

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