

FSCA Imposes Administrative Sanction on Theuns Vosloo Financial Advisory Services CC (FSP 43453)

The Financial Sector Conduct Authority (FSCA) has imposed an administrative sanction of R400 000 on Theuns Vosloo Financial Advisory Services CC (TVFAS) for failing to comply with certain provisions of the Financial Intelligence Centre Act, No. 38 of 2001 (FIC Act).

TVFAS 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 25 and 26 January 2023 the FSCA, as part of its ongoing supervisory activities, conducted an inspection on TVFAS in terms of section 45B of the FIC Act. The inspection revealed TVFAS 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 TVFAS did develop an RMCP, the RMCP was found to be defective as it failed to set out the manner in which it would comply with the FIC Act. Additionally, TVFAS failed to implement the RMCP.

Executive Committee:

- 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 must, in the course of concluding that single transaction or establish that business relationship, establish and verify the identity of the client, in accordance with its RMCP. At the time of the inspection, TVFAS had not implemented an RMCP and as a result none of its clients had been identified and verified accordingly.
- Section 28A read with sections 26A – 26C: Accountable institutions are required to scrutinise client information to determine whether such clients are listed in terms of section 25 of Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33 of 2004 (POCDATARA) and the Targeted Financial Sanctions Lists (TFSL) issued by the United Nations Security Council. If an accountable institution finds that a client is on the TFSL, it must, as soon as possible report that fact to the Financial Intelligence Centre and take steps to freeze the assets of the clients. At the time of the inspection, TVFAS had failed to screen its clients against the TFSL.

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 and screening 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, R200 000 has been suspended for a period of three years, on condition that TVFAS fully complies with a directive to remediate the deficiencies identified and remains fully compliant with sections 42(1) and (2), section 21(1) and section 28A read with section 26 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.

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