

<b>ENQUIRIES:</b>	Stella Nekhaguma	<b>DIALLING NO:</b>	(012) 428 8079
<b>OUR REF:</b>	FSP 10953	<b>E-MAIL:</b>	<a href="mailto:Stella.nekhaguma@fsca.co.za">Stella.nekhaguma@fsca.co.za</a>
<b>DATE:</b>	12 December 2024		

Mr Jan Van Staden  
Director  
ID Capital (Pty) Ltd  
The Vineyards Office Estate  
99 Jip De Jager  
Lambton  
Bellville  
7530

By email: [jan@dalebrookcapital.co.za](mailto:jan@dalebrookcapital.co.za) and [jan@innowealth.co.za](mailto:jan@innowealth.co.za)

Dear Sir

## NOTICE OF ADMINISTRATIVE SANCTION

### 1 NOTICE

- 1.1 The Financial Sector Conduct Authority (FSCA) is satisfied that ID Capital (Pty) Ltd (IDC), an authorised financial services provider (FSP) and an accountable institution as envisaged in terms of item 12 of schedule 1 to the Financial Intelligence Centre Act 38 of 2001 (the FIC Act), has failed to comply with the FIC Act. Accordingly, the FSCA hereby issues this Administrative Sanction Notice (the Notice)
- 1.2 The non-compliance was identified in an inspection conducted by the FSCA on IDC in terms of section 45B of the FIC Act of which the final report was issued on 10 April 2024.

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#### Executive Committee:

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

## **2 NATURE OF ALLEGED NON-COMPLIANCE**

### **2.1 Risk Management and Compliance Programme.**

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

2.1.2 Section 42(2) of the FIC Act states that, “A risk management and compliance programme must-

(a) Enable the accountable institution to-

(i) Identify;

(ii) Assess;

(iii) Monitor;

(iv) Mitigate; and

(v) Manage,

the risk that the provision by the accountable institution of new and existing products or services may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities;”

2.1.3 Section 42(2) of the FIC Act sets out the minimum information an accountable institution must provide for in the risk management and compliance programme (RMCP).

2.1.4 The findings of the aforementioned inspection revealed that IDC contravened sections 42(1) and/ or 42(2) of the FIC Act for the following reasons:

2.1.4.1 Section 42(2)(o) and (p) of the FIC Act states that the RMCP must enable IDC to determine when a transaction or activity is reportable to the Financial Intelligence Centre (FIC) and provide for the processes for reporting such information to the FIC. In terms of section 28A of the FIC Act, accountable institutions must report to the FIC, within the prescribed period, property in its possession or under its control,

property owned or controlled by or on behalf of, or at the direction of:

- Any entity which has committed, or attempted to commit, or facilitated the commission of specified offences as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (POCDATARA);
- A person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in section 26A(1) of the FIC Act.

2.1.4.2 Section 29(1) of the FIC Act requires a person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that–

- (a) the business has received or is about to receive property which is connected to an offence relating to the financing of terrorist and related activities;
- (b) a transaction or series of transactions to which the business is a party–
  - (i) facilitated or is likely to facilitate the transfer of property which is connected to an offence relating to the financing of terrorist and related activities;
  - (ii) relates to an offence relating to the financing of terrorist and related activities; or
  - (iii) relates to the contravention of a prohibition under section 26B; or
- (c) the business has been used or is about to be used in any way to facilitate the commission of an offence relating to the financing of terrorist and related activities, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the FIC the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

2.1.4.3 The RMCP did not provide for the manner in which and processes by which IDC will identify, and report activity and/or transactions as outlined in sections 28A and 29(1) of the FIC Act described above.

2.1.4.4 Section 42(2)(s) of the FIC Act states that the RMCP must provide for any prescribed matter. IDC's RMCP was silent on how it will comply with the provisions of section 26B of the FIC Act relating to prohibitions of persons and entities identified by the Security Council of the United Nations in that IDC's RMCP did not provide processes in relation to the manner in which it will freeze the property related to a sanctioned person and/or entity.

### **3 REASONS FOR IMPOSING THE ADMINISTRATIVE SANCTION**

3.1 IDC's non-compliance as detailed above is a serious violation of the provisions of the FIC Act.

3.1.1 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.

3.1.2 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.

3.1.3 It is important that accountable institutions understand what would constitutes terrorist activity or suspicious activity in order for it to identify it in day-to-day operations and report it to the FIC. The understanding should be shared with all employees of the accountable institution. Furthermore, it's important to highlight the process to report these transactions to the FIC so that there is no uncertainty.

- 3.2 The FSCA has no record of recent non-compliance with any law on the part of IDC.
- 3.3 The sanction to be imposed must be effective, proportionate, and dissuasive.
- 3.4 On 14 November 2024, IDC responded to the notice of intention to sanction which was issued on 17 October 2024. IDC provided the FSCA with an updated copy of the RMCP together with the response letter. Upon assessing the RMCP, we noted the following:
- 3.4.1 The amended RMCP provides for the processes to identify and report terrorist financing transactions; however, the indicators of terrorist financing transaction reports provided in the RMCP are not customised to the IDC nature of business.
- 3.4.2 The amended RMCP does not provide for the manner in which IDC will identify and report terrorist financing activities to the FIC.
- 3.4.3 The amended RMCP provides processes relation to the manner in which IDC will freeze the property related to a sanctioned person and/or entity.
- 3.5 IDC has acknowledged the non-compliances and is committed to take steps to ensure compliance with the FIC Act.
- 3.6 The FSCA noted that IDC has cooperated pre, during, and after the inspection.

#### **4 PARTICULARS OF THE ADMINISTRATIVE SANCTION**

- 4.1 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 sanction on IDC:
- 4.1.1 A directive to amend the RMCP to be compliant with the requirements set out in section 42(2)(o and p) of the FIC Act in respect of the manner in which IDC will identify and report terrorist financing activities and transactions to the FIC. IDC is directed to provide the approved amended RMCP on or before **31 January 2025**.

- 4.1.2 To ensure that the amended RMCP is approved and signed by the highest level of authority.
- 4.1.3 To ensure that all clients are screened against the TFS lists at onboarding and throughout the business relationship in accordance with the approved RMCP and the FIC Act requirements, and that evidence of such screening is retained.
- 4.1.4 A financial penalty of R200 000 for non-compliance with 42(1) and (2)(o), (p) and (s) of the FIC Act.
- 4.2 IDC is directed to pay the R100 000 of the financial penalty on or before **22 January 2025**.
- 4.3 The payment of the remaining R100 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 IDC complies with the directive issued in paragraph 4.1.1 to 4.1.3 above and remains fully compliant with sections 42(1) and (2), and section 28A read with section 26 of the FIC Act.
- 4.4 Should IDC be found to be non-compliant with provisions of the FIC Act detailed on paragraph 4.3. above, within the 3 years suspension period, the suspended penalty of R100 000 becomes immediately payable.
- 4.5 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 – ID Capital (Pty) Ltd
- 4.6 Proof of payment must be submitted to the FSCA, to Mrs Stella Nekhaguma at [stella.nekhaguma@fsca.co.za](mailto:stella.nekhaguma@fsca.co.za).

## **5 RIGHT OF APPEAL**

- 5.1 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, IDC 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-:

5.1.1 hand delivered or send via e-mail to:

The Secretary: The FIC Act Appeal Board

Byls Bridge Office Park, Building 11

13 Candela Street

Highveld Extension

Centurion; or

E-mail: [AppealBoardSecretariat@fic.gov.za](mailto:AppealBoardSecretariat@fic.gov.za)

cc [Frans.Nyundu@fic.gov.za](mailto:Frans.Nyundu@fic.gov.za)

5.1.2 sent via electronic mail to:

The HOD: Office of General Counsel

FSCA

Attention: Mr S Rossouw ([Stefanus.Rossouw@fsca.co.za](mailto:Stefanus.Rossouw@fsca.co.za))

5.2 The Secretary of the FIC Act Appeal Board may be contacted at [AppealBoardSecretariat@fic.gov.za](mailto:AppealBoardSecretariat@fic.gov.za) and telephonically at (012) 641-6243 should IDC 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](http://www.fic.gov.za).

## **6 FAILURE TO COMPLY WITH THE ADMINISTRATIVE SANCTION**

6.1 In terms of section 45(C)(7)(b) of the FIC Act, should IDC 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.

## **7 PUBLICATION OF SANCTION**

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

Yours faithfully



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**Unathi Kamlana**  
**Commissioner**  
**Financial Sector Conduct Authority**