

ENQUIRIES:	Tintswalo Nkuna	DIALLING NO.:	(012) 367 7262
OUR REF:	FSP 5385	E-MAIL:	Tintswalo.Nkuna@fsca.co.za
DATE:	12 December 2024		

Mr Henk Kolver
Henk Kolver Investment Management Services CC
470 Wendy Street
Waterkloof Glen
Pretoria
0181

Per email: henkko@absamail.co.za

NOTICE OF ADMINISTRATIVE SANCTION

1. NOTICE

- 1.1. The Financial Sector Conduct Authority (FSCA) is satisfied that Henk Kolver Investment Management Services CC (HKIMS), an authorised financial services provider 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 emanated from an inspection conducted by the FSCA on HKIMS in terms of section 45B of the FIC Act of which the final report was issued on 01 March 2024.

Executive Committee:

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

2. NATURE OF THE 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 and counter terrorist 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. The findings of the inspection revealed HKIMS contravened sections 42(2) of the FIC Act for the following reasons:

2.1.3.1. The RMCP does not provide for the process of screening clients against the Targeted Financial Sanctions Lists (TFS Lists).

2.1.3.2. HKIMS failed to develop processes to identify and report Terrorist Property Report (TPR) to the Financial Intelligence Centre (FIC) in contravention of section 42(2)(o) and/or section 42(2)(p) of the FIC Act.

Furthermore, HKIMS failed to develop processes to identify and report Suspicious and unusual Transaction Reports (STRs), Suspicious and unusual transaction Activity Reports (SAR), Terrorist Financing Transaction Reports (TFTRs), and Terrorist

Financing Activity Reports (TFARs) to the FIC in contravention of section 42(2)(o) and/or 42(2)(p) of the FIC Act.

- 2.1.3.3. HKIMS's RMCP is 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 HKIMS's RMCP does not provide processes in relation to the manner in which it will freeze the property related to a sanctioned person and/or entity in contravention of section 42(2)(s) of the FIC Act.

2.2. Targeted Financial Sanctions

- 2.2.1. In terms of section 28A read with section 26A – 26C of the FIC Act and Guidance Note 7, an 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.
- 2.2.2. Section 28A(3) of the FIC Act states that an accountable institution must upon-
- (a) publication of a proclamation by the president under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 ; or
 - (b) notice being given by the Director under section 26A(3),
Scrutinise its information concerning clients with whom the accountable institution has business relationships in order to determine whether any such client is a person or entity mentioned in the proclamation by the President or the notice by the Director.
- 2.2.3. The findings of the aforementioned inspection revealed that HKIMS contravened section 28A read with section 26B of the FIC Act in that the accountable institution failed to scrutinise (screen) any of its clients against any sanction lists (UN1267 and the TFS list). It was found that 6 out of 13

sampled client files did not have evidence that the accountable institution screened the clients against TFS lists upon onboarding and on an ongoing basis during the business relationship. Furthermore, 7 out of 13 of the sampled client files were not submitted to the FSCA upon request, as a result the FSCA was unable to determine or establish whether HKIMS screened those clients against TFS lists upon onboarding and on an ongoing basis.

2.2.4. Accordingly, HKIMS failed to obtain and scrutinise information in order to determine that it does not inadvertently have a sanctioned person as a client.

3. REASONS FOR IMPOSING THE ADMINISTRATIVE SANCTIONS

- 3.1. HKIMS's non-compliance as detailed above is a serious violation of the provisions of the FIC Act.
- 3.2. 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.
- 3.3. 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 of which South Africa is a member jurisdiction and is required to comply with its recommendations. 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.
- 3.4. It is important that accountable institutions implement processes to determine when a transaction or activity is reportable to the FIC and outline the processes for reporting information to the FIC in the RMCP. This will enable the accountable institutions to manage their ML/TF/PF risks. 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 is important to highlight the processes these transactions to the FIC so that there is no uncertainty.

- 3.5. The screening of clients is also important in that 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 they have a client on the targeted financial sanction list.
- 3.6. The FSCA has no record of previous non-compliance with any laws.
- 3.7. The FSCA has taken into consideration that HKIMS has cooperated with the FSCA pre, during and after the inspection.
- 3.8. The sanction to be imposed must be effective, proportionate and dissuasive.
- 3.9. Post inspection, HKIMS have in their email to the FSCA dated 12 March 2024 submitted the following for remediation purposes:
- 3.9.1. Evidence of TFS screening in respect of the thirteen (13) sampled client files;
and
 - 3.9.2. Copy of the revised RMCP, which was still deficient in that it still did not outline the processes to determine when a transaction or activity is reportable to the FIC and provide for the processes for reporting such information to the FIC.
- 3.10. The FSCA took into account HKIMS correspondence submitted on 15 November 2024 subsequent to the Notice of intention to Sanction (NIS) that was issued on 17 October 2024. In particular the following documentation and / or information was considered to determine the appropriateness of the sanction:
- 3.10.1. Representations as to why the intended administrative sanction should not be imposed, including HKIMS commitment to comply with the FIC Act.
 - 3.10.2. A revised RMCP which addresses the manner in which HKIMS will screen clients on the TFS list and ensure that they do not inadvertently have a sanctioned person as a client. However, the revised RMCP still does not address the manner in which HKIMS will determine when a transaction or activity is reportable to the FIC and provide for the processes for reporting such information to the FIC.
 - 3.10.3. Evidence of TFS screening in respect of the thirteen (13) sampled client files.

4. PARTICULARS OF THE ADMINISTRATIVE SANCTION

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

4.1.1. A directive to remediate the following non-compliance issues and to provide evidence of remediation to the FSCA on or before **31 January 2025**:

4.1.1.1. Submit a revised RMCP that complies with the provisions of section 42(2)(o), (p), and (s) of the FIC Act;

4.1.1.2. To ensure that the revised RMCP is approved and signed by the highest level of authority;

4.1.1.3. To ensure that it screens all clients at onboarding and during the course of the business relationship against the TFS lists in accordance with the approved RMCP and the requirements of the FIC Act.

4.1.2. A caution not to repeat the conduct which led to the non-compliance detailed in paragraph 2 above.

4.1.3. A financial penalty of R200 000 for non-compliance with sections 42(2)(o),(p), and (s) of the FIC Act.

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

4.2. HKIMS is directed to pay the R150 000.00 financial penalty on or before **22 January 2025**.

4.3. The payment of the remaining R150 000.00 of the total financial penalty is hereby suspended for a period of 3 years from the date of this Administrative Sanction, on

condition that HKIMS complies with the directive issued in paragraph 4.1.1 above and remains fully compliant with sections 42(2)(o) and section 42(2)(p) of the FIC Act.

4.4. Should HKIMS be found to be non-compliant with the provisions of the FIC Act detailed in paragraph 4.3. above, within the 3 years suspension period, the suspended penalty of R150 000.00 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 – Henk Kolver Investment Management Services CC

4.6. Proof of payment must be submitted to the FSCA at Tintswalo Nkuna (Tintswalo.Nkuna@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, HKIMS 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 to:

The Secretary: The FIC Act Appeal Board

Byls Bridge Office Park, Building 11

13 Candela Street

Highveld Extension

Centurion

Sent via electronic mail to:

The Secretary: The FIC Act Appeal Board

AppealBoardSecretariat@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)

5.2. The Secretary of the FIC Act Appeal Board may be contacted at AppealBoardSecretariat@fic.gov.za and telephonically at (012) 641-6243 should HKIMS 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.

6. FAILURE TO COMPLY WITH THE ADMINISTRATIVE SANCTION

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

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

Unathi Kamlana
Commissioner