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| ENQUIRIES: | Michele Fourie | DIALING NO: | (012) 367 7283 |
| OUR REF: | FSP 2046 | E-MAIL: | michele.fourie@fsc.co.za |
| DATE: | 5 June 2024 | | |

Mr MAM Kaffka Genaamd Dengler
Mika Finansiële Dienste (Pty) Ltd
P O Box 14735
Hatfield
Pretoria
0028

By email: miros@mikafin.co.za

Dear Sir

NOTICE OF ADMINISTRATIVE SANCTIONS

1. The Financial Sector Conduct Authority (FSCA) is satisfied that Mika Finansiële Dienste (Pty) Ltd (MFD), 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 Sanction Notice (the Notice).
2. On 30 August 2022, and as part of its supervisory duties, the FSCA conducted a virtual inspection in terms of section 45B of the FIC Act on MFD. The inspection found that MFD 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, MFD provided an RMCP to the FSCA. However, the RMCP was found to be defective as it did not set out the manner in which and the processes by which MFD will comply with various provisions of the FIC Act as required by section 42(2). Furthermore, MFD failed to implement the RMCP.
- 3.1.3. Accordingly, MFD had failed to develop, document, maintain and implement an RMCP as required in terms of sections 42(1) and 42(2) of the FIC Act.
- 3.1.4. In particular, MFD failed at the time of the inspection to provide in its RMCP for
- the manner in which and the processes by which the institution conducts additional due diligence as required in terms of section 42(2)(f) read with sections 21B, 21F and 21G of the FIC Act applicable to foreign politically exposed persons and other high risk clients;
 - the manner in which MFD will examine complex or unusually large transactions with no apparent business or lawful purpose as required in terms of section 42(2)(h) of the FIC Act; and
 - the manner in which MFD will freeze assets of a client identified as a positive match on the targeted financial sanctions list without delay in terms of sections 42(2)(o) and (p) read with sections 28A and 26A to 26C of the FIC Act.
- 3.1.5. The mere inclusion of the provisions in the FIC Act in MFD's RMCP was inadequate as MFD is obligated to provide in the RMCP for the manner in which and the processes by which MFD will comply with its obligations under said provisions in the FIC Act.
- 3.1.6. MFD failed to implement its RMCP as it relates to risk rating its clients. At the time of the inspection, MFD risk rated only 61 of its 341 clients. Although MFD has since confirmed that it had risk rated a further 196 clients, it failed to evidence the risk rating of the remaining 84 clients.

- 3.1.7. MFD maintained the incorrect position that the products offered to clients by MFD results merely in a business relationship between the client and the product provider and does not impact or introduce money laundering and terrorist financing risk to MFD, or at least alleging in its representations that such risk is “negligible”. MFD renders advisory services to its clients in respect of financial products as a regular feature of business, and product providers being part of the value chain of the rendering of financial services to clients, do not absolve MFD of its obligations under the FIC Act as it relates to entering into and maintaining a business relationship with its clients.
- 3.1.8. MFD’s subsequent provisions in its amended RMCP for measures to risk rate high risk clients are not based on a risk-based approach, based on MFD’s application of over-riding high risk ratings based on limited factors and downgrading the risk rating of high-risk clients to low risk in order to fit into MFD’s overall approach of not onboarding / maintaining high risk clients.

3.2. Customer due diligence (CDD)

- 3.2.1. In terms of section 21B of the FIC Act, 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.
- 3.2.2. MFD failed to comply with the above section of the FIC Act. At the time of the inspection, MFD had not implemented its RMCP, and as a result MFD failed to identify and verify the identity of the beneficial owner/s of one of its clients being a legal person.
- 3.2.3. MFD has subsequently submitted a letter from the affected client stating that the client has many shareholders and none of them hold shareholding in excess of 25%. This however only applies to establishing legal ownership, not beneficial ownership and no

evidence of verification of identity of such beneficial owner/s was submitted by MFD either way.

4. Reasons for imposing the administrative sanctions:

4.1. MFD's 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. MFD correctly acknowledged in its representations that *"Section 42(1) and 42(2) of the FIC Act are serious offences in themselves.."*

4.1.3. Customer due diligence is one of the most important provisions of the FIC Act. This is similarly critical in relation to beneficial owners. Understanding who your client is, is important to manage and mitigate the money laundering and terrorist financing risks and to identify any suspicious transactions and activity that the client may be engaged in. Risk rating customers also provides the foundation for applying the appropriate customer due diligence measures. This similarly applies to the identification, verification and additional customer due diligence applicable to beneficial owners.

4.2. All accountable institutions were given 18 months to implement the amended provisions of the FIC Act. MFD has been found to be non-compliant with the provisions of the FIC Act for the failure to develop and implement its RMCP, risk rating of clients and identifying and verifying the identity of beneficial owners. From the sampled client list, the clients were on-boarded from 2008.

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

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

4.5. If it wasn't for the FSCA's inspection, MFD would still be non-compliant with the FIC Act. This was similarly acknowledged in MFD's representations to the extent that *"It is indeed so that had no evaluation been performed by the FSCA, the AI would still be non-compliant with the FIC Act..."*.

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

4.6.1. MFD did not willfully commit non-compliance, but *bona fide* mistakes occurred based on the external guidance sought and implemented by MFD;

4.6.2. the RMCP was updated subsequent to the inspection;

4.6.3. MFD cooperated with the FSCA during and after the inspection;

4.6.4. MFD's financial position to pay a financial penalty.

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 MFD:

5.1.1. A directive to conduct the following activities on or before 30 June 2024:

- amend its RMCP to enable MFD to understand its obligations under the FIC Act, in particular as it relates to its obligations in respect of managing its business relationships with clients regardless of the relationship between the client and product provider/s in terms of section 42(2) of the FIC Act as well as not merely adjusting risk ratings to suite MFD's perceived risk appetite, but to reflect the actual risk posed to MFD by clients.
- Provide evidence of the risk rating of the remaining 84 customers.

5.1.2. a financial penalty of R200 000 for non-compliance with section 42(1) of the FIC Act as it relates to deficiencies in the RMCP.

5.1.3. a financial penalty of R700 000 for non-compliance with section 42(2) of the FIC Act as it relates to the implementation of the RMCP, specifically

the risk rating of clients;

5.1.4. A financial penalty of R200 000 for non-compliance with section 21B of the FIC Act as it relates to identifying and verifying the identity of beneficial owners of clients who are legal persons.

5.2. MFD is directed to pay the financial penalty of R500 000 on or before **30 June 2024**.

5.3. The payment of the remaining R600 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 MFD complies with the directive issued in paragraph 5.1.1 above and remains fully compliant with sections 42(1), 42(2) and section 21B of the FIC Act.

5.4. Should MFD be found to be non-compliant with provisions of the FIC Act detailed in paragraph 5.3. above, within the 3 years suspension period, the suspended penalty of R600 000 becomes immediately payable.

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

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| Account Name | : | NRF – FIC Act Sanctions |
| Account Holder | : | National Treasury Account |
| Number | : | 80552749 |
| Bank | : | South African Reserve Bank |
| Code | : | 910145 |
| Reference | : | FIC Sanction – Mika Finansiele Dienste (Pty) Ltd |

5.6. Proof of payment must be submitted to the FSCA at Michele Fourie (michele.fourie@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, MFD 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@fsca.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 MFD 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 MFD 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**

