

ENQUIRIES:	Tshepo Sebolai	D. DIALING NO.:	012 422 2902
OUR REF:	FSP 13143	E-MAIL:	Reginald.Sebolai@fsca.co.za
DATE:	20/09/2021		

Mr Jyx Jacobs
KFS Finserv (Pty) Ltd
Unit 1, Ground Floor
309 Brooks Street
Menlo Park

By email: jyxi@kestrel.co.za

Dear Mr Jacobs

NOTICE OF ADMINISTRATIVE SANCTION

1. The Financial Sector Conduct Authority (FSCA) is satisfied that KFS Finserv (Pty) Ltd (formerly Kestrel Financial Services (Pty) Ltd), 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. **Nature of Non-compliance:**

2.1. In terms of section 21(1)(a) of the FIC Act, *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 establishing that business relationship and in accordance with its risk management and compliance programme establish and verify the identity of the client.*

2.2. Based on the 94 client files that were sampled, KFS Finserv (Pty) Ltd did not fully comply with section 21(1)(a) of the FIC Act in that the accountable institution established the identity of the clients but failed to verify their identity in accordance with Annexure A to the RMCP, except for 2 clients.

3. Reasons for imposing the administrative sanction

3.1. The non-compliance as detailed above is a serious contravention of the provisions of the FIC Act. The non-compliance relates to customer due diligence which is an important control measure in the combating of money laundering and terrorist financing;

3.2. The FSCA has no record that KFS Finserv (Pty) Ltd previously failed to comply with the provisions of the FIC Act;

3.3. KFS Finserv (Pty) Ltd co-operated with the FSCA during the inspection;

3.4. The FSCA provided all accountable institutions regulated by it, an 18-month grace period to comply with the amendments to the FIC Act; and

3.5. KFS Finserv (Pty) Ltd managed to verify the identity of 2 clients following receipt of the notice of intention to impose a sanction.

4. Other factors

4.1. KFS Finserv (Pty) Ltd provided the FSCA with the following submissions as part of its written representations to the notice of intention to impose a sanction:

4.1.1. The institution only managed to verify the identity of 2 clients. For the most part, they are trying very hard to remediate the non-compliance identified, however they have some difficulties.

4.1.2. Most of the clients are government officials who were approached at their respective places of work, usually through an organised briefing.

4.1.3. The institution has changed the processes regarding customer due diligence.

5. **Particulars of the administrative sanction:**

5.1. In terms of section 45C(1), read with sections 45C(3)(c), and 45C(6)(a) of the FIC Act, the FSCA hereby imposes the following administrative sanction on KFS Finserv (Pty) Ltd:

5.1.1. A directive to verify the identity of the clients whose identity was not verified as at the date of the inspection in accordance with the RMCP and provide the FSCA with proof thereof on or before **28 February 2022**. A list of the affected clients is attached to this notice.

5.2. In terms of section 45C(3)(e) of the FIC Act, the FSCA imposes a financial penalty of R460, 000.00 on KFS Finserv (Pty) Ltd for failure to fully comply with section 21(1)(a) of the FIC Act.

4.2.1. KFS Finserv (Pty) Ltd is directed to pay the financial penalty of R230 000.00 on or before **31 October 2021**.

4.2.2. The payment of the remaining R230 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 KFS Finserv (Pty) Ltd remains fully compliant with section 21(1)(a) of the FIC Act.

5.3. Should KFS Finserv (Pty) Ltd be found to be non-compliant with section 21(1)(a) of the FIC Act within the 3-year suspension period, the suspended penalty R230 000.00 becomes immediately payable.

5.4. 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 – KFS Finserv

5.5. Proof of payment must be submitted to the FSCA at reginald.sebolai@fsca.co.za and copy charl.geel@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, KFS Finserv (Pty) Ltd 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 Appeal Board Secretary may be contacted at AppealBoardSecretariat@fic.gov.za and telephonically at (012) 641-6000 should KFS Finserv (Pty) Ltd 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 sanction

In terms of section 45(C)(7)(b) of the FIC Act, should KFS Finserv (Pty) Ltd 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 sanction:

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



Kedibone Dikokwe

For the Financial Sector Conduct Authority