



Financial Sector
Conduct Authority

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ENQUIRIES:	Mr. Mashuwa Mandavha	D. DIALING NO.:	(012) 422 2975
OUR REF:	Momentum Wealth (Pty) Ltd (FSP 657)	E-MAIL:	mashuwa.mandavha@fsc.co.za
DATE:	07 June 2021		

MR. MFUNDO XOKO
MOMENTUM WEALTH (PTY) LTD
268 WEST AVENUE
CENTURION
0046

Per email: mfundo.xoko@momentum.co.za

Dear Mr Xoko

NOTICE OF ADMINISTRATIVE SANCTION

1. The Financial Sector Conduct Authority (FSCA) is satisfied on available facts and information, in particular the factors mentioned in section 45C(2) of the FIC Act and representations received, that Momentum Wealth (Pty) Ltd ("Wealth"), an Accountable Institution as envisaged in terms of item 5 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 The FIC Act requires an Accountable Institution to apply a risk-based approach in accordance with its Risk Management and Compliance Programme ("RMCP") when carrying out customer due diligence (CDD) measures (Section 21 of the FIC Act read in conjunction with section 42 of the Act and Guidance Note 7 issued by the Financial Intelligence Centre (Centre) on 2 October 2017). The risk-based approach guides Accountable Institutions in applying enhanced or simplified customer due diligence as required by section 42(2)(m) of the FIC Act. Additional due diligence has to be conducted on inter alia trusts (section 21B(4)).

Transitional Management Committee:

U Kamlana (Commissioner) A Ludin (Deputy Commissioner) DP Tshidi LP Kekana OB Makhubela K Gibson

- 2.1.1** Wealth contravened section 21B(4)(e) of the FIC Act read with Part II of Guidance Note 7 in that it failed to risk rate, identify and verify a beneficiary in accordance with that risk rating of at least one trust.
- 2.2** An Accountable Institution is required to report to the Centre all cash transactions exceeding R24 999.99 received by a client or paid to a client as soon as possible but not later than 2 days after becoming aware of it in terms of section 28 of the FIC Act read with regulations 22B, 22C and 24(4) of the Money Laundering and Terrorist Financing Control Regulations, 2002 (the Regulations).
- 2.2.1** Wealth contravened section 28 of the FIC Act read with regulations 22B, 22C and 24(4) of the Regulations for the following reason: -
- 2.2.1.1** Wealth failed to report 301 cash transactions above the prescribed threshold to the Centre within the prescribed period. The cash transactions that were not reported amount to approximately R24 467 635.09 and date back to 01 December 2010.

3. Reasons for Imposing the administrative sanctions

3.1. The nature, duration, seriousness and extent of the non-compliance

- 3.1.1.** The obligation to risk rate clients and to conduct CDD in accordance with the risk rating of clients became effective and enforceable on 2 October 2017. The FSCA, as a means to assist the transition to compliance with the obligations that were introduced by the FIC Amendment Act, permitted a transitional period whereby the sanctioning of non-compliance in respect of these provisions of the FIC Act was deferred until 1 April 2019. By 9 March 2020, when the FSCA conducted the inspection, Wealth still did not comply with the provisions of the FIC Act to risk rate clients and conduct CDD in terms of the RMCP of at least one trust.
- 3.1.2.** The failure to risk rate clients and conduct customer identification and verification in accordance with the RMCP of at least one trust is a serious contravention. By not applying a risk-based approach to identifying and verifying clients will lead to ineffective measures to prevent or combat money laundering and terrorist financing commensurate with the risks identified.

- 3.1.3. Conducting CDD is important as it is the basis for identifying potential suspicious and/or unusual transactions and trusts are particularly vulnerable to be abused by criminals for money laundering.
- 3.1.4. The failure to submit cash threshold reports (CTRs) to the Centre is a serious contravention. CTRs are one of the factors the Centre takes into account to identify proceeds of crime or potential money laundering or terrorist financing. The failure to submit CTRs would therefore lead to an ineffective system to identify and combat money laundering and the financing of terrorism.
- 3.1.5. Although there was not a total failure to submit CTRs to the Centre, the failure to identify and report all cash threshold transactions is still substantial in that 301 transactions with a total value of R24 467 635.09 were not submitted.
- 3.1.6. The failure to submit CTRs started in December 2010 and was only identified by Wealth during 2017. In 2018 the Momentum Metropolitan Group started a formal investigation into this failure. The first time Wealth reported the failure to the FSCA was during the inspection in March 2020. The duration of non-compliance was for an extremely long period of time.
- 3.1.7. The fact that Wealth did not conduct any audit on their cash threshold reporting system from 2010 to 2017 points to a lack of governance and accountability by the management of Wealth.
- 3.1.8. In coming to its decision, the FSCA also took into account the Notice published by it on 25 April 2019 and Public Compliance Communication 46 issued by the Centre on 30 March 2020 on the implementation of the amendments to the FIC Act.

3.2. Remedial steps taken by Wealth

- 3.2.1. Wealth has taken steps to risk rate beneficiaries and to freeze the accounts where it could not identify and verify the beneficiary.
- 3.2.2. Wealth conducted a detailed audit on their cash threshold reporting system.
- 3.2.3. Subsequent to the inspection, Wealth submitted reports to the Centre and FSCA regarding the reporting failure.
- 3.2.4. Wealth indicates that they have implemented measures to prevent a reoccurrence of the failure to report cash threshold transactions.

3.3. Other factors

- 3.3.1. FSCA has no record of a previous non-compliance with any law by Wealth.

3.3.2. During the inspection, Wealth was transparent and forthcoming about the historic inadequacies of its CTR difficulties.

4. Particulars of the administrative sanction:

4.1. In terms of section 45C(1), read with section 45C(3)(e) of the FIC Act, the FSCA imposes the following financial penalties on Wealth:

4.1.1. A financial penalty of R100 000 for non-compliance with section 21B(4) of the FIC Act. In terms of section 45C(4)(c) of the FIC Act, this penalty is suspended for three years on condition that Wealth remains compliant with the obligations in terms of section 21B(4) during the period of suspension.

4.1.2. A financial penalty of R4 800 000 for non-compliance with section 28 of the FIC Act read with regulations 22B, 22C and 24(4) of the Regulations.

4.2. Wealth is directed to pay the financial penalty of **R4 800 000** on or before **06 July 2021**.

4.3. 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 – Momentum Wealth/2020

4.4. Proof of payment must be submitted to the FSCA at mashuwa.mandavha@fsc.co.za and copy charl.geel@fsc.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, Wealth 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

5.1.2. sent via electronic mail to:

The HOD: Office of General Counsel
FSCA

Attention: Stefaus Rossouw(Stefanus.Rossouw@fsca.co.za) or Charl Geel (Charl.geel@fsca.co.za)

5.2. Mr Gcinikhaya Dudeni, Secretary of the FIC Act Appeal Board, may be contacted at Gcinikhaya.dudeni@fic.gov.za and telephonically at (012) 641-6241 / 082 437 6371 should Wealth 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 Wealth 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



K.S. DIKOKWE

FOR THE FINANCIAL SECTOR CONDUCT AUTHORITY