

ENQUIRIES:	Mpho Radebe	D. DIALLING NO.:	(012) 422 2848
OUR REF:	FSP 48045	E-MAIL:	mpho.radebe@fsca.co.za
DATE:	1 February 2022		

Mr C Lakhani
Ravensberg Advisory and Consulting Services (Pty) Ltd
3 Ravensberg Avenue
Newlands
7700
E-mail: chirag@ravensberg.co.za

Dear Mr Lakhani

NOTICE OF ADMINISTRATIVE SANCTION

1. The Financial Sector Conduct Authority (FSCA) is satisfied that Ravensberg Advisory and Consulting Services (Pty) Ltd (Ravensberg), an authorised financial services provider and an accountable institution as envisaged in terms of item 12 of schedule 1 of the Financial Intelligence Centre Act 38 of 2001 (FIC Act), has failed to comply with the FIC Act. Accordingly, the FSCA hereby issues this Administrative Sanction Notice (the Notice).
2. On 06 November 2020, and as part of its supervisory duties, the FSCA conducted a desk-based and virtual inspection in respect of Ravensberg in terms of section 45B of the FIC Act to determine its level of compliance with the FIC Act.

3. NATURE OF NON-COMPLIANCE

Risk Management

3.1 Nature of the non-compliance and section of the FIC Act

Section 42(1) of the FIC Act requires Ravensberg to develop, document, maintain and implement its Risk Management and Compliance Programme (RMCP). Section

Executive Committee:

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

42(2) of the FIC Act stipulates that the RMCP must enable Ravensberg to identify, assess, monitor, mitigate and manage the risk that the provision by Ravensberg of products or services may involve or facilitate ML/TF. Section 21(1) of the FIC Act states that 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 the business relationship and in accordance with its RMCP establish and verify the identity of the client.

3.1.1 At the time of the inspection, Ravensberg contravened sections 42(1), 42(2) and/or 21(1) of the FIC Act in that it failed to implement its RMCP by failing to:

- risk assess its clients in terms of its risk calculator;
- the risk rating allocated to its clients was not informed by the identified and assessed ML/TF risks; and
- the customer due diligence was not conducted in terms of the risk rating as set out in the RMCP.

3.1.2 The FSCA reviewed a sample of 60 client files and all 60 clients were not risk rated (100% failure) in line with the RMCP submitted on 8 November 2020.

3.1.3 In addition, the risk rating of clients that are legal persons did not take into account the identity and risks of the beneficial owner.

3.1.4 The annexure D of the RMCP submitted on 8 November 2020 stipulated that “The customer making deposit of funds with a request for immediate transfer elsewhere” is an indicator of a suspicious transaction. Subsequent to the inspection the FSCA pointed out that Ravensberg did not follow its process outlined in its RMCP as the FSCA identified transactions that met the categorisation of suspicious transactions indicators included in the RMCP. Ravensberg subsequently reported the transactions to the FIC on 25 May 2021. Ravensberg, therefore, had failed to implement this requirement of its RMCP.

RMCP

3.2 Nature of the non-compliance and section of the FIC Act

Section 42(2)(f), (m) and (o) of the FIC Act requires that the RMCP to provide for:

- the manner in which and the processes by which the institution conducts additional due diligence measures in respect of legal persons, trusts and partnerships;
- the manner in which and the processes by which enhanced due diligence is conducted for higher-risk business relationships and when simplified customer due diligence might be permitted in the institution; and
- enable the institution to determine when a transaction or activity is reportable to the FIC under Part 3 of the FIC Act.

3.2.1 At the time of the inspection, Ravensberg contravened sections 42(2)(f), (m) and (o) of the FIC Act in that the accountable institution's RMCP submitted on 8 November 2020 did not:

- provide for the manner in which and the processes by which the institution conducts additional due diligence measures in respect of legal persons in terms of section 21B(2). The FSCA has noted that the accountable institution subsequently submitted updated RMCPs on 26 May 2021 and 31 August 2021 respectively, however the RMCPs did not provide for the manner in which Ravensberg will verify the identity of its legal person clients;
- provide for the manner in which and the processes by which enhanced due diligence is conducted for higher risk business relationships and when simplified customer due diligence might be permitted by the institution. The updated RMCPs submitted on 26 May 2021 and 31 August 2021 respectively did not explain what simplified/standard customer due diligence and enhanced due diligence entailed; and
- provide for the manner in which it will determine when a transaction or activity is reportable to the FIC in terms of section 28A(1)(c) of the FIC Act. Furthermore, the RMCP submitted on 8 November 2020 had not provided for the manner in which Ravensberg will scrutinise the clients' accounts in order to determine when the transactions or the clients' activities are reportable to the FIC.

Cash transactions above prescribed limit

3.3 Nature of non-compliance and section of the FIC Act

Section 28(b) of the FIC Act read with regulations 22B, 22C, 24 of the Money Laundering and Terrorist Financing Control Regulations (the Regulations) provides that an accountable institution must as soon as possible but not later than two days, report to the FIC the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of R24 999,99 is received by the accountable institution or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

3.3.1 At the time of the inspection, Ravensberg contravened section 28(b) of the FIC Act read with the Regulations 22B, 22C and 24 in that on 28 March 2019 a cash amount of R391,500 was deposited into a client's CCM account. Ravensberg did not file a cash threshold report in this regard to the FIC. The FSCA has noted that Ravensberg subsequently reported this transaction to the FIC on 18 August 2021.

Obligation to keep transaction records

3.4 Nature of non-compliance and section of the FIC Act

Section 22A of the FIC Act requires an accountable institution to keep a record of every transaction, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, that are reasonably necessary to enable that transaction to be readily reconstructed.

Records must reflect the following information:

- (a) the amount involved and the currency in which it was denominated;
- (b) the date on which the transaction was concluded;
- (c) the parties to the transaction;
- (d) the nature of the transaction;
- (e) business correspondence; and

- (f) if an accountable institution provides account facilities to its clients, the identifying particulars of all accounts and the account files at the accountable institution that are related to the transaction.

3.4.1 Ravensberg contravened section 22A(e) of the FIC Act in that when Ravensberg was requested to submit the clients' instruction that enabled the movement of funds within the sampled CCM accounts, same was not provided. The FSCA has noted that Ravensberg subsequently requested clients to confirm that verbal instructions were given. The appended annexure has a list of the transactions concerned.

4. OTHER RELEVANT FACTORS

- 4.1 The non-compliance findings are serious contraventions of the FIC Act.
- 4.2 All accountable institutions were given 18 months to implement the amended provisions of the FIC Act which includes the non-compliance identified by the FSCA.
- 4.3 Ravensberg has cooperated with the FSCA during and post the inspection. This is demonstrated by the few iterations of the RMCP submitted by Ravensberg subsequent to the inspection being conducted.
- 4.4 Ravensburg submitted its representations, and these have been duly considered by the FSCA.
- 4.5 The FSCA has no record of a previous non-compliance with any law by Ravensberg, other than the report issued by the FIC on 08 July 2020 (which was provided to the FSCA by Ravensberg) which directed Ravensberg to confirm implementation of the remedial actions by providing its amended RMCP by 7 August 2020. The report from the FIC identified the same issues in Ravensberg's RMCP as the FSCA in that Ravensberg must amend its RMCP as provided for in section 42(2) of the FIC Act inter alia, by including processes and procedures to conduct customer due diligence as specified in Part 1 of Chapter 3 of the FIC Act, processes and procedures to keep records as specified in Part 2 of Chapter 3 of the FIC Act, processes and procedures to comply with the reporting duties as specified in Part 3 of Chapter 3 of the FIC Act.
- 4.6 The responses received on 26 May 2021 and 31 August 2021 respectively demonstrated that the findings as set out in paragraph 3.1.1, 3.3.1 and 3.4.1 to be remediated.

- 4.7 Based on the above, the FSCA is satisfied that the revised RMCP submitted on 31 August 2021 has materially improved and deemed it appropriate to partially suspend the financial penalty outlined in the notice of intention to sanction.

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 Ravensberg:

5.1.1 A financial penalty of R550 000 for non-compliance with sections 42(1), 42(2)(a) and/or 21(1) of the FIC Act, read with Guidance Note 7 issued by the FIC.

5.1.2 A financial penalty of R30 000 for non-compliance with sections 42(2)(f), (m) and (o) of the FIC Act, read with Guidance Note 7 issued by the FIC.

5.1.3 A financial penalty of R80 000 for non-compliance with section 28(b) of the FIC Act, read with regulations 22B, 22C and 24 of the Money Laundering and Terrorist Financing Control Regulations (the Regulations).

5.1.4 A financial penalty of R120 000 for non-compliance with section 22A of the FIC Act.

- 5.2. R300 000 of the financial penalty of R780 000 is suspended for 3 years on condition that Ravensberg is not found to be non-compliant with sections 42(1), 42(2), 28 and 22A of the FIC Act during the period of suspension.

- 5.3. The balance of the financial penalty of R480 000 is payable via electronic fund transfer on or before 28 February 2022 to:

Account Name	:	NRF – FIC Act Sanctions
Account Holder	:	National Treasury
Account Number	:	80552749
Bank	:	South African Reserve Bank
Code	:	900145

Reference : FSCA Sanction – Ravensberg

- 5.4. Proof of payment must be submitted to the FSCA at mpho.radebe@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, Ravensberg 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 sent via electronic mail to:

Mr G Dudeni (Gcinikhaya.Dudeni@fic.gov.za)
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 Mr G Dudeni, Secretary of the FIC Act Appeal Board, may be contacted at Gcinikhaya.Dudeni@fic.gov.za and telephonically at (012) 641-6243 should Ravensberg 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:

- 7.1 In terms of section 45(C)(7)(b) of the FIC Act, should Ravensberg 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:

- 8.1 The FSCA is of the view that there are no exceptional circumstances present that justify the preservation of the confidentiality of its decision and 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