



Financial Sector
Conduct Authority

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ENQUIRIES:	Michele Fourie	DIALLING NO:	(012) 367 7283
OUR REF:	FSP 44568	E-MAIL:	michele.fourie@fsc.co.za
DATE:	27 March 2024		

Mrs D Katemauswa
TANA Africa Capital Managers (Pty) Ltd
Suite 164, Private Bag X31
Saxonwold
2132

By email: daria.katemauswa@tana-africa.com

Dear Madam

NOTICE OF ADMINISTRATIVE SANCTIONS

1. The Financial Sector Conduct Authority (FSCA) is satisfied that TANA Africa Capital Managers (Pty) Ltd (TACM), 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 17 February 2023, and as part of its supervisory duties, the FSCA conducted a virtual inspection in terms of section 45B of the FIC Act on TACM. The inspection found that TACM 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, TACM provided a RMCP to the FSCA. However, the RMCP was found to be defective as it did not set out the manner in which and the process by which TACM will comply with various provisions of the FIC Act as required by section 42(2). Furthermore, TACM failed to implement the RMCP.
- 3.1.3. Accordingly, TACM had failed to develop, document, maintain and implement an RMCP as required in terms of section 42(1) and 42(2) of the FIC Act.

3.2. Customer due diligence (CDD)

- 3.2.1. In terms of section 20A of the FIC Act, an accountable institution may not establish a business relationship or conclude a single transaction with an anonymous client or a client with an apparent false or fictitious name.
- 3.2.2. In terms of section 21(1) of the FIC Act, when an accountable institution engages with 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 establish that business relationships and in accordance with its RMCP establish and verify the identity of the client.
- 3.2.3. In terms of section 21A of the FIC Act, when an accountable institution engages with a prospective client to establish a business relationship as contemplated in section 21, the institution must, in addition to the steps required under section 21 and in accordance with its RMCP, obtain information to reasonably enable to accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the institution's knowledge of that prospective client, including information describing the nature of the business relationship concerned, the intended purpose of the business relationship

concerned and the source of the funds which that prospective client expects to use in concluding transactions in the course of the business relationship concerned.

- 3.2.4. In terms of section 21B of the FIC Act, when a client is a legal person, trust or similar arrangements between nature 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.
- 3.2.5. In terms of section 21C of the FIC Act, an accountable institution must, in accordance with its RMCP, conduct ongoing due diligence in respect of a business relationship, which includes monitoring of transactions undertaken throughout the course of the relationship and keep information obtained for the purpose of establishing and verifying the identities of clients pursuant to sections 21, 21A and 21B of this Act, up to date.
- 3.2.6. TACM failed to comply with the above sections of the FIC Act. At the time of the inspection, TACM had not implemented its RMCP and as a result its client has not been identified and verified in accordance with the RMCP.

3.3. Targeted financial sanctions (TFS)

- 3.3.1. In terms of section 28A read with section 26A – 26C of the FIC Act, an accountable institution is required to scrutinise (screen) client information to determine whether their clients are listed in terms of section 25 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (POCDATARA)

and listed by the United Nations Security Council, as contemplated in the notice referred to in section 26A (1) of the FIC Act.

3.3.2. TACM did not screen its client when on-boarding them. TACM only started to screen its client after the inspection and following the issuing of the notice of intention to sanction.

4. Reasons for imposing the administrative sanctions:

4.1. TACM'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.

4.1.3. Customer due diligence is one of the most important provisions of the FIC Act. Understanding who your client 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.

4.1.4. The screening of clients is also important because 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 it had a client on the targeted financial sanction list.

4.2. All accountable institutions were given 18 months to implement the amended provisions of the FIC Act. TACM has been found to be non-compliant with the provisions of the FIC Act for the failure to develop its RMCP, risk rating of clients and screening of clients against the TFS list since the effective date of the FIC Act Amendment on 02 April 2019. From the sampled client list, the client was on-boarded from 2011.

- 4.3. The FSCA has no record of a previous non-compliance with any law by TACM.
- 4.4. The sanction to be imposed must be effective, proportionate and dissuasive.
- 4.5. If it wasn't for the FSCA's inspection, TACM would still be non-compliant with the FIC Act.
- 4.6. The FSCA took into account the representations from TACM and specifically that:
 - 4.6.1. TACM did not willfully commit non-compliance, but *bona fide* mistakes occurred based on the institution's incorrect interpretation of "client", "business relationship" and "transaction";
 - 4.6.2. the RMCP was updated subsequent to the inspection;
 - 4.6.3. TACM started to screen its client against the lists issued by the United Nations Security Council;
 - 4.6.4. TACM cooperated with the FSCA during and after the inspection.

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 TACM:
 - 5.1.1. A directive to conduct the following activities on or before 30 April 2024:
 - 5.1.1.1. amend its RMCP to include processes for compliance with various provisions of the FIC Act as required by section 42(2), in particular sections 42(2)(a), 42(2)(f), 42(2)(g), 42(2)(j), 42(2)(m), 42(2)(o) and (p).
 - 5.1.2. a financial penalty of R1 million for non-compliance with section 42(1), 42(2) read with section 21(1) of the FIC Act.
 - 5.1.3. a financial penalty of R1,4 million for non-compliance with sections 20A, 21, 21A to 21C of the FIC Act;

5.1.4. A financial penalty of R500 000 for non-compliance with section 28A read with section 26B of the FIC Act.

5.2. TACM is directed to pay the financial penalty of R1,9 million on or before **30 April 2024**.

5.3. The payment of the remaining R1 million of the total financial penalty is hereby suspended for a period of 3 years from the date of this Administrative Sanction, on condition that TACM complies with the directive issued in paragraph 5.1.1 above and remains fully compliant with sections 42(1) and (2), section 21(1), sections 21A to 21C and section 28A read with section 26 of the FIC Act.

5.4. Should TACM be found to be non-compliant with provisions of the FIC Act detailed on paragraph 5.3. above, within the 3 years suspension period, the suspended penalty of R1 million becomes immediately payable.

5.5. 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 – Tana Africa Capital Managers (Pty) Ltd

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