

FSCA Press Release

21 November 2024

FSCA imposes administrative sanctions on Sunlight Financial Services (Pty) Ltd (FSP 32190) and Tana Africa Capital Managers (Pty) Ltd (FSP 44568)

The Financial Sector Conduct Authority (FSCA) has imposed administrative sanctions on Sunlight Financial Services (Pty) Ltd (Sunlight) and Tana Africa Capital Managers (Pty) Ltd (Tana) for failing to comply with certain provisions of the Financial Intelligence Centre Act, No. 38 of 2001 (FIC Act).

Sunlight and Tana are both licensed Financial Services Providers (FSP) under the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act) and accountable institutions under the FIC Act. The FSCA is responsible for supervising and enforcing compliance of FSPs with the FIC Act. The objective of the FIC Act is, among other things, to help combat money laundering, the financing of terrorism and other related criminal activities. All accountable institutions designated under the FIC Act must comply fully with its requirements.

The FSCA conducted inspections on Sunlight and Tana as part of its ongoing supervisory activities in terms of section 45B of the FIC Act. The inspections revealed both institutions to be in breach of the following provisions of the FIC Act:

- **Sections 42(1) and (2) read with section 21(1):** Accountable institutions must develop, document, maintain, and implement a risk management and compliance programme (RMCP) for anti-money laundering and counter-terrorist financing. The RMCPs of both institutions were found to be deficient and failed to outline how the respective institution would comply with various FIC Act requirements. Additionally, neither institution could demonstrate that its RMCP was implemented effectively.

Executive Committee:

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

- **Section 28A read with sections 26A – 26C:** Both institutions failed to scrutinise client information against the United Nations Security Council Targeted Financial Sanctions Lists (TFSL) published under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33 of 2004 (POCDATARA Act), as required.
- **Section 43:** Sunlight also failed to provide the requisite ongoing training to its employees to ensure compliance with the FIC Act and its RMCP.

In light of the above contraventions and based on an assessment of various factors applicable to each institution respectively, the FSCA imposed the following administrative sanctions:

- Sunlight was fined R600 000, of which R300 000 was conditionally suspended for three years; and
- Tana was fined R2.9 million, of which R1 million was conditionally suspended for three years.

Both institutions took the FSCA's decisions on appeal to the FIC Act Appeal Board (Appeal Board).

Sunlight's appeal was subsequently settled after it reached an agreement with the FSCA to pay the administrative penalty in monthly instalments. The FSCA acknowledges Sunlight's commitment to remediating the identified compliance deficiencies.

Tana proceeded with its appeal, ultimately challenging only the severity of the imposed penalty. On 6 November 2024, the Appeal Board decided in favour of the FSCA and upheld the penalty amount.

Accountable institutions are urged to take note of the following key points emphasised by the Appeal Board in respect of their compliance obligations under the FIC Act:

- The **FIC Act's objectives** extend beyond South Africa, reinforcing the importance of accountable institutions identifying and mitigating the potential for exposure to unlawful financial activities in foreign jurisdictions that may pose an increased risk.

- **Administrative sanctions** serve both punitive and deterrent purposes and are necessary even in cases where the perceived compliance risks are minimal.
- **Customer Due Diligence requirements** apply to all clients, regardless of the accountable institution's familiarity with the client. The fact that an accountable institution only has a single client does not necessarily minimise its risk exposure or absolve it from having to conduct the requisite client due diligence.
- **Corrective actions taken post-inspection** do not reduce the need for sanctions, as various Appeal Board judgments have confirmed that remediation efforts *ex post facto* do not offset compliance failures or detract from the broader purpose of imposing administrative sanctions for non-compliance.
- **Client screening against sanctions lists** is mandatory to prevent dealing with potentially illicit actors.

Further to the above, the Appeal Board addressed an argument put forward by Tana that it did not act wilfully in failing to comply with its regulatory obligations as it was wrongly advised by an external compliance service provider. This argument has also previously been raised with the FSCA by other institutions during ongoing supervisory engagements and inspections.

The Appeal Board confirmed that reliance on third party providers for compliance advisory services cannot and does not absolve an institution of accountability for failing to meet its regulatory obligations. Accountable institutions that outsource their compliance support and advisory functions are reminded to exercise heightened caution when placing exclusive reliance on third parties for the discharge of their compliance responsibilities.

Similarly, third parties that offer professional compliance advisory and support services to accountable institutions are urged to be mindful of their level of understanding of the specific risks and circumstances applicable to individual institutions, beyond just generalised knowledge of the FIC Act.

The FSCA considers Sunlight and Tana's compliance deficiencies to be serious breaches of the FIC Act. The requirement to understand and mitigate money laundering and terrorist financing risks through the implementation of an RMCP is vital not only because it assists accountable institutions to protect and maintain the integrity of their own businesses but

also because it helps contribute to the integrity of the South African financial system as a whole.

Additionally, proper due diligence of all clients is crucial to help identify and mitigate against suspicious and criminal elements from infiltrating the financial system

The sanctions imposed on Sunlight and Tana serve as reminders that the FSCA will not tolerate non-compliance with the FIC Act. All accountable institutions are reminded to continually review and enhance their anti-money laundering and terrorist financing controls and to conduct thorough risk assessments on a regular basis. Failure to do so will result in firm regulatory action.

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