
**SUCCESSFUL ENFORCEMENT OF FINANCIAL SECTOR LAWS AS A CREDIBLE
DETERRENT IN THE CONTEXT OF THE SOUTH AFRICA FATF GREY-LISTING**

**ADDRESS BY THE COMMISSIONER OF THE FINANCIAL SECTOR CONDUCT AUTHORITY
AT THE UNISA COLLEGE OF LAW SEMINAR**

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Good morning everyone and thank you very much to the UNISA College of Law for organising this event and inviting us to address you this morning. We quite appreciate the opportunity to engage and to share insights as practitioners in the field of financial sector regulation and conduct. It's good to be here.

I will be speaking on a topic of great contextual significance for the country especially - ***"The Successful Enforcement of Financial Sector Laws as a Credible Deterrent in the Context of South Africa's FATF Grey-Listing."*** This is not merely academic exploration, but it's a critical examination of a very real challenge that our nation is facing, which has far-reaching implications for our economy, the integrity of our financial system, and the rule of law. It requires all of us to reflect deeply on the enforcement mechanisms and strategies used by financial sector regulators like the FSCA and other law enforcement agencies, as we strive to combat financial crimes and create a financial system that is not only strong and resilient but also maintains a high level of integrity.

Importance of enforcement and the rule of law

The importance of enforcing laws in a society is a concept that is as old as civilization itself. It is intertwined with the very fabric of human history and our quest to build fair and just communities. The fundamental basis of any society lies in the establishment of laws that govern behavior, creating a framework that ensures order, security, and justice. These laws represent the collective

moral code, defining what is right and wrong, setting standards, and providing mechanisms for conflict resolution.

However, the effectiveness of laws is determined not only by their articulation or existence, but also by their proper enforcement. It is through enforcement that wrongdoers are deterred, and unlawful activities are curtailed, forming a shield that safeguards the harmony and stability of society. Without robust and effective enforcement, laws become mere words on paper, lacking the power to protect the rights and interests of individuals and society as a whole. This powerlessness breeds a culture of impunity and risks the erosion of public trust in legal institutions. Conversely, it is the diligent and vigilant enforcement efforts that ensure the credibility and efficacy of legal frameworks.

The challenge of South Africa's FATF Grey-Listing

This principle is particularly important in light of South Africa's current challenge of being listed as one of the jurisdictions under increased monitoring (grey list) by the Financial Action Task Force (FATF), a global intergovernmental body whose mission is establishing international standards to combat money laundering, terrorist financing, and the financing of the proliferation of weapons of mass destruction.

Our country's placement on the FATF's grey list highlights an unfortunate reality that there are strategic deficiencies in our system and measures against financial crimes that require urgent attention. However, on the positive side, it signifies that the country is committed to promptly addressing the identified strategic vulnerabilities within agreed-upon timeframes.

In response to this commitment, FATF has issued an action plan that includes specific action items for South Africa, demanding strict adherence. This plan serves as a roadmap for strengthening our regime's ability to combat sophisticated financial crimes and removing our country from the "grey list". Central to this action plan is the imperative for South Africa to exhibit a demonstrable and sustained increase in the number of investigations and prosecutions related to intricate and serious cases of money laundering. This applies specifically to cases involving professional money laundering networks and enablers, as well as third-party entities engaged in money laundering – all of which are aligned with our country's unique risk profile.

Furthermore, this action plan necessitates an augmentation of our efforts to identify, seize, and confiscate the proceeds and instrumentalities of a wider spectrum of predicate crimes. These actions must be carried out in accordance with South Africa's risk profile, signifying alignment with the specific challenges and vulnerabilities that our country faces in relation to financial crimes.

Enforcement Strategies

To navigate the current complexities, a concerted focus on enforcing financial sector laws, such as the Anti-Money Laundering (AML) legislative framework, is required. The core of this enforcement lies in establishing its credibility as a true deterrent — a function that extends beyond mere regulations and penalties. This requires cultivating a belief within the industry that violations are not only punishable, but that detection is inevitable, and sanctions are uncompromising. It is this unyielding posture that serves to create a credible deterrent, sending a clear and strong message that improper conduct will not only be identified but will also lead to repercussions that are both decisive and resilient against appeals.

To achieve successful enforcement, we must begin with a strong foundation, which means strengthening our regulatory frameworks and legal provisions to ensure that they are both comprehensive and adaptable. As financial crimes evolve in complexity, so must our defenses. A static system will quickly become obsolete and ineffective against novel financial crimes. By enhancing the flexibility and adaptability of legal provisions, we ensure that they remain relevant and potent, providing financial sector regulators and enforcement agencies with the mechanisms needed to effectively combat increasingly sophisticated and innovative illicit activities that threaten the integrity of our financial system.

Secondly, the concept of credible deterrence hinges on the establishment of rigorous detection mechanisms that leave no room for misconduct to go unnoticed. These mechanisms must encompass both passive and active approaches, instilling high levels of trust to encourage individuals to come forward and report violations without fear of reprisal. The Protected Disclosures Act emerges as a crucial instrument in this context, promoting a culture of protected whistleblowing. However, we cannot rely solely on the courage of individuals to report; we need to proactively seek out violations. This is where active detection measures, such as real-time social media monitoring and vigilant market abuse surveillance, come into play. Technology has

opened up avenues previously thought impossible, enhancing our detection mechanisms. The integration of advanced analytical tools and artificial intelligence into detection mechanisms means financial sector regulators and enforcement agencies can now monitor vast amounts of data, identify patterns, spot anomalies, and act with unparalleled swiftness.

The imposition of meaningful and appropriate sanctions forms the backbone of effective deterrence. There must be a real consequence for misconduct, substantial enough to discourage future violations but fair and proportionate in its application. This requires a nuanced approach to punishment. The role of the FSCA as a regulator is instrumental in this regard. The FSCA is tasked with imposing remedial actions and sanctions that are effective, proportionate, and dissuasive for those entities and individuals who breach the provisions of the law. To this end, a dynamic sanctions guideline comes into play, taking into account numerous factors, including the gravity of the offense, disgorgement of ill-gotten gains, harm inflicted on investors, cooperation, past behavior, and the depth of knowledge of wrongdoing. The tangible results of rigorous enforcement are evident in the fact that, in the previous financial year, the FSCA imposed administrative penalties totaling over R100 million on 44 individuals. This stands as a tangible testament to the outcomes that can be realised through resolute and diligent enforcement efforts.

Prosecution is also important in enforcing financial sector laws, as it serves as both a deterrent to illicit activities and a mechanism for holding wrongdoers accountable. The very essence of enforcing laws lies in the ability to translate violations into legal consequences, and prosecution does precisely that. South Africa's anti-money laundering and combating the financing of terrorism regime highlight the profound impact of successful prosecutions. As evident in the FATF action plan for South Africa, the effectiveness of this regime is not measured merely in the creation of laws or the implementation of preventive measures but also in concrete results such as successful prosecutions of money laundering, terrorist financing, and the forfeiture of assets involved in these crimes.

The high stakes and complexity of these crimes necessitate a robust approach to prosecution. Legal actions must be forceful and unequivocal, conveying an unambiguous message that such transgressions will be met with the full force of the law. In a society where financial crimes can often seem intangible or abstract, successful prosecutions serve as concrete evidence of accountability, making the abstract consequences of financial misconduct palpable and real. There is no such thing as a victimless crime, there are real victims of illicit crimes which cost the

state development resources and as such stealing futures of the youth, the poor and the vulnerable – so we know the victims, they live amongst us.

Collaboration and cooperation between various regulatory authorities and enforcement agencies is essential for successful prosecutions. The interconnected nature of financial crimes requires a collaborative approach that transcends the boundaries of individual agencies, involving seamless cooperation between regulatory authorities, such as the FSCA, and enforcement agencies. This includes sharing intelligence, coordinating investigations, and leveraging each other's expertise. This collaborative effort has strategic importance for the work of the FSCA. Because we see effective enforcement as a critical component of fostering a fair, efficient, resilient and inclusive financial system. Acting against misconduct supports confidence and integrity in the financial sector. Which in turn ensures good outcomes for financial customers, which is of paramount importance.

Of course another dimension to think about, is the globalization or global nature of finance create a highly interconnected financial ecosystem – and I think digital technologies are part of that equation. The result is huge growth in the provision of cross-border financial services. There are obvious advantages from globalization, but it also does not and has not escaped the attention of the criminals, given the opportunities it creates for illicit activity.

Just to give you a sense of the scale here – the UNCTAD's Economic Development in Africa Report 2020 states that illicit financial flows rob Africa of US\$88 billion each year. Some estimates show that SA has lost more than US\$100 billion between 2002 and 2011, and a 2022 joint study between the OECD and National Treasury estimates between US\$3.5 billion and 5 billion in illicit financial flows leaving the country annually, representing some 1-1.5% of annual GDP. The global value lost to scams is currently around US\$55 billion, increasing at about 15% per year. So the scale of the problem is huge and growing. We have to work together and work smartly to disrupt this.

Such harmonious collaboration does not happen by accident. It requires deliberate efforts to break down silos and foster strong partnerships. For example, during the previous financial year, the FSCA referred 70 cases to the South African Police Service (SAPS), illustrating how this collaboration works in practice. Many of these referrals have found their way to the Specialized

Commercial Crime Units and Commercial Crime Courts, given the intricate nature of the cases. Furthermore, active support is being rendered by the FSCA to the SAPS and the National Prosecuting Authority (NPA) in navigating through complex commercial crime cases stemming from investigations conducted by the FSCA. This includes active involvement in the endeavor to extradite one of the central figures in the “Mirror Trading International case”, in which the company was offering unregistered automated trading services in forex and cryptocurrency derivatives, encapsulating the spirit of collaborative pursuit of justice.

The collaboration does not end with the prosecution; it extends to preserving assets and ensuring that the fruits of illicit activities are not enjoyed by the perpetrators. Collaboration between the FSCA, Financial Intelligence Centre (FIC), and Asset Forfeiture Unit (AFU) has proven effective in preserving assets under threat. Recent successes, such as the preservation of R19 million in the bank accounts of a Ponzi scheme, Classic Financial Services One (Pty) Ltd, and its director, underscore the tangible benefits of working in concert.

In our interconnected global economy, financial misconduct often transcends national boundaries, necessitating a unified international response. The FSCA's active participation in the International Organization of Securities Commissions (IOSCO) and its 92 bilateral and multilateral MoUs with other regulatory bodies highlight the critical importance of cross-border collaboration. These collaborations facilitate the exchange of vital information, support investigations, and provide a cohesive front against financial crimes, ensuring that misconduct finds no refuge in jurisdictional gaps.

The role of the financial sector

It would be remiss of me not to acknowledge the role of the financial sector in fostering a culture of compliance. The responsibility for effective enforcement does not rest solely with regulators and law enforcement agencies. Financial institutions must accept responsibility for upholding the highest standards of integrity and transparency. By embracing compliance as a shared goal, we can collectively mitigate the risks posed by financial crimes and work towards a stronger, more resilient financial system.

In closing, the endeavor to enforce financial sector laws and build a credible deterrent against financial crimes in South Africa is a complex task that cannot be undertaken in isolation. The challenges of today, compounded by the shadow of the FATF grey listing, call for unprecedented collaboration and unity of purpose among regulators, law enforcement, prosecutors, and all other stakeholders. By forging a cohesive and determined front, we can surmount the obstacles ahead and reestablish South Africa's standing as a secure and respected financial center. Way beyond removing our country from the greylist we would continue to work together towards building an inclusive financial system with high levels of integrity able to attract investment into the developmental needs of this economy. So it is in our interests and it is in our hands.

Thank you for your attention and participation. I look forward to addressing any questions and engaging in a meaningful discussion.

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The eight (8) areas of strategic deficiencies identified by the FATF require South Africa to:

- (1) demonstrate a sustained increase in outbound Mutual Legal Assistance requests that help facilitate money laundering/terrorism financing (ML/TF) investigations and confiscations of different types of assets in line with its risk profile;**
- (2) improve risk-based supervision of Designated Non-Financial Businesses and Professions (DNFBPs) and demonstrating that all AML/CFT supervisors apply effective, proportionate, and effective sanctions for noncompliance;**
- (3) ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership (BO) information on legal persons and arrangements and applying sanctions for breaches of violation by legal persons to BO obligations;**
- (4) demonstrate a sustained increase in law enforcement agencies' requests for financial intelligence from the Financial Intelligence Centre for its ML/TF investigations;**
- (5) demonstrate a sustained increase in investigations and prosecutions of serious and complex money laundering and the full range of TF activities in line with its risk profile;**
- (6) enhance its identification, seizure and confiscation of proceeds and instrumentalities of
a wider range of predicate crimes, in line with its risk profile;**
- (7) update its TF Risk Assessment to inform the implementation of a comprehensive national**

counter financing of terrorism strategy; and

(8) ensure the effective implementation of targeted financial sanctions and demonstrating

an effective mechanism to identify individuals and entities that meet the criteria for domestic designation.