



Financial Sector
Conduct Authority

P.O. Box 35655
Menlo Park
0102

Tel. +27 12 428 8000
Toll free. 0800 20 3722
Fax. +27 12 346 6941
Email. info@fsca.co.za
Website. www.fsca.co.za

ENQUIRIES:	Charl Geel	DIALLING NO:	(012) 367 7890
OUR REF:	FSP 40169	E-MAIL:	Charl.geel@fsca.co.za
DATE:	16 October 2024		

Mr. Ali Solim
Director
Prime Collective Investments Schemes Management Company (RF) (Pty) Ltd
28 Peter Place
Lyme Park
Sandton
2060

By email: - ali@collectiveendeavours.co.za and idabrowski@globaladmin.co.za

Dear Mr Solim

NOTICE OF ADMINISTRATIVE SANCTION

1. NOTICE

1.1. The Financial Sector Conduct Authority (FSCA) is satisfied that Prime Collective Investment Schemes Management Company (RF) (Pty) Ltd (Prime), a registered collective investment scheme's manager and an accountable institution as envisaged in terms of item 5 of schedule 1 to the Financial Intelligence Centre Act 38 of 2001 (the FIC Act), has failed to comply with the FIC Act. Accordingly, the FSCA hereby issues this Administrative Sanction Notice (the Notice).

1.2. The non-compliance was identified in an inspection conducted by the FSCA on Prime in terms of section 45B of the FIC Act of which the final report was issued on 11 June 2024.

Executive Committee:

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

2. NATURE OF ALLEGED NON-COMPLIANCE

2.1. Risk Management and Compliance Programme

- 2.1.1. In terms of section 42(1) of the FIC Act, an accountable institution must develop, document, maintain and implement a programme for anti-money laundering, counter terrorist financing and proliferation financing risk management and compliance.
- 2.1.2. Section 42(2) of the FIC Act states that, “A risk management and compliance programme must-
 - (a) Enable the accountable institution to-
 - (i) Identify;
 - (ii) Assess;
 - (iii) Monitor;
 - (iv) Mitigate; and
 - (v) Manage,the risk that the provision by the accountable institution of new and existing products or services may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities;”
- 2.1.3. Section 42(2) of the FIC Act continues to set out what minimum information an accountable institution must provide for in the risk management and compliance programme (RMCP).
- 2.1.4. The findings of the aforementioned inspection revealed that Prime contravened sections 42(1) and/or 42(2) of the FIC Act for the following reasons:
 - 2.1.4.1. Section 42(2)(o) and (p) of the FIC Act states that the RMCP must enable Prime to determine when a transaction or activity is reportable to the Financial Intelligence Centre (FIC) and provide for the processes for reporting such information to the FIC. In terms of section 28A of the FIC Act, accountable institutions must report to the FIC, within the prescribed period, property in its possession or

under its control, property owned or controlled by or on behalf of, or at the direction of:

- Any entity which has committed, or attempted to commit, or facilitated the commission of specified offences as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (POCDATARA);
- A person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in section 26A(1) of the FIC Act.

2.1.4.2. Section 29(1) of the FIC Act requires a person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that–

(a) the business has received or is about to receive property which is connected to an offence relating to the financing of terrorist and related activities;

(b) a transaction or series of transactions to which the business is a party–

(i) facilitated or is likely to facilitate the transfer of property which is connected to an offence relating to the financing of terrorist and related activities;

(ii) relates to an offence relating to the financing of terrorist and related activities; or

(iii) relates to the contravention of a prohibition under section 26B; or

(c) the business has been used or is about to be used in any way to facilitate the commission of an offence relating to the financing of terrorist and related activities,

must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the FIC the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

- 2.1.4.3. The RMCP did not provide for the manner in which and processes by which Prime will identify and report activity and/or transactions as outlined in sections 28A and 29(1) of the FIC Act as described above. The RMCP did not distinguish between the terrorist financing transactions and terrorist financing activities which will enable Prime to identify reportable transactions and activities to FIC.
- 2.1.4.4. Section 42(2)(s) of the FIC Act states that the RMCP must provide for any prescribed matter. Prime's RMCP was silent on how it will comply with the provisions of section 26B of the FIC Act relating to prohibitions of persons and entities identified by the Security Council of the United Nations in that Prime's RMCP did not provide processes in relation to the manner in which it will freeze the property related to a sanctioned person and/or entity.

2.2. Customer due diligence

- 2.2.1. In terms of section 21B of the FIC Act, if a client contemplated in section 21 is a legal person, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its RMCP—
- (a) establish the identity of the beneficial owner of the client by—
 - (i) determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person;
 - (ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means; or
 - (iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager; and

(b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is.

2.2.2. If a person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting in pursuance of the provisions of a trust agreement, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its RMCP:

- (a) establish the identifying name and number of the trust, if applicable;
- (b) establish the address of the Master of the High Court where the trust is registered, if applicable;
- (c) in respect of the founders of the trust, establish the identity of–
 - (i) each founder; and
 - (ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust;
- (d) in respect of the trustees of the trust, establish the identity of–
 - (i) each trustee;
 - (iA) if a trustee is a legal person or a person acting on behalf of a partnership, the beneficial owner of that legal person or partnership; and
 - (ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust, whether such a person is appointed as a trustee of the trust or not;
- (e) in respect of the beneficiaries of the trust, establish–
 - (i) the identity of each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created;
 - (iA) if a beneficiary referred to by name in the trust instrument is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust; and
 - (ii) if beneficiaries are not referred to by name in the trust instrument or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined;

- (f) take reasonable steps to verify the particulars obtained in paragraphs (a), (b) and (e)(ii); and
- (g) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d), (e)(i) and (iA) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.

2.2.3. The findings of the aforementioned inspection revealed that Prime contravened section 21B of the FIC Act in that Prime failed to:

- 2.2.3.1. Establish and verify the beneficial owner of four out of six clients who are legal persons (67% failure of the sample reviewed); and/or
- 2.2.3.2. Verify the identity of the founder and/or beneficiaries of three clients who are trusts (100% failure of the sample reviewed).

3. REASONS FOR IMPOSING THE ADMINISTRATIVE SANCTION

3.1. Prime's non-compliance as detailed above is a serious violation of the provisions of the FIC Act.

- 3.1.1. 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.
- 3.1.2. 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.
- 3.1.3. It is important that accountable institutions implement processes to determine when a transaction or activity is reportable to the FIC, and outline the processes for reporting information to the FIC in the RMCP. This will enable the accountable institutions to manage their ML/TF/PF risks. It is important that accountable institutions understand what would constitute terrorist activity, terrorist financing transactions or suspicious activity in order for it to identify it in day-to-day operations and report it to the FIC. The understanding should be shared with all employees of the accountable institution.

Furthermore, it is important to highlight the process to report these transactions to the FIC so that there is no uncertainty.

- 3.1.4. Customer due diligence is one of the most important provisions of the FIC Act. Understanding who your client is important to identify any suspicious transactions and activity that the client may be up to.
- 3.2. The FSCA takes into account that Prime has failed to submit its annual financial statements on time and that there are currently enforcement processes underway in this regard.
- 3.3. The sanction to be imposed must be effective, proportionate and dissuasive.
- 3.4. The FSCA took into account Prime's correspondence to the FSCA dated 28 June, 23 August and 11 October 2024. In particular, the following was taken into account to determine the appropriateness of the sanction:
 - 3.4.1.1. It has remediated the deficiencies identified in its RMCP. The Board of Prime has also approved the revised RMCP;
 - 3.4.1.2. Since August 2019, Prime is making use of the Docfox tool to screen clients against sanction lists, politically exposed persons lists and negative media. Screening is taking place on a daily basis;
 - 3.4.1.3. Subsequent to the inspection, they have obtained or are in the process to obtain beneficial ownership information of clients identified in the inspection report. However, not all beneficial ownership has been obtained to date as required by the FIC Act and Prime's RMCP;
 - 3.4.1.4. Prime is committed to complying with the FIC Act.
- 3.5. Prime has at all times co-operated with the FSCA.

4. PARTICULARS OF THE ADMINISTRATIVE SANCTION

- 4.1. 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 sanction on Prime:
 - 4.1.1. a directive to review all client files and ensure that beneficial ownership information has been obtained in respect of legal persons and trusts on or before **29 November 2024** and where such information is outstanding, to not

conclude a transaction in the course of the business relationship until such beneficial ownership information is obtained.

4.1.2. A financial penalty of R600 000.00 for non-compliance with 42(1) and (2)(o), (p) and (s) of the FIC Act.

4.1.3. A financial penalty of R1 million for non-compliance with section 21B of the FIC Act.

4.2. Prime is directed to pay the R1 million of the financial penalty on or before **29 November 2024**.

4.3. The payment of the remaining R600 000 of the total financial penalty is hereby suspended for a period of 3 years from the date of this Administrative Sanction, on condition that Prime complies with the directive issued in paragraph 4.1.1 above and remains fully compliant with sections 42(1) and (2), section 21(1) and section 28A read with section 26 of the FIC Act.

4.4. Should Prime be found to be non-compliant with provisions of the FIC Act detailed on paragraph 4.3. above, within the 3 years suspension period, the suspended penalty of R600 000 becomes immediately payable.

4.5. 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 – Prime CIS

4.6. Proof of payment must be submitted to the FSCA, to Mr Charl Geel at (charl.geel@fsca.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,

Prime 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 or send via e-mail to:

The Secretary: The FIC Act Appeal Board
Byls Bridge Office Park, Building 11
13 Candela Street
Highveld Extension
Centurion; or

**E-mail: AppealBoardSecretariat@fic.gov.za
cc Frans.Nyundu@fic.gov.za**

5.1.2. sent via electronic mail to:

The HOD: Office of General Counsel
FSCA
Attention: Mr S Rossouw (Stefanus.Rossouw@fsca.co.za)

5.2. The Secretary of the FIC Act Appeal Board may be contacted at AppealBoardSecretariat@fic.gov.za and telephonically at (012) 641-6243 should Prime 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 Prime 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.

Issued on this the 16th October 2024

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', is written over a horizontal line.

Unathi Kamlana
Commissioner
Financial Sector Conduct Authority