



FSCA FAIS Notice 21 of 2020

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. 37 OF 2002)

EXEMPTION OF FINANCIAL SERVICES PROVIDERS AND JURISTIC REPRESENTATIVES FROM CERTAIN FINANCIAL SOUNDNESS REQUIREMENTS, 2020

The Financial Sector Conduct Authority hereby, under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002, read with section 281(3)(b) of the Financial Sector Regulation Act, 2017, exempts financial services providers and juristic representatives from sections 45(2) and 48(1) and (2) of the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, to the extent set out in the Schedule.

**Kedibone Dikokwe
For the Financial Sector Conduct Authority**

DATE OF NOTICE: 15 APRIL 2020

SCHEDULE

EXEMPTION OF FINANCIAL SERVICES PROVIDERS AND JURISTIC REPRESENTATIVES FROM CERTAIN FINANCIAL SOUNDNESS REQUIREMENTS, 2020

Definitions

1. In this Schedule “**the Act**” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and any word or expression to which a meaning is assigned in the Act shall have that meaning, and unless the context otherwise indicates -

“**Determination**” means the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, published in Board Notice 194 of 2017 in Government *Gazette* No. 41321 on 15 December 2017; and

“**specific FSPs and juristic representatives**” means –

- (a) a Category I FSP that holds, controls or has access to client assets or that collects, holds or receives premiums or other monies in respect of a financial product
- (b) a Category II, IIA, III and IV FSP; and
- (c) a juristic representative of an FSP referred to in subparagraph (b) above.

Extent of exemptions

2. Category I FSPs that do not hold, control or has access to client assets or that do not collect, hold or receive premiums or other monies in respect of a financial product, and a juristic representative of such a FSP, are exempted from section 45(2) of the Determination for the period 1 April 2020 to 31 March 2021.
3. Specific FSPs and juristic representatives are exempted from section 48(1) and (2) of the Determination for the period 1 April 2020 to 31 March 2021.
4. The exemptions referred to in paragraphs 2 and 3 do not apply to an FSP or juristic representative that is a -
 - (a) bank as defined in section 1 of the Banks Act;
 - (b) insurer as defined in section 1 of the Insurance Act; or
 - (c) authorised user as defined in section 1 of the Financial Markets Act.

General conditions of the exemptions

5. The exemption referred to in paragraph 2 is subject to the condition that the liabilities of the FSP and/or juristic representative do not exceed its assets with more than 20%.
6. The exemption referred to in paragraph 3 is subject to the condition that -
 - (a) the liabilities of the FSP and/or juristic representative do not exceed its assets with more than 20%;
 - (b) the current liabilities of the FSP and/or juristic representative do not exceed its current assets with more than 20%;

- (c) the additional assets of the FSP and/or juristic representative, where applicable, is at no stage less than 50% of the specified Additional Asset Requirement set out in Table B of the Determination; and
 - (d) the liquid assets of the FSP and/or juristic representative is at no stage less than 50% of the specified Liquidity Requirement set out in Table B of the Determination.
7. The exemptions referred to in paragraphs 2 and 3 are subject to the following general conditions –
- (a) an FSP that relies on this exemption must submit the following to the Authority within 7 days after the FSP starts relying on the exemption:
 - (i) Annexure 6 (Form A) of the Determination, which form must be certified by the chief executive officer, controlling member, managing or general partner, or trustee of the FSP, as the case may;
 - (ii) an action plan setting out –
 - (aa) how the FSP plans to restore its assets, liquidity and working capital to the levels specified in section 45(2) and/or 48(1) and (2) of the Determination, as the case may be, including the steps that will be taken and the timeframe required to restore its assets, liquidity and working capital to the required levels;
 - (bb) the measures it will take to ensure business continuity and continued cash flow up until such time as its assets, liquidity and working capital has been restored to the required levels referred to in sub-item (aa);
 - (b) an FSP that rely on this exemption must every 6 months (calculated from the date on which Annexure 6 as referred to in subparagraph (a)(i) was first submitted to the Authority) submit management accounts and Annexure 6 (Form A) of the Determination to the Authority;
 - (c) the FSP may not directly or indirectly make any payment by way of a loan, advance, bonus, dividend, repayment of capital or a loan (except for agreed upon loan repayments) or any other payment or other distribution of assets to any director, officer, partner, shareholder, related party or associate without the prior written approval of the Authority.
 - (d) the conditions specified in subparagraphs (a) to (c) apply with the necessary changes to a juristic representative, provided that -
 - (i) any submission referred to in subparagraphs (a) or (b) must be made to the FSP of the juristic representative; and
 - (ii) an approval referred to in subparagraph (c) must be provided by the FSP of the juristic representative.

Amendment and withdrawal of exemption

8. The exemption is subject to-
- (a) amendment thereof published by the Authority by notice on its website; and
 - (b) withdrawal in a like manner.

Short title and commencement

9. This Notice is called the Exemption of FSPs and juristic representatives from certain financial soundness requirements, 2020, and comes into operation on 1 April 2020.