



FSCA FAIS Notice 25 of 2023

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

EXEMPTION OF PERSONS RENDERING A FINANCIAL SERVICE IN RELATION TO CRYPTO ASSETS FROM CERTAIN REQUIREMENTS, 2023

The Financial Sector Conduct Authority (“FSCA”), under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (“the Act”), read with section 281(3)(b) of the Financial Sector Regulation Act, 2017, hereby exempts persons from provisions of the Act to the extent as set out in the Schedule.

**KATHERINE GIBSON
DEPUTY COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

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SCHEDULE

EXEMPTION OF PERSONS RENDERING A FINANCIAL SERVICE IN RELATION TO CRYPTO ASSETS FROM CERTAIN REQUIREMENTS, 2023

1. Definitions and application

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

“**Board Notice 123 of 2009**” means the Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009, published by Board Notice 123 of 2009 in *Government Gazette* No. 32587 on 21 September 2009;

“**CPD activities**” means an activity that is –

- (a) accredited by a professional body as defined in section 1 of the Determination or recognised by a foreign professional body;
 - (b) allocated an hour value or a part thereof by that professional body or foreign professional body; and
 - (c) verifiable,
- and excludes –
- (i) an activity performed towards a qualification; and
 - (ii) product specific training as defined in section 1 of the Determination;

“**CPD cycle**” has the meaning assigned to it in section 1 of the Determination;

“**crypto asset**” has the meaning assigned to it in General Notice 1350 of 2022 – Declaration of a Crypto Asset as a Financial product, 2022, published in *Government Gazette* No. 47334 on 19 October 2022;

“**competency requirements**” has the meaning assigned to it in section 1 of the Exemption of Services under Supervision;

“**Crypto Asset FSP**” means a person that is licensed under section 8 of the Act to render financial services in relation to crypto assets;

“**crypto asset supervised representative**” means a representative of a Crypto Asset FSP who –

- (a) renders financial services in relation to crypto assets;
- (b) does not meet one or more of the competency requirements; and
- (c) renders financial services under supervision;

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

“**execution of sales**” has the meaning assigned to it in section 1 of the Determination and, for purposes of this exemption, is limited to where it is performed in compliance with section 22(b)(ii) of the Determination;

“**Exemption of Services under Supervision**” means the Exemption of Services under Supervision, 2018, published on the website of the Authority in FSCA FAIS Notice 86 of 2018 on 3 December 2018;

“foreign professional body” means a foreign body with individual members practicing a profession or occupation, and which body maintains oversight of the knowledge, skills, conduct and practices of that profession or occupation;

“FSP” means a financial services provider, including a Sole Proprietor, as defined in section 1(1) of the Act;

“General Code of Conduct” means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, published by Board Notice 80 in Government Gazette No. 25299 on 8 August 2003, as amended from time to time;

“key individual” means a key individual as defined in section 1 of the Act, who is responsible for managing or overseeing the rendering of financial services in relation to crypto assets;

“regulatory examination” has the meaning assigned to it in section 1 of the Determination;

“regulatory examination requirement” means the requirements in Part 4 of Chapter 3 of the Determination;

“representative” means a representative as defined in section 1 of the Act, who renders a financial service in relation to crypto assets;

“supervision” for purposes of this exemption, means the guidance, instruction and oversight, by any means or medium, by a supervisor using a variety of assessment, observation and oversight methods or tools that are appropriate for the assessed level of competence of the crypto asset supervised representative;

“supervisor” means a supervisor as contemplated in the Exemption of Services under Supervision;

“Tier 2 financial product” has the meaning assigned to it in section 1 of the Determination; and

“verifiable” has the meaning assigned to it in section 1 of the Determination.

2. Exemptions applicable to Crypto Asset FSPs, their key individuals and representatives

Exemption from section 13 of the General Code of Conduct and Board Notice 123 of 2009

- (1) A Crypto Asset FSP is exempted from section 13 of the General Code of Conduct and Board Notice 123 of 2009, only insofar it relates to the rendering of financial services in respect of crypto assets.

Temporary exemption from regulatory examinations

- (2) A Crypto Asset FSP and its key individuals are exempted from Part 4 of Chapter 3 of the Determination for a period of 18 months from the effective date of this Notice.

3. Exemption applicable to crypto asset supervised representatives

Exemption from regulatory examination requirements

- (1) A crypto asset supervised representative, other than a crypto asset supervised representative referred to in subparagraph (2), who, before publication of this Notice, was never appointed as a representative of an FSP, is exempted from Part 4 of Chapter 3 of the Determination, on the condition that the crypto asset supervised representative complete the relevant regulatory examination within two years from the date on which such a person was first appointed as a representative to render financial services in relation to crypto assets.
- (2) A crypto asset supervised representative who, before publication of this Notice, only has a date of first appointment to –
 - (a) render financial services in respect of a Tier 2 financial product; or
 - (b) perform the execution of sales,must within 2 years from the date on which such person was first appointed as a representative to render financial services, other than the execution of sales, in relation to crypto assets, comply with the applicable regulatory examination requirements.

4. Additional Conditions

- (1) A Crypto Asset FSP, its key individual and representatives, as the case may be, must complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle.
- (2) A crypto asset supervised representative must complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle –
 - (a) starting from the date on which the crypto asset supervised representative meets the applicable regulatory examination requirements and qualification requirements pertaining to crypto assets; or
 - (b) after six years from the date on which the crypto asset supervised representative was first appointed as a crypto asset supervised representative, whichever occurs first.
- (3) A crypto asset supervised representative who, before publication of this Notice, only has a date of first appointment to –
 - (a) render financial services in respect of a Tier 2 financial product; or
 - (b) perform the execution of sales,who after that date is appointed as a representative to render financial services, other than the execution of sales, in relation to crypto assets, must complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle –
 - (i) starting from the date on which the crypto asset supervised representative meets the applicable regulatory examination requirements and qualification requirements pertaining to crypto assets; or
 - (ii) after six years from the date on which the crypto asset supervised representative was first appointed as a crypto asset supervised representative, whichever occurs first.

5. Lapsing, amendment and withdrawal of Exemption

- (1) Failure by a Crypto Asset FSP, their key individuals, representatives and crypto asset supervised representative to comply with any condition referred to in this Notice will automatically result in the exemption no longer being applicable to that Crypto Asset FSP, their key individuals, representatives and crypto asset supervised representative.
- (2) This Exemption is subject to –

- (a) amendment thereof, published by the Authority by notice on the web site of the Authority; and
- (b) withdrawal in a like manner.

6. Short title and commencement

This Notice is called the Exemption of Persons rendering a Financial Service in relation to Crypto Assets from Certain Requirements, 2023, and takes effect on the date of publication.