



FSCA FAIS Notice 90 of 2022

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

EXEMPTION OF PERSONS RENDERING FINANCIAL SERVICES IN RELATION TO CRYPTO ASSETS FROM SECTION 7(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2022

The Financial Sector Conduct Authority, 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 rendering financial services in relation to crypto assets from section 7(1) of the Act, to the extent set out in the Schedule.

**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**

Date of publication: 21 October 2022

SCHEDULE

EXEMPTION OF PERSONS RENDERING FINANCIAL SERVICES IN RELATION TO CRYPTO ASSETS FROM SECTION 7(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2022

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 –

“**application**” for purposes of this exemption means an application –

- (a) for authorisation as an FSP, in terms of section 8 of the Act, to render a financial service in relation to crypto assets; or
- (b) to amend the subcategories of financial products in respect of which the FSP is authorised to render financial services, to include a crypto asset;

“**crypto asset**” has the meaning assigned to it in the Declaration;

“**crypto asset miner**” means a juristic or natural person that, alone or in a mining pool, uses computers or specialized hardware to participate in blockchain processing by verifying and adding new transactions to the blockchain;

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

“**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;

“**Declaration**” means the Declaration of a crypto asset as a financial product under the Financial Advisory and Intermediary Services Act, 2022, published on 19 October 2022 in General Notice 1350 of 2022 of Government Gazette No. 47334;

“**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;

“**node operator**” means a juristic or natural person that runs software that keeps a complete or pruned version of the blockchain and broadcasts transactions across the network; and

“**non-fungible tokens**” means crypto assets recorded on a blockchain with unique identification that distinguishes them from each other and can be associated with real-world objects.

2. Exemption from section 7(1) of the Act

A person who as a regular feature of the business of such person renders a financial service in relation to crypto assets, is exempted from section 7(1) of the Act insofar it relates to the rendering of a financial service in relation to crypto assets.

3. Conditions of Exemption

- (1) The exemption referred to in paragraph 2 is subject thereto that the person, excluding a crypto asset miner, node operator and a person rendering financial services in relation to non-fungible tokens, must –
 - (a) submit an application to the Authority between 1 June 2023 and 30 November 2023; and
 - (b) comply with –
 - (i) Chapter 2 of the Determination as from the effective date of the Declaration;
 - (ii) section 2 of the General Code of Conduct as from the effective date of the Declaration; and
 - (iii) all other requirements in the General Code of Conduct, with the exclusion of section 13 of the General Code of Conduct, by 1 December 2023,

as if such person is a Crypto Asset FSP or a representative of a Crypto Asset FSP, as the case may be.

- (2) The exemption referred to in paragraph 2 is also subject to the condition that a person who is subject to the exemption must provide the Authority with any information the Authority requests that is in the possession of, or under the control of, the person, that is relevant to the financial services and/or similar activities rendered by such person.
- (3) The exemption referred to in subparagraph (1) is valid, in respect of –
 - (a) persons other than a crypto asset miner, node operator and a person rendering financial services in relation to non-fungible tokens, until such time as the application referred to in subparagraph 2(a) has been approved or declined; and
 - (b) a crypto asset miner, node operator and a person rendering financial services in relation to non-fungible tokens, until the exemption is amended or withdrawn in accordance with paragraph 4(2).

4. Lapsing, amendment and withdrawal of Exemption

- (1) Failure by a person referred to in paragraph 2 to comply with any condition referred to in paragraph 3 will automatically result in the exemption no longer being applicable to that person.
- (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.

5. Short title, commencement and repeal

- (1) This Notice is called the Exemption of Persons rendering Financial Services in relation to Crypto Assets from section 7(1) of the Financial Advisory and Intermediary Services Act, 2022, and takes effect on 19 October 2022.

- (2) The Exemption of Persons rendering Financial Services in relation to Crypto Assets from Section 7(1) of the Financial Advisory and Intermediary Services Act, 2022, as published in FSCA FAIS Notice 90 of 2022, is hereby withdrawn and replaced with this Notice.