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Exemptions and extensions for financial services providers and juristic representatives

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by Hilah Laskov, Senior Associate and Chelsea Roux, Candidate Attorney
Reviewed by *Shayne Krige, Director and head of the Investment Funds & Private Equity practice*

The COVID-19 pandemic and the national lockdown has placed severe financial constraints on some FSPs and juristic representatives. The FSCA has exempted financial services providers and juristic representatives from certain financial soundness requirements as provided in the Determination of Fit and Proper Requirements for Financial Services Providers. An exemption from and extension of the period to comply with the Fit and Proper Requirements, 2020[1] has also been granted.

1. **Exemptions for Financial Services Providers ("FPSs") and juristic representatives from certain financial soundness requirements**

In an attempt to alleviate the financial pressures experienced by some FPSs and juristic representatives as a result of the COVID-19 pandemic and the national lockdown, the Financial Services Conduct Authority ("**FSCA**"), has issued a Notice[2] containing two exemptions from certain financial soundness requirements as provided in the Determination of Fit and Proper Requirements for Financial Services Providers[3] (the "**Determination**"). The exemptions do not apply to an FSP or juristic representative that is a bank[4], insurer[5] or authorised user[6].

1.1 First exemption

The first exemption applies to Category I FSPs (and their juristic representatives) that *do not* hold, control or have access to client assets or that do not collect or receive premiums, or other monies in respect of a financial product. It exempts these FSPs from the requirement[7] that the FSP's assets should always exceed its liabilities. This is subject to the condition that the liabilities of the FSP may not exceed the FSP's assets by more than 20%.

1.2 Second exemption

The second exemption applies to:

- Category I FSPs that *do* hold, control or have access to client assets or that do collect or receive premiums, or other monies in respect of a financial product; and
- Category II, IIA, III and IV FSPs (and their juristic representatives).

The second exemption exempts the identified FSPs from: (a) the requirement[8] that their assets always exceed their liabilities and (b) from compliance with the additional asset, working capital and liquidity requirements.

General Conditions

Both exemptions are subject to the following general conditions:

1.2.1 an FSP that relies on the exemption must submit the following to the FSCA within 7 days after the FSP starts relying on the exemption:

1.2.1.1 Annexure 6 (Form A: Liquidity Calculation) of the Determination, which is certified by the chief executive officer, controlling member, managing or general partner or trustee of the FSP;

1.2.1.2 an action plan setting out:

1.2.1.2.1 how the FSP plans to restore its assets, liquidity and working capital to the prescribed levels, including the steps that will be taken and the timeframe required to restore its assets, liquidity and working capital;

1.2.1.2.2 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 prescribed levels;

1.2.2 an FSP that relies on the exemption must submit management accounts and the Form A: Liquidity Calculation to the FSCA every 6 months; and

1.2.3 the FSP may not directly or indirectly make any payment by way of a loan, advance, bonus, dividend, repayment of capital or a loan or any other payment or other distribution of assets without the prior written approval of the FSCA.

The conditions mentioned in 1.2.1, 1.2.2 and 1.2.3 apply with the necessary changes to a juristic representative provided that:

1.2.4 any submissions referred to in 1.2.1, 1.2.2 and 1.2.3 must be made to the FSP of the juristic representative; and

1.2.5 an approval referred to in 1.2.1, 1.2.2 and 1.2.3 must be provided by the FSP of the juristic representative.

1.3 Specific conditions to the second exemption

The second exemption does not apply to juristic representatives of FSPs mentioned under. It is granted subject to the conditions that:

1.3.1 the liabilities of the FSP and/or juristic representative do not exceed its assets by more than 20%;

1.3.2 the current liabilities of the FSP and/or juristic representative do not exceed its current assets by more than 20%;

1.3.3 the additional assets of the FSP and/or juristic representative is at no stage less than 50% of the specified Additional Asset Requirement;[9] and

1.3.4 the liquid assets of the FSP and/or juristic representative is at no stage less than 50% of the specified Liquidity Requirement.[10]

The exemptions above apply for the period of 1 April 2020 to 31 March 2021 and are subject to amendment or withdrawal by the FSCA by notice on its website.

2. **Exemption from and extension of period to comply with fit and proper requirements, 2020**

FSPs[11], key individuals and representatives, including supervised representatives are required to complete a minimum number of Continuous Professional Development ("**CPD**") hours as stipulated in the Determination. The Determination[12] requires that an FSP, key individual and representative obtain a specified number of CPD hours within a 12-month period. On 16 April 2020, the FSCA issued a Notice[13] providing an exemption from this requirement.

The exemption is applicable subject to the completion of reduced hours required to be completed for the 2021 CPD Cycle.[14] It provides that an FSP, key individual and representative authorised, approved or appointed to render, manage or oversee the rendering of financial services in respect of:

2.1 a single subclass of business within a single class of business who would be required to complete a minimum of 6 hours of CPD activities per CPD cycle, now complete a minimum of 4 and a half hours;

2.2 more than one subclass of business within a single class of business who would be required to complete a minimum of 12 hours of CPD activities per CPD cycle, now complete a minimum of 9 hours; and

2.3 more than one class of business who would be required to complete a minimum of 18 hours of CPD activities per CPD cycle, now complete a minimum of 13 and a half hours.

Non-compliance with the reduced number of hours for the 2021 CPD Cycle will result in the exemption no longer being applicable to that FSP, key individual, representative or supervised representative. The date for compliance with the minimum CPD hours for the 2020 CPD Cycle[15] is extended to 31 August 2020. Any FSP, key individual or representative who has a specific compliance date for the completion of the 2020 CPD Cycle which falls between 27 March 2020 and 30 November 2020, is afforded an extension to comply by 15 December 2020.

The exemption comes into operation on 16 April 2020 and is subject to amendment or withdrawal by the FSCA by notice on its website.

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[1] FSCA FAIS Notice 17 of 2020.

[2] FSCA FAIS Notice 21 of 2020.

[3] Board Notice 194 of 2017.

[4] As defined in section 1 of the Banks Act 94 of 1990.

[5] As defined in section 1 of the Insurance Act 18 of 2017.

[6] As defined in section 1 of the Financial Markets Act 19 of 2012.

[7] Section 45(2) of the Determination.

[8] Section 48(1) and (2) of the Determination.

[9] As defined in the Determination.

[10] As defined in the Determination.

[11] As defined in section 1(1) of Act 37 of 2002.

[12] Section 33(1) of the Determination.

[13] FSCA FAIS Notice 22 of 2020.

[14] 1 June 2020 to 31 May 2021.

[15] 1 June 2019 to 31 May 2020.



Shayne Krige

Head of Investment Funds

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