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The FSCA publishes exemptions for Crypto Assets Financial Service Providers

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On 11 May 2023, the Financial Sector Conduct Authority ("**FSCA**") published notice 25 of 2023 ("**Notice**"), (i) exempting crypto asset financial service providers ("**CASPs**") from certain requirements of the Financial Advisory and Intermediary Services Act 37 of 2002 ("**FAIS Act**"), and (ii) imposing additional conditions on, *inter alia*, CASPs to be licensed as such providers.

The Notice should be read together with the FSCA communication 16 of 2023, also published by the FSCA on 11 May 2023.

As of the date of publication of the Notice –

- CASPs are exempted from complying with section 13 of the General Code of Conduct for Authorised Financial Services Providers and Representatives of 2003 published under notice 80 of 2003 by the Financial Services Board ("**General Code of Conduct**") and the Financial Services Board Notice 123 of 2009, in that CASPs are not required to maintain in-force and suitable guarantees, professional indemnity cover or fidelity insurance to render crypto-asset related services;
- CASPs and their key individuals[1] are, temporarily (for a period of 18 months from the date of publication of the Notice), exempted from completing and passing the regulatory examinations required in terms of section 8A of the FAIS Act, read with Part 4 of Chapter 3 of the Determination of Fit and Proper Requirements ("**Regulatory Examinations**") published by the Financial Services Board in 2017 ("**Fit and Proper Requirements**");
- a crypto asset supervised representative ("**Representative**"), excluding in respect of paragraph (iv) below, who before the Notice was published, had not ever been appointed as a representative of a financial services provider, is exempted from completing the Regulatory Examinations, for a period of two years from the date on which he/she was first appointed to render financial services in respect of crypto assets; and
- a Representative, who, before publication of the Notice, only has a date of first appointment to (i) render financial services in respect of a Tier 2 financial product;[2] or (ii) execute sales must, within two years from the date on which he/she was first appointed as a Representative, other than in respect of executing of sales in relation to crypto assets, comply with the applicable regulatory examination requirements.

In addition, the FSCA has imposed the below requirements in that –

- CASPs, their key individuals and other representatives must complete a minimum of six hours of continuous professional development ("**CPD**") activities,[3] relating to crypto assets every CPD cycle;[4]
- a Representative must complete a minimum of six hours of CPD activities relating to crypto assets per CPD cycle, starting from –
- the date on which the Representative meets the applicable regulatory examination and qualification requirements pertaining to crypto assets; or
- after six years from the date on which the Representative was first appointed as a Representative,

whichever occurs first; and

- a Representative who, before publication of the Notice, only has a date of first appointment to (i) render financial services in respect of Tier 2 financial products, or (ii) execute sales in relation crypto assets, who after such date of appointment is appointed to render financial services other than the execution of sales, must complete a minimum of six hours of CPD activities relating to crypto assets per CPD cycle, starting from the date on which the Representative meets the applicable regulatory examination and qualification requirements pertaining to crypto assets, or after six years from the date on which the Representative was first appointed as a Representative, whichever occurs first.

Where a CASP, its Representatives and its key individuals fail to comply with the above requirements, the exemptions contained in the Notice will be forfeited.

The publication of the Notice comes after the (i) declaration of crypto assets as financial products on 19 October 2022 by the FSCA ("**Declaration**") and (ii) the policy document supporting the Declaration ("**Policy Document**"). The Policy Document contained various proposed draft exemptions in relation to the Fit and Proper Requirements, which were subject to public commentary ("**Draft Exemptions**").

We note that one of the exemptions under the Draft Exemptions related to section 23 of the Fit and Proper Requirements and that such section has been omitted from the exemptions in the Notice, which means that a CASP, its Representatives, key individuals and other representatives are required to hold a recognised academic qualification as set out in the list of qualifications published by the FSCA. Where a person holds a non-recognised qualification, and believes that his/her qualification ought to be recognised, such person may submit an application to the FSCA for recognition.

If you are a CASP in South Africa, remember that in terms of the Declaration read with the Policy Document, applications for a license to be recognised as a CASP must be submitted to the FSCA for consideration between 1 June 2023 and 30 November 2023. An application for the recognition of a qualification not accepted by the FSCA may be included as part of the CASP licence application.

Footnotes

[1] Means a 'key individual' as defined in section 1 of the FAIS Act

[2] Tier 2 financial products refer to the financial products as defined in section 1 of the Fit and Proper Requirements

[3] The Fit and Proper Requirements provide that "CPD" activities means an activity that is –
(a) accredited by a professional body as defined in section 1 of the Fit and Proper Requirements;
(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 Fit and Proper Requirements

[4] A period of 12 months commencing on 1 June of every year and ending on 31 May of the following year

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