

DECLARATION OF CRYPTO ASSETS AS A FINANCIAL PRODUCT

The Financial Sector Conduct Authority (FSCA) has published the declaration of Crypto Assets as a financial product under the FAIS Act, which was gazetted on 19 October 2022. The declaration, brings providers of financial services in relation to crypto assets within the FSCA's regulatory jurisdiction.

On 20 November 2020, the FSCA published a draft Declaration of Crypto Assets as a Financial product under the FAIS Act, for public consultation. A total of 94 individual comments were received from 22 different commentators. Following this public consultation process, the FSCA published the final Declaration in the *Government Gazette* and on the FSCA's website.

The FSCA has also published a Policy Document supporting the Declaration. The Policy Document provides clarity on the effect of the Declaration, including transitional provisions, and the approach the FSCA is taking in establishing a regulatory and licensing framework that would be applicable to Financial Services Providers (FSPs) that provide financial services in relation to Crypto Assets.

In addition to the Declaration and Policy Document, the Authority also published a general exemption for persons rendering financial services (advice and/or intermediary services) in relation to Crypto Assets, from section 7(1) of the FAIS Act.

The intention of the exemption is the following:

- To facilitate transitional arrangements for existing providers of crypto asset activities. The transitional arrangements entail that a person may continue to render financial services in relation to crypto assets without being licensed, provided that such person applies for a licence under the FAIS Act within the period specified in the exemption. The stipulated period is 1 June 2023 until 30 November 2023. The exemption will apply until the licence application submitted has been approved or declined; and
- To exempt certain ecosystem participants from the FAIS Act. These participants are crypto asset miners and node operators performing functions in respect of the security and health of the network as well as persons rendering financial services in relation to non-fungible tokens¹.

¹The terms crypto asset miner, node operator and non-fungible token are defined in the published Exemption of persons rendering financial services in relation to crypto assets from section 7(1) of the Financial Advisory and Intermediary Services Act, 2002.

To facilitate the application of an appropriate regulatory framework for Crypto Asset FSPs once licensed, the FSCA also published a Draft Exemption of Persons rendering Financial Services in relation to Crypto Assets from Certain Requirements. The draft exemption proposes to exempt licensed Crypto Asset FSPs and their key individuals and representatives from certain requirements of, amongst others, the General Code of Conduct for Authorised Financial Services Providers (General Code) and their Representatives and the Determination of Fit and Proper Requirements, 2017 (Fit and Proper requirements). Requirements contained in the General Code and Fit and Proper requirements will apply to all Crypto Asset FSP's once licensed, except those requirements that they are exempted from in terms of the draft General Exemption.

The draft General Exemption has been published for public comment pending finalisation, to solicit stakeholder inputs on the proposed regulatory framework that will apply to licensed Crypto Asset FSP's. Submissions on the draft Exemption must be made using the submission template available on the FSCA's website and be submitted in writing on or before **1 December 2022** to the FSCA at FSCA.RFDStandards@fsca.co.za.

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