

## **FSCA COMMUNICATION 16 OF 2023 (FAIS)**

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

#### **1 PURPOSE**

The purpose of this Communication is to inform stakeholders that the Financial Sector Conduct Authority (FSCA) today published the following documents on its website:

- 1.1 FSCA FAIS Notice 25 of 2023 - Exemption of Persons rendering a Financial Service in relation to Crypto Assets from Certain Requirements, 2023 (“Exemption”);
- 1.2 Annexure A - Response Matrix relating to comments received on the draft Exemption of Persons rendering Financial Services in relation to Crypto Assets from Certain Requirements (draft Exemption), that was published for comment on 19 October 2022; and
- 1.3 FSCA FAIS No, 24 of 2023, Revised List of Qualifications Recognised for Financial Services Providers, Key Individuals and Representatives.

#### **2 DECLARATION OF CRYPTO ASSETS AS A FINANCIAL PRODUCT**

- 2.1 On 19 October 2022, the FSCA published the final Declaration of a Crypto Asset as a Financial Product (Declaration) under the Financial Advisory and Intermediary Services Act, 2003 (FAIS Act), in the *Government Gazette* and on the FSCA’s website.
- 2.2 A Policy Document was published alongside the Declaration, that provided:
  - 2.2.1 an overview of the consultation process followed when making the Declaration;
  - 2.2.2 clarity on the effect of the Declaration, including transitional provisions, that would be applicable; and
  - 2.2.3 the approach the FSCA intends to take in establishing a regulatory and licensing framework under the FAIS Act for Crypto Asset FSPs.
- 2.3 The FSCA also published a general exemption of persons rendering financial services (advice and/or intermediary services) in relation to crypto assets from section 7(1) of the FAIS Act. The effect of this exemption is that a person who, as a regular feature of the business of such person renders a financial service in relation to crypto assets, may continue to render financial services in relation to crypto assets without being licenced,

provided that the person applies for a licence under the FAIS Act within the period specified in the exemption (1 June 2023 and 30 November 2023) and complies with the other conditions indicated in the exemption.

- 2.4 The exemption from section 7(1) of the FAIS Act will apply until the licence application submitted within the time period referred to in 2.3 has been finally approved or declined.
- 2.5 The application forms that need to be completed by FSPs and submitted to the FSCA when applying for a licence in terms of section 8 of the FAIS Act were assessed and, where appropriate, amended to make provision for the crypto asset product sub-category.
- 2.6 Licence Forms FSP 2, FSP 4C, FSP 4D and FSP 5 were accordingly amended. A Notice, confirming the publication of the application forms, will be published on the FSCA's website ([www.fsca.co.za](http://www.fsca.co.za)) **before 1 June 2023**. Once published, the forms can be accessed, together with all the other applicable application forms, as follows: **Home > Regulated Entities > Licensing and Registration > FAIS > New Applications > Forms**.
- 2.7 In addition to the Declaration, Policy Document and section 7(1) exemption, the FSCA also published the draft Exemption of Persons Rendering Financial Services in relation to Crypto Assets from certain requirements (draft Exemption) for public comment.

### 3 THE DRAFT EXEMPTION

- 3.1 As was set out in the Policy Document, various exemptions were required to give effect to the proposals made in the Policy Document. As a result, the draft Exemption was published which proposed 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 and Representatives, 2003 (General Code of Conduct) and the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 (Determination).
- 3.2 A total of 77 individual comments on the draft Exemption were received from 11 different commentators. The FSCA considered the comments received and made the necessary changes to the Exemption. The comments received and the FSCA's responses thereto are reflected in Annexure A, published together with this Communication.
- 3.3 The changes that were made following the public consultation process are discussed below.

*Appropriate academic credentials vs a qualification recognised under section 23 of the Determination*

- 3.4 The most material amendment that was made to the draft Exemption is the removal of the exemption from section 23 of the Determination. Initially it was thought that

qualifications recognised by the FSCA had not focused on crypto asset related criteria and it would therefore be difficult to, in the short-term, identify crypto related qualifications.

- 3.5 However, the FSCA embarked on a process to evaluate the existing qualifications on the list of recognised qualifications to identify if, and to what extent, there might be qualifications on the list that can be recognised for purposes of crypto assets. The list of recognised qualifications was consequently updated, and section 23 of the Determination will therefore apply as is to Crypto Asset FSPs, their key individuals and representatives, meaning they are required to have a qualification recognised by the FSCA, as is the case with all other FSPs. This part of the Exemption is therefore no longer required and has been removed.
- 3.6 The updated List of Qualifications Recognised for Financial Services Providers, Key Individuals and Representatives that make provision for the crypto assets product sub-category is published on the FSCA's website ([www.fsc.co.za](http://www.fsc.co.za)) under FSCA FAIS No. 24 of 2023 and can be accessed as follows: **Home > Regulated Entities > Licensing and Registration > FAIS > Fit and Proper > Competence Requirements > Qualifications > Qualification List.**
- 3.7 The FSCA wishes to emphasise that any person can at any stage submit an application to the FSCA to recognise a specific qualification for purposes of section 23 of the Determination. An application for the recognition of a qualification can also be included as part of a licence application under section 8 of the FAIS Act.
- 3.8 Persons that are rendering financial services in relation to crypto assets who do not have a qualification that reflects on the list of recognised qualifications, and who has a qualification that they believe should reflect on the list, are urged to submit an application to the FSCA for the recognition of such qualification as soon as possible.

#### *Other amendments*

- 3.9 The other amendments made to the draft Exemption were mostly cosmetic in nature, made for clarity purposes or made to apply the existing requirements to crypto asset providers:
- 3.9.1 Paragraph 2(1) of the draft Exemption was amended to clarify that the exemption from section 13 of the General Code of Conduct applies only insofar as it relates to the rendering of financial services in respect of crypto assets. Where an FSP is also licensed for other financial products in addition to crypto assets, the exemption is not applicable in respect of the other financial products.
- 3.9.2 The reference to "representative" in paragraph 2(4) of the draft Exemption was removed as it was erroneously inserted. A representative of a Crypto Asset FSP who, before publication of the Exemption, was never appointed as a representative of an FSP and does not comply with the regulatory examination requirements, is subject to the exemption stipulated in paragraph 3(3) of the draft Exemption.

- 3.9.3 Paragraph 2(5) of the draft Exemption was removed to clarify that the minimum of 6 hours of CPD activities relating to crypto assets is required **in addition** to the CPD requirements set out in section 33(1) of the Determination, where applicable. As a result of the removal of paragraph 2(5), the requirement or condition that a Crypto Asset FSP, its key individuals and representatives must complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle was moved to the paragraph dealing with additional conditions (see new paragraph 4 of the final Exemption).
- 3.9.4 As previously communicated, section 15 of the Determination applies to a Crypto Asset FSP, its key individuals and representatives. The FSCA believes that Condition 2(7)(b) of the Exemption of Services under Supervision, 2018 (Exemption of Services under Supervision), which provides that a representative will remain under supervision until being assessed as having the required experience in respect of the particular financial product for which it is appointed will equally apply to a crypto asset supervised representative who does not meet the experience requirement. The exemption from the experience requirements in the Exemption of Services under Supervision would, however, equally apply to a crypto asset representative who does not meet the experience requirements in section 15 of the Determination. For this reason, paragraph 3(1) of the draft Exemption as well as the definition of 'experience requirement' was removed.
- 3.9.5 In addition, as a result of the removal of the definition of 'experience requirement', it is no longer necessary to have a definition for 'crypto asset competency requirements,' as the definition of 'competency requirements' in the Exemption of Services under Supervision will apply to a crypto asset supervised representative.
- 3.9.6 Paragraph 3(3) of the draft Exemption was amended by the insertion of an additional paragraph to clarify that a crypto asset supervised representative, who has a date of first appointment to render financial services only in respect of a Tier 2 financial product or perform the execution of sales, also has 2 years from the date on which such person was first appointed as a representative to render financial services in relation to crypto assets, to comply with the applicable regulatory examination requirements.
- 3.9.7 As was the case with the removal of paragraph 2(5) of the draft Exemption, paragraph 3(4) of the draft Exemption was similarly removed to clarify that a crypto asset supervised representative is required to complete a minimum of 6 hours of CPD activities relating to crypto assets **in addition** to the CPD requirements set out in section 33(1) of the Determination, where applicable. As a result of the removal of paragraph 2(5), the condition that a crypto asset supervised representatives must complete a minimum of 6 hours of CPD activities relating to crypto assets per CPD cycle was moved to the paragraph dealing with additional conditions (see new paragraph 4 of the final Exemption).

- 3.9.8 Similar to what was said in paragraph 3.9.6 above, an additional paragraph was also inserted under paragraph 4 of the final Exemption to clarify that a crypto asset supervised representative who has a date of first appointment to render financial services only in respect of a Tier 2 financial product or performs execution of sales, and 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 the required CPD requirements as follows: CPD requirements become applicable starting from the date on which the representative meets the applicable regulatory examination requirements and qualification requirements OR after 6 years from the date on which the person was first appointed as a crypto asset supervised representative, whichever occurs first.
- 3.9.9 To prevent unnecessary misunderstanding, the FSCA decided to remove paragraphs 3(5)(a) and (b) of the draft Exemption, as the Exemption of Services under Supervision, in its entirety, will apply to a crypto asset supervised representative where applicable.
- 3.10 Following the public consultation process, the FSCA today published the final *Exemption of Persons Rendering Financial Services in relation to Crypto Assets from certain requirements* on the FSCA's website.

#### 4 ENQUIRIES

- 4.1 For queries relating to the Exemption or the information contained in this document please contact the Regulatory Frameworks Department of the FSCA at [karien.nel@fsc.co.za](mailto:karien.nel@fsc.co.za) or [johann.vanderlith@fsc.co.za](mailto:johann.vanderlith@fsc.co.za)
- 4.2 For queries relating to the licensing application process, forms, fees etc please contact the Licensing Department of the FSCA at [diketso.mashigo@fsc.co.za](mailto:diketso.mashigo@fsc.co.za)



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**Date of publication: 11 May 2023**