

(1 July 2023 - to date)

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002

Government Notice 1453 in Government Gazette 24079 dated 15 November 2002. Various commencement dates – See Act for details

FINANCIAL SERVICES BOARD

EXEMPTION OF BANKS IN RESPECT OF CERTAIN CLIENTS

Board Notice 103 in Government Gazette 26844 dated 29 September 2004. Commencement date:
1 October 2004.

As amended by:

Board Notice 103 in Government Gazette 29255 dated 29 September 2006. Commencement date:
29 September 2006.

Board Notice 99 in Government Gazette 30349 dated 3 October 2007. Commencement date:
1 October 2007.

Board Notice 97 in Government Gazette 31479 dated 30 September 2008. Commencement date:
1 October 2008.

Board Notice 125 in Government Gazette 32596 dated 28 September 2009. Commencement date:
1 October 2009.

Board Notice 43 in Government Gazette 33052 dated 26 March 2010. Commencement date: 1 May 2009.
(Commencement date may be erroneous – 1 May 2010 may have been intended)

Board Notice 79 in Government Gazette 34240 dated 20 April 2011. Commencement date: 1 May 2011.

Board Notice 176 in Government Gazette 34729 dated 4 November 2011. Commencement date:
1 November 2011.

Board Notice 97 in Government Gazette 35394 dated 30 May 2012. Commencement date: 1 June 2012.

Board Notice 27 in Government Gazette 36193 dated 27 February 2013. Commencement date:
1 March 2013.

Board Notice 27 in Government Gazette 37429 dated 11 March 2014. Commencement date: 1 March 2014.

Prepared by:

FAIS Notice 11 of 2015, dated 27 February 2015 and published on the website of the Financial Services Board <https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2011%20of%202015.pdf>.

Commencement date: 1 March 2015.

FAIS Notice 13 of 2016, dated 25 February 2015 and published on the website of the Financial Services Board <https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2013%20of%202016.pdf>

Commencement date: 1 March 2016.

FAIS Notice 16 of 2017, dated 23 February 2017 and published on the website of the Financial Services Board <https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2016%20of%202017.pdf>

Commencement date: 2 March 2017.

FSCA FAIS Notice 18 of 2018, dated 6 June 2018 and published on the website of the Financial Sector Conduct Authority <https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2018%20of%202018.pdf>

Commencement date: 1 July 2018.

FSCA FAIS Notice 49 of 2019, dated 6 June 2018 and published on the website of the Financial Sector Conduct Authority <https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2049%20of%202019.pdf>

Commencement date: 1 July 2019.

FSCA FAIS Notice 70 of 2021, dated 30 June 2021 and published on the website of the Financial Sector Conduct Authority: <https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2070%20of%202021.pdf>

Commencement date: 1 July 2021.

FSCA FAIS Notice 35 of 2023 dated 28 June 2023 and published on the website of the Financial Sector Conduct Authority: <https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2035%20of%202023.pdf>

Commencement date: 1 July 2023.

I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby under section 44 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), exempt banks, to the extent and subject to the condition set out in the Schedule.

(Signed)

J. VAN ROOYEN,

Registrar of Financial Services Providers

SCHEDULE

EXEMPTION OF BANKS IN RESPECT OF CERTAIN CLIENTS

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1. Definitions

In this Schedule, “the FAIS 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 FAIS Act shall have that meaning, and unless the context otherwise indicates-

“bank” means a 'branch', 'branch of a bank', 'mutual bank' or 'representative office' as defined in section 1(1) of the Banks Act, 1994 (Act No. 94 of 1994), who renders a financial service other than a Category II, IIA, III or IV financial service, to a client as a regular feature of its business;

(Definition of “bank” in paragraph 1 substituted by item 2(2) of FSCA FAIS Notice 18 of 2018)

“Category II, IIA, III and IV financial services” has the meaning assigned to it in the fit and proper requirements determined by the Financial Sector Conduct Authority under section 6A of the Act;

(Definition of “Category II, IIA, III and IV financial services” in paragraph 1 inserted by item 2(1)(b) of FSCA FAIS Notice 18 of 2018)

“client”, in relation to a bank, means-

- (a) another bank;
- (b) a financial services provider who is a –
 - (i) registered insurer or licensed insurer as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998);
 - (ii) registered insurer or licensed insurer as defined in the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

(Paragraph (b) of the definition of “client” in paragraph 1 substituted by item 2(1)(a) of FSCA FAIS Notice 18 of 2018)

- (c) a person outside the Republic who-
 - (i) as a regular feature of the person's business, renders a service similar to a 'financial service' as defined in section 1(1) of the Act; and

- (ii) is registered, licensed, recognised, approved or otherwise authorised to conduct the business of a bank or the business of an insurer by a foreign regulator with functions similar to those of the Prudential Authority;

(Paragraph (c) of the definition of “client” in paragraph 1 substituted by item 2(1)(a) of FSCA FAIS Notice 18 of 2018)

- (d) a central bank or other national monetary authority of any country, state or territory;
- (e) any person who is mandated to manage assets and who has confirmed to the satisfaction of the bank that the market value of the assets managed by the person will exceed R1 billion at all times of the rendering of financial services to the person;
- (f) any other person included in the definition of ‘client’ in section 1(1) of the Act, who has confirmed to the satisfaction of the bank that the person will have assets of which the net asset value will exceed R20 million at all times of the rendering of financial services to the person, and who is not-
 - (i) a natural person;
 - (ii) a pension fund organisation as defined in section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956);
 - (iii) a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (iv) a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act No 131 of 1998),

“Prudential Authority” means the Prudential Authority as defined in section 1(1) of the Financial Sector Regulation, 2017 [sic] (Act No. 9 of 2017)

(Definition of “Prudential Authority” in paragraph 1 inserted by item 2(1)(c) of FSCA FAIS Notice 18 of 2018)

2. Objective of exemption

Banks have submitted an exemption application in respect of the rendering of financial services in the course of merchant banking business.

The registrar is of the view that the provisions of the FAIS Act can hardly be applied where a bank is confronted by large corporate and other clients in a business situation where clients will usually have sufficient know-how and expertise, or access thereto. Certain of these clients will be “execution-only” clients who will have a fixed mind on the services required, leaving the bank with a limited discretion in the rendering of the required service.

Having regard particularly to the applicable requirements for an exemption from section 7(1) of the FAIS Act, as set out in section 44(1)(b) and (c) of the FAIS Act, the registrar is also satisfied that the requested exemption can hardly frustrate the achievement of any object of the FAIS Act, particularly as the exemption will not apply to several classes of clients still in need of full statutory protection.

The registrar is in addition satisfied that under current economic and public financial circumstances, the granting of the requested exemption does not seem to be in conflict with public interest, and that the public interest in sound merchant banking business, which is apparently conducted in terms of proper international standards and norms, may not be capable of being served by the application of section 7 of the FAIS Act, conjointly with other provisions of the FAIS Act, and may obviously result in financial or other hardship or prejudice to the relevant parties.

The registrar is however, despite the considerations mentioned above, satisfied that economic and public financial circumstances and current business practices and client bases of the relevant banks may change even in the near future, and that the non-applicability of the provisions of the FAIS Act referred to above, may in practice be proved to frustrate an object of the FAIS Act to provide and promote client protection, and that at this stage an exemption of only limited duration must be granted.

3. Duration of exemption

A bank is exempted until 30 June 2025 from section 7(1) of the FAIS Act.

Publisher's Note:

Due to the nature of the amendments of Paragraph 3, separate historical versions have not been created. Instead the amendments are listed as follows:

Paragraph 3 has been amended by BN 103 of 2006 with effect from 29 September 2006 by the substitution for the date "30 September 2006" of the date "30 September 2007".

Paragraph 3 has been amended by BN 99 of 2007 with effect from 1 October 2007 by the substitution for the date "30 September 2007" of the date "30 September 2008".

Paragraph 3 has been amended by BN 97 of 2008 with effect from 1 October 2008 by the substitution for the date "30 September 2008" of the date "30 September 2009".

Paragraph 3 has been amended by BN 125 of 2009 with effect from 1 October 2009 by the substitution for the date "30 September 2009" of the date "30 April 2010".

Paragraph 3 has been amended by BN 43 of 2010 with effect from 1 May 2009? by the substitution for the date "30 April 2010" of the date "30 April 2011".

Paragraph 3 has been amended by BN 79 of 2011 with effect from 1 May 2011 by the substitution for the date “30 April 2010” of the date “31 October 2011”.

Paragraph 3 has been amended by BN 176 of 2011 with effect from 1 November 2011 by the substitution for the date “31 October 2011” of the date “31 May 2012”.

Paragraph 3 has been amended by BN 97 of 2012 with effect from 1 June 2012 by the substitution for the date “31 May 2012” of the date “1 March 2013”.

Paragraph 3 has been amended by BN 27 of 2013 with effect from 1 March 2013 by the substitution for the date “1 March 2013” of the date “1 March 2014”.

Paragraph 3 has been amended by BN 27 of 2014 with effect from 1 March 2014 by the substitution for the date “1 March 2014” of the date “1 March 2015”.

Paragraph 3 has been amended by FAIS Notice 11 of 2015 with effect from 1 March 2015 by the substitution for the date “1 March 2015” of the date “1 March 2016”.

Paragraph 3 has been amended by FAIS Notice 13 of 2016 with effect from 1 March 2016 by the substitution for the date “1 March 2016” of the date “1 March 2017”.

Paragraph 3 has been amended by FAIS Notice 16 of 2017 with effect from 2 March 2017 by the substitution for the date “1 March 2017” of the date “30 June 2018”.

Paragraph 3 has been amended by FSCA FAIS Notice 18 of 2018 with effect from 1 July 2018 by the substitution for the date “30 June 2018” of the date “30 June 2019”)

Paragraph 3 has been amended by FSCA FAIS Notice 49 of 2019 with effect from 1 July 2019 by the substitution for the date “30 June 2019” of the date “30 June 2021”)

Paragraph 3 has been amended by FSCA FAIS Notice 70 of 2021 with effect from 1 July 2021 by the substitution for the date “30 June 2021” of the date “30 June 2023”)

Paragraph 3 has been amended by FSCA FAIS Notice 35 of 2023 with effect from 1 July 2023 by the substitution for the date “30 June 2023” of the date “30 June 2025”)

4. Amendment and withdrawal of exemption

The exemption mentioned in paragraph 3 is subject to-

- (a) amendment thereof published by the registrar by notice in the *Gazette*; and

(b) withdrawal in like manner.

5. Short title and commencement

This Exemption is called the Exemption of Banks in respect of Certain Clients, 2004, and comes into operation on the date determined by the Minister in terms of section 7(1) of the FAIS Act.