

(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)

EXEMPTION OF CERTAIN PERSONS CONDUCTING FINANCIAL SERVICES RELATED BUSINESS WITH PRIVATE EQUITY FUNDS

Board Notice 208 in Government Gazette 35997 dated 13 December 2012. Commencement date:
13 December 2012.

As amended by:

FAIS Notice 44 of 2014 dated 27 June 2014. Commencement date: 1 July 2014.
<https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2044%20of%202014.pdf>

FAIS Notice 71 of 2015 dated 23 June 2015. Commencement date: 1 July 2015.
<https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2071%20of%202015.pdf>

FAIS Notice 76 of 2016 dated 21 June 2016. Commencement date: 1 July 2016.
<https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2076%20of%202016.pdf>

FAIS Notice 15 of 2017 dated 23 February 2017. Commencement date: 1 July 2017.
<https://www.fsb.co.za/Departments/fais/FAIS%20Notices/FAIS%20Notice%2015%20of%202017.pdf>

FSCA FAIS Notice 37 of 2018 dated 28 June 2018. Commencement date: 28 June 2018.
<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2037%20of%202018.pdf>

FSCA FAIS Notice 32 of 2020 dated 1 June 2020. Commencement date: 1 July 2020.
<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2032%20of%202020.pdf>

FSCA FAIS Notice 54 of 2021 dated 31 May 2021. Commencement date: 1 July 2021.
<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2054%20of%202021.pdf>

FSCA FAIS Notice 32 of 2023 dated 13 June 2023. Commencement date: 1 July 2023.
<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2032%20of%202023.pdf>

EXEMPTION OF CERTAIN PERSONS CONDUCTING FINANCIAL SERVICES RELATED BUSINESS WITH PRIVATE EQUITY FUNDS

Prepared by:

I, German Emmanuel Anderson, Deputy Registrar of Financial Services Providers, hereby exempt under section 44(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), certain persons from the provisions of the Act when conducting financial services related business with a private equity fund, to the extent and subject to the conditions set out in the Schedule.

(Signed)

G E ANDERSON,

Deputy Registrar of Financial Services Providers

SCHEDULE

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1. Definitions

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

“**associate**” means an “associate” as defined in section 1(1) of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

“**Code of Conduct for Discretionary FSPs**”

(Definition of “Code of Conduct for Discretionary FSP’s” deleted by paragraph 2(1) of FSCA FAIS Notice 37 of 2018)

“**Determination of Fit and Proper Requirements**” means the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, published by Board Notice 194 of 2017 in Government Gazette No. 41321 on 15 December 2017;

(Definition of “Determination of Fit and Proper Requirements” substituted by paragraph 2(2) of FSCA FAIS Notice 37 of 2018)

“**Category II FSP**” has the meaning assigned to it in section 3(b) of the Fit and Proper Requirements;
(Definition of ‘Category II FSP’ inserted by paragraph 2(3) of FSCA FAIS Notice 37 of 2018)

“**clients**” means the persons, other than the provider or its associates, who have committed capital to the private equity fund;

“Discretionary Code of Conduct” means the Code of Conduct determined in terms of section 15 of the Act applicable to Category II FSPs as defined in section 3(b) of the Fit and Proper Requirements;
(Definition of “Discretionary Code of Conduct” inserted by paragraph 2(4) of FSCA FAIS Notice 37 of 2018)

“liquidity requirements” means the liquidity requirement as defined in section 47 of the Determination of Fit and Proper Requirements;

(Definition of “liquidity requirements” inserted by paragraph 2(5) of FSCA FAIS Notice 37 of 2018)

“pension fund”

(Definition of “pension fund” deleted by paragraph 2(6) of FSCA FAIS Notice 37 of 2018)

“private equity fund” means a managed pool of capital that-

- (a) has as its principle business the making of equity, equity orientated or equity related investments primarily in unlisted companies or ventures to earn income or capital gains;
- (b) is managed or advised by a member of the South African Venture Capital and Private Equity Association or other equivalent private equity and venture capital industry body; and
- (c) is not open or offered to the public as an investment;

“provider” means a Category II FSP that render financial services to a private equity fund.

2. Extent of exemption and conditions

- (a) A provider is exempted from-
 - (i) section 5(1)(c) of the Discretionary Code of Conduct in respect of mandates concluded prior to the date referred to in paragraph 4 hereunder provided the provider, in writing, has informed clients of the risks associated with investing in private equity funds and local and foreign financial products with particular reference to any currency risk or informs clients of the aforementioned risks within six months from the date referred to in paragraph 4;
 - (ii) section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded prior to the date referred to in paragraph 4 hereunder;
 - (iii) section 5(1)(j) of the Discretionary Code of Conduct in respect of all mandates concluded after the date referred to in paragraph 4 hereunder provided clients, who in the aggregate have committed 75% of the capital to the private equity fund, have the right to terminate, for any reason whatsoever, the mandate of the provider after notice in writing of not more than 180 days;

- (iv) sections 48(2) and 48(3) of the Determination of Fit and Proper Requirements, insofar it relates to the liquidity requirements, until **30 June 2026**, provided that such provider renders financial services to one or more private equity funds only.

(Paragraph 2(a)(iv) amended by FAIS Notice 44 of 2014)

(Paragraph 2(a)(iv) amended by FAIS Notice 71 of 2015)

(Paragraph 2(a)(iv) amended by FAIS Notice 76 of 2016)

(Paragraph 2(a)(iv) amended by FAIS Notice 15 of 2017)

(Paragraph 2(a)(iv) substituted by paragraph 3(1) of FSCA FAIS Notice 37 of 2018)

(Paragraph 2(a)(iv) substituted by paragraph 1 of FSCA FAIS Notice 32 of 2020)

(Paragraph 2(a)(iv) amended by FSCA FAIS Notice 54 of 2021)

(Paragraph 2(a)(iv) amended by FSCA FAIS Notice 32 of 2023 dated 13 June 2023)

- (b) The exemptions referred to in paragraph 2 are subject to the conditions that the provider must-
 - (i) register the exemption with the Registrar in the prescribed format and manner; and
 - (ii) inform the Registrar in writing within 15 days after the change has taken place, of any change in respect of the information that was submitted for purposes of registering the exemption.

3. Amendment and withdrawal of exemption and conditions

The exemptions and conditions referred to in paragraphs 2 are subject to-

- (a) amendment thereof published by the registrar by notice in the *Gazette*; and
- (b) withdrawal in like manner.

4. Short title and commencement

This Exemption is called the Exemption of Certain Persons conducting Financial Services related business with a Private Equity Fund, 2012, and comes into operation on the date of publication in the *Gazette*.