

BOARD NOTICE 166 OF 2011

FINANCIAL SERVICES BOARD

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO. 37 OF 2002)**

EXEMPTION OF FOREIGN FSPs

I, German Emmanuel Anderson, the Deputy Registrar of Financial Services Providers, exempt under section 44(4), read with section 44(1)(b) and (c), of the Financial Advisory and Intermediary Services Act, 2002, foreign FSPs from the Act to the extent and subject to the conditions set out in the Schedule.

A handwritten signature in black ink, consisting of a large capital 'A' followed by a series of loops and a trailing flourish.

**GE Anderson,
Deputy Registrar of Financial Services Providers**

SCHEDULE

EXEMPTION OF FOREIGN FSPs

Definitions

1. In this Schedule, “the Act” means the Financial Advisory and Intermediary Services Act, 2002. Any word or expression to which a meaning is assigned in the Act has that meaning, and unless the context otherwise indicates-

“**Fit and Proper Requirements**” means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

“**foreign FSP**” means a Category I financial services provider that is not domiciled, or that does not have a branch or representative office in South Africa;

“**foreign regulator**” means a regulatory body, recognised by the Registrar, that supervises the foreign FSP in the home jurisdiction of the FSP;

“**foreign auditor**” means an auditor registered under a foreign law regulating the activity of independent auditors in the country the foreign FSP is domiciled;

“**General Code**” means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

“**Regulations**” means the Financial Advisory and Intermediary Services Regulations, 2003.

Objective of exemption

2. (1) A person not domiciled in South Africa, who wishes to act as an FSP in South Africa must apply under section 8(1) of the Act to be authorised as an FSP.
- (2) Regulation 3 of the Regulations provides that no person other than an authorised FSP may solicit for business relating to the rendering of financial services in South Africa. This includes a person domiciled outside the Republic who solicits for business in South Africa.

- (3) In cases where foreign regulators, similar to the Financial Services Board, regulate foreign FSPs in their jurisdictions with reference to the rendering of financial services, and their regulatory requirements are at an acceptable standard, a duplication of regulation could result. The Registrar has consequently decided that it would be reasonable to exempt an applicant or licensee domiciled outside South Africa from certain provisions of the Act and the Fit and Proper Requirements.
- (4) In terms of section 19(1) of the Act, an FSP must prepare financial statements reflecting the financial position of the business as at the last day of the financial year. Section 19(2)(a) requires that the statements must be audited and reported on by an external auditor approved by the Registrar and submitted within a required time period to the Registrar. Section 1(1) of the Act defines "auditor" as an auditor registered in terms of the Auditing Profession Act, 2005. Foreign FSPs may be required to have an auditor recognised in terms of the laws applicable to the jurisdiction they are domiciled. Under section 19(3) of the Act, an FSP must maintain records in respect of cash and assets held on behalf of clients, and must submit to the Registrar a report by the auditor in the form and manner determined by the Registrar. The report must be in accordance with South African auditing standards and foreign auditors may not be able to comply therewith, but with similar requirements in their respective jurisdictions. The Registrar is satisfied that there are reasonable grounds for the relaxation of such requirements.
- (5) Paragraph 5 of the Fit and Proper Requirements and paragraph 3(1)(a) of the Notice on Qualifications, Experience and Criteria for Approval of Compliance Officers, 2010, determine that FSPs, key individuals, representatives and compliance officers must hold recognised qualifications.

Paragraphs 6 and 10 of the Fit and Proper Requirements determine that FSPs, key individuals and representatives must successfully complete the first and second level regulatory examinations.

Paragraph 7 of the Fit and Proper Requirements requires FSPs, key individuals and representatives to comply with continuous professional development requirements.

Foreign FSPs may already have similar requirements under the applicable foreign law.

- (6) Paragraph 8(1)(d) of the Fit and Proper Requirements provides that an FSP must have an account with a registered bank. Foreign FSPs may not have a

bank account in South Africa and will therefore be unable to comply with the requirement. The Registrar is satisfied that there are reasonable grounds for the relaxation of such requirements.

- (7) The condition is that the foreign FSP must be subject to similar regulation overseas after the Registrar has taken into account the extent of the regulation and the type of financial services that the FSP is authorised to render in terms of the foreign laws.
- (8) The Registrar is satisfied that the exemption otherwise meets the requirements of section 44(1)(c) of the Act.

Extent of exemption and conditions

- 3. (1) A foreign FSP is exempted from section 19(2)(a) and (b)(i) of the Act, provided the foreign FSP has appointed an auditor approved or recognised by a foreign regulator and prepares financial statements in conformity with the generally accepted accounting practice of the country domiciled in.
- (2) A foreign FSP is exempted from section 19(3) of the Act, provided the foreign FSP-
 - (a) maintains a separate bank account into which clients' funds are deposited;
 - (b) the records relating to clients' funds are audited by an auditor appointed or recognised under the laws of the country domiciled in; and
 - (c) a report similar to the report in section 19(3) of the Act is submitted to the Registrar as provided in the section.
- (3) A foreign FSP is exempted from paragraph 8(1)(b) of the Fit and Proper Requirements, provided the foreign FSP has a registered bank account in the country domiciled in which conforms to the applicable foreign laws.
- (4) A foreign FSP, its key individuals and representatives who are not domiciled in South Africa are exempted from paragraph 5 of the Fit and Proper Requirements, provided the key individuals and representatives of the foreign FSP hold a similar relevant qualification recognised by a foreign regulator.
- (5) A foreign FSP, its key individuals and representatives who are not domiciled in South Africa and who are authorised or appointed to render intermediary services only, are exempted from paragraphs 6(2), 10(3)(d) and (e), 10(3)(i) and

(j), 10(3A)(b) and (c), 10(4)(b) and (c) and 10(7)(a) of the Fit and Proper Requirements.

- (6) A foreign FSP, its key individuals and representatives who are not domiciled in South Africa and who are authorised or appointed to render intermediary services only, are exempted from paragraphs 7(1), 10(5), 10(7)(b) of the Fit and Proper Requirements.
- (7) The compliance officer of a foreign FSP is exempted from paragraph 3(1)(a) of the Notice on Qualifications, Experience and Criteria for Approval of Compliance Officers, 2010, provided the compliance officer holds a similar relevant qualifications recognised by a foreign regulator.

Repeal

4. The Exemption relating to Foreign Financial Services Providers, Board Notice 9 of 2007, in *Gazette* 29567 of 29 January 2007, is repealed.

Short title and commencement

5. This Exemption is called the Exemption of Foreign FSPs, 2011, and comes into operation on date of publication in the *Gazette*.
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