

Crypto assets now officially considered 'financial products' in South Africa

By [Ashlin Perumall](#)

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Crypto assets are now regulated as financial products in South Africa. On 19 October 2022, the Financial Sector Conduct Authority (FSCA), South Africa's financial institutions regulator, issued a declaration (Declaration) that crypto assets are now included under the definition of 'financial products' in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS).



Image source: [lightboxx](#) – [123RF.com](#)

The Declaration also provides a wide definition for crypto assets, being a digital representation of value that:

- is not issued by a central bank, but is capable of being traded, transferred or stored electronically by natural and legal persons for the purpose of payment, investment or other forms of utility;
- applies cryptographic techniques; and
- uses distributed ledger technology.

The effect of the Declaration is that any person who provides advice or renders intermediary services in relation to crypto assets must be authorised under the FAIS Act as a financial services provider, and must comply with the requirements of the FAIS Act. Under FAIS, 'advice' includes recommendations, guidance or proposals of a financial nature furnished by any means or medium in respect of a defined financial product. 'Intermediary service' includes any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier with a view to:

- buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;
- collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or
- receiving, submitting or processing the claims of a client against a product supplier.



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Exemption application

Ordinarily, in terms of section 7 of FAIS, a person may not act or offer to act as a financial services provider unless such person has been issued with a licence by the FSCA. The FSCA has set applicable licences which an FSP would generally require, which are divided into different categories of licences. The full list of categories can be found [here](#). However, on 19 October 2022, the FSCA also published notice 90 of 2022 exempting certain persons who render a financial service in relation to crypto assets from the application of section 7(1) of FAIS. In order for the exemption to apply, the relevant persons are required to comply with the following:

1. submit an application to the FSCA between 1 June 2023 and 30 November 2023
2. comply with:
 - a. chapter 2 of the Determination of Fit and Proper Requirements for Financial Services Providers, 2017
 - b. section 2 of the General Code of Conduct (GCC)
 - c. all other requirements in the GCC excluding section 13.



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The exemption is also subject to the condition that the relevant applicant must provide the FSCA with any information it requests that is in the possession of, or under the control of, the applicant, that is relevant to the financial services and/or similar activities rendered by such applicant. This application must be made by persons seeking an exemption by 1 December 2023. This exemption excludes persons categorised as crypto asset miners, node operators, and financial services in relation to non-fungible tokens, in respect of whom it is already deemed to apply.

As can be seen from the breadth of the legislative framework underpinning 'financial products' under FAIS, the consequences of the Declaration will be far reaching, and will impact many businesses in South Africa dealing in crypto assets. When the draft of the Declaration was published in November 2020, it was noted that the intention behind the Declaration was to capture intermediaries that advise on or sell crypto assets to consumers, so as to provide adequate protection for consumers who are advised to purchase these products. Businesses in this space that have until now been

operating in a largely unregulated environment will need to move quickly to become compliant.

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