

S.I. 36 of 2019**FINANCIAL SERVICES AUTHORITY***(Act 19 of 2013)***Financial Services Authority (Regulatory Sandbox Exemption)
Regulations, 2019****Arrangement of Regulations****Regulations**

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S.I. 36 of 2019**FINANCIAL SERVICES AUTHORITY***(Act 19 of 2013)***Financial Services Authority (Regulatory Sandbox Exemption) Regulations, 2019**

In exercise of the powers conferred by paragraph (c) of subsection (1) of section 4 and section 35, read with section 48 of the Financial Services Authority Act, 2013, the Minister for Finance hereby makes the following Regulations —

1. These Regulations may be cited as the Financial Services Authority (Regulatory Sandbox Exemption) Regulations, 2019.

Citation

2. In these Regulations unless the context otherwise requires —

Interpretation

“Authority” means the Financial Services Authority established under section 3 of the Financial Services Authority Act, 2013;

Citation

“control” in relation to a person means —

- (a) another person (the “controller”) holding more than half of the equity capital of the person by contract, or by the memorandum or articles of the person, or otherwise being entitled to appoint, or prevent the appointment of, a managing director, or more than half the directors (other than the managing director) of the person; or
- (b) the controller satisfying either of the above conditions in relation to another controller of the person;

“controller of an eligible person” means a person who (whether alone or together with one or more other persons) controls the eligible person;

“eligible financial service” means —

- (a) providing a financial product advice in relation to a particular kind of financial product; or
- (b) applying for or acquiring a particular kind of financial product; or
- (c) issuing, varying or disposing of a non-cash payment facility; or
- (d) arranging for the issuing, varying or disposing of a particular kind of financial product;

“eligible general insurance product” means a general insurance product issued by an insurance company that is either authorised by the Authority or is a general insurance product authorised by the Authority for the purposes of these Regulations;

“eligible life risk insurance product” means a life risk insurance product issued by an insurance company that is either authorised by the Authority or is a life risk insurance product authorised by the Authority for the purposes of these Regulations;

“eligible person” means a person, who may but not necessarily, be a permanent resident of Seychelles and offers eligible financial service outside the Seychelles;

“eligible superannuation product” means a superannuation product offered from a jurisdiction that has the approval of the Authority for the purposes of these Regulations;

“FSA Act” means the Financial Services Authority Act, 2013 (Act 19 of 2013);

“FSA Rules” means the rules, codes and guidelines made under the FSA Act and the Securities Act;

“non-cash payment facility” means a facility through which, or through the acquisition of which, a person makes non-cash payments;

“related body corporate” in relation to a company or a body corporate means, a person who is —

- (a) a holding company of a company or a body corporate;
- (b) a subsidiary of a company or a body corporate;
- (c) a subsidiary of a holding company of a company or a body corporate; or
- (d) a holding company of a subsidiary of a company or a body corporate;

“retail client” means a client other than a wholesale client;

“Securities Act” means the Securities Act, 2007 (Act 8 of 2007);

“wholesale client” means a client who —

- (a) is a person whose ordinary business or employment involves, whether for his own account or the accounts of others, the —
 - (i) acquisition or disposal of financial products of the same kind or substantially the same kind as being offered by the eligible person; or

- (ii) offering of financial services of the same kind or substantially the same kind as being offered by the eligible person;
- (b) is a person who has a net worth, whether individually or jointly with his spouse, exceeding US \$1,000,000 or its equivalent in any other convertible currency, and has signed a declaration to such effect and consenting to be treated as a wholesale client;
- (c) is a financial institution licensed under the Financial Institutions Act, 2004, (Act 14 of 2006) or under the corresponding law, by the Authority for the purposes of these Regulations;
- (d) is a collective investment scheme licensed, under the Mutual Fund and Hedge Fund Act, 2008 (Act 10 of 2008) or under the corresponding law, by the Authority for the purposes of these Regulations;
- (e) is an insurance company licensed in Seychelles, or under the corresponding law, by the Authority for the purposes of these Regulations;
- (f) is a pension fund licensed under the corresponding law by the Authority for the purposes of these Regulations;
- (g) is a securities dealer or stock broker licensed in Seychelles, or under the corresponding law, by the Authority for the purposes of these Regulations.

3. For the purpose of these regulations, Regulatory Sandbox means the framework set up by the Authority under these Regulations to allow for the offer and testing of

innovative eligible financial services within a regulated environment with defined conditions and restrictions, but exempted from licensing, disclosure and reporting requirements under the Securities Act.

4.(1) An eligible person may obtain from the Authority, Exemptions
exemptions from the —

- (a) licensing;
- (b) disclosure;
- (c) reporting,

requirements under the Securities Act to offer different eligible financial services for testing purposes.

(2) An eligible person may obtain an exemption by —

- (a) filling a written application in the form and manner as may be specified by the Authority;
- (b) satisfying the requirements as set out in the First Schedule; and
- (c) complying with the conditions or restrictions imposed by or in accordance with these Regulations.

(3) Notwithstanding sub-regulation (1), no eligible person shall obtain an exemption to test the same type of financial service or the same kind of financial product on more than one occasion, and only one member of a group of related body corporate may obtain exemptions under these Regulations at any one time.

5.(1) An eligible person shall cease to be exempted if the eligible person becomes a licensee to provide the eligible financial service or otherwise ceases to be an eligible person for the eligible financial service.

Ceasing and non-availability of exemption to certain eligible persons

(2) The exemption shall not be available if the eligible person has already been exempted for providing that type of eligible financial service for the same kind of financial product.

Testing period

6.(1) The testing period of the exemption of the eligible person for the eligible financial service is for a maximum period of 24 months from the date on which the Authority grants approval for exemption.

(2) The testing period may be less than 24 months, if —

(a) the eligible person lodges an application with the Authority in accordance with First Schedule specifying that it wishes to be exempted for a different period not exceeding 24 months;

(b) the Authority notifies the eligible person that the exemption period is for a shorter period and where the Authority gives such a notice, the testing period shall be no longer than the period specified in the notification issued by the Authority.

(3) The Authority may, upon written request from the eligible person, agree to extend, for an additional period as specified in sub paragraphs (a) and (b), the duration of any testing period that has been determined pursuant to this subregulation, if —

(a) at the time of testing period of an eligible person is scheduled to end and the eligible person has submitted an application for an authorisation which is pending with the Authority, the Authority may, under such a circumstance, extend the period of the exemption of the eligible person for an additional maximum period of 12 months from

the date that the testing period was scheduled to end, or until the date on which the application for the authorisation from the Authority is determined, whichever date comes first; or

- (b) the eligible person lodges a request for an extension, within 3 months from the date of testing period of the eligible person is scheduled to end, specifying the reasons for the extension and specifying the length of the extension sought, the Authority may extend the period of exemption of the eligible person for an additional maximum period of 12 months from the date that the testing period was scheduled to end.

7.(1) The exemption granted under regulation 4(1) or the exemption of testing period granted under regulation 6(3) shall cease automatically when the eligible person fails to meet any of the conditions or restrictions provided under regulation 8(1) for any of the eligible financial services or the testing period of the eligible person has ended.

Ceasing of
exemption

(2) The Authority may, by written notice given to the eligible person, cancel the exemption of the eligible person granted under regulation 6 for an eligible financial service if—

- (a) the conditions or restrictions imposed by the Authority under regulation 8 or a condition imposed under the Second Schedule is not complied with by—
- (i) the eligible financial service; or
 - (ii) any other eligible financial service for which the eligible person has or has had an exemption under regulation 4; or

- (b) the Authority reasonably believes that —
 - (i) if the eligible person is a natural person, the eligible person is not of good reputation or character or financial integrity or reliability;
 - (ii) if the eligible person is a body corporate, one or more of the eligible person's officers are not of good reputation or character or financial integrity or reliability; or
 - (c) the Authority reasonably believes that the eligible person has failed to act fairly, efficiently or honestly in providing eligible financial services; or
 - (d) the Authority reasonably believes that the purpose for obtaining exemption was to continue or recommence an exemption granted under regulation 4, which was earlier obtained by another person.
- (3) The exemption ceases, where an eligible person lodges with the Authority a written notice to cancel the exemption granted to the eligible person under regulation 4.
- (4) The cancellation —
- (a) under subregulation (2) shall take effect on the day specified in the notice, which shall not be a day before the notice is given to the eligible person in writing; and
 - (b) under subregulation (3) shall take effect on the day specified in the notice, which shall not be a day before the notice is lodged by the eligible person with the Authority.

8.(1) Upon receipt of a notification for exemption and at any time during the relevant period, the Authority may impose conditions or restrictions on the eligible person and such conditions or restrictions may include, without limitation, —

Imposition,
variation or
withdrawal of
certain
conditions or
restrictions

- (a) conditions regarding any requirements, which may include best practices, standards, rules, arrangements, systems, processes, procedures, infrastructures and resources, that the eligible person shall comply with or have in place during the testing period; or
- (b) restrictions regarding the type or nature of financial product or financial service that may be offered by the eligible person regarding —
 - (i) the manner in which the eligible person deals with clients, by requiring specified terms to be included in any contract that the eligible person enters into with their clients or by requiring the eligible person to put certain processes and procedures in place for the protection of clients;
 - (ii) other considerations including the income and age of retail clients.

(2) An eligible person shall have in place, to the satisfaction of the Authority, —

- (a) an appropriate and effective risk management framework that is based on the nature and complexity of the business and the financial product or financial service offered;
- (b) an exit strategy that caters for both a planned or an unplanned exit from the Regulatory Sandbox that ensures none of its customers are prejudiced by an exit;

- (c) appropriate customer protection measures that address, inter alia, data protection, cybersecurity and segregation of client assets.

(3) If the eligible person does not comply with any of the conditions or restrictions imposed under subregulations (1) and (2), the exemption of the eligible person shall cease automatically in accordance with regulation 7.

(4) At any time during the testing period, the Authority may vary or withdraw any of the conditions or restrictions imposed on an eligible person.

(5) The Authority shall notify the eligible person in writing regarding any of the conditions or restrictions it intends to impose, or any variation to or withdrawal of conditions or restrictions that are already in effect, pursuant to subregulation (1).

Notifications

9.(1) The eligible person shall notify the Authority in writing as soon as reasonably practicable, but not later than 2 working days, on becoming aware that it fails or has failed to meet or comply with any of the conditions or restrictions specified in regulation 8.

(2) Where the eligible person wishes to have the exemption continued during a grace period, as may be determined by the Authority under 10(2), it shall submit to the Authority in writing its plans to rectify the failure.

Continuation
of exemption

10.(1) Where the eligible person has notified the Authority about the failure to meet any of the conditions or restrictions specified in regulation 8 and has done so in accordance with the requirements of regulation 9, the Authority may, and in consideration of the plans submitted under regulation 9(2), order that the exemption be permitted to continue up to and including the duration of the grace period.

(2) The duration of the grace period shall be determined by the Authority, beyond the date on which the failure to meet the conditions first occurred, and during which period the eligible person shall rectify the failure to the satisfaction of the Authority according to the submitted plan and notify the Authority in writing by the end date of the grace period if —

- (a) it rectified the failure; or
- (b) it does not rectify the failure.

(3) If, during the grace period referred to in regulation 9(2), the eligible person has rectified the failure to the satisfaction of the Authority, the exemption of the eligible person may continue and shall not be considered to have been ceased and the Authority shall confirm in writing to the eligible person, where it has been so satisfied.

(4) If the eligible person fails to comply with the requirements of regulation 7 or if it fails during the grace period to rectify the failure to the satisfaction of the Authority, its exemption shall cease automatically with effect from the date of such failure.

11. The eligible person shall ensure that it meets, at all times, the conditions for an eligible financial service as specified in the Second Schedule.

Conditions
for eligible
financial service

12. The eligible person, shall, before providing an eligible financial service to a retail client or wholesale client, ensure that it meets the conditions and disclosure requirements as specified in the Third Schedule.

Compliance
with the
conditions and
disclosure
requirements

13. The eligible person shall submit, on the periodicity and in the format specified by the Authority, any information as may be required by the Authority for the effective regulation and supervision of the activities of the eligible person within the Regulatory Sandbox.

Submission
of required
information
to the
Authority

Powers of
the
Authority

14. The Authority shall have such powers as prescribed under the FSA Act and the Securities Act, necessary to enable it to effectively discharge its functions and may, in particular —

- (a) make inspection of the premises, records and systems, including assets and monies of the eligible person, make copies of documents and records, and as the situation may require, interview or request testimonies from the officers, partners, shareholders, or controllers of the eligible person, where the Authority considers it necessary;
- (b) request any relevant information from the eligible person, on a periodic or on ad hoc basis;
- (c) apply FSA Rules, set standards and provide guidelines, rules relating to a person who develops, sells, facilitate the exchange of an open blockchain token;
- (d) give directions to any eligible person to ensure compliance with the FSA Rules, standards or guidelines;
- (e) with respect to a present or past eligible person or any person who is a present or past officer, partner, shareholder, or controller of an eligible person —
 - (i) issue a private warning;
 - (ii) issue a public censure;
 - (iii) disqualify an eligible person from the exemption of a specified kind for a specified period;

- (iv) in the case of an officer of an eligible person, disqualify the officer from a specified office or position in the office of an eligible person for a specified period;
 - (v) impose an administrative penalty not exceeding SCR20,000;
 - (vi) revoke an exemption, if applicable; and
 - (vii) request for any relevant information relating to an exemption.
- (f) in relation to any case or class of cases, for good cause, grant exemption or partial exemption from compliance with the FSA Rules and guidelines issued under section 33 of the FSA Act or under sections 5 and 134 of the Securities Act, subject to such conditions; and
- (g) set up such technical committees as it thinks fit to assist it in the discharge of its functions under the relevant Acts.

FIRST SCHEDULE

[Regulation 4(2)]

REQUIREMENTS FOR THE EXEMPTION

1. The eligible person lodges with the Authority a written application to provide an eligible financial service, to which sub regulation (2) applies, that states that the eligible person is proposing to obtain the exemption under regulation 4 for providing the eligible financial service.

2. This subsection applies to an application, if the application contains the following details—
- (a) the eligible person's name, address and contact details;
 - (b) the address of the eligible person's website, if applicable;
 - (c) if the eligible person is a natural person—
 - (i) the person's date of birth;
 - (ii) a declaration as to whether the person is or has been declared bankrupt, or has applied to take the benefit of any law for the relief of bankruptcy or insolvent debtors (or taken any analogous procedure or step) in any jurisdiction;
 - (iii) a declaration as to whether the person has been the subject of any findings or judgment in relation to fraud, misrepresentation or dishonesty in any administrative, civil or criminal proceedings in any country, or is currently party to any proceedings that may result in the person being the subject of such findings or judgment;
 - (d) if the eligible person is a company or body corporate—
 - (i) the name of each director and controlling entity, if applicable, of the eligible person;
 - (ii) a declaration as to whether the entity is insolvent or has been the subject of insolvency, liquidation or administration proceedings or any analogous procedures or steps in any jurisdiction;
 - (iii) for each director and controlling entity who is a natural person, the information referred to in paragraph (c) about such natural person; and
 - (iv) the name and contact details of a contact person and who is a

natural person who can be contacted in relation to the application;

- (e) if the eligible person is regulated in Seychelles or elsewhere either as —
- (i) a financial services licensee;
 - (ii) an authorised representative of a financial services licensee;
 - (iii) a related body corporate of a person referred to in subparagraphs (i) or (ii); and
 - (iv) the licence number of the licensee and the details of the regulatory authority;
- (f) a description of each eligible financial service (including any related kind of financial product) for which the eligible person is proposing to use the exemption under regulation 4; and
- (g) the name of any person including any related body corporate of the eligible person, other than an employee or director of —
- (i) the eligible person;
 - (ii) any related body corporate of the eligible persons,

whose role includes the responsibility for making significant decisions about the ongoing provision of each eligible financial service covered by subsection (f), and a description of that role.

3. The eligible person submits a written application to the Authority under regulation 4 for providing an eligible financial service and pays the exemption fee —
- (a) for the first 12 months or part thereof of the testing period —
 - (i) USD4,000 for providing financial product advice in relation to a particular kind of financial product;

- (ii) USD4,000 for applying for or acquiring a particular kind of financial product;
 - (iii) USD5,000 for issuing, varying or disposing of a non-cash payment facility; and
 - (iv) USD10,000 for arranging the issuing, varying or disposing of a particular kind of financial product;
- (b) for the second 12 months or part thereof of the testing period the fee shall be dependent on the nature and complexity of the financial product; but shall not exceed 150% of the exemption fee payable under subparagraph (a).
 - (c) for extension of the testing period in addition to the original 24 month, testing period, the fee shall be dependent on the nature and complexity of the financial product; but shall not exceed 150% of the exemption fee payable under subparagraph (a).
4. The Authority may, at its discretion, revise the exemption fees from time to time.

SECOND SCHEDULE

(Regulation 11)

CONDITIONS TO BE MET OUT BY THE ELIGIBLE PERSON FOR PROVIDING FINANCIAL SERVICE

Part 1 - Exposure limits to exempt financial services product limits

1. The eligible person meets the conditions for an eligible financial service, if the eligible person ensures that paragraphs 2 to 7 of this Part are satisfied.
2. The Authority may set a limit on the total amount that each retail client of the eligible person may invest in financial products as the result of —

- (a) the provision of the eligible financial service during that service's testing period; or
 - (b) the provision of any other eligible financial service, for which the eligible person has or has had an exemption under regulation 4, during the other service's testing period.
3. Paragraph 2 of this Part shall not apply to a financial product referred to in paragraphs 4, 5 and 6 of this Part.
4. Each retail client of the eligible person shall insure totaling to the sum not more than USD85,000 for eligible general insurance products as the result of —
 - (a) the provision of the eligible financial service during the testing period of that service; or
 - (b) the provision of any other eligible financial service, for which the eligible person has or has had an exemption under regulation 4, during the testing period of the other service.
5. Each retail client of the eligible person shall insure totaling to the sum not more than USD300,000 for eligible life risk insurance products as the result of —
 - (a) the provision of the eligible financial service during the testing period of that service; or
 - (b) the provision of any other eligible financial service, for which the eligible person has or has had an exemption under regulation 4, during the testing period of the other service.
6. Each of the eligible person's retail clients may contribute to the sum not more than USD40,000 in eligible superannuation products as the result of —
 - (a) the provision of the eligible financial service during the testing period of that service; or

- (b) the provision of any other eligible financial service, for which the eligible person has or has had an exemption under regulation 4, during the testing period of the other service.
7. The Authority may set a limit on the number of retail clients of the eligible person, who may invest in a particular kind of financial product as the result of the provision of the eligible financial service during the testing period of that service.

Part 2 - Exposure limits to exempt financial services Total limits

1. The eligible person meets the conditions for an eligible financial service if the eligible person ensures that at any point during the testing period that no more than a total of USD5 million made up of the following —
- (a) sum insured for eligible general insurance products;
 - (b) sum insured for eligible life risk insurance products;
 - (c) contributions in eligible superannuation products;
 - (d) investments in other kinds of financial product that do not involve the eligible person in carrying out banking business within the meaning of the Financial Institutions Act, 2004 (Act 14 of 2004);
 - (e) arise as the result of commitments referred to in paragraphs 2 and 3 of Part 1.
2. For the avoidance of doubt, the eligible person may allow commitments with an aggregate value of more than USD5 million across the duration of the testing period, provided that at no point of time during the testing period, the eligible person shall allow the commitments of more than USD5 million.
3. For the purposes of paragraph 1 (a) to (d) of this Part, the commitments of the persons to invest in financial products as the result of the provision of eligible financial services if —

- (a) either the eligible person or a related body corporate of the eligible person, has or has had an exemption under regulation 4 for each of the eligible financial services;
- (b) the provision of each of the eligible financial services happened during the testing period of that eligible financial service; and
- (c) the eligible financial services were provided by the eligible person or a related body corporate of the eligible person.

THIRD SCHEDULE

(Regulation 12)

CONDITIONS RELATING TO NOTIFICATIONS AND OTHER ARRANGEMENTS

Part 1 - Conditions for notifying the retail and wholesale clients before providing an eligible financial service

The eligible person shall disclose to each client, clearly and prominently, in writing—

- (a) that the eligible person is not authorised by the Authority to provide the financial service;
- (b) that the eligible person is not an authorised representative of a financial services licensee for the provision of the financial service;
- (c) that the financial service is being provided under an exemption provided under these regulations;
- (d) the details of the normal protection associated with receiving financial services from a financial services licensee shall not apply by virtue of the exemption; and
- (e) if any of the events referred to in Part 2 of Second Schedule occurs.

Part 2 - Conditions for notifying the retail clients before providing an eligible financial service

The eligible person shall disclose to each retail client, clearly and prominently, in writing —

- (a) the name and contact details of the eligible person;
- (b) information about any remuneration, including commissions to which the eligible person may become entitled in relation to the financial service;
- (c) information about any associations, relationship or conflict of interest between —
 - (i) the eligible person or any of the body corporate of the eligible person;
 - (ii) the issuers of any financial product,

that may be capable of influencing the client in relation to the provision of the financial service; and

- (d) material information about the dispute resolution systems available to the client, including, but not limited to, about how to access those systems.

Part 3 - Conditions for notifying the retail and wholesale clients while providing an eligible financial service

The eligible person shall clearly and prominently notify each client in writing, within 10 business days after the happening of any of the following —

- (a) the eligible person has ceased to carry on a financial services business;
- (b) the eligible person has become insolvent or has been the subject of insolvency, liquidation or administration proceedings, or any analogous procedures or steps, in any jurisdiction;

- (c) the eligible person has become bankrupt or has applied to take the benefit of any law for the relief of bankruptcy or insolvent debtor or taken any analogous procedures or steps, in any jurisdiction;
- (d) the eligible person has compounded with the creditors or has made an assignment of the remuneration for the benefit of the creditors;
- (e) the eligible person has ceased to rely on the exemption provided under these regulations;
- (f) the financial service or a financial product to which it relates, has materially changed;
- (g) the financial service or a financial product to which it relates, is no longer being offered to new clients; or
- (h) an event which may reasonably be considered to have a material effect on the client.

Part 4 - Conditions for maintaining certain procedures, memberships and arrangements

The eligible person shall ensure that it —

- (a) establishes and maintains an internal dispute resolution procedure that —
 - (i) complies with the standards, and requirements made or approved by the Authority; and
 - (ii) covers complaints against the eligible person made by retail clients in connection with the provision of the financial service;
- (b) establishes and maintains an arrangement that —
 - (i) include holding professional indemnity insurance;
 - (ii) is approved by the Authority in writing as adequate,

for compensating the retail clients of the eligible person for loss or damage suffered because of the breach of any financial services legislation or of the conditions or restrictions in these Regulations, by the provider or its representatives; and

- (c) continues during the testing period, any memberships which the eligible person has in effect at the date of lodging its written application under regulation 4 and which the Authority requests in writing that the eligible person may continue during the financial service's testing period.

MADE this 3rd day of June, 2019.

**MAURICE LOUSTAU-LALANNE
MINISTER FOR FINANCE, TRADE,
INVESTMENT AND ECONOMIC PLANNING**
