Global Financial Services Regulatory Guide - South Africa

3. What types of activities require a license in your jurisdiction?

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# What types of activities require a license in your jurisdiction?

Various role players and activities are regulated in South Africa, including the following:

**Accepting deposits from the general public** – Subject to a few exceptions, this activity would generally include the following:

Acceptance of, soliciting of, or advertising for deposits from the general public (including persons in the employ of the person accepting such deposits) as a regular feature of a business – this would cover typical retail banking activities under the Banks Act or deposit-taking by member-based organizations such as stokvels, co-operative finance institutions, co-operative banks, friendly societies and mutual banks in terms of legislation specific to those organizations

Utilization of money accepted by way of deposit for: (i) the granting of loans to other persons; (ii) investment by any person acting as an investor in such person’s name or through the medium of a trust or a nominee; or (iii) the financing, to any material extent, by any person of any other business activity conducted by such person in his or her own name or through the medium of a trust or a nominee

Obtaining of money through the sale and repurchase of assets, to any person other than a bank, as a regular feature of the business

**Dealing in foreign exchange -** No person (other than an authorized dealer) is permitted to buy or borrow any foreign currency or any gold from, or sell or lend any foreign currency or any gold to, any person not being an authorized dealer unless they have obtained the requisite approval from the SARB through an authorized dealer. An authorized dealer is a person authorized by the Financial Surveillance Department of the SARB in respect of any transaction involving gold or foreign exchange or to deal in gold or foreign exchange.

**Payment services and money remittances –** This includes persons who, as a regular feature of their business, accept money or payment instructions from multiple payers on behalf of a beneficiary or from a payer on behalf of that payer to multiple beneficiaries.

Any of the following "securities services," which are regulated in terms of the Financial Markets Act:

**Dealing in securities** – including the buying or selling of securities as part of a business, the use of a securities exchange to buy or sell listed securities, or the furnishing of advice relating to security to any person

**Operating a securities exchange** – providing infrastructure for the trading of listed securities

**Operating a clearing house** – providing infrastructure for the clearing of transactions in listed or unlisted securities

Providing or participating in **clearing and settlement processes**

**Operating a securities depository** – the provision of infrastructure for holding uncertificated securities, including a securities settlement system

**Custody and administration services** –a person (referred to as a participant) authorized by a central securities depository to perform custody and administration services in terms of the central securities depository rules

**Maintaining records of securities transactions** –a person (referred to as a trade repository) who maintains a centralized electronic database of records of securities transaction data

**Providing advisory or intermediary services in relation to a financial product or financial service** – "Advice" includes any recommendation, guidance or proposal of a financial nature to any person in respect of the purchase of, or investment in, any financial product; the conclusion of any other transaction aimed at incurring any liability or acquiring of any right or benefit in respect of any financial product; or on the variation of any term or condition applying to a financial product. "Intermediary services" include any act other than the furnishing of advice the result of which is that a client may enter into any transaction in respect of a financial product, including actions taken with a view to buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing a financial product; collecting or accounting for premiums; or processing claims. Businesses typically affected by the Financial Advisory and Intermediary Services Act are investment managers, investment advisers, insurance brokers and advisers, foreign exchange intermediaries (persons who trade foreign exchange as an asset class for clients), financial planners and advisers.

**Collective investment schemes** – This involves establishing and managing an investment scheme into which individual investors' funds are pooled for investment purposes and marketing of domestic or foreign collective investment schemes or funds.

**Loans to consumers** **-** The National Credit Act, 2005 applies to all credit agreements entered into or having an effect in, South Africa and which contemplates a credit facility, a credit transaction, a credit guarantee or any combination of these products or transactions being provided to a consumer. All credit providers must apply to be registered as a credit provider with the National Credit Regulator unless one of the following exceptions apply:

The borrower is a juristic person with a total asset value or annual turnover exceeding the specified threshold (currently at ZAR 1 million).

The borrower is a juristic person with a total asset value or annual turnover not exceeding the above threshold and the credit agreement is a mortgage agreement; or any other credit transaction where the principal debt amounts to ZAR 250,000 or more.

The credit agreement is not concluded on arm's length terms (i.e., related party transactions).

The agreement or transaction relates only to incidental credit, the letting of immovable property, an insurance policy, credit provided for the payment of insurance premiums, or a transaction between a stokvel and its members in accordance with the rules of the stokvel.

**Credit rating services** – This refers to the analysis, evaluation, approval, issuing or review of data and information for purposes of providing a credit rating that determines the creditworthiness of an entity, a security or financial instrument, or an issuer of a security or financial instrument.

**Establishing and operating a retirement fund**

**Providing short-term or long-term insurance products**

**Supplying any financial product** – If the provision of a particular financial product is not regulated under any specific financial sector law, the product provider will be required to register under the Financial Sector Regulation Act.

**Crypto-assets or cryptocurrencies** – Crypto-assets are regulated as "financial products" in South Africa under the Financial Advisory and Intermediary Services Act (the FAIS Act). On 19 October 2022, the FSCA issued a declaration (Declaration) confirming that crypto-assets are included under the definition of "financial products" in terms of the FAIS Act. 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 for or on behalf of a client or product supplier must be authorized under the FAIS Act as a financial service provider and must comply with the requirements of the FAIS Act. In terms of section 7 of the FAIS Act, a person may not act or offer to act as a financial services provider unless such a person has been issued with a license under section 8 of the FAIS Act.

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