Global Financial Services Regulatory Guide - South Africa

4. How do the licensing requirements apply to cross-border business in your jurisdiction?

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# How do the licensing requirements apply to cross-border business in your jurisdiction?

There is no single system by which foreign financial services or product providers can apply to supply such services or products to South African residents. Currently, this is determined by each financial subsector, as indicated below.

Banking – An institution established in a foreign jurisdiction and which lawfully conducts the business of a bank in such jurisdiction may establish the following:

A representative office in South Africa, after obtaining the written consent of the Prudential Authority pursuant to a written application to be submitted to the Prudential Authority, together with the prescribed fee and a certificate from the competent authority in the foreign jurisdiction in which such institution conducts a business similar to the business of a bank – A representative office may not conduct the business of a bank in South Africa and instead serves to promote and facilitate the business of the foreign bank outside of South Africa.

A branch of the foreign bank in South Africa to conduct the business of a bank in South Africa, with the prior written authorization of the Prudential Authority and subject to the prescribed conditions and such further conditions, if any, as the Prudential Authority may determine – The foreign bank will be required to lodge with the Prudential Authority an application in the form set out in the Regulations relating to Banks together with the prescribed fee. The application must include information regarding the nature and extent of supervision exercised or to be exercised by the responsible supervisory authority of the foreign institution’s country of domicile. The Prudential Authority will not approve an application unless they are satisfied that proper supervision is or will be exercised by the responsible supervisory authority of the foreign institution’s country of domicile. The foreign institution will also be required to register as an external company (in accordance with the Companies Act, 2008).

Financial advisors and intermediaries – In terms of the Financial Advisory and Intermediary Services Act, a financial services provider who is not a resident may submit an application to the FSCA in the form and manner determined by the authority, which must be accompanied by information to satisfy the FSCA that the applicant complies with the prescribed fit and proper requirements. Broadly speaking, the FSCA acknowledges that foreign financial service providers may be subject to similar regulation and supervision by regulators in their home jurisdictions. Accordingly, provided the licensing requirements of the foreign regulator are at a standard acceptable to the FSCA, foreign financial service providers and their compliance officers may be able to obtain exemptions from compliance with some local fit and proper and auditing requirements prescribed in terms of the Financial Advisory and Intermediary Services Act. The FSCA has, in practice, required that a company operating as a financial advisor or intermediary to customers in South Africa be registered as an external company in South Africa.

Collective investment schemes – The manager or operator of a foreign investment fund must apply to the Registrar of Collective Investment Schemes, which is a functionary of the FSCA, for the registration of the particular investment fund and each relevant portfolio as a collective investment scheme in terms of the Collective Investment Schemes Control Act prior to soliciting investments in any such fund from members of the public in South Africa. The foreign investment fund must comply with the following requirements to be registered:

The investment fund must be registered and supervised in a jurisdiction that is acceptable to the FSCA.

The operator of the investment fund must be subject to at least the same standard of regulation and supervision as South African collective investment schemes.

The operator must either: (a) enter into a representative agreement with a South African collective investment scheme manager that is authorized in terms of the Collective Investment Schemes Control Act; or (b) establish and maintain a representative office in South Africa (which must be a company incorporated under the Companies Act, 2008).

The operator must satisfy certain requirements by the Registrar, including the liquidity of the investment fund and that the assets of investors are properly protected by the principle of segregation and identification.

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