



An update on the COFI Bill

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14 May 2021

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Agenda

1. Recap of the objectives of the COFI Bill and application to retirement funds
2. Update from FSCA on the harmonization of the current financial sector law in preparation for transition to COFI
3. Which sections of the PFA are best placed under COFI and will be required to migrate to a conduct standard
4. What should retirement funds be doing in preparation for the COFI Bill

Recap on COFI Bill

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Recap on COFI Bill

- Represents the **holistic legal framework for market conduct regulation** in South Africa that is consistently applied to all financial institutions. Replaces conduct provisions in financial sector laws.
- Streamlines the legal landscape** for conduct regulation in the financial sector and gives legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles.
- Will **strengthen customer protection** by putting in place a **single comprehensive market conduct law** in the financial sector, resulting in the consistent application of consumer protection principles across the sector.
- Gives legal **effect to transformation and inclusion requirements** in support of targets agreed through the Financial Sector Transformation Council and specified in the Financial Sector Code.
- Gives more **flexibility and better tools to the regulator** to support emerging new financial institutions.
- Activity** based, **principle** based, **outcomes** focused, **risked** based and **proportionate**.
- Regulated entity-facing** – setting the requirements that financial institutions must meet and the outcomes they are expected to deliver.

Recap on COFI Bill

Financial sector laws to be repealed

- Long-term Insurance Act
- Short-term Insurance Act
- Financial Institution (Protection of Funds) Act
- Financial Advisory and Intermediary Services
- Credit Ratings Services Act
- Friendly Societies Act

Financial sector laws with consequential amendments

- Financial Sector Regulations Act
- Insurance Act
- Pension Funds Act (Retirement Funds Act)
- Financial Markets Act
- Collective Investment Schemes Control Act
- Medical Schemes Act
- Co-operatives Act

Following remains in force and effect

- Anything done under a section, subsection or paragraph of Act amended or repealed
- Any matter prescribed under an Act amended or repealed
- Any authorisation, approval, registration, consent or similar permission by FSCA
- Regulatory instrument
- Notice, rules or other form of subordinate legislation
- Regulation

Schedule 4: Transitional licensing arrangements

- Every previously licensed financial institution continues to exist as a licensed financial institution in terms of the previous Act
- Existing financial institutions will have to be licensed within a period of 3 years after the effective date of COFI or date determined
- FSCA must publish licensing framework

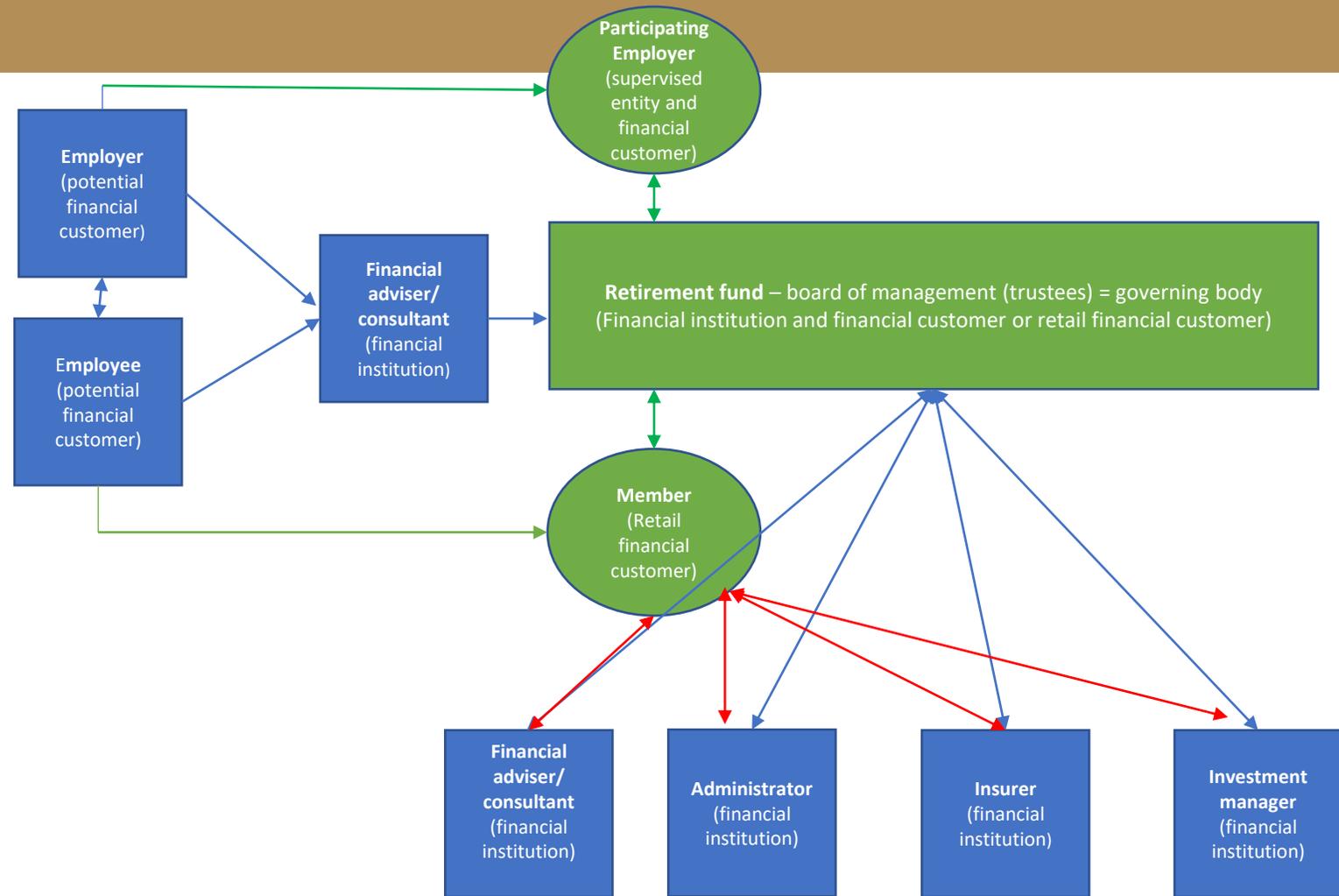
Recap on COFI Bill

When interpreting and applying must give effect to objectives of COFI and must read in conjunction with FSR Act

Retirement fund	Financial Institution
Board of Management / Trustees	Governing Body Key Person
PEO and Deputy	Key Person
Employer	Supervised Entity
Service Providers - S13B Administrator - Insurer - Asset Manager - Consultant	Financial Institution

Recap on COFI Bill

- It is **clear** a retirement fund will be subject to COFI and be required to be licensed in terms COFI for *Activity 1 Providing a financial product sub-activity f. providing retirement benefits* and must be of the institutional form of a retirement fund
- What is **unclear** due to multiple layers of stakeholders who is ultimately responsible to fund members



Recap on COFI Bill

- Current legal construct to remain = Board is accountable for meeting fiduciary and other obligations to fund members
- ‘Look-through provisions’ and multiple layers of stakeholders in value chain within retirement funds = must consider member outcomes
- Need to strike a balance between legal construct and right outcomes, while keeping primary responsibility with the Board
- Possible conduct standard for value chain responsibilities

Update from the FSCA

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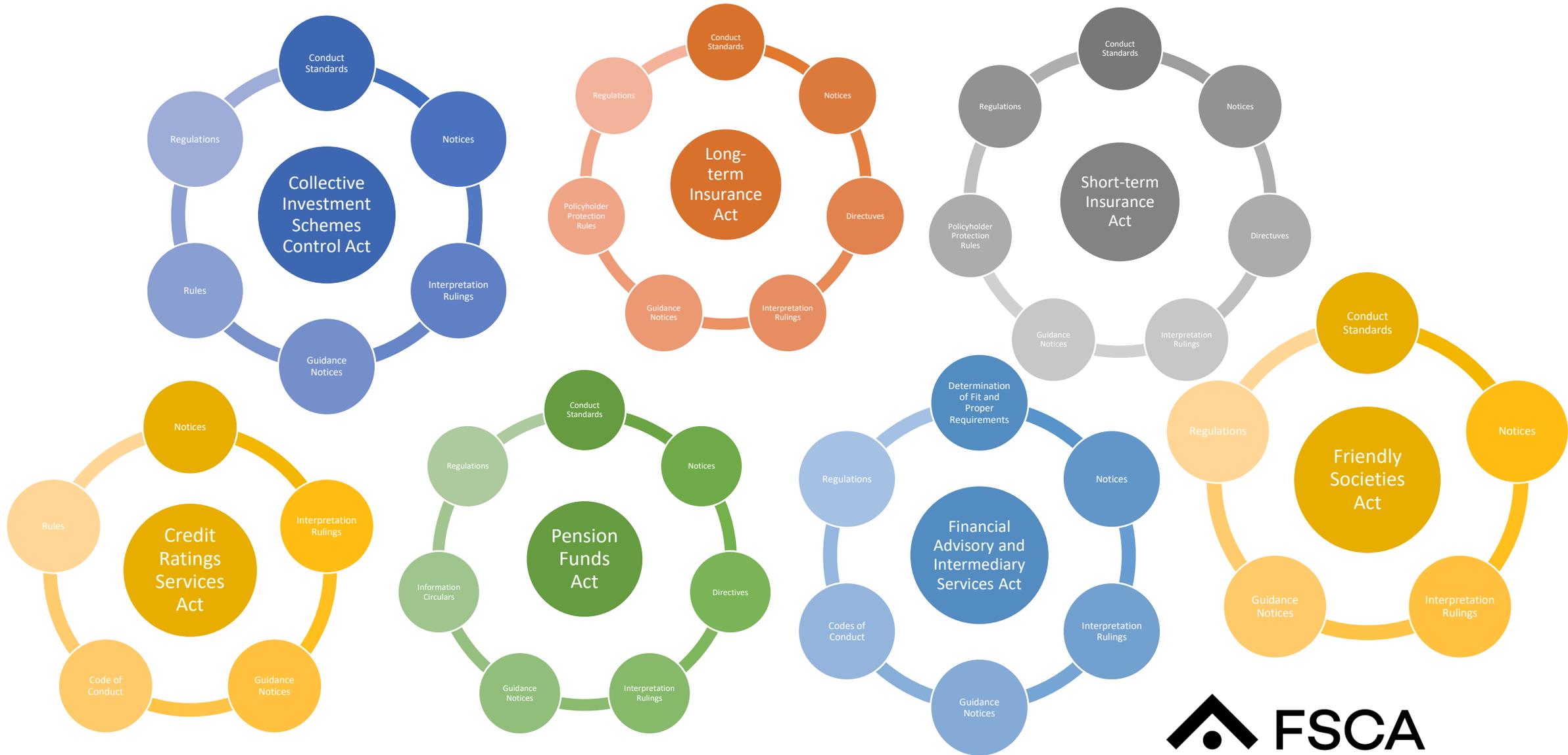


NATIONAL TREASURY 2014 POLICY PAPER

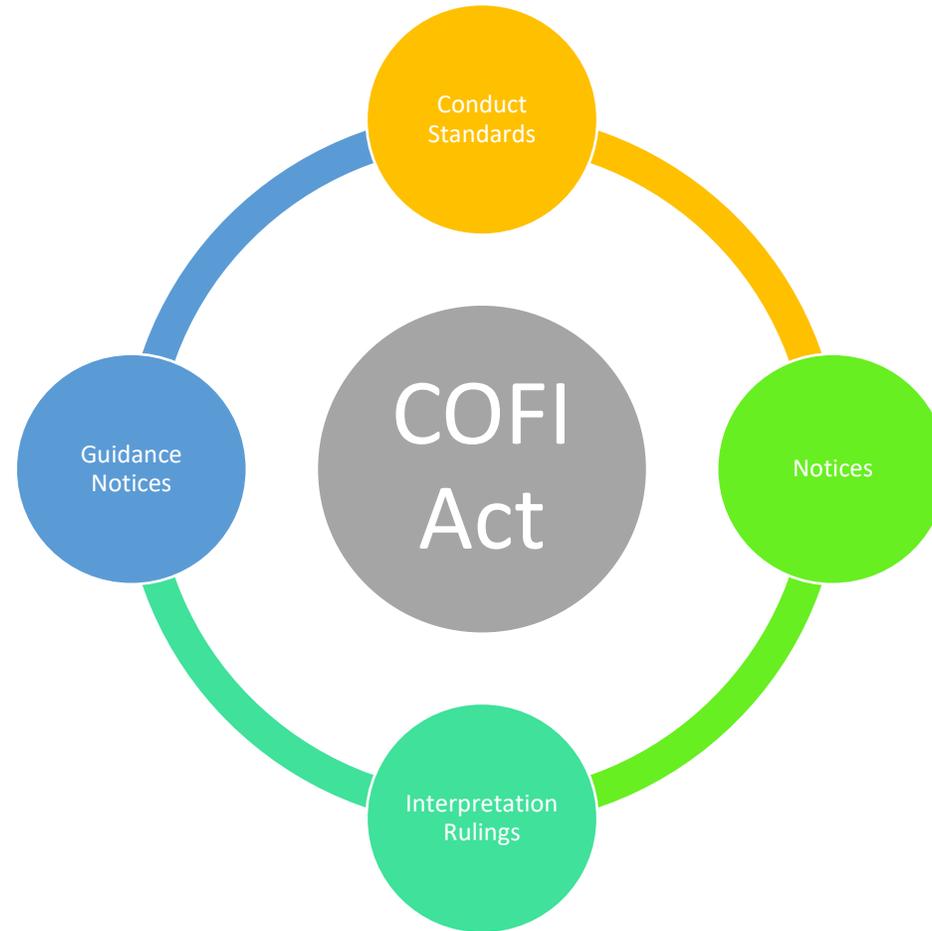
Comments from *“Treating Customers Fairly in the Financial Sector – A Draft Market Conduct Policy Framework for South Africa”*

- **regulatory silos** impede reform
- regulatory requirements tend to focus on sub-sector rules **rather than consistent, cross-sectoral outcomes**
- financial institutions are subject to an incomplete and inconsistent legal framework for market conduct that creates opportunities for **regulatory arbitrage** and **fragmented supervision**
- **level of customer protection depends on the industry and distribution channel**

Existing conduct sectoral law architecture

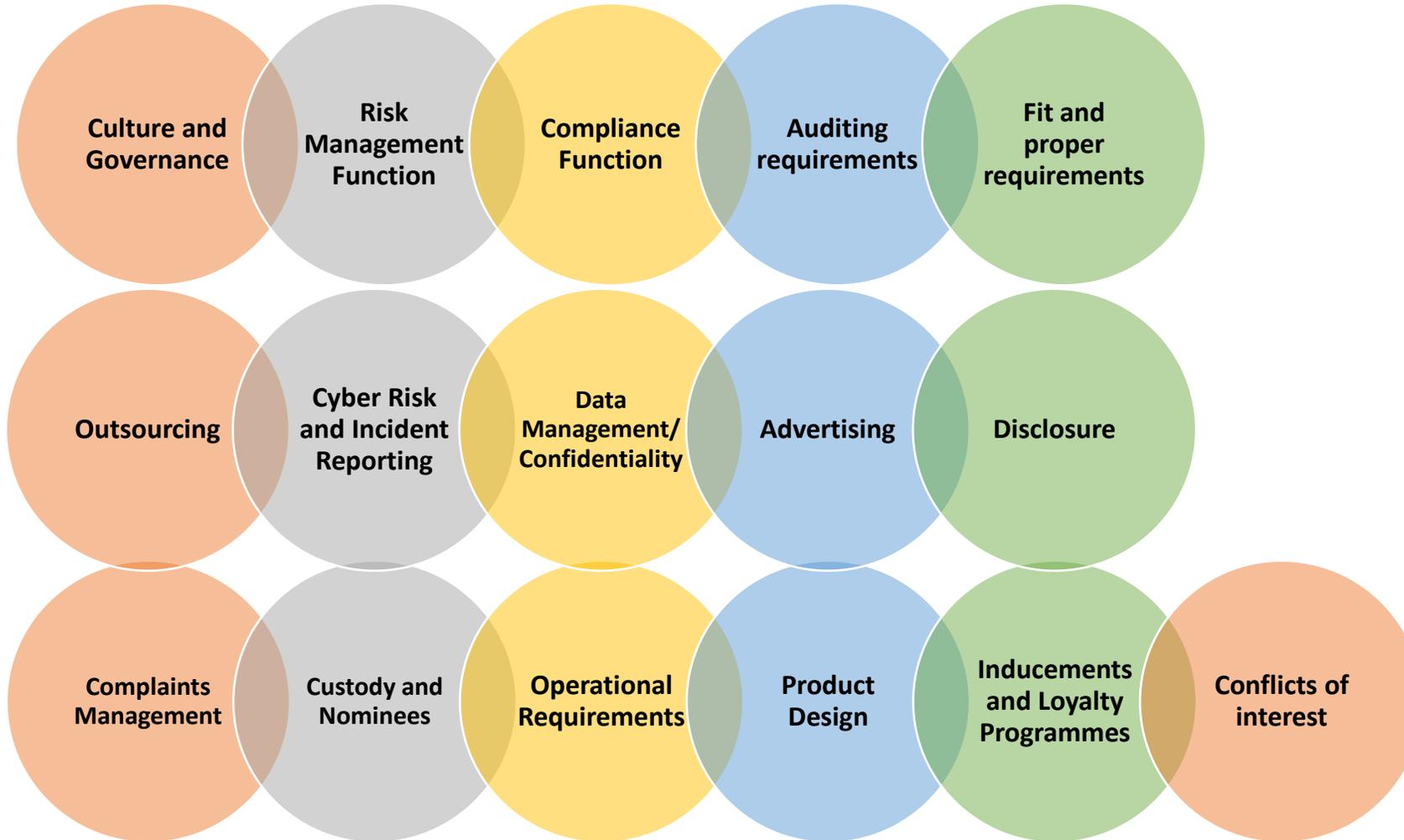


Future conduct sectoral law architecture



How will the FSCA move the existing regulatory framework to the future regulatory framework?

PHASE 1 – HARMONISATION PROJECT



Themed frameworks = outcomes- and principle-based and, as far as possible, apply across sub-sectors

Envisaged that themed frameworks will be issued as conduct standards under the COFI Bill

Relevant overlapping requirements in existing “instruments” will be repealed

Harmonisation extends beyond the FSCA frameworks- FSCA and PA working together to harmonise conduct and prudential requirements where there are overlaps (e.g. governance, outsourcing, IT Risk etc)

PHASE 2 – ASSESSMENT OF REMAINING REQUIREMENTS

Requirements in existing “instruments” not repealed by harmonisation frameworks will be assessed to determine 1. whether such requirements are still relevant and should be transitioned into the COFI Bill framework; or 2. no longer relevant and can be repealed



If identified as a requirement to be “transitioned”, it will have to be assessed how it can be transitioned to the COFI Bill framework (e.g. through a separate conduct standard, consolidated conduct standard, Guidance Notice etc)

Example: Conduct Standard prescribing condition in respect of pension fund benefit administrators will be replacing Board Notice 24 of 2002 (Conditions determined in respect of Administrators acting on behalf of Pension Funds). Aspects addressed include:

PHASE 1	Culture and Governance	Fit and Proper	Administration Agreements	Financial Soundness	Operational ability	Outsourcing	Conflicts of interest	Complaints Management
Linked to Harmonisation work?	Yes	Yes	No	No	Yes	Yes	Yes	Yes

* In terms of Phase 1 requirements that are already provided for in Harmonisation frameworks will be repealed

PHASE 2

- Repeal or Transition *administration agreement* and *financial soundness* requirements into relevant instruments under COFI
- Repeal or Transition requirements related to themes not covered in Harmonisation frameworks into relevant instruments under COFI

FINAL NOTES

END GOAL:

- No more conduct focused instruments that exist under current financial sector laws
- Entire conduct framework provided for under the COFI Bill through conduct standards, FSCA Notices, guidance notices and interpretation rulings
- Regulatory Framework under COFI demonstrates a significant shift to more outcomes- and principle-based requirements, and a bigger reliance on guidance notices to inform outcomes- and principles-based requirements
- It will, however, not be a complete shift to only outcomes- and principles-based requirements. **Specific rules-based requirements will still exist**

LONG-TERM PROJECT: The whole process to transition all of the existing instruments to the COFI Bill is expected to last anything from 3 to 6 years

HARMONISATION WILL HAPPEN: If the COFI Bill process is delayed or ceased, implementation of the harmonised frameworks might occur at an earlier stage through conduct standard under the Financial Sector Regulation Act. **Therefore, harmonisation will occur one way or the other**

Which sections of the PFA
are best placed under COFI

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Which provisions of the PFA are best placed under COFI

NT Explanatory Policy Paper following the first draft of COFI Bill states that:

“Over time, conduct requirements will be migrated from the PFA to the COFI Act. Various provisions of the PFA will be retained to provide for the separate legal status of the fund and to set prudential requirements. But this migration can only happen following the conclusion of an in-depth mapping of the PFA to determine which requirements are best placed under the COFI Bill framework to be prescribed as conduct standards.”

Conduct standards are provided for in section 106 of the FSRA and section 67 of the COFI Bill.

Conduct Standards are subordinate legislation but must be read together with the COFI Bill once published (see definition of “this Act”) : It will be interesting to see what happens in the application of conduct standards once provisions are removed from the primary legislation (being the PFA) with specific regard to the force and effect

Current Conduct Standards that have been published

Conditions for amalgamations and transfers in terms of section 14 of the Pension Funds Act

- Deals with requirements for different types of amalgamations & transfers
- Provide conditions in terms of s14 transfers to ensure funds treat members affected by these transfers fairly

Conditions for smoothed bonus policies to form part of default investment portfolios

- Deals with conditions to be complied with for a smoothed bonus policy to form part of a default investment portfolio as per Reg 37

Minimum Skills and Training requirements for Board Members of Pension Funds

- Prescribes the minimum requirements to be met by a board member of a pension fund (what will later become retirement funds)
- Prescribes that board members must attain certification of the Trustee Training Toolkit within a period of 6 months from date of appointment

Which provisions of the PFA are best placed under COFI

1. Specific conditions applicable to the licensing of public sector retirement funds as per the proposed amended section 4A read together with sections 4B and 4C which currently speak to the effect of such registration and the transfer to such a retirement Fund (see item 8 of Schedule 5 of the COFI Bill)
2. Section 7D of the PFA (Duties of a Board) as it is set to be repealed by the COFI Bill (see item 18 of Schedule 5 to the COFI Bill) and COFI deals with governance requirements. It's possible that PF130 will also be embodied in a conduct standard specifically for retirement funds even though the primary legislation (COFI) sets out the general provisions to governance arrangements
3. Section 13B of the PFA (Restriction on the administration of funds). NT 2020 Response Document states that:

Retirement fund benefit administrators, previously known as section 13B administrators, will be subject to the requirements in the Bill as “third-party retirement fund administrators” (item 5.c on Schedule 1). The regulation of retirement fund benefit administration is accordingly removed from the Pension Funds Act to the COFI Bill framework (section 13B is set to be repealed).

Which provisions may migrate, but it is unclear if it will

Protected Disclosures

- As provided for in section 9B of the PFA. Currently, sections 253 to 255 of FSR Act provide for similar disclosures and / or reports and the FSCA could publish a conduct standard that deals with the manner in which protected disclosures should be made within the structures of financial institutions.
- Alternatively, if the FSCA is of the opinion that such requirements differ per type of FI, separate conduct standards could be published with requirements for the publication of such disclosures

Complaints

- COFI provides for the complaints framework
- FSR Act deals with Ombuds framework, including industry Ombuds such as OPFA
- The Financial Services Ombuds Schemes (FSOS) Act will be repealed and integrate into FSR Act and provisions made for the enhanced oversight of ombud schemes through the FSR Act (proposed repeal date 31 May 2021)
- NT *A Known and Trusted Ombud System for All (Sep 2017)* - The intention will be to ensure a consolidated approach to alternative dispute resolution in support of the consolidated approach and streamlined system of overall regulation

Provisions to remain in PFA (RFA)

Chapter II

- Registration and Incorporation with the addition of conduct standards that will prescribe requirements for the licensing of public sector retirement funds in line with the proposed amended wording for sections 4A, 4B and 4C

Chapter III

Manner of Administration and Powers of Registered Funds except sections 7D, possibly 9B and section 13B. The FSCA may prescribe conduct standards which are to be read together with the PFA with respect to:

- Section 13A (Payment of contributions i.e. the contributions to be made by employers specific to the type of retirement fund)
- Section 14 (Amalgamations and transfers) As it has already done so
- Section 14A and 14B (to the extent that these differ per type of retirement fund, the FSCA may prescribe conduct standards that specifically pertain to each type of fund)

Chapter IV:

- Retirement funds are prudentially supervised FI and at the moment the FSCA is exercising the powers of the PA in relation to the prudential supervision of pension funds in addition to its market conduct powers. It's possible that the issues referred to below will remain in the PFA until prudential supervision is settled:
 - Surplus
 - Reserve Accounts
 - Fund not in financial sound condition
 - Investments
- Once settled, it is possible that either a prudential or joint standard will be published in respect of the above specifically applicable to retirement funds.

Chapter V

- Enquiries by Registrar, Applications to Court, Cancellation or suspension of registration and dissolution of funds
- These provisions will remain in the PFA however COFI makes mention of amendments to section 29 and 30 which impact on amendments to the FSR Act

What should retirement funds be doing in preparation for the COFI Bill

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NT Explanatory Policy Paper following the first draft of COFI Bill

The overall intention is to ensure that members and beneficiaries of retirement funds will have the relevant protection, both through the provisions in COFI and the PFA.

- ❖ Monitor submission of Bill to Parliament
- ❖ After promulgation CoFI Act will not be able to come into immediate force and effect – incremental transition
- ❖ Conduct standards are needed to underpin provisions of CoFI
- ❖ FSCA licensing framework

THANK YOU

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