



Transformation and Financial Inclusion

The regulatory landscape

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- What is transformation and financial inclusion?
 - It is firstly import to appreciate that we deal with two separate concepts.
 - **During 2010**, the former Financial Services Board published the Treating Customers Fairly (TCF) framework which focuses on an outcomes-based approach, requiring financial service organisations to incorporate the fair treatment of customers throughout a product’s lifecycle.
 - **During 2017**, the Financial Sector Regulation Act, 9 of 2017 (FSR Act) was promulgated to give effect to the new Twin Peaks model of regulation. Importantly, under the FSR Act the following key concepts were introduced, and which forms part of the objectives of the FSR Act:

“**financial inclusion**” means that all persons have timely and fair access to appropriate, fair and affordable financial products and services

“**transformation of the financial sector**” means transformation as envisaged by the Financial Sector Code for Broad-Based Black Economic Empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)

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- Both these concepts are included as part of the objectives of the FSR Act which is stated to:
“... Achieve a stable financial system that works in the interests of financial customers and that supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the specific financial sector laws, a regulatory and supervisory framework that promotes:
 - (a) financial stability;*
 - (b) the safety and soundness of financial institutions;*
 - (c) the fair treatment and protection of financial customers;*
 - (d) the efficiency and integrity of the financial system;*
 - (e) the prevention of financial crime;*
 - (f) financial inclusion;*
 - (g) transformation of the financial sector; and*
 - (h) confidence in the financial system.”*
- Since the FSR Act is the framework piece of legislation for regulation of the financial services sector, these objectives should be considered when considering the powers of the relevant Authorities (the Prudential Authority and the Financial Sector Conduct Authority).

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- Importantly:
 - The Prudential Authority must, in order to achieve its objectives, support financial inclusion. [See *section 34 of the FSR Act*]
 - The Financial Sector Conduct Authority must, in order to achieve its objectives, promote financial inclusion. [See *section 58 of the FSR Act*]
- A further **important development during 2017** was the promulgation of the Insurance Act, 18 of 2017 (Insurance Act). The Insurance Act was one of the first new pieces of legislation promulgated under the umbrella regulation of the FSR Act. Importantly:
 - The Insurance Act equally included promotion of broad based transformation of the insurance sector as stated objective of the Insurance Act.
 - Introduced the same definitions for “transformation” and “financial inclusion” as per the FSR Act.
 - Empowers the Prudential Authority to impose conditions on insurance companies (and insurance groups) that seeks to promote developmental, financial inclusion and transformation objectives.
 - Additionally, a person must, in order to qualify for a licence as an insurance company, include plan to meet stated transformation objectives, including meeting the targets envisaged by the Financial Sector Code.

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- During 2020, the second draft of the Conduct of Financial Institutions Bill (COFI Bill) was published for comments.
- The COFI Bill dedicates a chapter on the development of a transformation plan and provides, if a financial institution is subject to the BBEE Act and the FSC Code, that such institution must have a plan in place to meet its commitments in terms of promotion transformation of the financial sector.
- The transformation plan also, in terms of the COFI Bill, forms part of the governance requirements of financial institutions.
- The object to the COFI Bill once more includes “transformation” and indicates that a financial institution must conduct its business in a manner that promotes transformation, consistent with the transformation plan.

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- Importantly, the COFI Bill seeks to also amend the FSR Act:
 - The powers of the Financial Sector Conduct Authority (who currently is only tasked with promoting financial inclusion), to also *“promote, to the extent consistent with achieving the objective of the Financial Sector Conduct Authority, transformation of the financial sector...”*
 - Include the powers of both the Prudential Authority and the Financial Sector Conduct Authority to make standards in respect of “transformation and matters which must be addressed in a transformation plan”.
- It should be noted that neither transformation nor financial inclusion is currently regulated in terms of the Pension Funds Act (as is the case with insurance companies regulated under the Insurance Act), however this will change pursuant to the promulgation of the COFI Bill.

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- Finally, on **28 October 2020**, National Treasury published a draft paper titled: *An Inclusive Financial Sector for All* (Policy Paper).
- The aim of the Policy Paper:
 - Establish a policy framework for financial inclusion;
 - Sketch an approach to implementation; and
 - Provide a basis on which the financial services sector, regulators, policymakers and all other stakeholders will promote and support financial inclusion.
- It provides the following definition of financial inclusion:

- Financial inclusion is the provision and use of affordable and appropriate financial services by those segments of society where financial services are needed but not provided, or they are inadequately delivered. It is an important tool in the economic development of a country, just as financial exclusion is a significant constraint to economic and societal development.

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- The Policy Paper recognises that financial inclusion is not an end in itself. However, it is deemed a key enabler in improving the quality of life of households and individuals, and increasing the productive capacity of SMMEs, thereby reducing poverty and inequality, especially for disenfranchised groups.
- The Policy Paper focusses on three pillars with various priorities under each:



- The proposals in the Policy Paper will, following consultation, be adopted as part of the National Financial Inclusion Strategy.

Conclusion

- Significant reforms are proposed for transformation and financial inclusion of the financial services sector.
- Broad powers are envisaged for financial sector regulators to make standards regarding transformation and financial inclusion, including the need for the development of transformation plans.
- The powers of the Authorities also extend to disallowing certain actions if it is not aligned with the transformation objectives and/or plan.
- The Policy Paper gives an indication of National Treasury's stated objectives regarding financial inclusion (which is also seen in the Open Finance document).

THANK YOU

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