COFI Transition

Presented by:
Chantal Manson – Liberty Group
Lezanne Botha – Financial Sector Conduct Authority

Brief overview of COFI

Single, holistic, cross-sector market conduct law that replace multiple sectoral laws

Shift from rules-based compliance to **principles-based, outcomes-focused, risked** based and **proportionate customer-centric regulation**

Regulated entity-facing – setting the requirements that financial institutions must meet and the outcomes they are expected to deliver.

Transformation, financial inclusion, competition, responsible innovation

Introduces Activity-Based Licensing

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

PENSION LAWYERS ASSOCIATION 30TH ANNUAL CONFERENCE

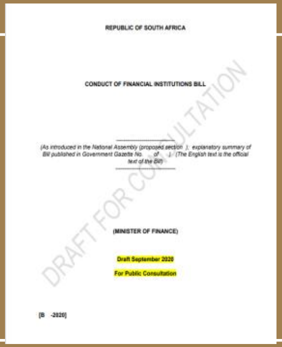
Timelines

2014

Draft Market Conduct Policy Framework ("TCF") discussion document

2018

Draft Conduct of Financial Institutions (COFI) Bill published for public comment with an Explanatory Policy Paper



2020

Second draft COFI Bill published for comment (GN 519, GG 43741), with Response Document and media statement

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

2021

Targeted stakeholder consultation

2026

Cabinet submission and Parliamentary tabling?

Key proposals impacting retirement funds

- Licensing and Schedule 6 Activities .
- Transitional arrangements iro licensing
- Transformation
- Repeal of s13B PFA
- Self-administered funds
- Public Sector Funds
- Employers = supervised entities
- PEO included as Key Person
- Commercial sponsors of retirement funds
- Renaming of PFA to RFA and consequential amendments

PENSION LAWYERS ASSOCIATION 30TH ANNUAL CONFERENCE

Transitional arrangements

Savings: Anything done under existing financial sector laws being repealed will remain effective.

Licensing: RFs will require 2 licences, in terms of RFA and FSRA
RFs performing **self-administration** will also have to be licensed for that activity in terms of FSRA

Incremental implementation: Different provisions in the Bill can be made effective on different dates, including the repeal of laws.

Transition of licenses

Existing licenses granted by the FSCA must be converted to new licenses mapped to the new activity schedule- FSCA responsibility.

New activities not currently licensed by the FSCA, licence applications must be submitted within the time period determined by the FSCA- likely introduced incrementally per activity.

Must
- publish its approach how it will give effect to the aforementioned- within 6 months of the effective date of provisions
- (i) be fair;
- (ii) provide for sufficient engagement

May provide for
- (i) different processes and timeframes for different Classes and types of Fis for conversions, licences and authorisation for activities; and
- (ii) guidance relating to which activity or sub-activity is similar in nature to the business for which a Class 1 FI, Class 2 FI or Class 3 FI is licensed under another Act or previous Act.

These arrangements are NB to ensure a smooth transition to new framework through incremental introduction. It is critical to avoid undue disruption to business activities.

FSCA COFI Bill readiness

Establishing a subordinate legislative framework under COFI

Phase 1: High-level Design of Framework

Phase 2: Themed/Harmonisation Frameworks

Phase 3: Transition of remaining existing laws to COFI

- Identify key strategic impacts
- Formulate response and implementation plans

Key strategic impacts

COFI Bill

Transition of existing licenses and licensing of new activities

Conversion of existing licenses (mapping to new activities, etc)

Licensing new activities (prioritisation and staggered implementation)

- Risk model
- Omni-Risk Returns
- Identify key areas of alignment across functions

Developing a consistent supervisory and enforcement approach

FSCA

FSCA COFI Bill readiness

Regulatory framework readiness

- The FSCA is already far advanced in conceptualising and developing the future subordinate legislative framework (conduct standards) that will underpin the COFI Bill. The FSCA's published 3-year Regulation Plan of the last 2 years explains the FSCA's approach in this regard. In essence, a three-phased approach has been adopted:

PHASE	STATUS
Phase 1: Develop a high-level design of the future framework	Completed
Phase 2: Identify key conduct themes and develop frameworks for each of these themes	Work is well advanced. Industry consultation forum established and informal consultation has started.
Phase 3: Transition the remaining existing financial sector law frameworks to the COFI Bill	Conceptual work has started, but this phase will only be prioritized once phase 2 has been completed

- The COFI Bill regulatory framework transition Project is a multi-year project and Phase 3 in particular will take several years to complete.

- **Importantly, roll-out of frameworks will occur on a staggered basis.**

PHASE 1: HIGH-LEVEL DESIGN

CONDUCT OF FINANCIAL INSTITUTIONS ACT

- **Licensing & related matters**
  - Licensing requirements and conditions
  - Change in institutional form, acquisitions, disposals, conversions and amalgamations
  - Conducting business other than licensed activities or foreign business
- **Governance, Key Persons, control functions & Transformation**
  - Governance and Key Persons [H]
  - Risk Management Function [H]
  - Compliance Function [H]
  - Internal Audit Function
  - Transformation requirements
- **Internal controls & operational ability**
  - IT Governance and Risk Management [H]
  - Cybersecurity and Cyber Resilience [H]
  - Data Governance and Protection of Information [H]
  - Outsourcing [H]
  - Operational Ability
- **Business conduct**
  - General Principles
  - Product Development [H]
    - Design
    - Performance
    - Oversight and Review
  - Advertising and Dislcosure [H]
  - Distribution and Advice
  - Ongoing Obligations
    - Complaint Management [H]
    - Claims Management
    - Financial Product or Service Termination or Changes
  - Remuneration and Conflicts of Interest [H]
- **Technical & activity specific requirements**
  - Net Asset Valuation and Pricing
  - Inclusion of Assets and Securities in CIS in Securities and Hedge Funds
  - Pro-forma Deed for CIS
  - Suspensions and other Liquidity Management Options for CIS's
  - Limits and Conditions for Third Party Named Portfolios of CIS's
  - Conditions for soliciting investments by Foreign CIS's
  - Alternative Investment Fund Requirements
  - Cell captive requirements
- **Financial soundness & handling of funds**
  - Financial Soundness of non-Prudentially Regulated Financial Institutions
  - Funds and trust property held
  - Custody and Nominees [H]
- **Financial Matters & Reporting**
  - Accounting Records, Financial Statements, Auditing and Retention of Records [H]
  - Auditor requirements [H]
  - Reporting and Public Disclosure

FSCA

PHASE 2 – Themed Regulatory Frameworks

Prioritisation:

THEMED FRAMEWORK	PRIORITY	NOTES
Governance (incl culture)	High	Joint Standard between the FSCA and PA. Separate consultation process- i.e. not through industry Working Group.
Fit and Proper	High	Highest priority due to COFI Bill licensing implications and FSCA system developments underway.
Risk management, internal controls and control functions	High	High priority due to licensing and system development implications.
Licensing requirements	High	High priority due to COFI Bill licensing implications and FSCA system developments underway. Separate internal process underway.
Complaints Management	Medium	Important in the context of new activities that will be introduced through the COFI Bill. Quick win – established framework.
Advertising and Disclosure	Medium	Important in the context of new activities that will be introduced through the COFI Bill.
Conflicts of interest and remuneration	Medium	Important in the context of new activities that will be introduced through the COFI Bill.

PHASE 2 – Themed Regulatory Frameworks

Prioritisation:

THEMED FRAMEWORK	PRIORITY	NOTES
Outsourcing	Medium	Important in the context of new activities that will be introduced through the COFI Bill. Question mark surrounding whether to proceed at this stage considering that a Joint Standard on Outsourcing (FSCA and PA) is potentially in the pipeline. The latter will entail a separate consultation process- i.e. will likely not be consulted on through the Working Group.
Data management	Medium	Important, but needs to be considered in the context of other frameworks and developments. Could, potentially be progressed earlier as a quick win.
Cyber risk and resilience	Medium-Low	Potentially a watered-down version of the Joint Standard on Cyber Risk and Resilience. Intended to cover institutions not covered by the Joint Standard. Alternative approach also being considered- i.e. applying certain provisions of the existing Standard to institutions not currently covered.
Product Development	Medium-Low	Implications of new activities that will be introduced through the COFI Bill has limited impact on this theme.
Audit and auditor requirements	Low	COFI Bill itself already deals with this to a large extent. Further detail dealing with institution type nuances might, however, be required.
Custody	Low	Review of the Financial Markets Act might have an impact on this framework, hence the reason why it is not being prioritized at this stage.

PHASE 2 – Themed Regulatory Frameworks

Status:

FSCA

- Industry reference group established under the auspices of the Market Conduct Committee- purpose is to discuss policy direction and assist the FSCA in refining the themed frameworks
- Consultation with reference group already underway in respect of 3 themed frameworks, i.e. **Fit and Proper themed framework; Risk management, internal control and heads of control functions themed framework and Complaints management themed framework**
- Consultation on **remaining themed frameworks** will continue in 2026, based on the aforementioned prioritization
- **Public consultation** in respect of remaining themed frameworks will be initiated as and when informal consultation through the industry reference group is concluded- i.e. concurrent informal and formal consultation will occur in future.

Considerations for retirement funds

Although the themed frameworks will have cross-sector principles applicable to all financial institutions, many of those frameworks will also have institution/sector specific Chapters.

The following will likely be incorporated into the Pensions/Retirement funds Chapter contained in the Themed Framework:

Advertising and Disclosure

- PF Circular 86 - Disclosure requirements to be observed by funds
- PF Circular 90 - Minimum information to be disclosed to pensioners, deferred pensioners and dependants of deceased members
- The previous draft Conduct Standard – Communication of benefit projections to members of pension funds

Fit and Proper

- FSCA Conduct Standard 4 of 2020 (RF) - Minimum skills and training requirements for board members of pension funds will be incorporated into the Themed F&P framework.

Remuneration and conflicts of interest

- Elements of Directive PF No. 8 (2018) -Prohibition on the Acceptance of Gratification will possibly be incorporated into this themed framework. Other elements may find its way into other frameworks.

Concluding remarks and recommendations

The CoFI Bill introduces ***significant changes*** that will redefine conduct of business regulation and supervision, reshaping the financial sector's regulatory landscape.

Impact of the CoFI Bill on the financial sector should ***not be underestimated***

- *Active **stakeholder engagement** is essential for successful implementation.*

Financial institutions should ***assess implications*** across licensing, governance, compliance, and operations—especially over the medium to long term.

Institutions are ***encouraged to participate*** in consultations on both the primary and subordinate legislation throughout the reform process.

FSCA

THANK YOU