



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

Invitation for public comments on the draft Conduct of Financial Institutions Bill 2018

National Treasury invites public comments on the draft Conduct of Financial Institutions (COFI) Bill 2018, which is published today together with an explanatory policy paper that sets out the policy rationale for the COFI Bill.

The COFI Bill is the next phase of the legislative reforms aimed at strengthening the regulation of how the financial services industry treats its customers. The Bill follows the Financial Sector Regulation Act (FSRA) No 9 of 2017, which established two new authorities with dedicated mandates. The two new authorities are the Prudential Authority (PA) which manages prudential risk (financial health), and the Financial Sector Conduct Authority (FSCA) which manages the market conduct risk across all financial institutions. Both regulators became operational on 1 April 2018.

The FSR Act gives consumers and financial institutions an indication of what to expect of financial sector regulators, while the COFI Bill will outline what customers and industry players can expect of financial institutions.

The Bill aims to significantly streamline the legal framework for the regulation of the conduct of the financial institutions, and to give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. These principles currently have little legal backing.

Improving market conduct and customer protection in the South African financial sector extends beyond the establishment of a new regulator. The 2014 discussion document (published along with the Financial Sector Regulation Bill) “Treating Customers Fairly in the Financial Sector: A Draft Market Conduct Policy Framework for South Africa” sets out the following pillars for improving market conduct and customer protection:

- Structural reform of regulatory agencies;
- Revised legal framework for market conduct (significantly streamlining the current range of different laws applicable to the financial sector);



- Responding to poor conduct practices in the financial sector;
- Better empowered customers (including through improved consumer education initiatives, and improved dispute resolution channels through which customer complaints can be resolved)

The Bill, which intends to replace the conduct requirements in existing financial sector laws, is designed to be:

- **Principles-based:** A principles-based approach seeks to set principles that specify the intention of regulation, rather than set rules for financial institutions. A focus on principles should see a shift in both industry and the regulator toward ensuring that their actions are geared toward driving the attainment of certain principles in the financial sector, not only on technical compliance with the law.
- **Outcomes-focused:** Linked to the above, outcomes-focused supervision allows the supervisor to test financial institutions on their delivery of the actual outcomes, testing the financial sector's effectiveness not only in providing the correct customer outcomes, but in supporting the real economy too.
- **Activity-based rather than institutionally driven:** Shifting away from the institutionally-driven approach, the law will look at defining the activities undertaken in the financial sector. The same regulation will apply to similar activities, regardless of the institution performing the activity. This will create level playing fields amongst stakeholders.
- **Risk-based and proportionate:** the new framework will enable the regulator to monitor the financial sector, identify areas that pose greatest market conduct risks, and use proportionate regulatory capacity to address these risks. Proportionality will affect the regulator's supervisory approach, the standards it sets, and the enforcement action it takes.

Furthermore, the Bill will better support the participation of black businesses in the provision of financial products and services, and strengthen the protection of vulnerable consumers. Because it will apply to all financial institutions, it is well placed to support the Financial Sector Code issued under the Broad Based Black Economic Empowerment (BBBEE) Act, by requiring financial institutions to comply with that Code.

Objectives of the COFI Bill



The Bill aims to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will:

- a) Protect financial customers;
- b) Promote the fair treatment of financial customers by financial institutions;
- c) Support fair and efficient financial markets;
- d) Promote innovation and the development of and investment in innovative technologies, processes and practices;
- e) Promote competition;
- f) Promote financial inclusion; and
- g) Promote transformation of the financial services sector.

Also accompanying the COFI Bill is an explanatory policy paper to assist in interpreting the provisions of the Bill.

Comments on the Bill will be accepted until 1 April 2019. Comments can be sent to marketconduct@treasury.gov.za. Public workshops will also be arranged and further information on these will be communicated in early 2019.

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