


MOONSTONE
COMPLIANCE AND RISK MANAGEMENT

Conduct of Financial Institutions (Bill)

A Brief Overview . . .

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 **Treating Customers Fairly**

International standards: G20 Principles on Financial Consumer Protection

- Principle 3, Equitable and fair treatment of customers:
"All financial consumers should be treated equitably, honestly and fairly at all stages of their relationship with financial service providers. Treating consumers fairly should be an integral part of the good governance and corporate culture of all financial services providers and authorised agents. Special attention should be given to the needs of vulnerable groups."
- See also Principles 4 (Disclosure & transparency); 6 (Responsible business conduct); 9 (Complaints handling and redress)
These have been prioritised by the OECD Financial Consumer Protection in Task Force in their action plan to implement the G20 principles.

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"Twin Peaks"



Financial Stability (Prudential) **Fair Treatment of Customers (Conduct)**

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Retail Distribution Review 2014



55 Proposals
The word "Standard"
appears 252 times

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Consequent Legislation

Financial Sector Regulation Act, 9 of 2017

- Regulator facing
- Establishes the regulatory authorities
- Regulators supervisory and enforcement powers

Insurance Act, 18 of 2017

- Primarily prudential

CoFI Bill 2019

- Regulated Entity facing

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Agenda

FSRA – Overview and Reminders

CoFI – in some detail

FSRA and CoFI – how they relate

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FSRA - Overview

“Regulatory Instruments”

- Includes Conduct and Prudential Standards

“Financial Sector Law”

- Includes a Regulatory Instrument

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FSRA - Overview

The CA may make standards in respect of:

- financial institutions
- representatives of financial institutions
- key persons of financial institutions
- contractors

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CoFI S4 - General Application

The Act will apply to:

- All financial institutions that provide financial products and financial services
- All supervised entities including supervised entities that are not financial institutions

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CoFI – Acts Repealed

- Long-term Insurance Act, 52 of 1998
- Short-term Insurance Act, 53 of 1998
- Financial Institutions (Protection of Funds) Act, 28 of 2001
- Financial Advisory and Intermediary Services Act, 37 of 2002
- Collective Investment Schemes Control Act, 45 of 2002

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Proposed revised legal landscape

Transition towards the new legal framework		Subordinate law
Current	Future	
<p>Conduct of business</p> <ul style="list-style-type: none"> Long-term Insurance Act Short-term Insurance Act Pension Funds Act Collective Investment Schemes Control Act Financially Soundness Act Financial Advisory and Intermediary Services Act Financial Markets Act Credit Ratings Services Act Banks Act* National Payment Systems Act* 	<p>Financial Sector Regulation Act (includes arrangements for FSCA and prudential schemes i.e. entities primarily on the regulation)</p> <p>Conduct of Financial Institutions Act (i.e. focuses primarily on regulated institutions)</p>	<p>Note: repealing provisions in existing sectoral laws, or the laws themselves, will not result in subordinate regulation issued under those laws falling away.</p> <p>A careful transitional process will be followed to ensure that required subordinate legislation remains effective under the CoFI Bill framework until migrated into conduct standards.</p>
<p>Dispute resolution</p> <ul style="list-style-type: none"> Financial Services Ombuds Schemes Act (as amended) 		

*The two acts administered by the Reserve Bank are prudential with no conduct provisions. As a result, while the FSCA will have jurisdiction over these market segments, the acts themselves will remain largely unchanged, absorbed into the new PA and Reserve Bank Structures

Figure 3.2 of 2014 discussion document. Note credit services, debt collectors and forex dealers not reflected in 'Current' legislation, but will be captured for conduct regulation in terms of FSCA Act definitions

national treasury
Department of Finance

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Treating Customers Fairly initiative

CoFI – Objectives


A consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will—

- a) protect financial customers;
- b) promote the fair treatment and protection of financial customers
- c) support fair, transparent and efficient financial markets;
- d) promote innovation;
- e) promote trust and confidence in the financial sector;
- f) promote sustainable competition
- g) promote financial inclusion;
- h) promote transformation of the financial sector; and
- i) assist the South African Reserve Bank in maintaining financial stability.

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COFI Bill Principles

- The COFI Bill is designed to be:
 - Activity-based:** The Bill shifts away from institutional to activity based regulation. Licensing schedule sets out financial activities requiring license. Same regulation will apply to similar activities, regardless of the institution performing the activity.
 - Principles and outcomes focused:** Provisions have been drafted setting principle requirements in law; will allow regulator to monitor and enforce the achievement of outcomes rather than compliance with the letter of the law
 - Risk-based and proportionate:** Proportionality will affect the regulator's supervisory approach, the standards it sets, and the enforcement action it takes. Chapter 1 of the COFI Bill sets out guidelines for what the FSCA should consider in applying a proportionate approach




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CoFI – Authorised Activities

Main categories of authorised activities (Schedule 2)

1. Providing a financial product or financial instrument
2. Distributing Financial Products
3. Financial Advice
4. Managing and Administering Investments
5. Benefit Administration
6. Professional Fiduciary or Custodian Service




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CoFI – Authorised Activities

Main categories of authorised activities (Cont.)

7. Payment Service
8. Financial Markets Activities
9. Trading, making a market, clearing, settlement, custody
10. Providing benchmarks and related services
11. Service related to buying or selling of forex
12. Credit Rating Service
13. Debt collection service



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CoFI – Licensing Framework

All institutions that conduct an authorised activity must be licensed

Multiple activities – single licence but multiple authorisations

Licensing is three-tier:

- Activity; linked to
 - Product/products; linked to
 - Customers to whom the activity applies

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CoFI – Licensing

Chapter 2 (s11 –s27)

Part 1 Power to Grant Licences

Part 2 Requirements for Licensing of Financial Institutions

Part 3 Requirements for Licensees

Part 4 Licensing Conditions

Part 5 Transitional Arrangements in Relation to Licensing

Part 6 Representatives

Part 7 Conduct Standards (12 additional)

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CoFI – Culture & Governance

Chapter 3 (s28 – s45)

Part 1 Practices relating to Corporate Culture and Governance

Part 2 Governance Policy*

Part 3 Transformation Policy*

Part 4 Key Persons and Significant Owners

Part 5 Avoidance or Mitigation of Conflict of Interest*

Part 6 Remuneration and Compensation

Part 7 Conduct Standards (14 additional)

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Small Enterprise Definition

Column 1	Column 2	Column 3	Column 4
	Size of class	The total full-time equivalent of paid employees	Total annual turnover
Finance and Business Services	Medium	51 - 250	<R85m
	Small	11 - 50	<R35m
	Micro	0 - 10	<R5m

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CoFI – Financial Products

Chapter 4

- S46 – Purpose of the Chapter
- S47 - Principles for design and provision of financial products
- S48 - Oversight and governance of product design
- S49 - Design and suitability of products for retail financial customers
- S50 - Product performance
- S51 - Conduct Standards (17 additional)

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CoFI – Financial Services

Chapter 5

- S52 – Purpose of the Chapter
- S53 - Principles for provision of financial services
- S54 - Oversight of the provision of financial services
- S55 - Providing financial services to retail financial customers
- S56 - Conduct standards (14 additional)

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CoFI – Promotion, Marketing and Disclosure

Chapter 6

- S57 - Purpose of the Chapter
- S58 - Principles for promotion, marketing and disclosure
- S59 - Promotion and marketing
- S60 - Disclosure
- S61 - Conduct standards (21 additional)

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CoFI – Distribution, Advice And Discretionary Investment Management

Chapter 7

- S63 - Purpose of the Chapter
- S64 - Principles for distribution, etc.
- S65 - Selection of distribution and advice channels
- S66 - Distribution and advice models
- S67 – Principles for advice and discretionary investment
- S68 - Responsibilities of providers of products
- S69 - Conduct standards (29 additional)

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CoFI – Post-Sale Barriers And Obligations

Chapter 8

- S70 - Purpose of the Chapter
- S71 - Principles relating to post-sale barriers
- S72 - Limiting unreasonable post-sale barriers
- S73 - Post-sale obligations
- S74 - Service levels
- S75 - Conduct standards (15 additional)

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CoFI – Safeguarding Assets And Operational Requirements

Chapter 9

S76 - Application of Chapter
 S77 - Purpose of the Chapter
 S78 - Principles for dealing with assets of customers or institutions
 S80 - Investment of assets of financial customers
 S81 - Segregation of assets of financial customers
 S82 - S84 - Operating capital and ability, guarantees and indemnity
 S90 - Conduct standards (10 additional)

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CoFI – A Summary

Topics	Conduct Standards
Licensing	12 Additional
Culture and Governance	14 Additional
Financial Products	17 Additional
Financial Services	14 Additional
Promotion, Marketing and Disclosure	21 Additional
Distribution, Advice etc	29 Additional
Post-Sale Barriers and Obligations	15 Additional
Safeguarding Assets	10 Additional

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CoFI and the FSRA

Standards – S107 CoFI

A conduct standard must be aimed at achieving the object of the Act or the stated purpose of the applicable Chapter or Part of this Act. (S107(1)(c))

When prescribing conduct standards, the Authority must consider the nature, scale and complexity of different financial institutions, financial products and financial services (S107(2)(a))

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CoFI and the FSRA

Standards – S106 FSRA

- The Authority must publish:
 - a draft
 - an explanation
 - impact assessment
- Invite comments – six weeks minimum
- Submit to Parliament
- Each Regulatory Instrument must include the consultation report

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Questions?

Comments?

Observations?

Thank you

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