

Public comment sought on draft Cofi Bill

National Treasury is soliciting public comments on the second draft of the Conduct of Financial Institutions (Cofi) Bill, which was published on Monday.



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The first draft of the Bill was published for comment in December 2018.

The second draft of the Bill is accompanied by a Response Document, which explains key changes made to the first draft of the Bill, in response to comments submitted and engagements held.

In a statement, Treasury said it aims to finalise the Bill after taking into account the second-round comments. The Bill will then be sent to Cabinet for approval and tabling early next year.

“The Cofi Bill is a key pillar in government’s Twin Peaks financial sector regulatory reform process, which aims to entrench better financial customer outcomes in the South African financial sector. It is a financial institution-facing law that sets requirements for financial institutions to meet and outcomes to deliver.”

The Bill aims to significantly streamline the legal landscape for conduct regulation in the financial services sector and to

give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles.

“These principles are currently not enforceable, and while customer outcomes may have somewhat improved, this has not been consistent across the sector. The Cofi Bill will ensure that the TCF principles are legally binding and enforced on all financial institutions,” said Treasury in a statement.

Key changes

Key changes made between the first and second drafts of the Cofi Bill include the application of the Cofi Bill in relation to existing legislation.

In this regard, in response to comments and engagements that flagged potential inconsistencies and ambiguities with existing laws, the revised Cofi Bill has proposed consequential amendments to the Financial Sector Regulation (FSR) Act.

The draft also proposes an approach to conduct standards.

“The first draft of the Cofi Bill contained enabling provisions for making conduct standards in different chapters. These have been removed, and the standard-making provisions in the FSR Act have instead been strengthened.

“The FSCA will thus be empowered, through the conduct standard making provisions in the FSR Act, to set conduct standards under the Cofi Act,” said Treasury.

Another key change will be the refined approach to licensing.

“Key enabling provisions have been proposed for inclusion in the FSR Act licensing chapter through consequential amendments. Provisions have been expanded and strengthened to provide for a more comprehensive licensing framework for the Twin Peaks regulatory authorities.

“The intended effect of this approach is that an entity will require a licence issued under the Cofi Act, but the provisions that set out the framework for licensing are those in the FSR Act,” said Treasury.

Other key changes between the two drafts include:

- **Focusing transformation to tangible targets:** The revised draft of the Cofi Bill attempts to strengthen the transformation in the financial sector. The requirement for financial institutions to have transformation policies are refined to require the policies to more closely align to the achievement of tangible targets. The revised draft also allows for the FSCA to issue directives in relation to transformation policies. It clarifies that the FSCA may use its supervisory and enforcement powers to ensure that a financial institution’s governance frameworks – including in relation to transformation – are adequate and adhered to.
- **Approach to medical schemes sector:** The first draft of the Cofi Bill envisioned application of conduct requirements in relation to medical schemes and medical scheme administrators. This was in line with the provisions of the FSR Act, which define health service benefits provided by a medical scheme as financial products, thus bringing them under the jurisdiction of both the Prudential Authority (PA) and FSCA. A task team has been established between the National Treasury, Council for Medical Schemes (CMS), PA and FSCA to address issues of regulatory approach of the three regulators. The revised draft of the Bill thus removes all reference to medical schemes and medical scheme administrators until the work of this task team has concluded.
- **Alignment to financial markets review:** The potential for overlap between the revised draft Cofi Bill and envisaged new Financial Markets Act (FMA) was the subject of further discussion during the process of refining the Cofi Bill. As a result, activities defined in Schedule 1 of the Bill, (Licensing Schedule), capture certain of the new activities

proposed to be regulated through the FMA review.

- **Application to the non-retail market:** A series of engagements were held to specifically consider the application of the Cofi Bill to the non-retail environment. A new license activity of corporate advisory services has been included. This intends to better capture the activities undertaken by institutions such as investment banks, such as arrangement of debt and equity issues, advisory services and on- and off-balance sheet financing of transactions. A new license activity (called 'lending') has been added to capture the provision of non-retail credit, i.e. lending agreements that are not regulated in terms of the National Credit Act.

The Response Document accompanying the revised draft of the Cofi Bill explains the changes made in greater detail, and provides an overview of other changes made to the Bill that aim to ensure technical accuracy of provisions.

Comments on the Bill will be accepted until 30 October 2020. Comments can be sent to marketconduct@treasury.gov.za.

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