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FSCA's draft transformation strategy – A step in the right direction?

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FSCA: Draft Transformation Strategy

On 28 February 2022, the Financial Sector Conduct Authority ("**FSCA**") published a draft financial sector transformation strategy ("**Draft Transformation Strategy**") for public comment. The Draft Transformation Strategy demonstrates the FSCA's intention to increase its role in transformation in the financial sector and how this may be amplified by the proposed Conduct of Financial Institutions Act, which is currently a draft bill ("**COFI Bill**").

The Draft Transformation Strategy is, at least on paper, a step in the right direction, however, whether the implementation will have the intended outcome of improving transformation remains to be seen.

The Draft Transformation Strategy illustrates the ultimate framework for the regulation of transformation in the financial sector as follows:[1]

Legal Brief Picture1

As it currently stands, transformation in the financial sector is regulated by the Financial Sector Code ("**FS Code**"), issued in terms of the Broad-Based Black Economic Empowerment Act ("**B-BBEE Act**").[2] The FS Code is enforced by the Financial Sector Transformation Council ("**FSTC**"), which is established in terms of the FS Code.[3]

FSCA does not replace the role of the FSTC

The 2020 draft COFI Bill significantly shifts the regulation of transformation in the financial sector to the FSCA, however, the FSCA does not replace the role of the FSTC. The 2020 draft COFI Bill provides for, amongst others, the following key proposals in relation to transformation:[4]

1. The promotion of transformation would be an explicit function of the FSCA and the FSCA would have the power to set the standard in relation to transformation.
2. Financial institutions will be required to promote transformation in compliance with their transformation plans, which should have tangible targets informed by the targets in the FS Code.
3. The FSCA would have the power to issue directives in relation to transformation plans and would have the supervisory and enforcement powers to ensure that a financial institution's governance frameworks, which includes transformation, are sufficient and being complied with.

In anticipation of the FSCA's amplified role in transformation, the FSCA has now published its Draft Transformation Strategy. The FSCA's objectives for the Draft Transformation Strategy include, amongst others, the following:[5]

1. Engagement with the financial institutions on their existing transformation plans and their levels of compliance with the plans for purposes of assessing the current state of transformation.

2. Supporting the FSTC by improving the availability and quality of transformation data, especially in relation to ownership and in determining the ultimate beneficial ownership of licensed financial institutions.
3. Supporting small businesses in the financial sector by providing training and support in relation to issues of compliance, licensing, and regulatory examinations.
4. Developing licensing, regulatory and supervisory frameworks that promote the transformation of the financial sector.
5. Engaging with the FSTC, B-BBEE Commission[6], and the Prudential Authority and supporting initiatives in relation to the transformation of the financial sector by the National Economic Development and Labour Council and the FSTC.
6. Once the COFI Bill is enacted, initiating the regulatory and supervisory actions to promote transformation, engagement with the FSTC and B-BBEE commission, and the regular evaluation of the effectiveness of the legislative frameworks and their application.

Draft Transform Strategy

The Draft Transform Strategy, in its current version, is not centered around merely regulating financial institutions, however, provides a balance between the regulation and the research, engagement, and assistance to financial institutions which is required to improve transformation. The FSCA's intention to engage with various regulatory bodies may result in a more cohesive approach to improving transformation in the financial sector. There is also a greater emphasis on the transformation plans, therefore, financial institutions should consider and re-evaluate their plans and ensure they are complying with them and, if not, be prepared to account to the FSCA.

You may access the Draft Transformation Strategy and the comment template here.

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[1] Draft Transformation Strategy pages 9-14.

[2] No 53 of 2003; Draft Transformation Strategy, page 2; Financial Sector Regulation Act No 9 of 2017, section 1 *s.v.* "**transformation of the financial sector**".

[3] Draft Transformation Strategy, page 5; https://fstc.org.za/Aboutus/Aboutus.

[4] Draft Transformation Strategy, page 12.

[5] Draft Transformation Strategy, page 14.

[6] Established in terms of the B-BBEE Act.

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