

REGULATORY

Mind the Conduct: A Guide to COFI – Part 1: Purpose and Application

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In this article series, we take a deep dive into the South African Conduct of Financial Institutions (COFI) Bill — a major financial sector regulatory reform — one theme at a time.

COFI was drafted in conjunction with the Financial Sector Regulation Act (FSRA), the two pillars of the Twin Peaks regulatory reform. The Twin Peaks regulatory reform is a response to financial system weaknesses identified by the 2008 Global Financial Crisis, such as the systemic risks of large insurers and inappropriate market conduct practices.

The FSRA has already been implemented. The FSRA introduced the Twin Peaks regulatory framework, bringing into existence two regulators for the industry. The first regulator is the Prudential Authority (PA) responsible for the prudential regulation of financial institutions, while the second is the Financial Sector Conduct Authority (FSCA) responsible for regulating market conduct.

COFI represents a major overhaul of how financial institutions will be regulated in South Africa. Currently, different financial institutions are regulated by different legislation. COFI will involve shifting to a harmonised, principles-based conduct regime focused on customer outcomes, transparency and inclusion. COFI also provides for a single licensing and supervision framework and stronger enforcement and standards across the financial sector. Its implementation will unfold over several years and reshape regulatory expectations for financial institutions and consumers alike.

National Treasury has indicated that COFI will be finalised in 2026. COFI has recently been adopted by Cabinet for submission to Parliament.

Purpose and Application: Part 1

In this article, we consider the scope and application of COFI.

Application

COFI applies to all "financial institutions", a term defined broadly to include banks, insurers, retirement funds, investment managers, collective investment schemes, credit providers, payment service providers and a wide range of other entities involved in the provision of financial products or services.

Critically, COFI is not concerned with the form of an institution, but with the activities it performs. In other words, under COFI, *it is not what you are, but what you do that counts*.

Purpose and regulatory approach

The purpose of COFI is to strengthen market conduct regulation across the financial sector by introducing a single, overarching legal framework governing how financial institutions behave and treat customers. To achieve this, COFI seeks to eliminate the current fragmented conduct regime, which is spread across multiple, and often overlapping, pieces of legislation. In its place, COFI introduces a harmonised, activity-based framework that applies consistently across the financial sector.

Breadth of application

COFI's wide scope is a deliberate feature. By applying common conduct standards across all financial activities, the framework aims to ensure that customers receive consistent levels of protection, regardless of the type of institution with which they engage.

However, this breadth has also attracted meaningful industry concern. Stakeholders have noted that COFI's application to a wide range of financial activities may extend regulatory oversight into areas that were previously lightly regulated or unregulated, for example, the introduction of a licensing category for "corporate advisory services", which appears to capture activities typically associated with investment banking — including the arrangement of debt and equity issuances and advisory services in relation to mergers and acquisitions. While the framework appears to contemplate the ability for certain counterparties to "opt out" of protection, this nonetheless represents a significant expansion of regulatory scope into activities involving sophisticated, non-retail clients. This raises a broader policy question as to whether COFI's extension into these areas is appropriately calibrated, given that such clients are not traditionally regarded as vulnerable.

A further concern relates to the replacement of sector-specific legislation (such as FAIS) with a single, cross-sectoral framework. While harmonisation reduces fragmentation, it may also obscure important differences between sectors and business models.

COFI incorporates the principle of proportionality, recognising that regulatory requirements should be applied in a manner that is appropriate to the size, nature and complexity of a financial institution. In theory, this should ensure that smaller providers — such as independent financial advisors — are not subject to the same expectations as large, complex institutions. In practice, however, the application of proportionality remains uncertain in certain respects. COFI makes use of concepts such as "governing body" and "corporate culture", which are not always clearly defined and may not translate easily to smaller firms or new market entrants. This creates a degree of ambiguity as to how such entities are expected to comply with COFI's conduct expectations.

Practical implications

COFI's broad scope means that its impact will be felt across the entire financial sector, including by entities that may not currently be subject to comprehensive conduct regulation.

Given the scale of reform, COFI will be implemented on a phased basis. Transitional arrangements will allow financial institutions time to align with the new framework, including the move to activity-based licensing. That being so, in anticipation of COFI's implementation, financial institutions should assess whether their activities fall within the scope of COFI and map existing products, services and business lines to the activity-based framework.

Importantly, entities that are not currently regulated — or that are only lightly regulated — should consider whether COFI will introduce new licensing and compliance obligations.

While there is uncertainty as to how certain aspects of COFI will be implemented in practice, what is clear is that COFI represents a material expansion in both the scope and depth of conduct regulation.

Early engagement and preparation will be key to navigating this transition.



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