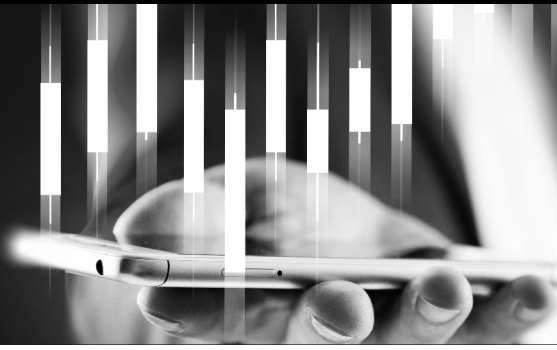




REGULATORY

Mind the Conduct: A Guide to COFI – Part 3: Consumer Protection and Transparency

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Introduction

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.

Consumer Protection and Transparency: Part 3

In our previous articles in this series, we examined the [Purpose and Application](#) of COFI and the [Licensing Framework](#) under COFI. In this article, we consider COFI's approach to consumer protection and transparency, with a particular focus on the obligation imposed on financial institutions to publish their audited annual financial statements (AFS).

Transparency as a regulatory pillar

A central objective of COFI is to promote transparency in the financial sector as a mechanism for enhancing consumer protection and market discipline.

COFI seeks to ensure that financial customers are placed in a position to make informed decisions and that financial institutions operate in a manner that is open and accountable. This is reflected in disclosure requirements at a product level, such that institutions must ensure that fees, terms, risks and benefits of financial products are transparent and understandable. In addition, this is reflected at an institutional-level via transparency obligations.

Publication of audited financial statements

COFI requires that institutions prepare audited AFS and submit those statements to the FSCA. One of the more notable, and vociferously debated, features of COFI is the requirement that certain financial institutions must make those statements publicly available within a prescribed period after the end of their financial year.

This represents a shift from existing frameworks, where financial reporting obligations are typically directed at regulators, shareholders and/or specific stakeholders — but not typically the general public.

The publication requirement reflects an intention to enhance market-wide transparency, enabling customers, counterparties and other stakeholders to better assess the financial position and conduct of financial institutions.

From a regulatory perspective, the publication requirement appears to be grounded in three key objectives: Enhanced accountability, improved comparability and consumer empowerment.

Notwithstanding these objectives, the requirement has attracted meaningful criticism from industry participants and legal commentators.

- **Lack of clarity:** It is not entirely clear to which institutions the publication requirement applies. COFI states that the publication requirement applies broadly to "financial institutions" required to prepare AFSs in terms of COFI or applicable conduct standards. The detail (i.e. who must be audited) is not exhaustively set out. Rather, it is expected to be specified in conduct standards, or determined by reference to other applicable legislation (such as the Companies Act). Based on the current drafting and regulatory intent, the following categories are *likely* to be caught: (a) licensed financial institutions carrying on regulated activities at scale, including insurers, CIS managers, discretionary investment managers, large FSPs and retirement fund administrators as well as certain credit providers / payment providers (depending on classification); (b) any other regulated entity where audit requirements are imposed owing to other applicable legislation. That being said, this is mere conjecture.
- **Limited utility for consumers:** AFSs are unlikely to be meaningful or accessible to most retail customers. AFSs are technical documents, rendering it questionable whether their publication materially advances consumer protection, in practice.
- **Confidentiality and competitiveness:** Financial institutions, particularly those that are not publicly listed, have understandably raised concerns about the commercial sensitivity of their financial information. Requiring the public disclosure of detailed financial statements may expose proprietary or commercially sensitive information, place firms at a competitive disadvantage and deter market entry, particularly for smaller or niche providers. Against the backdrop of the limited utility for consumers (and high utility for competitors), this seems intrinsically unfair.

The requirement to publish AFS highlights a broader tension within COFI: the need to balance enhanced transparency and consumer protection against practical, proportionate regulation. While the objective of improving transparency is widely supported, stakeholders have emphasised that disclosure measures should be targeted, meaningful and proportionate to the risks being addressed.

Practical implications

If implemented in its current form, the publication requirement will require financial institutions to –

- review their financial reporting and audit processes;
- consider the public positioning of their financial information; and
- implement processes to ensure timely publication within prescribed deadlines.

Institutions should also assess whether any group-level or subsidiary structures may be affected, particularly where entities have not historically been subject to public disclosure requirements.

Ultimately, COFI signals a shift towards a regulatory regime in which *it is not only what you do that counts, but how you behave while doing it.*



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