

Trustee Tutor 25:

The Conduct of Financial Institutions Bill (COFI): A Comprehensive Guide

The story behind COFI

The Conduct of Financial Institutions Bill, often shortened to COFI, is an important piece of legislation that will change the regulatory landscape of South Africa's financial sector. This bill emerges from a long standing recognition that the existing framework for regulating financial conduct has become fragmented, outdated and insufficient to address the complexities of a modern economy. To fully appreciate COFI, we need to delve into the historical context that shaped its creation, the motivations driving its drafters and the key principles that infuse its provisions with purpose.

The roots of COFI can be traced back to the aftermath of the 2008 global financial crisis, which exposed vulnerabilities in financial systems around the world, including South Africa. In the local context, incidents like the 2014 collapse of African Bank, triggered by reckless lending practices that burdened vulnerable consumers with unsustainable debt, underscored the urgent need for stronger protections against misconduct. Similarly, the 2017 Steinhoff scandal, involving accounting irregularities that led to massive losses for investors, highlighted gaps in governance and transparency. These events, combined with ongoing issues like hidden fees and unfair penalties in financial products, revealed how disparate laws - scattered across acts like the Financial Advisory and Intermediary Services Act of 2002, the Pension Funds Act of 1956, and various insurance laws - created silos that allowed financial institutions to exploit loopholes, shifting activities to less regulated areas and undermining the financial consumer's trust.

The drafting process for COFI started around 2014, as part of the broader Twin Peaks regulatory model. Under Twin Peaks, regulation is divided into two pillars:

Prudential oversight by the Prudential Authority within the South African Reserve Bank, focusing on financial soundness

Market conduct regulation by the Financial Sector Conduct Authority, or FSCA, emphasising fair treatment and integrity.

COFI represents the next evolution in this model, aiming to consolidate and harmonise conduct rules into a single, cohesive framework.

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At its heart, the spirit behind COFI is one of equity, resilience and inclusivity. It shifts the financial sector from a rigid, rule-based system - where compliance often meant merely ticking boxes without ensuring meaningful outcomes - to a principles-based approach that prioritises real world results for financial consumers.

As a principles-based approach, COFI emphasises outcomes like fair treatment, rather than prescribing exact forms, procedures or checklists. For example, a bank must not only disclose loan terms but also ensure they are suitable for the borrower's circumstances. Financial sector regulation focusing on conduct is not unique to South Africa. COFI draws inspiration from international benchmarks, like the United Kingdom's (and South Africa's) Treating Customers Fairly (TCF) initiative, and Australia's post-Royal Commission reforms that focused on accountability for misconduct.

COFI is designed to build a financial system that is not only transformed and stable but also trustworthy and accessible, ultimately contributing to national development goals like reducing poverty and inequality. The spirit of COFI is transformative, replacing the patchwork of old laws that allowed inconsistencies, with a unified regime that places customers at the centre.

Objectives of the COFI Bill

COFI's objectives align with the broader goals of the Financial Sector Regulation Act of 2017 and are set out in Section 3. These are:



These interconnected pillars form the foundation on which the legislation is built and guide its interpretation, implementation and enforcement.

Spotlight on objective: Protecting customers by treating them fairly

Most importantly, COFI aims to protect financial customers by ensuring they are treated fairly throughout their interactions with financial institutions. This means safeguarding against practices that could lead to harm, such as misleading advertising or unsuitable product recommendations. For example, consider a low income worker purchasing life insurance; under COFI, the insurer must provide clear, comprehensible information about coverage exclusions and premiums, preventing surprises during claims that could devastate families financially.

A quick reminder of the six Treating Customers Fairly (TCF) Outcomes

TCF ensures that financial institutions deliver specific fairness outcomes for customers throughout the product life cycle - from design and marketing, through advice and sales, to servicing, claims and complaints

Outcome 1: Culture and governance

Customers can be confident that they are dealing with financial institutions where the fair treatment of customers is central to the corporate culture.

Outcome 2: Product design and suitability

Products and services marketed and sold are designed to meet the needs of identified customer groups and are targeted accordingly.

Outcome 3: Clear information

Customers are provided with clear information and are kept appropriately informed before, during, and after the time of contracting.

Outcome 4: Suitable advice

Where customers receive advice, the advice is suitable and takes account of their circumstances.

Outcome 5: Product performance and service

Customers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.

Outcome 6: Post-sale barriers

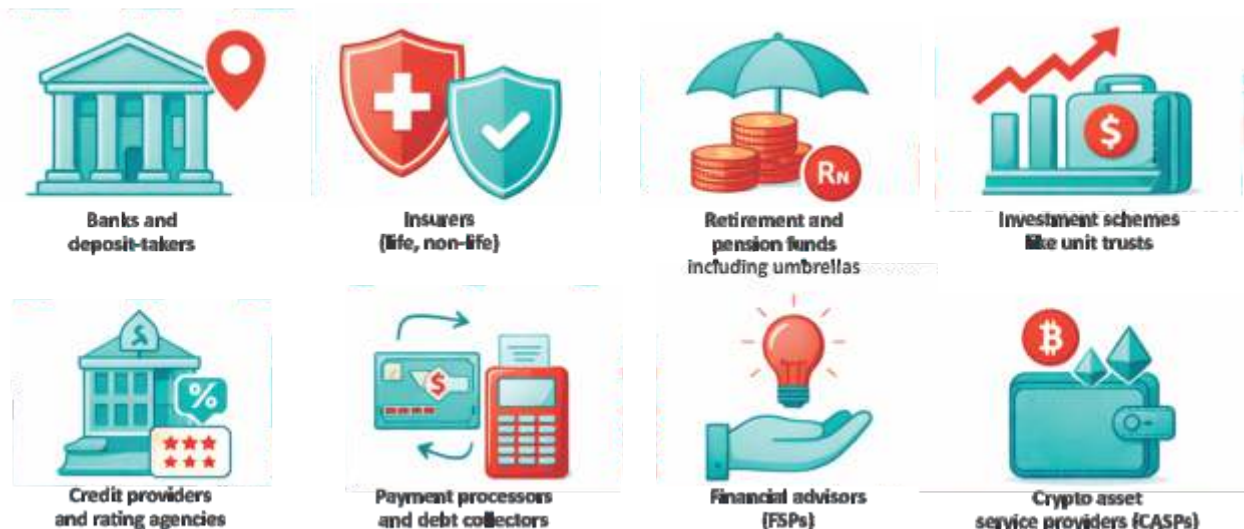
Customers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim, or make a complaint.

Financial Institutions covered under COFI

The scope of COFI is deliberately broad: both in terms of the entities and the activities it encompasses - to ensure comprehensive oversight of conduct in the financial sector.

Under COFI, a financial institution is defined in alignment with the Financial Sector Regulation Act of 2017 (FSRA), as any person or entity providing financial products or services, as per the FSRA. Exclusions include the central bank and certain non-public activities.

Types of institutions covered



Financial institutions covered include traditional players like banks that accept deposits and provide loans, insurers offering life or non-life policies, and retirement funds managing pension savings. The bill then extends to modern entities such as crypto asset service providers handling digital wallets, payment service providers facilitating mobile transfers, and fintech companies offering app-based lending. Credit rating agencies that assess borrower risk, debt collectors recovering loans, and collective investment schemes like unit trusts are also included. Even holding companies of financial conglomerates can be designated if they oversee licensed activities.

Medical schemes providing health benefits fall under COFI's ambit, as do co-operative banks and friendly societies. Public sector retirement funds, previously somewhat exempt, are now fully covered, ensuring uniformity. Umbrella funds, which pool contributions from multiple employers, are explicitly recognised with requirements for segregated sub-funds to protect individual employer groups.

This activity-based approach marks a departure from the old entity-focused regulations, where rules varied by institution type, allowing some to evade scrutiny. Instead, COFI focuses on what an entity does - whether lending, advising or administering - ensuring consistent standards across the board.

Activities covered by COFI

Schedule 1 of COFI lists categories and sub-categories that require licensing. These include the provision of financial products such as participatory interests in collective investment schemes, alternative investment funds, insurance policies, deposits under the Banks Act, lending (both retail and non-retail), retirement fund benefits, health service benefits from medical schemes, and other credit support arrangements like warranties or guarantees.

Financial services encompass:



Distribution (selling or marketing products)



Financial advice (recommending investments or insurance)



Discretionary investment management (managing client portfolios)



Administration (handling claims, valuations, or investor registers)



Fiduciary or custodian services (safeguarding assets)



Payment services, ebt collection, financial market activities (like underwriting or benchmark administration)



Credit rating services



Third-party treasury management



Corporate advisory services on mergers or financing

For instance, a company administering retirement fund payouts must license for administration activities, ensuring accurate records and fair processes.

The activities are grouped into products and services. Products cover tangible offerings like loans or policies, while services include advisory or operational roles. Sub-activities are detailed to prevent overlaps. Exclusions apply to unlicensed persons or foreign equivalents recognised by the FSCA.

Benefits

The benefits of this coverage are many: it levels the playing field, reducing regulatory arbitrage where a bank might reclassify lending as advice to avoid rules.

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Challenges

Challenges include the administrative burden on small entities, addressed through proportionality - lighter requirements for low risk activities.

Compared to old laws like the FAIS Act, which covered only advice, COFI's net is wider, capturing administration and markets for better protection. Ultimately, this ensures all players, from big banks to small advisors, adhere to the governance standards under Chapter 4, promoting ethical cultures and transformation.

The structure of COFI

Chapter 1: Interpretation, objects and application

Defines key terms, outlines the Act's objectives such as customer protection and financial stability, and specifies its scope including proportional application to various entities.

Chapter 2: Licensing

This chapter sets requirements for licensing financial institutions based on activities in Schedule 2, including transitional arrangements and rules for representatives.

Chapter 3: Culture and governance

This chapter mandates principles for corporate culture, governance policies, transformation plans, conflict management, remuneration, and fitness of key persons.

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Chapter 4: Financial products

This chapter regulates the design, suitability, and performance of financial products, particularly for retail customers, with provisions for oversight and conduct standards.

Chapter 5: Financial services

This chapter governs the provision of financial services, emphasising suitability, performance oversight, and principles for fair treatment of customers.

Chapter 6: Promotion, marketing and disclosure

This chapter addresses rules for advertising, marketing materials, and disclosure to ensure transparency and prevent misleading promotions.

Chapter 7: Distribution, advice and discretionary investment management

This chapter covers selection of distribution channels, advice models, and responsibilities for providing advice or managing investments on a discretionary basis.

Chapter 8: Post-sale barriers and obligations

This chapter limits unreasonable post-sale barriers, outlines ongoing obligations and sets service level requirements after transactions.

Chapter 9: Safeguarding assets and operational requirements

This chapter requires segregation and protection of customer assets, operating capital, operational resilience, and approval for structural changes.

Chapter 10: Reporting

This chapter mandates supervisory reporting, public disclosures, accounting records, audits, and retention of records for transparency and accountability.

Chapter 11: Remedial actions for financial customers

This chapter provides mechanisms for redress, remedies and court orders to address customer complaints and harms.

Chapter 12: General provisions

This chapter covers interactions with other laws, imposition of requirements, equivalence for foreign jurisdictions, applications, notifications, and offences.

Chapter 13: Final provisions

This chapter includes review clauses, savings, amendments to other laws, and commencement details, supplemented by schedules on licensing activities and transitions.

Hitting the compliance highlights**Licensing**

In retirement funds, your administrators, fund investment managers, advisors and insurers will need to be licensed under COFI, as well as the retirement fund itself. The FSCA has indicated that resources have been made available to avoid a bottle neck in this process once COFI is rolled out.

Institutions will apply to the FSCA with forms, fees and evidence of fit and proper key persons, adequate resources and operational capabilities. The FSCA can consult other regulators and can impose conditions or exemptions. Transitional provisions allow existing licenses to continue for up to three years while converting.



What does COFI mean for retirement fund trustees?

Governance

Chapter 4 addresses governance, requiring principles like fair customer treatment, market efficiency and transformation. Governing bodies must endorse ethical cultures, with arrangements for accountability, risk management and compliance functions. Remuneration policies cannot incentivise misconduct, such as bonuses for aggressive sales; and conflicts of interest must be disclosed and managed. Transformation plans align with B-BBEE, setting targets for diverse ownership. Fit and proper checks for key persons ensure honesty and competence, with the FSCA able to issue directives for breaches.

Under the current Pension Funds Act of 1956 (which will be renamed the Retirement Funds Act under COFI), trustees operate within a framework that emphasises fiduciary duties, governance and member protection. Under COFI, their responsibilities will expand significantly, with stricter licensing, conduct standards and transformation requirements.

Retirement funds will need to obtain a conduct license from the FSCA, demonstrating their ability to deliver fair outcomes for members. Existing funds will have up to four years to transition, with public sector funds aligning within three years. This means trustees must prepare applications, including details on governance, resources and compliance capabilities.

Under COFI, trustees will embed the TCF principles into all operations. This involves designing products and services that are suitable, transparent and free from abusive practices. For retirement funds, this translates to clearer fee disclosures, better complaint resolution and no unreasonable barriers to benefits.

Governance requirements will intensify. Boards must document frameworks covering accountability, skills development, risk management, conflicts, remuneration policies and transformation plans.

Fit and proper standards will be more rigorous. All key persons, including trustees, must maintain honesty, integrity, competence and good standing. Professional or independent trustees may require individual licensing, while member elected trustees are exempt but still accountable. The FSCA can intervene, suspending or removing unfit individuals, and mandate training or outsourcing.

Compliance reporting will become more stringent. Trustees must notify the FSCA of material failures immediately and submit annual disclosures. The FSCA's expanded powers include proactive inspections, directives and enforcement against non-compliant employers or administrators. For instance, late contributions could trigger direct FSCA action, relieving trustees of some enforcement burdens but requiring closer monitoring.

In terms of ethical decision making, trustees will navigate complex scenarios, such as balancing short term member demands with long term fund health.

What about management committees (mancos) of umbrella funds?

For the first time in our retirement fund legislative landscape, COFI formally defines "umbrella fund" in the renamed Retirement Funds Act, formalising the manco's role and imposing legal obligations, making manco training essential.

Under COFI, manco oversight will be amplified with stricter governance requirements. They will need to embed TCF principles, ensuring transparent, suitable and ethical services. This means actively monitoring for fair fee structures, clear disclosures and no abusive practices. Mancos will need to review product designs within their sub-fund, advocating for member-centric innovations. What's more, fit and proper standards may extend to manco members, requiring competence and integrity checks.

And Financial Services Providers (FSPs)?

Currently governed primarily by the Financial Advisory and Intermediary Services Act (FAIS) of 2002, FSPs must adhere to strict standards of professionalism, transparency and client protection. However, under COFI, the regulatory landscape for FSPs shifts. COFI replaces FAIS entirely, transitioning FSPs to an activity-based licensing regime under the FSCA, with enhanced emphasis on outcomes-based regulation, fair customer treatment and transformation.

FSPs must re-license under COFI, with authorisations for specific activities. Existing FAIS licences will continue during a multi-year transition (likely 3-4 years post promulgation), but all FSPs must map current services to Schedule 1 activities and apply for conversion.

The shift to outcomes-focused regulation means embedding TCF principles legally. FSPs must demonstrate fair customer outcomes in product suitability, disclosures and post-sale support, including no unreasonable barriers to switching or cancelling.

Governance will strengthen. FSPs must have documented arrangements for ethical culture, risk management, conflicts, remuneration (no incentives for misconduct) and transformation plans, where relevant.

Fit and proper standards extend to key persons and representatives, with ongoing monitoring. The FSCA can set detailed conduct standards on advice processes, complaints and redress.

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Licensing becomes proportionate: lighter for low-risk sole advisers, stricter for complex operations.

Complaints and redress will focus on root causes and timely resolution. Transformation obligations require plans for diverse ownership and skills development, especially for FSPs over certain thresholds.

To prepare for COFI, FSPs should map activities to COFI categories now, review governance against anticipated standards and invest in training on outcomes-based thinking.

And finally, COFI and Section 13B Administrators

Section 13B administrators, also known as pension fund benefit administrators, are specialised entities approved to handle critical operational functions for retirement funds. These administrators manage the receipt of contributions from employers and members, process and dispose of benefits (withdrawals, retirements, deaths and disabilities), maintain accurate member records, calculate valuations and ensure timely payments. Operating under Section 13B of the Pension Funds Act, they provide essential back-office support that allows trustees to focus on governance while ensuring smooth day-to-day operations for funds managing trillions of rands in assets.



Administrators must comply with the recently implemented Conduct Standard 2 of 2025 (RF), issued by the FSCA in August 2025, which significantly raised governance, conduct and fairness standards. Section 13B will be repealed by COFI, transitioning administrators to a full activity-based licensing regime under COFI for "administration" services.

Administrators will be expected to embed TCF principles legally, demonstrating fair treatment in processes, disclosures and complaints. No unreasonable barriers to benefits or switching

funds. Governance will intensify as requirements for documented frameworks on culture, remuneration, transformation plans (B-BBEE alignment), reporting and conflicts are required.

It's important to bear in mind that licensing is proportionate but rigorous covering resources, fixed address, operational capacity and fit and proper key persons. A transitional period, expected to be 3-4 years, will allow existing approvals to continue while converting.

So where is COFI right now?

As at January 2026, no confirmed date exists for the tabling of the COFI Bill in Parliament.

National Treasury has completed certification with the Chief State Law Adviser and plans Cabinet submission soon, targeting tabling in early 2026. Be that as it may, it serves all retirement fund stakeholders to understand, and begin aligning with, its principles.

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How to?

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1. **Which development best explains why South Africa is moving from sector-based laws (like the Long-term Insurance Act and FAIS) towards the Conduct of Financial Institutions (COFI) Bill?**
 - a) To replace prudential regulation with conduct regulation
 - b) To remove all existing Treating Customers Fairly (TCF) requirements
 - c) To create a single law focused on market conduct and customer outcomes across all financial sectors
 - d) To reduce the number of regulators to only one mega-regulator

2. **Which statement best describes how Treating Customers Fairly (TCF) principles are incorporated into the COFI Bill?**
 - a) TCF is limited to complaints handling and does not affect product design or sales
 - b) TCF is replaced by purely rules-based, tick-box compliance requirements
 - c) TCF becomes an optional code of good practice with no legal force under COFI
 - d) TCF outcomes are converted into binding conduct standards that apply across product life cycles

3. **Under the COFI Bill, which entities are generally expected to fall within the definition of a “financial Institution” for conduct regulation purposes?**
 - a) Any entity licensed under financial sector laws that provides financial products, financial services or market infrastructures
 - b) Only advice-giving financial services providers (FSPs) with natural person representatives
 - c) Only banks and traditional insurers
 - d) Only retirement funds and their administrators

4. **Which of the following best illustrates how COFI will affect retirement funds specifically?**
 - a) Retirement funds will be allowed to delegate all conduct obligations to their administrators and FSPs
 - b) Retirement funds will be exempt from FSCA conduct supervision once COFI is in force
 - c) Retirement funds will only be subject to prudential solvency requirements, with conduct matters removed
 - d) Retirement funds will need to demonstrate that their governance, communication and benefit practices deliver fair member outcomes across the savings journey

5. **From a financial services provider (FSP) perspective, which conduct expectation is most aligned with COFI and TCF?**
 - a) Focusing only on initial sales conduct, as post-sale activities fall outside COFI's scope
 - b) Using complex product disclosures primarily to limit the FSP's legal liability
 - c) Designing incentive schemes that reward maximum volume of sales regardless of product suitability
 - d) Ensuring advice processes and remuneration structures support suitable, affordable and clearly explained products for the identified target market

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6. Which structural feature of the COFI Bill best reflects its outcomes-based and principles-driven design?
- a) Conduct obligations are framed largely as high-level standards supported by more detailed conduct standards and licensing conditions
 - b) The Bill contains highly prescriptive, product-specific rules for each type of financial product
 - c) COFI removes the need for any subordinate standards or regulatory guidance
 - d) The Bill focuses exclusively on enforcement provisions and sanctions
7. How is the relationship between COFI and existing sector laws (such as the Pension Funds Act and FAIS Act) generally envisaged once COFI is fully implemented?
- a) Sector laws will become mere guidance documents with no legal status
 - b) COFI will only apply where sector laws are silent, leaving most existing conduct provisions untouched
 - c) COFI will progressively take over conduct elements, while prudential or structural aspects may remain in sector laws
 - d) COFI will immediately repeal all sector laws without transitional arrangements
8. For administrators of retirement funds and other products, what is a key conduct implication of COFI?
- a) Administrators will mainly be judged on operational efficiency, with no responsibility for customer outcomes
 - b) Administrators may ignore complaints data because responsibility for complaints lies solely with the product supplier
 - c) Administrators will only need to comply with COFI if they provide investment advice
 - d) Administrators must ensure that their systems, data and processes support the product supplier or fund in delivering fair outcomes to members and customers
9. Which example best demonstrates alignment with COFI's culture and governance expectations for a financial institution?
- a) The board focuses solely on meeting minimum legal requirements and delegates all conduct issues to compliance
 - b) Remuneration and promotion decisions are based exclusively on financial targets such as profit and new business volume
 - c) Senior leadership regularly reviews customer outcome metrics, integrates them into strategy, and holds management accountable for addressing conduct risks
 - d) Conduct risk is treated as a side issue that is discussed only when the regulator is due to visit
10. In the context of COFI, which statement best explains the intended impact on customers and members of financial institutions over time?
- a) The main impact will be on regulators, with customers unlikely to notice any differences
 - b) Customers and members should, over time, experience clearer products, more appropriate advice, better value and more effective recourse when things go wrong
 - c) Customers will have to take full responsibility for product suitability, as COFI removes suitability obligations from institutions
 - d) Customers will mainly experience more paperwork and disclosures, with little change in real outcomes