COFI – is this a reason to be positive?

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The year 2019 kicked off with the Conduct of Financial Institutions Bill (COFI) being published for comment. COFI is part of the Twin Peaks reform process. The Twin Peaks model was formalised when the Financial Sector Regulation Act, 2017 (FSR) came into effect.

One of the intentions of COFI is to introduce a single law market conduct regulation for all financial institutions. It is recognised that market conduct is currently regulated in a fragmented basis and that the financial industry needs to move away from a tick-box approach.

Creating consistency in the industry

COFI will regulate the financial industry holistically, and it is informed by the Treating Customers Fairly (TCF) outcomes. This is important because it will create consistency with how customers are treated throughout the financial industry.

COFI is different to the Financial Advisory and Intermediary Services Act, 2002, in that it:

- Shifts away from institutional to activity-based regulations. This means that the Financial Sector Conduct Authority (FSCA) will not only regulate institutions that provide financial products but that also provide a wide range of financial services;
- Is outcomes-based; and
- Risk-based and proportionate.

It is important to note that although COFI will repeal sectoral laws, sub-ordinate legislation under those laws will remain effective once they are migrated into conduct standards.

Supporting transformation and innovation

COFI also intends to be supportive of transformation, inclusion, competition and innovation. This means that the FSCA will need to skill itself up as it will now need to regulate institutions, products and services that were not previously under the jurisdictions of the Financial Services Board (FSB) – now the FSCA.

A specific expert team in FinTech, for example, has been created in order to monitor, research and assess technological trends and innovations and to understand their impact on the financial sector. This team will help the FSCA understand and support new ways of doing business and disruptive technology in the financial sector.

COFI recognises that smaller businesses will now fall under its regulation and, as a result, it allows for proportionality, which will affect the FSCA's regulatory approach. Therefore, to support transformation and small businesses the FSCA introduces a Financial Inclusion Research unit and an Inclusive Business Model Support unit within the Regulatory Policy Division. These units will focus on an appropriate exemption framework, especially in the transition period before COFI comes into operation.

COFI will also support FinTech start-ups through the FSCA's Regulatory Sandbox. The Intergovernmental FinTech Working Group (IFWG) recognises that regardless of the technology used by providers, if they are carrying on financial services or activities these must be regulated to ensure the TCF outcomes are being met. The IFWG also recognises that oversight needs to be proportional to the risks involved. COFI will allow the FSCA to exempt in order to meet this proportional form of oversight.

What is required

It is therefore important when making comments to understand the intention of the legislation within the regulatory framework and to consider what is required in terms of standards to allow for:

- Proportional supervision;
- Innovation enhancing;
- Encouraging transformation; and
- The creation of a level playing field for financial institutions.

Let's be positive that this piece of legislation will give effect to the aims of the FSR.

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