ABSIP calls on all its stakeholders and members to provide comment on the Conduct of Financial Institutions (COFI) Draft Bill. Please email succinct comments with concise proposals to queen@absip.co.za by no later than 22 February 2019. ABSIP encourages its stakeholders to also submit comments and proposals directly to National Treasury.

ABSIP Draft Commentary: Conduct of Financial Institutions Draft Bill (COFI)

South Africa has renewed and refocused efforts to ensure that our financial sector provides consumers and businesses with good-value products to receive and make payments, save, borrow and insure against daily risks. The National Development Plan highlights the role that an efficient financial sector can play in providing dynamic intermediary services, contributing towards greater economic inclusion - particularly of historically marginalized people - fostering growth and creating employment. Strong market conduct policy is a critical pillar in building a financial sector that delivers these outcomes. It can support and facilitate better competition and participation in the financial sector, including of emerging black-owned financial institutions. Market conduct regulation aims to prevent, and manage when prevention is not successful, the poor outcomes that arise from financial institutions conducting their business in ways that are unfair to customers or undermines the integrity of financial markets and confidence in the financial system.

Parliamentary hearings regarding transformation of the financial sector were held in the first half of 2017. Submissions from the public and ABSIP stressed amongst others concerns with the heavy concentration of the sector, high barriers to entry for new or emerging entrants or women entrants, and the need for much stronger support of small to medium enterprises (SMEs). Submissions also noted the prevalence of poor market conduct practices and financial exclusion, compromising the transformative effects of the sector by benefiting relatively few South Africans and the historically advantaged.

Better regulation, improved financial sector conduct, more financially resilient South Africans

The conduct of financial sector institutions in South Africa leaves much to be desired. The impact of corruption and malfeasance by institutions (VBS Mutual Bank, Fidentia, Saambou…) has been detrimental to the lives of ordinary South Africans. Unfair practices by financial sector institutions remains prevalent and surfaced recently with widespread public outrage against insurer, Momentum. The result of these ongoing occurrences is that ordinary South Africans lose trust and confidence in the system.

The existence of conduct regulations within multiple legislation aids the misinterpretation of responsibilities promoting confusion which weakens the link between the regulator, the licensed entity and the consumer. Licensed entities have become all too familiar in meeting the “tick-box” processes followed by administrators within the regulatory agencies and have therefore shaped their compliance and governance practices to satisfy such an approach. The problem with such an approach is that most
often form trumps substance. In the past, the structure of the sector and financial inclusion and transformation have never been explicitly defined as a critical factor towards long-term sustainability. For the reasons mentioned above, as ABSIP we welcome the Bill in its current form. We support the consolidation of conduct regulation under one umbrella, we further support the introduction of principles-based compliance as well as the explicit inclusion of a transformative agenda.

**Implementation Will Be the True Test**

- Whilst we laud the intentions of the Bill, we also recognise that results can only be achieved through the ardent commitment and support of the principal actors for success. Our concerns include the following:
  - Principles based regulations require the discretion of regulatory administrators to execute their responsibilities in a manner that is aligned to the spirit of the regulations. Therefore, personnel must have the requisite skills to perform their roles effectively.
  - The regulator should have the institutional capacity and managerial skills to execute, including clearly defined roles, a mind-set change and co-ordination amongst the various teams.
  - Success in achieving the above will go a long way in meeting the meritorious objectives of the Bill particularly in respect of the structure of the sector and its overarching bearing on the overall economy.

**COFI and the Pension Funds Act**

We are in disagreement that member elected trustees are not required to be licensed. Such trustees play the same role as professional trustees and independent trustees and should be subjected to fit and proper requirements as part of their fiduciary and regulatory obligations. We believe that this will go a long way in strengthening boards of trustees and the performance of retirement funds in South Africa.

We are also in support of enhancing the obligations of asset/investment consultants in respect of their role in advising retirement funds. Similarities between the extensive studies conducted in the UK by the FCA can be drawn on in consideration of the risks posed to the financial system when large pools of assets are in the hands of a few dominant asset consultants.

**The critical importance of ongoing evaluation and monitoring**

- In the absence of ongoing reviews including the publishing of data it will be hard to evaluate the success of the Bill on the sector and on the structure of the economy.
- We urge lawmakers to deploy the necessary capacity to constantly monitor implementation and provide tangible evidence of improving or declining conditions.
- Such reviews will support informed interventions and grow and restore confidence amongst participants.
- All data and reviews must be made available to the public.
**Transformation**

The lopsided topography of the sector has been a frustration for many Black institutions when it comes to competition, licensing and the Financial Sector Code. We welcome the steps taken to facilitate inclusion through the proposed licensing process. We believe that this will go a long way in promoting competition within the sector. To achieve a transformative sector, we have to also analyse and reflect on the relevance of the current design of savings products made available to the consumer and the role of industry bodies in setting the standards of such products. In most cases the design and structure of such products only meets the savings needs of the middle and upper classes thereby alienating the majority of South Africans. We call on lawmakers to take back the responsibility of setting product standards to ensure that the marginalised are not left out of the system. We also ask for lawmakers to measure the effectiveness of current product standards to evaluate their effectiveness in meeting the savings needs of all South Africans.

Parliamentary hearings regarding transformation of the financial sector were held in the first half of 2017; The Financial Sector Code came under severe criticism at the hearings on the transformation of the financial sector. We are in agreement with lawmakers that the targets set are too low and require an upward revision. We urge National Treasury, a member of the Financial Sector Transformation Council, to assert its position in the attainment of a Code that is representative and that can move the needle to achieve stronger transformation and inclusionary outcomes.

Submissions from the public and ABSIP to the parliamentary hearings stressed amongst others concerns with the heavy concentration of the sector, high barriers to entry for new or emerging entrants or women entrants, and the need for much stronger support of small to medium enterprises (SMEs). Submissions also noted the prevalence of poor market conduct practices and financial exclusion, compromising the transformative effects of the sector by benefiting relatively few South Africans and the historically advantaged.

The COFI Bill Policy Paper speaks about fining institutions that do not meet the targets. We are in support of this proposal. The Conduct of Financial Institutions (COFI) draft Bill also proposes that the COFI Bill is also best-placed to give legal effect to transformation requirements in support of targets agreed through the Financial Sector Transformation Council (FSTC) and specified in the Financial Sector Code (FS Code). ABSIP’s considered view is that the FSTC with considerable vested interests has been dragging its feet when it comes to meaningful inclusive, sustainable above average economic growth. The role and objectives of the FSTC, FS Codes and BBBEE Act should execute on its objective to transform South Africa in achieving wealth and income levels distribution based on population demographics.

The ABSIP proposal regarding the Ownership element is to achieve the Broad-Based Socio-Economic Empowerment objective of achieving a normal and equal society (lowering inequality) in the Financial Sector value chain and the broader South African society. A normal and equal society is where the citizens of South African share in the wealth and income based on population race and gender demographics.
ABSIP proposes that all mandated investments (retirement funds, umbrella funds, collective investment schemes, medical aid funds, mandated funds such as the Public Investment Corporation and Industrial Development Corporation etc.) on a look through basis gets counted in the determination of the Black and Women ownership of companies in the Financial Sector (and other sectors).

As more Black people and women get employed and save for retirement the ownership of mandated investments by Black people and women will naturally increase. As an example, in 1994 about 10% of an SOE retirement fund’s assets were owned by Black people, today it is estimated to be 40%. We estimate in 10 years-time about 70% to 80% retirement and investment funds will be Black “Owned” indirectly.

The B-BBEE ownership targets can be achieved and should be reset once a year that ultimately reflects gender and race demographics. The B-BBEE ownership targets should be increased every year by say 10% from the current target of 25% so that in seven years-time the target for Black (and Women) ownership will be reached; the low ownership targets of 25%, which is well below population demographics, and forms of “Once Empowered and Always Empowered” notions is not consistent with reducing increasing inequality in South Africa. More credit should also be given for sustainable local procurement and local job creation, specifically youth unemployment.

The enforcement of B-BBEE within the Financial Sector must be rigorously regulated and enforced. It is essential that new license and renewal of license conditions be made subject to a B-BBEE Level Two being achieved. On renewal of licenses as part of the evaluation and review, the original business plan, achievements of transformation targets should be evaluated and reviewed against actual performance. If transformation targets have not been meaningfully met, licenses should be revoked.

We urge lawmakers to strengthen the current transformation provisions in the Bill and not waver in the face of lobbyists seeking to derail such a commitment.

ABSIP calls on National Treasury to fund an independent impact study on the possible impact of any of BBBEE in attracting local and foreign investment. The impact study should also focus on workable solutions on how to attract new local and foreign investment while South Africa can at the same time achieve its objective of wealth and income distribution that reflects our population demographics.