DRAFT FOR PUBLIC COMMENT:

FSCA STRATEGY FOR PROMOTING FINANCIAL SECTOR TRANSFORMATION

FSCA

Financial Sector
Conduct Authority

CONTENTS

1. BACKGROUND

The financial sector is a key contributor to the South African economy. It is thus an important component in driving transformation of the economy and ensuring greater inclusivity in economic activities. Since democracy, there has been some progress made toward both economic transformation in general and financial sector transformation specifically. However, it is well acknowledged that the extent to which the majority of South Africans participate meaningfully in the financial sector remains limited.

Parliamentary hearings regarding transformation of the financial sector were held in the first half of 2017. Submissions from the public emphasised, amongst others, concerns with the heavy concentration of the sector, high barriers to entry for new or emerging entrants, and the need for much stronger support of black industrialists and 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.

It was recognised that while the overall policy framework for broad-based black economic empowerment (B-BBEE) remains the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (B-BBEE Act), which resides under the Department of Trade, Industry and Competition (DTIC), state organs such as the National Treasury and financial sector regulators must play a more active role in driving transformation of the financial sector.

In recognition of the above, the Financial Sector Regulation (FSR) Act, 2017 (Act No. 9 of 2017), which establishes the Financial Sector Conduct Authority (FSCA), includes as an object of the Act the promotion of transformation of the financial sector. The FSR Act defines "transformation of the financial sector" as transformation as envisaged by the Financial Sector Code for B-BBEE issued in terms of section 9 (1) of the B-BBEE Act.

The Insurance Act (Act No. 18 of 2017) also contains requirements relating to transformation. It requires that at licensing stage, an insurer must demonstrate that it has a plan to meet its stated commitments in terms of transformation of the insurance sector, including meeting the targets envisaged by the Financial Sector Code.

The transformation requirements of the Insurance Act are supervised by the FSCA's financial sector regulator "twin", being the Prudential Authority (PA), which is the responsible authority in terms of that Act. However, it has been indicated by the National Treasury that this is an interim measure. The proposed Conduct of Financial Institutions Act (COFI Act), currently a draft Bill, will provide for transformation requirements for all financial institutions, to be supervised by the FSCA.

The FSCA's 2018 Regulatory Strategy identified the creation of an inclusive and transformed financial sector as one of its strategic priorities. This strategic priority has further been elaborated in the FSCA Regulatory Strategy 2021 -2025, which include supporting financial sector transformation as one of the strategic outcome.

This document therefore aims to:

- outline the FSCA's approach to promoting financial sector transformation within the existing policy framework, including the FSR Act, and
- outline an approach for the FSCA to promote transformation under the future COFI Act framework.

2. THE CURRENT POLICY AND LEGISLATIVE FRAMEWORK FOR TRANSFORMATION

Figure 1 below depicts the overview of the current policy and legislative framework for transformation:

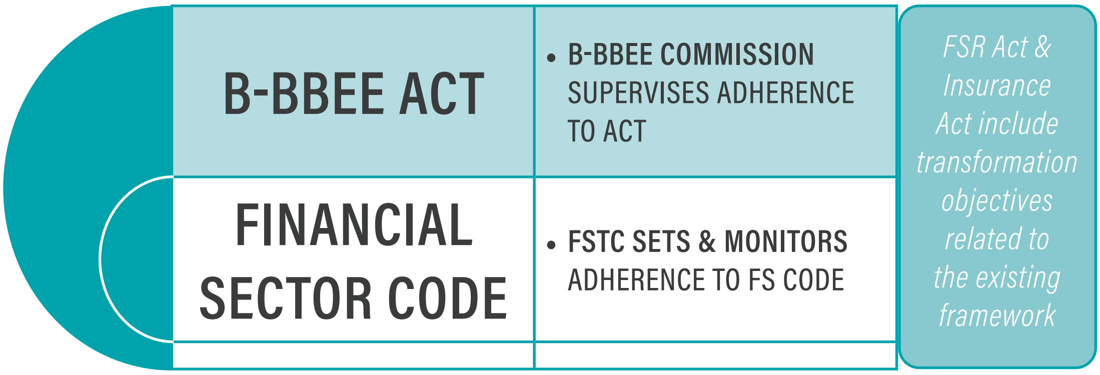

Figure 1: Current policy and legislative framework for transformation of the financial sector

2.1. THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT, 2003[1]

The B-BBEE Act provides the legislative framework for B-BBEE in South Africa. The primary purpose of the B-BBEE Act, and Codes issued under this Act, is to address the legacy of apartheid and promote the economic participation of black people in the South African economy.

Codes of Good Practice may be issued by the Minister of Trade, Industry and Competition under the B-BBEE Act, to ensure that there is consistent and standard measurement of B-BBEE across all sectors. Such Codes may be "generic" (i.e. of general application) or apply to a specific sector of the economy (so-called sector codes that are developed by stakeholders in the relevant sector).

1 As amended by the Broad-Based Black Economic Empowerment Amendment Act, 2013 with effect from 1 May 2015

2.2. THE FINANCIAL SECTOR CODE (FS CODE)

The FS Code was gazetted in 2012 and subsequently revised and gazetted in 2017. It is the outcome of interaction and negotiations between financial sector trade associations, the Association of Black Securities and Investment Professionals (ABSIP), Organised Labour, Community and Government. The FS Code reflects the accord reached by all the stakeholders regarding their joint commitment to fostering B-BBEE in the financial sector and in the South African economy.

Aligned to the B-BBEE Act, the FS Code defines transformation as broad-based empowerment of black people by:

- increasing the number of black people that manage, own and control enterprises and productive assets in the financial sector;
- facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises
- investing in the skills development and training of existing and new black professionals and managers;
- achieving equitable representation in all occupational categories and levels in the workforce;
- increasing empowerment financing; and
- increasing access to financial services.[2]

A brief overview of the Code is included as Annexure A of this document.

2.3. INSTITUTIONAL MECHANISMS FOR MONITORING AND EVALUATING B-BBEE

2.3.1. The B-BBEE Commission

The B-BBEE Commission was established in 2014 in terms of the B-BBEE Act. This Commission is mandated to amongst others, oversee, supervise and promote adherence with the B-BBEE Act in the interest of the public. It is also mandated to strengthen and foster collaboration between the public and private sector to promote and safeguard the objectives of broad-based black economic empowerment.

The Commission may liaise with any regulatory authority on matters of common interest and may exchange information with and receive information from any such regulatory authority pertaining either to matters of common interest or to a specific complaint or investigation. The Act allows the Commission to participate in the proceedings of any regulatory authority; and advise, or receive advice from, any regulatory authority.

The B-BBEE Act does not impose obligations upon any enterprise to achieve specific B-BBEE targets. Failure to achieve a certain level of B-BBEE compliance is not an offence. The B-BBEE Act provides for criminal offenses involving misrepresenting the BEE status of an enterprise, the provision of false information to a verification professional or any organ of state or public entity and engaging in a 'fronting activity'. The B-BBEE Act also makes it clear that persons who engage in fraudulent practices to enhance their B-BBEE status may be charged with common law crimes such as fraud.

2 Access to financial services is also a component of the FSCA's strategic approach to financial inclusion. In this respect, financial inclusion and transformation can be seen as mutually supportive.

2.3.2. The Financial Sector Transformation Council (FSTC)

The B-BBEE Act[3] requires that enterprises operating in a sector in respect of which the Minister of Trade, Industry and Competition has issued a sector code of good practice, must report annually on their compliance with B-BBEE to the sector council which may have been established for that sector. For the financial sector the FSTC was established to enforce the FS Code. Its objectives are to[4]:

- engage with policymakers to ensure that legislation enables transformation;
- engage with financial institutions to promote understanding of the FS Code and to provide support for compliance;
- regularly review implementation guidelines to ensure relevancy and ease of implementation;
- publish an annual performance report which is reflective of the status of the sector's transformation;
- conduct research to understand challenges and identify opportunities to expedite transformation; and
- engage with other relevant stakeholders to promote understanding of the FS Code and its benefits.

The FSTC is not mandated to take action against financial institutions in relation to the lack of achievement of targets of the FS Code, or failure to report on compliance.

3 Section 10(4) of the B-BBEE Act

4 https://fstc.org.za/about-us.php

3. THE ROLE OF FINANCIAL SECTOR REGULATORS IN PROMOTING TRANSFORMATION

Section 10(1)(a) of the B-BBEE Act requires every organ of state and public entity – such as the FSCA – to apply a relevant code of good practice issued in terms of that Act when determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any [other] law. This puts an obligation on financial sector regulators to apply the FS code when issuing a licence in terms of financial sector laws. However, a direct role for financial sector regulators in promoting transformation of the sector has in the main been limited. This is in part due to the lack of enabling financial sector legislation in relation to transformation.

It is recognised that regulators such as the FSCA can better support the FSTC in driving meaningful progress toward commitments made under the FS Code. Regulators are able to set requirements on regulated entities at licensing stage and on an on-going basis (related to the regulatory objectives) and enforce the achievement of these requirements.

In relation to transformation, and in line with the National Treasury's proposed COFI Bill and consequential amendments to the FSR Act[5], the FSCA could potentially take actions such as:

- require financial institutions to have in place a transformation plan, aimed at achieving targets set under the FS Code;
- set minimum B-BBEE levels that must be targeted by each firm and documented in the transformation plan, especially for larger firms within the financial sector, and particularly to require progression through the levels of transformation over defined periods of time;
- consider transformation plans during the licensing process;
- supervise the progress of financial institutions against their plans;
- take action when there is a lack of commitment to or achievement of targets set in transformation plans; and
- minimise regulatory barriers to entry for small, black-owned entities in the financial sector, and supporting small black businesses with suitably enabling regulatory compliance requirements.

5 Available on http://www.treasury.gov.za/public%20comments/2020%2010%2008%20CoFI%20Bill%20(version%20published%20for%20comment)%20(slightly%20updated).pdf. See clause 23 as well as consequential amendments to the FSR Act in Schedule 5, Part 16.

Entrenching transformation requirements in financial sector law began with the promulgation of the Insurance Act in 2017. As the Insurance Act is overseen by the PA, the transformation plans of insurers are considered at licensing stage by the PA[6]. Licensing of insurers by the PA occurs with the concurrence of the FSCA.

The Insurance Act provisions in relation to transformation are understood to be an interim measure as a legal framework is developed[7] to allow the FSCA to play this role for a broader range of financial institutions.

The promulgation of the COFI Act, together with consequential amendments to the FSR Act, are expected to provide the FSCA with the enabling framework to set requirements related to transformation on all financial institutions and supervise and enforce these requirements.

As a market conduct regulator, the FSCA is also instrumental in addressing poor market conduct practices and issues of financial inclusion. As noted in the FSCA's financial inclusion strategy, while access to financial products and services has increased for South Africans, more can be done to deepen financial inclusion through improved quality and use of financial products and services. Through efforts to improve financial inclusion and customer outcomes, the FSCA can also support a more transformative financial sector, including for the historically disadvantaged. Deeper financial inclusion supports wider economic participation, and wealth accumulation, by black South Africans.

6 As part of broader efforts to support transformation of the sector, the PA has also been engaging with banks regarding their transformation plans.

7 The COFI Bill provides for the FSCA to oversee the transformation requirements of all licensed financial institutions. Once enacted, it will replace requirements in the Insurance Act in this regard.

4. THE FSCA'S APPROACH TO PROMOTING FINANCIAL SECTOR TRANSFORMATION

Given that the legislative framework that specifically empowers the FSCA to promote transformation is still under development, the FSCA has adopted a two-phase approach to promoting transformation:

- Phase 1 will focus on the role that the FSCA will play within the current legislative framework i.e. the FSR Act, B-BBEE Act, and FS Code.
- Phase 2 will focus on the role that the FSCA will play within the COFI Act legislative framework.

A summary of the FSCA's two-phase approach is set out below and further discussed in the document:

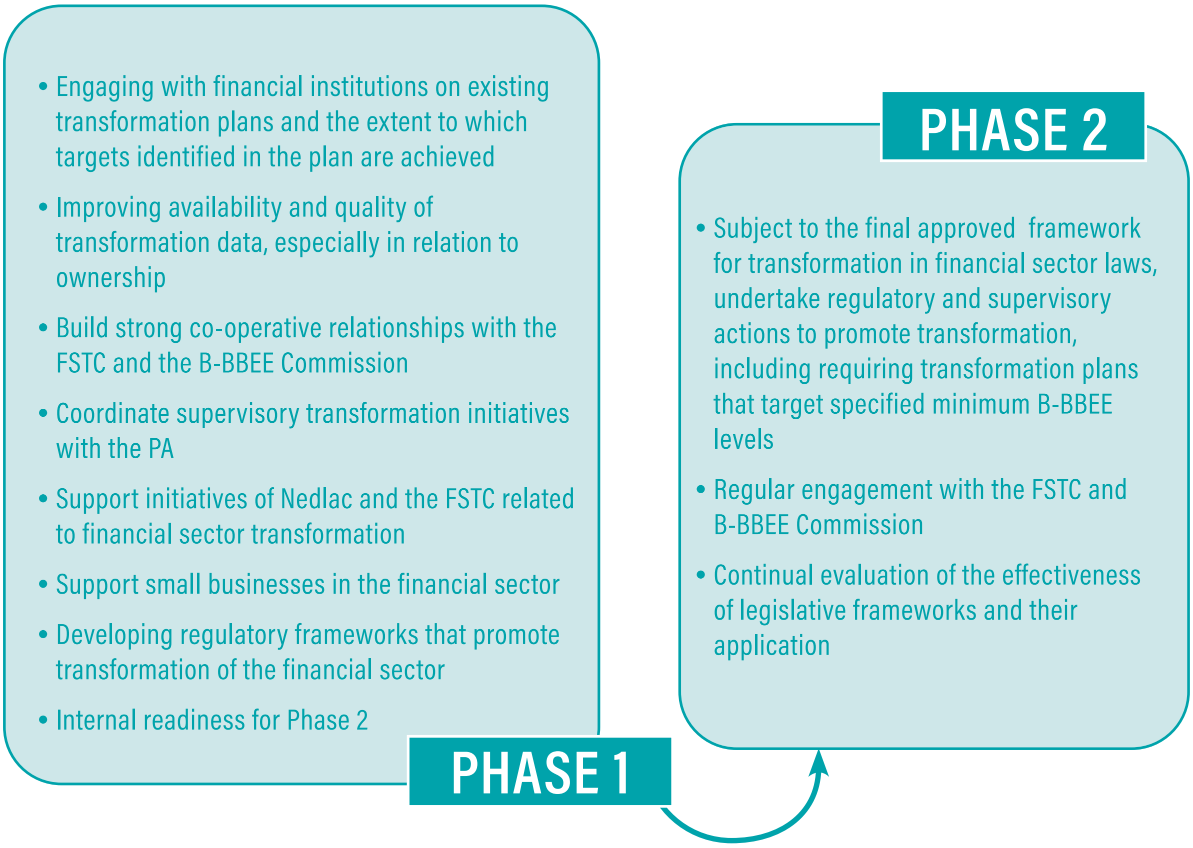

Figure 2: the FSCA's phased approach to financial sector transformation

4.1. PHASE 1: PROMOTING TRANSFORMATION UNDER THE EXISTING POLICY AND LEGISLATIVE FRAMEWORK

Some of the strategic initiatives outlined in FSCA's Regulatory Strategy can be achieved in Phase 1, while others are reliant on the legislative framework to be provided under the COFI Act.

The FSCA will achieve the following objectives in Phase 1:

4.1.1. Engaging with financial institutions on existing transformation plans and levels of compliance

In recognition of the stronger role that the FSCA is required to play in relation to financial sector transformation, the FSCA will include a transformation focus in its engagement with currently regulated and newly licensed financial institutions. The purpose of such engagement will be to assess current levels of transformation within the sector and evaluate the maturity of transformation plans that institutions may have in place to improve their achievement of targets under the FS Code over time.

The FSCA can also assess the extent to which financial institutions are obtaining verification certificates on their B-BBEE status and submitting these to the FSTC. The FSCA will focus on developing a clear picture of the ownership structures of financial institutions in the sector, and how they relate to transformation aims and objectives.

This will provide a solid grounding for the FSCA to develop its regulatory and supervisory capacities related to promoting transformation. Further preparation will entail the activities set out in terms of readiness for Phase 2.

4.1.2. Improving availability and quality of transformation data, especially in relation to ownership

Effective policy making and supervision necessitates reliable data. To date this has been a challenge and data is often contested, especially in relation to ownership. Ownership structures of many large institutions are complex and assessing the ultimate beneficial ownership of the enterprise is not straightforward. This is complicated by ownership held by holding companies, subsidiaries, trusts, and institutional investors, including by foreigners[8]. The FSCA will therefore support the FSTC in data collection, by enhancing and not duplicating data collection by the FSTC. Moreover, the FSCA will undertake a data collection and clean-up exercise to strengthen and improve the information it holds regarding the ownership of licensed financial institutions. This is likely to be a multi-year project and will continue in Phase 2.

4.1.3. Build strong co-operative relationships with the FSTC and the B-BBEE Commission

As an organ of state, the FSCA has a role to play within the transformation policy framework set out under existing legislation. The FSCA will therefore strengthen its engagements with the FSTC and the B-BBEE Commission, to improve coordination of efforts aimed at promoting transformation of the financial sector, within respective mandates.

The FSCA has already entered into a Memorandum of Understanding with the FSTC that addresses co-ordination of processes, the sharing of information, and other matters of common interest. The FSCA also actively participates in technical committees of the FSTC and provides technical inputs where necessary to strengthen the impact of the FS Code and enhance reporting and monitoring of transformation in the financial sector.

8 A study conducted by the National Treasury in 2017, "Ownership of JSE-listed Companies" found that in 2016, 48.4% of listed shareholding was by institutional investors, 38% by foreign investors and only 14% was directly held shares.

Engagements with the B-BBEE Commission will similarly focus on formalising the working relationship with this body and establishing the role the FSCA can play in supporting it.

4.1.4. Developing a collaborative approach to transformation of the financial sector with the Prudential Authority

The PA is already enabled through the Insurance Act to set requirements on insurance companies in relation to transformation. It can also consider transformation at licensing stage for insurance companies. As part of its mandate, the PA will also be engaging with banks on their transformation commitments.

As these entities are also regulated by the FSCA, it is important that both the PA and FSCA are aligned in engaging with banks and insurers on transformation requirements. The PA and FSCA have engaged on their approaches to transformation and will continue to work closely together in engaging with the industry on transformation and in ensuring that approaches are aligned.

4.1.5. Supporting initiatives of the National Economic Development and Labour Council (NEDLAC) and FSTC related to financial sector transformation

The first Financial Sector Summit was held in 2002. The outcome of the Summit was the signing of the Financial Sector Charter by all constituencies (business, government, labour and community). This eventually translated into the subsequent FS Code. Challenges identified in the financial sector at the time included the lack of transformation in terms of ownership and control of financial institutions, difficulties of entry of black businesses into the sector, and poor access to and use of financial products and services, including business financing. While progress has been made on all these issues, it is clear from the 2017 Parliamentary hearings that more needs to be done in the sector.

A second Financial Sector Summit is proposed to be convened to bring together constituencies to identify current challenges and discuss how best to address these challenges. The FSCA, as a key stakeholder in the transformation of the financial sector ecosystem, will participate in the next Financial Sector Summit, and in other initiatives undertaken at NEDLAC related to financial sector transformation.

The FSCA has also engaged in the process of revising the FS Code, coordinated through the FSTC. The consumer protection, financial inclusion and financial education mandates of the FSCA places it in good stead to support discussions at the FSTC related to financial inclusion and financial education, as well as to support broader transformation objectives in the sector it oversees.

4.1.6. Supporting small businesses in the financial sector

The FSCA is responsible for licensing and supervising financial institutions, which include a large number of small businesses operating in the financial sector. For these SMEs, regulation and supervisory approaches can be a barrier to entry. If not managed proportionately, such can cause the failure of a business through inappropriate compliance costs or the withdrawal of licenses due to an inability to comply. To support these businesses, the FSCA through its Inclusive Business Model Support Unit (IBMSU) will conduct training and support workshops for SMEs and entrepreneurs in the financial sector, focused on issues of compliance, readiness for licensing, and support for regulatory examinations. In the 2020/21 financial year, the IBMSU conducted 46 workshops, most of them online due to COVID19 restrictions. The work of this unit will continue and be expanded beyond matters of regulatory compliance and support in Phase 2, to also include more general operational business support

The FSCA's financial inclusion strategy considers how to improve access to financial services for SMEs, a historically underserved market in South Africa. The work of other stakeholders involved in small business development is important in this regard, and the FSCA aims to ensure cooperation and collaboration with such stakeholders so that efforts have maximum effect.

4.1.7. Developing licensing, regulatory and supervisory frameworks that promote transformation of the financial sector

Licensing, regulatory and supervisory requirements of the FSCA should not in themselves pose a barrier to entry for small financial institutions, particularly those owned by previously disadvantaged individuals. In support of transformation, the FSCA will develop regulatory and supervisory frameworks and instruments that allow for proportional application of requirements, minimising undue barriers to entry and compliance burdens. Where appropriate, regulatory instruments may also introduce explicit requirements aimed at transformation.

For example, provisions in Regulations made under the Long-term Insurance Act and Short-term Insurance Act require insurance binder agreements to provide for mechanisms and measures aimed at the insurer meeting procurement, enterprise and supplier development targets, as envisaged in the FS Code.

4.1.8. Internal readiness for Phase 2

A key component of the FSCA's efforts to support transformation under the current framework, will be to focus on readying the organisation for a stronger and more active role when a new legislative framework is implemented. This will encompass the following:

i. **Training and upskilling core functions teams on the FS Code:** Given that transformation is a growing focus area for the FSCA, it is important that core functions (licensing, supervision, regulatory and enforcement) teams be trained on the FS Code, so that they can appropriately implement the strategy in their respective focus areas. The objective of the training will be as follows for each core function:

- **Licensing and Business Centre division:** training and upskilling will equip employees tasked with considering licensing applications to better understand how the applicant intends to promote transformation, as measured against the FS Code targets and reflected in its transformation plan. Workshops facilitated by the FSTC could, for example, clearly explain the requirements of the FS Code and explore how to consider transformation plans against these. Through this, the FSCA can begin considering the criteria that could be included to consider transformation as part of the licensing process.Reliable data is an important aspect of monitoring transformation of the sector. The Business Centre will therefore need to build its understanding of suitable indicators for data collection. Some data may already be available within financial institutions, and the Business Centre should be able to identify existing sources of data and where further data may be required (e.g. in relation to beneficial ownership[9]).

9 A clear understanding of beneficial ownership of institutions is important for supervising anti-money laundering and counter of terrorism financing provisions as required by the Financial Action Task Force. However, greater clarity on the beneficial ownership of institutions, including ultimate ownership through structures like pension funds and collective investment schemes, will better inform understanding of actual levels of ownership in South Africa by race and gender

- **Conduct of Business Supervision division:** training would aim to equip supervisors in understanding how to evaluate financial institutions on an on-going basis on the extent to which they are adhering to commitments made in terms of their transformation plans. The division would also need to consider what information regarding transformation it may find useful to obtain from other stakeholders, such as the FSTC, as part of its supervisory engagements – for example, an understanding of which financial institutions do and do not submit annual transformation reports to the FSTC as required. Supervisors should also be mindful of their impact on smaller financial institutions. Processes for formalising the supervision of transformation objectives under a new legislative framework can be drafted on this basis. This would consider aspects such as what and when regulatory action would be recommended to address transformation.
- **Investigations and Enforcement division:** one of the key strengths of the FSCA in supporting transformation of the financial sector is its ability to take enforcement action against financial institutions. This is in contrast to other stakeholders such as the FSTC, which is not able to sanction institutions, and even the B-BBEE Commission, whose administrative actions are limited to instances of fraud or misrepresentation. The FSCA will ultimately be able to take action against financial institutions that do not adhere to commitments made in terms of their transformation plans. A clear understanding will be required by the Investigations and Enforcement department of the FS Code, the evaluation of transformation plans, and the range of appropriate enforcement action that may apply. Training and upskilling of employees would therefore be important, as well as engagement between the division and the COB Supervision department where close collaboration on these matters would be required.

ii. **Participating in the development of the legislative framework:** the FSCA will continue to participate in the development of the COFI Bill and consequential amendments to the FSR Act, to ensure that transformation is adequately provided for, in a way that can be appropriately regulated and supervised by the FSCA. This focus areas in the draft COFI Bill published in September 2020 are threefold: firstly, the Bill contains direct requirements on financial institutions regarding transformation, such as the requirement to have in place a transformation plan and promote transformation in line with that plan (see clause 23).

Secondly, the Bill introduces a legislative framework that is principles-based and proportionate, to better support transformation by supporting entrants to the financial sector, and financial inclusion by improving access to, quality of, and use of financial products and services - see for example clause 7(1)(d) of the COFI Bill. Finally, consequential amendments to the FSR Act made through the COFI Bill strengthen the powers of the FSCA to support the B-BBEE Commission in promoting transformation (see schedule 5, part 16).

Key proposals in the 2020 draft COFI Bill that relate to transformation include:

- promoting transformation is made an explicit function of the FSCA in section 58 of the FSR Act and standard setting powers in relation to transformation are given in section 108;
- the COFI Bill requires entities to promote transformation in a manner reasonably consistent with its transformation plan, which plan should be aligned to the achievement of tangible targets informed by the targets in the Financial Sector Code; and
- the revised draft also allows for the FSCA to issue directives in relation to transformation plans and clarifies that the FSCA may use its supervisory and enforcement powers to ensure that a financial institution’s governance frameworks – including in relation to transformation – are adequate and adhered to.

4.2. PHASE 2: PROMOTING TRANSFORMATION UNDER A NEW LEGISLATIVE FRAMEWORK

Phase 2 will build on rather than replace efforts undertaken in Phase 1, which in many instances will be ongoing. In addition to the work undertaken in Phase 1, once the COFI Act is implemented, the FSCA will be empowered to set direct requirements on financial institutions relating to transformation and supervise compliance with these.

4.2.1. Regulatory and supervisory actions to promote transformation

Transformation plans of financial institutions should demonstrate how the entity will ultimately meet the targets set out in the FS Code. Given the levels of transformation of the financial sector currently, it is envisaged that all financial institutions with an annual revenue of over R10 million should reflect a B-BBEE Level 4 score or have in place a transformation plan that demonstrates how they will reach this level within five years.

Where entities are already at B-BBEE Level 4 or above, the FSCA will engage will financial institutions on an individual basis to determine their achievement of the various elements of the scorecard. This can be done in conjunction with the FSTC and B-BBEE Commission, to identify particular areas where the industry may be able to improve. For example, it may be identified that the financial industry is doing poorly in relation to the management control element of the FS Code; the FSCA can engage with financial institutions to ascertain whether improvements can be made in relation to the management control performance. In line with its risk-based approach to supervision, these engagements with the sector will prioritise high (er)-impact financial institutions.

Where transformation plans are deemed to be inadequate, the FSCA can engage with financial institutions to consider how plans can be improved. Supervisory actions can be considered in instances where financial institutions do not meet the targets identified in their transformation plans. When considering taking action for such failures, the FSCA must balance proposed actions with its mandate, namely the fair treatment of customers, the efficiency and integrity of financial markets and financial stability (in support of the SARB). Actions that can be considered where financial institutions fail to meet the targets identified in their transformation plans could include:

- meeting with the board of the institution and engaging on the importance of transformation as a national imperative;
- requesting a remedial plan to address the shortcomings, which can take the form of an enforceable undertaking;
- issuing a directive for non-compliance with an enforceable undertaking; and
- issuing an administrative penalty for non-compliance with COFI Act transformation requirements, an enforceable undertaking or directive. It is important to note that the FSCA mandate would be limited to enforcing financial sector laws only, and not the B-BBEE Act or the FS Code, which are the responsibility of the B-BBEE Commission and FSTC respectively.

In line with the FSCA's proportionate approach to regulation, the action taken will depend on the nature and severity of the transgression.

4.2.2. Regular engagement with the FSTC and B-BBEE Commission

The FSCA will need to ensure that its efforts to promote transformation are aligned as far as possible to the efforts of the FSTC and B-BBEE Commission. The FSCA will also be able to use its regulatory powers to support the work of these bodies were applicable – for example in ensuring that financial institutions comply with reporting requirements of the FSTC or supporting the B-BBEE Commission in any investigation against financial institutions. Similarly, the FSTC and Commission should share with the FSCA information that may be relevant to their ongoing supervision of entities in the sector. For example, if it is identified that there are particular sub-sectors of the financial sector, or particular financial institutions, that are performing poorly in terms of transformation imperatives, the FSCA can engage with these entities to consider how to remedy the situation.

4.2.3. Continual evaluation of the effectiveness of legislative frameworks and their application

The COFI Act intends to put in place a framework that supports transformation, including through allowing for the proportional application of the Act. Evaluation of the effectiveness of the framework and its application will be important to ensure that the intended objectives are being achieved.

This includes objectives of fair customer outcomes and financial inclusion, which, as noted, ensure that the financial sector has a transformational impact on the lives of financial customers. Efforts to improve financial inclusion (as set out in the FSCA's Financial Inclusion Strategy) and customer outcomes are complementary to achieving the objective of transformation.

The ultimate framework for financial sector transformation is depicted below:

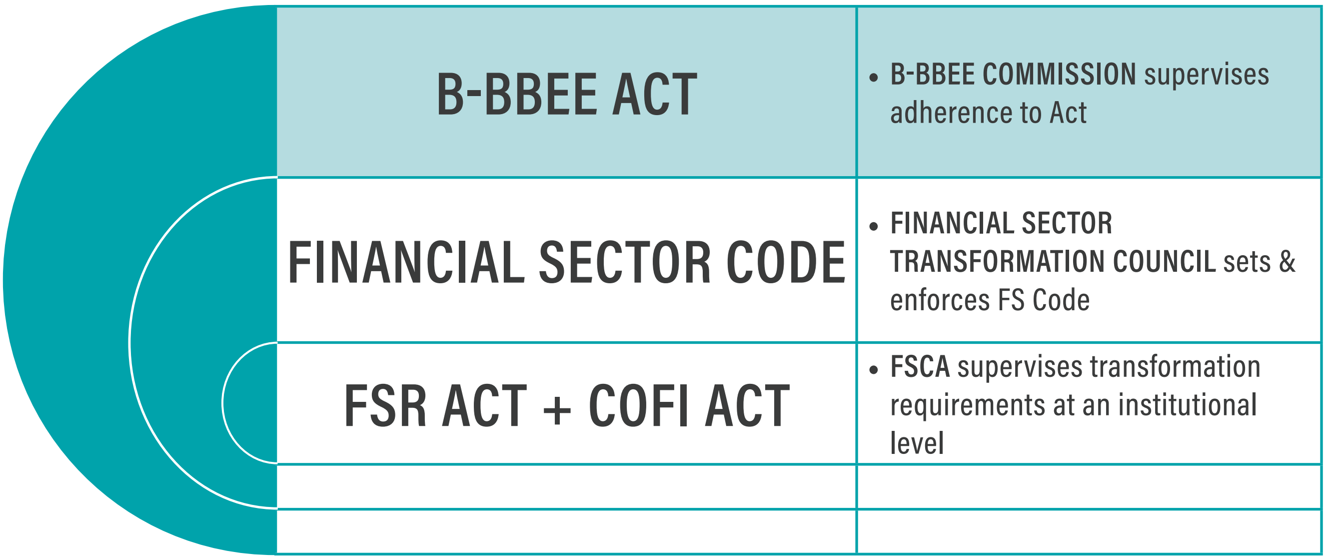

Figure 3: The intended final framework for overseeing transformation of the financial sector

5. IMPLEMENTING THE FSCA'S APPROACH TO TRANSFORMATION

The Regulatory Policy Division of the FSCA, through its Market, Customer and Inclusion Research department, will be responsible for overseeing the implementation of the FSCA's approach to transformation. An annual Implementation Plan will be developed, setting out the activities to be undertaken by different FSCA departments and division in each financial year, aligned to the approach. It will be updated annually to cater for changes in the sector and in the legislative landscape.

6. STAKEHOLDER CONSULTATION

The draft FSCA strategy for promoting financial sector transformation is released to solicit comments from all interested stakeholders. Stakeholders are invited to provide inputs on draft strategy, using the Comments Template attached as Annexure B. Feedback received will inform the finalisation and implementation of the strategy.

Comments on this strategy may be sent to fsca.policy@fsca.co.za by no later than 29 April 2022.

Click here to download the comments template

ANNEXURE A

WHAT IS THE FINANCIAL SECTOR CODE (FSC)?

The FSC is the product of the interaction between the financial sector trade associations, ABSIP, Organised Labour, Community and Government. The FSC reflects the accord reached by all the stakeholders regarding their joint commitment to fostering B-BBEE in the financial sector and in the South African economy.

The Amended FSC was gazetted on Friday 1 December 2017 and is currently being reviewed by the Financial Sector Transformational Council and the relevant constituents.

SCOPE OF APPLICATION OF THE FSC[10]

The amended FSC applies to any natural or juristic person conducting a business, trade or profession in the South African financial sector including, but not limited to, the following:

Banking	Retirement fund administration
Long-term insurance (Life)	Short-term insurance (Non-life)
Financial services intermediation and brokerage	Public entities involved in the financial sector e.g. DBSA, Land Bank
Private equity, venture capitalist and impact investors	Management of investments on behalf of the public, including, but not limited to, private equity, members of any exchange licensed to trade equities or financial instruments in South Africa and entities listed as part of the financial index of a licensed exchange
Industry Trade Associations operating in the sector	The management of collective investment scheme assets
Re-insurance	Asset management, consulting and administration
Underwriting management agents	

The amended FSC does not apply to:

- Natural or juristic persons who do not have trading operations in the Republic of South Africa;
- The trading operations of natural or juristic persons outside the Republic of South Africa; and
- Managers of investments on behalf of the public who are not subject to regulation by the FSCA, such as lawyers who hold money in intermediate trusts.

The gazetting of the amended FSC means that it is binding and takes precedence over any other Code, including the Code of Good Practice (CoGP) issued by the DTI. The Code of Good Practice is applicable only to the extent that the amended FSC is silent on a particular aspect of B-BBEE that is covered in the CoGP.

10 Information provided herein is extracted from the Financial Sector Code and the Prudential Authority's internal document "Transformation - Implementing the legislative requirements of the Insurance Act"

Financial Sector Code Series	Code Title
FS000	Framework for measuring Broad-Based Black Economic Empowerment (B-BBEE)
FS100	Measurement of the Ownership Element of B-BBEE
FS200	Measurement of the Management Control Element of B-BBEE
FS300	Measurement of the Skills Development Element of B-BBEE
FS400	Measurement of the Procurement, Enterprise and Supplier Development Element of B-BBEE
FS500	Measurement of the Socio-Economic Development and Consumer Education Development of B-BBEE
FS600	Measurement of the Empowerment Financing, Enterprise and Supplier Development Element of B-BBEE
FS700	Measurement of the Access to Financial Services Element to B-BBEE
FS800	Measurement of the Qualifying Small Financial Institutions of B-BBEE
FS900	Measurement of the Specialised Entities of B-BBEE
Schedule 1	Voluntary Dispensation for Top 100 Retirement Funds Including Umbrella Funds
Schedule 2	Interpretation and Definitions

Table 1 – Index of the amended FSC

Source: Government Gazette No.41287 dated 1 December 2017

1.2 ELEMENTS OF B-BBEE IN TERMS OF THE SCORECARD

1.2.1 The Ownership element (Code series FS 100) measures effective ownership of entities by black people.

1.2.2 The management control element (Code series FS200) measures the effective control of entities by black people.

1.2.3 The skills development element (Code series FS300) measures the extent to which the employers carry out initiatives designed to develop the competencies of black employee and black people internally and externally.

1.2.4 The Enterprise and Supplier Development element (Code Series FS400) measures the extent to which entities buy goods and services from Empowering Suppliers with various B-BBEE recognition levels. This element also measures the extent to which enterprises carry out supplier development and enterprise development initiatives intended to assist and accelerate the growth and sustainability of black enterprises.

1.2.5 The Socio-Economic Development (SED) and Sector Specific Contributions elements (Socio-Economic Development and Consumer education, Empowering Finance and ESD and Access to Financial Services (Code series FS500, FS600 and FS 700) measure the extent to which entities carry out initiatives that contribute towards socio-economic development or sector specific initiatives that promote access to the economy for black people.

1.3 CLASSIFICATION OF ENTITIES IN TERMS OF THE FSC CODE

1.3.1 Exempted micro-enterprise

Any enterprise with a total annual revenue of up to R10 million qualifies as an Exempted Micro-Enterprise (EME). An EME is deemed to have a B-BBEE status of a level four contributor, with a B-BBEE recognition level of 100%. An EME which is 100 per cent black-owned qualifies for elevation to level one contributor with a B-BBEE recognition level of 135%. Notwithstanding the above, an EME that is more than 50% (at least 51%) but less than 100% black-owned qualifies for elevation to level two contributor with a B-BBEE recognition level of 125%. An EME may elect to be measured in terms of a qualifying small financial institution (QSFI) scorecard if it wishes to move to a higher B-BBEE recognition level.

An EME is required to obtain a sworn affidavit, or a Companies and Intellectual Property Commission issued certificate on an annual basis, confirming that it has a total annual revenue of R10 million or less; and the el of black ownership[11].

1.3.2 Qualifying Small Financial Institution

A measured entity with a total annual revenue of more than R10 million but less than R50 million qualifies as a Qualifying Small Financial Institution (QSFI). A QSFI must comply with all of the elements of B-BBEE for the purposes of measurement, unless exempted from compliance with any element or sub-element.

A QSFI which is 100% black-owned qualifies for level one B-BBEE recognition. A QSFI which is more than 50% black owned (at least 51%), but less than 100% black owned qualifies for B-BBEE recognition at Level 2.

A QSFI is required to obtain a sworn affidavit confirming the total annual revenue of R50 million or less, level of black ownership and empowering supplier status.

A QSFI that is at least 51% black owned or 100% black owned, may elect to obtain a verification certificate from a verification professional. All other QSFIs, which elect to be measured, will be requirement to obtain a verification certificate to substantiate their B-BBEE status.

1.3.3 Start-up enterprises

A start-up enterprise must be measured as an EME for the first year following the commencement of its operations, regardless of the expected total revenue of the start-up enterprise. A start-up enterprise is deemed to have qualifying B-BBEE status as that of an EME. In order to qualify as a start-up enterprise, the enterprise must provide confirmation of its status as required in terms of EMEs.

11 Any misrepresentation – constitutes a criminal offence as set out in the B-BBEE Act.

1.4 SCORECARDS

1.4.1 Generic scorecard

The following table represents the B-BBEE Generic scorecard to be used by Large Entities

ELEMENT	WEIGHTING				
	Banks and Life offices scorecard	Short Term Insurers scorecard	Stock Exchanges and Stock Exchange Members	Other Institutions scorecard	Code Series Reference
OWNERSHIP	**23**	**23**	**23**	**25**	FS100
MANAGEMENT CONTROL	20	20	20	20	FS200
SKILLS DEVELOPMENT	20	20	20	20	FS300
PROCUREMENT AND ESD	15	35	35	35	FS400
SOCIO ECONOMIC DEVELOPMENT AND CONSUMER EDUCATION	5	5	5	5	FS500
EMPOWERMENT FINANCING AND ESD	25	0	0	0	FS600
ACCESS TO FINANCIAL SERVICES	12	12	0	0	FS700
TOTAL	120	115	103	105	

1.4.2 Qualifying Small Financial Institution Scorecard

The following table represents the B-BBEE scorecard to be used for QSFIs

ELEMENT	WEIGHTING	CODE SERIES FS800
OWNERSHIP	25 POINTS	FS801
MANAGEMENT CONTROL	15 POINTS	FS802
SKILLS DEVELOPMENT	25 POINTS	FS803
ENTERPRISE AND SUPPLIER DEVELOPMENT	30 POINTS	FS804
SOCIO-ECONOMIC DEVELOPMENT	5 POINTS	FS806
TOTAL	100 POINTS	

1.4.3 B-BBEE Recognition Levels

B-BBEE Status	% Qualification	B-BBEE Recognition Level
Level One Contributor	>= 100/109	135%
Level Two Contributor	>= 95/109 BUT < 100/109	125%
Level Three Contributor	>= 90/109 BUT < 95/109	110%
Level Four Contributor	>= 80/109 BUT < 90/109	100%
Level Five Contributor	>= 75/109 BUT < 80/109	80%
Level Six Contributor	>= 70/109 BUT < 75/109	60%
Level Seven Contributor	>= 55/109 BUT < 70/109	50%
Level Eight Contributor	>= 40/109 BUT < 55/109	10%
Non-Compliant Contributor	< 40/109	0%

The formula required to calculate the level of recognition is the number of points in the CoGP scorecard divided by the total number of DTI points multiplied by the total number of industry points set the generic scorecards.

Each financial institution, irrespective of the fact that it is a member of a group, must be measured and reported on its own. A financial institution that is a member of a group may be measured and reported on as part of the South African group provided that such group reporting is approved in advance by the Financial Sector Charter Council.

Each financial institution must report annually to the Council on its progress implementing the provisions of this Amended FSC.

Enhanced recognition for certain categories of black people: The Amended FSC provides various criteria which advances the interests of certain categories of black. These include:

- Black women should make up between 40% and 50% of the beneficiaries of the relevant elements of the scorecard; and
- black people with disabilities, black youth, black people living in rural areas and black unemployed people, who should make up part of the beneficiaries of the relevant elements of the scorecard.

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