Ref# 766457

National Treasury

40 Church Square

Pretoria

0002

16 November 2020

By e-mail: marketconduct@treasury.gov.za

Dear Sir/Madam,

Revised Conduct of Financial Institutions Bill

1. The South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make submissions to National Treasury on the Conduct of Financial Institutions Bill (COFI Bill or the Bill).

2. The South African Institute of Chartered Accountants (SAICA) is the home of chartered accountants in South Africa – we currently have over **46,000 Chartered Accountant** members from various constituencies, including members in public practice (±30%), members in business (±50%), in the public sector (±5%), education (±2%) and other members (±13%). In meeting our objectives, our long-term professional interests are always in line with the public interest and responsible leadership.

3. For ease of reference we set out below in **Annexure A,** our main points and detailed comments.

Yours sincerely

Nicolette Jacobs

SAICA IMPG Chairperson

Milton Segal

Snr Exec: Corporate Reporting

The South African Institute of Chartered Accountants

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ANNEXURE A

Concerns over consultation and consideration of comments

1. SAICA submitted its input on the Draft COFI Bill of 2019 as was requested. SAICA is particularly concerned that many of our inputs were not considered, specifically related to the application of the Companies Act to financial institutions.

2. The issue of the Companies Act applying to financial institutions that are not companies should not be underestimated. In some cases, the Bill states the Companies Act applies and then in other sections it seemingly changes the requirements

3. It should be noted that companies have to comply with the Companies Act as stated in section 5 of the Companies Act and financial institutions that are not companies might have difficulty applying the Companies Act in certain circumstances.

Companies Act

"S5(4) If there is an inconsistency between any provision of this Act and a provision of any other national legislation-

(a) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second; and

(b) to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second-

(i) any applicable provisions of the-

(aa) Auditing Profession Act;

(bb) Labour Relations Act, 1995 (Act No. 66 of 1995);

(cc) Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

(dd) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

(ee) Public Finance Management Act, 1999 (Act No. 1 of 1999);

(ff) Securities Services Act, 2004 (Act No. 36 of 2004);

(gg) Banks Act;

(hh) Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003); or

(ii) Section 8 of the National Payment System Act 1998 (Act No. 78 of 1998),

prevail in the case of an inconsistency involving any of them, except to the extent provided otherwise in sections 30(8) 49(4); or

(ii) the provisions of this Act prevail in any other case, except to the extent provided otherwise in subsection (5) or section 118(4)."

4. Submission: It is submitted that National Treasury provide responses for both comments addressed and not addressed to inform a consultative environment and in order to confirm that submissions were considered.

5. Submission: We recommend that clarification be provided in terms Companies Act as applicable to financial institutions into the Bill, this will prevent any confusion or unintended consequences for entities other than companies.

QUESTIONS FOR COMMENTATORS

6. Noting the overlaps between the COFI Bill, FSR Act and the intended new FMA, should the COFI Bill and new FMA both be incorporate into the FSR Act? For example, the COFI Bill could form its own "part" in the FSR Act. This should be considered not just from the perspective of the COFI Bill and FMA, but all sectoral laws like the Banks Act and Insurance Act.

7. Response: The Twin Peaks model introduced two authorities, the prudential authority which would be responsible for safety and soundness of financial institutions and the market authority, which would protect customers. We would propose that neither COFI, nor the sectoral laws be incorporated under the FSR Act as the sectoral laws in respect of prudential authorities (Banks Act, Insurance Act etc.) are well established with extensive regulations which developed over time, it would not be beneficial incorporating all these pieces of legislation under the FSR Act at this stage. In our view, it makes sense to have the FSR Act as umbrella legislation and the two authorities, being prudential and conduct, being regulated in terms of substantive independent laws, each with its own suite of regulations and subordinated laws.

8. Should "research services" be a licensed activity, included in Schedule 1?

9. Response: From the definition of research services, it appears to enable institutions to provide financial advice or products, in ensuring that this is done with the best interest of customers we would propose that it form part of activities as per schedule 1 and that conduct standards be considered.

10. Should the FSCA set requirements directly on analysts working in the areas of "research services" and "credit rating services", and be able to debar delinquents?

11. Response: Should research services be included in Schedule 1 as a licensed activity, we would propose that the FSCA set requirements for all those involved within the area to ensure a level playing field and fair application of regulation across the board.

12. Should market infrastructures and their members be subject to the COFI Bill for their conduct in relation to their customers, and Chapter 4 in particular? Currently only CSDPs that perform custody and brokers are captured.

13. Response: Given the integral role played by the market infrastructures, we strongly recommend that market infrastructures should be subjected to and regulated by COFI. We propose that the COFI Bill should be the comprehensive overarching conduct framework for all financial institutions and provide a level playing field applied across the board within the financial services industry, with any subordinate legislation carving out what is not applicable to the specific sector/ activity.

14. Should "sovereign ratings" be included as a credit rating, and if so, how should this be defined?

15.	Response: We propose that sovereign ratings be included as a credit rating given the impact it has on the investment status of the economy, financial sector and on financial institutions. The integrity of such a rating should be supervised given the significant negative/positive impact it has on the economy that filters down to services rendered by financial institutions and thus to consumers.

16. How should the activity of providing a retail and non-retail hedge fund be provided for in the licence schedule i.e. should a hedge fund targeted at the wholesale or professional market be treated as an alternative investment fund, rather than a collective investment scheme? (provided that the existing tax treatment can be retained.)

17.	Response: Hedge funds are included and provided for in the CISCA and the provision of them in the licence schedule would have to result in subordinate legislation being updated accordingly. We propose that hedge funds be treated as per CISCA.
18.	Alternative investment fund is defined in absence i.e. something other than a collective investment scheme in the FSR Act, it does not mention hedge fund, private equity etc. more detail should be provided in the FSR Act. This could also lead to the unintended consequence of capturing other funds prevalent in the market (such as crypto-funds).

19. Should the licensed activity of "lending" be divided into sub-categories of cash and non-cash to accommodate securities lending transactions?

20.	Response: Yes, we would propose that the activity be divided given that cash lending transactions are different to securities lending transactions and the conduct standards for cash would be different to securities. Also to be noted is that non-cash lending transactions such as securities lending are sophisticated transactions conducted in the wholesale banking space and that cash lending transactions are conducted across the spectrum of retail, business and wholesale banking. This distinction should follow through to subordinate legislation applicable.

21. In relation to Schedule 1 that reflects licensed activities, should the activity of "trading" be captured under the generic activity of "sales and execution" or should it be a specific sub-category under the activity category of "financial markets activities"? If the latter, how do you propose that the definitions be differentiated, and why?

22.	Response: Sales and execution activity is intermediary service as per FAIS and there is discretionary or non-discretionary, trading is more of an active service as opposed to other services such as administering a client buying e.g. Unit Trusts. There is also financial risk associated with trading mainly due to volumes hence it should be separated or have a sub category as the term is used within financial markets.

KEY CHANGES

Refined approach to licensing

23. We welcome the chapter being compressed and aligning provisions to FSR Act.

24. We have noted that the exemption of Pension Funds to provide financial advice was not carried through from FAIS Act. The exemption was brought about as it was noted that it discouraged communication with members/clients in ensuring their pension fund covers any post retirement needs. We would propose that subordinate legislation include this provision to encourage savings as per FAIS provision.

Consolidation of chapters

25. We welcome the streamlining and combination of the chapters. We also welcome the content being dealt with in conduct standard, it is appropriate to do so provided definitions and overarching legislation is clear.

Other considerations

Other policy matters in the FSR Act

26. We would like to propose that the defined term "licensed financial institution" be used in Parts 1 of chapters 8 and 9, as a holding company of a financial conglomerate is included in the definition of a financial institution in the FSR Act. Holding companies of financial conglomerates are usually not operating entities, they do not have staff, they do not make investments on behalf of clients and it is not appropriate for Part 1 of chapter 8 to refer to "financial institutions" as defined in the FSR Act. Accordingly, reference to "financial institution" in sections 36 to 40 should be updated to be "licenced financial institution".

27. We also propose that the inclusion of "holding company of a financial conglomerate" in the definition of "financial institution" in the FSR Act be reconsidered.

GENERIC COMMENTS ON THE BILL

Chapter 1

Definitions

28. The following terms have not been defined

    a. Material/Materiality
    b. Subordinate legislation

29. We propose that the FSR Act be the main referral point/legislation for definitions with the COFI Bill referencing to it to ensure consistency and for ease of following through by users. Subordinate legislation specific terms can also be referred to by the Bill.

Chapter 9 Reporting

Information for supervisory purposes (prescribed returns)

30. Section 48 (1) states “In addition to any specific or general requirement provided for elsewhere in this Act, a financial institution must provide the Authority with any information that the Authority may require”

31. Submission: The word ‘any’ as underlined above is ambiguous, we suggest it be replaced with the relevant term so that there would be a causal link between the information requested by the authority.

32. Section 48(3)(a) states “complete in all material respects;”

33. Submission: There should be a definition of what material means and to whom, for financial reporting purposes we suggest the IFRS practice note 2 definition of materiality to avoid subjectivity.

34. Section 48(3)(c) relevant, reliable and comprehensible;

35. Submission: We suggest replacing the term comprehensible with either accurate or eliminating it completely, as relevant and reliable already includes a level of comprehension. As it reads now it suggests that information could be relevant, reliable but not comprehensible. It is too subjective a term.

36. Section 49(3)(a) stating “The Authority may approve the non-disclosure of specific information, if the disclosure of the information – (i)….(vi)”

37. Submission: The above section may result in the unintended consequence of financial institutions failing to comply with the section 29 requirement (in the Companies Act) that financial statements must “satisfy the financial reporting standards as to form and content”.

38. Section 49(4)(a) In the event of any major development affecting the relevance of the information disclosed in accordance with subsection (1),

39. Submission: Does this apply post year end or within the year under review? If included in the year under review, it is presumed that the major development must be considered material, either qualitatively or quantitatively or both. If so, it would be difficult to think of a scenario where the authority has specifically approved non-disclosure thereof. This also highlights the importance of defining materiality for reporting purposes.

Section 51

40. The beneficial interest threshold will need to be clarified by the authority as it is not a standard term – it is very important that this be defined within the COFI bill and not left to the discretion of the authority.

Accounting records and financial statements

Section 53(1)(b) preparation of financial statements

41. The Bill states in section 53(1)(b) that a financial institution must annually prepare financial statements that:

    "(i) fairly represent the state of affairs of the financial institution's business;"

42. The Bill then includes section 53(3) which is discussed below applying certain sections of the Companies Act, 2008.

43. SAICA therefore questions the inclusion of section 53(1)(b)(i) as this is included in the section reference in the Companies Act, section 29(1)(b) which states that the annual financial statements must present fairly the state of affairs and business of the company…"

44. Submission: It is submitted that the inclusion of this section is superfluous and should be removed as the included reference to the Companies Act, section 29 already requires that the annual financial statements must fairly present the state of affairs.

Section 53(1)(b)(iv) preparation of financial statements

45. The Bill states in section 53(1)(b) that a financial institution must annually prepare financial statements that:

    "(iv) are in the format determined by the Authority."

46. The Bill then includes section 53(3) which is discussed below applying certain sections of the Companies Act, 2008.

47. SAICA therefore questions the inclusion of section 53(1)(b)(iv) as the Companies Act, section 29 sets out the requirements for the preparation of annual financial statements.

48. Submission: It is submitted the inclusion of this section is superfluous and should be removed as the inclusion of the reference to the Companies Act, section 29 already includes a framework to be used for the preparation of annual financial statements.

Section 53(3) application of certain sections of the Companies Act, 2008

49. The Bill proposes that sections 28, 29 and 30 of the Companies Act apply to the accounting records.

50. Section 29(1)(e) of the Companies Act requires the following:

    "(e) bear, on the first page of the statements, a prominent notice indicating –
    (i) whether the statements –
    (aa) have been audited in compliance with any applicable requirements of this Act;

(bb) if not audited, have been independently reviewed in compliance with any applicable requirements of this Act; or
(cc) have not been audited or independently reviewed; and

(ii) the name and professional designation, if any of the individual who prepared or supervised the preparation of the annual financial statements;"

51. The Bill includes certain sections of the Companies Act and SAICA is concerned with the application of this section on financial institutions that are not companies, including individuals. Questions that we require clarity on include, inter alia; whether these non-companies will be required to calculate their PI Score and if so, on what basis will they be doing so, as the Companies Regulations are specifically written for companies?

52. SAICA would also like to draw attention to the fact that section 30(2A) allows for exclusion of owner-managed companies from having their annual financial statements independently reviewed. In SAICA's view, many financial services companies and individuals would only be required to compile annual financial statements and no audit or independent review would be required. We question whether this is the intention of the legislature.

53. The inclusion of sections 28 to 30 of the Companies Act, also allows for owner-managed companies, as defined in section 30(2A) to only have annual financial statements compiled, with no independent review or audit requirement.

54. The Bill in further sections requires audit or independent review of annual financial statements, again making the application of the Companies Act unclear as the Bill seemingly required audited or independently reviewed annual financial statements.

55. Submission: It remains unclear why the requirements of Companies Act section 28, 29 and 30 applies to financial institution that are not companies, including individuals as there is no guidance for these non-companies to calculate their PI Score as per the Companies Regulations. SAICA also suggests that the exclusion of owner-managed companies from being independently reviewed be taken into account in the Bill.

Auditing or independently reviewed annual financial statements

Section 54 (1) (b) - *Audited or independently reviewed annual financial statements*

56. The comments raised on section 97(1) of the draft Conduct of Financial Institutions Bill, 2018 as contained in our previous comment letter are still applicable here.

57. The section requires that a financial institution must cause its annual financial statements and information prescribed in part 1 of Chapter 9 to be audited or independently reviewed. This information refers to the prescribed return, public disclosures and beneficial interest and requires the auditor / independent reviewer to audit this information and express an opinion.

58. When the registered auditor / independent reviewer is required to express an opinion or conclusion on any particular subject matter or subject matter information, the implication is that an assurance engagement is required. Depending on the nature of the subject matter or subject matter information, and the information needs of the intended users, such engagements can provide either reasonable assurance or limited

assurance in accordance with International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) or International Standards on Assurance Engagements (ISAEs), as applicable.

59. The registered auditor / independent reviewer can only accept an engagement if the preconditions for an audit or an assurance engagement (independent review) are met. Two of these preconditions are that the underlying subject matter is appropriate; i.e. it is identifiable and capable of consistent measurement or evaluation against applicable criteria such that the resulting subject matter information can be subjected to procedures for obtaining sufficient appropriate evidence to support the auditor's opinion or conclusion; and that the criteria that the auditor expects to be applied in the preparation of the subject matter information exhibit all the characteristics of suitable criteria.

60. Registered auditors / independent reviewers can therefore not provide an opinion on statements or reports that do not have criteria to be measured against and inclusion of additional statements or reports may create situation where auditors cannot express an opinion on public disclosure and beneficial interest.

61. The Companies Act requires independent reviewers to use the International Standard for Review Engagements, ISRE 2400 for an independent review. This standard does not deal with the review of "other information"

62. Section 54(1) requires financial institutions to have their annual financial statements audited or independently reviewed. We question how section 30(2A) will apply as section 30(2A) allows for certain "owner-managed" companies to be exempt from independent review.

63. Submission: The requirements for registered auditors to provide opinion on statements or reports that do not have evaluation criteria to be measured against must be removed. We further recommend that the drafters contact the Independent Regulatory Board for Auditors (IRBA) to discuss the ability of an auditor to express an opinion on a return and any other assurance related requirements.

64. Submission: SAICA questions whether the prescribed standard in the Companies Regulations, ISRE 2400 can be used to review "information as prescribed".

65. Submission: It is submitted that there will be a conflict between the legislation as the Companies Act states in section 30(2A) that companies where every person who is a holder of, or has a beneficial interest, in any securities issued by the company is also a directors of the company that company is exempt from the requirements in this section to have its annual financial statements audited or independently reviewed. We request that National Treasury considers the impact of the inclusion of the sections of the Companies Act.

66. Submission: Please refer to Annexure 1 where a summary is provided on the Companies Act requirements with regards to the financial reporting standards to be used, independent review requirements, audit requirements as well as the requirement applicable to the auditor and independent reviewer.

Section 54(2) - *Audited or independently reviewed annual financial statements*

67. The comments raised on section 97(2) of the draft Conduct of Financial Institutions Bill, 2018 as contained in our previous comment letter are still applicable here.

68. The section states that a financial institution must submit its audited financial statements to the Authority and make it available to the public within the prescribed period after its financial year-end. Section 30 of the Companies Act already includes a six months' period for the financial statements to be prepared and audited. Again clarity is required on whether the Bill is planning to amend the six months' period as this can lead to confusion over which requirement would take precedent.

69. Section 68 of the COFI Bill states that COFI and conduct standards prevails over any subordinate legislation. Companies are required to comply with the Companies Act as the governing legislation. SAICA questions whether the Companies Act would be viewed as subordinate legislation as it is the applicable legislation for companies.

70. Section 54(2) requires financial institutions to submit their audited financial statements to the Authority. Section 30 of the Companies Act states that companies must either have their annual financial statements audited or independently reviewed. As this section only refers to audited financial statements, the question is raised on whether companies that have their annual financial statements independently reviewed must also submit their financial statements or not?

71. Submission: We propose that section 68 of the Bill be amended to be in line with the Companies Act provision to ensure that there are no inconsistencies.

72. Submission: We propose that the Bill deals with the requirements for independent reviewed annual financial statements, should it also be required to be submitted to the Authority.

Section 54(3)

73. Section 54(3) raises the question of whether the intention of this section is that only an independent review will be required if the legal form of the financial institution is not accompany. And if so, SAICA questions whether this is desirable, taking into account public interest. There may be large financial institutions that holds funds on behalf of a large number of investors, and based on the Companies Act requirements, have a PI Score above 350. Again, in terms of the Companies Act these financial institutions would require an audit, but seemingly this section states that they will only be required to have their annual financial statements' independently reviewed.

74. There does not seem to be any consideration of Regulation 28(2)(a) as legislated in Section 29(4) of the Companies Act. Regulation 28(2)(a) requires any company that in the ordinary course of its primary activities holds assets in a fiduciary capacity for persons who are not related to the company and the aggregate value of such assets held at any time during the financial year exceeds R5million.

75. With the application of sections 28 to 30 of the Companies Act, this Regulation would also apply and any financial institution, company or otherwise that has more than R5million value of assets will have to apply the audit requirements.

76. Submission: This section makes it compulsory, if so required by the Authority to have an independent review if a legal form of the financial institution is not a company. The Companies Act does allow for companies that are owner-managed as per section 30(2A) to be exempt from an independent review of their annual financial statements. As the Companies Act, sections 28 to 30 is applicable to companies and in this instance non-companies then they seemingly would be exempted from an independent review, but this section might now require an independent review.

77. Submission: Clarity should be provided on whether and how these specific sections in the Companies Act must be applied to ensure that the companies can apply the Companies Act and these financial institutions that are not companies can be clear on the impact.

78. Submission: It is our submission that based on this section, the Authority could only require financial institutions that are not companies to have an independent review of their annual financial statements, but if these financial institutions have to apply the Companies Act sections, then conflict might arise, because if this financial institution meets the requirements in terms of the PI Score, their annual financial statements must be audited.

Appointment of auditor

Section 56(1)(a) - *Appointment of an auditor by a financial institution*

79. The comments raised on section 99(1) of the draft Conduct of Financial Institutions Bill, 2018 as contained in our previous comment letter are still applicable here.

80. The Bill states in section 56(1)(a) that a financial institution must appoint an auditor and that the appointed auditor must not have a direct or indirect financial interest in the business of the financial institution.

81. The Bill does not deal with the appointment of the independent reviewer. This section states that all financial institutions MUST appoint an auditor. Financial institutions that only require an independent review or even only the compilation of annual financial statements, are not required to appoint an auditor, however, the reading of this section requires the appointment.

82. Submission: SAICA submits that this section requiring the appointment of an auditor would lead to conflict with the Companies Act. In terms of Regulation 29(4) of the Companies Regulations, legislated in terms of section 30 of the Companies Act, the independent review of the annual financial statements can be done by a person / firm that is not a registered auditor but a member of SAICA or a person who is qualified to be appointed as an accounting officer of a close corporation in terms of section 60(1), (2) and (4) of the Close Corporations Act, 69 of 1984.

83. Therefore, a person/firm other than a registered auditor can perform the independent review. The Bill does not deal with the appointment of the independent reviewer. The Bill needs to be amended to make provision for the appointment of the independent reviewer and set out the requirements for the said appointment.

84. Submission: SAICA submits that the section dealing with "direct or indirect financial interest" be removed as the IRBA Code of Professional Conduct for Registered Auditors (Revised November 2018) has very strict independence requirements which are already applicable to registered auditors.

Section 56(1)(b) - *Application of sections 90 to 93 of the Companies Act*

85. The comments raised on section 99(1)(b) of the draft Conduct of Financial Institutions Bill, 2018 as contained in our previous comment letter are still applicable here.

86. The section states that sections 90 to 93 of the Companies Act is applicable to a financial institution.

87. Certain questions arise on the application of the Companies Act as section 56(2)(a) states that the auditor is subject to the approval of the Authority in the form and manner prescribed by the Authority.

88. In terms of the Companies Act the auditor must be appointed at the annual general meeting. If the financial institution is also a listed entity, then they also need to comply with the JSE Listings requirements.

89. Section 90(1) and (1A) requires the auditor to be appointed at the annual general meeting, we question the application of such to an individual financial institution that does not have an annual general meeting.

90. Submission: SAICA submits that the various requirements above be aligned to ensure that an auditor can be appointed timeously. The appointment of the registered auditor must, in terms of the Companies Act be done at the annual general meeting, we request clarity on how other financial institutions need to apply this requirement.

91. Submission: SACA also submits that it is clarified how the independent reviewer must be appointed or if not regulated, then it should be allowed for to appoint the independent reviewer based on its out requirements.

Section 56(2)(a)

92. The Bill states that the appointment of an auditor is subject to the approval of the Authority in the form and manner prescribed

93. Submission: More detail required around "form" and "manner prescribed". Clarity should also be provided on whether this would not contradict with the Prudential Authority's approval when it comes to the appointment of auditors for registered banks

Section 56(3) - *Fit and proper requirements*

94. The comments raised on section 99(3) of the draft Conduct of Financial Institutions Bill, 2018 as contained in our previous comment letter are still applicable here.

95. The Bill states in section 56(3)(a) that auditors must, at all times, comply with prescribed fit and proper requirements. We are unclear whether this refers to the fit and proper requirements in the definition section or whether additional fit and proper requirements will be prescribed by the Authority. As these requirements has not been published for auditors it is difficult to provide comments on this requirement.

96. We also question the implications of the fit and proper requirements for the independent reviewers, as the Bill does not refer or deal with independent reviewers as defined in the Companies Act.

97. Submission: SAICA submits that the various requirements for Mandatory Audit Firm Rotation be included to ensure that an auditor can be appointed timeously. Also does the definition given in the Bill agree with the fit and proper requirements mentioned in the Financial Advisory and Intermediary Services (FAIS) Act and described in the King Code?

98. The Bill on Section 56 (3)(b) states that "The Authority may, if it reasonably believes that an auditor does not comply or no longer complies with the requirements referred to paragraph (a), in addition to any other action that the Authority may take under this Act, direct the financial institution to terminate the appointment of the auditor."

99. Submission: SAICA submits that more detail to be given around "any other action" and what grounds would constitute the termination of the appointment of an auditor. As well as what would the "cooling off" period be before the auditor can be considered for re-appointment

Section 56(4) – *Authority to appoint auditor*

100. The following comment included in the previous SAICA comment letter of the draft Conduct of Financial Institutions Bill, 2018 is still relevant:

101. The Authority also obtains the duty to appoint an auditor where the financial institution has failed. In this instance, the Authority would need to take into consideration specific South African requirements such as Mandatory Audit Firm Rotation, section 90 of the Companies Act dealing with disqualifications of certain auditors to be appointed as auditors and section 92 of the Companies Act dealing with auditor rotation. The other requirements such as the appointment of more than one auditor also needs to be considered. The relationship between the COFI Bill and the Companies Act with regards to the appointment of the auditor also needs to be considered.

102. The Bill does not deal with the appointment of the independent reviewer should Authority wish to appoint an independent reviewer.

103. Submission: SAICA submits that the various requirements for Mandatory Audit Firm Rotation be included to ensure that an auditor / independent reviewer can be appointed timeously.

Section 56(6)(b) - *Reportable irregularity report*

104. Section 56(6)(b) of COFI seems to imply that the auditor is permitted to resign despite the existence of a Reportable Irregularity, which is contrary to the guidance contained in the IRBA Revised Guide for Registered Auditors: *Reportable Irregularities in terms of the Auditing Profession Act*, which states: "The auditor must complete the reporting of a reportable irregularity before resigning from an audit. The report process is completed once the auditor has submitted the second report to the IRBA as required by section 45(3)1".

105. In contrast to the auditor having concluded that a Reportable Irregularity exists, the IRBA Revised Guides indicates that: "If an auditor suspects the existence of a reportable irregularity and the auditor is replaced (following resignation or a termination of services) such auditor should communicate the circumstances and details to the successor auditor in terms of section 210.13 of the IRBA Code2".

106. Submission: SAICA submits that section 56(6)(b) needs to be amended to rather require the auditor to communicate the circumstances and details relating to any suspected Reportable Irregularity to the Authority and need to be aligned to the Auditing Profession Act.

Duties of the Auditor

Section 57(2)(a) - *Requirements for annual financial statements to be audited as prescribed*

107. The comments raised on section 100(2)(a) as contained in our previous comment letter are still applicable here.

108. The Bill states in section 57(2)(a) that the auditor must audit the annual financial statements in the manner prescribed. Please refer to previous comments on the fact that auditors provide an audit opinion in terms of the International Standards of Auditing prescribed by the IRBA.

109. SAICA noted that the independent reviewer is not dealt with in this section and questions the duties of the independent reviewer.

110. Submission: SAICA submits that section 57(2)(c) be amended to include that auditors perform the audit in accordance with the International Standards for Auditing prescribed by the IRBA.

Section 57(2)(c) - *Requirements of auditor to perform any functions prescribed*

111. The Bill states in section 57(2)(c) that the auditor of a financial institution must perform any other duties or functions prescribed.

[1] Paragraph 16.2
[2] Paragraph 16.3

112.	Submission: SAICA submits that this statement is too general and that the Bill should specifically outline the process for prescribing these additional duties or functions and who these can be prescribed by.

Conduct standards made by Authority

Section 67- Conduct standard for reporting

113. Section 67 states that the Authority may prescribe conduct standards in respect of accounting and auditing.

114. With regards to accounting the Financial Reporting Standards Council established in terms of section 203 of the Companies Act has been tasked to make regulations establishing financial reporting standards. As discussed earlier and set out in Annexure 1 various financial frameworks has already been prescribed by the Companies Act.

115.	Submission: We would urge the drafters to discuss conduct standards for auditing as registered auditors in South Africa per the IRBA have to follow the International Standards on Auditing.

116. Having various regulators setting standards for the same profession may create confusion and difficulty to comply. The Auditing Profession Act states that the IRBA must prescribe standards for professional competence, ethics and conduct for registered auditors.

Schedule 1, item 10 (Corporate Advisory Services)

117. We would like to express our concern with the inclusion of Corporate Advisory Services as an activity under COFI. We kindly request that we be provided with an explanation of why it is necessary to include this as an activity to be licenced. Most of the clients/ customers are sophisticated (even global players) and do not need the protection that COFI is seeking to address as they finally act on advice of their boards of directors, attorneys and other professional advisors in respect of corporate actions where corporate advisors are involved.

Annexure 1 – Companies Act requirements

Category of Companies	**Financial Reporting Standard**	***Audit / Review***	**Who**
State owned companies.	IFRS, but in the case of any conflict with any requirement in terms of the	Audit	Registered Auditor (RA)

	Public Finance Management Act, the latter prevails.		
Public companies listed on an exchange.	IFRS	Audit	RA
Public companies not listed on an exchange.	One of – (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SMEs.	Audit	RA
Profit companies, other than state-owned or public companies, whose public interest score for the particular financial year is at least 350 OR who hold assets in excess of R5m in a fiduciary capacity.	One of—– (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SMEs.	Audit	RA
Profit companies, other than state-owned or public companies, whose public interest score for the particular financial year is at least 100 but less than 350.	One of—– (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SMEs; or (c) SA GAAP (withdrawn)1	a) Internally compiled – audit. The Section 30(2A) "owner managed" exemption does NOT apply (b) Independently compiled – independent review. If you can apply the Section 30(2A) "owner managed" exemption, there is no review requirement.	RA RA / Chartered Accountant (CA(SA))
Profit companies, other than state-owned or public companies, whose public interest score for the particular financial year is less than 100, and whose statements are independently compiled.	One of—– (a) IFRS; or (b) IFRS for SMEs, provided that the company meets the scoping requirements outlined in the IFRS for SME's; or (c) SA GAAP (withdrawn).	Independent review – If you can apply the Section 30(2A) "owner managed" exemption, there is no review requirement	RA / CA(SA) / Accounting officer
Profit companies, other than state-owned or public companies, whose public interest score for the particular financial year is less than 100, and whose	The Financial Reporting Standard as determined by the company for as long as no Financial Reporting Standards are prescribed.	Independent review – If you can apply the Section 30(2A) "owner managed" exemption, there is no review requirement	RA / CA(SA) / Accounting officer

statements are internally compiled.			