

FSCA, B-BBEE Commission partner to transform financial sector

By Johan Henning, Zelda Swanepoel, Safiyya Patel, Gabi Richards-Smith & Mariam Ismail

2 Apr 2024

On 5 March 2024, the Financial Sector Conduct Authority (FSCA) announced a Memorandum of Understanding (MoU) with the Department of Trade, Industry and Competition's (DTIC) Broad-Based Black Economic Empowerment (B-BBEE) Commission. The announcement serves as a cautionary note regarding the B-BBEE Commission's concern over, in its view, the inadequate submission of B-BBEE compliance reports by the financial sector.



Image source: [spotmatikphoto – 123RF.com](https://www.123RF.com)

The purpose of the MoU between the FSCA and B-BBEE Commission is to formalise and strengthen a relationship on issues of common interest, cooperation, collaboration, assistance and exchange of information. This is to fulfil their resultant responsibilities and obligations insofar as it relates to promoting the transformation of the financial sector.

In March 2023, the FSCA published its final "Strategy for Promoting Financial Sector Transformation" (the FSCA Transformation Strategy). It outlines how the FSCA aims to promote transformation within the current legislative framework, such as the B-BBEE Act and the Financial Sector Code, pending the finalisation of the Conduct of Financial Institutions (Cofi) Bill for all financial institutions. In addition to this publication, the FSCA published a summary of the feedback received on the draft FSCA Transformation Strategy, and some key changes include:

A two-phase approach

- Phase 1 will focus on the role that the FSCA will play within the current legislative framework; and
- Phase 2 will focus on the role that the FSCA will play within the Cofi legislative framework.

The FSCA's jurisdiction extends widely, encompassing insurers, collective investment schemes, retirement funds, brokers, financial planners, and wealth managers. The FSCA intends to lower entry barriers by adjusting regulatory demands according to the risks and scale of financial institutions. It may introduce phased implementation of requirements and explore tiered licensing. Moreover, when existing regulations pose obstacles for small entities, the FSCA encourages

stakeholders to motivate how certain requirements hinder entry.

Phase 2 will require financial institutions to have in place a transformation plan aimed at achieving targets set under the Financial Sector Code. Upon implementation of the Cofi Bill, which is said to be tabled in Parliament this year, the FSCA will be empowered to make standards relating to transformation. These standards will aim to provide specific details on requirements for transformation plans.

Currently, the FSCA does not have transformation objects as part of its regulatory regime, therefore, there are consequently no significant penalties for failing to meet the government's transformation goals under existing legislation. As the regulatory body for all financial institutions, the FSCA will take a stronger stance on transformation by requiring them to submit plans for achieving it. A failure to comply with specific BEE thresholds outlined in these plans could lead to the FSCA withholding licenses.



B-BBEE Commission: How the complaints and investigations procedure works

Safiyya Patel and Loatile Baiphaphele 12 Oct 2023



Transformation plans during the licensing process

To stay within its designated mandate, the FSCA will base its transformation requirements on provisions outlined in the Cofi Act (once implemented). Its mandate remains the enforcement of financial sector laws only, and not the Broad-Based Black Economic Empowerment Act 53 of 2003 (B-BBEE Act) or the Financial Sector Code, which are the responsibility of the B-BBEE Commission and Financial Sector Transformation Council (FSTC), respectively.

The impact of the inclusion of transformation in the licensing process can be summarised as follows:

- financial institutions will be required to have transformation plans in place, likely becoming a mandatory requirement. These plans, tailored to each institution's business model, will be assessed during licensing to ensure commitment to transformation objectives and Financial Sector Code targets. Ongoing supervision will evaluate institutions' performance against their transformation plans, with additional guidance provided as licensing frameworks are developed under the Cofi Bill;
- existing licensed institutions are expected to undergo a conversion process from their current sectoral licenses to licenses and authorisations governed by the Cofi Act. As part of this conversion, these entities will likely be mandated to submit their transformation plans to the FSCA within a specified timeframe. The details on the new licensing framework, including the license conversion process will be communicated as the Cofi Act is rolled out; and
- the FSCA will ensure that transformation plans encompass all relevant aspects of the Financial Sector Code for

approval. There will be no preference given to specific elements.

Regulatory and supervisory actions

The FSCA has opted for a "proportionate approach" to transformation, abandoning a blanket requirement for a minimum Level 4 B-BBEE status. This approach entails exemptions and varying requirements based on factors such as turnover threshold, ownership structures, business models, and existing B-BBEE levels.

By eliminating the Level 4 requirement, the FSCA aims to adopt a risk-based approach, concentrating resources where transformation is most needed. This includes entities with high B-BBEE ratings but poor performance in specific areas, those showing no progress in transformation, and those unable to justify their inability to achieve higher transformation levels. The possibility of establishing a minimum B-BBEE level in the future remains open, pending consultation.

Through this approach, the FSCA seeks to foster sustainable transformation while balancing regulatory imperatives, ultimately paving the way for a more diverse and resilient financial sector.

ABOUT THE AUTHOR

Johan Henning, Partner, Zelda Swanepoel, Partner, Safiyya Patel, Partner, Gabi Richards-Smith, Partner & Mariam Ismail, Associate at Webber Wentzel

For more, visit: <https://www.bizcommunity.com>