

FSR Bill

Matters of overlapping interest between the NT and dti - proposed refinements

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national treasury

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Principles

- Provide for a **proportionate, risk-based, system-wide approach** to regulating the financial sector, to **level the regulatory playing field** for market participants, **support sustainable market participation** and minimise the potential for regulatory gaps, arbitrage and forum shopping.
- To **minimise fragmentation effects and regulatory siloes, support and strengthen coordination mechanisms** between the new authorities - the FSCA and PA - and the NCR, CMS and FIC, building on what is provided for in existing sector laws like the NCA and the insurance laws (on CCI).
- **Operational independence** of each regulator should be protected from [possible] interference from the executive and each other, however regulators should operate **within the policy direction spelt out by the governing law**, and the achievement of the objectives of one regulator should not be at the expense of achievement of objectives of another regulator; to the extent possible **these regulators should support the achievement of each other's objectives**.
- To **minimise the potential for regulatory overlap or underlap**, with the potential for duplication, contradiction and implied regulatory cost for regulated entities, require **clear jurisdictional boundaries**.

Policy approach

- Consider **definition of “financial product” and “financial service,”** in the context of including **“credit agreement”** as defined under the National Credit Act, and the **scope of jurisdiction** for the financial sector regulators and the SARB
- **SARB and PA should regulate credit providers for stability and safety and soundness** respectively, with intensity of oversight determined on a **risk-basis**.
- The **NCR and FSCA should regulate credit providers for conduct** but in **different ways and with a different focus; the FSCA should complement and support the actions of the NCR**, and vice versa.
- **NCR is the sole regulator of the credit agreement** itself, i.e. the features of the product, although the **FSCA can regulate credit providers** that provide credit agreements, on a risk-basis, especially **in relation to the culture** of such providers (esp. banks), to **complement what is provided for under the NCA**.
- **FSCA sets standards for financial services** provided in relation to credit agreements, as may regards distribution and advice, to provide for a system-wide approach to conduct, provided that these support regulatory requirements set by the NCR under the NCA.

Proposed drafting

- Revise clause 2(1)(g)

credit, as defined in section 1 of the National Credit Act, provided in terms of a credit agreement as defined in that section, excepting for Chapter 4 and section 106 of Chapter 7, where, subject to section 58(2)(b), financial product does not include a credit agreement that is authorised and regulated under that Act;

- Revise clause Clause 58(2)

(a) The Financial Sector Conduct Authority may not regulate and supervise a credit agreement that is authorised and regulated under the National Credit Act;

(b) To achieve its objectives, the Financial Sector Conduct Authority may however regulate and supervise financial institutions that provide such credit agreements, for that activity, but only for the matters identified in section 108, and may regulate and supervise financial services provided in relation to all credit agreements.