Employment Law

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SOUTH AFRICA

- What the new COFI Bill means for pension funds
- New developments regarding the Fair Pay Bill

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What the new COFI Bill means for pension funds

On 25 March 2026, Cabinet approved the submission of the Conduct of Financial Institutions Bill (COFI Bill) to Parliament. This marks a significant milestone in a reform process that has been underway for more than a decade.

For retirement fund trustees, fund administrators, employers and members, the COFI Bill signals a fundamental shift in how pension funds will be regulated and supervised – with a stronger emphasis on governance, accountability and member protection.

What is the COFI Bill?

The COFI Bill proposes a single, comprehensive framework for regulating the market conduct of all financial institutions in South Africa, including banks, insurers and retirement funds. Its central aim is to ensure that financial institutions treat customers fairly, operate transparently and are held accountable for their conduct throughout the product lifecycle.

COFI is a cornerstone of South Africa's 'Twin Peaks' model of financial regulation. Under this framework, prudential regulation is overseen by the Prudential Authority (PA), while market conduct regulation falls under the Financial Sector Conduct Authority (FSCA). The COFI Bill equips the FSCA with a unified set of conduct tools that apply consistently across the financial services sector.

Importantly, COFI adopts a principles based, activity based and outcomes focused approach. Rather than relying on prescriptive rules, financial institutions will be expected to demonstrate that their conduct delivers fair outcomes for customers in practice – not merely on paper.

How did we get here?

The move towards COFI began in earnest in 2014, when National Treasury published a discussion paper proposing a new market conduct framework aligned with the Twin Peaks vision.

The first draft of the COFI Bill was released in 2018 and prompted extensive industry. A revised draft followed in 2020, incorporating material changes. Targeted consultations between National Treasury and the FSCA continued through 2021.

On 25 March 2026, Cabinet approved the COFI Bill for submission to Parliament, where it will now proceed through the legislative process, including further opportunities for public participation.

Key implications for pension funds

While the COFI Bill does not repeal the Pension Funds Act 24 of 1956 (PFA), it introduces a new conduct focused regulatory layer that will apply alongside it. Broadly, the PFA will continue to govern the structural and prudential aspects of retirement funds, while conduct related provisions will be consolidated under the COFI framework.

Key changes include the following:

From registration to licensing

Retirement funds will move from a registration based system to a formal conduct licensing regime. All funds will be required to hold a COFI licence issued by the FSCA in order to operate. Existing funds will be afforded a three year transition period from the date of promulgation to obtain the requisite licence.

As part of this shift, the PFA will be renamed the Retirement Funds Act.

Public sector funds regulated

Public sector retirement funds – including those to which the state, provincial entities or municipalities contribute – will be brought squarely within the FSCA's regulatory ambit. This reform aims to ensure consistent member protection across all retirement funds, regardless of sector.

Stronger governance requirements

The COFI Bill introduces enhanced governance standards for retirement fund boards. Trustees and other key persons will be subject to expanded "*fit and proper*" requirements, including standards of honesty, integrity, competence and relevant experience. The bill also reinforces democratic governance through member representation and strengthens accountability mechanisms.

Employers as supervised entities

A significant development is the designation of participating employers as "*supervised entities*" under the COFI Bill. This will enable the FSCA to exercise oversight over employer related conduct, including contribution non payment – a long standing risk to members' retirement savings.

Enhanced member protection

The Treating Customers Fairly (TCF) principles are embedded at the core of the COFI framework. Where a financial institution provides services to a retirement fund, retail customer protections will extend directly to fund members. The COFI Bill also restricts unreasonable post sale barriers that could impede members from transferring or switching products.

Activity based licensing for administrators

Retirement fund administrators will be required to obtain a COFI licence, replacing the current registration regime under section 13B of the PFA. The COFI Bill distinguishes between third party administration and own fund administration, reflecting COFI's activity based approach.

What now?

Although the COFI Bill may still be refined as it progresses through Parliament, the direction of reform is clear. Trustees, administrators and employers should begin familiarising themselves with COFI's core principles of fairness, transparency and accountability, and assessing how these will affect governance arrangements, compliance frameworks and operational practices.

Stakeholders should also consider engaging in the parliamentary process once the bill is formally tabled, to ensure that sector specific concerns are properly addressed.

Imraan Mahomed and Thato Makoaba

SOUTH AFRICA

New developments regarding the Fair Pay Bill

In our Alert of 21 July 2025, we highlighted the key issues to be aware of in relation to the Employment Equity Amendment Bill, commonly referred to as the Fair Pay Bill (Bill), which was proposed by the political party Build One South Africa (BOSA). On 30 April 2026, a Notice was issued regarding BOSA's intention to introduce an updated version of the Bill in the National Assembly.

The Bill aims to respond to two alleged persistent and harmful recruitment practices:

- the widespread reliance on a job applicant's past remuneration to determine starting pay, which anchors future earnings to salaries often shaped by discriminatory factors; and
- the lack of pay transparency in recruitment processes, particularly in the private sector, where vague terms such as *"market-related"* or *"competitive"* are used instead of clear remuneration figures.

The memorandum to the Bill notes that the absence of salary disclosure in job advertisements, especially in the private sector, gives prospective employers an information advantage that can be used to underpay candidates, particularly those from historically disadvantaged groups. Therefore, mandatory disclosure is intended to create a more competitive and equitable job market by levelling the playing field, reducing information asymmetry and helping to address persistent gender and race-based pay disparities.

The Bill also seeks to amend section 3 of the Employment Equity Act 55 of 1998 (EEA) to provide that it be interpreted in compliance with South Africa's obligations under the International Labour Organization's Convention (No. 100) concerning Equal Remuneration.

The Bill introduces three central reforms:

1. Prohibition on salary history: Employers will be prohibited from asking about, or relying on, an applicant's past or current remuneration in recruitment and hiring decisions.
2. Mandatory pay transparency: Employers must disclose remuneration or remuneration ranges:
    - in job advertisements; and
    - on request by applicants or employees.
3. Right to discuss pay; Employees will be permitted to share and discuss remuneration information, limiting the enforceability of pay secrecy practices.

Key provisions of the updated Bill

Definitions

The updated Bill introduces important new or amended definitions, including the following:

- "***Current remuneration***", which was not defined in the earlier version of the Bill, is now defined as "*the remuneration of a person in their current employment*".
- In relation to the "***employment policy or practice***" definition, the updated version of the Bill adopts a cleaner approach to the amendments proposed in the earlier version. In addition, the updated version of the Bill inserts a new, standalone sub-paragraph (cA) to the definition that expressly covers "*salary benchmarking and remuneration ranges for a job or position*" as an employment practice or policy.
- "***Enquiring***", which was set in the earlier version of the Bill as "*enquire*", has been more broadly defined to mean "*any attempt to gather information, directly or indirectly, either personally or through an agent*".
- "***Past remuneration***" is defined more narrowly than in the earlier version of the Bill as "*the remuneration of a person in any of their past employment*".
- "***Remuneration information***" has been defined as "*any information or records relating to or showing a person's remuneration, including salary records and proof of payment*". This is a change from the reference in the earlier version of the Bill to "*past remuneration information*".
- "***Remuneration range***", which was not defined in the earlier version of the Bill, is now defined as "*the range of remuneration that an employer currently pays for a job or position, or intends in good faith to pay upon hire*".

Remuneration transparency: Proposed section 6A to the EEA

Employers will be required, when conducting job classification, grading or evaluation, to determine the remuneration or, where applicable, the remuneration range for each job or position. The framing of this provision is different from the earlier version of the Bill, which was conditional and set the obligation to determine remuneration ranges as being triggered only **if** an employer conducts job classification and grading. However, the obligation is now framed as being mandatory whenever classification occurs, and expressly subject to section 6(4) of the EEA and any prescribed criteria/methodology prescribed in terms of section 6(5) of the EEA.

A new obligation has also been included for an employer to disclose, **on request**, the remuneration or remuneration range for a job or position for which a person is currently employed or for which they have applied or wish to apply. This is different to the position in the earlier version of the Bill that only required disclosure before appointing, promoting or transferring an employee into that position, and when advertising or recruiting for that position.

Prohibition on use of past or current remuneration: Proposed section 6B of the EEA

The prohibition under the proposed section 6B was impersonally framed in the earlier version of the Bill. It has now been made clear that it is **an employer** who is prohibited from, in the process of recruiting, selecting or appointing an applicant for a job or position:

- enquiring into an applicant's past or current remuneration or requiring their past or current remuneration information; and
- determining the remuneration or terms and conditions of employment for a job or position based on an applicant's past or current remuneration.

The exception to the above is that where an offer of employment has already been made to a job applicant, the applicant may then make a request, in writing, that their past or current remuneration be considered.

Importantly, a new provision has been added that any past or current remuneration will not justify any income differential or unfair discrimination.

Proposed amendments to section 9 of the EEA

Section 9 of the EEA currently provides that, for the purposes of sections 6, 7 and 8 of the EEA, the word "*employee*" includes an applicant for employment. In practical terms, this means that those provisions of the EEA that deal with unfair discrimination, medical testing and psychological testing extend their protections not only to people already employed, but also to those applying for jobs.

The Bill proposes to substitute section 9 in its entirety and replace the existing provision with a new section 9 headed "*Applicants*", which reads: "*For purposes of sections 6, 6A, 7 and 8, 'employee' includes an applicant for employment.*"

There is also no reference to the proposed section 6B in the substituted section 9. This appears to align with the now personified formulation of the proposed section 6B alluded to above, and the express reference to "*applicants*" in that proposed section.

Next steps

The Bill is currently open for public comment and interested parties and institutions are invited to submit written representations on the proposed content of the Bill to the Speaker of the National Assembly within 30 days (i.e. by 29 May 2026). Such representations can be:

- delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town;
- mailed to the Speaker at PO Box 15, Cape Town, 8000; or
- e-mailed to speaker@parliament.gov.za and copied to info@fairpaybill.co.za.

An unintended consequence of the Bill may be employers facing an upward wage pressure and reduced flexibility in remuneration negotiations.

We will continue to monitor developments and provide further guidance as the Bill progresses through Parliament.

Imraan Mahomed and Lee Masuku

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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