

**FINANCIAL SERVICES AUTHORITY (FSA) BILL AND
IMPROVING FINANCIAL SECTOR MARKET CONDUCT IN
KENYA**

**Highlights of the Financial Services Bill
and Impact of Sacco Subsector**

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Structure

1. Background & Rationale
2. FSA Objectives
3. Key Elements of the Bill
4. Key Relationships and definitions
5. Prudential Supervision of SACCOs/DTSS
6. Market Conduct Regulation Framework

1.0 Background & Rationale

1.1 Rationale

- ❖ Basis for the work is the Presidential Taskforce on Parastatal Reforms, 2013
- ❖ Recommendations issued in 2014 and approved by the H. E. President for implementation
- ❖ The recommendations came on the back of reforms that players in the financial sector were undertaking, notably: risk-based supervision, ICT and capacity enhancement
- ❖ Creation of a Financial Services Authority (FSA) bringing together four non-bank regulators using a single law for a unified regulatory approach

1.0 Background & Rationale cont....

1.2 Rationale for consolidating CMA, IRA, RBA and SASRA:

- increasing integration
- convergence in financial services
- blurring the lines between banking, DTSs, insurance, capital markets and long-term pensions sectors
- Reducing regulatory arbitrage
- Addressing regulatory gaps
- ❖ Reducing compartmentalised and fragmented industry oversight (silos)
- ❖ Because of prior delay, current work was done in extremely limited time and with urgency

1.0 Background & Rationale cont..

1. In 2014, H. E. Deputy President directed formation of Committee on Cost of Credit and Mortgage Finance
2. Led by CS Treasury, with participation of CS Health, CS Industrialisation, CBK Governor, and other experts
3. Wide ranging recommendations, but w.r.t. consumer protection:
 - Ensure disclosure of lending rates
 - Increase transparency in pricing of financial products
 - Develop financial services consumer protection law
 - Develop financial education national strategy and framework
 - Develop unified oversight of credit provision
 - Develop approach to oversee unregulated credit sector, e.g. credit only MFIs
4. These recommendations added impetus to the work on holistic financial sector market conduct framework

2.0 The FSA - Objectives

2.1 PREAMBLE: AN ACT of Parliament to provide for the:

- ❖ Establishment of uniform norms and standards in relation to the conduct of providers of financial products and financial services,
- ❖ Establishment of the Financial Services Authority, the Financial Sector Ombudsman, Compensation Fund and the Financial Sector Tribunal,
- ❖ Prudential supervision of prudentially regulated non-bank financial institutions,
- ❖ Promotion and maintenance of a fair and efficient financial sector in Kenya, and
- ❖ for connected purposes.

2.0 The FSA – Objectives cont....

2.2 Policy thinking behind FSA

- a) promote and enhance the safety and soundness of prudentially regulated financial institutions;
- b) enhance and support the efficiency and integrity of financial markets;**
- c) promote public confidence in and encourage the development of the financial sector;**
- d) protect financial customers by—**
 - (i) promoting fair treatment of financial customers by financial institutions; and**
 - (ii) providing financial customers and potential financial customers with financial education**
- e) promote systemic stability in the financial sector; and
- f) subject to paragraphs (a) to (e) —support the economic policy of the Government, including its objectives for growth and employment

3.0 Main Elements of the FSA Bill

- ❖ Builds on work done in 2014, but now is more broader, covering consumer protection/market conduct mandate, etc
- ❖ Establishes the FSA as directed by the Taskforce recommendations
- ❖ Provide stronger prudential powers through:
 - General prudential rule-making powers
 - Access to the full suite of enforcement powers introduced for conduct
 - Jurisdiction and regulatory powers over non-bank financial conglomerates
- ❖ Provide powers to support conduct regulation:

3. Main Elements of the FSA Bill

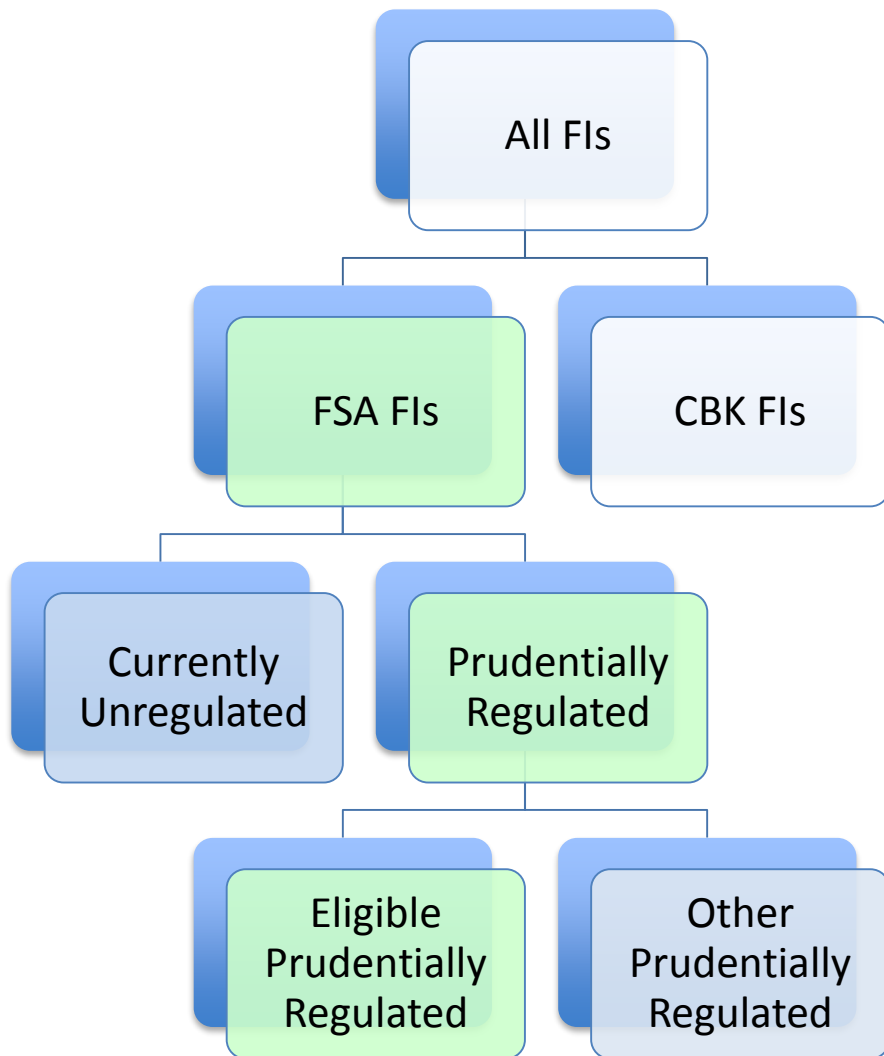
- ❖ Powers to support conduct regulation include:
 - Conduct rule-making power
 - Conduct license
 - Regulation of SROs
 - Information gathering
 - Inspections and investigations
 - Enforcement – full suite of graduated powers

- ❖ Establish a Statutory Ombudsman (for customer complaints)

- ❖ Establish a single Compensation Fund Manager (with multiple funds including **Deposit Guarantee Fund**)

- ❖ Establish a Tribunal (for industry complaints against FSA)
- ❖ Financial arrangements (industry funded), transitional provisions, consequential amendments

4.0 Key Relationships and definitions



- Financial institutions = all FIs minus CBK supervised FIs
- **Prudentially regulated = existing 4 industries**
- Eligible FIs = large prudentially regulated FIs (for conglomerates) – Saccos, Insurers, Security Exchanges

Objective: No provider of a financial product or service should escape conduct regulation (unless by explicit exemption)

5.0 Prudential Regulation of DT SACCOs

- ❖ Primary focus is:
 - financial soundness of the DTS or the financial institution in order to ensure institutional capacity to deliver on its promise to members or customers
 - Hence financial soundness of the industry and the financial system as a whole
- ❖ Current policy is such that regulation is institutional based hence DTSs, Non-DTSs, Money lenders, MFIs, Insurers etc.
- ❖ FSA Bill provides for establishment of the Authority, its objectives, Functions, and Powers (previous under industry Laws)
- ❖ Bill **preserves and improves** the current prudential regulatory framework in Cap 490B and other Industry Laws

5.0 Prudential Reg of DT SACCOs cont..

- ❖ So what is really new under FSA Prudential regulation powers?
 - Powers to regulate non-bank financial institutions that cut across financial subsectors
- ❖ Current framework creates regulatory arbitrage and regulators have entered into MoUs to cure collaboration and information sharing challenges
- ❖ FSA intends to regulate financial conglomerates that include at least 1 “Eligible” FSA regulated FI and which are not headed by a CBK-regulated entity. Sections 80s to 86
- ❖ CBK will regulate conglomerates that are headed by a CBK regulated FI
- ❖ FSA will determine the scope of regulation and will carve out any CBK-regulated entities from direct supervision (any group-wide requirements that affect a CBK entity will require CBK concurrence)

6.0. Market conduct reg. framework

Main Tools of Conduct Regulation

- ❖ Market Intelligence and analysis
- ❖ Licensing
- ❖ Conduct rules and guidance
- ❖ Supervision for market integrity
- ❖ Supervision for customer protection
- ❖ Enforcement
- ❖ Dispute resolution
- ❖ Customer education
- ❖ Stakeholder engagement