Financial Sector Regulation Act
Implementing Twin Peaks and the impact on the industry
Executive Summary

What is the Financial Sector Regulation Act?
Signed into law in August 2017, the Financial Sector Regulation (FSR) Act is effective from 1 April 2018, and is a piece of legislation that will bring about a major transformation of the South African financial services regulatory and risk management framework, including the move to a Twin Peaks approach to regulation.

What does it do?
The Twin Peaks approach sees the regulation of prudential and conduct risk separated out under the supervision of two distinct regulatory bodies, the Prudential Authority (PA) - contained within the South African Reserve Bank (SARB) - and the Financial Sector Conduct Authority (FSCA). The current Financial Services Board (FSB) will ultimately be replaced by the FSCA, and the SARB will become the resolution authority responsible for protecting, maintaining and enhancing financial stability.

What are the objectives of the FSR Act?
By restructuring the regulatory system, the FSR Act aims to increase its robustness, reinforce financial stability and integrity, and improve protection for customers from potential poor conduct by financial services firms.

What are the key points?
- The PA is responsible for the oversight of activities of financial institutions from a prudential perspective, and the FSCA is responsible for regulating conduct activities. There are no longer separate regulators for banks and insurers.
- The new regulators have the power to create regulatory standards and have supervisory tools and enforcement powers at their disposal, to enable them to fulfill their objectives.
- Various councils and committees are being created with the objective of facilitating effective collaboration and co-operation between the regulatory bodies.
- Sanctions may be imposed on organisations and individuals found to be in contravention of financial sector laws and regulations in the scope of the FSR Act.

This document aims to outline the main features of the FSR Act (including the responsibilities and powers of the new regulatory bodies), highlight the key considerations for firms for implementation, and detail the support EY can provide to our clients as they prepare for the new legislation to take effect.
Background to the changes to South Africa’s financial regulation

The international financial crisis highlighted vulnerabilities in the global financial system, amplified by the interconnectedness of financial markets, prompting a change in regulation worldwide. There was a general consensus that co-ordinated global action was required in order to prevent a similar financial crisis from re-occurring. South Africa follows other jurisdictions, such as the UK in implementing a Twin Peaks approach to regulation, i.e. having dedicated regulatory authorities for prudential and conduct matters. In South Africa, these regulatory bodies will be the Prudential Authority (PA) and Financial Sector Conduct Authority (FSCA) respectively.

The FSR Act, promulgated on 21 August 2017 and effective from 1 April 2018, provides a robust framework for the financial sector and is intended to support an extensive regulatory system. Its purpose is to reinforce financial stability and maintain the soundness of individual institutions while protecting their customers. Other objectives of the Act include ensuring fair treatment of customers and productivity of the financial system, the prevention of financial crime, monetary consideration, changes of the sector and trust in the financial system.

The FSR Act also makes provisions for licensing, supervision and enforcement for authorised entities, and additionally measures for complaints resolution and customer education. The FSR Act aims to improve the structure of the regulation of financial services by ensuring more consistent and complete regulation. It gives the PA and the FSCA jurisdiction over all financial institutions and will provide them with a range of supervisory tools to fulfill their objectives.

The FSR Act will be implemented progressively, initially establishing the regulators and a uniform system, then defining the required standards, before focusing on streamlining the current activity-based regulation into consolidated legislation to reduce the scope for regulatory arbitrage.

The FSR Act is considered to be the most significant reform of the South African financial sector regulatory architecture in over 30 years.¹ Both the PA and FSCA are required to formulate and adopt a regulatory strategy within six months of the FSR Act coming into effect. This will provide general guidance on the achievement of objectives and the performance of its regulatory and supervisory functions. The anticipated sequencing of the implementation of the FSR Act and ancillary legislation is set out below.

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¹ “The FSR Act is considered to be the most significant reform of the South African financial regulatory architecture in over 30 years.” SARB press release, https://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/7948/SARB%20welcomes%20sign-ing%20into%20law%20of%20Financial%20Sector%20Regulation%20Act1.pdf, 22 August 2017
Governance

The success of the new regulatory framework will be dependent on clear co-ordination and co-operation between the relevant regulatory authorities. In order to achieve this, a new system of governance is being put in place, including a number of oversight committees outlined below. These committees will play a prominent role in ensuring co-ordination and co-operation within the Twin Peaks framework, as well as with regulatory authorities which fall outside of the Twin Peaks umbrella, such as the National Credit Regulator (NCR).

Bodies to oversee and co-ordinate regulators:

### Financial Services Tribunal (FST)
- The FST ensures that the regulators have clear internal policies and procedures for enforcement, enhanced transparency and accountability, as well as a robust appeals mechanism.
- The Minister of Finance appoints the members of the FST who must include at least two retired judges or persons with suitable legal experience and at least two other people with sufficient financial services, products and instruments, market infrastructures or financial systems experience.

### Financial Stability Oversight Committee (FSOC)
- The FSOC facilitates the collaboration and co-operation between the SARB and the financial sector regulators (including the PA, FSCA, NCR and FIC), in matters relating to financial stability.
- The FSOC will advise the SARB and the Minister of Finance on the designation of Systemically Important Financial Institutions (SIFI) and matters relating to crisis management and prevention.
- The FSOC consists of:
  - the SARB Governor
  - the Deputy Governor responsible for financial stability matters
  - the Chief Executive Officer (CEO) of the PA
  - the Commissioner of the FSCA
  - the CEO of the National Credit Regulator (NCR)
  - the Director-General of the National Treasury
  - the Director of Financial Intelligence Centre
  - a maximum of three additional persons appointed by the SARB Governor

### Financial System Council of Regulators (FSCR)
- The FSCR facilitates the collaboration and co-operation between the institutions represented below, to discuss and inform themselves about matters of common interest:
  - Director Generals of the:
    - National Treasury
    - FIC
    - Department of Trade and Industry
    - Department of Health
  - The CEOs of the:
    - Prudential Authority
    - NCR
  - The Commissioners of the:
    - FSCA
    - National Consumer Commission (NCC)
    - Competition Commission
    - Registrar of Medical Schemes (CMS)
  - SARB Deputy Governor responsible for financial stability matters

### Financial Sector Inter-ministerial Council (FSIC)
- The role of the FSIC is to promote collaboration and co-operation between the cabinet members responsible for administering financial sector legislation.
- Included in this council are the:
  - Minister of Finance
  - Cabinet member responsible for consumer protection and consumer credit matters
  - Cabinet member responsible for health
  - Cabinet member responsible for economic development

### Financial Sector Contingency Forum (FSCF)
- Forum to be established by the SARB Governor with the primary aim of assisting FSOC with the identification of potential risks of systemic events, and the co-ordination of appropriate plans, mechanisms and structures to mitigate those risks.
- Consists of at least eight members including:
  - A SARB Deputy Governor who is to be the chairperson of the forum (designated by the SARB Governor)
  - Representatives of each of the financial sector regulators
  - Representatives of other organs of state, as the Chairperson may determine
  - Representatives of financial sector industry bodies and any other relevant person, as the Chairperson may determine

### New Prudential Authority (PA)
- The PA is responsible for the prudential regulation and supervision of financial conglomerates, banks, insurers, corporate banks, co-operative financial institutions and certain financial market infrastructures.
- The role of the PA is to ensure the safety and soundness of financial institutions, market infrastructures and assist in maintaining financial stability.
- The PA must have a suitably qualified SARB Deputy Governor as the CEO.
- The CEO will be responsible for the day-to-day management and administration of the PA.
- A Prudential Committee (PC) is also to be established for the PA and consists of the SARB Governor, the CEO of the PA and other SARB Deputy Governors.
- The PC must oversee the management and administration of the PA to ensure that it is efficient and effective.
- The PC must, within six months after the date on which the FSR Act takes effect, adopt a regulatory strategy for the PA to achieve its objectives.

### Financial Sector Conduct Authority (FSCA)
- The FSCA is responsible for regulating and supervising the conduct of financial institutions.
- The role of the FSCA is to ensure consumer protection and market conduct.
- The Minister of Finance must appoint fit and proper people with appropriate experience in the financial sector as Commissioner and Deputy Commissioners.
- The Commissioner is responsible for the day-to-day management and administration of the FSCA.
- The Executive Committee is established for the FSCA, which consists of the Commissioner and the Deputy Commissioners.
Regulatory scope and powers

Financial Sector Law

The scope of any regulatory requirements and actions is based on what the FSR Act refers to as “financial sector law” in terms of an exhaustive list of sources. Schedule 3 of the Act assigns jurisdiction to the newly created authorities accordingly:

<table>
<thead>
<tr>
<th>PA</th>
<th>FSCA</th>
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<tbody>
<tr>
<td>• Banks Act</td>
<td>• Pension Funds Act</td>
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<tr>
<td>• Mutual Banks Act</td>
<td>• Friendly Societies Act</td>
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<tr>
<td>• Co-operative Banks Act</td>
<td>• Financial Advisory and Intermediary Services Act</td>
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<tr>
<td>• Financial Supervision of the Road Accident Fund Act</td>
<td>• Collective Investment Schemes Control Act</td>
</tr>
<tr>
<td>• Long-term Insurance Act and Short-term Insurance Act, as they relate to matters within the specific objectives of the Prudential Authority</td>
<td>• Financial Markets Act</td>
</tr>
<tr>
<td>• Regulations issued in terms of any of the above</td>
<td>• Credit Rating Services Act</td>
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<tr>
<td></td>
<td>• Long-term Insurance Act and Short-term Insurance Act, as they relate to matters within the specific objectives of the Financial Sector Conduct Authority</td>
</tr>
<tr>
<td></td>
<td>• Regulations issued in terms of any of the above</td>
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</tbody>
</table>

The CoFi Act, once enacted, is expected to extend the scope of the FSCA’s jurisdiction and amend the FSR Act accordingly. The Special Resolution Act, once enacted, is expected to introduce further safety and soundness reforms in the form of a deposit insurance scheme and a resolution framework. The Insurance Act, once enacted, will provide a legal framework for the prudential supervision of insurance companies, including micro-insurers.

Regulatory Powers

Licensing

The PA and FSCA, respectively, will issue, suspend and revoke licences according to a separate, but closely co-ordinated process.

Licences are required for financial institutions or persons to perform specific activities in accordance with a specific financial sector law. If no specific financial sector law applies, the financial institution must be licensed in terms of the FSR Act itself. The responsible authority must consider the application and its outcome must be decided within three months.

The financial institution must be licensed under the relevant regulator in relation to the activity being conducted. In occurrences where licence applications are under the supervision of multiple regulators the licensing regulator will enter into Memoranda of Understanding (MOUs) with the other authorities. Should the financial institution be a Systemically Important Financial Institution (SIFI), SARB approval must be sought for the licence application.

Factors that are taken into account in licence applications include:
- Objectives of authority
- The applicant's financial and other resources
- Fit and proper requirements
- Governance and risk management arrangements
- Statements in the application are not false or misleading

Licences may be amended by the responsible authority by removing or varying conditions, or changing categories of products, services or customers. The authority responsible for licensing has the right to suspend or revoke a licence for specific contraventions. It can also decline to revoke or suspend a licence if it would not be in the interest of customers or the financial sector law. The licensee can also be allowed to continue with its activities, after a licence has been revoked or suspended, for the same reasons. The responsible authority will determine the procedures for applications and these procedures must be published.

The Financial Sector Information Register must contain a list of all licences and the status of these. Any licence, authorisation, approval, registration, consent or similar permission in force immediately before the date that the FSR Act comes into effect will remain in force, but may be revoked or amended in accordance with the provisions of a financial sector law.
# Standard-setting

## Regulatory standards

The FSR Act allocates a defined set of subject matters to dedicated Prudential Standards and Conduct Standards, which are issued and subsequently supervised and enforced by the PA and the FSCA respectively. A number of general subject matters can be included in either type of regulatory standard, with jurisdiction assigned to the relevant issuing regulatory body.

<table>
<thead>
<tr>
<th>Matters reserved to Prudential Standards</th>
<th>Matters to be included in either type of Standard</th>
<th>Matters reserved to Conduct Standards</th>
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</thead>
<tbody>
<tr>
<td>• Capital adequacy</td>
<td>• Fit and proper requirements</td>
<td>• Fair treatment of customers</td>
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<tr>
<td>• Liquidity and cash reserves requirements</td>
<td>• Board governance</td>
<td>• Design and suitability of financial products and financial services</td>
</tr>
<tr>
<td>• Minimum asset quality</td>
<td>• Appointment/dismissal, remuneration/reward and responsibilities of key persons</td>
<td>• Promotion, marketing and distribution of, and advice in relation to those products and services</td>
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<tr>
<td>• Credit concentrations</td>
<td>• Financial management</td>
<td>• Resolution of complaints and disputes concerning those products and services, including redress</td>
</tr>
<tr>
<td>• Solvency measures, specifically counter-cyclical buffers</td>
<td>• Risk management and internal control requirements, set up of control functions</td>
<td>• Information disclosure</td>
</tr>
<tr>
<td>• Leverage ratio</td>
<td>• Outsourcing, record-keeping, data management and reporting</td>
<td>• Refusal, withdrawal or closure of product or service</td>
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<tr>
<td>• Organisational structures</td>
<td>• Amalgamation, merger, acquisition, disposal and dissolution</td>
<td>• Financial education programmes</td>
</tr>
<tr>
<td>• Risk management structures, including guarantees</td>
<td>• Conflicts of interest management</td>
<td>• Design, suitability, implementation, monitoring and evaluation of financial education programmes, or other initiatives promoting financial literacy</td>
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<tr>
<td>• Sectoral and geographical exposures</td>
<td>• Safekeeping of assets</td>
<td>• Prevention of financial crime</td>
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<td>• Statistical returns</td>
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<tr>
<td>• Public disclosure</td>
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<tr>
<td>• Recovery, resolution and business continuity</td>
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<tr>
<td>• Financial stability</td>
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As another distinct regulatory instrument type, the FSR Act introduces Joint Standards, which are issued, supervised and enforced by the PA and the FSCA together. Joint Standards can include any of the subject matters listed above.

The above subject matters are not necessarily exhaustive, as the FSR Act contains blanket clauses that allow for regulatory standards to cover any further matters pertaining to the respective regulatory objectives that the Act establishes for the PA and FSCA respectively.
Supervision

Under Twin Peaks, the PA and FSCA will become the two main supervisory bodies within the financial services sector. Accordingly, the FSR Act endows the new authorities with a number of supervisory tools and powers designed to assist them in fulfilling their regulatory objectives.

Information gathering

The responsible authority may request information or documents in writing from a supervised entity on an ad-hoc basis, should there be suspicion of a contravention of a financial sector law.

A supervised entity must comply with the request for information or documents (although in some cases legal privilege may be claimed). Responsible authorities may also use mystery shopping to gather information.

Supervisory on-site inspections

The responsible authority may request an on-site visit for purposes of checking compliance with financial sector law, directives or enforceable undertakings, determining the extent of risk posed by any contravention and assisting in supervising the financial institution’s activity.

The Consumer Protection and Credit authorities may request documents and examine them, take extracts or copy them, and question any person. If any contravention is suspected, they can direct the supervised entity not to conceal or destroy documents and can take possession of such documents.

Investigations

Regulators may instruct an appointed investigator to conduct an investigation if there is a suspicion that a relevant financial sector law has been contravened, or if the regulator reasonably believes that an investigation is required to meet its objectives. Responsible authorities may also investigate any matter relating to certain aspects of the Financial Markets Act, Insider Trading Act and Securities Services Act. For the purposes of conducting the investigation, an investigator may:

- Require a person to appear before the investigator
- Produce documents or items and examine, take extracts or copy
- Question a person (who may have a legal practitioner present to assist)
- Require a person to make an oath or affirmation
- Take possession of documents or items

Investigators may also:

- Enter premises with prior consent
- Enter premises without prior consent if a warrant is obtained or with prior authority of certain designated regulator roles

Entrance to premises must be within ordinary business hours unless a warrant is given to enter at night. Investigators must be accompanied by a police officer or an appointed person. A person may not intentionally nor negligently interfere with an investigation.
Enforcement and sanctions

Enforcement

Compliance with financial sector laws
The current enforcement process varies in approach, depending on the regulatory authority concerned. Under the Twin Peaks regime, the regulators will follow an enforcement model whereby certain administrative actions may be taken and remediations may be issued through directives.

Enforcement powers
A range of enforcement powers will be available to the new regulators, including the ability to levy administrative penalties.

Appeals
Actions undertaken by the authorities can be referred for appeal to the FST, in its capacity as independent and impartial arbiter.

The FST may dismiss the appeal, set the decision aside and return the matter to the original decision-maker for further consideration, or replace it with the FST’s decision. If any party is dissatisfied with the FST’s order, they may apply for a judicial review.

Administrative actions and sanctions

Issuing directives
The regulators will be able to issue written directives to financial institutions or key persons compelling them to take specific action. This could be for a number of different reasons, for example, if the firm is contravening or likely to contravene a relevant financial sector law, or if the firm’s treatment of its customers is not in line with its Treating Customers Fairly (TCF) obligations. In some specific scenarios, agreement must be sought from other regulatory bodies before the directive can be issued.

Court orders
The responsible authority can apply to the High Court for an order to ensure compliance with the financial sector law. Apart from interim orders, the responsible authority must publish each court order that it obtains. The publication of these orders could result in potential reputational damage to the firm and/or the individual concerned.

Enforceable undertakings
A financial institution can enter into an agreement – known as an enforceable undertaking – with the regulator. This is a contractual commitment made by the financial institution to take certain actions to rectify a contravention of financial sector law, and/or to remediate customers who have been impacted as a result. Details of the enforceable undertaking are likely to be published, and sanctions can be imposed on firms that do not adhere to the agreed terms.

Debarment orders
Where the regulator considers that a certain individual presents a risk to financial customers, they can impose a debarment order which prevents the individual from undertaking particular roles within the financial services sector for a stipulated period of time. Examples could include debarring an individual from providing specific services or from holding certain key positions. In order for a Debarment Order to be issued, it must have been determined that the individual in question has committed specific contraventions, such as non-compliance with a financial sector law, regulator’s directive or enforceable undertaking, or facilitating another’s non-compliance.

Sanctions
At an organisational level, sanctions can be imposed for non-compliance with individual directives or debarment orders, with a potential fine of up to R15m, subject to conviction by a court.

Sanctions can also be imposed on individuals as a result of non-compliance with directives, contravention of which is a criminal offence and carries a penalty of a fine of up to R15m, and/or up to 10 years’ imprisonment.

If an individual provides the financial regulator or the SARB with false or misleading information (including an omission), they are liable for a fine of up to R10m and/or up to 10 years imprisonment. The responsible authority can issue a temporary debarment to a person, preventing them from working in the financial services sector altogether.

An offence in terms of financial sector laws by a financial institution makes a member of the governing body personally liable on conviction by a court.

A financial sector regulator may remove a person from a position only if they are in contravention of financial sector laws, involved in financial crime or non-compliance with fit and proper requirements.
Financial conglomerates

The PA may designate members of a group of companies to be a financial conglomerate as per the FSR Act. Any designation conducted by the PA must be for the purpose of facilitating the prudential supervision of the eligible financial institution. The financial conglomerate designated by the PA must include the eligible financial institution, plus the holding company of the financial institution, but not all members of the group need to be included. The PA must give the holding company notice of the proposed designation and the purpose of and the reasons for the proposed designation. The holding company will be invited to make submissions on the designation matter and be given a reasonable time to do so. The PA must consult the FSCA on any designation it intends to pursue. The decision to designate members of an financial institution must take into account at the very least the following considerations:

- The risk to effective prudential supervision of the financial institution from the structure of the group of companies
- Submissions made by or for the holding company
- Any other matters that may be prescribed by regulation

The PA is able to set Prudential Standards for financial conglomerates over and above general standards in respect of:

- Financial and other exposures of companies within the financial conglomerate
- Governance and management arrangements of holding companies
- Reporting of information about companies within the financial conglomerate that are not financial institutions
- Reducing or managing risks to safety and soundness of the financial institution arising from other members of the financial conglomerate

The PA can issue directives to holding companies imposing requirements to manage and mitigate risk to prudential management or financial soundness.

Financial stability

The SARB is mandated to protect and enhance financial stability. In a case where a systemic event has adversely affected financial stability, the SARB must restore and maintain financial stability. In addition to this, the SARB must also monitor and keep under review the strengths and weaknesses of the financial system and any risks to financial stability.

The SARB must conduct a Financial Stability Review at least every six months. The review should set out the assessment of financial stability in the review period, the risks to financial stability in the next 12 months, overview of steps taken to identify and manage risk, and a summary of recommendations and progress of implementing the recommendations. The financial stability review will not include any information that may materially increase the possibility of a systemic event. Such information will only be included once the risk of a systemic event subsides.
## Twin Peaks structure

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<th>National Payment Systems</th>
<th>Financial Stability</th>
<th>SARB Resolution Authority</th>
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<tr>
<td>CIS</td>
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<tr>
<td>Financial Sector Contingency Forum</td>
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</table>

### Committee
- **Committee Decisions**
  - Facilitates the collaboration between the SARB and the financial sector regulators on matters relating to financial stability
  - Votes on proposals

### Sub-committee
- **Financial Sector Contingency Forum**

### Objectives
- Supports the SARB to perform its function in relation to financial stability

### Functions and measures
- Supports the SARB to perform its function in relation to financial stability

### Directives
- Support restructure, resolution or windup
- Prevent and/or reduce spend of risk and or disruption and increasing resilience

### Delegation
- Assigns subcommittee duties to PA committees

### Regulatory Strategy
- States regulatory and supervisory priorities of the PA for the next three years and intended key outcomes of the strategy
- Establishes and implements appropriate and effective governance systems

### Governance
- Governing bodies to ensure effective compliance
- Financial Stability Review to be conducted on a six month basis
- Minister of Finance and FSOC reviews and comments on Prudential Standards and a copy is sent to Parliament

### Power
- Act within the policy framework agreed by the Minister of Finance and the Governor of the SARB
- Appoints a CEO to manage and exercise powers of the PA

### Finances
- CEO recommends fees for the PA and protects assets of PA, maintains transparency and cost efficiencies
- Financial accounts to form part of the SARB annual report

### Levies
- Administers the collection and distribution of levies

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**National Reserve Bank**

**SARB Resolution Authority**

**FSR Act**

**Micro Prudential**

**Macro Prudential**

**Committee**
- **Chair**
  - Governor

**Prudential Committee**

**CEO**

**Oversees the management of PA to ensure efficient and effective votes on proposals**

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**Governor**

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**Supports the SARB to perform its function in relation to financial stability**

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**Supports the SARB to perform its function in relation to financial stability**

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**Promotes safety and soundness of financial institutions and market infrastructure and assists in maintaining financial stability**

**Protects financial customers against the risk that financial institutions may fail to meet their obligations**

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**Regulates and supervises financial institutions and market infrastructure, co-operates with all the other financial sector regulators and councils and supports financial inclusion and sustainable competition**

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**Sets prudential, joint and other regulatory instruments and notifies SARB and FSOC of steps to enforce a standard or directive**

---

**States regulatory and supervisory priorities of the PA for the next three years and intended key outcomes of the strategy**

**Establishes and implements appropriate and effective governance systems**

---

**Minister of Finance and FSOC reviews and comments on Prudential Standards and a copy is sent to Parliament**

---

**Appoints a CEO to manage and exercise powers of the PA**

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**Administers the collection and distribution of levies**

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**FSCA**

- **Customer Conduct**
- **Counterparty Conduct**

**Executive Committee**

- Oversees the management of FSCA to ensure its efficiency and effectiveness and vote on proposals

**Commissioner**

Enhances and supports the efficiency and integrity of financial markets, protects financial customers and assists in maintaining financial stability

- Regulates and supervises conduct of financial institutions; co-operates with all other financial sector regulators and councils; promotes financial inclusion and sustainable competition
- Supervises financial institution’s conduct in relation to the provision of credit as well as provides oversight of debt collection services
- Sets conduct, joint and other regulatory instruments
- FSCA may not make standards that impose requirements on payment systems or to assist in financial stability without concurrence from the SARB

FSCA will set conduct, joint and other regulatory instruments

States regulatory and supervisory priorities of the FSCA for the next three years and intended outcomes of the strategy

Establishes and implements appropriate and effective governance systems

The Minister of Finance must appoint fit and proper persons with appropriate experience in the financial sector as Commissioner and Deputy Commissioners

Appoints a Commissioner to manage and exercise powers of the FSCA

Administers the collection and distribution of levies

**Enforcement tribunal for the FS Regulators**

**Financial Sector Inter-ministerial Council**

- Financial Services Tribunal
- CMS
- NCC
- National Treasury
- Financial System Council of Regulators
- FIC
- NCR
- Dept. of Health
- Competition Commission
- Dept. of Trade and Industry

Activity based licencing. Relevant regulator will issue the licence in accordance to the activity. In occurrences where licence applications are under the supervision of multiple regulators the licencing regulator will enter into MOUs with the other authorities. Should the financial institution be a Systemically Important Financial Institution (SIFI), SARB approval must be sought for the licence application.

“**The Twin Peaks structure will introduce a holistic approach for supervising financial conglomerates. This will result in additional prudential requirements for these conglomerates.**”

Vibhuti Laloo, Financial Services Africa Prudential Director

“**The Twin Peaks model is aimed at providing a stable and mature financial services sector, which in turn provides accessible, affordable and well designed products and services that meet consumer needs.**”

Abigail Viljoen, Financial Services Africa Risk Management Leader
What actions should firms be taking now?

Twin Peaks is a move from a fragmented to a more consolidated and comprehensive regulatory system. Whilst this provides a platform for the promotion of regulatory consistency, reducing the scope of regulatory arbitrage, firms will need to align with these changes in an efficient and effective manner. Given the anticipated timetable of activity, it is essential that regulated firms begin to respond and consider the impact of the proposed changes and prepare both strategically and operationally. Having worked closely with the financial services industry in other countries that have implemented this supervisory model, EY considers the following to be key areas:

**Structure**

Firms should consider whether their existing structure is appropriately aligned to the new supervisory model. Firms designated as financial conglomerates are likely to require more change to their organisations than less complex structures. The FSR Act defines which regulator is in charge of which type of institution and aims to streamline the reporting and communication processes between regulated firms and the regulators. In particular, for dual-regulated firms, this may require internal restructuring of functions and capability within these functions. With the focus of supervisors shifting to include macro-prudential supervision, additional reporting and emphasis on macro-prudential indicators is likely to result in additional metrics, focused on maintaining financial stability, which firms may need to consider.

**Data and reporting**

The implementation of Twin Peaks regulation is likely to drive more stringent reporting requirements within increasingly dense data landscapes. Increasingly, EY has seen firms developing central repositories of integrated risk data into a single data warehouse to facilitate consistent and accurate risk reporting. In line with the new regulatory structure, compliance with the Risk Data Aggregation and Reporting (RDAR) principles, as they already apply to banks, is likely to become mandatory across the financial services industry more broadly. The amount and complexity of data required in relation to third parties such as intermediaries forming part of a financial institution’s distribution network, its suppliers or outsourcing partners, and others, is likely to significantly increase.

**Skills**

The delineation between the regulation of prudential and conduct risk is likely to mean that more specialised resources will be required. This is especially true for conduct risk, which is a relatively new area of focus for the South African financial services regulation. In addition, most firms will be supervised by a new regulator including requirements for regulatory reporting, potentially resulting in the need for new skills or up-skilling of existing people. This may mean investment into training and development for existing personnel or recruitment to hire in the right skills to meet the new requirements.

**Technology**

In a regulatory environment with high levels of scrutiny and complexity, EY has observed the emergence of new approaches to risk and regulatory management practices across the financial services sector globally. The likely increase in the cost and complexity of compliance is leading firms, technology providers and regulators to focus on new enabling technologies to meet regulatory challenges. The emergence of these enabling technologies is commonly referred to as “RegTech”, which can be described as the adoption of innovate technologies to facilitate the delivery of regulatory requirements. In our view, the early adoption of such technologies will be crucial to enable more efficient and effective compliance. In responding to Twin Peaks regulation, firms should identify the relevant compliance and reporting elements that can benefit from automation and consider potential solutions to address these needs.

**Prudential considerations**

Financial conglomerate supervision will result in additional prudential requirements specifically for financial conglomerates. Financial conglomerates will be required to incorporate these prudential requirements in their business models.

In addition, the Twin Peaks structure will introduce two new pieces of legislation, namely the Special Resolution Act (SRA) and the Financial Sector Levies Act (FSLA). These two pieces of legislation will result in additional costs for banks via the contributions to a deposit insurance scheme and increased annual licence fees. Banks should consider these additional costs during their financial planning process.
How can EY help financial institutions to comply with the FSR Act?

EY has a dedicated Financial Services Advisory practice, which includes Risk Management, Technology, Process and People. This gives us deep industry knowledge in all aspects of the financial services industry, allowing us to tailor integrated solutions to our clients’ specific needs.

Our Financial Services Risk Management (FSRM) practice combines local regulatory and legislative knowledge with global experience. The team has experience working with financial services firms and regulators in jurisdictions that have adopted a Twin Peaks model of supervision, and of providing support in preparing for and implementing the required changes.

Moreover, the FSRM practice covers a breadth of risk and regulatory topics across all sectors of the financial services industry, including:

- Market Conduct: Helping financial services organisations design their interactions with customers and counterparties, including those in the capital markets, to deliver fair outcomes and market integrity, and effectively manage associated regulatory, reputational and strategic risks.
  - Prudential regulations ensure that banks and insurance companies globally are resilient to financial and economic stresses that are top priority for global regulatory bodies such as the Basel Committee on Banking Supervision and the Financial Stability Board. The services offered to CFOs, CROs, treasurers and data officers include:
    - Efficient compliance with multiple, overlapping prudential regulatory requirements
    - Optimised balance of financial resources i.e. capital, liquidity and leverage
    - Increased timeliness and value of critical business decision support
    - Optimised return on equity and capital adequacy ratios
  - EY can assist with defining the prudential regulatory framework and the pro-active strategic response to mitigate the implications of these regulations on key financial indicators.
  - EY’s global regulatory network leverages regulatory knowledge on an international scale. We can support our clients in understanding and addressing the most critical financial and compliance impacts for their business as a result of regulatory change, and help them to implement solutions on a cross-border basis to support compliance wherever they operate.
  - EY can help our clients with the assessment of their current frameworks and the implementation of strategies to mitigate conduct risk in the evolving digital and compliance landscape.
  - In today’s environment of heightened and evolving regulation and structural changes, our professionals can work side by side with our clients to interpret new rules as they are issued. Through this collaboration, any compliance and operational changes that are required can be identified quickly and processes can be established to implement them efficiently.
  - In terms of governance, EY can assist financial services organisations with streamlining their legal entity (board) and management governance structures.
  - EY’s Enterprise Risk Management practice includes a focus on Market Risk, Credit Risk, Operational Risk, Conduct Risk and Compliance Risk.
  - We can support financial services organisations in designing the identification, assessment, mitigation and reporting of risk and the streamlining of associated control functions.
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