

Treasury on new Twin Peaks regulators

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New Twin Peaks regulators established

On 1 April 2018, South Africa's financial regulatory system will fundamentally change, as two new regulators come into operation - the Prudential Authority (PA) and the Financial Sector Conduct Authority (FSCA). This implements a new Twin Peaks model of financial sector regulation in South Africa.

The Minister of Finance and Governor of the South African Reserve Bank are pleased to announce the appointment of Deputy Governor Kuben Naidoo as the CEO of the Prudential Authority. Established within the South African Reserve Bank, the PA will supervise the safety and soundness of all financial institutions. The FSR Act also provides for stronger oversight of financial conglomerates and of systemically important financial institutions (SIFIs).

The Minister of Finance will initiate the legislated process to appoint a Commissioner and Deputy Commissioners for the FSCA, expected to take three months. The FSCA will supervise how financial institutions conduct their business and treat customers. It will be responsible for significantly improving customer protection in the financial sector, and driving better customer outcomes, ensuring that the sector serves South Africans best. It is also responsible for the efficiency and integrity of financial markets. The current Financial Services Board (FSB) closes down on 31 March 2018. Transitional plans for the closing down of the FSB and the establishment of the FSCA are well-progressed. A Transitional Management Committee will be responsible for implementing transitional plans, until a FSCA Commissioner and Deputy Commissioners have been appointed. The chair of the FSB Board, together with the current executive committee of the Financial Services Board, are included in the Transitional Management Committee in order to ensure a smooth and non-disruptive process.

The 2011 policy document, "A Safer Financial Sector to Serve South Africa Better", first proposed the shift to a Twin Peaks model of regulation. Twin Peaks is a comprehensive and complete system for regulating the financial sector. It represents a decisive shift away from a fragmented regulatory approach and will reduce the possibility of regulatory arbitrage or forum shopping and close gaps in the regulatory system. Twin Peaks aims to make the financial sector safer and make it work more effectively in the interests of all South Africans, by reducing potential threats to financial stability and better protecting customers by ensuring that financial institutions treat their customers fairly.

Both the PA and FSCA will publish regulatory strategies within six months of their establishment, setting out in further detail their intended regulatory focus areas and work plans over the next three years.

A Commencement Notice and Regulations have been published in the Government Gazette to give effect to the relevant provisions of the Financial Sector Regulation Act (Act 9 of 2017)(FSR

Act) that provides for the Twin Peaks system. The attached Annexure provides further detail on the implementation of the FSR Act.

In order to ensure a well-managed and non-disruptive transition to the new model, certain provisions of the FSR Act will be phased in over time. Once fully phased in, the Twin Peaks regulatory model will focus on a more harmonised system of licensing, supervision, enforcement, customer complaints (including ombuds), appeals, and consumer advice and education across the financial sector. Ensuring that there is co-ordination across all regulators in the financial system is an important supporting pillar. These regulators include the PA and FSCA, the National Credit Regulator, the Financial Intelligence Centre, the Council for Medical Schemes and the South African Reserve Bank.

The Commencement Notice and Regulations can be found on www.treasury.gov.za/twinpeaks

Annexure: FSR Act Implementation

In addition to the establishment of the Prudential Authority and Financial Sector Conduct Authority, the Commencement Notice and Regulations also provide for the following:

1. Transitional provisions

The Commencement Notice brings certain provisions of Chapter 17 of the FSR Act into effect from 1 April 2018. These provisions provide for transitional arrangements to ensure the continuation of existing matters being addressed by the Registrar of Banks and FSB. This includes:

- Existing inspections and investigations that are not concluded prior to the establishment of the PA and FSCA, will be continued and concluded by the PA and FSCA as relevant (clause 296)
- Existing matters being heard by the FSB Enforcement Committee and Appeal Board will continue to be heard by those bodies until the matters are concluded (clause 298)
- The Tribunal, PA and FSCA will be substituted as the relevant parties for any pending proceedings in terms of clause 300
- Clause 301 provides for savings of approvals, consents, registrations and other acts

2. Financial Services Tribunal

In order to ensure a smooth, seamless and non-disruptive transition, the current members of the FSB Appeal Board, the Board of Review and the FIC Appeal Board, are appointed to constitute the Tribunal created in sections 219 and 220 of the FSR Act. Members are appointed on a three year basis.

The Regulations provide for the FSB or FSCA to enter into agreements with the SARB or PA and the FIC, to share costs of running the Financial Services Tribunal, until the Financial Sector Levies Bill (“Levies Bill”) comes into effect (envisaged for the 2019/20 financial year).

Judge Yvonne Mokgoro (Retired Judge) will serve as the Chairperson of the Tribunal and Judge Louis T Harms (Retired Judge) as the Deputy Chairperson of the Tribunal. The names of all Tribunal members will be made available in the next two weeks.

3.Ombud Council

The Ombud Council is created in terms of Chapter 14 of the FSR Act. The Commencement Notice provides that this chapter will become effective on 1 October 2018 to allow for sufficient time for appointments to be made. Further information will be published in due course.

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