national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

IMPLEMENTING THE TWIN PEAKS MODEL OF FINANCIAL REGULATION

Invitation for public comments on the draft Financial Sector Regulation Bill, 2013

The National Treasury invites public comments on the draft Financial Sector Regulation Bill, 2013.

The draft bill is the first in a series of Bills that gives effect to Cabinet's decision to implement a "twin-peaks" model of financial regulation to make the financial sector safer and serve South Africa better. The Bill follows two policy papers that respond to lessons learnt in the 2008 global financial crisis: *A Safer Financial Sector to Serve South Africa Better* released with the 2011 Budget, and a *Roadmap for Implementing Twin Peaks Reforms*, released on 1 February 2013 (available on the treasury website).

The twin peaks regulatory framework will provide a comprehensive framework for regulating the financial sector. The implementation of Twin Peaks reform is a multi-year project, with a two-phase process envisaged (see below). This Bill covers the first phase, which is to establish the following two regulatory authorities:

- A new *Prudential Authority* within the Reserve Bank. This Authority will be responsible for the oversight of the safety and soundness of banks, insurers and financial conglomerates.

- A new *Market Conduct Authority* to protect customers of financial services firms, and to improve the way financial service providers conduct their business. This Authority will also be responsible for ensuring the integrity and efficiency of financial markets, and promoting effective financial consumer education. As noted below, Phase 2 of the process will streamline the framework for market conduct legislation.

In addition, the Bill gives the South African Reserve Bank primary responsibility to oversee financial stability. To facilitate this, the Bill creates a statutory inter-agency Financial Stability Oversight Committee (FSOC), chaired by the Governor of the Reserve Bank, with appropriate financial stability powers.

The phased approach to the implementation of Twin Peaks reform

As set out above, in the **first phase** of the reform, the two regulators will be established and appropriate powers assigned to them. In phase one, very few changes will made to existing sector legislation (e.g. the Banks Act), other than re-assigning responsibility for implementation of legislation to the two regulators (e.g. the formal responsibility for the Banks Act is shifted from the Banking Supervision Department to the Prudential Authority). This will substantially minimise disruption during the transition phase.

The draft Financial Sector Regulation Bill also creates the concepts of "mono-regulated" and "dual regulated" institutions. Mono-regulated entities are those that undertake activities that only give rise to market conduct regulation (e.g. advisory and intermediary services). Dual-regulated entities are those that undertake activities that give rise to both prudential and market conduct regulation (e.g. banking and insurance). Table 1 provides more detail.

Table 1: Dual- and mono-regulated activities

Regulated financial sector/activity	Dual-regulated	Mono-regulated
Banking	✓	
Long-term insurance	✓	
Short-term insurance	✓	
Collective investment schemes and management companies		✓
Financial advisory and intermediary services		✓
Exchanges	✓	
National payment system	✓	
Other financial markets infrastructure[1] (central counterparties, clearing houses, central securities depository and trade repositories)	✓	
Credit ratings agencies		✓
Pension Funds		✓

Source: Adapted from *Implementing a twin peaks model of financial regulation in South Africa*, published on 1 February 2013. Available at www.treasury.gov.za

In the **second phase**, the existing sectoral legislation (like the example of the Banks Act given above) will be gradually amended or replaced with laws that more appropriately align with the Twin Peaks framework. For example, a comprehensive

[1] These include central counterparties, clearing houses, central securities depository and trade repositories.

market conduct framework will be legislated, which will give legal effect to the Treating Customers Fairly initiative currently underway, and will ensure a comprehensive, consistent and complete approach to governing the conduct of financial institutions across the financial sector.

Other objectives of the Bill

In addition to creating the two regulators and strengthening financial stability, the other objectives of the Bill are:

1. Enhancing coordination and cooperation between regulators

Coordination and cooperation between regulators is a necessary component of a sound regulatory system. A recent peer review of South Africa (document on website), conducted by the international Financial Stability Board under the auspices of the G-20, highlighted the need for the improved coordination between our regulators. To achieve this, the Bill provides a legal framework to enhance coordination and cooperation between regulators. In particular, an MoU is provided for between the Prudential and Market Conduct Authorities to ensure alignment; the FSOC will ensure a coordinated and immediate response to risks to the stability of the financial system; and a Council of Financial Regulators ("CFR") will coordinate all regulators, standard-setters and other agencies with a mandate over financial institutions on issues like financial stability, market conduct, competition, legislation, and enforcement. The CFR will therefore also include regulators that do not report to the Minister of Finance, for example, the National Credit Regulator, Council for Medical Schemes, Competition Commission and the National Consumer Commission.

2. Balancing operational independence and accountability of regulators

The Bill seeks to strengthen the operational independence of regulators, within a policy framework approved by government, while at the same time strengthening their accountability. The governance framework will provide clarity on the policy objectives of government, while ensuring that regulators have the necessary operational powers and independence to perform their duties impartially.

3. Establishing a crisis management and resolution framework

The global financial crisis illustrated the importance of having mechanisms in place to deal with disruptions in the financial system that threaten financial stability. A resolution framework provides authorities with the appropriate tools and powers to limit such contagion, thereby reducing both the private and public costs associated with a financial crisis. The Bill provides for resolution powers and identifies the Reserve Bank as the resolution authority in South Africa. However, where taxpayers' money is at risk, the Bill provides for crisis management decisions to be taken by the Minister of Finance.

4. Creating a Financial Services Tribunal and strengthening enforcement

The Bill also establishes a shared enforcement mechanism, the Financial Services Tribunal, which is aimed at encouraging compliance with all aspects of the new regulatory regime. The Bill enhances existing regulatory and enforcement action powers (such as suspension or withdrawal of licences and approvals, orders to take or cease particular actions, and debarments) of the regulators, and also provides for a robust appeal mechanism.

5. Strengthening ombuds schemes

The ombuds system is a powerful redress mechanism in the hands of consumers. The Bill, through consequential changes to the Financial Services Ombuds Schemes (FSOS) Act, seeks to strengthen the ombuds system by putting measures in place to enhance public awareness of the ombud system and requiring all financial institutions to be members of an ombud scheme. It also broadens the mandate and role of the FSOS Council to, amongst others, approve the appointment or removal of an ombud, set norms and standards for ombud schemes including those to ensure the independence of such schemes, and promote and direct cooperation and coordination of the activities of ombud schemes to ensure easy access to schemes and consistency in complaint resolution mechanisms.

Invitation for comments

Comments on the Bill are invited from all interested stakeholders. Written comments should be sent to: CommentDraftLegislation@treasury.gov.za, or faxed to **012 315 5206** on or before **7 February 2014**.

Public workshop

Out of respect for the mourning period in South Africa, the planned public workshop has been postponed to January 2013. Details will be communicated in early January, and interested persons are invited to submit their contact information to the email address or fax number given above.

Additional Documentation

The draft Bill with related documentation is available on the National Treasury website (www.treasury.gov.za/twinpeaks).

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