

Legislative and Industry Updates

A. Financial Sector Regulation Bill: Twin Peaks Legislation

The “Twin Peaks” regulatory model was introduced by the National Treasury to industry in 2011, in the form of the Financial Sector Regulation Bill. There have been various drafts of the Bill published in 2013, 2014 and in 2016.

Reminder on Twin Peaks structure:

Financial Sector Conduct Authority (“FSCA”):

- ▶ Will protect financial customers by ensuring that financial institutions treat customers fairly
- ▶ Will enhance the efficiency and integrity of financial markets
- ▶ Will provide financial customers / potential customers with financial education programmes
- ▶ Will promote financial literacy and financial capability
- ▶ The current Financial Services Board (“FSB”) will be absorbed into the FSCA
- ▶ Financial products regulated by the FSCA include those offered by retirement funds, friendly societies, long-term and short-term policies, medical schemes and credit facilities
- ▶ Financial services in relation to financial products include offering, marketing, promoting or distributing; providing advice, guidance or recommendations; operating or managing and administration services.

Prudential Authority (“PA”):

- ▶ Will operate within the South African Reserve Bank
- ▶ Will promote and enhance the safety and soundness of financial institutions that provide financial products
- ▶ Will protect financial customers against the risk that a financial institution may fail to meet its obligations
- ▶ Will assist in maintaining financial stability
- ▶ The functions of the PA include regulating and supervising financial institutions that provide financial products; cooperating with other regulators; supporting financial inclusion and reviewing financial sector regulation.

The above authorities will regulate, supervise and take enforcement action against all financial institutions over which they have jurisdiction, from their first day of operation. They will also be empowered to issue communication, including standards, guidance notices, interpretation rulings, directives and enforceable undertakings. These new authorities are to be more proactive and intrusive in their supervision, and more principles-based in taking action where necessary.

- ▶ **An Ombud Council** will be established, to co-ordinate ombud schemes and ensure customers have access to appropriate dispute resolution processes. Industry ombud schemes will apply to the Ombud Council for recognition.

Current Status of the Bill

In October and November 2016, the Standing Committee on Finance deliberated on the Bill. After approving the changes to the legislation, they voted on the Bill on 30 November 2016.

The final version of the Bill was approved by the National Assembly on 6 December 2016 and was referred to the National Council of Provinces. It was initially believed the Bill would become law on 1 April 2017, which has not taken place as yet. When the Bill becomes law, its provisions will be phased in over the next few years. The PA may be established before the FSCA.

The Insurance Bill and the Conduct of Financial Institutions Bill are aligned to the Financial Sector Regulation Bill. It is anticipated that the whole legislative framework is to be in place by the end of 2018.

B. Financial Sector Levies Bill: Twin Peaks' funding

National Treasury has released the Financial Sector Levies Bill ('the Bill') for comment. This Bill sets out the levies to be paid to cover the costs of the PA and FSCA's regulation and supervision. Occupational funds, retirement annuity funds, commercial umbrella funds, pension fund administrators and long-term insurers will have to pay the levies. A supervised entity can apply for exemption from paying all or part of the levy.

These annual levies are proposed as follows:

Entity	Proposed Levy Formulae*	Current Levy Formulae
Prudential Authority	None	Not applicable
Financial Sector Conduct Authority	R2 000 base, plus variable fee of R14 x L (L = number of members as at 30 June of the levy year). Maximum of R2 750 000	Not applicable
Financial Services Tribunal	2.5% x S2 (S2 = amount of levy payable to the FSCA)	Not applicable
Ombud Council	2.5% x S2 (S2 = amount of levy payable to the FSCA)	Not applicable
Pension Funds Adjudicator	R4.65 x L (L = number of members as at 30 June of the levy year)	R4.90 per member (based on the number of members as at 30 June 2016)
Financial Services Board	Not applicable, as the FSB will be replaced by the FSCA	a) R1 138 plus R13.20 per member or b) R2 556 435 whichever of (a) and (b) is the lesser

*The levy period is defined as 1 April to 1 March.

Implementation levy

An implementation levy has been proposed to establish the FSCA, the PA, the Financial Services Tribunal and the Ombud Council. The implementation levy will be payable for the first two levy years after the Bill commences and will be 15% of the levy payable.

Information Circular 1 of 2017

Information Circular 1 of 2017 was issued on 10 February 2017. It sets out the FSB's intention to impose penalties for the late or non-submission of retirement funds' 2015 annual financial statements, at a rate of R60 per day.

Funds that have not applied for exemption or extension from the Registrar to submit these 2015 financial statements will be impacted. Non-compliant funds are advised to make provision for the payment of these penalties.

Notification letters are being issued by the FSB and funds will be given an opportunity to respond. Funds may motivate, with reasons, why no penalties should be imposed.

Draft Notice: Conditions for investment in Hedge Funds

A draft notice was issued for comment, closing at the end of March 2017. This notice sets out conditions for retirement funds to invest in hedge funds, in terms of Regulation 28. These conditions are set out in this notice, as follows:

A fund may only invest in the following hedge funds:

- ▶ A hedge fund contemplated in paragraph 2 of the Hedge Fund Declaration, administered by a manager registered under the Collective Investment Schemes Control Act and authorised to administer a hedge fund under that Act
- ▶ A foreign hedge fund collective investment scheme portfolio if the manager or operator of the foreign collective investment scheme is approved in terms of the Collective Investment Schemes Control Act; and
- ▶ A hedge fund as defined in Regulation 28.

Funds must ensure that the principles set out in Regulations 28 in respect of hedge funds, are adhered to at all times

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