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Twin Peaks – strengthening the financial sector through more efficient regulation

The ASISA and its members fully support the strengthening of the financial sector through the introduction of appropriate structures for more efficient regulation, supervision and oversight.

The majority of our members therefore agree with the principle of a prudential and a market conduct regulator under the Twin Peaks model. We hope that this will ultimately result in timely and appropriate intervention with swift remedial action, which will in turn build the trust and confidence of South African citizens, encouraging them to save.

Improved regulatory structures and regulation, if judiciously framed and effectively supervised with reduced regulatory costs that are employed to good effect, could well result in an industry that operates more efficiently. Barriers to entry will be lowered and competition improved, resulting in a better deal for consumers.

However, there are concerns that if this is not achieved and regulatory costs become excessive, the national agenda of delivering low-cost financial services to a far broader group of South Africans cannot be realised.

Cost of implementing Twin Peaks

The ASISA and its members believe that the cost of implementing the Twin Peaks model is likely to be significant. The real costs for the industry and the consumer will not only result from establishing the two regulators, but also from the need for additional staff and systems, as well as the impact of their activities once established.

We were pleased therefore when National Treasury commissioned a cost-analysis of the restructuring to determine the potential financial impact on regulated entities, and ultimately, consumers as part of its Impact Study of the Twin Peaks Reforms. The study was published in April 2016 and contains the following conclusions, which ASISA and it members support:

- Further harmonisation of financial sector legislation in the second phase of the Twin Peaks reforms is seen as an important component of maximising the benefits of the new institutional framework set out in the FSR Act.

- Continued consultation with stakeholders on further regulatory reforms (prudential and market conduct) will be needed to support the intended outcomes of the FSR Act, taking into account the impact of regulatory change on financial institutions.
- Monitoring and evaluation at the new regulatory authorities and within the various forums for collaboration should assist in identifying any legislative changes needed to further clarify powers and responsibilities, especially during the implementation phase.
- Existing regulatory staff who move into the new regulatory authorities may require training and support to successfully transition to the new institutional framework and the associated risk-based and outcomes-focused approach to regulation (a change management process).
- Financial institutions and consumers will need to be fully informed of their rights and obligations under the new regulatory framework.

Exclusion of the National Credit Regulator (NCR)

We value the consultative process that has been followed in the developments of the FSR Act, which is the enabling piece of legislation for the implementation of the Twin Peaks model. Our members are largely comfortable with the final version of the Act and the amendments to it that are proposed by the National Council of Provinces.

However, we are disappointed that the NCR has not been brought within the ambit of the Twin Peaks structure, under the Market Conduct Regulator. ASISA's life office members, to the extent that they provide life policies to cover the debt in the event of the death of the debtor, are regulated by the NCR. The inclusion of the NCR would have enhanced coherent regulation and consistency of application. We note that the Financial Stability Board, in its Peer Review of South Africa Report dated 5 February 2013, expressed a similar view.

Effective co-ordination

Effective coordination between the Prudential Regulator and the Market Conduct Regulator will be vital – both proactive coordination, before regulatory changes are finalised or implemented, as well as reactive. We look forward to more detail on how synchronisation between the regulators with dual responsibilities for the same organisations and in some cases the same functions will be achieved.

Frameworks and process rules will need to be clearly defined and available to regulated entities to ensure that overlapping responsibilities and accountability do not lead to serious inefficiencies and, potentially, unnecessary delays. This will provide institutions with the certainty that they need, in respect of their day-to-day operational interactions with the two regulators, as well as when particular issues need to be discussed by a financial institution with the regulator.

The Financial System Council of Regulators is established under the FSR Act, with the aim of facilitating cooperation, collaboration and consistency between the Twin Peaks regulators and the Department of Trade and Industry, the Department of Health, the NCR, the Council for Medical Schemes, the FIC, the National Consumer Commission, the Competition Commission, and the Deputy Governor of the Reserve Bank responsible for financial stability matters. Effective synchronisation between all of these regulatory agencies will also be very important.

Importance of consultation

National Treasury's *Impact Study of the Twin Peaks Reforms* concludes its summary as follows: "Extensive research and consultation has informed the development of the FSR Act. Further work to set out the operational requirements and financial costs of the new regulatory framework (relative to existing costs of regulation) will enhance the assessment of costs, benefits and risks of the Act."

As key stakeholders in this process, the ASISA and its members look forward to participating in this process and assisting with these future developments.