The proposed twin-peaks system for regulating the financial sector of South Africa in comparative perspective.

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1. Introduction

There has been much debate regarding the implementation of a twin-peaks system in South Africa. The stakeholders in the financial industry have been keeping a close eye on the Financial Sector Regulation Bill (FSR).

The first draft of the FSR was published in December 2013. The second draft of the FSR was published in December 2014 incorporating comments that were received on the first draft of the FSR.

In this dissertation, information is gathered relating to the history of the twin-peaks model to establish its origin, why the change of regulation was needed and how it is to be incorporated in South Africa. Further investigations are made to predict the impact of this model in South Africa and the changes that will be required for it to be effective. The South African model is compared to similar models introduced in other countries.

In the first part of this dissertation I shall focus on the origin of the model and look at the history behind it. The second part of this study compares the South African model to those implemented in Australia, the Netherlands and the United Kingdom. In conclusion, the results of this comparison are analysed to see where South Africa has improved the twin-peaks model.

2. The global financial crisis of 2008

John Lanchester asserted that "The 2008 global financial crisis was based on a problem, a mistake, a failure and a culture; but before it was any of those things, it arose from a climate."[1]

The 2008 global financial crisis did not occur over night. Years before the financial crisis, much irresponsible mortgage lending took place in America. Loans were given to borrowers with poor credit histories who were unable to repay these loans.

[1] Lanchester *Whoops! Why everyone owes everyone and no one can pay* (2010) 6.

Subprime mortgages became a new manner in which a loan was granted to a person with poor credit history who did not qualify for a conventional mortgage-loan product. Typically the loan was offered at a very low initial interest rate, which reset later to a higher rate.[2]

These loans or risky mortgages were passed on to financial engineers at the top banks who then turned them into low-risk securities. This was accomplished by putting large numbers of these loans together in pools. Pooling only works when the risks of each of these loans are uncorrelated. In order to justify the pools, the big banks relied on the excuse that different American cities would rise and fall independently lowering the risks of loans. This notion was proven wrong when all American cities started to suffer a house-price slump at the beginning of 2006.[3]

Collateralised debt obligations were formed by adding the pooled mortgages together. Investors then believed that these were safer investments as they were rated triple-A by Moody's, Standard and Poors. The ratings were paid for by the bank concerned and this resulted in the agency being too lenient with its rating.

When the housing market started to deteriorate in America these so-called safer options were exposed to be what they really were, namely neither safe nor secure. They had a low value and some had no value at all. Investors were unable to sell these mortgages. Banks started to recognise their vulnerability to each other and wondered whether their counterparties would be able to adhere to loan agreements that were signed between them.

In September 2008 the fear realised and one of the global banks, Lehman Brothers, collapsed. This almost destroyed the world's financial system.[4]

[2] Gordhan "A Safer Financial Sector to Serve South Africa Better" 2011 http://www.treasury.gov.za/ (4 October 2015).
[3] The Economist "The origins of the financial crisis Crash Course" 2013 http://www.economist.com/news/schools brief /21584534-effects-financial-crisis-are-still-being-felt-five-years-article (22 August 2015).
[4] The Economist (n3) 1.

The bankruptcy lead to a panic in the market which escalated worldwide. The 2008 global financial crisis has been described as the worst recession in eighty years.[5] The base of the problems can be regarded as the global macroeconomic imbalances and inadequate financial-sector regulation.[6]

According to the South African National Treasury a number of key lessons were learnt from the financial crisis of 2008. They are stated as follow:

- "The need for a holistic view of financial sector regulation – Financial regulatory reform has been focused on ensuring that authorities and regulators adopt a macro prudential approach towards supervision as opposed to a purely micro prudential one. This is particularly true for global systemically important financial institutions.
- The failure of light touch regulation of the financial sector at the global level. The idea that the financial sector can successfully regulate itself has lost credibility in the aftermath of the crisis. Even if individual financial institutions are able to improve risk management practices, regulators must proactively monitor changes in systemic risk.
- The importance of regulating market conduct to support prudential regulation. The crisis has proven that it is poor policy to force banks to lend to consumers who cannot afford to repay their loans. Inappropriate lending practices in the US and the resultant fall-out of the subprime mortgage crisis demonstrated the need to balance the socio-economic objectives of increased access to credit and homeownership with the imperative of financial stability. The regulation of market conduct must eliminate lending malpractices in order to both protect customers and reduce systemic risk.
- Global cooperation in preventing macroeconomic imbalances. The macroeconomic imbalances in savings and consumption that laid the ground for the crisis have shown no signs of disappearing. The global community must act together to find a sustainable solution to this problem.
- The importance of swift regulatory action to prevent contagion. The financial crisis swelled from a prudential crisis at a few institutions to a liquidity crisis across global markets in 2008 and 2009. By 2010, the crisis had turned into a sovereign crisis in fiscally weak

[5] The Economist (n3) 1.
[6] Gordhan (n2) 9.

> European economies and has recently spilled into political crisis in countries which have suffered from extended unemployment. The key lesson here is that regulatory action must be swiftly taken to prevent the spread of contagion."[7]

For the reasons above solutions had to be put in place in order to ensure that another event similar to this is prevented in future. Regulation of financial institutions would have to be done more closely and intensely. Furthermore the global community would have to rebuild a regulatory framework that is better suited to service a sophisticated financial sector that will give more attention to systemic risk.[8]

Four different approaches were reviewed. The first is the institutional approach which is a legal-entity driven approach. The legal status of the institution will determine the permissible business activities and the regulator that will be responsible for the regulation of the institution. Therefore different legal entities may be permitted to operate in the same business activities but be regulated by different regulators.[9]

The second is the functional approach, which looks at the business activities of the institution and not the legal status. The different types of businesses will have a specific regulator that will be responsible for the safety and soundness of the institution and the business conduct regulation.[10]

The third is the integrated approach which provides for a single regulator responsible for safety-and-soundness oversight and the conduct of the business. The regulator will therefore take full responsibility for all sectors of the financial-services business.[11]

The final one is the twin-peaks model which provides for two separate regulators. Each regulator will be responsible for its own duties, one for safety-and-soundness supervision and the other for conduct-of-business regulation.[12]

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[7] Gordhan (n2) 11.
[8] Gordhan (n2) 12.
[9] Frenkel "The Structure of Financial Supervision Approaches and Challenges in a Global Marketplace" 24 http:// www.group 30. org/ images/PDF/The%20Structure%20of%20Financial%20Supervision.pdf (24 November 2015).
[10] Frenkel (n9) 24.
[11] Frenkel (n9) 24.
[12] Frenkel (n9) 24.

It was decided that a twin-peaks model of regulation should be implemented. The proposed twin-peaks system for regulating the financial sector is designed to make the financial sector safer and to protect financial customers better. A twin-peaks approach places distinct and separate focus on the safety and soundness of a financial institution, and the manner in which an institution provides financial products or services.[13]

Safety-and-soundness supervision can be thought of as supervising the promises that financial institutions make. Prudential oversight is focused on ensuring that financial institutions are in a financial position to be able to deliver on the financial promises they make to customers.[14]

The main focus point in the twin-peaks model is the roles and duties of the central bank. Generally the central bank is responsible for controlling a country's monetary policy and is the lender of last resort. However, some central banks also have supervisory powers to protect investor activities, oversee micro-prudential supervision and macro-prudential analysis.[15]

The advantage that the twin peaks model lies in its creation of two specialised regulators with defined and understandable roles. Each will be responsible to ensure that its roles and duties are performed accordingly.[16]

The possible disadvantages of the twin-peaks model include the possible overlap and duplication of regulatory requirements, conflict between the regulators and the possibility that important regulatory matters may fall between the cracks.[17]

[13] Gordhan "Twin peaks in South Africa: Response and Explanatory Document. Accompanying the Second Draft of the Financial Sector Regulation Bill" 2014 http://www.treasury.gov.za/ (4 October 2015).
[14] Gordhan (n13)15.
[15] Vletter-Van-Dort "Some Challenges Facing European Central Banks as Supervising Authority" 2012 *European Company and Financial Law Review* 131 133.
[16] Cooper "The Integration of Financial Regulatory Authorities – the Australian Experience" 2006 http://download.asic.gov.au/media/1339352/integration-financial-regulatory-authorities.pdf (24 November 2015).
[17] Cooper (n16) 3.

3. The twin peaks model of Australia, before the global financial crisis

The global financial crisis of 2008 was not the cause of implementation of a twin-peaks system in all countries, or even the reason why they started to investigate it as an alternative approach to financial regulation.

The twin-peaks model was implemented in 1998 in Australia, a long time before the global financial crisis of 2008. It was the first country to have done so.[18]

There was no financial crisis or any pressure on the Australian government at the time to restructure Australia's regulatory system. Instead, the implementation of the twin-peaks model can be seen as a proactive approach by the government to re-organise its regulation of the financial industry.[19]

The Australian population is fairly small. However the share market is significantly larger than the economy may suggest.[20]

In 1996 an inquiry, chaired by Stan Wallis, was held to establish the impact of the deregulation of the Australian financial system between 1980 and 1990.[21] The recommendations that were made led to the restructuring of the financial system in Australia. Australia implemented a twin-peaks system with two regulating authorities namely the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC). The APRA is responsible for prudential regulation and the ASIC is responsible for regulating the conduct of business.[22]

The APRA aims to ensure that the financial promises and commitments that are made by financial institutions are met with a stable, competitive and efficient financial market. This is obtained by

[18] Bakir "The Governance of Financial Regulatory Reform: The Australian Experience" 2009 Public Administration 910 910.
[19] Bakir (n18) 911.
[20] Cooper (n16) 1.
[21] Michael "The "Twin peaks" Regulatory Model: The Future of Financial Regulation?" 2014 *Banking Today* 2 3
[22] Hill "Australia and the GFC – Why did we fare so well?" 2013 http://sydney.edu.au/news /84.html?newsstoryid =12676 (22 August 2015).

the APRA ensuring that the risks are evaluated and the necessary procedures are in place to mitigate these risks.[23]

ASIC on the other hand aims to promote a fair and transparent financial market to consumers. Its duties include investigating situations where a possible breach in legislation may have occurred and taking action against the institution through a court of law.[24] ASIC's regulatory approach is risk-based. The most onerous risk will be looked at first and they will always look at implementing new procedures in order to mitigate these risks.[25]

The responsibility for financial stability still remains with the Reserve Bank of Australia. Two other entities will have an influence on the financial service providers in Australia, namely the Australian Competition and Consumer Commission (ACCC) and the Analysis Centre. The ACCC is responsible for the market conduct of the non-financial institutions. The Analysis Centre is responsible for anti-money-laundering systems in financial and non-financial institutions.[26]

The challenges that both regulators face are to keep up with the fast-changing financial services sector, to balance consumer protection against business facilitation and to discover any measures of fraud in an institution before it may lead to financial damage in the industry.[27]

With the implementation of the twin-peaks model there were also ten other regulators that were abolished and the Australian Reserve Bank lost its bank-regulation powers.[28]

After the financial crisis of 2008 Australia was seen as one of the countries that best survived the crisis. Some factors that led to this was China's stable demand for Australian resources and the restructuring of the regulatory system. Australia's regulatory system was unique in the sense that there was a clear division between prudential regulation and consumer protection.[29]

[23] Cooper (n16) 3.
[24] Cooper (n16) 7.
[25] Cooper (n16) 8.
[26] Frenkel (n9) 189.
[27] Cooper (n16) 8.
[28] Bakir (n18) 910.
[29] Hill (n22) 1.

Since the global financial crisis of 2008 the economic growth of Australia has been relatively slow, However, the disruption of its economy has also been limited. The GDP growth has reached moderate levels despite the impact of the financial crisis.[30] Australia also did not go through a recession after the financial crisis like most other countries.[31] This was noticed internationally and Australia's regulatory model became the blueprint of the regulatory reform that started taking place in other countries like the Netherlands, United Kingdom and South Africa.[32]

Over time the Australian twin-peaks system has experienced significant changes in the roles and responsibilities of the two regulators. Much has been done in order to keep up with the changing financial market. ASIC has proposed a minimum capital of eight per cent of risk-weighted assets and further liquidity requirements of nine per cent on debenture issuers.[33]

Treating customers fairly has also been enhanced. The reliance on the disclosures made by retail borrowers to establish the suitability of the product has been replaced by the responsibility of the credit providers to ensure that the products are suitable for the customers need.[34] Giving advice to customers and financial product sale regulations have also been strengthened to ensure that consumers are protected accordingly.[35] In June 2010, the National Consumer Credit Protection Act was established. This Act regulates responsible lending to consumers. The responsibility to establish whether the consumer could afford the loan was placed on the lender and not on the borrower.[36]

Another in-depth review of the financial system was launched by David Murray and his panel. A report, the Financial System Inquiry Final Report, was released in December 2014. In this report forty four recommendations are made to the government. The main themes identified in this report relate to enhancements to be made in the financial system. The banking markets were to be made more resilient and competitive and economic growth and productivity were to be driven by

[30] Brown Davis Mayes "Regulatory Change in Australia and New Zealand Following the Global Financial Crisis" (2015) *Journal of Financial Economic Policy* 8 11.
[31] Brown "A Comparison of the Handling of the Financial Crisis in the United States, The United Kingdom and Australia" 2010 *Villanova Law Review* 509 519.
[32] Hill (n22) 1.
[33] Brown Davis Mayes (n30) 20.
[34] Brown Davis Mayes (n30) 21.
[35] Brown Davis Mayes (n30) 21.
[36] Brown Davis Mayes (n30) 22.

technological innovation. Superannuation was to be reformed to increase the value of retirement incomes. Necessary improvements were to be made in disclosure documentation and adequate advice was to accompany the products being sold. Finally, the Regulators were to be given more independence and accountability. This was the first in depth review since the Wallis Inquiry of 1997.[37]

4. The twin peaks model of Netherlands, before the global financial crisis

The Netherlands transformed their financial supervision model to a twin-peaks model in 2002, well before the 2008 global financial crisis.[38] Its twin-peaks model proved to work effectively and outperformed other European Nations that had only single regulators overseeing the financial sector.[39] It is of interest to note that despite the implementation of the twin peaks in the Netherlands, it was still badly affected by the global financial crisis of 2008. Some institutions went bankrupt and others required bailouts from the state to survive.[40]

The reason for re-examining the previous regulatory system in the Netherlands was that the sectoral boundaries of the previous model were found not to be sustainable. It was decided that a careful consideration of the objectives of supervision in relation to the financial markets should lead to a better focal point for supervision which would ultimately lead to better sustainability.[41]

The Netherlands is a fairly small country when measured by area and/or population. However in terms of its GDP it is classified as a medium or large country. The Netherlands, therefore, is classified as one of the larger financial centres in world.[42] The financial sector contributes approximately 7.5 percent of the GDP and provides 3.5 percent of the employment.[43]

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[37]Brown Davis Mayes (n30) 22.
[38] Vletter-Van-Dort (n15) 132.
[39] Michael (n21) 4.
[40] Mhango "Approach With Care When Considering Twin peaks" 2014 http://www.iol.co.za/business/ opinion/ approach -with- care-when-considering-twin-peaks-1.1656994#.VkHBCrcrKCg (10 November 2015).
[41] Kremers Schoenmaker Wierts "Cross-Sector Supervision: Which Model?" 2003 *Brookings-Wharton Papers on Financial Services* 225 238.
[42] Kremers Schoenmaker Wierts (n40) 229.
[43] Van der Cruijsen Haan Jansen Mosch "Knowledge and Opinions About Banking Supervision: Evidence from a Survey of Dutch Households" 2013 *Journal of Financial Stability Nine* 151 220.

One of the benefits of the twin peaks system being implemented in the Netherlands and in Australia, is that the regulators benefited from employing individuals with the required knowledge that would be able to deliver the specific duties that is required from the regulator. The functions of each regulator are now separated leading to decreased conflict between them.[44]

The Netherlands implemented a functional model of regulation.[45] The central bank of Netherlands, De Nederlandsche Bank (DNB), retained the responsibility for prudential regulation of all financial services. It aimed to promote the soundness of financial institutions such as banks. The Authority of Financial Markets (AFM) became responsible for the regulation of business conduct in the financial markets.[46] The AFM aims to ensure that financial institutions treat their clients properly and that the relationships between the institutions are stable. Therefore the AFM is also responsible to ensure that the market processes are clear and easy to understand.[47]

The AFM and DNB are both responsible for the regulation of banks in the Netherlands. The AFM ensures that the customers of the banks are treated fairly, that unambiguous information is given to the customers, and that the customers are aware of the fees that they are paying for the bank's services. The DNB, on the other hand, has the responsibility to ensure that the financial health of the banks is in order. Their combined efforts are designed to promote the financial stability of the Netherlands.[48]

The DNB as the prudential and systemic risk regulator is responsible for the financial services of banks, insurance companies, pension funds and all securities. The prudential regulator in Australia is not responsible for all of these activities.[49]

Financial stability will lead to the promotion of safety and soundness in all financial institutions and will lead to the enhancement of the financial industry. The AFM ensures the fair treatment of

[44] Hill (n22) 1.
[44] Michael (n21) 2.
[45] Kremers Schoenmaker Wierts (n40) 237.
[46] Michael (n21) 4.
[47] Van der Cruijsen Haan Jansen Mosch (n42) 222.
[48] Van der Cruijsen Haan Jansen Mosch (n42) 224.
[49] Frenkel (n9) 31.

customers by strengthening the tools of regulation while still maintaining the efficiency of the objectives that was given to them via their financial supervisory duty.[50]

Big financial groups started becoming the dominant players in the financial market of the Netherlands. These institutions are better known as financial conglomerates in the Dutch community.[51] The twin-peaks model was influenced by the financial conglomerates in the Netherlands.[52]

The Netherlands has a specific approach on how to regulate the financial conglomerates that operate in the financial system. The risk profile of the different activities of the financial conglomerates are identified. Based on this risk profile a regulatory and supervisory approach is then developed. The most important characteristic of the Dutch approach is to respond to any market development or organisational integration of the conglomerates. The regulatory framework that is developed covers the holding company of the conglomerate as well as the integrated activities of the other companies within the group. This tailored approach therefore covers the entire conglomerate and not just sections thereof.[53]

The advantage of the Netherlands model is that it unites all the functions of financial stability within one regulator. After the tragic events of 11 September 2011, the DNB could take immediate action. It united its information flows from its payment systems, the monetary policy and the prudential supervision and could manage the crisis accordingly. This model also aims to avoid any conflict of interest that may exist between the different regulators.[54]

The DNB and AFM need to work closely together. In order to regulate the relationship a covenant was signed between these parties. This covenant dictates the procedures for co-operation and co-ordination between the two regulators. The regulators meet on a regular basis and discuss any matters that are of concern.[55]

[50] Kremers Schoenmaker Wierts (n40) 227.
[51] Kremers Schoenmaker Wierts (n40) 230.
[52] Michael (n21) 4.
[53] Kremers Schoenmaker Wierts (n40) 233.
[54] Kremers Schoenmaker Wierts (n40) 238.
[55] Frenkel (n9) 202.

However, when a study was conducted in the Netherlands to establish whether the citizens understood the roles and responsibilities of each regulator, the results were shocking. People had poor knowledge as to who was responsible for what. This led to unrealistic expectations which were not met in the financial crisis of 2008 and in turn, brought about a loss of confidence in the ability of the regulators. The public blamed the regulators for not performing properly when in actual fact, they were never tasked with the duties concerned in the first place. Improving the knowledge of the public and equipping it with accurate information regarding the regulators' roles and responsibilities are likely to rebuild trust in the regulators themselves and in the financial industry as a whole.[56]

5. The twin peaks model of the United Kingdom, after the global financial crisis

The United Kingdom (UK) was also impacted by the financial crisis of 2008. The regulatory structure that was in place at the time was that of a tripartite structure. The financial industry was regulated by Treasury, the Bank of England and the Financial Services Authority (FSA).This structure faced criticism in the aftermath of the crisis which led to the reform of the UK financial services regulatory structure.[57]

The Financial Services Bill was published in June 2011 and contained the new structure that government implemented. It abolished the tripartite structure and establishes the following new regulatory bodies:

- The Financial Policy Committee (FPC);
- The Prudential Regulation Authority (PRA); and
- The Financial Conduct Authority (FCA)[58].

[56] Van der Cruijsen Haan Jansen Mosch (n42) 224.

[57]Lewis "UK Financial Services Regulatory Structure Facing Major Reforms" 2012. http://www.morganlewis.com/pubs/im-pif_lf_reformsukfinancialservicesregstructure_14june12 (24 November 2015).

[58] Lewis (n57) p1.

The restructuring of the regulatory system along these lines meant that the UK government moved from the tripartite structure to a twin peaks model.[59]

Regulators had to refocus their attention towards a proactive judgment-led regulation instead of a reactive approach as under the tripartite structure. This had an impact on the performance of the Regulators in order to achieve the powers needed to make the necessary changes to a twin peak model as envisaged in the Financial Services Bill. [60]

The FSA was replaced by the twin peaks regulatory model with the responsibility for regulating the financial services sector being divided between the two new regulators.[61]

The Bank of England will monitor the financial sector by establishing two new entities, the FPC and the PRA. The FPC will take responsibility for macro-prudential regulation and the PRA will be responsible for micro-prudential regulation.[62]

The FCA will take on the responsibility of regulating the conduct of the financial services sector.[63] It will therefore be the prudential and conduct regulator for all other financial services firms as well.[64]

The PRA is a subsidiary of the central bank in the UK. With the twin-peaks model implemented in the UK the duties will be separated from the central bank and the PRA. Therefore the traditional banking duties carried out by the central bank and the supervisory tasks by the PRA. Therefore these duties are not regulated by one regulator but by two separate entities.[65]

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[59] Tolley "Splitting FSA Will Not Stop Mistakes Being Repeated" 2011 http://www.moneymarketing.co.uk/splitting-fsa-will-not-stop-mistakes-being-repeated/ (4 October 2015).
[60] Patient "What to expect from the UK's new twin peaks regulatory model" 2012 http://www.iflr.com/Article /2987921/What-to-expect-from-the-UKs-new-twin-peaks-regulatory-model.html (11 November 2015).
[61] Patient (n60) 1.
[62] Patient (n60) 2.
[63] Patient (n60) 1.
[64] Lewis (n57) 1.
[65] Vletter-Van-Dort (n15) 140.

The twin-peaks model will mean that banks, insurers, major investment firms and building societies will be dual-regulated by the FCA and the PRA, the PRA focusing on prudential issues and the FCA focusing on conduct.[66]

The roles of the PRA and the FCA are primarily that of supervision and enforcement.[67] The FSA relies more on a risk-based approach to regulation.[68] Both the PRA and FCA are responsible to implement a judgement-based and an interventionist approach to regulation. The PRA and the FCA aims to prevent the flawed decision-making that led to the financial crisis of 2008.[69]

The FCA received new powers in order to ensure that its new objectives will be achieved. The FCA will be able to intervene while products are being designed, having the authority to become involved much quicker to ensure that the products are in the best interests of consumers. Furthermore they will be able disclose to the public that disciplinary action is being taken against an institution or whether any action regarding misleading promotions has been taken. The FCA will be able to conduct its own studies and may refer complaints to the Financial Ombudsman directly.[70]

These new powers have to ensure that the FCA protects the consumer accordingly. This means that it must ensure: (i) that there is enough protection for the consumers in order to enhance confidence in the financial services industry of the UK;[71] and (ii) that the principle of treating customers fairly that has been implemented since 2004 be enhanced and be brought to the forefront whilst dealing with consumers by all institutions in the financial services industry.[72]

66 Goodway "April switch to Twin Peaks regulation for FSA watchdogs" 2012 http://www.standard.co.uk/business/business-news/april-switch-to-twin-peaks-regulation-for-fsa-watchdogs-7315486.html. (11 November 2015).
67 Lewis (n57) 1.
68 Money Marketing "FSA working towards twin peaks" 2011 http://www.moneymarketing.co.uk/fsa-working-towards-twin-peaks/ (11 November 2015).
69 Brandt "What to expect from the UK's new regulators" 2013 http://www.iflr.com/Article/3176797/What-to-expect-from-the-UKs-new-regulators.html (11 November 2015).
70 Patient (n60) 3.
71 Patient (n60) 3.
72 Patient (n60) 3.

Furthermore, Treasury has the authority to suggest recommendations to the FPC. By implementing this twin-peaks model and establishing these different regulators, government will create clear lines of responsibility and accountability.[73]

In April 2011 the FSA restructured and separated into the PRA and the FCA. Each regulator will act independently of the other to achieve its objectives as stated in the Financial Services Bill. The point that needs to be stressed is that these regulators will act independently but with co-ordinated regulation.[74] The twin-peaks model means that there will be two sets of regulators making two separate judgements each with its own independent process.[75]

On 1 April 2013 the FSA was abolished and the twin-peaks model envisaged in the Bill came into existence.[76] This is commonly known as the legal cutover for the twin-peaks structure.

The FSA Handbook will be divided between the PRA and the FCA in order to form two new Handbooks. Dual-regulated firms will need to refer to both handbooks while the FCA-regulated firms will only need to refer to the FCA handbook.[77]

The impact of the legal cutover on institutions that will be governed by the FCA and the PRA differ. Institutions will not have to reapply for licenses to the PRA and the FCA to proceed with business. Institutions that were governed by the FSA will be dealt with on a special case basisand may proceed with UK regulated business.[78]

The UK model differs from other models because the PRA will be a subsidiary of the Bank of England and therefore not part of the central bank.[79]

As noted above, some institutions will be regulated by both regulators who each have its own responsibilities and objectives. Each regulator has the duty to implement its own rules and regulations to achieve these objectives. This means that some institutions will have duplicated

[73] Patient (n60) 2.
[74] Patient (n60) 2.
[75] Masters "Financial Sector must change, says Sants" 2012 http://www.ft.com/cms/s/0/cf9fc604-50e7-11e1-8cdb-00144feabdc0.html#axzz3sOVIxNwU (24 November 2015)
[76] Brandt (n69) 1.
[77] Lewis (n57) 1.
[78] Brandt (n69) 1.
[79] Vletter-Van-Dort (n15) 140.

reporting. The responsibility will lie on the regulators to communicate effectively amongst one another and to cooperate with one another against the background of this overlapping. However each regulator will exercise its own judgement relating to any particular matter before it.[80]

As a consequence of these new requirements and reporting to new regulators, most institutions have realised that they will have to appoint more resources, obtain legal advice from experts and re-examine their complete business to ensure that they will be in compliance with the new regulations.[81] This will lead to additional costs for each institution wishing to comply from the onset with the implementation of the Financial Services Bill. The costs may include fees for legal advice and for the updating of information at each regulator, as well as ongoing fees.[82]

The biggest change that needs to be brought about is the organisational culture in institutions. This includes: (i) the re-examination of each business model ensuring that all products are reviewed; (ii) the following of a risk-based approach and that each customer will be treated fairly; and, (iii) that the consumer be placed at the centre of the business model to ensure that the product addresses the needs of the consumers for whom it was designed.[83]

The following timeline indicates the progression of switching to the twin-peaks model:[84]

- 2010: Chancellor George Osborne announces plans to abolish FSA.
- 2012: The Financial Services Act creates a new regulatory framework, creating the FCA and PRA.
- 2013: The FCA and PRA come into effect as from 1 April.

As of 2010 there has been an increase in the number of fines and prohibitions that were imposed by the FSA. In the 2010/2011 financial year the fines reached 98.5 million pounds whereas in

[80] Lewis (n57) 1.
[81] Lewis (n57) 1.
[82] Patient (n60) 7.
[83] Patient (n60) 7.
[84] Newman "New 'twin peaks' regulatory system faces questions as post-FSA era gets underway: lawyers warn of challenges ahead as new financial regulation model takes effect" 2013 http://www.legalweek.com/legal-week/analysis/2260598/new-twin-peaks-regulatory-system-faces-questions-as-postfsa-era-gets-underway (24 November 2015).

2008/2009 the fines were only 27.5 million pounds. Individual fines also increased during this period to exceed 1 million pounds.[85]

Moreover, the FSA has seen a 30 percent increase of staff leaving before the implementation of the new twin-peaks model (430 permanent employees left during 2011).[86]

The twin-peaks model is an improved regulatory system focusing on a proactive approach instead of a reactive approach. However, the responsibility is on the regulators to communicate and co-ordinate their functions with each other. The PRA and FCA will have to ensure that confusion, loopholes and time-wasting are brought to a minimum. Once this is achieved the execution risk will be limited and trust in the UK regulatory system will start to grow.[87]

6. The twin peaks model of South Africa, after the global financial crisis

The South African financial system has evolved over the past few decades. First there was an institutional approach. This was followed in the late 1980's by a functional approach. Later, in the 1990's, an integrated system was adopted. These changes were mainly driven by international trends.[88]

The financial services sector plays a very important role in the lives of each and every South African. Without the financial services sector economic growth will deteriorate. It is needed in order for jobs to be created, building of infrastructure and future developments.[89]

[85] Patient (n60) 6.
[86] Holt "FSA staff exodus gathers pace" 2012 http://www.moneymarketing.co.uk/fsa-staff-exodus-gathers-pace/ (24 November 2015).
[87] Newman (n84) 1.
[88] Pillay "The road to Twin Peaks" 2013 http://www.banking.org.za/docs/default-source/publication/banker-sa/banker-sa-08.pdf?sfvrsn=2 (24 November 2015).
[89] Gordhan (n2) 1.

The aim is for regulation to be the same across all jurisdictions and be enforced fairly and without bias. However, in reality, it differs between jurisdictions and regions. This is what makes it so difficult to manage cross-border financial institutions.[90]

A formal review of the financial services regulatory system by National Treasury commenced in 2007 and was expanded when the 2008 global financial crisis erupted. The aim of the ensuing reforms was to heed the lessons learnt from the 2008 global financial crisis and to implement broader policy objectives in order to maintain financial sector stability. In order to promote economic growth and development that will be sustainable the financial services industry must be accessible to all.[91]

One of the lessons learnt from the 2008 global financial crisis relates to the weakness of a light-tough financial regulatory system. South Africa was not affected by the crisis as much as most other countries but still lost almost one million jobs. Should South Africa have experienced a financial crisis of similar magnitude many more jobs would have been lost.[92]

The National Credit Act[93] prohibits excessive lending and safeguards consumers from becoming over indebted. It generally contributed to sustainable credit extension to consumers. For this reason it saved South Africa from a significantly harsher impact of the 2008 global financial crisis. Some other policy components that also protected South Africa during the financial crisis are:[94]

- The existing framework for financial regulation which enable regulators to see the potential risks and to place appropriate procedures in place to mitigate them.
- The conservative risk management policies and procedures that were in place for domestic banks.

[90] Flamee Windels "Restructuring Financial Sector Supervision: Creating a Level Playing Field" 2009 https://www.ge nevaassociation. org/media/247544/ga2009_gp34(1)_flam%C3%A9e.pdf (24 November 2015).
[91] Gordhan (n2) 2.
[92] Gordhan "Implementing a twin peaks model of financial regulation in South Africa" 2013 http://www.treasury. gov.za/ twinpeaks/20131211%20-%20Item%203%20Roadmap.pdf (24 November 2015).
[93] 34 of 2005.
[94] Gordhan (n2) 13.

- Knowledge gained from the 2002 banking crisis in South Africa[95] and the subsequent implementation of the Basel II Capital Accord in 2008.
- South Africa’s limited to foreign assets.
- The listing requirements in place for registered banks which ensured that their assets were ring-fenced should the parent company be in distress. This ensured transparency and enhanced good corporate governance.
- An enhanced monetary policy framework that was able to absorb shocks from the 2008 global financial crisis and contribute towards the stability of the domestic economy.
- The implementation of a countercyclical monetary policy in order to curb the growth in credit extension that could led to a higher inflation rate. (The Reserve Bank countered unhealthy credit by raising the repo rate slowly but surely. When the financial crisis was over it then started bringing the repo rate down.)
- The implementation of a countercyclical fiscal policy. (The 2008 global financial crisis led to a decrease in domestic tax revenue and the need arose for spending more during the worst period of the crisis. Many countries did not have this option which made it difficult for them to stabilise their economies.)
- Capital adequacy requirements were raised by the banks as more and more consumers applied for credit. The risks were mitigated by providing loans to customers who were able to repay their loans.
- The enactment of the National Credit Act which safeguarded consumers from becoming over-indebted and from reckless lending practices.

Most countries were facing the same problem: the financial sector is regulated nationally but it is globally integrated. Therefore should one country be in distress this may have a global impact. For this reason minimum international standards should be adopted by the national regulators in order to advance co-ordination between them.[96]

[95] South Africa’s big four banks (Absa, Nedbank, Standard Bank and First National Bank) are known as the first-tier banks and small or medium banks that are established is known as the second-tier banks. In 2002 the second-tier banking sector collapsed due to a liquidity crisis, this included Saambou, BoE and Unifer. The crisis was worsened by the lack in faith by the public who went and withdrew all their money from the bank.
[96] Gordhan (n92) 2.

South Africa in this regard, participates in a number of institutions and forums[97] and has committed itself to implement higher global standards and to ensure that the financial sector is safer and better for its consumers.[98]

During the G-20 session, that was held during October and November 2010, South Africa committed to a global financial regulatory reform. The reason behind this commitment was to strengthen financial stability in South Africa and to ensure that job creation would be possible in the long run. It has committed to the following:[99]

- a stronger regulatory framework, new and appropriate principles to be developed in order to ensure that weaker areas of financial regulation are addressed;
- effective supervision, strengthening the regulators by providing them with adequate powers to become more effective in their governance over the domestic and international regulation;
- crisis resolution and addressing systemic institutions, ensuring that financial costs are kept to the minimum should there be a crisis or failure in the financial industry. Also to ensure that the cries or failure does not impact the broader financial system; and
- international assessment and peer review against international norms.[100]

The goal is to ensure that every individual that deals with the financial services industry knows the aim of regulation. This includes the following:

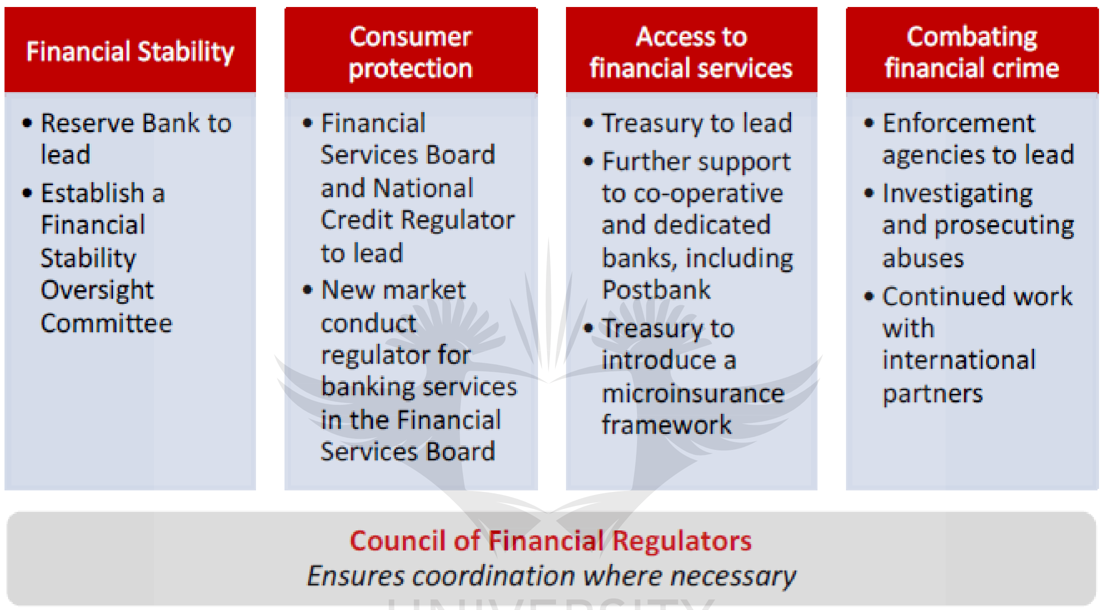
- maintaining confidence in the financial system and sustaining systemic stability;
- ensuring that providers of financial services are appropriately licensed;
- promoting appropriate market conduct and prosecuting cases of market misconduct, thereby protecting the consumer;
- maintaining the safety and soundness of financial institutions; and

[97] The IMF, the G-20, the Financial Stability Board, the Basel Committee on Bank Supervision, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors. See Gordhan (n92) 2.
[98] Gordhan (n92) 2.
[99] Gordhan (n2) 4.
[100] Gordhan (n2) 4.

- enforcing applicable laws.

The framework for the realisation of these aims are to be structured along the following four policy objectives set out in the table below:[101]

Figure 1.1: The new framework will take a holistic approach



6.1 Financial stability – policy priority number 1[102]

As mentioned above, the South African financial services industry forms part of the global environment and is therefore at risk to be contaminated by a crisis in another country. For South Africa to be able to grow, more reliance needs to be placed on international trade. This exacerbates the risk of becoming part of a global economic crisis. Enhanced measures should accordingly be put in place to address this risk. These include the following:

- A financial stability oversight committee will be established. This committee will consist of the South African Reserve Bank, the Financial Services Board and the National

[101] Gordhan (n2) 5.
[102] Gordhan (n2) 5.

Treasury. The committee will be jointly chaired by the Governor and the Minister of Finance;[103]

- A Council of Financial Regulators will be provided with a broader spectrum of powers and duties. Interagency coordination between all the regulators in matters that relate to legislation, enforcement and market conduct is envisaged.[104]
- The National Treasury and the Reserve Bank is looking into improving the banking and financial-crisis resolution frameworks.[105]
- South Africa will consent to an international peer review to be conducted on a regular basis. (The G-20 countries have to consent to such a review in order to determine whether their financial services industry is aligned with international regulatory best practice. This may include looking into the current banking, insurance and securities regulation.). South Africa already had a peer review during the course of 2010 and the assessment confirmed that the quality of South African regulation and supervision is generally very good. Even though it was good more changes should be made to bring it up to international standard.[106]

6.2 Consumer protection and market conduct – policy priority number 2[107]

The financial services industry in South Africa is known to have high and or vague fees. The consumers are being mistreated as they cannot afford to pay these fees. They do not have access to savings accounts and are unable to take out loans because they do not qualify for these. This makes it impossible for them to even think of starting to save money for their retirement.

Solutions included that a market conduct regulator should be established that will focus on the market structure and the high bank costs. This regulator will be the Financial Services Board and will work closely with the National Credit Regulator. A treating customers fairly project should be implemented to ensure that the principles are set in rules for the financial industry to abide by. This will ensure that the consumers will be safeguarded against the unfair treatment of corporates.

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[103] Gordhan (n2) 5.
[104] Gordhan (n2) 5.
[105] Gordhan (n2) 6.
[106] Gordhan (n2) 6.
[107] Gordhan (n2) 5.

6.3 Expanding access through financial inclusion: policy priority number 3[108]

With the poor being able to access affordable financial services it will be an opportunity to strengthen and grow the economy. The Financial Sector Charter has been given the task of ensuring that the transformation objectives that includes greater access for the poor and the promotion of broad-based black economic empowerment are implemented in South Africa. The task furthermore is to ensure that these objectives can be realised without influencing the financial stability of the economy or promote any reckless credit practices.

6.4 Combating financial crime: policy priority number 4[109]

This has always been prioritised in South Africa in order to ensure that South Africa is not used for any financial crimes. Strong structures have been put in place in order to ensure that any type of financial crime may be investigated and the culprits are accordingly prosecuted.

In 2002 the Financial Intelligence Centre (FIC) was established in South Africa in order to fight against any financial crimes. The FIC received its powers out of the following legislation that was implemented:

- The Prevention of Organised Crime Act of 1998;
- The Protection of Constitutional Democracy Against Terrorism and Related Activities Act of 2004; and
- The Financial Intelligence Centre Act of 2001 (FIC Act).

The onus has been placed on each accountable institution ("AI") that is identified in the FIC Act to ensure that they conduct a thorough due diligence in respect of each and every client. Furthermore AI's are required to ensure that records are kept of the documentation that was received during the identification and verification process and to report any suspicious transactions to the FIC.

[108] Gordhan (n2) 7.
[109] Gordhan (n2) 5.

National Treasury will be assisting the FIC and compiling a comprehensive financial integrity policy that will improve the interaction between local and international bodies. Furthermore, South Africa is currently working with other countries through FATF to identify high risk jurisdictions.[110]

The above four priorities will be interacting with each other and it will lead to difficult decisions that the policymaker has to make. Balancing each priority against the other will lead to a couple of tricky situations:[111]

- "Financial stability versus access to credit. While unrestrained credit growth might appear desirable, the financial crisis demonstrated that excessive household lending creates financial stability risks, with disastrous economic consequences. A careful balance needs to be struck between these competing objectives.
- Consumer protection versus financial stability. Arguably, a highly profitable and concentrated financial services sector is a stable one but often profits might be considered excessive and due to unreasonably high fees.
- Combating financial crime versus financial access. Combating financial crimes is part of a comprehensive strategy to address financial integrity. Yet overly onerous requirements might impede access to financial services for the poor."

In order to implement the proposed priorities as described above regulation will have to be changed in South Africa.

The proposal that has been made is to separate prudential and market conduct regulation. The change will lead to a modified twin-peaks model ensuring that different regulators are given the responsibility for key policy objectives.[112] "In addition, South Africa will adopt a system-wide approach to financial stability and regulation, bolster the supervision of individual institutions, and ensure better coordination and information sharing. The scope of regulation will also be extended to cover presently unregulated financial activities that have the potential to create systemic risks

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[110] Gordhan (n2) 76.
[111] Gordhan (n2) 7.
[112] Gordhan (n2) 5.

to financial stability."[113] Macro-prudential supervision is normally given to the central bank in order to ensure that prudential development of the whole financial system. Micro-prudential supervision on the other hand safeguards the financial soundness of individual institutions.[114]

The twin peaks model is a comprehensive and complete system that will regulate the financial sector. The aim of the model is to ensure that better outcomes are achieved for financial consumers and the economy. Therefore the aim is for the consumers to be treated fairly, their funds protected against the risk of entities failing and the risk of using taxpayer funds to safeguard the economy from any systemic failures is minimised. The model places equal focus on the prudential and market conduct supervision. Two regulators will be created by the model each with their own responsibilities and objectives that they have to achieve. The model further places a focus on how to achieve financial stability.[115]

The objective of the Twin peaks system in South Africa is to strengthen consumer protection and to create a resilient and stable financial system.[116] The referencing of the words Twin peaks is to indicate that the two objectives are to be reached in the financial system.[117]

By implementing the twin peaks system it will move away from a fragmented regulatory approach and the so called "tick box" approach of regulation. "It focuses on implementing a more streamlined system of licensing, supervision, enforcement, customer complaints (including ombuds), appeal mechanism and customer advice and education across the financial sector."[118]

"The FSR aims to create the two new authorities with the appropriate scope of responsibility, specific mandates, and requisite powers to achieve effective prudential and market conduct oversight. The objectives of the two regulatory authorities are quite distinct, although strong

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113 Gordhan (n2) 23.
114 Masciandaro Quintyn "Regulating the Regulators: The Changing Face of Financial Supervision Architectures before and after the Crisis" 2009 European Company Law 6 187 188.
115 Gordhan (n13) 5.
116 Dixon "Twin peaks legislation nears its final stages" 2014 https://www.fsb.co.za/Departments/twinpeaks/Documents/Twin%20Peaks%20FAQ's.pdf (24 November 2015).
117 Gilmour "2014's Twin peaks" 2013 http://www.moneyweb.co.za/archive/2014s-twin-peaks/ (4 October 2015).
118 Gordhan (n13) 5.

coordination and cooperation between the two authorities is also necessary to ensure their effectiveness."[119]

The key objective of the FSR is to put in place the architecture of the Twin peaks Regulatory system for the financial sector. Regulation will be done by a twin-peaks approach by establishing two Regulators:

- The Prudential Authority who will supervise the soundness of banks, insurance companies and other Financial Institutions. The Reserve Bank will be responsible for this function;
- Financial Sector Conduct Authority who will supervise how the financial service industry conducts business and treat the consumers. The Financial Services Board's name will therefore change to the Financial Sector Conduct Authority and their mandate will be expanded to include the market conduct of retail banking services.[120]

Within this twin peak system the Reserve Bank will oversee the financial stability within a policy framework agreed with the Minister of Finance.[121]

Proper structures will be implemented between the two Regulators in order to ensure that there is proper communication.[122] The twin peaks model is designed in order to streamline the communication between the two regulators and the financial industry. This is a more functional approach and will replace the silo-based approach. By doing this it will allow a consolidation of supervision in certain areas in order to avoid duplication and to improve the efficiency of supervision.[123]

The first phase that will be undertaken is to establish the two regulators and making minor changes in current legislation in order to give the regulators their powers that will be needed to complete

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[119] Gordhan (n13) 14.
[120] Gordhan (n2) 1.
[121] Gordhan (n13) 7.
[122] Dixon (n116) 13.
[123] Dixon (n116) 14.

their duties. The two regulators will sign a memorandum of understanding in order to ensure that effective interactions are maintained between the two.[124]

The second phase will allow for current legislation to be replaced by legislation that will ensure that the twin peaks model will be correctly implemented in South Africa. Therefore powers will be given to the regulators in order to establish how they have to regulate and what they have to regulate.[125]

The FSR aims at strengthening the operational independence of the two regulators but also allowing the necessary accountability to fall on the shoulders of the specific regulator responsible for its duties. The FSR further provides a governance framework that dictates the objectives of the Government and to ensure that the two regulators may perform their respective duties impartially.[126]

The main objective of the South African Reserve Bank (SARB) is to ensure financial stability. In order to achieve its objective the SARB is given instrumental independence. This is internationally known as the principles and or functions of the central bank.[127]

The twin peaks model will replace an industry-specific regulator model and will be very different to what South Africa is used to. The industry-specific regulatory model is where a specific regulator is responsible for prudential regulation, market conduct and oversight, administrative duties and enforcement in the specific sector. However this model has proven to be insufficient in South Africa. By being replaced by the twin peaks model the two regulators will have to streamline their interactions and the interactions with the financial services industry.[128]

In the FSR are there are more flexible and broader definitions of the terms financial service and financial product. The current legislation sometimes exclude certain products and for this reason

[124] ENSight "The "twin peaks" model of financial regulation and financial sector regulation bill" 2014 https://www.ensafrica.com/news/the-twin-peaks-model-of-financial-services-regulation-and-financial-sector-regu?Id=1596&STitle=banking%20and%20finance%20ENSight.
[125] ENSight (n124) 1.
[126] Havemann Gibson "Financial Sector Regulation Bill 2013 Implementing Twin peaks – Phase 1" 2014 http:// www .treasury.gov.za/twinpeaks/20140128%20(Workshops)%20v4%20Twin%20peaks%20presentation.pdf (24 November 2015)
[127] De Jager "The South African Reserve Bank: Blowing Winds of Change (Part 2)" 2013 SA MERC LJ 512
[128] ENSight (n124) 1.

the FSB will not have jurisdiction in a matter. With the future broader definitions the market conduct regulator will have more jurisdiction in matters and be able to intervene.[129]

Together with the FSR Bill, another document, the Market Conduct Policy Framework for South Africa, was also published. This document incorporates the idea of Treating Customers fairly and gives guidelines on how this will be implemented. The document discusses the following main parts:

- Comprehensive framework for how the market conduct regulator will operate;
- Treating customers fairly;
- The twin peaks reformation process;
- Proposed regulatory and supervisory framework for the FSCA; and
- Various subordinate legislation applicable to financial sector will be consolidated.

This is the first step to regulate that financial consumers must be treated fairly by the product suppliers, the industry and regulators.

7. Conclusion

The financial services industry has changed so much over the past few years and with the product changes that will be implemented to adhere to the twin peak regulation it will change again. The question is: how will regulators be able to keep up with the trends? To implement effective supervision, adequate and up to date information is required.[130]

Financial regulation in South Africa has been regulated by many pieces of legislation. All this legislation aims to protect the consumer.[131]

[129] Cairns "Consumers can hope for better protection from Twin peaks" 2015 http://www.moneyweb.co.za/news/economy consumers-can-hope-for-better-protection-from-twin-peaks/ (4 October 2015).
[130]Quintyn Baffi "After the Big Bang and Before the Next One? Reforming the Financial Supervision Architecture and the Role for the Central Bank. A Review of Worldwide Trends, Causes and Effects (1998-2008)" 2009 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1336390 (24 November 2015).
[131] Van Jaarsveld "Domestic and International Banking Regulation and Supervision – Defying the Challenges" 2002 South African Law Journal 71 119.

South Africa has been known to follow international trends and will be adopting a twin peaks model and not a single regulated model.[132] The problem is that South Africa has to choose either not to change their regulatory system, or implement a single regulator or go with the twin peaks model. Each and every country that considers their financial regulatory reform has to ensure that there is adequate regulatory co-ordination, that information is being shared frequently and the necessary allocation of the necessary resources.[133]

The regulation of the financial institutions normally has two separate goals, to ensure financial soundness and to protect the consumers.[134] The increased regulation that will be implemented with the twin peaks model will lead to increased compliance costs. More staff will have to be hired in order to ensure compliance with the new regulations. This may also have an impact on the resources available for innovation.[135] The co-ordination between the two regulators is another potential weakness of the twin peaks model.[136]

There has been much pressure in South Africa to reduce fees of financial products in the financial services industry. However there has also been an increase in compliance to ensure that the regulatory requirements are met and this has led to the increase of the costs in the products.[137]

Some critics have mentioned that the twin peaks model is not without flaws. The cost of restructuring the financial structure is high and may not be as beneficial as first believed. The cost implications have been discussed with the South African Government when this model was reviewed. The cost of compliance will increase and more appointments have to be made to monitor compliance.[138]

[132] Mhango (n43) 1.
[133] Mhango (n43) 1.
[134] Mhango "Twin peaks is not for SA" 2014 http://www.fin24.com/Companies/Financial-Services/Twin-Peaks-is-not-for-SA-20140205 (24 November 2015).
[135] Bird "South African Regulation – has it gone too far?" 2013 http://www.sablog.kpmg.co.za/2013/10/the-south-african-regulatory-landscape-has-it-gone-too-far/ (24 November 2015).
[136] Mhango (n43) 1.
[137] Lamprecht "Shadow banking in the spotlight" 2015 http://www.moneyweb.co.za/news/markets/shadow-banking-spotlight/ (25 November 2015)
[138] Hill (n22) 1.
[138] Michael (n21) 2.

Since the global financial crisis of 2008 it has become fashionable to make use of the twin peaks model of regulation. However the model may not be suitable for all countries. Each country will have to look at their specific needs and then select a regulatory structure suitable for their needs.[139]

Australia was the first country to implement the twin peaks model and this has been used as the blueprint for other countries who adopted the model. Netherlands tweaked the model a bit to ensure that it makes provision for conglomerates. On the other hand the United Kingdom made their PRA a subsidiary of the Bank and it will be separated from the Central bank. Therefore there is no real set of rules for the twin peak model and it may be changed from country to country based on their specific needs, as South Africa is currently doing.

Each and every country has to realise that by implementing a model it will not ensure the failure or success of financial supervision. Each model will have its pros and cons.[140] The reasoning behind the implementation of the twin peaks model by way of the FSR seems to be something that will benefit the financial industry in the long run. With the rolling out of the new legislation that will provide for the features as discussed above it will be a long process. Change is not going to happen overnight and compliance with these changes will also take time to implement. One of the main concerns is that compliance monitoring is becoming more and more expensive. It will therefore be difficult to provide products to all levels of income holders in South Africa. Companies are in the industry to make money and therefore treating all investors the same will be a daunting task.

It may be too soon to determine if the twin peaks model will be as effective in South Africa as in the other countries. What customers would like to know is if the market conduct regulator will be able to fulfil its mandate and be more vigorous than what the FSB has been.[141]

Further investigations should be done after the implementation of the FSR and the subordinate legislation to make a finding if this model will be successful in an ever changing South Africa.

[139] Hill (n22) 1.
[139] Michael (n21) 4.
[140] Vletter-Van-Dort (n15) 154.
[141] Cairns (n129) 1.

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