

Financial Sector Regulation (“Twin Peaks”) Bill

Implementing Twin Peaks

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Underlying Questions to Twin Peaks System of Regulation

- How best to regulate the financial sector?
 - Globally?
 - Financial institutions operate globally, but are regulated nationally
 - In South Africa?
- What are the key lessons following the 2008 Global Financial Crisis?
 - Financial sector is like nuclear energy.....Big benefits but BIG risks
 - Financial sector regulation must be INTRUSIVE, INTENSIVE, EFFECTIVE in order to make the financial sector SAFER
 - Quality of regulation rather than form (uniform or twin peaks system) but market conduct is important and requires dedicated focus
- Why have we decided on the Twin Peaks model for regulating the financial sector in SA?
 - Shift from banking and non-banking prudential regulatory system
 - Focus on prudential (macro- and micro-) and market conduct objectives

Financial services reform process to date

- 2011** *A safer financial sector to serve South Africa better* approved by Cabinet
 – Set out comprehensive programme of reform
- 2012** **Financial Markets Act** – updated securities laws, regulations for derivatives
 Credit Ratings Services Act – regulated agencies
- 2013** **Bank Amendment Act** – Basel 3 implemented
 Financial Services General Laws – amended 13 laws (Pensions Act, Insurance Acts, etc.)
- 2015** **Banks Amendment Act** – updated resolution
 Financial Sector Regulation Bill – Twin Peaks system
- 2016** **Insurance Bill**
- 2017** **Resolution Bill, Conduct of Financial Institutions Bill**

Today, the focus is on “Twin Peaks”

- **Feb 2011:** Policy document ‘*A safer financial sector to serve South Africa better*’ proposing Twin Peaks reform
- **July 2011:** approved by Cabinet
- **2011 - 2012:** Financial Sector Regulatory Reform Steering Committee established (NT, SARB, FSB). Study tours (UK, Netherlands) and other research work undertaken
- **February 2013:** Roadmap published – ‘*Implementing a twin peaks model of financial regulation in South Africa*’. Consultations with public, industry on proposals
- **December 2013:** **First** draft of the FSR Bill published
- **2014:** Over 300 pages of comments received and considered; public workshops held; bi-lateral industry consultations; intergovernmental meetings; consulted with experts involved in Australian Twin Peaks legislation and regulation

Twin Peaks reform process to date

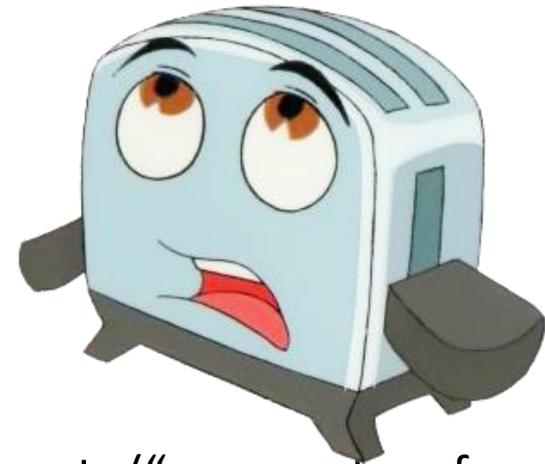
- **December 2014:** Second draft of the FSR Bill with detailed response doc and comments matrix (and draft market conduct policy framework)
- **January 2015 to date:** Over 300 pages of comments submitted and considered; public workshops held; bi-lateral institutional and industry consultations; intergovernmental meetings; expert legal consultations (South African and Australian); NEDLAC consultation (final report expected **early August**)
- **24 June 2015:** Bill submitted to State Law Advisers for initial consideration
- **27 July 2015:** Comments received from State Law Advisers
- **6 August 2015:** Bill to be submitted to State Law Advisers for final certification
- **Week of 17 August 2015:** Bill expected to be tabled

Crucial role of financial sector in an economy

- A financial system should work in the interests of financial customers and **support balanced and sustainable economic growth**
- ALL households & companies should be able to *transact, borrow, save, and manage their day-to-day risks* efficiently and effectively
- From a regulatory and supervisory perspective?
 - Regulators must be able to *identify & manage risks* emerging within the sector that could compromise on these customer & economic outcomes
 - Three main risk categories: *Stability, Prudential, Conduct*
 - May be tensions between FOUR financial sector policy objectives of: stability, protecting financial customers, financial market integrity, inclusion
- Financial sector is the crucial link between the domestic economy to the global economy
 - Facilitates trade, investment, remittances

Why is the financial services industry different?

- Customers of financial services need special, different protection:
 - An individual may use a financial product over a long period of time
 - Contributions to a pension plan
 - Savings in a bank account
 - Savings in a unit trust
(collective investment scheme)
 - Buyers of financial products are often at a disadvantage compared to the sellers, advisers and agents (“asymmetry of information”)
 - Buying a financial product is not like buying a toaster, hence need higher standards than in generic consumer protection legislation like the CPA



Regulation aims to protect customers in two ways

Need to ensure that the financial institution can meet its obligations, i.e. pay its depositors back, pay out insurance policies, etc.

- Sustainable business model
- Prudent investments
- If it fails, its obligations to customers need to be passed on to another firm efficiently and with minimum disruption

1

» **“Prudential” regulation and supervision** is concerned with the safety and soundness of an individual firm, and aims to ensure the financial firm is run prudently

Need to ensure that the financial institution sells its products appropriately
Discloses costs, “fine print”, etc.

2

“Market conduct regulation” is concerned with how the individual firm behaves with customers, other firms; i.e. how it conducts itself in the market

How does Twin Peaks improve financial sector regulation?

- **TWO OBJECTIVES TWO SUPERVISORS (Fin wellness and market conduct)**
 - Each objective requires a **DEDICATED** regulator, but they are forced to co-ordinate
 - Both fall under **ONE Law, One Minister, One framework**
 - **Dedicated and equal emphasis** on monitoring stability, prudential and conduct risks in financial sector
 - **Fin stability OBJECTIVE left to a THIRD and bigger REGULATOR**
- **Increased regulatory coverage**, minimising potential for regulatory gaps
- Regulatory laws that are **complete, harmonised, integrated, proportionate**
- Enhanced oversight of **micro-prudential regulation** for banks, insurers, financial markets, special focus on conglomerates
- **Increased focus on outcomes**, especially fair customer treatment
- **More efficient use of supervisory capacity**, strengthen risk-based approach
- **Strong and swift action** for contraventions

There are many ways to structure regulators...

- “Single regulator”
 - Germany
 - UK before its reforms
- “Institutional”
 - Multiple regulators for every type of financial institution
 - E.g. in current South Africa approach we have \pm 15 regulators:
 - Banking Registrar (Reserve Bank)
 - Credit Regulator (NCR)
 - Multiple non-bank regulators (housed together at FSB)
 - Insurance registrar
 - Pensions registrar
 - Etc.
- Financial Intelligence Centre, Excon, Council for Medical Schemes, etc.



A financial sector to serve SA better: Key Principles

Cabinet approved regulatory principles to shape regulatory reform:

P 1: Financial service providers must be appropriately licensed or regulated.

No provider of a financial service should be allowed to operate outside the regulatory perimeter.

P 4: Policy and legislation are set by government and the legislature, providing the operational framework for regulators.

P 5a: Regulators must operate objectively with integrity and be operationally independent, but must also be accountable for their actions and performance.

P 6: Regulations should be of universal applicability and comprehensive in scope in order to reduce regulatory arbitrage.

P 7: The legislative framework should allow for a lead regulator for every financial institution that is regulated by a multiple set of financial regulators. All regulators involved must strive to coordinate their supervisory activities.

P 8: Relevant ministers must ensure that the legislation they administer promotes coordination and reduces the scope for arbitrage.

P 10: Special mechanisms are needed to deal with systemically important financial institutions (SIFIs).

P 11: Market conduct oversight must be sufficiently strong to complement prudential regulation, particularly in the banking sector.

P 15: All the above principles are reflected in international standards like Basel III and standards set by the International Association of Industry Supervisors (IAIS).

International assessments: The story so far...

Since the financial crisis, G20 members have agreed a framework to assess their domestic financial systems:

- **IMF Financial Sector Assessment Programmes (FSAP):** Every 5 yrs
- **G20- Financial Stability Board Peer Reviews (FSB):** In-between FSAPs

SA G20 Peer Review (2013)- main findings	SA FSAP (2014)- main findings
<ol style="list-style-type: none">1. Poor interagency coordination and regulatory structure.2. Inadequate OTC Derivatives reforms. SA needs to create a framework for centrally clearing OTC derivatives where possible.	<ol style="list-style-type: none">1. Poor coordination between and among regulators.2. Deep interconnection within the financial sector without a consolidated approach to supervision. (i.e. Medical Insurance (schemes), insurance firms , asset managers and banks within the same financial conglomerate.)

A financial sector to serve SA better: market conduct

Cabinet also approved publication of draft framework for market conduct regulation in 2014:

- Transparent
- Comprehensive and consistent
- Appropriate, intensive and intrusive
- Outcomes-based:
- Risk-based and proportional
- Pre-emptive and proactive
- A credible deterrent to misconduct
- Aligned with applicable international standards

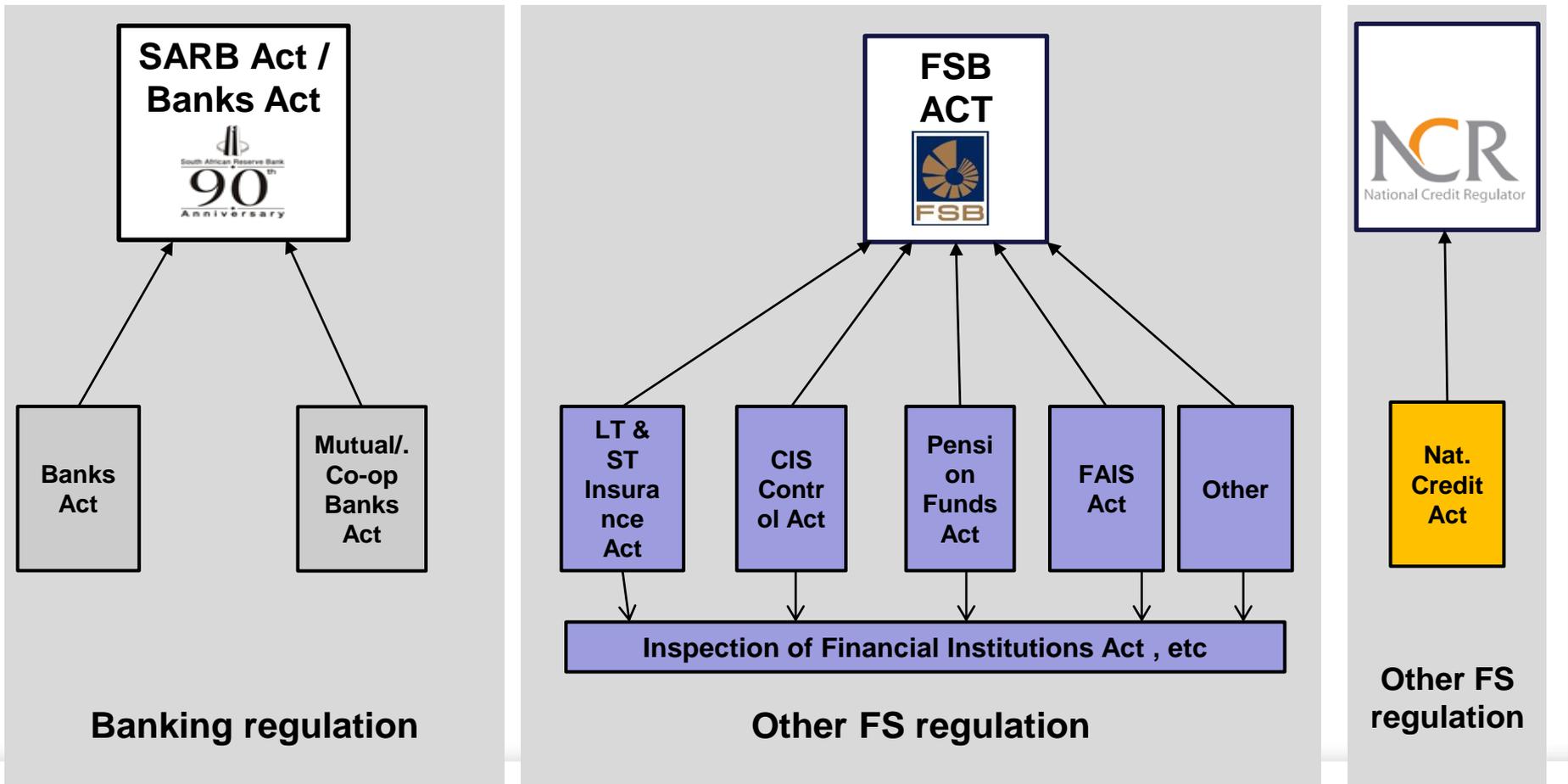
Why do we need a comprehensive system?

- Consider the regulatory system from the perspective a banking group
- Bank A is actually a financial group, and includes companies that require licenses for banking, credit, long- and short-term insurance, investment and asset management, retirement funds, medical scheme, and also more cross-cutting regulators dealing with money-laundering, competition etc
 - This involves a plethora of regulators (the two twin peaks regulators that replace BSD and FSB, NCR, CMS, FIC, CC)
 - Each regulator has own licensing system, own tribunal, own ombuds etc
 - Also have JSE, CIPC and standard setters, DoJ for Big DATA standards (POPI)
- QUESTION: HOW DO ALL THESE REGULATORS CO-ORDINATE THEIR ACTIVITIES?
 - To prevent regulatory arbitrage?
 - To reduce costs of regulation and supervision?
- Do MoUs work when the system is so fragmented?
 - UK experience indicated many MoUs not worth the paper they written on!

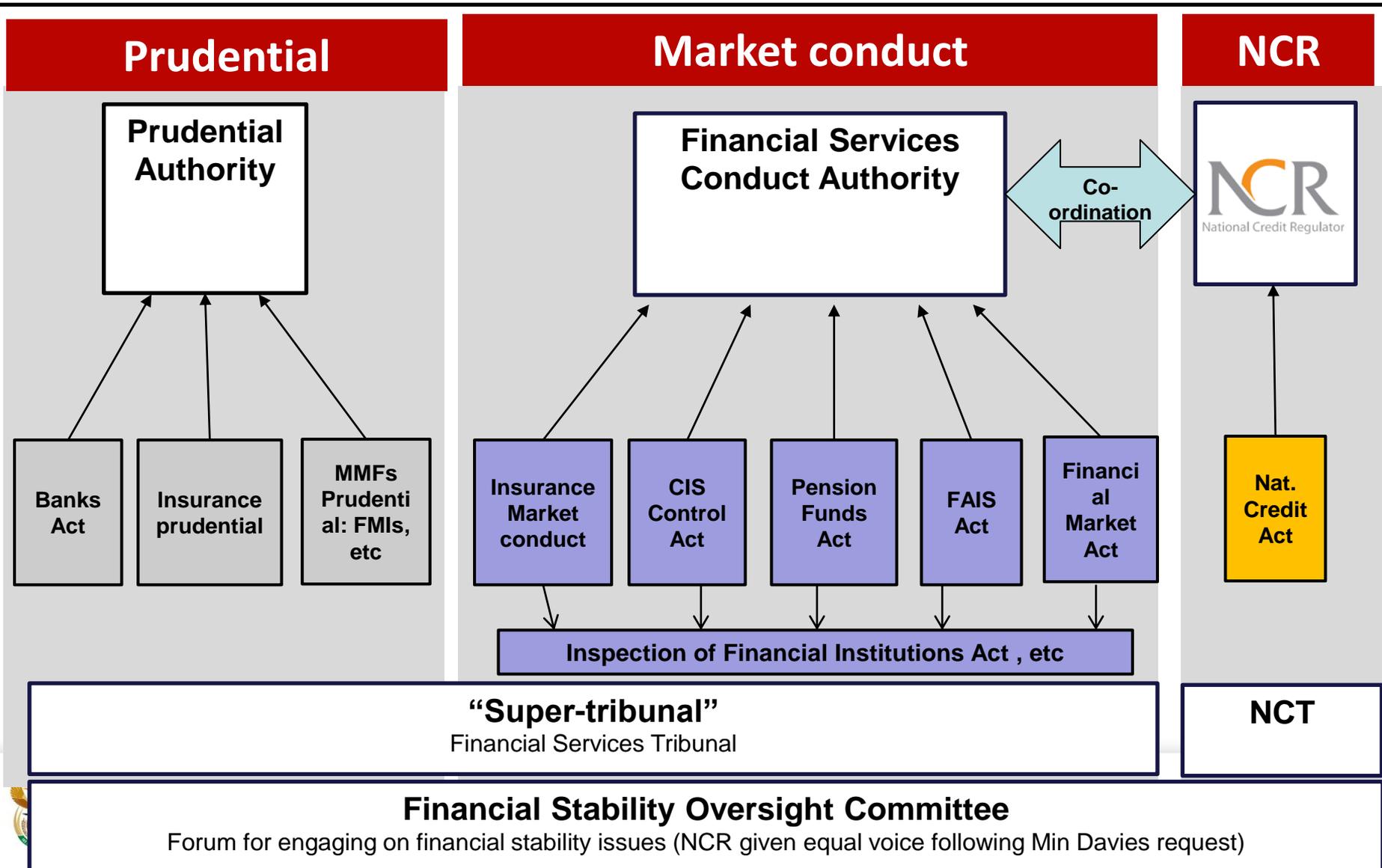


Current regulatory architecture...

- *Before.....*



Proposed regulatory architecture (Phase 1)



Comments and lessons learnt from ABIL's failure

- In August 2014, the Minister of Finance placed African Bank Limited under curatorship.
- Whilst it is too early to draw final lessons from the failure of African Bank, **initial lessons underline** the need for:
 - a stronger system of financial regulation,
 - a consistent and comprehensive approach to regulating conglomerates (or groups with a number of subsidiary companies).
- Many of the difficulties experienced by African Bank were as a result of a related furniture company, which impacted on the holding company, African Bank Investments Limited (ABIL). **There was limited scope for the regulators to intervene** at group holding company level.
- Though regulated by the SARB, FSB and NCR, **it is questionable whether the regulatory system was anywhere as effective or even as intensive** as it should have been.
- An effective regulatory system should ideally identify problems as early as possible.

Issues to be considered

- How do we respond to FSAP recommendations?
- What approach should be taken for **regulating financial groups**?
- How do we deal with **SIFIs**?
- Can we agree on **principles for coordination**?

Revised FSR Bill strengthens supervisory capacity & effectiveness

The framework being developed is considering a holistic approach to:

- ***Scope & objectives*** of regulation
- Approach to ***licensing***
- ***Subordinate regulation*** making powers
- How ***supervision*** happens
- ***Information gathering***
- ***Enforcement***

Establishing the FSCA and PA is just the first step.

Revised draft FSR Bill – recognise importance of NCR and other regulators in regulatory system

- NCR expressly provided for within Twin Peaks, named a financial sector regulator on equal footing with PA and FSCA
- SARB, PA and FSCA jurisdiction over all financial sector to plug gaps
- Coordination mechanisms spelt out to ensure regulatory cooperation, coordination & consistency in administrative action
- NCR a principle on FSOC (equal standing to FSCA and PA)
- Role for dti/NCR on Council for Financial Regulators
- Challenge is to ensure that we also meet FSAP and G20 Peer Review concerns and recommendations
- Other regulators that largely deal with the financial sector include the Financial Intelligence Centre, Council for Medical Schemes, and non-financial regulators like the Competition Commission
 - FSAP and G20 Peer Review also raise the role of CIPC and Financial Reporting Standards Council (FRSC) in terms of Companies Act
 - Also need to consider role of accounting and auditing standard-setting bodies on financial sector reporting

The contents of the Bill

Financial Stability / Prudential

Need to strengthen **financial stability**

- Reserve Bank to lead on macro-prudential (systemic stability) and micro-prudential (safety and soundness of institutions)

Market conduct

Need to improve **market conduct**

- Much wider regulatory net, higher standards applied consistently across sector
- Focus on outcomes incl. Treating Customers Fairly

Access to financial services

Need to widen access to **financial services**

- Treasury to lead
- Financial sector code
- Co-operative and dedicated banks, and Postbank
- Introduce a microinsurance framework

Combating financial crime

Need to combat **financial crime**

- Enforcement agencies to lead
- Investigating and prosecuting abuses
- Continued work with international partners

It is vital to ensure coordination and information sharing between regulators particularly in the face of an event that threatens systemic stability

How to balance prudential and conduct policy objectives, & system-wide regulatory coverage? Two 'peaks'

Prudential Authority

- promote and enhance the safety and soundness of financial institutions that provide financial products;
- promote and enhance the safety and soundness of market infrastructures;
- protect financial customers against the risk that those financial institutions may fail to meet their obligations; and
- assist in maintaining financial stability

Financial Sector Conduct Authority

- Enhance, support efficiency & integrity of financial system;
- protect financial customers by–
 - promoting that financial institutions treat financial customers fairly; and
 - providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions; and
- assist in maintaining financial stability.

Financial Services Tribunal and Enforcement

- Regulators will have clear internal policies & procedures for enforcement, enhanced transparency & accountability, strong appeal mechanism

Financial Stability (FSOC)

- Inter-agency co-ordination of financial stability issues

Chapter 2

Financial Stability and role of the Reserve Bank

- Financial stability oversight role is firmly placed with the Governor of the SARB
 - Minister only involved with setting the framework with Governor
 - SARB can operate speedily to deal with risks that can emerge too quickly for government-approval processes (globally, not just in SA)
 - Key question is when, and how, do we bring in role of executive (Ministers of Finance, dti, EDD, Health etc)
 - Key points of consultation with MoF when funds from fiscus at risk
- Governor also designates SIFIs in order to ensure that SARB can better manage and monitor risks from major banks, insurance and other groups or market and payment infrastructure
- Note the role of SARB is not restricted to operation of monetary policy, but includes SARB as prudential regulator, payments system regulator, exchange control implementer etc
 - Need to differentiate in Bill btw SARB and PRA

Chapter 3

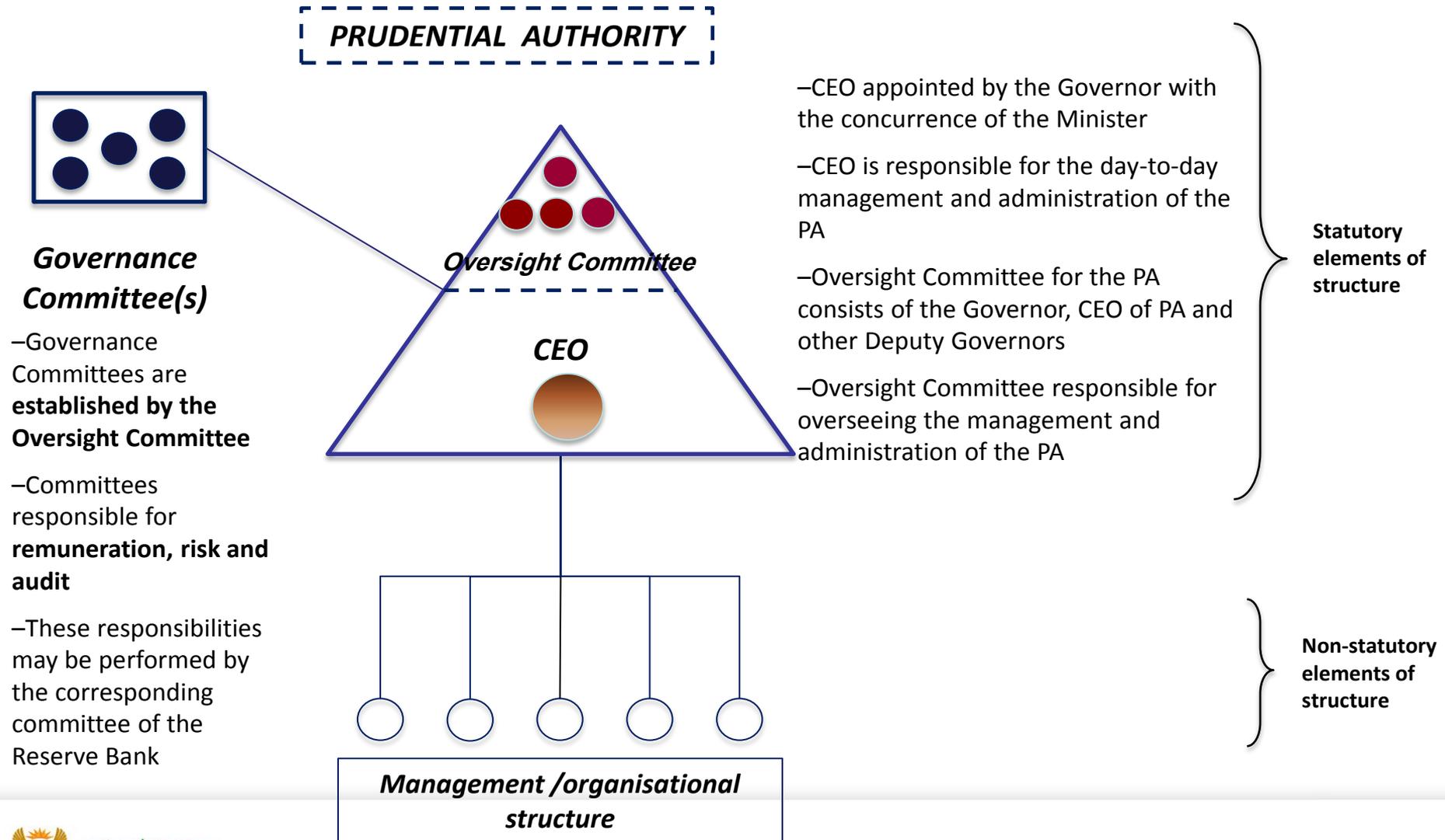
Prudential Authority – what does it do?



- Prudential Authority responsible for supervising safety and soundness of market infrastructures and financial institutions that provide **financial products**
- Prudential oversight required so institutions meet financial obligations to customers ('promises')
- **Financial product** is :
 - a participatory interest in a collective investment scheme;
 - a long-term insurance policy
 - a short-term insurance policy
 - a benefit provided by a pension fund organisation or a friendly society
 - a health service benefit provided by a medical scheme
 - A loan agreement
 - a warranty, guarantee or other credit support arrangement
- **FSR Bill allows Finance Minister to designate new financial products**

Chapter 3

Prudential Authority – what does it look like?



Chapter 4

Financial Sector Conduct Authority – what does it do?

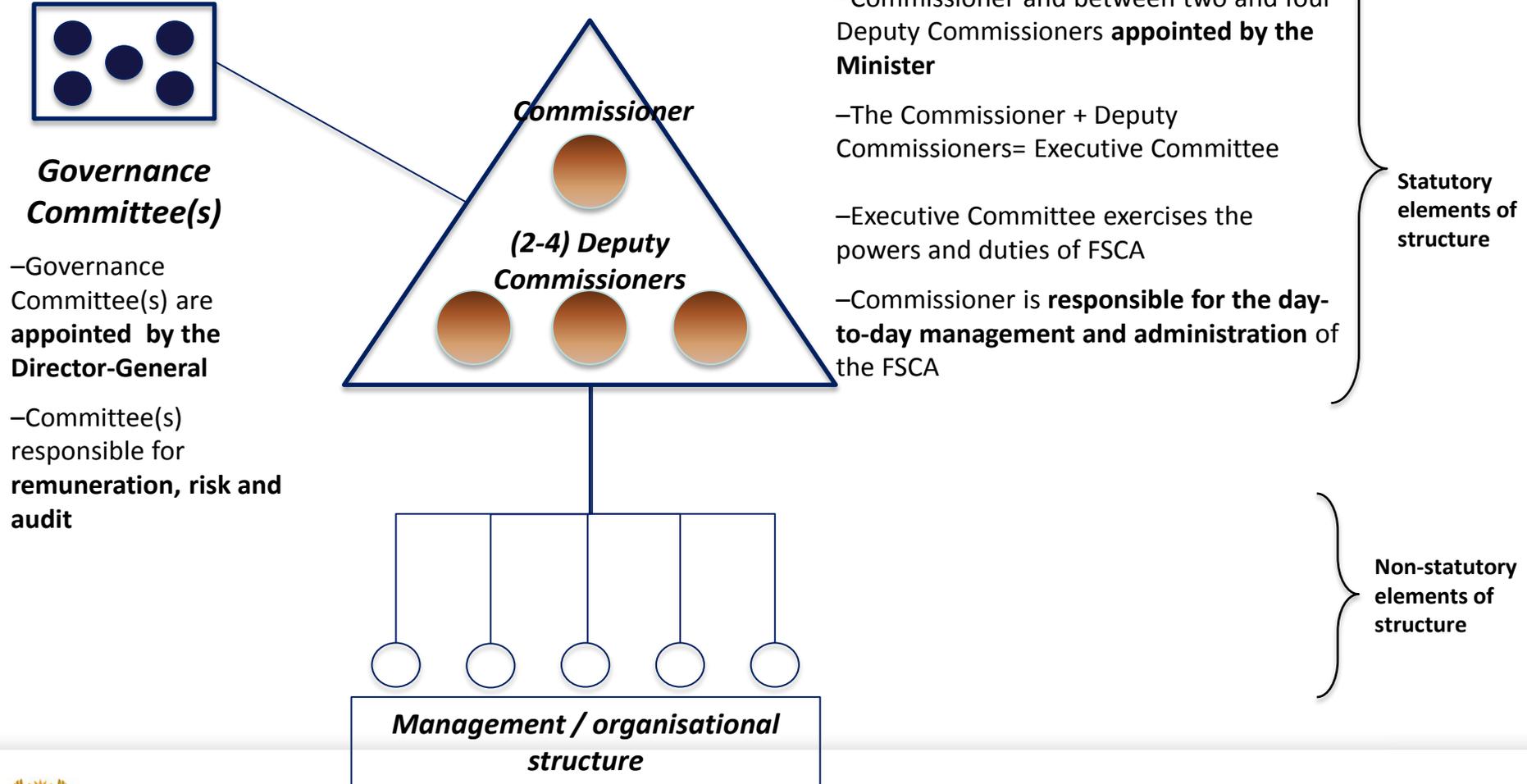


- FSCA responsible for fair treatment, integrity and education. Will supervise **services performed in relation to a financial product, a foreign financial product, a financial instrument or a market infrastructure** :
 - offering, promoting, marketing or distributing
 - providing advice, recommendations or guidance
 - dealing or making a market in
 - operating or managing, or providing administration services
- **Financial services** also include:
 - a payment service
 - a service provided by a financial institution, being a service regulated by a specific financial sector law
 - a service related to the buying and selling of foreign exchange
 - a service, including a debt collection service, provided to a financial institution through an outsourcing arrangement
- **FSR Bill allows Finance Minister to designate new financial services**

Chapter 4

Financial Sector Conduct Authority – structure?

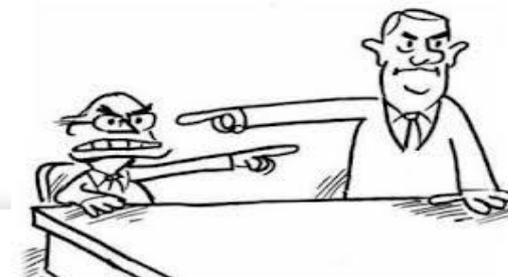
FINANCIAL SECTOR CONDUCT AUTHORITY



How to strengthen accountability of the Authorities?

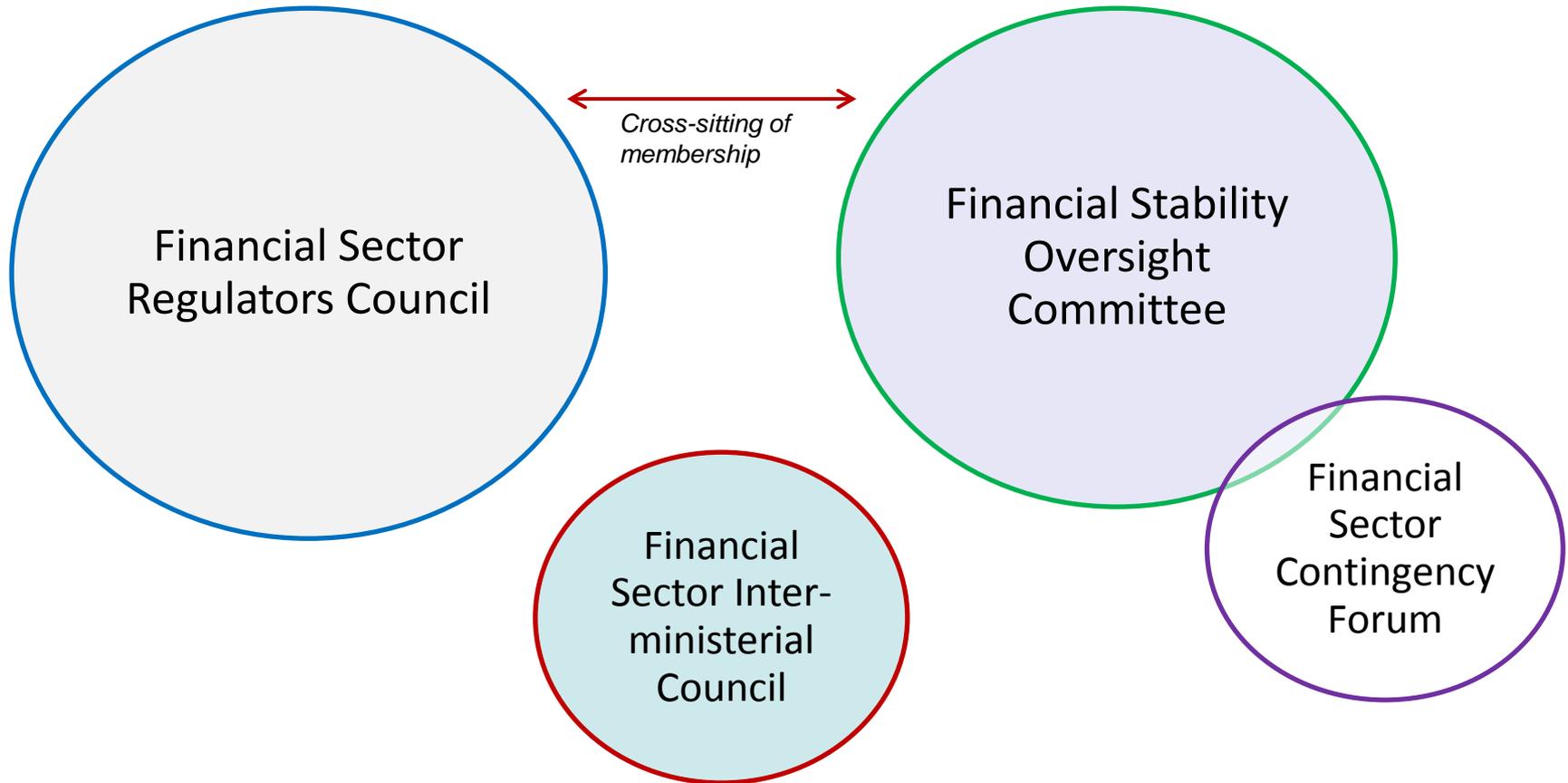
More transparency, more engagement

- Strong powers provided along with **appropriate checks and balances**, including:
 - Annual reports tabled in Parliament
 - Authorities to develop **regulatory strategies** setting out strategic objectives and focus areas
 - Extensive **consultation process** to be followed when setting standards
 - Authorities may have written **administrative action procedures** regarding the actions it may take in terms of a financial sector law to promote a fair and consistent approach
- Strong appeal mechanism also provided for – **Financial Services Tribunal**



Chapter 5

Co-operation and collaboration

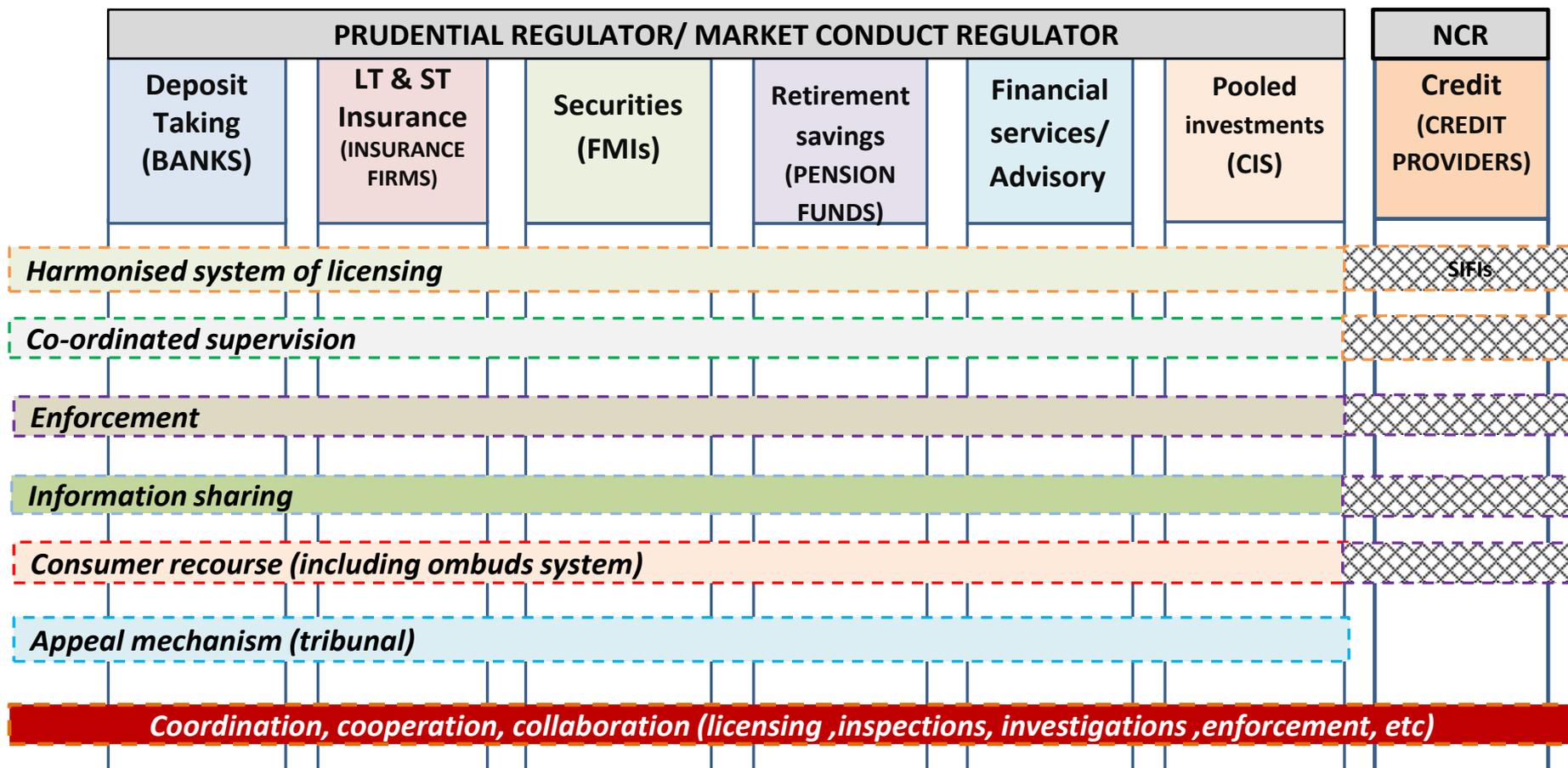


- FSCA and the PA have an obligation to co-operate with all key regulators
- Financial sector regulators must have arrangements in place for consulting when making regulatory instruments

Chapters 6 to 10

How to achieve a harmonised system of regulation?

- Twin Peaks is a comprehensive and coherent system going beyond the setting up of the “twins”



Chapter 7

Standard setting powers within policy framework

- Authorities will be empowered through standards to impose requirements to fulfill their mandates. Similar status to current rules, board notices, and other regulatory instruments

- PA can set **prudential standards**, including to maintain financial stability, for matters such as:



Liquidity



Leverage



Risk management



Capital

- FSCA can set **conduct standards** for matters such as:



Product design



Advice



Disclosure



Transparency

- Where standards overlap, **the two authorities may set joint standards**
- A clearly defined **public consultation process is set out**
- SARB may, after consulting PA, impose requirements on SIFIS through prudential standards issued by PA

Chapter 8

Licencing

- FSR Bill doesn't change **existing** licensing requirements
- Broadens licensing environment. **New licenses can be issued** for newly designated products/services
- Responsibilities for licensing under the current Acts allocated to one of the two responsible authorities, including in certain instances for a 3 year transitional period:
 - Short and Long Term Insurance Laws only legislation split and allocated to **both** authorities. Due to Insurance Bill being passed soon
 - Licensing requirements remain set by the relevant industry-specific sectoral laws, unless designated under this Act
 - The FSR Bill **delinks authority powers** from licensing – regardless of which authority issues the license, both authorities can apply their regulatory, supervisory and enforcement powers on **all financial institutions**

Licensing cont.



–Medical Schemes Act



–National Credit Act

***Prudential
Authority***

–Banks Act
–Mutual Banks Act
–Long-term Insurance Act
–Short-term Insurance Act
–Co-operative Banks Act
–Financial Supervision of
the Road Accident Fund Act

***Financial Sector
Conduct Authority***

–Friendly Societies Act
–Financial Advisory and
Intermediary Services Act
–Financial Markets Act
–Credit Rating Services Act
–Pension Funds Act
–Collective Investment
Schemes Control Act
– Long-term Insurance Act
–Short-term Insurance Act

Chapters 9-10

Supervision and Enforcement

- Authorities provided with comprehensive powers in FSR Bill for undertaking administrative and enforcement action
- **Administrative actions**
 - Authorities may adopt written administrative action procedures
 - An administrative actions committee may be established to advise the authority on appropriate action in complex cases
 - All administrative actions are subject to:
- **Enforcement actions**
 - If there is a breach of a financial sector law, prudent choose to remediate the situation, including by issuing directives, entering into enforceable undertakings, declaring practices as undesirable, or applying to court for appropriate orders, imposing an administrative penalty. **Remediation aims to rectify the breach and ensure it does not recur.**
 - Authority may also institute criminal prosecutions

The Promotion of Administrative Justice Act (the PAJA)

Chapter 14

Ombuds



- Revised **FSR Bill** proposes to **repeal the FSOS Act**, and integrate provisions into the FSR Bill, to align ombud system to evolving Twin Peaks regulatory system, in keeping with a **unified** regulatory approach and move away from the range of industry specific legislation

- The FSR Bill proposes :
 - Establishing the **Ombud Council** as a **statutory body that will establish a single point of entry** into the ombud system
 - Making it **compulsory for financial institutions to belong to an ombud** scheme
 - Requiring **all ombuds schemes to be registered** with the Ombud Council
 - Strengthening **mechanisms for Ombud Council to ensure a consistent framework for external dispute resolution mechanisms** across the financial services industry, including increasing awareness of ombuds, advising on jurisdictions, and prescribing ombud rules
- Improvements to the ombuds system also discussed in the market conduct framework discussion document

Chapter 15

Financial Services Tribunal



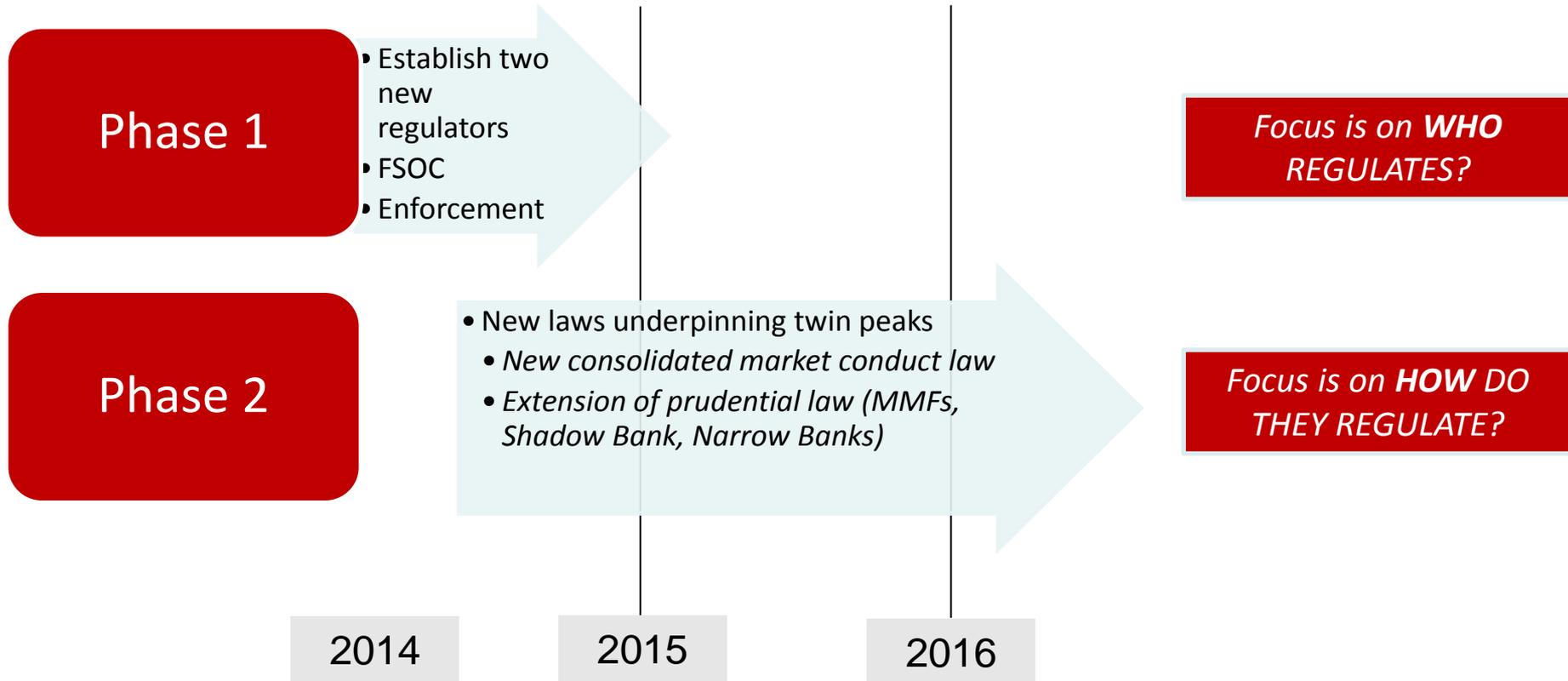
- The FSR Bill establishes a Financial Services Tribunal
 - The **function of the Tribunal is to hear and determine reviews** in terms of a financial sector law
 - Members of the Tribunal are appointed by the Minister
-
- **The Tribunal consists of as many members as the Minister considers necessary**, including, at least two retired judges or persons with experience and expertise in law; and at least two other persons who have experience and expert knowledge of financial products or financial services.
 - All of the **members of the Tribunal must be independent**
 - An order by the Tribunal has legal force and has the effect of a civil judgement and may be enforced as such
 - Decisions of the Tribunal are made public
 - **All administrative actions are reviewable to the Tribunal** and additionally to the Courts

Next steps

- Phased approach reduces risks and simplifies implementation

Phase 1: Who regulates? → 2015 - 2016	Phase 2: How do they regulate? → 2016 - 2018
<ul style="list-style-type: none">• Tabling revised FSR Bill in Parliament• Establish new regulatory authorities (target 1 April 2016)<ul style="list-style-type: none">• Provide regulator and supervisory powers• Stability oversight	<ul style="list-style-type: none">• New laws underpinning Twin Peaks• Conduct framework – draft legislation in 1Q 2016

Implementation to be phased



Phased approach reduces risks & simplifies implementation

Key Questions for SCOF

- There are many questions that the SCOF MUST consider, as NOBODY really knows everything on regulation, and there is no ONE WAY or ONE PANACEA
- Big CONCEPTUAL questions as to how best to regulate the financial sector, taking into account international standards and practices
- Key STRATEGIC and POLICY questions like whether Twin Peaks really does improve the regulatory architecture in order to deal with two key objectives of financial health and market conduct as well as FINANCIAL STABILITY
- ORGANISATIONAL questions as to whether co-ordination mechanisms and MoUs are really sufficient, and CREDIBLE, to deal with an agile financial sector that takes advantage of regulatory gaps and fragmentation
- CRITICAL questions like:
 - Have we gone far enough in dealing with fragmented regulatory system?
 - Have we taken steps to minimise regulatory costs by making the regulatory system more efficient?
 - Have we really reduced the risks of financial instability?

Questions