policies and airtime), probably at exorbitant prices, and deducting the money at the time or point of payment.

settlement on the East Rand has ... five-year-old son, Richard Thole. He fell into a disused mine shaft and his body has not been

Bakhaliphicebo Nakedi
Soweto

Anonymous correspondence will not be published. Writers should include a daytime number.

17/03/17 SC finance

TWIN PEAKS

Bank regulators must reduce rogue risks

HILARY JOFFE

Banks have long been experts in modelling the risks that most obviously affect their financial soundness – such as the risks they face if interest or exchange rates go the wrong way or their customers can't pay back loans or their funders take flight.

But the risks they face if their people get up to no good are far harder to model – and just as likely to do serious damage to the financials.

It has been misconduct, among the interest rate or currency traders in global banks' dealing rooms or the salespeople selling pension products, that in the post-crisis period has tended to do the most damage to banks globally, denting their reputations, their share prices and their profits.

SA, too, now has competition regulators investigating alleged misconduct by traders in the offshore rand-dollar foreign exchange market.

Historically, the huge global forex market was hardly regulated. But the world has changed, here as elsewhere.

And in SA's new regime of financial regulation, conduct and the operational risks of misconduct will have to be much higher on the list of priorities than in the past. Banks will have to stretch their models to try to take account of the possibility of really bad behaviour – and to ensure they have safeguards against it.

The era of Twin Peaks is upon us, after the 280-page Financial Sector Regulation Bill went through the National Assembly in December 2016, making it likely that the Twin Peaks institutions – the new market conduct regulator and the prudential regulator, as well as a new ombud council – will finally be established this year.

There's been a flurry of interest in Twin Peaks lately, not least because of the forex allegations. The Treasury emphasised in its response in February that the allegations of collusion, if proved correct, pointed to poor market conduct practices – precisely the type of abuse the Treasury had in mind when it proposed the new market conduct regulator in 2011, to ensure institutions treat customers fairly and behave ethically.

Twin Peaks is not just about consumer protection, but about everything from financial stability to transformation (and the multiple and potentially competing objectives could become an issue one day).

But some of the simplest explanations I have heard were offered by the Treasury and Financial Services Board (FSB) officials at a Sowetan/FSB dialogue where the focus was on consumers and how the first of the peaks, the new conduct authority, will have the tools to ensure better behaviour in the financial sector, while the second peak – the new prudential regulator – will ensure the safety and soundness of all financial institutions.

Alongside them is a new ombud council that will bring consistency and provide a central point of entry to the various sector watchdogs.

Before, SA had a banking supervisor housed in the Reserve Bank, which looked after the financial soundness of banks, while the FSB watched the financial soundness and the conduct of insurers, pension funds, markets such as the JSE and others. Now, the Reserve Bank expands its bank supervisory function to take over prudential regulation of everyone in the sector, about 250 companies in total.

The FSB, in turn, expands its regulation of market conduct to cover the banks – and to catch all those activities that previously tended to fall between the cracks of SA's multiple and sometimes competing pieces of financial and consumer legislation.

It is the FSB that will become the new market conduct regulator, with jurisdiction over more than 10,500 companies, and a new "pre-emptive, proactive and intrusive approach", as the FSB's Caroline da Silva puts it.

The new conduct regulator, which must present its strategy six months after it is established, will be more engaged with the business and with the governance of the financial firms it regulates, and can take much stricter deterrence measures.

That's in the industry's own interest, says Da Silva. "An industry that has the trust and confidence of its customers is an industry that grows and is strong and delivers for the South African economy."

It's ideally also an industry where there's better control over potential rogue traders, or rogue salespeople.

It's certainly time the long-mooted new system finally gets going, but there are clearly risks. An intrusive regulator with new powers could be fine if it is well skilled and well run, as well as being of unquestioned integrity and independence. Given the way banking has been politicised in SA lately, there are no guarantees. We will just have to hope.

GIVEN THE WAY BANKING HAS BEEN POLITICISED IN SA LATELY, THERE ARE NO GUARANTEES. WE WILL JUST HAVE TO HOPE

That's particularly so given that the new regulator has a mandate that, for the first time also includes transformation and financial inclusion, so we will have to see how the new regulators strike a balance between their mandates – and how they reconcile these, if conflicts arise, with the apex priority of maintaining financial stability in SA.

There will be the nitty gritty, too, of setting up the new regulatory entities, shifting people around and skilling up for new mandates. How they pursue these will be crucial to whether they succeed in ensuring fairer treatment and good conduct, along with financial stability.

They will have to ensure firms don't just tick the compliance boxes but buy in the culture and objectives Twin Peaks has in mind.

Joffe is editor-at-large.

BusinessDay 8 March 2017