



# BYE BYE FSB, HELLO FSCA

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## LEGAL BRIEF MAY 2018

As of 1 April 2018, there is a new sheriff for the South African financial services sector. The Financial Services Board ("**FSB**") has been replaced by the Financial Sector Conduct Authority ("**FSCA**"). Here are five things you need to know about this development.

1. The change from the FSB to the FSCA is a further step on the path towards implementing the "Twin Peaks" model of financial sector regulation in South Africa. Twin Peaks is a model for regulating financial services. Notwithstanding the David Lynch reference, Twin Peaks was pioneered in Australia in 1998 and has since been adopted by the Netherlands, Belgium, New Zealand and the United Kingdom. To date, South Africa has adopted an "integrated" approach to financial regulation with the FSB acting as a "super-regulator" with responsibility for regulating both the conduct of financial market participants like investment managers and also the prudential soundness of financial institutions like banks. The main advantage of the super-regulator approach is that it focusses limited resources, notably personnel in countries where these resources are scarce. However, critics argue that market conduct and prudential regulation require fundamentally different approaches and cultures and note that no country that has ever adopted Twin Peaks has ever gone back to a super regulator model.
2. South Africa has implemented Twin Peaks through the Financial Sector Regulation Act ("**FSRA**") which has come into force but is only partially in effect.
3. The Twin Peaks of regulation in South Africa will be:
  - 3.1. market conduct regulation, including investment funds and investment managers, which will be the domain of the **FSCA** which replaces the **FSB**; and
  - 3.2. regulation of financial institutions, including banks, which will be the domain of the Prudential Authority ("**PRA**"), housed in the South African Reserve Bank.
4. The shift from the current sectoral licensing model to a more centralised, activity-based licensing model has not yet been adopted. This will follow the implementation of a new licensing regime, which will focus on defined activities that a prospective licensee wishes to perform rather than on particular sectors of the market. The Conduct of Financial Institutions ("**COFI**") Act will define all of these activities in a single, overarching law and will replace the Financial Advisory and Intermediary Services Act ("**FAIS**"). Financial institutions, including entities currently regulated as financial services providers, will need to hold a licence from the FSCA to render a financial service in respect of specific, defined activities they perform. National treasury has set up a panel to develop the COFI Bill and it is anticipated that the first draft will be distributed for comment around the middle of this year.

5. The parameters of licencing under the COFI Bill have not been finalised, but current discussions have contemplated that:
  - 5.1. a "one size fits all" approach will not be taken to licensing but instead the requirements for licensees will be proportionate to the risks underlying the business activities of different entities; and
  - 5.2. the FSCA will enter into Memoranda of Understanding with other regulatory authorities, including the PRA, so that there is clarity as to the requirements applying to licensees who fall under the supervision of multiple regulatory authorities.

It will take some time for the draft COFI Bill to be finalised. Until then, the licences issued by the FSB will remain in force and the licensing of new entities will continue to take place under the existing financial sector laws, albeit those "old" laws will be implemented by the FSCA.

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