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## **Latest regulatory update in the insurance industry**

Actuarial & Insurance Solutions

July 2018

Twin Peaks  
is now a reality...

**As of 1 April 2018, South Africa became the eighth country in the world to adopt a Twin Peaks regulatory model. As a result of the enactment of the Financial Sector Regulation (FSR) Act, the following two regulators were established:**

1. The Prudential Authority (PA) – responsible for maintaining stability in the financial system
2. The Financial Sector Conduct Authority (FSCA) – responsible for market conduct and consumer protection

The Twin Peaks model will be implemented in two phases with primary and secondary legislation to be published under both regulators.

	FSB		PA		FSCA	
	Primary Legislation	Secondary Legislation	Primary Legislation	Secondary Legislation	Primary Legislation	Secondary Legislation
<b>Prior to Twin Peaks</b>	<ul style="list-style-type: none"> <li>• LTIA</li> <li>• STIA</li> </ul>	<ul style="list-style-type: none"> <li>• Board Notices</li> <li>• Insurance Notices</li> <li>• PPRs</li> <li>• Regulations</li> </ul>				
<b>Twin Peaks Phase 1</b>			<ul style="list-style-type: none"> <li>• Insurance Act</li> </ul>	<ul style="list-style-type: none"> <li>• Prudential Standards</li> </ul>	<ul style="list-style-type: none"> <li>• LTIA</li> <li>• STIA</li> </ul>	<ul style="list-style-type: none"> <li>• Insurance Notices</li> <li>• PPRs</li> <li>• Regulations</li> </ul>
<b>Twin Peaks Phase 2</b>			<ul style="list-style-type: none"> <li>• Insurance Act</li> </ul>	<ul style="list-style-type: none"> <li>• Prudential Standards</li> </ul>	<ul style="list-style-type: none"> <li>• CoFI Act</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct Standards</li> </ul>

**In January 2018 the President signed the Insurance Bill into law. The new Insurance Act will become effective from 1 July 2018 and will eventually replace the existing Long-term and Short-term Insurance Acts. Once the Insurance Act becomes effective, SAM is live!**

The latest set of Prudential Standards was issued for comment during March 2018 and the period for comment has now closed. Note: this set of Standards was issued for comment only, therefore insurers do not need to report based on these Standards before 1 July 2018.

National Treasury has established a working group to develop the Conduct of Financial Institutions (CoFI) Bill. This will provide the framework for licensing based on the type of activity (this relates to financial services provided). The Bill is to be tabled in Parliament during 2018.

Secondary legislation under the FSCA will include Insurance Notices, Policyholder Protection Rules (PPRs), other Regulations and Conduct Standards.



## More about the Prudential Peak

**The PA is responsible for regulating banks, insurers, cooperative financial institutions, financial conglomerates and certain market infrastructures. The PA operates within the administration of the South African Reserve Bank (SARB) and consists of the following four departments:**

- Financial Conglomerate Supervision Department
- Banking, Insurance and Financial Market Infrastructure Supervision Department
- Risk Support Department
- Policy, Statistics and Industry Support Department

The new website of the PA can be found here:

<https://www.prudentialauthority.co.za>

## More about the Good Conduct Peak

The FSCA has replaced the former FSB as of 1 April 2018. The new website of the FSCA can be found here:

<https://www.fsc.co.za>

It should be noted that regulation of credit, including the protection of customers against lending abuse will stay with the National Credit Regulator (which is responsible for enforcing the National Credit Act). Furthermore, the Council for Medical Schemes will remain the regulator for medical schemes registered under the Medical Schemes Act.

## The new licensing framework

The process for phasing in the Twin Peaks licensing framework is expected to be set out in the draft CoFI Bill and supporting explanatory documents from National Treasury, which is expected to be published for comment in the next few months.

All existing insurance licence holders will be required to apply for their licences to be converted to the new framework i.e. this does not happen automatically.

In the first phase of Twin Peaks implementation, the PA will be the licensing authority for Banks and Insurers and the FSCA will be the licensing authority under the other financial sector laws. In the second phase of Twin Peaks implementation, certain entities might need to be licensed by both the FSCA and the PA, under their respective laws.

## Transitional arrangements and reporting

**Allowance is made for incremental implementation of the Insurance Act. The PA may allow for progressive application (i.e. exemption) of specific provisions for up to two years. This is referred to as the “Transitional Period”.**

**Any “key person” appointed (e.g. Head of Actuarial Function) is automatically regarded as fit and proper until the licence conversion is concluded.**

Insurers that are not able to comply with the Insurance Act or Prudential Standards on 1 July 2018 must engage with the PA within 60 days to discuss any non-compliance issues.

If your company's financial year end falls before the effective date of the Insurance Act (1 July 2018):

- Submission requirements for regulatory returns will be communicated before 1 July 2018 (but is likely to follow the requirements under the existing Comprehensive Parallel Run i.e. five months for annual QRTs and two months for quarterly QRTs)
- The existing requirement to submit audited Annual Financial Statements to the PA within four months after year end will still apply
- Public disclosure will only be required after 1 January 2019 (unless the PA instructs your company otherwise)
- The auditing of public disclosures will be required from 1 January 2019 (unless the PA instructs your company otherwise)

# Other regulatory initiatives

### Reinsurance Regulatory Review Position Paper

In September 2016 the FSB released the “Reinsurance Regulatory Review Position Paper”. It has been confirmed that no new updates to the paper will be released and that the final Prudential Standards will encapsulate the requirements pertaining to reinsurance.

It is important to note that the PA has issued a list of Equivalent Jurisdictions. This is the jurisdictions (countries) which the PA regards as “equivalent” to SAM. The risk mitigation effect of reinsurance can only be used for those reinsurers that are regulated in equivalent jurisdictions.

**Any reinsurance with placed in a non-equivalent foreign jurisdiction may be continued until the (re)insurer’s licence conversion is concluded.** The latest list was published in July 2017 and includes the following equivalent jurisdictions:

Australia	Germany	Mexico
Austria	Gibraltar	Netherlands
Belgium	Greece	Norway
Bermuda	Hungary	Poland
Brazil	Iceland	Portugal
Bulgaria	Ireland	Romania
Canada	Italy	Slovakia
Croatia	Japan	Slovenia
Cyprus	Latvia	Spain
Czech Republic	Liechtenstein	Sweden
Denmark	Lithuania	Switzerland
Estonia	Luxembourg	UK
Finland	Malta	USA
France		

*It should be noted that African countries and Mauritius are currently not on the above list.*

### Cell Captive Insurance Position Paper

In June 2013 the FSB released a Discussion Document titled “Review of Third Party Cell Captive Insurance and Similar Arrangements”. This Discussion Document explored how the regulatory framework may be enhanced to best achieve the objectives of insurance supervision in respect of cell captives and similar arrangements, while supporting financial inclusion.

It has been confirmed that no further updates will be made to the paper and that all requirements regarding cell captives will be encapsulated in the final Prudential Standards.



## Micro-insurance

Micro-insurance refers to insurance that is accessed by lower-income segments of the population. Under SAM there will be a separate licensing category for micro-insurers.

Unlike insurers and reinsurers, a particular micro-insurer may be licensed to conduct both life and non-life business. A micro-insurer will be able to write a selection of life and non-life classes on a group or individual basis. Furthermore, reinsurers will be able to reinsure micro-insurance policies.

It is proposed that micro-insurance cell captive insurers be restricted to registered public companies with a micro-insurance license that are fully owned by a registered long-term or short-term insurer. This is because of the specialised skills and experience that are required, which may not be suited to a new entrant micro insurer.

For a policy to be considered a micro-insurance policy it will need to comply with the prescribed caps and limits e.g. a maximum benefit of R50 000 per insured life, per insurer for any insurance related to a death event.

Some of the benefits of writing micro-insurance business include less onerous reporting and capital requirements. Additionally, in terms of control functions, a micro-insurer will have to establish either an internal audit function or actuarial function, but not both.

## Insurance group and financial conglomerate supervision

**An insurer that is part of a group of companies must notify the PA thereof by 1 September 2018 and provide the PA with detailed information on the structure of the group, its holding company and intra-group transactions.**

The PA has started developing the framework for the supervision of financial conglomerates.

In essence, a financial conglomerate would comprise members of a group of companies (provided one company is a bank, insurer or market infrastructure), under common control or dominant influence, including the holding company exercising such control or influence. However, the PA has the power to designate a group as a financial conglomerate even when it conducts business in only one financial sector but has material financial activities that are not sufficiently captured under the respective sectoral frameworks.

The supervision of entities that form part of a financial conglomerate, will focus on the potential risks of contagion, complexity and concentration as well as the detection and correction of 'double gearing' i.e. the multiple use of capital.

Similar to Insurers and Insurance Groups, the PA will establish prudential standards for financial conglomerates which will cover:

- Capital adequacy
- Capital planning
- Identification and management of specific risks that are not completely or sufficiently captured at sector-specific supervision
- Leverage
- Adequacy and robustness of the risk management processes, practices and systems
- Corporate governance frameworks
- Public disclosure

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