Twin Peaks and Credit Providers

1. There have been questions to what extent the Financial Sector Regulation Bill (Bill), or Twin Peaks as it is commonly referred to, will affect the Credit Industry, if at all. The answer in my view is not easy. The Bill is complex and has a lot of policy and principles in it. It is clearly aimed at closing regulatory gaps and arbitrage.

2. The main object of the Bill is to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the other financial sector laws, a regulatory and supervisory framework that promotes:
   - financial stability;
   - the safety and soundness of financial institutions;
   - the fair treatment and protection of financial customers;
   - the efficiency and integrity of the financial system;
   - the prevention of financial crime;
   - financial inclusion; and
   - confidence in the financial system.

3. To achieve the objects of the Bill two new financial sector regulators will be established. One is the Prudential Authority and the other the Financial Sector Conduct Authority (FSCA).

4. The National Credit Act and Regulator (NCA and NCR respectively) is not part of the Twin Peaks model but is mentioned in and catered for in the Bill. Clearly the NCR remains the sole regulator of the credit agreement itself and the features around the product. The NCR therefore regulates credit providers as provided for within the NCA.

5. There is however credit that falls outside the scope of the NCA and the FSCA will regulate this type of credit.

6. Both the NCR and the FSCA will regulate credit providers for their conduct but it will be done in different ways and with a different focus. The FSCA can regulate credit providers on a risk basis.

7. The FSCA can set standards for financial services provided in relation to credit agreements to provide for a system-wide approach to conduct provided that the standards support regulatory requirements set by the NCR under the NCA.

8. The SARB and the Prudential Authority also has an overlap with the NCR. They will regulate credit providers for stability, safety and soundness and very much on a risk-based approach. When it comes to systemic risk the Governor of the Reserve Bank may issue Directives the credit industry.

9. The Bill is rife with references to the NCR and the NCA. Lots of emphasis is placed on cooperation, collaboration and communication among the various entities and relevant Government Departments.

10. These are early days for the Twin Peaks. The Bill has been passed by the National Assembly and has been discussed in February 2017 in the National Council of Provinces. The first stage is to establish the regulators and to set up a uniform system and standards. The second stage will streamline the current activity based legislation such as banking, insurance, credit, pensions etc. into consolidated legislation.

11. In my view as the present Bill does not take away from the NCR and the NCA, but it does add on to it. I believe it would be naïve to think that the Twin Peaks will not affect the way that the NCR and Credit Providers go about their business. Credit Providers should become aware of the other Financial Sector Regulators in the credit arena and increased regulatory oversight and scrutiny.

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