The Role of the South African Reserve Bank as central bank in the South African Twin Peaks Model

by

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DECLARATION OF ORIGINALITY

I declare that this dissertation is my original work. Any sources that have been used have been referenced and acknowledged. This dissertation is submitted in partial fulfilment of the degree Master of Laws in Mercantile Law at the University of Pretoria.

Signed at__________________________on_______________________________

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To God be the glory.

SUMMARY

South Africa has recently transitioned from a model of sectoral financial regulation to a Twin Peaks model of financial regulation by objective. The Financial Sector Regulation Act 9 of 2017 (FSRA) which puts in place the architecture for the new Twin Peaks model is a focused piece of legislation aimed at safeguarding financial stability.

This mini-dissertation will guide the reader on the impact of the FSRA on role of the Reserve Bank of South Africa (SARB), as central bank, in relation to financial stability. The previous functions of the SARB will be discussed, to indicate how the role of the SARB has changed in the Twin Peaks model. This discussion will be informed by an overview of the reasons for, and lessons learnt from, 2008 Global Financial Crisis and the rationale for the introduction of a Twin Peaks model in South Africa. Thereupon the legal framework for the expanded financial stability mandate of the SARB is considered in detail.

A brief discussion of the Australian Twin Peaks model is also provided with a discussion of the roles of the Australian Reserve Bank and the Australian Prudential Regulatory Authority, who share the mandate for financial stability in Australia. The purpose of this comparative discussion is to benchmark the role that the SARB plays within the South African model and to draw lessons that could aid in improving the South African model and particularly the central bank's ability to promote and maintain financial stability.

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CHAPTER 1: GENERAL INTRODUCTION

1.1 Background information

South Africa has recently shifted from a model of silo sectoral financial regulation to a Twin Peaks model of financial regulation by objective. The Financial Sector Regulation Act 9 of 2017 (hereinafter FSRA)[1] which puts in place the architecture for the new Twin Peaks model, is a focused piece of legislation that has the clear objective of improved safeguarding of the financial sector in South Africa. The objectives of the FSRA are to "achieve a stable 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".[2]

Over the years South Africa's membership of the G20 has ensured the strength of its banking sector because of robust regulation aligned with international standards issued by standard setting bodies such as the Basel Committee on Banking Supervision and the Financial Stability Board.[3] As pointed out by Van Heerden and

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[1]The Republic of South Africa's presidential predecessor, Jacob Zuma, signed the Financial Sector Regulation Bill into law on 21 August 2017. The commencement date of the Act was published by way of notice GN R99 in the Government Gazette 41433 on 9 February 2018. The National Treasury announced that the FSRA would come into effect incrementally on 1 April 2018 and 1 April 2019 in terms of Schedule 4. Different sections of the FSRA would come into effect on different allocated dates.

[2] S 7 of FSRA.

[3] Van Heerden and Van Niekerk (2018) Twin Peaks in South Africa: a new role for the central bank, *Law and Financial Markets Review* 1.

Van Niekerk, the 2008 Global Financial Crisis (hereinafter Crisis or GFC) has however been "a global game-changer and the cause of a deliberate shift in the regulatory paradigm geared at the pursuit of financial stability as overarching objective".[4]

The Crisis yielded many lessons of which the main ones were the failure of light touch regulation; the need for a holistic macroprudential approach to financial regulation; the need for prudential regulation and market conduct regulation to operate in tandem, the need for global cooperation to contain macroeconomic imbalances and the need for swift regulatory action to prevent contagion.[5] According to the National Treasury, South Africa only weathered the GFC because of its robust financial regulatory systems, conservative risk management practices in banks, limited exposure to foreign assets and subsidiary structure and listing requirements.[6] Although South Africa did not experience the devastating effects of the GFC to the same extent as for example, the United States, South Africa as member of the G20 nevertheless decided not to be complacent and committed to align its approach to financial regulation with international best practice. It accordingly selected the Twin Peaks model of financial regulation by objective as the most suitable regulatory approach post-GFC.[7]

1.2 Problem statement and research objective

Central banks have traditionally been responsible for maintaining financial system stability.[8] This mandate was however generally not captured in legislation. The GFC however changed this underplayed role of central banks when it pushed financial stability onto the stage as core regulatory pursuit. In line with this development the role of the South African Reserve Bank (SARB) with regard to financial stability has been magnified in the new Twin Peaks model of financial regulation introduced by the FSRA. The research objective of this dissertation is therefore to investigate and examine the

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[4] Ibid. See also Warner and Taylor "The Global Financial Crisis and the Financial Stability Board: Hardening the Soft Law of International Financial Regulation." (2009) *University of New South Wales law Journal* 488.

[5] National Treasury policy document "A safer financial sector to serve South Africa better" (2011) available at http://www.treasury.gov.za accessed on 03 September 2018 (hereinafter "A safer financial sector to serve South Africa better") 13.

[6] Ibid.

[7] Ibid.

[8] Bordo "A brief history of central banks" Economic Commentary, Federal Reserve Bank of Cleveland (December 2007) available at https://ideas.repec.org>fip>fedcec.pdf accessed on 4 September 2018.

role, function and responsibilities of the SARB in this new Twin Peaks model, specifically in relation to the promotion and maintenance of financial stability. These aspects will also be considered against the comparative backdrop of the role of the Reserve Bank of Australia within the Australian Twin Peaks model that was the first Twin Peaks model pioneered in 1998. Finally some conclusions will be drawn and recommendations will be made.

1.3 Delimitation

This dissertation reflects the position of the law as it reads and is being interpreted at 20 October 2018. The focus of this dissertation is the role of the central bank in relation to the promotion and maintenance of financial stability. It will therefore not contain a detailed analysis of the roles of the twin regulators, namely the Prudential Authority and the Financial Sector Conduct Authority although some reference to these institutions will necessarily be made insofar as it is relevant to the financial stability mandate of the SARB. Insofar as Australia is concerned the study will be limited to a consideration of the roles of the Reserve Bank of Australia and the Australian Prudential Authority (APRA) as both these institutions have been accorded a financial stability mandate in the Australian Twin Peaks model.

1.4 Structure of dissertation

Chapter 1 is a roadmap to the study and provides general background on the topic of study, the methodology, research question, research methodology, delimitation and chapter lay-out. An overview of the role of the South African Reserve Bank prior to the introduction of the Twin Peaks model is provided in Chapter 2. In Chapter 3 the role of the South African Reserve Bank within the new Twin Peaks model of financial regulation will be considered and analysed. A comparative study of the role of the Reserve Bank of Australia (RBA) and the Australian Prudential Authority (APRA), that shares the financial stability mandate with the RBA in the Australian Twin Peaks model, will be undertaken in Chapter 4. Notably Australia pioneered their Twin Peaks model twenty years ago, and particularly well before the GFC, hence their experiences with the Twin Peaks model insofar as financial stability is concerned may be instructive to South Africa. Chapter 5 contains the conclusions and recommendations of the study.

CHAPTER 2: THE ROLE OF THE SARB PRIOR TO THE INTRODUCTION OF THE TWIN PEAKS MODEL

2.1 Historical background of financial regulation in South Africa

Before moving to a Twin Peaks model on financial regulation, the model of financial regulation in South Africa was sectoral in nature, comprising of various regulators practising silo regulation in respect of the different role players in the South African financial markets.[9] The Financial Services Board (FSB) was a key role player in this sectoral model and was tasked with regulating and supervising insurance regulation, fund managers and exchanges. The FSB also shared the duty of supervising, together with the Johannesburg Stock Exchange (JSE) the market intermediaries. The JSE supervised listed companies and the Department of Trade and Industry supervised unlisted companies. The National Credit Regulator, established in terms of the National Credit Act[10], regulated the credit market and reported to the Department of Trade and Industry.[11] The result of this fragmented sectoral model was that financial regulation in South Africa became clearly disjointed, complex and open to regulatory arbitrage.[12]

2.2 The SARB as central bank pre-Twin Peaks

The SARB was established as the central bank of South Africa in terms of the Currency and Banking Act 31 of 1920.[13] The SARB is currently regulated in terms of the South

[9] "A safer financial sector to serve South Africa better" 28.
[10] National Credit Act 34 of 2005.
[11] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 2.
[12] "A safer financial sector to serve South Africa better" 4.
[13] This Act was later repealed by the South African Reserve Bank Act 29 of 1944. See also De Jager "The South African Reserve Bank: An Evaluation of the Origin, Evolution and Status of a Central Bank (Part 1)" (2006) 18 *SA Mercantile Law Journal* 159 -174 and De Jager "The South African Reserve Bank: An evaluation of the Origin, Evolution of a Central Bank (Part 2)" (2006) 18 *SA Mercantile Law Journal* 274-290 for a historical overview of the role of the SARB as central bank of South Africa.

African Reserve Bank Act 90 of 1989 (SARB Act) and its position as central bank is entrenched by section 223 of the Constitution of the Republic of South Africa, 1996.[14]

It should be noted that the SARB is one of the few banks globally with a private shareholding structure.[15] De Jager points out that what makes this private shareholding structure unique is the fact that the bank does not have a profit maximization purpose and it is non-competitive in nature.[16]

The SARB, as central bank, had a diversified mandate prior to the adoption of the Twin Peaks model of financial regulation in South Africa.[17] The SARB's primary purpose was stated in section 3 of the Reserve Bank Act as the protection of the value of the currency of the Republic in the interest of balanced and sustainable economic growth in the Republic. This mandate was subsequently confirmed in section 224 of the Constitution of South Africa,1996. The SARB was required, in pursuit of its abovementioned primary objective, to perform its duties independently and without fear, favour or prejudice.[18]

In pursuit of its primary mandate the SARB used inflation targeting to pursue price stability. In addition to its responsibility for monetary policy the SARB was also supervisor of the payments and settlement system, supervisor of banks, Lender of Last Resort and Provider of Emergency Liquidity Assistance (ELA). In the pre-Twin Peaks dispensation, the SARB further had the *de facto* responsibility for maintaining the stability of the financial system, by virtue of its traditional roles as central bank.[19]

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[14] De Jager "The South African Reserve Bank: Blowing Winds of Change (Part 2)" (2013) *SA Mercantile Law Journa*l 342.

[15] S21(1) of the SARB Act. De Jager "The South African Reserve Bank: Blowing Winds of Change (Part 2)" (2013) *SA Mercantile Law Journal* 344 points out that central banks in older Europe developed from traditional commercial banks, as a result of receiving more and more responsibilities and powers. Because of this highly influential role the bank plays within a country, the governments typically owned the central bank with no private shareholding. .

[16] De Jager "The South African Reserve Bank: Blowing Winds of Change (Part 2) (2013) South African Mercantile Law Journal 344.

[17] Van Heerden and Van Niekerk (2018) Twin Peaks in South Africa: a new role for the central bank, Law and Financial Markets Review 3.

[18] S 3 of the SARB Act.

[19] S 10 of the Reserve Bank Act 90 of 1989. See also De Jager "The South African Reserve Bank: Blowing winds of change (Part 2" (2013) 25 *SA Mercantile Law Journal* 496. See also Van Niekerk *The role of the Central Bank in the Promotion and Maintenance of Financial Stability* (LLD-Thesis, University of Pretoria, 2018) (hereinafter Van Niekerk *Thesis*).

2.3 The rationale behind the move to a Twin Peaks system of financial regulation in South Africa

As pointed out by Van Niekerk, the shift towards a Twin peaks model for financial regulation in South Africa was motivated by a predetermined desire already expressed by the South African National Treasury prior to the GFC. The decision to migrate towards a Twin Peaks model of financial regulation was thus not in response to the GFC, but rather motivated by a desire to align financial regulation in South Africa with the international shift towards financial stability as core regulatory goal post-GFC.[20] The intention was to make the South African financial sector safer through a comprehensive macro-prudential financial stability framework and a dedicated prudential and market conduct framework that focused on the safety and soundness and integrity and effectiveness respectively, of individual institutions.[21]

One of the many pitfalls of the pre-Twin Peaks model of financial regulation in South Africa was that market conduct regulation and supervision of banks did not receive the attention it deserved, because such market conduct regulation and supervision did not form part of the regulatory responsibility of the SARB as bank supervisor nor did it form part of the responsibility of the other regulators.[22] Market conduct by banks were however not totally unregulated as credit lending practices were regulated by the National Credit Regulator and market conduct from a competition perspective, was regulated by the Competition Commission of South Africa.[23] Nevertheless the need for comprehensive regulation of market conduct by banks was clear and was among the many reasons that motivated the shift towards a Twin Peaks model in South Africa. Other problems related to the inadequacies of silo sectoral regulation, the high costs of financial services and products, opaque fee structures and lack of financial inclusion and financial consumer protection as well as lack of competitiveness due to the concentrated nature of the South African financial system.[24]

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[20] Van Niekerk *Thesis* 122.
[21] "A safer financial sector to serve South Africa better" 8.
[22] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank, Law and Financial Markets Review" (2018) 2.
[23] The National Credit Regulator is established in terms of s26 of the National Credit Act 34 of 2005 and is the primary body that enforces that Act. The Competition Commission was established in terms of s 26 of the Competition Act 89 of 1998 as primary enforcer of the Competition Act.
[24] "A safer financial sector to serve South Africa better" 22-29.

2.4 Review of the South African financial sector pre-Twin peaks

In 2007, when the GFC started, National Treasury had already commenced with a formal review of the South African financial sector and was intent on determining the suitable approach to future financial regulation in South Africa. National Treasury expanded the scope of this review pursuant to South Africa's commitment in the G20 to reform its system of financial regulation post-GFC. It subsequently issued a comprehensive policy paper entitled "A safer financial sector to serve South Africa better" (the "Red Book")[25] in February 2011. The Red Book pointed out the key lessons learned from the 2008 GFC and identified various shortcomings in the then existing regulatory model.[26] A main regulatory challenge appeared to be the risks for financial instability emanating from high levels of interconnectedness between financial institutions.[27] It was further noted that the 2007 GFC revealed that build-up of macroeconomic risks (such as asset bubbles, high household debt levels or interconnectedness between large institutions) may pass unobserved by micro-prudential regulators who only focused on individual institutions.[28] Thus reform by means of macro-prudential oversight aimed at financial stability, together with focussing on other regulatory problems identified during the GFC was deemed necessary.

2.5 The South African Twin Peaks Model

After careful consideration, the Twin Peaks model, conceptualised in 1995 by Michael Taylor for the United Kingdom, was identified to be the appropriate model for future financial regulation in South Africa, given the ability of the model to provide macro-prudential oversight in tandem with microprudential and market conduct oversight.[29] The Twin Peaks model was stated to be a focused approach to financial regulation, designed to yield greater efficiencies than that produced by a fragmented approach to

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[25] "A safer financial sector to serve South Africa better" 1-83.
[26] "A safer financial sector to serve South Africa better" 13.
[27] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 4.
[28] Ibid.
[29] Michael Taylor "'Twin peaks": A regulatory structure for the new century" published by the Centre for the Study of Financial Innovation, 1995 – Financial Service Industry - Issue 20 of DSFI series, hereinafter Taylor 1995. See also Schmulow A "Financial regulatory governance in South Africa: the move towards Twin Peaks" 2017 (25) *African Journal of International and Comparative Law* 393 at 394.

regulation of the financial system. Taylor proposed that financial regulation should be done with two goals in mind, namely to protect the stability and integrity of the financial system ("systemic protection") and to ensure that the interests of individual depositors, investors, and policy-holders are protected ("consumer protection").[30] A very advantageous feature of this new model was that it would enable systemwide supervision on both a prudential and market conduct level.[31]

The Red Book was followed up with another detailed policy document published by the Treasury in February 2013, entitled *"*Implementing a Twin Peaks model of financial regulation in South Africa*"* (the "Roadmap"). The Roadmap set out the proposed process moving forward and highlighted important policy choices in prudential and market conduct supervision.[32]

The South African Twin Peaks model was subsequently introduced by the Financial Sector Regulation Act 9 of 2017 (FSRA). The FSRA applies to all financial institutions[33] that are rendering financial services and providing financial products in the South African financial system.[34] The South African Twin Peaks model is unique in the sense that it is not a pure Twin Peaks model but actually comprises of three peaks, namely the SARB, the Prudential Authority and the Financial Sector Conduct Authority[35]. A very important feature of the South African Twin Peaks model is that it imposes, for the first time in the SARB's history, an express and expanded financial stability mandate on the SARB as the central bank. The Prudential Authority (PA) is a new juristic person established by the FSRA, located within the SARB. The PA is tasked to serve as the systemwide prudential regulator, to oversee all financial institutions and not merely commercial banks. The new market conduct regulator, the FSCA, is a juristic person located separately from the SARB and Prudential Authority, that oversees market conduct of all financial institutions active in the financial system,

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[30] Ibid.

[31] "A safer financial sector to serve South Africa better" 1-33. See also De Jager "The South African Reserve Bank: Blowing Winds of Change (Part 2)" (2013) *SA Mercantile Law Journal* 492 at 499.

[32] "Implementing a Twin Peaks model of financial regulation in South Africa" published by the National Treasury on 1 February 2013 available at http://treasury.gov.za accessed on 5 September 2018.

[33] In terms of s1(1) of the FSRA "financial institution'' means a financial product provider; a financial service provider; a market infrastructure; a holding company of a financial conglomerate; or a person licensed or required to be licensed in terms of a financial sector law.

[34] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 6.

[35] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank"(2018) *Law and Financial Markets Review* 4.

including banks.[36] Notably the National Credit Regulator has not been integrated into the FSCA and functions independently as credit market regulator within the Twin Peaks model.[37]

2.6 Conclusion

By transitioning towards a Twin Peaks model of financial regulation South Africa has aligned its model of financial regulation with that of developed jurisdictions such as Australia, who pioneered their Twin Peaks model in 1998 and the Netherlands, who switched to a Twin Peaks model in 2002. The adoption of the Twin Peaks model in South Africa not only changed the institutional approach to financial regulation but placed renewed emphasis on the role of the central bank in the promotion and maintenance of financial stability as core regulatory pursuit post-GFC.

The following chapter will therefore delve deeper into the express and expanded financial stability mandate of the SARB as captured in the FSRA.

[36] "A safer financial sector to serve South Africa better" 31.
[37] S 2(g) and s3(g) read with s58(2) and (5) FSRA.

CHAPTER 3: THE ROLE OF THE SARB AS CENTRAL BANK IN THE SOUTH AFRICAN TWIN PEAKS MODEL

3.1 Introduction

As indicated, with the enactment of the FSRA, the SARB's financial stability mandate has been captured in legislation for the first time.[38] Notably no globally accepted definition exists for the concept "financial stability".[39] In the context of the SARB's mandate, the FSRA simply describes ''financial stability'' to mean that[40]:

"(a) financial institutions generally provide financial products and financial services, and market infrastructures generally perform their functions and duties in terms of financial sector laws, without interruption;

(b) financial institutions are capable of continuing to provide financial products and financial services, and market infrastructures are capable of continuing to perform their functions and duties in terms of financial sector laws, without interruption despite changes in economic circumstances; and

(c) there is general confidence in the ability of financial institutions to continue to provide financial products and services, and the ability of market infrastructures to continue to perform their functions and duties in terms of financial sector laws, without interruption despite changes in economic circumstances."[41]

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[38] Contrary to former legislation where the stability mandate was only implied.
[39] Allen "What is "financial stability"? The need for some common language in international financial regulation" (2014) *Georgetown Journal of International Law* 929.
[40] S 1 read with s4 of the FSRA.
[41] S4(2) provides that a reference to "maintaining" financial stability includes, where financial stability has been adversely affected, a reference to "restoring" financial stability.

The SARB's expanded financial stability mandate under the FSRA is a wide-ranging mandate that centres on prevention, mitigation and management of systemic events. According to Van Heerden and Van Niekerk, the selection of the SARB to implement this stability mandate seems practical given the fact that SARB has gathered approximately a century's institutional knowledge and expertise in maintaining financial stability in the financial system and macroeconomy.[42] The South African Treasury is also of the view that the SARB has the capacity to perform this stability mandate in the South African Twin Peaks model as a result of its expertise in exercising its traditional roles The Treasury therefore stated that the function of the SARB in implementing monetary policy, Lender of Last Resort and Provider of Emergency Liquidity Assistance (ELA) provides the central bank with exceptional insight into the operations of the entire financial sector as well as the macroeconomy.[43]

In the Twin Peaks Model the SARB's mandate is described as protecting and enhancing financial stability; and if a systemic event has occurred or is imminent, for restoring or maintaining financial stability.[44] The FSRA also aligns the primary objective of the SARB as stated in the Reserve Bank Act with its "new" express financial stability mandate by amending section 3 of the Reserve Bank Act to provide that *in addition to* its primary objective of price stability, the SARB is responsible for protecting and maintaining financial stability as contemplated in the FSRA.[45] In order to enable the execution of this mandate the FSRA assigns numerous powers and functions to the SARB which entails broad co-operation and collaboration with SARB by the PA and FSCA as well as other financial regulators and organs of state.[46]

It should further be noted that with the enactment of the FSRA, various bodies as platforms for discussion, cooperation and collaboration were created. The purposes of these bodies are to assist the SARB in the execution of its financial stability mandate and, on a broader level, to facilitate the effective overall functioning of the South

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[42] Van Heerden and Van Niekerk (2018) "Twin Peaks in South Africa: a new role for the central bank" *Law and Financial Markets Review* 7.
[43] "A safer financial sector to serve South Africa better" 31. See also Goodhart "The changing role of central banks" BIS Working Papers No 3 CAE (November 2010) 9 who supports the view that central banks with the variety of functions such as those of the SARB is best placed to oversee financial stability.
[44] Section 11 of the FSRA.
[45] Schedule 4, FSRA.
[46] Van Heerden and Van Niekerk (2018) Twin Peaks in South Africa: a new role for the central bank, *Law and Financial Markets Review* 8.

African Twin Peaks model.[47] The Financial Stability Oversight Committee (FSOC) and the Financial Sector Contingency Forum (FSCF) are two bodies that are specifically created to facilitate the implementation of the SARB's financial stability mandate and their respective roles will be discussed in more detail when dealing with the finer details of the SARB's financial stability mandate below.[48] Another body that was created for purposes of facilitating coordination and collaboration is the Financial System Council of Regulators (FSCR). The FSCR consists of the Director-General of Treasury; the Director-General of the Department of Trade and Industry; the Director-General of the Department of Health, the CEO of the PA; the Commissioner of the FSCA; the CEO of the National Credit Regulator; the Registrar of Medical Schemes; the Director of the Financial Intelligence Centre; the Commissioner of the National Consumer Commission; the Commissioner of the Competition Commission; the Deputy Governor of SARB responsible for financial stability matters; and the head of any organ of state or other organisation that the Minister of Finance may determine S79(3).[49] This committee/council has a wider mandate of enabling co-operation and collaboration and, where appropriate, consistency of action, between the institutions represented on the FSCR by providing a forum for senior representatives of those institutions to discuss and inform themselves about matters of mutual interest.[50] A Financial Sector Inter-Ministerial Council is also established consisting of the Minister of Finance; the Cabinet members responsible for consumer protection and consumer credit matters; the Cabinet member responsible for health and the Cabinet member responsible for economic development.[51] The broad purpose of the Inter–Ministerial Council is to enable co-operation and collaboration between Cabinet members responsible for governing legislation relevant to the regulation and supervision of the financial sector, by providing a forum where these Cabinet members can discuss and consider matters of common interest.[52]

[47] S 26 and s 76 to 86 respectively.
[48] Established in terms of s 20 and 25 FRSA respectively.
[49] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 9.
[50] S79 FSRA. The FSCR must establish working groups or subcommittees in respect of the following matters: enforcement and financial crime; financial stability and resolution; policy and legislation; standard-setting; financial sector outcomes; financial inclusion; transformation of the financial sector and any other matter that the Director General of Treasury may determine after consulting the other members of the FSCR.
[51] S83(1) FSRA.
[52] S83(2) FSRA.

3.2 The SARB's expanded financial stability mandate

The SARB's new express financial stability mandate requires it to monitor the financial system closely and to act swiftly to prevent disruption of financial stability and, if such disruption nevertheless occurs, to mitigate and manage its effects and to restore stability to the South African financial system.[53] The SARB does not have a carte blanche in how it approaches its expanded financial stability mandate but must act within a policy framework agreed between the Minister of Finance and the Governor of the SARB.[54] The SARB is further obliged to take recommendations by other organs of state into account, when exercising powers pertaining to financial stability that could affect the economy.[55] It is also obliged to take into account the opinions of the financial sector regulators when it executes its financial stability mandate.[56]

The powers of the SARB in the context of the promotion and maintenance of financial stability are set out in detail in the FSRA based on the principle that financial regulation post GFC also require emergency type powers to deal with systemic crises and that such powers require a robust legislative framework.[57]

3.3 Specific duties and powers of the SARB in respect of financial stability:

3.3.1 Monitoring of risks

The approach to be taken by the SARB in relation to its financial stability mandate is essentially risk-based. The SARB is therefore obliged to observe and keep under review the strengths and weaknesses of the South African financial system; and any risks to financial stability, as well as the nature and extent of those risks.[58] Therefore, a large part of the execution of the SARB'S financial stability mandate is precautionary in nature. The risks which the SARB is required to monitor are mainly the risk of systemic events occurring but also any other risks contemplated in matters raised by members of the FSOC or reported to the SARB by a financial sector regulator.[59] As

[53] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 10.
[54] S 11(2)(a) FSRA. In terms of s 8 FSRA the Minister of Finance is responsible for the administration of the FSRA.
[55] S 11(2)(b) and (c). An example of such an organ would be the Department of Trade and Industry who by means of determining interest rates pertaining to credit agreements governed by the National Credit Act 34 of 2005, exercises a power that may significantly impact on the economy.
[56] S26(2) FSRA.
[57] "A safer financial sector to serve South Africa better." 27.
[58] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 11.
[59] S12(a) FSRA.

pointed out by Van Heerden and Van Niekerk, the SARB as central bank, should also be cautious of smaller, seemingly non-systemic, risks that may build up and become systemic and which may eventually weaken or erode the stability of the financial system.[60] Once the SARB identifies any impending or actual risk to the country's financial stability, the FSRA requires it to take steps to mitigate such risks. The actual steps that the SARB should take in the event of identifying such risks are not prescribed, but the FSRA stipulates that they include advising the financial sector regulators and any other organ of state of steps to be taken by them to mitigate the risks to financial stability identified by SARB.[61] Thus the SARB is enabled to manage a crisis situation by indicating to the financial sector regulators and organs of state how to address risks that may affect financial stability, for example by tightening lending conditions that could otherwise give rise to a credit bubble. The SARB's expanded financial stability mandate also requires it to regularly assess the observance of principles in the Republic developed by international standard setting bodies for market infrastructures, and to report its findings to the financial sector regulators and the Minister of Finance.[62]

3.3.2 Financial Stability Review

The SARB has been issuing financial stability reviews since the early 2000s.[63] The FSRA now provides a legislative framework that informs the content of such review and that makes it clear that the financial stability review should not only cover the time period under review but should also take a forward-looking risk-based approach. As such it is provided that the SARB should conduct an assessment at least every six months on the stability of the South African financial system. Such financial stability review must be published for public notification and participation[64] and forms part of the SARB's macro-prudential surveillance obligation. The review must contain the following:

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[60] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 12.
[61] S12(b) FSRA.
[62] S12(c) FSRA.
[63] Van Niekerk Thesis 153.
[64] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 12.

(a) SARB's assessment of financial stability in the period under review; (b) its identification and assessment of the potential risks to financial stability in at least the next 12 months;
(c) an overview of steps taken by it and the financial sector regulators to identify and manage risks and that are envisaged to be taken during at least the next 12 months;
(d) weaknesses and disruptions in the financial system in the period under review; and
(e) an overview of recommendations made by the SARB and the FSOC during the period under review and the progress made in implementing those recommendations.[65]

The FSRA however stipulates that evidence which, if announced, may materially increase the possibility of a systemic event, need only be published in a financial stability review after the risk of a systemic event decreases or has been addressed.[66] As alluded to by Van Heerden and Van Niekerk, this may for example include situations where the SARB is responsible to provide liquidity assistance to a distressed systemic bank and needs to keep such information confidential in order to prevent a run on the bank.[67]

3.3.3 Dealing with systemic events

Systemic events are the greatest threat to financial stability because they can propagate contagion and bring a financial system to its knees. Systemic events occur as a result of the build-up of systemic risk which can either be structural in nature, such as the risk from large financial conglomerates with systemic importance, or it can arise over time, such as credit or asset bubbles.[68] In order for the SARB to properly execute its financial stability mandate it is necessary to endow it with powers which it can use to deal with systemic events. It is therefore important to define the concept of "systemic event" to have a legal framework that provides clarity on when the central bank's powers to prevent, mitigate and manage systemic events will be triggered and what those emergency powers entail. Accordingly a "systemic event" is broadly

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[65] S13(1) and (2) FSRA.
[66] S 13(3) FSRA.
[67] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 13.
[68] Schwarz "Systemic risk"(2008) 97 *Georgetown Law Journal* 193; South African Reserve Bank policy document entitled "A new macroprudential policy framework for South Africa" (November 2016) 9 available at http://www.resbank.co.za accessed on 11 November 2018.

defined in section 1 of the FSRA as “an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services.” Given that systemic events are directly responsible for financial instability it is crucially important for the SARB to be entrusted with appropriate and adequate powers to deal with systemic events. Section 14 of the FSRA accordingly sets out the power of the SARB to determine that certain events qualify as systemic events which have either occurred or are looming (i.e the trigger for SARB to use its emergency powers) and section 15 creates the basis for emergency *ex ante* intervention and *ex post* management of the event by the SARB.

In terms of section 14 the Governor of the SARB is required to consult with the Minister of Finance and may consult the FSOC (although Van Heerden and Van Niekerk submit that it will be done as a matter of course) before deciding that a systemic event has occurred or is imminent, and thus deploying its reserve powers.[69] This prior consultation with the Minister of Finance and the FSOC serves to avoid an event being branded without cause as a systemic event and attracting the unnecessary use of regulatory resources.[70] When the SARB deals with a looming systemic event, it is obliged to consider minimizing the effects of such event on financial stability and economic activity; to protect financial customers and to contain the cost to the country of the steps taken. [71] This means that, for example, the SARB will not have unlimited power to deal with systemic events, such as the failure of a systemically important financial institution (SIFI), by means of extending bail-outs with taxpayers’ money. The Governor of the SARB is further compelled to ensure that the Minister of Finance is kept informed of the systemic event and any steps taken or proposed to manage the

[69] S 14(2) FSRA. See further s14(3) to (5): The determination that an event is systemic must be kept under review and may be amended or revoked by the Governor at any time, after having consulted the Minister of Finance.
[70] Van Heerden and Van Niekerk “Twin Peaks in South Africa: a new role of the central bank” (2018) *Law and Financial Markets Review* 14.
[71] S 15(2) FSRA.

event and the results thereof which will also constrain the use of public funds in dealing with systemic events.[72]

The FSRA further specifically stipulates that the SARB may not, except with the Minister's consent, take action in relation to a systemic event that will or is likely to: force the National Revenue Fund to any spending; have a material impact on the cost of borrowing for the National Revenue Fund; or create a future financial obligation or a contingent liability for the National Revenue Fund. [73]

3.4 Cooperation and collaboration between the SARB and the financial sector regulators

As pointed out by authors such as Taylor and Godwin and Schmulow, successful implementation and performance of a Twin Peaks model of financial regulation depends on efficient and effective cooperation and collaboration between the various stakeholders in the financial system.[74] The FSRA facilitates such cooperation and collaboration on two levels: first, on the narrower level of specific collaboration for purposes of promoting and maintaining financial stability, the Act requires cooperation and collaboration between the SARB and the two peak regulators as well as other regulators who are active in the financial system and also organs of state responsible for financial policy and legislation. Second, on the broader level of ensuring the effective and efficient functioning of the Twin Peaks model as a regulatory approach that is critical to a well-functioning and stable financial system, the Act requires general cooperation and collaboration between all the aforesaid entities.[75]

To facilitate cooperation and collaboration for purposes of enabling the SARB to appropriately execute its financial stability mandate, the duty to assist the SARB in preserving financial stability in South Africa is expressly written into the objectives of the PA and the FSCA.[76] This duty requires the financial regulators to gather

[72] S 16(1) FSRA.
[73] S 16(2) (a)-(c) FSRA.
[74] Taylor "Twin Peaks: a regulatory structure for the 21st century" (1996) *The Futures & Derivatives Law Review* 7; Taylor "The road from "Twin Peaks" –and the way back" (2009-2010) 16 *Connecticut Insurance Law Journal* 64; Godwin and Schmulow "The Financial Sector Regulation Bill in South Africa, Second Draft: Lessons from Australia" (2015) 132 *The South African Law Journal* 756 at 758.
[75] See Van Niekerk Thesis 174.
[76] S 33(c) and s57(c) FSRA respectively.

information from, or about, financial institutions that concerns financial stability. As pointed out by Van Heerden and Van Niekerk this will relate to aspects such as failure to comply with prudential requirements; protracted illiquidity and negative market conduct that may put the financial system at risk.[77] The duty to assist the SARB with maintaining financial stability further requires the PA and FSCA to provide such assistance and information to the SARB and the FSOC for purposes of maintaining or restoring financial stability as they may reasonably request; and requires swift reporting to the SARB of any matter of which the financial sector regulator becomes aware of that poses or may pose a risk to the financial stability.[78]

The financial regulators must also provide the SARB with relevant information if the Governor has determined that a systemic event has occurred or is imminent., They are further required to consult the SARB before they use any of their powers in a way that may compromise steps taken in terms of section 15 of the FSRA to manage the systemic event or the effects thereof.[79] When exercising its powers in respect of financial stability the SARB is obliged to take into account any opinions expressed and any information reported by the financial sector regulators as well as any proposals of the FSOC.[80]

According to Van Heerden and Van Niekerk, South Africa has generally used hard law to regulate its financial system and the FSRA makes it clear that this approach will be augmented with flexible soft law options.[81] In this regard the FSRA compels the financial sector regulators to enter into memoranda of understanding (MOUs) to facilitate cooperation and collaboration between them and spell out their roles within the South African Twin Peaks model.[82] To ensure that they stay relevant these memoranda must be examined and updated at least once every three years.[83]

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[77] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 16.

[78] S26(1)(a)–(d) FSRA.

[79] S 17(a) and (b) FSRA.

[80] S 26(2) FSRA.

[81] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 17.

[82] S27 and s76.These MOUs had to be entered into within 6 months after Chapter 2 of the FSRA took effect.

[83] S 27(2) FSRA. It is further provided in s 27 (3) that a copy of a MOU must, without delay after being entered or updated, be provided to the Minister and the Cabinet member responsible for consumer credit matters. S 27(4) states that the validity of any action taken by a financial sector regulator in terms of a financial sector law, the National Credit Act or the Financial Intelligence Centre Act is however not

An important tool in the SARB's financial stability toolkit insofar as cooperation by financial sector regulators are concerned, entails that the Governor of the SARB can issue a directive to a financial sector regulator to provide the SARB with information necessary for exercising the powers. Such a directive may include directions aimed at supporting the restructuring, resolution or winding up of any financial institution; preventing or reducing the spread of risk, weakness or disruption through the financial system; or increasing the resilience of financial institutions to risk, weakness or disruption.[84] This power to issue directives therefore enables the SARB to compel financial sector regulators to disclose all information that the SARB needs to be appraised of for purposes of executing its financial stability mandate, even information that would otherwise be regarded as confidential.

3.5 The role of other organs of state

Van Heerden and Van Niekerk remark that, given their ability to influence regulators within their jurisdiction on policy issues and their ability to take actions that may compromise financial stability, the role of other organs of state in the context of financial stability also must be carefully managed.[85] Fittingly therefore, the FSRA specifies that if the Governor has determined that a systemic event has occurred or is imminent, an organ of state exercising powers in respect of a part of the financial system may not, without the approval of the Minister of Finance, acting in discussion with the Cabinet member responsible for that organ of state, exercise its powers in a way that is in conflict with a decision or steps taken by the Governor or the SARB to manage that systemic event or its effects.[86] The SARB and the FSOC will provide guidance to the Minister in this regard, as friction may arise in this area from time to time.

3.6 The Financial Stability Oversight Committee (FSOC)

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affected by a failure to comply with s 27 or a memorandum of understanding contemplated in this clause. This provision is problematic as it may compromise the effectiveness of the MOUs.

[84] S 18(1)-(3) FSRA. S 81(4) provides that the National Credit Regulator is obliged to comply with a directive issued to it in terms of s18(1) or (2), provided that the Minister of Finance has consulted the Minister of Trade and Industry who is responsible for consumer credit matters, on the directive.

[85] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 17.

[86] S 19(1) FSRA. In terms of clause 19(2) any unresolved issues between the Minister of Finance and the relevant Cabinet member must be referred to Cabinet.

As mentioned above, the FSRA facilitates cooperation and collaboration for purposes of financial stability and for the broader efficient and effective operation of the new South African Twin Peaks model by means of various committees that have each been assigned specific functions. The Financial Stability Oversight Committee (FSOC) is the apex committee for purposes of financial stability, comprising of the Governor of SARB (who acts as chairperson), the Deputy Governor responsible for financial stability matters, the Chief Executive Officer of the PA, the Commissioner of the FSCA, the Chief Executive Officer of the National Credit Regulator, the Director-General of Treasury, the Director of the Financial Intelligence Centre and any additional persons appointed by the Governor.[87] The FSOC's main task is to support the SARB when performing its duties regarding matters on financial stability.[88] It therefore serves as a platform for stakeholders of the SARB and the financial sector regulators to be well informed and to trade opinions on their individual mandates relating to financial stability; to make proposals to the Governor on the designation of systemically important financial institutions (SIFI); to recommend to the Minister of Finance and the SARB steps to be taken to promote, protect or maintain, or to manage or avoid risks to, financial stability; to advise the Minister and the SARB on matters relating to crisis management and prevention; to make proposals to other organs of state regarding financial stability and to perform any other function conferred on it in terms of applicable legislation.[89]

It is submitted by Van Heerden and Van Niekerk that the main decisions regarding the exercise of the SARB's financial stability mandate will be made in the FSOC and that the Governor will be acting mostly in accordance with decisions taken by the FSOC, which in turn will rely on information provided to it by the Financial Sector Contingency Forum, discussed below.

3.7 The Financial Sector Contingency Forum

[87] S 20 and 22 FSRA. The SARB must provide administrative support and other resources, including funding, to the FSOC to ensure its effective functioning.
[88] S 20(2) FSRA.
[89] S 21 FSRA.

The Financial Sector Contingency Forum (FSCF) is established for purposes of assisting with the maintenance of financial stability.[90] The FSCF comprises of at least eight members. including a Deputy Governor (who is designated by the Governor of SARB and acts as chairperson); agents of each of the financial sector regulators; representatives of other organs of state (as determined by the chairperson) and representatives of financial sector industry bodies and any other relevant person (as determined by the chairperson).[91] The FSCF must assist the FSOC with the identification of potential risk that systemic events will occur; and the co-ordination of appropriate strategies, mechanisms and structures to mitigate those risks. [92] As remarked by Van Heerden and Van Niekerk, the FSCF is therefore the committee where the detection occurs of risk that may hinder or threaten financial stability and that is actively engaged inplanning how to address and contain or mitigate those risks.[93]

3.8 Designation of SIFI

One of the prominent causes of the financial turmoil experienced during the 2008 GFC can be ascribed to the regulatory challenges posed by large financial conglomerates that gained systemic importance because of their size, complexity and interconnectedness. The diverse portfolio of activities these conglomerates engaged in created a so-called "blurring of the boundaries" that made it difficult for regulators to adequately supervise them. Their "Too Big To Fail"-status also occasioned many bail-outs with taxpayers money to prevent them from failing and imploding the entire financial system.[94] Key lessons from the 2008 GFC were thus that complex structural expansion of SIFI should be restricted, that special mechanisms are required to deal with SIFI and that SIFI should be closely watched for build-up of systemic risk - in principle, that no institution should be allowed to become "Too Big To Fail".[95] Post

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[90] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 19.
[91] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 20.
[92] S 25(2) FSRA. The FSCF gets its administrative support and other resources, including funding, from SARB and must meet at least every six months.
[93] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) Law and Financial Markets Review 20.
[94] Strahan "Too Big To Fail: Causes, Consequences and Policy Responses" (2013) *Annual Review of Financial Economics* 43.
[95] "A safer financial sector to serve South Africa better" 26. See also Financial Stability Board (2011) "Policy measures to address systemically important financial institutions" available at

GFC the approach to SIFIs has changed from bail-out to bail-in, by holding shareholders accountable for the costs occasioned by the financial distress of a SIFI.[96] This approach to abstain from bail-outs is confirmed in the FSRA that provides for designation of SIFIs for purposes of heightened prudential regulation and stipulates that the designation of a financial institution as a SIFI does not imply, or entitle that financial institution to a guarantee or any form of credit or other support from any organ of state.[97]

The process for designation of a SIFI is set out in section 29 of the FSRA. It entails that the Governor may, after consulting with the FSOC, decide to designate a specific financial institution as a SIFI. The SIFI can thereupon make submissions regarding its proposed designation, and these submissions must be considered by the Governor and the FSOC to inform the decision whether to proceed with such designation or not.[98] As part of the emergency powers granted to the SARB for purposes of executing its financial stability mandate, section 29(4) of the Act provides for crisis SIFI designation where a systemic event has occurred or is imminent.[99]

The decision to designate a financial institution as a SIFI is guided by a number of prescribed factors, namely: the size of the financial institution; its complexity and the complexity of its business affairs; its interconnectedness with other financial institutions within or outside South Africa; whether there are readily available substitutes for the financial products and financial services or market infrastructure that the financial institution provides; recommendations made by the FSOC; submissions made by or for the financial institution; and any other matters that may be prescribed by Regulation. [100]

By designating a financial intuition as a SIFI the FSRA creates the platform for more invasive regulation of these significant financial institutions in order to increase their

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http://www.fsb.org/wp-content/uploads/Policy-Measures-to-Address-Systemically-Important-Financial-Institutions.pdf accessed 9 November 2018.

[96] Avgouleas and Goodhart "Critical reflections on bank bail-ins" (2015) *Journal of Financial Regulation* 3.

[97] S29 (5) FSRA.

[98] S29(1) to (3) FSRA.

[99] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) Law and Financial Markets Review 22.

[100] S 29(1)–(3) FSRA.

loss absorbency in the event that they encounter financial distress.[101] This entails the imposition of stricter prudential measures on the SIFI due to it being regarded as high risk insofar as its ability to contribute to a systemic event is concerned.[102] These prudential measures include: solvency matters and capital requirements, which may include requirements in relation to counter-cyclical capital buffers; leverage ratios; liquidity; organizational structures; risk management arrangements; sectoral and geographical exposures; required statistical returns; recovery and resolution planning; and any other matter in respect of which a prudential standard may be made. [103] Section 31 of the Act further indicates that any steps relating to rescue or resolution of a SIFI will be void if taken without the concurrence of the SARB.[104]

3.9 Conclusion

The FSRA thus hails a new chapter in the history of the SARB as central bank of South Africa by providing, for the first time, a legislative framework against which to exercise its financial stability mandate. This framework prescribes the risk-based approach to be taken in executing such financial stability mandate and also incorporates powers that are pertinent to the proper exercise of this mandate such as the power to designate events as systemic which will then trigger the exercise of certain emergency powers. It also affords the SARB powers to deal with SIFIs that pose systemic risk to the financial system and through the designation process enables the SARB to manage the risk that these large institutions pose. Very importantly it also prescribes that the SARB, financial sector regulators and organs of state all cooperate and collaborate with each other for purposes of the promotion and maintenance of financial stability in South Africa.

[101] Van Heerden and Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2018) *Law and Financial Markets Review* 23.
[102] Ibid.
[103] S 30 (1) FSRA.
[104] S 31 FSRA.

CHAPTER 4: THE ROLE OF THE AUSTRALIAN RESERVE BANK IN THE AUSTRALIAN TWIN PEAKS MODEL

4.1 Historical background of financial regulation in Australia and the Reserve Bank of Australia as central bank

The Reserve Bank of Australia (RBA) originated from the Australian Commonwealth Bank[105] and was established as central bank in terms of the *Reserve Bank Act 1959*[106] that took effect on 14 January 1960.[107]

The general powers and duties of the RBA are set out in section 8 of the Reserve Bank Act. Section 8 provides that the Bank has such powers as are necessary for the purposes of the Reserve Bank Act and any other Act conferring functions on the Bank. In particular, and in addition to any other powers conferred on it in terms of the Reserve Bank Act, the RBA has the power:

(a) to receive money on deposit;

(b) to borrow money;

(c) to lend money;

(d) to buy, sell, discount and re-discount bills of exchange, promissory notes and treasury bills;

(e) to buy and sell securities issued by the Commonwealth and other securities;

[105] See Van Niekerk Thesis 337 for a detailed historical overview.
[106] Act 4 of 1959.
[107] Section 26 Reserve Bank Act.

(f) to buy, sell and otherwise deal in foreign currency, specie, gold and other precious metals;

(g) to establish credits and give guarantees;

(h) to issue bills and drafts and effect transfers of money;

(i) to underwrite loans; and

(j) to do anything incidental to any of its powers

Pre-Twin Peaks the RBA's primary mandate was stated in section 10 of the Reserve Bank Act to be that the RBA must "ensure that the monetary and banking policy of the Bank is dedicated to the greatest advantage of the people of Australia and that its powers are executed in such a manner as, in the opinion of the Reserve Bank Board, will best contribute to (a) the stability of the currency in Australia; (b) the maintenance of full employment in Australia; and (c) the economic prosperity and welfare of the people of Australia."

The impact of financial instability could damage employment and economic stability, and because of that, section 10 has been interpreted to imply a mandate to "pursue" financial stability.[108]

Like South Africa, Australia also followed a sectoral (institutional) approach to financial regulation prior to transitioning to a Twin Peaks model. In 1989 the Australian Securities Commission as Regulator, became responsible for the market integrity regulation of the entire financial sector, due to the enactment of the Australian Securities and Investments Commission Act.[109] At that stage the Insurance and Superannuation Commission regulated life and general insurance products and associated intermediaries.[110] Consumer protection regulation was divided between the Australian Securities Commission focusing on shares, debentures, futures contracts and interests in collective investment schemes and associated

[108] Reserve Bank of Australia and Australian Prudential Regulation Authority "Macroprudential Analysis and Policy in the Australian Financial Stability Framework" (September 2012) http://www. rba.gov.au/ fin-stability/resources/2012-09-map-aus-sf/pdf/2012-09-map-aus-fsf.pdf accessed 09 October 2018, hereinafter RBA & APRA Financial Stability 2012, at 2.

[109] Act 90 of 1989.

[110] Following the announcement of the Insurance and Superannuation Commissioner Act 98 of 1987.

intermediaries. The Australian Competition and Consumer Commission conducted general consumer protection regulation.[111]

The mandate for prudential regulation was split between three institutions, namely the Australian Financial Institutions Commission[112] mandated to look after entities like building societies and credit unions, the RBA in respect of banks and the Insurance and Superannuation Commission in respect of life and general insurance companies.[113]

In 1992 the Australian Payment Clearing Association ("APCA"), took responsibility for payment clearing[114] In the same year the Council of Financial Supervisors[115] was established for purposes of communication and coordination between the key financial regulators.[116] The Council of Financial Supervisors (CFR) consisted of the Insurance and Superannuation Commission, the RBA and the Australian Financial Institutions Commission.[117] As pointed out by Van Niekerk, the RBA had the traditional roles associated with the central bank within an institutional model of financial regulation in the pre-Twin Peaks era. In this regard its roles entailed oversight of the payment and settlement system, responsibility for monetary policy, administrating commercial banks and acting of lender of last resort in certain instances.[118] In this dispensation the RBA also had an implied *de facto* mandate to maintain financial stability in Australia.[119]

4.2 Rationale behind the move to a Twin Peaks system of financial regulation in Australia

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[111] Jensen and Kingston "Australian 'twin peaks' framework of financial system regulation: Australia and UK compared" 2010 (25) *Butterworths Journal of International Banking and Financial law* 548. Australian Competition and Consumer Commission (undated) https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-accc (accessed 14 October 2018).
[112] Established in terms of the Australian Financial Institutions Commission Act 1992.
[113] Jensen and Kingston "Australian 'twin peaks' framework of financial system regulation: Australia and UK compared" 2010 (25) *Butterworths Journal of International Banking and Financial law* 548.
[114] Ibid.
[115] Thompson "The role of the Council of Financial Supervisors" (14 September 1995) https://www.rba.gov.au/speeches/1995/sp-dg-150995. html accessed 14 October 2018.
[116] Van Niekerk Thesis 211.
[117] Council of Financial Regulators "History" (undated) https://www.cfr.gov.au/about-cfr/history.html (accessed 20 November 2017), hereinafter CFR History, at 1.
[118] Van Niekerk Thesis 222.
[119] Van Niekerk Thesis 224.

In 1996 the "Wallis Inquiry"[120] was set up and mandated to examine the influences of future events which could influence the stability and growth of the financial market and make suggestions on best practice moving forward.[121] The Wallis Committee selected the Twin Peaks model as future model for financial regulation in Australia. The main characteristics of the Australian model is that two highly specialised financial regulators would be established, with one responsible for the integrity of the financial markets and the other responsible for prudential regulation.[122] The Wallis Committee also identified possible shortcomings of the Twin Peaks model on financial regulation that had to be addressed, such as the possibility of regulatory duplication and intersection, disagreement on objectives and the potential for regulatory concerns to be overlooked.[123]

The Committee inter alia suggested a single prudential regulator that would take a holistic approach to respond to the development of interchangeable products across the banking and life insurance industries and who would embrace financial industry innovation.[124] It also proposed a single market conduct regulator. It further suggested that the then-existing CFR should be named the Council of Financial Regulators (CFR) and be put together with the purpose of facilitating the cooperation of its three members (the RBA, the proposed prudential regulator, and the proposed conduct and disclosure regulator) throughout the full range of regulatory functions, and the fulfilment of regulatory objectives with the minimum of agency and compliance costs.[125]

The Wallis Committee indicated that the RBA should have the primary responsibility to ensure stability of the financial system in the new Twin Peaks model. This entailed that the RBA should consult with the Treasurer and other financial stakeholders when necessary and that it would not do banking regulation and supervision anymore as this

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120 Wallis Inquiry (March 1997) http://fsi.treasury.gov.au/content/FinalReport.asp (accessed 30 March 2017) hereinafter Wallis Inquiry 1997. See further Wallis Report on the Australian Financial System: Summary and Critique – Research Paper No. 16 1996-97 published by the Department of the Parliamentary Library (1997) http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/D2G30/upload_binary/D2G30.pdf;fileType=application/pdf#search=%221990s%201997%20publications%22 accessed 14 October 2018.
121 Cooper "The integration of financial regulatory authorities – the Australian experience" Australian Securities and Investments Commission (September 2006) http://download.asic.gov.au/media/1339352/integration-financial-regulatory-authorities.pdf accessed 14 October 2018, hereinafter Cooper 2006, at 2.
122 Wallis Inquiry Recommendation 1.
123 Cooper 2006 3.
124 Wallis Inquiry Recommendation 31.
125 Van Niekerk Thesis 234.

function would be moved over to the prudential regulator.[126] The Committee further emphasised the importance of the RBA and prudential regulator being in close cooperation, even if formally separated.[127] The Inquiry also proposed a separate Payments System Board that would be regulated by the RBA .[128]

4.3 Twin Peaks in Australia: The new legal framework of financial regulation

The Australian Twin Peaks model took effect on 1 July 1998.[129] Although hailed as a Twin Peaks model the Australian model is in fact a three-peak model comprising of:[130]

(a) The Reserve Bank of Australia (RBA) acting as the Central Bank within the Australian Twin Peaks model: The RBA has the responsibility for monetary policy, overall financial system stability, regulation of the payment system and interest rates an acting as lender of last resort.[131]

(b) The Prudential Regulator: In 1998 the Australian Prudential Regulatory Authority Act[132] established the Australian Prudential Regulation Authority (APRA)[133]. The main responsibilities of APRA are to oversee prudential supervision, and to ensure safety and soundness of the financial institutions it supervises, independent of the RBA.[134]

(c) The Market Conduct Regulator: When the then existing, Australian Securities Commission was changed into ASIC, the Australian Securities and Investments Commission (ASIC) was created, replacing the Corporation and Financial Services Commission (CFSC).[135] ASIC is governed in terms of the Australian Securities and Investment Commission Act 200.[136] ASIC increased its duties for consumer protection

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[126] Wallis Inquiry Recommendation 56.
[127] Wallis Inquiry Recommendation 32.
[128] Recommendation 64 of the Wallis Inquiry determined that the Australian Payments System Council should be disbanded, with its functions in relation to the payments system assumed by the Payments System Board.
[129] Van Niekerk Thesis 237.
[130] Ibid.
[131] Ibid.
[132] Act 50 of 1998, hereinafter the APRA Act.
[133] The name that the Wallis Inquiry suggested for the prudential regulator, namely the Australian Prudential Regulation Commission (APRC), as discussed above, was thus substituted with the name Australian Prudential Regulation Authority (APRA).
[134] Van Niekerk Thesis 237.
[135] The name that the Wallis Inquiry suggested for the market integrity and consumer protection regulator.
[136] Act 51 of 2001, hereinafter the ASIC Act.

and market integrity in parts such as superannuation and insurance across the financial system and has the mandate to maintain, facilitate and improve the performance of the financial system and the institutions with that system.[137]

4.4 The role of the RBA in the Australian Twin Peaks system

When Australia transitioned to a Twin Peaks model of financial regulation in 1998, the duties of the RBA remained largely the same as in the pre-Twin Peaks dispensation, in respect of monetary policy, systemic stability and lender of last resort. However, bank supervision was removed from the RBA 's remit and assigned over to APRA and the separate Payment System Board constituted within the RBA, dealt payment system matters. [138]

Pertinently, the RBA as central bank of Australia had the implied overall responsibilities within the Twin Peaks model to ensure the overall stability of the financial system, the safety and reliability of the payments system as well as monetary policy.[139] It should however be noted that no express changes were made to the Reserve Bank Act at the time of the introduction of the Twin Peaks model, with reference to the primary mandate of the RBA which concerned price stability.[140] Unlike South Africa did in the FSRA, Australia has to date not expressly captured the RBA's mandate for financial stability in the Reserve Bank Act nor did it amend the central bank's price stability mandate to add financial stability as equal or secondary mandate. The Reserve Bank Act also contains no legal framework to guide the RBA's financial stability mandate which means that there is actually a lot of uncertainty regarding what exactly this

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[137] Section 1(2)(a) ASIC Act: In performing its functions and exercising its powers, ASIC must strive to maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and promote the confident and informed participation of investors and consumers in the financial system; and administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and ensure that information is available as soon as practicable for access by the public; and take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.

[138] Van Niekerk Thesis 238.

[139] Schmulow "Financial regulatory governance in South Africa: the move towards Twin Peaks" 2017 (25) *African Journal of International and Comparative Law* 397.The 1998 Treasure referred to financial stability being the regulatory focus of the RBA in the Second Reading Speech for the APRA Act. In July 2003 and September 2006 similar revised statements were published to this effect.

[140] Van Niekerk Thesis 238.

mandate entails. This dearth of information regarding the RBA's financial stability mandate further has the effect that there is actually a lot more information available on how APRA executes its financial stability mandate , as discussed below.

4.5 APRA's role in financial stability

When one considers the role of the central bank of Australia in relation to financial stability in the context of their Twin Peaks model it is inevitable that one also has to consider the role of the prudential regulator, APRA, as it shares the financial stability mandate with the RBA. Thus the RBA does not have the exclusive financial stability mandate in the Australian Twin Peaks model. In fact, APRA is the only institution in Australia who has the power to change the behaviour of financial institutions, by using tools for macroprudential supervision.[141] The RBA however has the dominant authority on matters relating to financial stability,[142] even though the RBA and APRA share the financial stability mandate.[143] Unlike the Reserve Bank Act, the APRA Act contains various measures by means of which APRA can contribute to the promotion and maintenance of financial stability in Australia.

Edey, describes the collaboration of the mandates of the RBA and APRA as follows:[144] "It is sometimes said in answering that question that the Bank is the macroprudential authority in Australia and APRA is the microprudential authority. The implication is that the bank looks at stability from the point of view of the system while APRA looks only at the individual institutions. I think that is at best an oversimplification and is an unhelpful way to look at the two institutional roles. It presupposes that it is possible to focus on the system as a whole without taking an interest in the individual components or, conversely, that an agency can sensibly look at parts without being interested in how they interact with the whole. The difference between the two roles, I suggest, is best understood in terms of their powers and responsibilities rather than their

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[141] RBA & APRA Financial Stability 2012 14.

[142]This is clear from the role that the RBA plays both in mitigating the risk of financial disturbances with potentially systemic consequences, and in responding if a financial system disturbance does occur, according to Van Niekerk Thesis 238.

[143] Reserve Bank of Australia – Financial Stability "Role of the Reserve Bank in maintaining financial stability" (undated) https://www.rba.gov.au/fin-stability/reg-framework/role-of-the-reserve-bank-in-maintaining-financial-stability.html (accessed 14 October 2018) 1.

[144] Edey "The Financial Stability Role of Central Banks" Address delivered at the Thomson Reuters Australian Regulatory Summit Sydney (1 May 2013) https://www.rba.gov.au/speeches/2013/sp-ag-010513.html accessed 14 October 2018.

objectives. APRA has powers and responsibilities that relate mainly to individual institutions, but its legislative mandate includes stability of the system, and it can adjust its prudential settings to address system-wide concerns. The RBA has a broad financial stability mandate, existing in conjunction with other macro-economic objectives and attached to a very different set of powers."

Edey further indicates that the RBA's general mandate to promote financial stability was endorsed when the responsibility for bank supervision shifted from the RBA to APRA.[145] He also states that: "…. the RBA and APRA have different powers but overlapping and complementary objectives in relation to financial stability." [146]

Section 8(1) of the APRA Act provides the main objectives of APRA.[147] In performing and putting into effect its functions and powers, APRA is compelled to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, to "promote financial system stability in Australia".[148] APRA has three main types of powers in regulating financial institutions: firstly the authorisation or licensing powers; secondly the supervision and monitoring powers; and lastly powers to act in events of financial problems to protect depositors, policy holders and superannuation fund members, including powers relating to taking control of entities and/or winding up bankrupt bodies.[149] APRA is mandated to determine whether a financial institution's system for classifying, assessing and managing risks is of high quality and to act in the event of any shortcomings in such a system.[150] APRA further assists an entity in making an orderly exit from the market in the event of a failure in their financial system, in order to maintain public confidence.[151]

APRA has the powers to obtain information from an Australian Deposit-taking Institution (ADI);[152] investigate an ADI;[153] give binding directions to an ADI (such as to recapitalise);[154] and, in more extreme circumstances, appoint a statutory manager to

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145 Ibid.
146 Ibid.
147 Section 8(1).
148 Section 8(2).
149 Thompson "APRA – its objectives and powers" (27 October 1998) http://www.apra.gov.au/Speeches/Pages/98_09.aspx accessed 14 October 2018.
150 Van Niekerk *Thesis* 8.
151 Cooper 2006 6.
152 Section 13(1) of the Banking Act.
153 Section 13(4), 13A(1) and 61 of the Banking Act.
154 Section 11CA of the Banking Act.

assume control of a distressed ADI[155] or take control of the institution itself,[156] if it identifies behaviour or financial upset that may pressure an ADI's ability to meet its financial commitments to depositors, or otherwise upset financial system stability.[157] In the event that difficulties prove unmanageable, APRA can apply to the courts to wind-up the ADI.[158] APRA also has the powers to revoke licences,[159] to make prudential standards[160] or issue enforceable directions.[161] Notably APRA is also mandated to take a system-wide view of the financial sector. APRA is further obliged to advise the Minister if it considers that a body regulated by it is in financial trouble in terms of section 10 of the APRA Act.[162]

In October 2002 APRA codified its risk-based approach with the introduction of the Probability and Impact Rating System (PAIRS) and the Supervisory Oversight and Response System (SOARS).[163]PAIRS is a framework that measures how 'risky' an institution is in relation to APRA's purpose and SOARS determines how officials must respond to that risk.[164]

4.6 Cooperation and collaboration between the RBA and regulators

Godwin et al list the following features that enable the Australian Twin Peaks Model to facilitate appropriate cooperation and collaboration:

(a) proactive information-sharing between the regulators;

(b) consultation and mutual assistance between the regulators;

(c) practical measures to encourage and facilitate coordination; and

(d) a coordination body.[165]

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155 See Division 2 Subdivision B of the Banking Act.
156 Section 13A(1) and section 65 of the Banking Act.
157 Van Niekerk *Thesis* 239.
158 Section 14F of the Banking Act.
159 Sections 9(4)(b), 9A and 11AB of the Banking Act.
160 See section 11AF of the Banking Act with regards to prudential standards that APRA may determine for ADIs and authorised NOHCs; section 32 of the Insurance Act 1973 for prudential standards that APRA may determine for insurers; and section 230A of the Life Insurance Act 1995 for prudential standards that APRA may make for life companies.
161 Division 1BA of the Banking Act about APRA's power to issue directions, sections 11CA to 11CB.
162 Section 10(1).
163 Council of Financial Regulators 2002 12. RBA & APRA Financial Stability 2012 17 and 18: PAIRS and SOARS are used by APRA for a measured and risk-based approach to supervision.
164 Van Niekerk *Thesis* 239.
165 Ibid.

According to Godwin et al information sharing between the financial sector regulators in Australia is of critical importance.[166] They indicate that MOUs and legislation governing the regulators assists them in sharing information and the output of the functions on all levels, including formulating and implementing policy.[167] The Australian regulators also have regular meetings, consultations, proactive dialogue and liaison that reinforces mutual assistance between them in the event where one regulatory body's actions have an impact on the other's responsibilities. These regulators use practical methods to encourage and facilitate coordination between themselves. The Australian Twin Peaks model is further underpinned by an appropriate coordination framework.[168] However, as pointed out by Godwin et al, the Australian judicial framework for regulatory coordination relies predominantly on 'soft law' mechanisms (i.e that are not legally binding) in the form of mutual memoranda of understanding and informal procedures between the RBA and APRA and ASIC.[169] MOUs are critical to ensure the effective communication and cooperation between the regulators. Numerous Memoranda of Understanding were signed between the regulators, namely between the RBA and APRA,[170] between the RBA and ASIC[171] and between APRA and ASIC.[172] Godwin et al state that the main reason for the success of this soft framework of coordination is because the process itself, not only the result thereof, is regarded as crucial; the working relationships on a number of levels are sound; the regulators understand their paired roles for the Twin Peaks model to be successful and the framework of coordination is flexible [173] and adds to the "culture of coordination".[174]

Schmulow also remarks that the relationship between the three peaks in Australia has historically been closely cooperative and not fragmented with conflict.[175] In Van

166 Ibid.
167 Ibid.
168 Ibid.
169 Ibid.
170 The RBA and APRA has signed a Memorandum of Understanding: Memorandum of Understanding between the RBA and APRA (12 October 1998) http://www.apra.gov.au/AboutAPRA/Documents/MoU-RBA-Reserve-Bank-of-Australia.PDF accessed 12 September 2017.
171 The RBA and ASIC has signed a Memorandum of Understanding in 2002.
172 APRA and ASIC have signed various Memoranda, namely in 1998, 2004 and 2010.
173 Godwin et al 2016 35.
174 Ibid.
175 Schmulow AD "Doing it the Australian Way, 'Twin Peaks' and the Pitfalls in Between" (31 March 2016) http://clsbluesky.law.columbia.edu/2016/03/31/doing-it-the-australian-way-twin-peaks-and-the-pitfalls-in-between-2/ accessed 10 October 2018.

Nierkerk's view Australia is in a privileged position, because over the years it has built an exceptional regulatory culture which sustains the effective use of soft law mechanisms for cooperation and collaboration and contributes to the effective functioning of the Australian Twin Peaks model.[176]

4.7 The Australian Twin Peaks model during the GFC

The GFC tested systems of financial regulation in several countries. Fortunately, Australia's economy was practically the least affected by the Crisis.[177] The FSB Country Peer Review of Australia in 2011, mentioned that the Australian financial system weathered the GFC well.[178]

Many factors contributed to this low impact on the Australian economy, like sound government finances as well as the solid position that the broader Australian economy was in prior to the onset of the GFC.[179] The resilience of Australia to the GFC was improved by sensible measures that were taken by the financial regulators prior to the crisis such as the fact that the RBA was putting more resources than some other central banks into place before the crisis erupted the global market, by analysing household and housing developments' implications for financial stability.[180] Arguably Australia's solid Twin Peaks model also assisted in steering the country safely through the GFC.

4.8 Reforms in Australia subsequent to the GFC

Because it experienced no significant adverse effects as a result of the GFC Australia's approach to financial regulation did not require any reform in response to the GFC. The Twin Peaks model in Australia was thus retained without significant changes, including no changes to the Reserve Bank Act insofar as the RBA's financial stability mandate is concerned.[181]

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[176] Van Niekerk *Thesis* 241.
[177] Ibid.
[178] Financial Stability Board – Peer review of Australia (21 September 2011) http://www.fsb.org/wp-content/uploads/r_ 110926b.pdf accessed 15 September 2018, hereinafter FSB Peer Review 2011, at 5.
[179] Van Niekerk Thesis 253.
[180] Ibid.
[181] Ibid.

Australia was nevertheless not complacent and undertook a Financial System Inquiry (FSI) in 2014 to determine how the financial system could be situated to best meet Australia's evolving needs and support its economic growth [182] The FSI Final Report pointed out that Australia has long adopted a macroprudential approach to supervision under the rubric of financial stability. Yet, Australia's institutional structure is relatively informal and decentralised. It was pointed out that the RBA and APRA each have responsibility for financial stability but most macroprudential tools can only be deployed by APRA thus placing a strong premium on cooperation between the two agencies.[183] The FSI Final Report considered whether Australia should change its institutional arrangements for making and implementing financial stability policy, but decided against it. It was found that although Australia's approach has advantages and disadvantages, alternative institutional approaches - and also the effectiveness of many macroprudential tools are yet to be tested. For this reason, the FSI recommended no fundamental change to the institutional arrangements for financial stability policy and to the prudential perimeter that existed at that stage. However, it indicated that the RBA should continue to monitor risks in the non-prudentially regulated sector, and that the CFR should periodically consider whether change is required.[184]

4.10 Conclusion

Pre-Twin Peaks the Reserve Bank of Australia (RBA) had traditional central banking roles which included an implied *de facto* responsibility for financial stability The adoption of the Twin Peaks model of financial regulation in Australia was not in response to any significant regulatory failure but rather a pro-active measure to improve the country's framework for financial regulation.

The legislative architecture of the Australian Twin Peaks model is contained in various Acts, including the Reserve Bank Act, the APRA Act and the ASIC Act. The Australian Twin Peak model boasts three prominent regulatory peaks comprised of the RBA as central bank, APRA as prudential Regulator and ASIC as market conduct regulator. In this model financial stability is a shared mandate between the central bank and the

[182] Australian Government – The Treasury "Financial System Inquiry" (20 December 2013) http://jbh.ministers.treasury.gov.au/media-release/037-2013/ accessed 31 July 2018.

[183] FSI Final Report 2014 233.

[184] FSI Final Report 2014 234.

prudential regulator. Finally the effective functioning of the Australian Twin Peaks model is attributed to a solid foundation of cooperation and collaboration that is contained in soft law by virtue of various memoranda of understanding that exist between the RBA and the financial sector regulators.

However Australia has not deemed it necessary, originally when it adopted its Twin Peaks model and also not post–GFC, to augment its central bank's implied financial stability mandate by amending the Reserve Bank Act to expressly capture such mandate and to provide a more comprehensive legislative framework against which this mandate can be executed.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

It appears that South Africa is on the right track insofar as its reformed approach to financial regulation and its adoption of a Twin Peaks model is concerned. Notably South Africa's move towards a Twin Peaks model of financial regulation was a well-considered and researched move that extensively examined for almost a decade, conscious of lessons taken from the GFC and specifically having regard to Australia's experience as the first jurisdiction to implement a Twin Peaks model. The FSRA as framework Act introducing the South African Twin Peaks model particularly provides greater certainty regarding the SARB's role in the South African Twin Peaks model by expressly capturing the broad features of the central bank's financial stability mandate and similarly the mandates of the PA and FSCA as well as the responsibilities of all the role players, specifically with regard to financial stability and also in the broader context of Twin Peaks.

Given its traditional roles and decades of institutional expertise and the role it *de facto* fulfilled with regard to financial stability pre-Twin Peaks, it is clear SARB is the best institution to oversee financial stability in the new Twin Peaks model. It is further clear that the FSRA introduced a fair measure of accountability and transparency to the central bank's mandate. The specific emergency powers extended to the SARB to deal with systemic events also ensures that time will not be wasted during a crisis to question the SARB's ability to appropriately deal with such systemic event. Given the potential for destruction posed by SIFIs it also makes perfect sense to provide certainty as to how the SARB can deal with these institutions in order to minimise the risk they pose to financial stability. The introduction of the SIFI-designation process and the consequences such designation attracts is thus a positive step in enabling the SARB to execute its financial stability mandate.

It is further evident that the SARB on its own will not be able to promote and maintain financial stability and thus the framework for collaboration and cooperation between the SARB is a positive development. The clear framework for collaboration and coordination mandated by the FSRA means that the SARB will be in a position to extract information from and dictate steps to the regulators and organs of state that will promote and preserve financial stability in general and especially in crisis times. The financial sector regulators and organs of state responsible for matters that may affect the financial system, is laudable. As the expanded mandate of the SARB will require more of its regulatory attention it seems appropriate to have removed bank supervision from its regulatory remit. It is further clear that the decision to house the prudential regulator within the same building as the SARB was a sound one as it will better facilitate information sharing which is crucial in times of crisis.

5.2 Recommendations

My recommendations are mainly based on lessons I take from the Australian Twin Peaks experience. It is evident that there is some fundamental differences between Australia and South Africa, the most obvious being that Australia is a developed country whilst South Africa is an emerging market. However the fact that Australia was not significantly affected by the GFC reflects favourably upon its prudent adoption of a Twin Peaks model in 1998 already, well before the GFC. I would therefore recommend that South Africa follows the Australian example of ensuring that the soft law mechanisms it sets up by way of memoranda of understanding are appropriately considered so that it can facilitate adequate collaboration and cooperation between the SARB and the other roleplayers. This would be crucial to the success of the South African model and would be integral to the proper execution of the SARB’s financial stability mandate. I also regard the interaction between the RBA and the Australian prudential regulator, APRA, and the fact that they share the financial stability mandate in the Australian Twin Peaks model, as beneficial. Promoting and maintain financial stability is an enormous responsibility and to entrust such overall mandate to one institution only puts that institution under great pressure. Merely indicating that the prudential regulator and the financial sector conduct regulator must “assist” the SARB with the maintenance of financial stability (as is currently done in the FSRA) does not alleviate the SARB’s difficult task in this regard. Rather it is recommended that consideration be given to expressly indicating that the financial stability mandate in South Africa is a shared mandate between the SARB and the PA and FSCA as this will make the latter two regulators more accountable to ensure that they regulate their various areas in such a way that it cumulatively contributes to financial stability in South Africa. In any event, without appropriate and coordinated regulation and supervision of the safety and soundness and the market conduct of financial institutions, the SARB will not be able to effectively execute its financial stability mandate.

Finally however, it is submitted that Australia can also learn from South Africa especially insofar as it is evident that the clear legislative framework that South Africa created in the FSRA for the execution of the central bank’s financial stability mandate will avoid turf wars and enable swift regulatory action in crisis times.

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