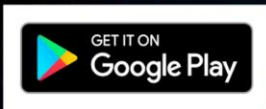




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**Mock Exams
App**



Topic 1

**Demonstrate
understanding of the
FAIS Act
as a
regulatory framework**

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The FAIS Act and Subordinate Legislation

Overview

The FAIS Act refers to the Financial Advisory & Intermediary Services Act, no. 37 of 2002.

- The commencement date of the FAIS Act is 15 November 2002
- **Purpose:**
 - *To professionalise the financial services industry and,*
 - *To provide adequate consumer protection*

It regulates the business of all financial services providers who give advice or provide intermediary services to clients, in a wide range of financial products



Market
Conduct



Key Individual

manages
and
oversees
the
provision
of financial
service



The Role-players in the FAIS Act

The FSCA

Is an independent institution established by law to **regulate the market conduct** of financial institutions and ensure consumer protection

FSP

Are the financial institutions, (banks, insurance companies or other entities) that need to be authorized or licenced by the FSCA to provide financial services covered by the FAIS Act

Key Individual (KI)

- Are employed by the FSPs (and approved by the FSCA)
- Are responsible for the management and oversight of the FAIS-related business

Representatives (Reps)

Are employed or mandated by FSPs to provide financial services to clients

Compliance officers

- Monitors compliance with the FAIS Act
- Take responsibility for communicating with the registrar
- Must comply with the fit and proper requirements

The Ombud (FAIS Ombud)

Resolves disputes between consumers (clients) and; financial services providers and their representatives with regard to financial services.

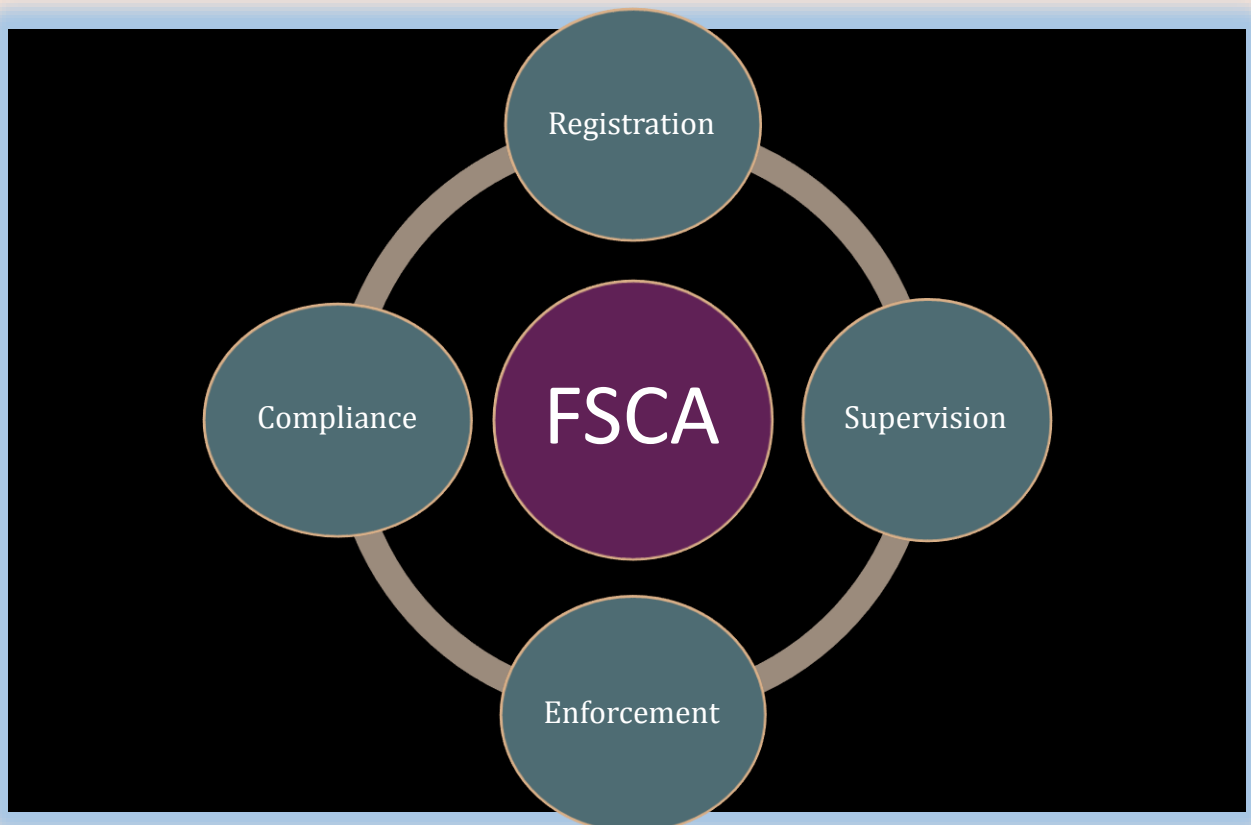
The FAIS Divisions of the FSCA – (FAIS Departments)

Ongoing interaction and communication between the FSP (key individual) and the FAIS Regulator is required during the lifespan of an FSP licence.



The FAIS Division of the FSCA consists of the following departments:

- Registration Department
- Supervision Department
- Enforcement Department, and
- Compliance Department



The table below summarises three departments and indicates the possible interactions and required documentation. We deal with Compliance Department under RE5 - Topic 2 (Contribute toward maintaining a FSP Licence).



The FAIS Divisions of the FSCA – Departments

Registration

- New licence applications
- Profile changes
- Updating the central representative register
- Approval of mandates and application forms for discretionary FSPs and Administrative FSPs
- Lapsing of licences
- Queries on licence status
- Collection of levies together with FSCA finance department

Supervision

- Implementation of a risk based approach to supervision of financial service providers
- Analysis of financial statements and compliance reports
- Conducting onsite visits to FSPs and compliance officers
- Liaison with industry relating to changes in subordinate legislation

Enforcement

- Deals with complaints against FSPs that cannot be referred to the FAIS Ombud
- Investigations into the affairs of FSPs
- Regulatory action (suspension and withdrawal of licences)
- Updating departments on the central representative register
- Reinstatement of representatives on the central register



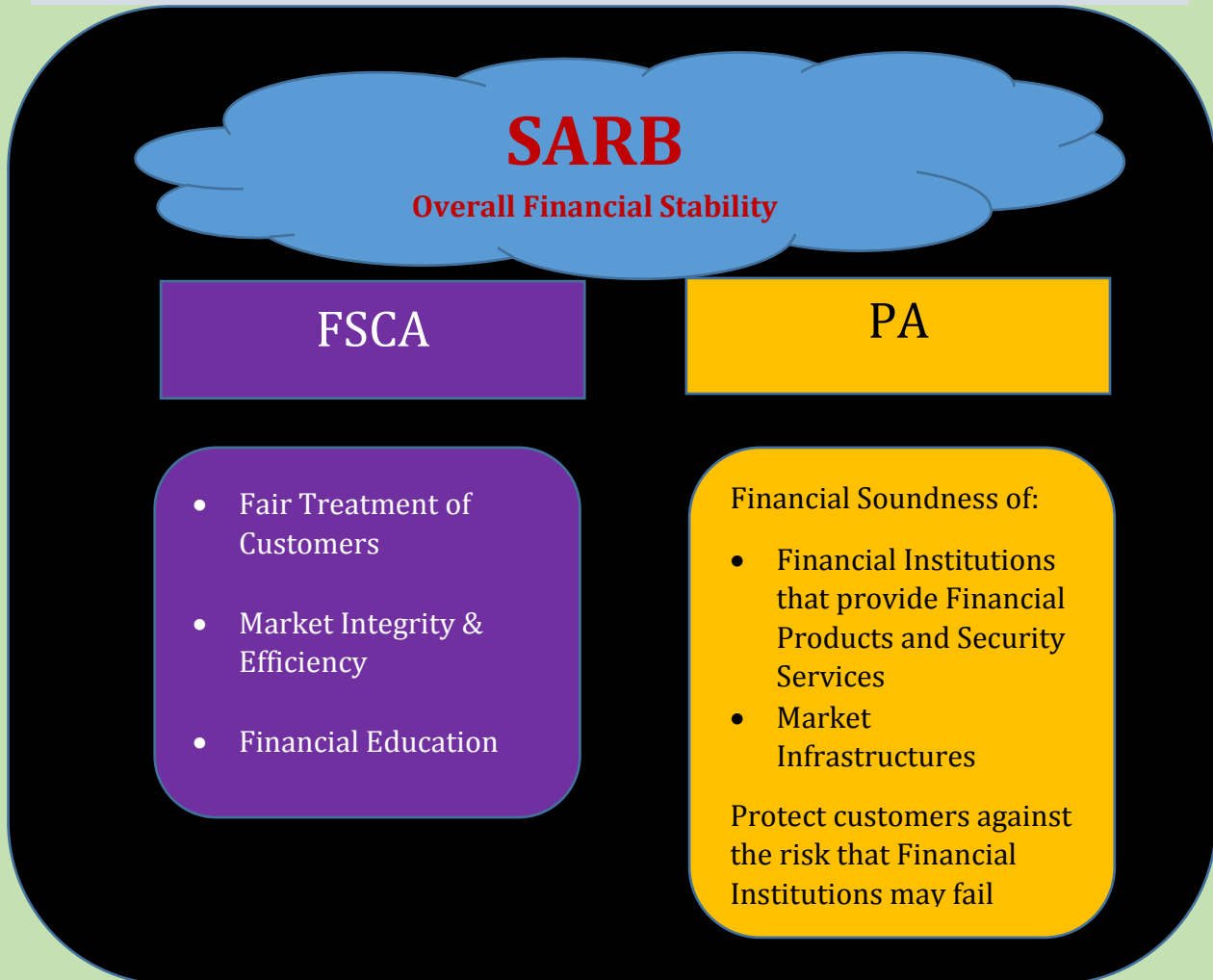
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The Regulatory Environment



The Twin Peaks Model of Financial Sector Regulation

The FSR Act was created to establish a system of financial regulation by establishing the **Prudential Authority (PA)** and the **Financial Sector Conduct Authority (FSCA)**. This model is termed the “*Twin Peaks Model*” of Financial Sector Regulation.



The aim of the Twin Peaks framework is a stable and efficient financial services sector that treats its customers fairly.

A Twin Peaks model separates regulatory functions between a regulator that performs prudential supervision and a regulator that performs market conduct supervision. The FSR Act, therefore, creates two new authorities – the PA housed in the SARB and the FSCA, replacing and revising the mandate of the former FSB.

The Twin Peaks approach sees the regulation of Prudential and Conduct risk separated out under the supervision of two distinct regulatory bodies;



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- **The Prudential Authority (PA)** – contained within the South African Reserve Bank (SARB), and the
- **Financial Sector Conduct Authority (FSCA)**



The Financial Sector Regulation Act (the FSR Act)

The FSR Act is the first step in South Africa's shift to a Twin Peaks model of financial sector regulation. The FSR Act, promulgated on 21 August 2017 and effective from 1 April 2018, provides a robust framework for the financial sector and is intended to support an extensive regulatory system. Its purpose is to reinforce financial stability and maintain the soundness of individual institutions while protecting their customers. Other objectives of the Act include ensuring fair treatment of customers and productivity of the financial system, the prevention of financial crime, monetary consideration, changes of the sector and trust in the financial system.

The FSR Act also makes provisions for licensing, supervision and enforcement for authorised entities, and additionally measures for complaints resolution and customer education. The FSR Act aims to improve the structure of the regulation of financial services by ensuring more consistent and complete regulation. It gives the Prudential Authority (PA) and the Financial Services Conduct Authority (FSCA) jurisdiction over all financial institutions and provides them with a range of supervisory tools to fulfill their objectives.

The FSR Act is considered to be the most significant reform of the South African financial sector regulatory architecture in over 30 years.



New Regulatory Authorities

Prudential Authority (PA)

- The PA is responsible for the prudential regulation and supervision of financial conglomerates, banks, insurers, corporate banks, co-operative financial institutions and certain financial market infrastructures
- The role of the PA is to ensure the safety and soundness of financial institutions, market infrastructures and assist in maintaining financial stability.
- The PA must have a suitably qualified SARB Deputy Governor as the CEO.
- The CEO is responsible for the day-to-day management and administration of the PA.
- A Prudential Committee (PC) was also established for the PA and consist of the SARB Governor, the CEO of the PA and other SARB Deputy Governors.
- The PC must oversee the management and administration of the PA to ensure that it is efficient and effective.
- The PC must, within six months after the date on which the FSR Act takes effect, adopt a regulatory strategy for the PA to achieve its objectives

Financial Sector Conduct Authority (FSCA)

- The FSCA is responsible for regulating and supervising the conduct of financial institutions
- The role of the FSCA is to ensure consumer protection and market conduct
- The role of the FSCA is to ensure consumer protection and market conduct
- The Minister of Finance must appoint fit and proper people with appropriate experience in the financial sector as Commissioner and Deputy Commissioners.
- **The Commissioner is responsible for the day-to-day management and administration of the FSCA.**
- The Executive Committee is established for the FSCA, which consists of the Commissioner and the Deputy Commissioners.



Regulatory Scope and powers

Financial Sector Law

The scope of any regulatory requirements and actions is based on what the FSR Act refers to as “financial sector law” in terms of an exhaustive list of sources. Schedule 3 of the Act assigns jurisdiction to the newly created authorities accordingly:

PA	FSCA (FAIS Licensed Financial Services Providers)
<ul style="list-style-type: none">• Banks Act• Mutual Banks Act• Co-operative Banks Act• Financial Supervision of the Road Accident Fund Act• Long-term Insurance Act and Short-term Insurance Act, as they relate to matters within the specific objectives of the Prudential Authority• Regulations issued in terms of any of the above	<ul style="list-style-type: none">• Pension Funds Act• Friendly Societies Act• Financial Advisory and Intermediary Services Act• Collective Investment Schemes Control Act• Financial Markets Act• Credit Rating Services Act• Long-term Insurance Act and Short-term Insurance Act, as they relate to matters within the specific objectives of the Financial Sector Conduct Authority• Regulations issued in terms of any of the above

The CoFI Act, is expected to extend the scope of the FSCA’s jurisdiction and amend the FSR Act accordingly. The Special Resolution Act, is expected to introduce further safety and soundness reforms in the form of a deposit insurance scheme and a resolution framework. The Insurance Act, will provide a legal framework for the prudential supervision of insurance companies, including micro-insurers.



Regulatory Powers

The FSR Act assigns a comprehensive set of regulatory powers to the new authorities, spanning across the supervisory life cycle.



Licensing

The PA and FSCA, respectively, will issue, suspend and revoke licences according to a separate, but closely co-ordinated process.

- Licences are required for financial institutions or persons to perform specific activities in accordance with a specific financial sector law.
- If no specific financial sector law applies, the financial institution must be licensed in terms of the FSR Act itself.
- The responsible authority must consider the application and its outcome must be decided **within three months**.
- The financial institution must be licensed under the relevant regulator in relation to the activity being conducted.
- In occurrences where licence applications are under the supervision of multiple regulators the licensing regulator will enter into **Memoranda of Understanding (MOUs)** with the other authorities.
- Should the financial institution be a Systemically Important Financial Institution (SIFI), SARB approval must be sought for the licence application.
- The responsible authority will determine the procedures for applications and these procedures must be published.
- The Financial Sector Information Register must contain a list of all licences and the status of these.

Factors that are taken into account in licence applications include:

- Objectives of authority
- The applicant's financial and other resources
- [Fit and proper requirements](#)



- Governance and risk management arrangements
- Statements in the application are not false or misleading

Changes to licenses:

- Licences may be amended by the responsible authority by removing or varying conditions, or changing categories of products, services or customers.
- The authority responsible for licensing has the right to suspend or revoke a licence for specific contraventions.
- It can also decline to revoke or suspend a licence if it would not be in the interest of customers or the financial sector law.
- The licensee can also be allowed to continue with its activities, after a licence has been revoked or suspended, for the same reasons.
- Any licence, authorisation, approval, registration, consent or similar permission in force immediately before the date that the FSR Act comes into effect will remain in force, but may be revoked or amended in accordance with the provisions of a financial sector law.



Regulatory standards

The FSR Act allocates a defined set of subject matters to dedicated Prudential Standards and Conduct Standards, which are issued and subsequently supervised and enforced by the PA and the FSCA respectively. A number of general subject matters can be included in either type of regulatory standard, with jurisdiction assigned to the relevant issuing regulatory body.

Matters reserved to Prudential Standards	Matters to be included in either type of Standard	Matters reserved to Conduct Standards
<ul style="list-style-type: none">• Capital adequacy• Liquidity and cash reserves requirements• Minimum asset quality• Credit concentrations• Solvency measures, specifically counter-cyclical buffers• Leverage ratio• Organisational structures• Risk management structures, including guarantees• Sectoral and geographical exposures• Statistical returns• Public disclosure• Recovery, resolution and business continuity• Financial stability	<ul style="list-style-type: none">• Fit and proper requirements• Board governance• Appointment/dismissal, remuneration/reward and responsibilities of key persons• Financial management• Risk management and internal control requirements, set up of control functions• Outsourcing, record-keeping, data management and reporting• Amalgamation, merger, acquisition, disposal and dissolution• Conflicts of interest management• Safekeeping of assets	<ul style="list-style-type: none">• Fair treatment of customers• Design and suitability of financial products and financial services• Promotion, marketing and distribution of, and advice in relation to those products and services• Resolution of complaints and disputes concerning those products and services, including redress• Information disclosure• Refusal, withdrawal or closure of product or service• Financial education programmes• Design, suitability, implementation, monitoring and evaluation of financial education programmes, or other initiatives promoting financial literacy• Prevention of financial crime

As another distinct regulatory instrument type, the FSR Act introduces Joint Standards, which are issued, supervised and enforced by the PA and the FSCA together. Joint Standards can include any of the subject matters listed above.

The above subject matters are not necessarily exhaustive, as the FSR Act contains blanket clauses that allow for regulatory standards to cover any further matters pertaining to the respective regulatory objectives that the Act establishes for the PA and FSCA respectively.

Supervision

Under Twin Peaks, the PA and FSCA will become the two main supervisory bodies within the financial services sector. Accordingly, the FSR Act endows the new authorities with a



number of supervisory tools and powers designed to assist them in fulfilling their regulatory objectives.

- **Information gathering**

The responsible authority may request information or documents in writing from a supervised entity on an ad-hoc basis, should there be suspicion of a contravention of a financial sector law. A supervised entity must comply with the request for information or documents (although in some cases legal privilege may be claimed). Responsible authorities may also use mystery shopping to gather information.

- **Supervisory on-site inspections**

The responsible authority may request an on-site visit for purposes of checking compliance with financial sector law, directives or enforceable undertakings, determining the extent of risk posed by any contravention and assisting in supervising the financial institution's activity. The Consumer Protection and Credit authorities may request documents and examine them, take extracts or copy them, and question any person. If any contravention is suspected, they can direct the supervised entity not to conceal or destroy documents and can take possession of such documents.

- **Investigations**

Regulators may instruct an appointed investigator to conduct an investigation if there is a suspicion that a relevant financial sector law has been contravened, or if the regulator reasonably believes that an investigation is required to meet its objectives.

Responsible authorities may also investigate any matter relating to certain aspects of the Financial Markets Act, Insider Trading Act and Securities Services Act. For the purposes of conducting the investigation, an investigator may:

- Require a person to appear before the investigator
- Produce documents or items and examine, take extracts or copy
- Question a person (who may have a legal practitioner present to assist)
- Require a person to make an oath or affirmation
- Take possession of documents or items

Investigators may also:

- Enter premises with prior consent



- Enter premises without prior consent if a warrant is obtained or with prior authority of certain designated regulator roles

Entrance to premises must be within ordinary business hours unless a warrant is given to enter at night. Investigators must be accompanied by a police officer or an appointed person. A person may not intentionally nor negligently interfere with an investigation.

Enforcement and sanctions

Enforcement

Compliance with financial sector laws

The current enforcement process varies in approach, depending on the regulatory authority concerned. Under the Twin Peaks regime, the regulators will follow an enforcement model whereby certain administrative actions may be taken and remediations may be issued through directives.

Enforcement powers

A range of enforcement powers will be available to the new regulators, including the ability to levy administrative penalties.

Appeals

Actions undertaken by the authorities can be referred for appeal to the FST, in its capacity as independent and impartial arbiter. The FST may dismiss the appeal, set the decision aside and return the matter to the original decision-maker for further consideration, or replace it with the FST's decision. If any party is dissatisfied with the FST's order, they may apply for a judicial review.

Administrative actions and sanctions Issuing directives

The regulators will be able to issue written directives to financial institutions or key persons compelling them to take specific action. This could be for a number of different reasons, for example, if the firm is contravening or likely to contravene a relevant financial sector law, or if the firm's treatment of its customers is not in line with its Treating Customers Fairly (TCF) obligations. In some specific scenarios, agreement must be sought from other regulatory bodies before the directive can be issued.



Court orders

The responsible authority can apply to the High Court for an order to ensure compliance with the financial sector law. Apart from interim orders, the responsible authority must publish each court order that it obtains. The publication of these orders could result in potential reputational damage to the firm and/or the individual concerned.

Enforceable undertakings

A financial institution can enter into an agreement – known as an enforceable undertaking – with the regulator. This is a contractual commitment made by the financial institution to take certain actions to rectify a contravention of financial sector law, and/or to remediate customers who have been impacted as a result. Details of the enforceable undertaking are likely to be published, and sanctions can be imposed on firms that do not adhere to the agreed terms.

Debarment orders

Where the regulator considers that a certain individual presents a risk to financial customers, they can impose a debarment order which prevents the individual from undertaking particular roles within the financial services sector for a stipulated period of time. Examples could include debarring an individual from providing specific services or from holding certain key positions. In order for a Debarment Order to be issued, it must have

been determined that the individual in question has committed specific contraventions, such as non-compliance with a financial sector law, regulator's directive or enforceable undertaking, or facilitating another's non-compliance.

Sanctions

At an organisational level, sanctions can be imposed for non-compliance with individual directives or debarment orders, with a potential fine of up to R15m, subject to conviction by a court.



Sanctions can also be imposed on individuals as a result of noncompliance with directives, contravention of which is a criminal offence and carries a **penalty of a fine of up to R15m, and/or up to 10 years' imprisonment.**

If an individual provides the financial regulator or the SARB with false or misleading information (including an omission), **they are liable for a fine of up to R10m and/or up to 10 years imprisonment.** The responsible authority can issue a temporary debarment to a person, preventing them from working in the financial services sector altogether. An offence in terms of financial sector laws by a financial institution makes a member of the governing body personally liable on conviction by a court. A financial sector regulator may remove a person from a position only if they are in contravention of financial sector laws, involved in financial crime or non-compliance with fit and proper requirements.

Financial conglomerates

The Prudential Authority (PA) may designate members of a group of companies to be a financial conglomerate as per the FSR Act. Any designation conducted by the PA must be for the purpose of facilitating the prudential supervision of the eligible financial institution. The financial conglomerate designated by the PA must include the eligible financial institution, plus the holding company of the financial institution, but not all members of the group need to be included. The PA must give the holding company notice of the proposed designation

and the purpose of and the reasons for the proposed designation. The holding company will be invited to make submissions on the designation matter and be given a reasonable time to do so. The PA must consult the FSCA on any designation it intends to pursue.

The decision to designate members of an financial institution must take into account at the very least the following considerations:

- The risk to effective prudential supervision of the financial institution from the structure of the group of companies
- Submissions made by or for the holding company
- Any other matters that may be prescribed by regulation

The Prudential Authority is able to set Prudential Standards for financial conglomerates over and above general standards in respect of:



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- Financial and other exposures of companies within the financial conglomerate
- Governance and management arrangements of holding companies
- Reporting of information about companies within the financial conglomerate that are not financial institutions
- Reducing or managing risks to safety and soundness of the financial institution arising from other members of the financial conglomerate

The PA can issue directives to holding companies imposing requirements to manage and mitigate risk to prudential management or financial soundness.

Financial stability

The SARB is mandated to protect and enhance financial stability. In a case where a systemic event has adversely affected financial stability, the SARB must restore and maintain financial stability. In addition to this, the SARB must also monitor and keep under review the strengths and weaknesses of the financial system and any risks to financial stability.

The SARB must conduct a Financial Stability Review at least every six months. The review should set out the assessment of financial stability in the review period, the risks to financial stability in the next 12 months, overview of steps taken to identify and manage risk, and a summary of recommendations and progress of implementing the recommendations. The financial stability review will not include any information that may materially increase the possibility of a systemic event. Such information will only be included once the risk of a systemic event subsides.

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