

KAZAKHSTAN

Diagnostic Review of Consumer Protection in Financial Services

Volume II Review against Good Practices

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CURRENCY EQUIVALENTS

(Exchange Rate Effective November, 2010)

Currency Unit = Kazakh Tenge (KZT)
US\$1 = KZT 147.57

FISCAL YEAR

January 1 – December 31

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Abbreviations & Acronyms

ADR	Alternative dispute resolution
AFN	Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations
AMC	Asset management company
APF	Accumulation Pension Fund
APR	Annual Percentage Rate of Charge
CIU	Collective investment undertaking
COE	Council of Europe
CP	Consumer Protection
CSD	Central Securities Depository
FIAK	Financial Institutions' Association of Kazakhstan
FX	Foreign Exchange
GDP	Gross domestic product
IFL	Investment Fund Law
IMF	International Monetary Fund
IMPA	Pension Assets Investment Management Companies
JSC	Joint Stock Company
KASE	Kazakhstan Stock Exchange
KYC	Know your customer
LCIVO	Law on Compulsory Insurance of Civil Liability of Vehicle Owners
LIB	Law concerning Insurance Business
LPS	Law on Pensions System
MOF	Ministry of Finance
MPPG	Minimum Pension Guarantee
MTPL	Motor third party liability
NBCI	Non-bank credit institution
NBK	National Bank of Kazakhstan
NGO	Non-government organization
PAYG	Pay as you go
RFCA	Regional Financial Centre of Almaty
SML	Securities Market Law
SPPC	State Pension Payment Centre

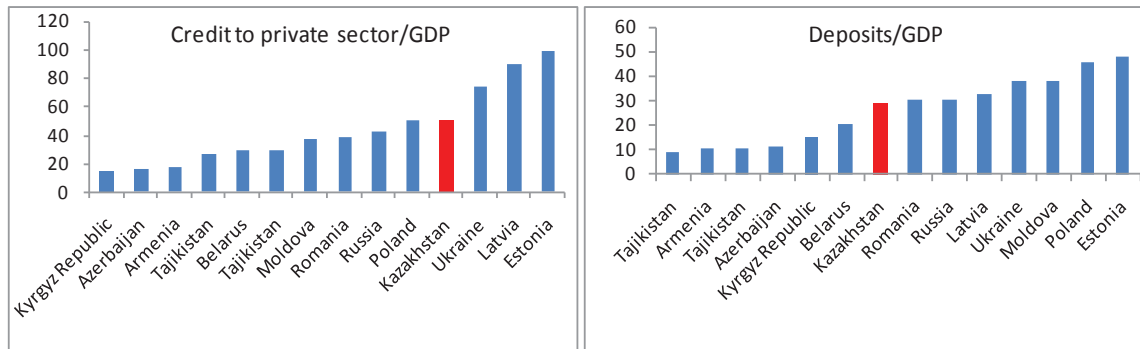
CONSUMER PROTECTION IN THE BANKING SECTOR

OVERVIEW

1. **Kazakhstan is still in the early stage of financial market development occupying the low end of financial sector penetration midway between Ukraine and Russia.** Banking penetration in Kazakhstan is in line with Central and Eastern Europe, but significantly below Western Europe. Kazakhstan's non-performing loans currently match those of the countries with the highest ratios in the 1997-1998 financial crisis¹. A distinct characteristic of the banking market is that the retail deposit is weak –at 11% of GDP, compared to 16% in Russia, 22% in Ukraine, 30% in Turkey and over 43% in Czech Republic–.

2. **During 2004 - mid 2007, Kazakhstan experienced high credit growth, and credit to the private sector increased from 22 percent in 2004 to 59 percent in 2007.** Annual domestic credit growth rates averaged 67 percent between 2004 and July 2007, fuelled by foreign capital inflows into the financial sector. During 2005-2007, the nominal value of credit to the economy almost doubled on an annual basis. The inflows were motivated partly by the plentiful global liquidity, partly by the country's resource richness and thus expected ability to generate foreign income. As a share of GDP, credit to the private sector increased from 22 percent in 2004 to 59 percent in 2007, and stood at about 50 percent at end-2008. The growth in credit outpaced the growth in deposits, which increased from 19.4 percent in 2004 to 30 percent in 2007, and stood at 28 percent at end-2008.

Figure 1. Credit to Private Sector and Deposits/GDP (Dec 2008)

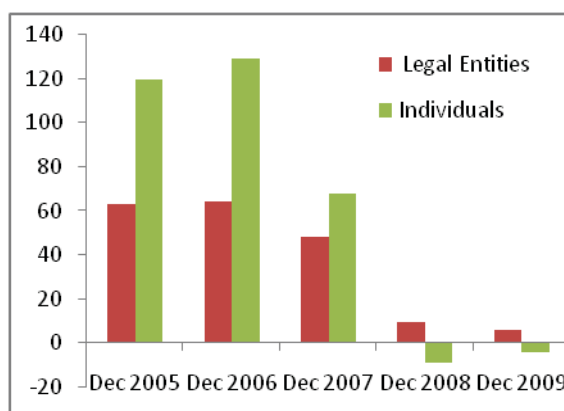


Source: World Bank

3. **Much of banks' lending was directed to households, which registered the highest growth rate.** From 2004-2007, retail lending increased by 106 percent, while corporate lending increased on average by 58 percent. As a result, household indebtedness stood at 22 percent of GDP in 2007. In addition, loans to construction and real estate sectors grew significantly. The share of real estate lending doubled between 2004 and 2007, amounting to 30 percent of GDP at end-2007. Loans to the construction sector increased rapidly by over 100 percent from 2006 to 2007, and comprised on average 25 percent of total loans in 2006-2008.

¹ AFN Annual Report and Investor's Voice by American Chamber of Commerce Kazakhstan, July 2010-Pg 40.

Figure 2. Credit Growth Rates



Source: AFN

4. **During the global financial crisis, the stop in capital inflows caused a severe credit crunch, as banks faced significant liquidity constraints.** Kazakh banks also lost virtually all access to rollover opportunities in the global financial markets. This created significant liquidity pressure on the banks, which had relied extensively on capital market funding, and they responded by attempting to shrink the credit portfolio and increase domestic deposit collection. Starting in mid-2007, lending to the economy stalled and grew very slightly at in 2008 and 2009, by 2.8 percent and 2.5 percent, respectively.

5. **Despite the decrease in lending operations, the Kazakhstan financial sector is still dominated by the banking sector.** The banking sector assets represent above 80 percent of the total financial sector assets. The private pension funds have slightly increased their participation in the financial system, from 10 percent in 2008 to 15 percent in 2009, whereas the participation of the securities sector went down from 3 to 1 percent in similar period.

Table 1: Structure of the Kazakh Financial System

	KZT bln.			% of Total Financial Sector		
	2008	2009	2010	2008	2009	2010
Banking	11,890	11,555	12,134	83.79	83.07	81.26
Pensions	1,378	1,825	2,170	9.71	13.12	14.53
Insurance	269	298	340	1.90	2.14	2.28
Securities	441	151	166	3.11	1.08	1.11
NBFI	213	80	122	1.50	0.58	0.81
Total	14,190	13,909	14,931	100	100	100

Source: AFN

6. **The financial system is still reeling from the global financial crisis.** The Government, the National Bank (NBK) and the Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations (AFN) have been working on stabilizing the economy and the financial system to mitigate the adverse impact of the global crisis on the social and economic situation of the country. The objective of minimizing systemic risks in the banking sector, maintaining stability in the system and supporting public confidence continues to have centre stage. AFN has also taken steps to

amend the legal and regulatory framework for the financial sector to manage the current and future risks in the financial system. In particular, measures were introduced in 2008 to require higher capitalization, better risk management and internal controls in banks².

7. Banks are also taking measures to normalize liabilities, rethink the funding structure and improve the liquidity with a view of servicing their debts. Banks, with government help, are taking steps to work with distressed assets. AFN too is instituting measures to improve its regulatory and supervisory capacity. The Law issued in 2009 “On amendments to some legislative acts on matters of the enhancement of legislation on payments and money transfers, accounting and financial reporting of financial organizations, banking activity, and activity of the National Bank ” (2009 Amendments) enables early intervention in troubled banks and better crisis management tools including bridge bank. Further legislative changes are anticipated to improve governance and consumer protection in financial services and investment through the Law on introducing amendments and addenda to some legislative acts on mortgage lending and consumer protection, financial services and investment (Law on MCPFS 2010).

8. The Kazakh banking sector is also relatively concentrated and dominated by domestic banks. As of November 2010 the banking system was comprised of 38 banks primarily domestically-owned. The foreign banks owned about 17 percent of the banking system’s assets. The top six banks control 78% of assets and the top three banks own 60% market share in the majority of products.

Table 2: Concentration of Bank Lending *

Item	Dec-2007	Dec-2008	Oct-2009
Lending to legal entities	86.66	84.4	84.54
construction	87.31	87.85	87.92
trade	84.47	79.18	80.49
Lending to individuals	67.97	66.46	61.37
consumer loans to individuals	73.77	73.05	56.29
for construction and purchase of housing by individuals	64.32	63.14	62.3
mortgage residential loans of individuals	75.18	63.96	62.72

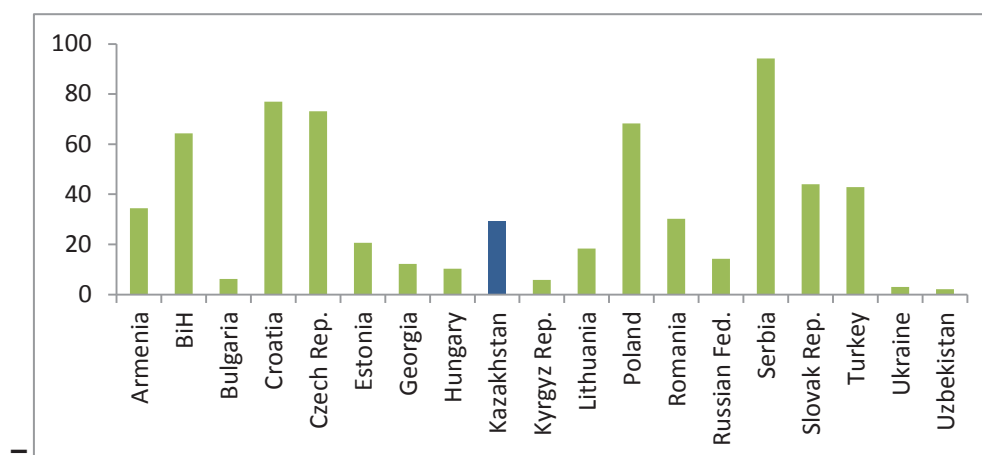
* share of top 5 financial organizations

Source: AFN

9. Going forward, one of major issues confronting AFN is, the need to establish capacity to better assess household indebtedness levels and its implications for the quality of bank consumer loan portfolio. The household debt ratio increased rapidly in the past years, but currently, the debt-to-GDP ratio, at 20.3 % can be considered modest by international standards. Anecdotal evidence suggests that the non performing loan in this category is between 20%- 45% depending on the banks. Banks are reviewing the household and consumer lending strategies to do better credit evaluation and credit worthiness assessments. Generally the banks say that they have learned important lessons from the crisis and going forth would manage these risks better.

10. The Kazakh credit reporting system covers less than a third of the population. The private credit bureau covers only some 30 percent of the adult population. The extent of the coverage falls significantly below several countries of the Region, including Turkey and Armenia (see Figure 3). The limited coverage of the credit reporting system does not help in the efforts to assess household indebtedness.

²Annual Report 2009; AFN.

Figure 3: Private Bureau Coverage – 2010 (% of Adults)

Source: World Bank (Doing Business)

LEGAL FRAMEWORK AND INSTITUTIONAL ARRANGEMENTS

11. Key laws and regulations governing general consumer protection and consumer protection in the banking system are:

- Law on Consumer Protection (Law No. 274 - August 2010)
- Law on Banks and Banking Activity (Law No. 2444–August 31, 1995, amended as at February 13, 2009)
- Law on Advertising (Law No. 508-II–December 19, 2003) amended as at 19 March 2010)
- Law on Loan Offices and Credit History (Law No. 573 –July 6, 2004), which deals with matters pertaining to credit bureau.
- Law concerning Competition and Restriction of Monopoly Activities (Law No. 144 -, January 19, 2001)
- Laws providing for privacy and data protection include:
 - i. Constitution of the Republic of Kazakhstan;
 - ii. Chapter 55 of the Civil Code of Kazakhstan;
 - iii. Administrative Code (fines for disclosure of information)
 - iv. Law on Private Entrepreneurial Activity (Law No.124-III - January 31, 2006) (commercial and official secrecy);
 - v. Informatization Law (Law No.217-III – January 11, 2007);
 - vi. Law on Securities Market (Law No. 461-II –July 2, 2003).
- Law on the Obligatory Insurance of Deposits placed in the Second Tier Banks (2006)
- Law on Regional Financial Center in Almaty (Law No. 145-III of 5 June 2006, as amended on 21 July 2007 by Law No. 309)
- Law on amendments to some legislative acts of the Republic of Kazakhstan on matters of the enhancement of legislation of the Republic of Kazakhstan on payments and money transfers, accounting and financial reporting of financial organizations, banking activity, and activity of the National Bank of the Republic of Kazakhstan” (2009 Amendments)
- Law on Counteracting Legalization (Laundering) of Ill-gotten Proceeds and Terrorist Financing (September 2009) provides detailed rules on KYC rules.

- Law on introducing amendments and addenda to some legislative acts on mortgage lending and consumer protection, financial services and investment (2010)

12. **Currently, there is no central body for consumer protection in Kazakhstan.** Until August 2010, the consumer protection in financial system was governed by the 1991 Law on Consumer Protection. This law dealt with all consumer protection matters and was enforced by the courts. A consumer protection department in the government and an inspectorate were established but these were dissolved in 1996. The unit was transferred to the Anti-Monopoly Commission but it has also been dissolved. Also, according to recent court experiences of consumer associations in regard to financial services matters, the courts seem ineffective and believed to be captured by the business community. There have also been cases whether the court out rightly declared that mortgage contracts do not constitute consumer matter and that it is entrepreneurial matter.

13. **In August 2010, a new consumer protection law was passed, providing for a general consumer protection agency and enhanced consumer rights.** Under Article 5 of the new Law No: 274 on Consumer Protection law (henceforth, CP law), the new body is empowered amongst other things to: (i) ensure the implementation of state policy on consumer protection; (ii) submit proposals to the Government on the main directions of state policy on consumer protection; (iii) carry out inter-sector coordination of public authorities on the improvement of legislation concerning the protection of consumer rights; (iv) take measures to improve the legislation concerning the protection of consumer rights; (v) interact with the public associations of consumers, associations (unions) in the field of consumer protection; and (vi) exercise other powers stipulated by laws and by Acts of the President and the Government.

14. **According to Article 2 of the new CP law, consumer protection in financial services is to be governed by the competent authority specified by the law relating to financial sector –AFN.³** Thus, according to Article 6, AFN has powers to: (i) develop regulations to protect the rights of consumers; (ii) make proposals to the authority and the Government on improvement of legislation concerning the protection of consumer rights; (iii) examine the treatment of individuals or legal entities in the area of consumer protection; (iv) apply measures of accountability for perpetrators of legislation on consumer protection; (v) supervise the observance of the legislation concerning the protection of consumer rights; (vi) exercise other powers stipulated by laws, Acts of the President and the Government.

15. **Furthermore, Article 41 of Law 2444 on Banks and Banking Activity from 1995 also provides for implementation and enforcement of consumer protection in the financial system.** The law indicates clearly that in order to ensure financial stability of the banking system and protection of depositors' interests, and to support stability of monetary and credit systems, the authorized body (AFN) is to- establish prudential standards and regulations for banks; provision for doubtful debt and loan losses; issue normative legal acts; inspect banks' activities; issue recommendations on improvement of financial situation of banks; apply sanctions against banks or their officials.

16. **Unlike some regulators who infer power to enforce consumer protection, AFN is given express mandate to implement and enforce consumer rights.** Article 8 of Law No. 474 of 2003 concerning the State of Regulation and Supervision of Financial Market and Financial Organizations (AFN Law) provides not only clear mandate, but also states it as the purpose of state regulation and supervision of financial market and financial organizations. This article provides that AFN's objective is to –(i) ensure financial stability of the financial market and financial organizations and to *maintain trust* in the financial system as a whole; (ii) *provide for the appropriate level of protection* for the interests of financial services consumers; and (iii) *establish market conditions to support honest competition* in the financial

³ Article 2 reads “Consumer rights in the areas of financial, social, health, tourism and other services, as well as their protection defined by the laws of the Republic of Kazakhstan”.

market. Article 9(4) of the law provides further that AFN is empowered to conduct checking of financial organizations and their affiliated persons, including involvement of auditing organization, in order to reveal and prevent violations of rights of financial services consumers.

17. Apart from the above, the new CP law⁴ empowers consumers to bring action in court under the Civil Code and Code of Civil Procedure in the event of non-compliance. Article 43 of the new law provides that violations of the provisions of the law are a punishable offence. Article 22 provides further that competent authorities and court or arbitration tribunal are to protect the rights and legitimate interests of consumers. The (new consumer protection agency and authorized experts of other bodies of public administration are also empowered to enforce this law. Accordingly, AFN carries out its consumer protection mandate and enforces the consumer protection law with regard to the financial sector products and services. The new law is a great step towards a concerted and national approach to consumer protection and if implemented effectively can improve the level of consumer protection in Kazakhstan.

18. Under Article 7 of the new CP law, consumers have the right to establish public associations of consumers. Article 20 provides that consumers are entitled to join on a voluntary basis in associations of consumers. Article 41 provides a wide mandate to these associations. They can make proposals for improving the legislation concerning consumer rights; seek assistance of state agencies to monitor compliance, evaluate goods and services and conduct public polls on quality of goods and services; receive applications and complaints; address state bodies in order to evaluate the quality of goods and services in the case of income statements and consumer complaints. It is also noteworthy that they can represent consumer interests in government and in other public associations in the order determined by the laws. Also, they can sue in court for the benefit of consumers, including class action; investigate and disseminate information on issues and consumer rights in the media; and implement social programs. The new law places a large mandate on voluntary organizations and huge expectation in the public. It is hoped that sufficient resources and effective plans are put in place to realize the goals of the new law. The new law when implemented will pave the path for better funding, activities, sustainability of consumer associations and improved consumer protection in the country.

19. The Financial Institutions' Association of Kazakhstan⁵ is the main voluntary industry association in the financial sector. Financial Institutions' Association of Kazakhstan (FIAK) was established in May 1999 in accordance with Congress I Resolution of Kazakhstan Financiers. The founders of FIAK are five significant second-tier banks and one leading Kazakhstan insurer. The funding sources of FIAK include the founders' contributions, the admission and calendar membership fees and the sponsor support. Its main objectives are to- (i) represent FIAK in governmental and other bodies, expressing and advocating the financial market subjects' common interests; (ii) participate in efforts for the improvement of legislation relating to the activities and interests of FIAK's members and (iii) establish liaison with the governmental bodies for the purpose of creating conditions for FIAK members' efficient activities and financial sector development, in general.

20. It is clear that FIAK is a young institution with the main objective of meeting its member's needs while supporting the government and the regulators in the development of the financial sector. Thus, it is not surprising that the institution does not carry out any concerted effort on consumer protection, participate with other voluntary organizations in financial literacy activities, accredit or carry out certification of specialized skills, provide information to consumers on financial products or services to customers. FIAK has not adopted any voluntary code of conduct and its website does not contain information that helps or promotes consumer literacy on financial products and services. Also, there are no established permanent working groups or committees on banking, capital markets, insurance and pension. One of the main activities of FIAK is representing the industry in the legislative proposals and it

⁴ Law No. 274 -2010

⁵ <http://www.afk.kz>

has been working with AFN on the proposed amendments to banking regulations. FIAK needs to review its mandate and include consumer protection as one of its stated objectives.

21. FIAK does not take it upon itself to improve banking practices unlike association of bankers in other countries. For instance, many countries -Hong Kong, Canada, US, UK, South Africa to name few, have adopted codes of conduct; have comprehensive websites for customers to provide important information on financial products and services, issue brochures and educational material in addition to the information on their website. Many bankers associations around the world establish, fund and run formal ombudsmen to handle disputes between banks and consumers. The level of skills in the banking industry is also comparatively low and the absence of a bankers training institute does not help in this respect. FIAK needs to take steps to address the foregoing urgently, to improve the banking practices in the country and consumer confidence so that consumer protection can be driven by the market instead of regulatory directives.

KEY RECOMMENDATIONS

SHORT TERM

- a. Establish and expand the scope of Ombudsman under AFN's proposed law to all banking matters.
- b. AFN needs to take steps to reduce high fees and charges in the banking system through improved competition by studying the dynamics of the market and behavior of banks and also learning from other regulators.
- c. AFN ought to require FIAK to play a more relevant role in consumer literacy.
- d. AFN needs to introduce cooling off period even if it is 3 or 5 working days in the beginning especially for mortgages and other financial contracts that have long term impact on the financial standing of customers.
- e. FIAK needs to start work on Code of Conduct and standard terms and glossary and issues them soonest possible.
- f. Improve collaboration of industry, regulator with civil society and mass media in the delivery of financial information and consumer literacy.
- g. Credit bureau ought to enable verification of information on line.

LONG TERM

- a. AFN ought to devise a long term plan on its mandate on consumer protection with a view of getting the industry participants to play more active proactive roles.
- b. AFN needs to compile and analyze legal action brought against banks to fully understand the impact of the court as a credible institution to uphold consumer rights.
- c. AFN needs to also look into the disclosure, sales practices, affordability test and customer account and handling procedures used by banks with a view of protecting, in particular unsophisticated consumers.
- d. Improve AFN's capacity to handle consumer protection through exchange program and additional resources.
- e. FIAK should take the following steps to improve the banking practices in the country and consumer confidence so that consumer protection can be driven by the market instead of regulatory directives:
 - Have standardized rules on in-house redressal or complaints mechanism and ensure disclosure and publication of the procedures on the website of banks.
 - Carry out concerted effort on consumer protection, participate with voluntary organizations and consumer protection associations in financial literacy activity, accredit or carry out certification of specialized skills, provide information to consumers on financial products or services to customers.

- Adopt a voluntary code of conduct and publish it on its website
 - Provide comprehensive information on its website that that helps or promotes consumer literacy on financial products and services.
 - Establish permanent working groups or committees on banking, capital markets, insurance and pension.
 - Take steps to improve the banking practices of its members.
 - Issue brochures and educational material in addition to the information on their website.
 - Improve level of skills in the banking industry through a banking institute
- f. RFCA ought to in the long run shift the duty and responsibility of educating and building consumer confidence in financial institutions from government to private sector.
- g. RFCA needs to carry out impact assessment of the training and outreach activities to better align resources to achieve the goals of better informed consumers.
- h. Competition Authority must monitor the banking sector closely and encourage better competition in the industry. It needs to also publish the assessment it carries out of the banking system and its practices including the evaluation of the fees and charges.
- i. State funding ought to be provided to consumer protection associations to improve their scope, outreach and sustainability.

REVIEW AGAINST GOOD PRACTICES IN THE BANKING SECTOR

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1.	<p><i>Consumer Protection Regime</i></p> <p>The law should provide for clear consumer protection rules regarding any regulated financial product or service, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.</p> <ol style="list-style-type: none"> a. Specific statutory provisions need to create an effective regime for the protection of any consumer of a banking product or service. b. Either a general consumer agency or a specialized agency should be responsible for implementing, overseeing and enforcing consumer protection, as well as collecting and analyzing data (including inquiries, complaints and disputes). c. The law should provide and not prohibit a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, regarding consumer protection in general and in banking products and services in particular.
Description	<p>Legal framework</p> <p>a. Until August 2010, consumer protection in financial services was governed by the 1991 Law on Consumer Protection. This law dealt with all consumer protection matters and was enforced by the courts. A consumer protection department in the government and an inspectorate were initially established but dissolved in 1996. The department was transferred to the Anti-Monopoly Commission but later it was dissolved. Thus, currently there is no general consumer protection authority.</p> <p>In August 2010, a new consumer protection law was passed (Law No: 274, thereafter CP Law. Under Article 5 of the CP Law, a new body was created with the following functions:</p> <ol style="list-style-type: none"> i. ensuring the implementation of state policy on consumer protection; ii. submitting proposals to the Government on the main directions of state policy on consumer protection; iii. carrying out inter-sectoral coordination of public authorities on the improvement of legislation concerning the protection of consumer rights; iv. taking measures to improve the legislation concerning the protection of consumer rights; v. interacting with the public associations of consumers, associations (unions) in the field of consumer protection; vi. exercising other powers stipulated by laws, Acts of the President and the Government. <p>However, the new general consumer protection agency has not been set up yet. Under Article 6, the State bodies overseeing specific areas of competence are in charge of enforcing the law, with the following responsibilities :</p>

	<ul style="list-style-type: none"> i. develop regulations to protect the rights of consumers; ii. make proposals to the Government on improvement of legislation concerning the protection of consumer rights; iii. examine the treatment of individuals or legal entities in the area of consumer protection; iv. apply measures of accountability for perpetrators of Kazakhstan legislation on consumer protection; v. supervise the observance of the legislation concerning the protection of consumer rights; vi. exercise other powers stipulated by laws, Acts of the President and the Government. <p>b. According to Article 2 of the CP Law, consumer protection in the financial sector is to be governed by the competent authority specified by the law relating to financial sector.⁶ The Agency on Regulation and Supervision of Financial Market and Financial Organizations (AFN) is the agency responsible for implementing and enforcing consumer protection in the financial system. Its mandate can be found in Article 8 of Law No. 474 of 2003 concerning the State of Regulation and Supervision of Financial Market and Financial Organizations (AFN Law).</p> <p>Implementation and Enforcement in the Banking Sector</p> <p>Article 41 of the Law 2444 on Banks and Banking Activity of 1995(Banking Law) states that one of the objectives of the banking regulator is to ensure protection of depositors' interests.</p> <p>Article 3 of the AFN Law provides that the purposes of state regulation and supervision of financial market and financial organizations shall be as follows:</p> <ul style="list-style-type: none"> 1. to ensure financial stability of the financial market and financial organizations and to maintain trust to the financial system as a whole; 2. to provide for the appropriate level of protection of the interests of financial services consumers; 3. to establish equal conditions for the activities of financial organizations, which aims at supporting fair competition in financial markets. <p>These provisions clearly establish the power of AFN to implement and enforce consumer protection in financial system.</p> <p>Article 2 also states that one of the principles of financial regulation and supervision shall be the establishment of measures to ensure protection of financial consumers' interests, by way of supporting the development of new financial instruments and services as well as introducing advanced technologies in financial markets.</p> <p>In Article 3, the objectives of state regulation and supervision of financial market and financial organizations includes, to promote introduction of modern technologies, ensure comprehensiveness and availability for consumers of information about the</p>
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⁶ Article 2 reads "Consumer rights in the areas of financial, social, health, tourism and other services, as well as their protection defined by the laws of the Republic of Kazakhstan".

	<p>activity of financial organizations and financial services rendered by them.</p> <p>Article 9(2)(4) of the AFN Law provides further that AFN is empowered to conduct checking of financial organizations and their affiliated persons, including involvement of auditing organization, in order to reveal and prevent violations of rights of financial services consumers.</p> <p>Judiciary</p> <p>The court system is a three-tier system composed of regional courts, district courts and the Supreme Court as the highest judicial body. The regional courts are of common jurisdiction and try most cases in the first instance. The judgments of regional courts may be appealed to the district courts, while decisions of district courts may be appealed to the Supreme Court. There are also specialized courts including the recently created economic courts. Cases that are in the competence of the specialized courts are judged in the first instance in the relevant specialized court.</p> <p>Based on recent court experiences of consumer protection associations with regard to financial services matters, the courts seem to be ineffective and captured by the business community.</p> <p>Consumer Associations</p> <p>c. Under Article 7 of the CP Law⁷, consumers have the right to establish public associations of consumers. Article 20 provides that consumers are entitled to join on a voluntary basis in associations of consumers.</p> <p>Article 22 indicates that protection of consumers' rights and legitimate interests are carried out within the competence of relevant authorities and courts or arbitration tribunals.</p> <p>According to Article 41 consumer associations are empowered to:</p> <ol style="list-style-type: none"> i. make proposals to the relevant authority and other government agencies for improving legislation concerning protection of consumer rights; ii. apply to state agencies to assist in cases of violation of consumer rights; iii. study properties of consumer goods and the demand for them, and conduct polls to determine public opinion about the quality of goods (works, services) iv. receive applications and complaints; v. address state bodies in order to evaluate the quality of goods (work, service) in the case of income statements, consumer complaints; vi. represent consumer interests in government and in other public associations in the order determined by the laws; vii. sue in court for the benefit of consumers, including the benefit of an indefinite number of consumers; viii. investigate and disseminate information on consumer rights in the media;
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⁷ Law No. 274 –August, 2010

- ix. implement social programs, projects and activities aimed at solving social problems, regarding protection of consumer rights on the basis of state social orders.

Article 43 provides that violations of the CP Law are punishable by the laws of Kazakhstan.

It is hoped that sufficient resources and effective plans are put in place to realize the goals of the CP Law. The CP Law will pave the path for better funding activities, sustainability of consumer associations and improvement of consumer protection in Kazakhstan.

The number of consumer organizations has dwindled from 100 over in 1991 to 4/5 today -and only the National Consumer League of Kazakhstan deals with financial products or services. The organizations suffer from lack of membership, funding and collaboration with government, industry and regulators. Most of the organizations are very small operating with volunteers and less than 10 members (one of the associations only had 4 members). Their major problem is the lack of funding and support to carry out their activities. Nevertheless, these grass root organizations are the only accessible points for the poor and socially disadvantaged citizens.

The biggest flaw in the consumer protection regime of Kazakhstan is that there is no consumer court or consumer ombudsman that provides free consultation and service to banking consumers. Most consumers bear abuse as they cannot afford to take the service or goods provider to court.

The National Consumer League of Kazakhstan is a strong institution with more than 7000 members and 125 institutional members. It collaborates closely with the business community and carries out activities to improve financial literacy and awareness amongst consumers. However banks do not collaborate with the institution and it provides on its own, weekly financial literacy training for a fee.

A general complaint from consumer associations is that the regulator does not actively seek or use their input, which is based on the need and experience of real consumers.

Association of Financial Institutions

Financial Institutions' Association of Kazakhstan (FIAK) was established in May, 1999 in accordance with Congress I Resolution of Kazakhstan Financiers. The founders of FIAK are five significant second-tier banks and one leading Kazakhstan Insurer. The funding sources of FIAK include the founders' contributions, the admission and annual membership fees and the sponsor support.

The main objectives of FIAK are to- (i) represent and advocate for the interests of financial institutions in governmental and other bodies; (ii) participate in efforts to improve the legislation relating to the activities and interests of FIAK's members; and (iii) establish liaison with governmental bodies for the purpose of creating conditions

	<p>to improve the efficiency of activities of FIAK members, and developing the Kazakh financial system in general. FIAK members are most of the financial market participants, including banks, state financial development institutions, insurance companies, pension funds, and securities market professionals.</p> <p>FIAK's functions are the following:</p> <ul style="list-style-type: none"> • Participating in financial market and tax regulation development; • Participating in development and implementation of financial, budget, tax and currency policies; • Participating in the financial services market further development; • Participating in the development and implementation of measures pertinent to the support and protection of local entrepreneurs; • Compiling, analyzing and summarizing FIAK members' proposals on solving financial sector issues and improving legislation pertaining to the financial institutions' interests; • Establishing working groups to deal with priority issues and problems agreed by FIAK members, developing general proposals and working them out with government authorities; • Organizing joint discussions and round tables, as well as the Kazakhstan Financiers' Congresses, which have become traditional; • Rendering information to FIAK's members. <p>It is obvious that apart from participating in the general efforts to develop the financial sector, FIAK does not have any mandate on consumer protection and its activities follow suit.</p>
Recommendation	<ol style="list-style-type: none"> 1. Provide funding for legitimate consumer associations to carry out consumer protection activities. 2. Ensure that FIAK's objective and activities include consumer protection.
Good Practice A.2	<p><i>Code of Conduct for Banks</i></p> <ol style="list-style-type: none"> a. There should be a principles-based, statutory code of conduct for banks that is devised in consultation with the banking industry, and with consumer associations if possible, and is monitored by a statutory agency or an effective self-regulatory agency. b. Every bank, acting alone and together, should publicize and disseminate this statutory code of conduct to the general public through appropriate means. c. The statutory code should be augmented by voluntary codes of conduct for banks on such matters as facilitating the easy switching of consumers' current accounts and establishing a common terminology in the banking industry for the description of banks' charges, services and products.
Description	<p>Currently, there is no principles-based, statutory or voluntary code of conduct for banks and bank-like institutions and thus no publication of any codes.</p> <p>AFN plans to institute measures to get the FIAK to come out with a voluntary code of</p>

	<p>conduct.</p> <p>There is also no common terminology on bank charges, services and products.</p>
Recommendation	<p>FIAK needs to include consumer protection activities as part of its mandate and:</p> <ol style="list-style-type: none"> i. Carry out any concerted effort on consumer protection, participate with other voluntary organizations in financial literacy activities, accredit or carry out certification of specialized skills, provide information to consumers on financial products or services to customers. ii. Adopt a voluntary code of conduct and publish it on its website iii. Have comprehensive information on its website that helps or promotes consumer literacy on financial products and services. iv. Establish permanent working groups or committees on banking, capital markets, insurance and pension. v. Take steps to improve banking practices. vi. Issue brochures and educational material oriented to consumers in addition to the information on their website. vii. Improve level of skills in the banking industry through a banking institute <p>FIAK must take the above steps to improve the banking practices in the country and consumer confidence. Proactive measures by FIAK are necessary so that consumer protection is driven by the market instead of regulatory directives.</p>
Good Practice A.3	<p><i>Balance between Prudential Supervision and Consumer Protection</i></p> <p>Where prudential supervision and consumer protection are the responsibility of a single organization, there should be a balance of prudential supervision and consumer protection.</p>
Description	<p>AFN has a fully fledged customer protection department and is appropriately funded. Also there is a good working relationship between this department and the other relevant departments including Bank Supervision.</p> <p>The complaints mechanism is also used as a supervisory tool and the Bank Supervision Department provides feedback on issues raised by the Consumer Protection Department, after their examination.</p> <p>AFN is currently in the process of amending the law –amendments and addenda to some legislative acts on mortgage lending and consumer protection, financial services and investment (Law on MCPFS) - to further improve consumer protection.</p> <p>The draft Law on MCPFS proposes to include far too many details in the law on consumer protection issues instead of leaving the details to regulations.</p>
Recommendation	<p>AFN ought to devise a long-term plan on its mandate on consumer protection with a view of getting the industry and participants to play a more active and proactive role. This plan ought to steer AFN away from micromanaging consumer protection rules.</p>
Good Practice A.4	<p><i>Other Institutional Arrangements</i></p> <ol style="list-style-type: none"> a. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection. b. The media and consumer associations should play an active role in promoting financial consumer protection.

Description	The general view is that courts are not easily accessible to ordinary citizens. Consumer associations neither are adequately funded nor have the resources to fully represent consumers. There is also a common perception that the judicial system is susceptible to corruption. As such, courts are not seen as the bastion for upholding consumer rights.
Recommendation	Data and information on the types of cases that end up in court, length of the process, time taken, costs incurred and general outcome of cases were not readily available to the mission. AFN should compile and analyze these cases to fully understand the impact of the court as a credible institution to uphold consumer rights in financial services.
Good Practice A.5	<i>Licensing</i> All banking institutions that either collect funds from consumers or lend funds to consumers need to be licensed and supervised.
Description	Banks and other institutions carrying out activities similar to banks are licensed by the AFN under Law 2444 on Banks and Banking Activity of 1995. Articles 4 and 6 of the law provide detailed provisions. The licensed institutions are appropriately regulated and supervised.
Recommendation	No recommendation.
SECTION B	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	<i>Know Your Customer (KYC)</i> When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer in order to ensure that the bank's recommendation, product or service is appropriate to that consumer. The extent of information the bank gathers should: <ol style="list-style-type: none"> a. Be appropriate to the nature and complexity of the product or service being proposed to or sought by the consumer; and b. Enable the bank to provide a professional service.
Description	The law on anti money laundering -Law of the Republic of Kazakhstan on Counteracting Legalization (Laundering) of Ill-gotten Proceeds and Terrorist Financing from September 2009 (effective in March 2010)- provides detailed KYC rules. Banks' compliance with KYC principles is monitored by AFN. Banks indicated that they generally collect sufficient information to sell their products. They also have access to the credit bureau to obtain additional information on consumers. Most of the information is collected with a view of ensuring the credit worthiness of the customer. It is unclear whether banks collect information with a view of ensuring that the products they offer the customer is appropriate and suitable for the customers.
Recommendation	There is a need for bankers to gather information which will enable them to offer suitable products to customers which in turn will help in their long-term relationship with the customer.
Good Practice B.2	<i>Affordability</i>

	<p>When making a recommendation to a consumer, the bank should ensure that:</p> <ul style="list-style-type: none"> a. Any product or service it offers to that consumer is in line with the need of the consumer; b. When offering any products or services, the consumer is given a range of options to choose from to meet his or her requirement; c. In recommending a product or service to that consumer, sufficient information on the product or service is provided to enable the consumer to select the most suitable product or service; and d. When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer’s credit-worthiness is properly assessed.
Description	<p>Products and services developed by banks are based on regular studies on the market conditions, analysis of competitors’ products and services. This results in segmenting of products in order to meet consumers’ needs.</p> <p>As indicated above, information is collected by banks with a view of ensuring the credit worthiness of the customer. It is unclear whether banks collect information with a view of ensuring that the products they offer the customer are appropriate and suitable for the customers.</p> <p>Credit bureau is used to obtain credit records and information therein is reliable.</p> <p>The affordability test used by banks varies. Some banks lend up to 65% of disposable income, while others lend up to 50%. However, AFN does not have precise information on this issue. This test ensures that consumers who are not sophisticated do not choose products that they cannot afford.</p>
Recommendation	<p>AFN needs to look into the affordability test and the limits used by banks. An industrywide acceptance of a maximum level for the affordability test would at least ensure some minimum protection to unsophisticated consumers.</p>
Good Practice B.3	<p><i>Cooling-off Period</i></p> <p>Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a —cooling-off period of a reasonable number of days immediately following the signing of any loan agreement between the bank and the consumer during which time the consumer may, on written notice to the bank, treat the agreement as null and void without penalty to the consumer of any kind.</p>
Description	<p>There is currently no cooling-off period.</p>
Recommendation	<p>Cooling-off period ought to be introduced even if it is 3 or 5 working days in the beginning, especially for mortgages and other financial contracts that have long-term impact on the financial standing of customers.</p>
Good Practice B.4	<p><i>Bundling and Tying Clauses</i></p> <p>Whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product.</p>

Description	<p>Banks offer few tied products. Generally mortgages and loans related to vehicles require insurance to be taken out. Banks usually provide a list of authorized insurance providers and consumers can choose from the list provided by the bank.</p> <p>The information on bundling is not readily available. Anecdotal information suggests that bundling has not been an issue with consumers.</p>
Recommendation	<p>Collecting information on bundling and tied products would be useful for AFN to understand further the practices in the banking system. Bundling should be avoided as much as possible as it restricts the right of a customer to choose and also forces the customer to subscribe to services that he or she may not need.</p>
Good Practice B.5	<p><i>Preservation of Rights</i></p> <p>Except where permitted by applicable legislation, in any communication or agreement with a consumer, a bank should not exclude or restrict, or seek to exclude or restrict:</p> <ul style="list-style-type: none"> a. Any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any financial service or product; or b. Any liability arising from the bank’s failure to exercise duty to act with skill, care and diligence in the provision of any financial service or product to the consumer.
Description	<p>The Banking Law, the AFN Law and consumer protection resolutions passed require banks to act with skill, care and diligence.</p> <p>All transactions are governed by the contracts entered between the bank and the customer. Since there is no express provision in the law that prohibits restriction to liability or duty of skill and care, it is unclear whether the contracts actually exclude or limit liability.</p>
Recommendation	<p>AFN needs to verify the foregoing by analyzing some randomly selected contracts.</p>
Good Practice B.6	<p><i>Regulatory Status Disclosure</i></p> <p>In all of its advertising, whether by print, television, radio or otherwise, a bank should disclose: (a) that it is regulated and (b) the name and address of the regulator.</p>
Description	<p>While the advertisements may not carry express indication that the bank is regulated or information about the banking regulator, generally consumers are able to identify the banks and know that they are regulated by AFN.</p>
Recommendation	<p>AFN must make it compulsory for banks to indicate that they are regulated and that AFN is the regulator. This will enable customers or consumer associations to lodge a complaint to AFN if the advertising is illegal or misleading, etc.</p>
Good Practice B.7	<p><i>Terms and Conditions</i></p> <p>Before a consumer may open a deposit, current (checking) or loan account at a bank, the bank should provide the consumer with a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these Terms and Conditions should:</p>

	<ul style="list-style-type: none"> a. Disclose details of the bank’s general charges, the bank’s complaints procedures, information about any compensation scheme that the bank is a member of, and an outline of the action and remedies which the bank may take in the event of a default by the consumer; b. Include information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer, any service charges to be paid by the consumer, restrictions –if any– on account transfers by the consumer, and the procedures for closing an account; c. Set forth clear rules regarding the reporting procedures from the consumer and the bank’s liability on: <ul style="list-style-type: none"> (i) unauthorized transactions, and (ii) stolen cards; and d. Be written in plain language and in a font size and spacing that facilitates the reading of every word.
<p>Description</p>	<p>Article 39 of the Banking Law provides that the banks shall independently establish their interest rates, fee and commission rates, and tariffs for the rendering of bank services.</p> <p>a. The AFN resolution on Rules of calculating interest rates when spreading information about values of interest for financial services that came to force in January 2007 (hereafter, APR resolution) provides for disclosure rules on annual percentage rates (APR). Section 3 provides that the loan agreement should contain a list of charges and payments that will affect the APR. However, there is no requirement that the consumers be informed about the calculation of the APR. Also there is no monitoring of the compliance with this resolution’s requirements by the banks.</p> <p>b. In addition, most customers sign contract agreements without having upfront knowledge of the bank’s general charges, the bank’s complaints procedure, the existence of any deposit insurance scheme, or the action and remedies which the bank may take in the event of default by the consumer.</p> <p>The contract provides details on the foregoing. It is unclear whether the customers are told of the methods of computing interest rates paid or charged, relevant non-interest charges or fees related to the product, service charges, restrictions on account transfers and the procedures for closing an account.</p> <p>Consumers also often do not fully understand the foreign exchange risk they would assume by taking on foreign currency denominated loans, let alone variable interest rates on these loans.</p> <p>c. The rules on the credit is a standard contract and clear rules have been provided on unauthorized transaction and stolen cards. It is not clear whether the banks inform the customers of some key features of the contract or leave the customers to read the contract.</p> <p>d. The contracts are not generally written in plain language and there is no prescribed font size that facilitates easy reading.</p>

Recommendation	Banks must be more diligent in informing in clear language the terms and conditions of the products offered to their customers. Either customer awareness need to be improved or non compliance by banks punished or products such as foreign currency loans be prohibited for sale to individuals.
Good Practice B.8	<p>Key Facts Statement</p> <ul style="list-style-type: none"> a. A bank should have a Key Facts Statement for each of its accounts, types of loans or other products. b. The Key Facts Statement should be written in plain language and summarize in a page or two the key terms and conditions of the specific financial product. c. Prior to a consumer opening any account at, or signing any loan agreement with, the bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received a copy of the relevant document from the bank.
Description	<p>Some banks have brochures of their products. It is not clear whether they can be regarded as key fact statement. Some of the 1-paged key fact statements of some banks are of little use to customers due to the language and terminology.</p> <p>Consumer associations claim that they find the key fact statements as confusing as the actual contract of the product.</p> <p>Customers do receive a signed document but generally claim they never understand what they sign.</p>
Recommendation	<p>Banks ought to collaborate with consumer associations to simplify the existing key fact statements.</p> <p>Financial literacy of consumers needs to be upgraded to enable them to ask relevant questions regarding the products or services they purchase and contracts they enter into.</p>
Good Practice B.9	<p>Advertising and Sales Materials</p> <ul style="list-style-type: none"> a. Banks should ensure that their advertising and sales materials and procedures do not mislead customers. b. All advertising and sales materials should be easily readable and understandable by the general public. c. Banks should be legally responsible for all statements made in advertising and sales materials.
Description	<p>There are clear rules on advertisement.</p> <p>Article 9 of the Banking Law⁸ prohibits untrue advertising::</p> <ol style="list-style-type: none"> 1. Banks are prohibited to include in their advertisements information that is contrary to fact on the date when the advertisement is published. 2. AFN shall be entitled to demand from a bank the modification of an untrue

⁸ Law No. 2444 –August 31, 1995

advertisement, its termination or publication of a refutation. In the case of non-fulfillment of such demand within a time period specified by AFN, the AFN shall be entitled to publish information regarding the untrue facts contained in the advertisement, or to clarify the information of the advertisement, at the expense of the bank that published such advertisement.

3. Advertisement regarding provision of services qualified as banking operations is prohibited for legal entities not having license of AFN and (or) the National Bank for the realization of banking operations.

Although banks indicate that they do not mislead, consumers claim that some of the advertisements are misleading.

Law № 508-II –December 19, 2003 on Advertising (amended as at 19.03.2010) also provides rules on advertisement. Article 3 of the law lays down the basic concepts on advertisement and advertising is defined as matter which is distributed and posted in any form by any means of information intended for an indefinite number of persons and designed to create or maintain interest in the natural or legal person, products, trademarks, works and services and facilitate their implementation. The law also covers advertisements placed on movable and immovable objects, and those located in public roads and open spaces outside the premises.

Apart from that, improper advertising is defined as unfair, misleading, unethical, false and hidden advertising, which violate the requirements on content, time, place and method of distribution, and placement, established by the legislation.

In addition, the way the advertisement is distributed is also covered to include all means by this article- televised, in cinema and video, which is characterized by a succession of (movement) of combinations of letters, digits, constituting in the aggregate certain information on their TV screens, as well as stand-alone monitors.

Article 6 of the Law on Advertising stipulates that advertisements should be reliable and comprehensible by the general public without the benefit of technical knowledge. Article 14 of the Law on Advertising deals specifically with advertising of financial, insurance, investment and securities services. This article prohibits, among other things, the forecast or guarantee of future performance or profitability (including estimated increase of market value of securities), as well as the omission of any material terms and conditions.

The new Consumer Protection Law⁹ establishes basic rights of a consumer (that would include a consumer of financial services) including the consumer's right to obtain complete, timely and accurate information about the product or service that is marketed to the consumer. If the consumer is provided inaccurate and misleading information about a product or service, the consumer is entitled to terminate the contract and to demand for damages for his losses.

⁹ Law No. 274 –August, 2010

	<p>The legal framework on responsible advertising is sound.</p> <p>Banks are legally responsible for statements made in advertisement and sales materials under the Civil Code and Banking Law.</p>
Recommendation	No recommendation
Good Practice B.10	<p><i>Guarantees</i></p> <p>No advertisement by a bank should describe either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless:</p> <p>a. There is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee.</p> <p>b. The advertisement states:</p> <p>(i) the extent of the guarantee;</p> <p>(ii) the name and address of the party providing the guarantee; and</p> <p>(iii) in the event that that party is in any way connected to the bank, the precise nature of that connection.</p>
Description	<p>According to Article 14 of the Law on Advertising, financial entities are prohibited to include in their advertisements any guarantee of future performance or profitability of a financial product.</p>
Recommendation	<p>.</p> <p>No recommendation</p>
Good Practice B.11.	<p><i>Professional Competence</i></p> <p>a. In order to avoid any misrepresentation of fact to a consumer, any bank staff member who deals directly with consumers, or who prepares bank advertisements (or other external distribution channels) or who markets any service or product of the bank should be familiar with the legislative, regulatory and code of conduct guidance requirements relevant to his or her work, as well as with the details of any product or service of the bank which he or she sells or promotes.</p> <p>b. Regulators and industry associations should collaborate to establish and administer minimum competency requirements for any bank staff member who:</p> <p>(i) deals directly with consumers;</p> <p>(ii) prepares any Key Facts Statement or any advertisement for the bank; or</p> <p>(iii) markets the bank's services and products.</p>
Description	<p>Banks generally provide internal training for all staff and specific training for those dealing with customers.</p> <p>There is no bankers' training institute which provides standardized and accredited training for bank employees. Thus it is unclear how banks actually verify whether</p>

	their staff is familiar with legislation, regulation and details of the product and services. Most banks rely on the sales numbers and whether there are complaints against products sold.
Recommendation	In the long run, to raise the skills level in the banking system, a standardized training and accreditation system ought to be introduced. Banks ought to have a system to ensure that their employees are competent.
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p><i>Statements</i></p> <ul style="list-style-type: none"> a. Unless a bank receives a customer's prior signed authorization to the contrary, the bank should issue, and provide the customer with, a monthly statement regarding every account the bank operates for the customer. Each such statement should: <ul style="list-style-type: none"> (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement b. Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment. c. Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid. d. A bank should notify a customer of long periods of inactivity of any account of the customer and provide a reasonable final notice in writing to the customer if the funds are to be transferred to the government. e. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.
Description	<p>The practice varies from bank to bank. Some banks provide monthly statements. Some provide quarterly statements. In some cases, a statement is only provided when requested. Given the difference in practice, it is not possible to verify the above.</p> <p>Some banks indicated that they fulfill all the requirements in this principle.</p>
Recommendation	AFN needs to collect specific samples from the banks to verify the difference in the practices. It is important that the customers are fully informed of the transactions that have taken place and their outstanding financial obligation.
Good Practice C.2	<p><i>Notification of changes in interest rates and non-interest charges</i></p> <p>A customer of a bank should be notified in writing by the bank of any change in:</p> <ul style="list-style-type: none"> a. The interest rate to be paid or charged on any account of the customer as soon as possible;

	<p>b. A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change;</p> <p>c. The customer should have the right to exit the contract, if the revised terms are not acceptable to the customer.</p>
Description	<p>The consumer must generally be informed in writing or agreed means of communication of any modification to terms and conditions of a credit contract including charges, interest rates and effective date of the changes.</p> <p>This notification ought to be communicated to the customer with acknowledgement of receipt or by means of a bank statement.</p> <p>Currently, the APR Resolution provides that if the agreement makes provision for change of interest rates, the way to inform the client is by mutual agreement.</p> <p>Some banks indicated that they provide 10-20 days of notice on change of interest rates but there is conflicting information from consumer associations. It is uncertain whether the lack of notice is a common practice or only happens in exceptional cases.</p> <p>However, this requirement is not being enforced in practice. It is a common complaint that banks change terms unilaterally and do not inform customers of charges accrued, dormant accounts and acceleration of default provisions.</p> <p>In 2009, the AFN received 2083 complaints (the number had doubled compared to 2008) on banks and credit organizations. The most common complaints were: excessive interest rates on loans and fees for banking services, unilateral increase of rates and fees, high commission rates, and improper calculation of commission rates of loan agreements and bank deposits.</p>
Recommendation	<p>It is important for AFN to request written responses from banks on their practices in this area and verify them against the complaints received from customers. This is the biggest grouse of customers and it needs to be dealt with.</p>
Good Practice C.3	<p><i>Customer Records</i></p> <p>A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:</p> <ol style="list-style-type: none"> a. A copy of all documents required to identify the customer and provide the customer's profile; b. The customer's address, telephone number and all other customer contact details; c. Any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct; d. Details of all products and services provided by the bank to the customer; e. A copy of correspondence from the customer to the bank and vice-versa and details of any other information provided to the customer in relation

	<p>to any product or service offered or provided to the customer;</p> <ul style="list-style-type: none"> f. All documents and applications of the bank completed, signed and submitted to the bank by the customer; g. A copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and h. Any other relevant information concerning the customer. <p>A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready and access to all such records.</p>
Description	<p>Banks are required under the Banking Law to maintain comprehensive records. Article 56 of the Banking Law provides that banks shall be obliged to provide strict accounting and custody of documents, used in bookkeeping during drawing up of accounts. Also the list of main documents, subject to custody, and terms of their maintenance shall be specified by the AFN.</p> <p>The regulation issued pursuant to the above, ensures that the banks maintain requisite documents for specific periods.</p> <p>Customers have access to the records for a fee.</p>
Recommendation	No recommendation.
Good Practice C.4	<p><i>Checks</i></p> <p>There should be clear rules on the issuance and clearing of checks that, among other things, set reasonable requirements for banks on the following issues:</p> <ul style="list-style-type: none"> a. For any bank on which a check is drawn, when the account on which it is drawn has insufficient funds; b. For any bank at which a customer of that bank seeks to cash or deposit a check, which is subsequently found to be drawn on an account with insufficient funds; c. Informing the customer of the consequences of issuing a check without sufficient funds, at the time a customer opens a checking account; d. Regarding the crediting of a customer's account and its timing, when a check deposited by the customer clears; and e. In respect of capping charges on the issuance and clearance of checks. <p>There should be clear rules on consumer protection, including procedures for error resolution.</p>
Description	Not applicable as checks are not used in Kazakhstan
Recommendation	No recommendation.
Good Practice C.5	<p><i>Electronic Checks</i></p> <ul style="list-style-type: none"> a. Customers should be provided with consistent, clear and timely information about the checks and the cost of using them, at all relevant stages in a consumer's decision, in easily accessible and understandable

	<p>forms.</p> <p>b. Customers should be informed on:</p> <ul style="list-style-type: none"> (i) how the use of credit card checks differs from the use of a credit card; (ii) the interest rate that applies and whether this differs from the rate charged for card purchases; (iii) when interest is charged and whether there is no interest free period; (iv) whether additional fees or charges apply and how much; (v) whether purchases using a credit card checks benefit from the same protection as using a credit card. <p>c. Credit card checks should not be sent to consumers without prior consent.</p> <p>d. Authorities should encourage efforts to enable end users to better understand the market for electronic checks, such as providing comparative price information or undertaking educational campaigns.</p> <p>e. There should be clear rules on consumer protection, including procedures for error resolution.</p>
Description	Not applicable as checks are not used in Kazakhstan
Recommendation	No recommendation.
Good Practice C.6	<p><i>Electronic Fund Transfers and Remittances</i></p> <ul style="list-style-type: none"> a. There should be clear rules on the rights, liabilities and responsibilities of the parties in electronic fund transfers. b. Banks should provide information on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include: <ul style="list-style-type: none"> (i) the total price (e.g. fees at both ends, foreign exchange rates and other costs); (ii) the time it will take the funds to reach the receiver; (iii) the locations of the access points for sender and receiver; (iv) terms and conditions of the fund transfers services to the customer. c. To ensure full transparency, it should be clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose the information without imposing additional requirements on the consumer d. There should be legal provision requiring documentation of electronic fund transfers. e. There should be clear, publicly available and easily applicable procedures in cases of errors and frauds. f. Authorities should encourage efforts to enable end users to better understand the market for electronic fund transfers and remittances, such as providing comparative price information or undertaking educational campaigns.

<p>Description</p>	<p>Article 38 of the Banking Law provides detailed rules on this area:</p> <ol style="list-style-type: none"> 1. Banks shall execute payments and money transmittance within Kazakhstan under procedure specified by legislation. 2. In a case of undue fulfillment of payments and money transmittance, the bank shall bear the responsibility in accordance with Kazakh legislation and the contract concluded with the customer (depositor). 3. International payments and money transmittance shall be fulfilled by banks following the forms, means and procedures established in international banking practices and not conflicting with existing Kazakh legislation. 4. Banks shall be entitled to withdraw money from customers (depositors) accounts without their consent in case there is evidence confirming falsification of payment documents, and in case a payment by mistake has been discovered.. <p>All transactions are subject to written contracts and transactions are documented. Customers enquire -and are informed- of the fee, the time taken and all additional information requested.</p> <p>There have been no complaints in this area so far.</p> <p>No specific steps have been taken by the AFN or anyone else to encourage efforts to enable end users to better understand the market for electronic fund transfers and remittances, such as providing comparative price information or undertaking educational campaigns.</p> <p>Customers are unable to compare rates and efficiency between banks. Banks claim that all their rates and charges can be found on the website. However, there is no location where comparative information can be obtained.</p>
<p>Recommendation</p>	<p>AFN or FIAK should encourage consumer associations, through fair incentive, to publish services and rates in the banking system. Consumer associations should be provided with support to undertake such activities.</p>
<p>Good Practice C.7</p>	<p><i>Debt Recovery</i></p> <ol style="list-style-type: none"> a. No bank, agent of a bank or third party should employ any abusive debt collection practice against any customer of the bank, including the use of any false statement, any unfair practice or the giving of false credit information to others. b. The type of debt that can be collected on behalf of a bank, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the bank when the credit agreement giving rise to the debt is entered into between the bank and the customer. c. No debt collector should contact any third party about a bank customer's debt without informing that party of: <ol style="list-style-type: none"> (i) the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking. d. Where sale or transfer of debt without borrower consent is allowed by law, borrowers should be: <ol style="list-style-type: none"> (i) notified of the sale or transfer within a minimum number of

	<p>days;</p> <p>(ii) informed that they remain obligated on the debt; and</p> <p>(iii) provided with information as to where to make payment as well as contact information on the purchaser.</p>
<p>Description</p>	<p>Most banks use external debt collection agencies. Banks also cooperate with external debt collection companies for borrowers who are individual and legal entities.</p> <p>Currently there is no separate law in Kazakhstan that regulates debt collection activity, but the Parliament is currently considering taking measures in this area.</p> <p>Banks generally have a retail workout procedure on how the debt collection ought to be carried out by its employees. The terms of collection are specified in the contract between the banks and the debt collection agents. The contract specifies that only lawful means can be used to collect on debts. In addition, bank requires debt collection agencies to take a reasonable attitude when carrying out their activities.</p> <p>The contracts with the customers include a clause which stipulates that the bank can provide information to external collection agencies.</p> <p>The credit contract does not provide procedural details on the person who collects or the procedure of collection. The reason given for not providing the details is the fear of restricting ability to recover.</p> <p>Collection agencies inform clients that they act on behalf of the bank, having Power of Attorney to act. They interact with the client and within the given disclosure agreements and also inform the client personally. Sale of collateral or transfer of debt (refinancing/restructuring) cannot be done without client's consent.</p> <p>All foreclosure procedures require the notification to clients minimum 30 days in advance. The letter notifying the auction contains all necessary information including where to make payments.</p> <p>The banks admitted that there is no guidance on this and the practice among banks differs.</p> <p>It is not surprising that there have been complaints of abusive practices by customers.</p>
<p>Recommendation</p>	<p>Debt collection in many countries carries risks of abuse. In the absence of an ombudsman or accessible and affordable judicial process to redress abuse, it is necessary to monitor practices in this area. It is necessary for AFN to have more information on the practices of the banks and obtain feedback from consumer association on consumers' view and actual experience.</p> <p>It is important for AFN to issue a regulation on debt collection practices. In doing so,</p>

	it has to balance the right of borrowers to fair and reasonable collection methods and right of lenders to enforce contractual right in a cost effective and speedy manner.
SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	<i>Confidentiality and Security of Customers' Information</i> Customers have a right to expect that their financial transactions are kept confidential. The law should require banks to ensure that they protect the confidentiality and security of personal data, against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.
Description	<p>1. Various laws provide for privacy and data protection. They include-</p> <ul style="list-style-type: none"> i. Constitution of the Republic of Kazakhstan; ii. Article 126, Chapter 55 of the Civil Code of Kazakhstan; iii. The Administrative Code of the Republic of Kazakhstan (fines for disclosure of information) iv. The Law on Private Entrepreneurial Activity № 124-III dated 31 January 2006 (commercial and official secrecy); v. Article 50 of the Law on Banks and Banking Activities № 2444 dated 31 August 1995 (banking secrecy); vi. The Informatization Law № 217-III dated 11 January 2007; vii. Article 42 of the Law on Securities Market № 461-II dated 2 July 2003. <p>There is no main unified law on data protection or on privacy. The legal provisions on privacy are included in the general rules of the Constitution of Kazakhstan. Article 18 says that everyone has “a right on privacy of personal deposits, telephone conversations, letters and other messages”.</p> <p>Article 126 of the Civil Code provides that “information shall constitute an employment or commercial secret when the information has real or potential commercial value by virtue of it being unknown to third parties; no free access to such information on legal grounds and that the possessor of the information has taken steps to protect its confidentiality”. Article 126 goes on to provide that persons who have received such information by illegal methods or where employees or parties to a contract divulge such information against the terms of the contract, they would be liable to compensate the damage that is caused.</p> <p>Article 14 of AFN Law (Law No. 474 –July 4, 2003) provides that the representative of the AFN shall bear the responsibility for the disclosure of data obtained during his execution of supervisory functions which constitute service secret, commercial secret, bank secret or any other legally protected secret in accordance to the laws , including also within three years after termination of work at the AFN.</p> <p>Article 13-1(22) of AFN Law provides that the AFN’s employees shall be prohibited to disclose or communicate to third parties data obtained during the checking of an</p>

	<p>organization. Sub article 23 provides that persons that conduct checking shall bear the responsibility for the disclosure of data obtained during the checking of an organization's activity and which constitute legally protected secrets, in accordance with Kazakh law.</p> <p>Article 14 of AFN Law provides AFN with authority to obtain information. This article provides that in order to ensure quality and timely execution of functions of regulation and supervision of financial market and financial organizations imposed to the AFN, and to implement the requirements of this Law, the AFN shall be entitled to gratuitously obtain from physical persons and legal entities, as well as from state bodies information necessary to perform its supervisory functions. This information is prohibited to be disclosed. The AFN's employees shall bear the responsibility for the disclosure of data obtained during the performance of their supervisory functions and constituting service secret, commercial secret, bank secret and any other legally protected secrets, in accordance with Kazakh laws .</p> <p>The law is sound and there seems to be no complaints by consumers on data being disclosed without permission or being stolen, etc.</p>
Recommendation	No recommendation.
Good Practice D.2	<p><i>Sharing Customer's Information</i></p> <ul style="list-style-type: none"> a. A bank should inform its customer in writing: <ul style="list-style-type: none"> (i) of any third-party dealing for which the bank should share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and (ii) how it will use and share the customer's personal information. b. No bank shall sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing. c. The law should allow a customer of a bank to stop or "opt out" of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, every bank should be required to inform each of its customers in writing of his or her rights in this respect. d. The law should prohibit the disclosure of any information of a banking customer by third parties.
Description	<p>Article 50 of the Banking Law provides clear provisions on this good practice. It reads:</p> <p>Article 50. Bank secrecy</p> <p>1. Bank secrecy shall include information of availability, owners, numbers of bank accounts of depositors, customers, and correspondents of bank, of the balance and flow of money on these accounts and accounts of the bank itself, of bank operations (except for general terms of bank operations execution), and information of availability, owners, character and cost of customers' property, kept in safe boxes, boards and premises of the bank.</p> <p>Bank secrecy does not include information of credits, issued by bank, being in the process of liquidation.</p> <p>2. Banks guarantee secrecy on operations and deposits of its depositors, customers,</p>

	<p>and correspondents, and secrecy of property, kept in safe boxes, boards, and premises of the bank.</p> <p>3. Officials, employees of the bank, and other persons that by virtue of execution of their official duties received access to information, composing bank secrecy, for their disclosure shall bear criminal responsibility, except for cases stipulated by paragraphs 4-8 of this article.</p> <p>The law is tight and clear. There are no complaints in this area and the system seems to be working effectively.</p>
Recommendation	No recommendation.
Good Practice D.3	<p><i>Permitted Disclosures</i></p> <p>The law should:</p> <ol style="list-style-type: none"> a. State specific rules and procedures concerning the release to any government authority of the records of any customer of a bank; b. State what the government authority may and may not do with any such records; c. State what exceptions, if any, apply to these rules and procedures; d. Provide for penalties for the bank and any government authority for any breach of these rules and procedures.
Description	<p>Article 50 of the Banking Law also deals with authorized disclosure and provides clear rules as follows-</p> <p>4. Bank secrecy may be disclosed only to the holder of account (property), any third person on the basis of written consent of the holder of account (property), given at the moment of its personal presence in bank, to loan office on granted loans in accordance with Kazakh law, and to persons, specified in paragraphs 5-8 of this article, for reasons and within the frames, stipulated by this article.</p> <p>Bank secrecy should not include: compulsory notification by banks to tax authorities of bank accounts opened to legal entities or individuals carrying out entrepreneurship activity without formation of legal entity; submission of customs authorities with the information on export and (or) import operations of customers for the execution of export and import currency control in accordance with currency legislation; and submission of data on balance of funds in bank accounts of individuals with deposits in a bank with revoked license, to the organization in charge of returning funds to depositors..</p> <p>5. Certificates of availability and numbers of bank accounts shall be issued to the bank where the holder of the account (-s) is the borrower, guarantor, warrantor, or pawner, on the basis of a written request, signed by the chairman of Board of the bank, or by the person, substituting him, under conditions of submission of document, confirming credit receipt.</p> <p>6. Certificates of availability and numbers of bank accounts of a legal entity, and current accounts of an individual, fulfilling entrepreneurship activity without</p>

	<p>formation of legal entity, of balance and flow of money on such accounts shall be issued to:</p> <p>a) bodies of inquiry and preliminary investigation: on produced by them criminal cases with the sanction of public prosecutor;</p> <p>b) courts: on produced by them cases on the basis of determination of court;</p> <p>c) public prosecutor: on the basis of decree of examination execution, within its competence, upon considered by it material;</p> <p>d) customs authorities on export and (or) import operations of customers with the sanction of public prosecutor;</p> <p>e) tax authorities: on issues, connected with taxation of examined person, and in relation to inactive legal entity;</p> <p>e-1) bodies of executive production: on produced by them cases of executive production on the basis of written request, signed by first director or officer of the court, sealed by the stamp of executive production body and sanctioned by public prosecutor.</p> <p>7. Certificates of availability and numbers of bank accounts of an individual, of balance and flow of money on such accounts, and available data of the character and cost of its property, kept in safe boxes, boards, and premises of the bank, shall be issued to:</p> <p>a) representatives of individual: on the basis of notarized letter of attorney;</p> <p>b) bodies of inquiry and preliminary investigation: on produced by them criminal cases in the events, when money and other property of individual, being on accounts or kept in bank, may be seized, charged or the property may be expropriated on the basis of written consent, signed by first director or investigator, sealed by the stamp of the body of inquiry and preliminary investigation and sanctioned by public prosecutor;</p> <p>c) courts: on produced by them cases on the basis of determination, decree, decision, verdict of court in cases, when money and other property of individual, being on accounts or kept in bank, may be seized, charged or the property may be expropriated;</p> <p>d) public prosecutor: on the basis of decree of examination execution, within its competence, upon considered by it material.</p> <p>7-1. Certificates of money flow on bank accounts, stipulated by paragraphs 6 and 7 of this article. Shall be submitted in the form of abstract from customer's personal account of money flow on its bank accounts. Information that must be included to abstract from customer's personal account of money flow on its bank accounts, shall be determined by normative legal act of the National Bank .</p> <p>8. Certificates of availability and numbers of bank accounts of an individual, of balance of money on them, and available data of the character and cost of its property, kept in safe boxes, boards, and premises of the bank in the event of holder's death, shall be issued to:</p> <p>a) persons, specified by account (property) holder in testamentary disposition;</p>
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	<p>b) courts and notaries: on produced by them probate cases on the basis of determination, decree of the court or written notary's request, sealed by its stamp. Written notary's request must be attached by the copy of death certificate of account holder;</p> <p>c) foreign consular offices: on produced by them probate cases.</p> <p>Article 10 of the AFN Law¹⁰ provides that the AFN's representative and employees shall bear the responsibility for the disclosure of data obtained during the performance of their supervisory functions where such data may be considered "service secret, commercial secret, bank secret and any other legally protected secrets", in accordance with the laws of Kazakhstan. Article 13 of the AFN Law provides that the AFN's employees shall be prohibited to disclose or communicate to third parties of data obtained during the checking of an organization where such data constitutes legally protected secrets in accordance with Kazakh law.</p> <p>The rules and practices in this area are precise and clear with no complaints so far.</p>
Recommendation	No recommendation.
Good Practice D.4	<p><i>Credit Reporting</i></p> <p>Credit reporting systems should be subject to appropriate oversight with sufficient enforcement authority.</p>
Description	<p>The law on Loan Offices and Credit History (Law No. 573, July 6, 2004) deals with matters pertaining to credit bureau.</p> <p>The law provides a clear legal framework (Article 2) and institutional arrangement with sufficient enforcement authority for the proper oversight of credit reporting (Article 32).</p> <p>All banks and non-bank credit institutions are members of the credit bureau. The Law No 573 provides comprehensive rules amongst other things, on the functioning of credit bureaus, use of credit information, and disclosure of information, privacy and protection of security of data.</p> <p>Article 14 of the law provides for retention of record. Procedure for storing documents and information by a credit bureau is provided for and credit history is retained for ten years.</p> <p>The main consumer issue is whether banks actually inform the customers that they are agreeing to allow the bank to share their credit history. It is also unclear whether banks tell the customers about their right to obtain a free credit report. Another issue is the ease with which a customer can correct his or her credit record.</p> <p>The duties and liabilities of the banks and institutions providing information to credit bureau are provided in Article 19 of the Law No. 573. Amongst other</p>

¹⁰ Law No. 474 –July 4, 2003

	<p>things, they may-</p> <ul style="list-style-type: none"> a. require the credit bureaus to use the information provided in accordance with this Law; b. have other rights in accordance with Kazakh law and (or) the contract for provision of information and (or) to obtain credit reports. <p>Banks are also required to –</p> <ul style="list-style-type: none"> a. obtain the consent of the subject's credit history for the representation of information about him to the credit bureaus; b. have a contract for the provision of information; c. provide information to the credit bureaus under the terms of the amount and manner determined by this law and the contract for information d. make adjustments to the information transmitted to the credit bureaus, at the request of the subject's credit history; e. provide information to credit bureaus in strict accordance with the available information on the subject of credit history; f. use information resources and information systems in accordance with Kazakh law; g. provide appropriate conditions for obtaining and processing information at their own expense; h. inform the credit bureau of any change of data on the subject of credit history in the manner and time frame specified by the agreement for information. i. when they enter into a contract with the credit bureaus for information, they must comply with requirements to other suppliers of information established by this law; j. provide the information they have about the subjects of credit histories to credit bureaus for free. <p>Providers of information to the credit reporting system, which no longer carry out the activities that previously led them to participate in the system, are required to update information on every data subject that was previously transmitted to the credit reporting system, until the contractual relations with such subjects terminate.</p> <p>The customers have the following rights under Article 22 of the Law-</p> <ul style="list-style-type: none"> a. to give consent to the information provider (e.g. bank) to submit information about him to the credit bureaus for the formation of credit history; b. to consent to the recipient of the customer's credit report to receive such credit report ; c. to obtain, in accordance with the requirements established by this law, a credit report on the subject himself once information about him is submitted to a credit bureau; d. when his application for a loan request is being considered, to demand from the credit report's recipient to review the credit report or to provide the customer with a copy of the credit report obtained by the recipient; e. to disagree with the information contained in a credit report, with the ability to obtain information about the supplier; f. to request a credit bureau to correct a credit report, if due to omissions or mistakes by the bureau's employees, the credit report received by the customer contained information that did not correspond to the information
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	<p>submitted by the information provider ;</p> <p>g. to demand the information provider to correct inaccurate information.</p> <p>The law also provides the procedures for correcting information and for resolving disputes. Article 31 states that-</p> <ol style="list-style-type: none"> 1. A credit history subject's application to a credit bureau or information provider disputing information contained in a credit report shall contain the subject's first name, second name, last name, place of residence, legal address and ID details for natural persons, name and address for legal entities, and indication of the disputed information and the request to provide accurate information. The application shall be signed by the applicant or an authorized person. The application may be accompanied by copies of documents referred to by the applicant. The information provider or credit bureau shall, within fifteen working days from receipt of the application, review the application and make one of two actions provided for in paragraphs 3 and 4 of this article. 2. If the distortion of the credit report was due to technical errors of the information provider or credit bureau, or other actions or omissions of their employees, the information provider must, within ten working days from the date such distortion was revealed, provide a credit bureau with information available to the information supplier on the date the distortion was revealed. The credit bureau must give the credit history subject a revised credit report. 3. If the disputed information corresponds to that available in the credit bureau and the information provider, then the information provider and/or the credit bureau shall send the applicant a written refusal of the application indicating the sources for obtaining the disputed information, within the period specified in paragraph 2 of this article. 4. In case an applicant who has received the refusal of the application re-applies, then the costs associated with the processing, consideration and submission of a reasoned response, shall be borne by the applicant. If there is disagreement in the distribution of costs, then the dispute shall be considered by the court. <p>The credit bureau functions as the processing centre and customers are required to deal with their banks in the areas of dispute or inaccuracy of data. Not many customers actually know that they can dispute the accuracy of the reports in their credit record and how to go about it.</p> <p>Anecdotal evidence suggests that not many consumers understand fully or realize the implication of failure to pay on time and the impact of a bad credit record.</p>
Recommendation	<p>Customers must have a direct means to seek correction of data in their credit report.</p> <p>So far, the consumer associations have not raised this as a problem but steps must be taken to better inform customers of the implication of credit history. At a minimum, either the FIAK or AFN ought to have a FAQ webpage on this topic.</p>

SECTION E	DISPUTE RESOLUTION MECHANISMS
<p>Good Practice E.1</p>	<p><i>Internal Complaints Procedure</i></p> <ol style="list-style-type: none"> a. Every bank should have in place a written complaints procedure for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank’s Terms and Conditions referred to in B.7 above. b. Within a short period of time following the date a bank receives a complaint, it should: <ol style="list-style-type: none"> (i) acknowledge in writing to the customer/ complainant the fact of its receipt of the complaint; and (i) provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank. c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time. d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant. e. When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank may not require, however, that a complaint be in writing. f. A bank should maintain an up-to-date record of all complaints it has received that are subject to the complaints procedure. For each complaint, this record should contain the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis. The bank should make these records available for review by the banking supervisor or regulator as and when requested.
<p>Description</p>	<ol style="list-style-type: none"> a. Banks generally have complaints procedure to handle customer complaints. There is no legal requirement for it to be in written form or that it must be made known to customers. b. The summary of the procedure for complaint handling is usually made known to the customer and generally does not constitute part of the bank’s Terms and Conditions referred to in B.7 above. c. Some banks acknowledge receipt of complaint within 15 days. The complainant is provided with name of person to contact. d. Banks do not often provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time. Information is provided when requested. e. Banks inform the customer/complainant in writing of the outcome of the

	<p>investigation.</p> <ul style="list-style-type: none"> f. Banks receive complaints verbally, through internet, etc. g. Banks maintain record of all complaints received. However, it was not possible to verify whether the record contains the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis. h. AFN has the legal powers to look into these records. <p>There is no uniform practice in this area. Procedures and practices vary. Banks are generally slow to respond to customer complaints according to consumer associations. Anecdotal evidence of customers and consumer associations indicated that this is one of the weakest points in the banks.</p>
Recommendation	<p>Procedures for handling complaints ought to be mandated for all banks, and such procedures ought to be standardized and incorporated in the Code of Banking Practices.</p> <p>In the absence of an ombudsman for banking complaints, banks must have effective in-house mechanism to resolve customer complaints. Banks must be required to have written procedures and a summary must be included in the terms and conditions. Customers must be told of the in-house relief available to them.</p> <p>FIAC ought to marshal the banks to ensure that they adopt a minimum standard for handling complaints.</p> <p>AFN ought to look through the record of complaints in banks to identify the major issues confronting the customers that are likely to become big consumer confidence issues, apart from indicating the areas where banks may have weaknesses in their internal systems.</p>
Good Practice E.2	<p><i>Formal Dispute Settlement Mechanisms</i></p> <ul style="list-style-type: none"> a. A system should be in place that allows a customer of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the customer's complaint is not resolved to his or her satisfaction in accordance with the procedures outlined in E.1 above. b. The existence of the banking ombudsman or equivalent institution, and the procedures before this institution, should be set forth in every bank's Terms and Conditions referred to in B.7 above. c. The banking ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the banking industry and the specific bank with which the complaint has been lodged. d. The decision of the banking ombudsman or equivalent institution should be binding upon the bank with which the complaint has been lodged and this fact, as well as the mechanism to ensure the enforcement of such a decision, should be set forth in every bank's Terms and Conditions

	referred to in B.7 above.
Description	<p>The Achilles heel of consumer protection in the banking sector is the absence of an effective, independent and affordable formal out-of-court redress/compensatory and enforcement mechanism such as an Ombudsman.</p> <p>The new CP Law and all laws covering consumer protection provide that customers can bring legal action in a court of law. Consumer associations generally feel that the outcome is weak. The only choice left to the consumers is to go to court. The number of consumers who can afford to go to court is limited. Customers can obtain general relief under the Civil Code for damages suffered. As such one cannot rely on courts to provide any relief to bank customers unless the customer has financial means. There are very few reported cases of action by customers against banks. The general view is that courts are not easily accessible to ordinary citizens.</p> <p>Consumer associations are not adequately funded or have the resources to fully represent consumers. There is also a common perception that the judicial system is susceptible to corruption. As such, courts are not seen as the bastion for upholding consumer rights. Statistics and information on the types of cases that end up in court, complexity of the process, time taken, costs incurred and the general outcome of cases need to be compiled to understand the true impact of the court as a credible institution to uphold consumer rights.</p> <p>Currently banks do not provide effective internal dispute or complaint handling mechanism which provides a first level redress to consumers. The ability of voluntary organizations or consumer associations to assist customers with their complaints or bring legal action against banks is limited currently.</p> <p>The absence of small claims court unlike in other countries prevents an affordable means for a common man to bring action against sellers, service providers and corporations. There is no established and thriving mediation process in Kazakhstan that provides an alternative avenue for customers to deal with consumer plight.</p> <p>The proposal under the draft financial consumer protection law of 2010 provides for the establishment of an ombudsman, but it is limited to mortgage cases, leaving most of the consumers without option to seek redress against infringement of consumer rights.</p> <p>AFN implements and enforces consumer protection in the financial system currently and performs the function of intermediating disputes between customers and banks. AFN has a department dedicated to consumer protection in the financial system. AFN has a complaints mechanism whereby consumers can lodge complaints either through letters, e-mail or telephone. AFN investigates the complaint by asking for an explanation from the bank and makes a decision on the complaint. It also ensures that the staff carrying out bank examination looks into the issues</p>

	<p>surrounding the complaints. In 2009, AFN received 2083 complaints (twice the number of 2008) on banks and similar organizations.¹¹ The most common complaints were- excessive interest rates on loans and fees for banking services; unilateral increase of rates and fees; high commission rates; improper calculation of commission rates of loan agreements and bank deposits. Some of these complaints sought assistance of AFN to -remove penalty fee for delay in repayment of loan, obtain grace period to pay off loans, and prevent foreclosure of pledged property.</p> <p>AFN investigated and imposed supervisory sanctions in relation to non-compliance of banking legislation. It imposed 15 written instructions; 7 written warnings; 10 letters of commitment. Fines were imposed on 1 bank and 1 credit organization.</p> <p>One can argue that the complaints mechanism of AFN is a formal out-of-court dispute settlement. However, it is clear that it is not so, given the procedures and outcomes. Though AFN's complaints mechanism helps in the enforcement of regulatory requirements especially those relating to consumer protection, it is a supervisory tool rather than a consumer redress tool. According to consumer associations, consumers do not benefit materially from the complaints mechanism and thus many do not complain.</p>
Recommendation	It is strongly recommended that the mandate of the new ombudsman to be established include not only mortgage complaints but all complaints arising in the banking sector.
SECTION F	GUARANTEE AND COMPENSATION SCHEMES
Good Practice F.1	<p><i>Depositor Protection</i></p> <ol style="list-style-type: none"> a. The law should ensure that the regulator can take prompt corrective action on a timely basis. b. The law on deposit insurance should be clear on: <ol style="list-style-type: none"> (i) the insurer; (ii) the classes of those depositors who are insured; (iii) the extent of insurance coverage; (iv) the holder of all funds for payout purposes; (v) the contributor(s) to this fund, each event that will trigger a payout from this fund to any class of those insured; (vi) the mechanisms to ensure timely payout to depositors who are insured. c. In the absence of deposit insurance, there should be an effective and timely payout mechanism in the event of insolvency of a bank
Description	The Banking Law provides for prompt corrective action on a timely basis. The law provides for clear, comprehensive and necessary provisions to enable the regulator to take necessary measures to ensure depositors protection and soundness of a bank. The foregoing is in addition to the prudential and supervisory measures such as bank examination on site and off site.

¹¹ AFN Annual Report 2009

The prompt corrective action that AFN can be taken is a broad range of activities. The relevant provisions illustrate the details –

In accordance with Article 45, in cases of worsening of the financial situation of a bank, the AFN shall be entitled to inquire shareholders on the necessity of financial improvement, change of administration or bank reorganization, including recommendations on:

- a. deposits acceptance limitation;
- b. authorized capital stock increase;
- c. termination of dividends payment and provisions increase;
- d. expenses reduction through closing of separate branches and representative offices, and through termination or limitations of additional employees hire;
- e. temporary or permanent dismissal of any official or employee of the bank;
- f. suspension or limitation of some types of banking operations with increased risk degree.

Under Article 46, when AFN discovers that a bank has violated prudential standards or AFN regulations, or that officials or employees of a bank have not taken needed actions or have undertaken illegal acts that may threaten the financial safety and stability of the bank, as well as the interests of its depositors, customers and correspondents, AFN can impose one or more of the following restricted enforcement measures on a bank:

- a) require a letter of commitment;
- b) draw up a written agreement with the bank;
- c) issue a warning;
- d) issue a written order, for compulsory execution;

A letter of commitment shall contain recognition of the existing defects and guarantee from the bank's management to eliminate such defects within strictly determined terms, specifying a list of planned actions.

A written agreement between the bank and AFN deals with the necessity to immediately remove the discovered defects and approve priority measures in connection with them.

A written order is the instruction for a bank to adopt compulsory corrective measures, directed to remove the discovered defect in a specified timeframe. An appeal of the written order in court shall not suspend its validity.

Banks shall be obliged to notify AFN of the execution of letter of commitment, written agreement or written order within the timeframe specified in each of these documents.

A written warning is a notice issued by AFN regarding the possibility of applying sanctions stipulated in article 47 to the bank, in the event that AFN discovers violations of the law, or if the defects are not removed within the timeframe specified by AFN.

	<p>The procedure for application of restricted enforcement measures shall be specified by AFN regulations.</p> <p>The measures mentioned in Article 46 may be also applied to a bank holding, organizations within a bank conglomerate, and large shareholders of a bank, if the AFN finds that violations, wrongdoings or omissions of these persons, their officials or employees worsened the financial situation of the bank.</p> <p>The National Bank of Kazakhstan also has the right to impose letter of commitment, written warning and written order if it discovers that a bank or credit institution violated legal requirements related to issues within its authority</p> <p>According to Article 47, AFN can also apply the following sanctions to a bank:</p> <ol style="list-style-type: none"> a. levy of penalty for reasons, specified by Kazakh laws; b. suspend or withdraw license for the execution of all or separate banking operations; c. temporary closing of a bank; d. withdraw permission for bank opening; e. remove officers and directors; f. exclude the bank from the deposit insurance scheme. <p>The powers and provisions in the law are sufficient to enable AFN to take necessary measures to take prompt corrective action.</p> <p>The Law on the Obligatory Insurance of Deposits Placed in the Second Tier Banks (with amendments as of 12.02.2009) provides the legal basis for the deposit insurance and related matters.</p> <ol style="list-style-type: none"> a. the insurer: Article 4 establishes the the Deposit Insurer as a non-commercial joint-stock company. Article 6 empowers the Insurer to undertake reimbursing to depositors of a member-bank from the day of Court decisions on compulsory liquidation effectiveness. b. the classes of those depositors who are insured: all depositors are covered. c. the extent of insurance coverage: depositor have the right to receive coverage for insured deposits as provided by this Law. If a depositor has several insured deposits in a member-bank, which are different in terms of types and currency, the Deposit Insurer shall reimburse total sum up to a maximum of one million tenge (around \$5,000). If a depositor opens deposits in several member-banks, the Deposit Insurer shall pay the coverage for each member-bank. The coverage amount shall be paid in the national currency . d. the holder of all funds for payout purposes: The Deposit Insurance System e. the contributor(s) to this fund, each event that will trigger a payout from this fund to any class of those insured: Event of insolvency. Article 18 provides that in the event of a compulsory liquidation of a member-bank the Deposit Insurer shall pay the depositors the coverage in the value of the deposit balance less the interest accrued but not more than one million tenge. In the event of compulsory liquidation of a member-bank during the period
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	<p>the Law #72IV of 23 of October 2008 “On introducing adjustments to a number of legislative acts of the Republic of Kazakhstan related to the issues of financial system stability” comes into force and till the 1 of January 2012, the Deposit Insurer shall pay coverage to the insured individual depositors in the value of the deposit balance less the interest accrued but no more than five million tenge. At the expiration of the period, determined by the present paragraph, the coverage shall be paid in amount specified by the article 18 of the Law “On the Obligatory Insurance of Deposits placed in the Second Tier Banks of the Republic of Kazakhstan”. The amount of coverage is per customer and per bank.</p> <p>f. the mechanisms to ensure timely payout to depositors who are insured. There is an orderly procedure for speedy pay out. 2 banks that went bankrupt required payment from deposit insurance. It was done within 3 months and without complaints. Article 21 provides detailed rules to ensure efficiency in payout.</p> <p>a. The Deposit Insurer shall publish an announcement concerning the compulsory liquidation of the member-bank and the commencement of coverage reimbursing with the name of the agent bank (or National Postal Operator in the event of no bank qualifying), duration and place(s) of payments or the delay in commencing the coverage as provided by article 23 of the Law, in periodicals, distributed within the Republic of Kazakhstan, in the State and Russian languages within fourteen working days of the relevant court judgment.</p> <p>b. In the event of the delay in paying coverage amount the Deposit Insurer shall also inform depositors of the commencement date, duration, place(s) and terms of payment by publishing announcements in periodicals distributed in the Republic of Kazakhstan in the State and Russian languages.</p> <p>c. A depositor has a right to obtain said information directly from the Deposit Insurer.</p> <p>d. A depositor of the compulsorily liquidated bank shall be entitled to apply to the agent bank for reimbursement with the original bank account agreements and (or) bank deposit and (or) deposit documents and their copies attached within six months of the announcement of the coverage commencement. The agent bank shall pay coverage to depositor only after submission of identifying documents.</p> <p>e. If the depositor’s rights of claims against the liquidated bank are confirmed the agent bank shall pay coverage within five working days of the documents being delivered to the agent bank.</p> <p>f. If the compulsorily liquidated bank acts as a creditor or guarantor of a depositor, the coverage amount shall be based on the balance remaining as a result of setting off the insured deposit and counterclaims of the member-bank.</p>
Recommendation	AFN should assess the awareness of consumers of the deposit insurance scheme.
Good Practice F.2	<p><i>Insolvency</i></p> <p>a. Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.</p> <p>b. The law dealing with the insolvency of banks should provide for</p>

	expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.
Description	<p>Depositors rank above secured creditors and after “trust payments” and wages.</p> <p>Article 74-2 of the Banking Law¹² lists the queue or order of priority of claims in the event of liquidation of a bank:</p> <ul style="list-style-type: none"> (i) claims of citizens, toward which the liquidated bank bears the responsibility for causing hazard to life and health through capitalization of respective periodical payments; (ii) settlements on remuneration of labor with persons, working under labor contract, and on payment of fees under author contracts; (iii) claims of individuals shall be settled on deposits and money transfer, future claims of organization on compulsory collective guaranteeing (insurance) of investments (deposits), on execution of obligations on repayment of compensation in the amount according to calculation, submitted by compulsorily liquidated bank, and claims on deposits, fulfilled at the expense of pension assets of accumulative pension funds; (iv) settlements with non-profit organizations; (v) settlements with insurance organizations ; (vi) claims of creditors on obligations, ensured by pledge of liquidated bank property, shall be settled; (vii) liabilities on taxes, charges, and other compulsory payments to budget, and on return of credits, issued from state budget; (viii) claims of legal entities; (ix) settlements with banks on interbank credits and with legal entities on deposit investments, not ensured by pledge of liquidated bank property; (x) settlements with other creditors. <p>The claims of every priority item shall be settled after claims of the previous queue have been completely settled.</p> <p>Articles 72-74 of the Banking Law deal with insolvency of banks and provide expeditious, cost-effective and equitable provisions to enable the maximum timely refund of deposits to depositors.</p>
Recommendation	No recommendation.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<p><i>Broadly based Financial Capability Program</i></p> <p>A broadly based program of financial education and information should be developed to increase the financial capability of the population.</p> <ul style="list-style-type: none"> a. A range of organizations –including the government, state agencies and non-governmental organizations– should be involved in developing and implementing the financial capability program. b. The government should appoint a ministry (e.g. the Ministry of Finance), the central bank or a financial regulator to lead and

¹² Law No. 2444 –August 31, 1995

	coordinate the development and implementation of the national financial capability program.
Description	<p>Though financial education was introduced in the curriculum at tertiary education some years back, consumers have not been provided with financial literacy in an effective way. There were no state sponsored consumer awareness or literacy campaigns that help customers to understand banking products and services till last year.</p> <p>The Regional Financial Centre of Almaty (RFCA) is an agency set up by statute to promote financial literacy. It is professionalized and well resourced, and has been aggressive in providing financial education to consumers throughout Kazakhstan. There is a hotline for consumers to call in when they have problems. There are financial literacy training printed materials (200,000 copies) twice a month that are distributed free of payment. RFCA has also published a variety of books/brochures relating to the protection of rights of consumers in the different sectors of the financial system.</p> <p>RFCA¹³ became the administrator of the program on enhancement of investment culture and financial literacy in September 2008. Its mandate on financial literacy has been extended till 2011. Amongst other things, its program objectives are to – create a public system of informing citizens of the possibilities of using various financial instruments and services; educate the public on managing personal budget; and inform the public on proper use of financial instruments and services existing in the market, and assess the risk associated with them. RFCA currently runs centers for information and education in 16 provinces, open to the public¹⁴. Nearly 280,000 people all over the country have interacted with these centers. RFCA also runs a free hot line to provide answers on financial services. Its website, http://www.fingramota.kz aims to provide an interactive learning platform to the public on basic knowledge for using financial instruments and personal budgeting. Since the website has only been in operation for a year, its impact in increasing the level of financial literacy in the public is yet to be known.</p> <p>According to research on financial literacy conducted by the Agency of the Republic of Kazakhstan on regulation of activities of the Regional Financial Centre of Almaty City, the average level of financial literacy in Kazakhstan is 20 points out of 32 points possible.¹⁵ The experts define this level as satisfactory.</p> <p>The research has also shown that population is mostly familiar with credits, deposits, and insurance policies; and that one in six respondents (17,1%) is willing to take special training on financial topics.</p>

¹³ Law on Regional Financial Center in Almaty (Law No. 145-III of 5 June 2006, as amended on 21 July 2007 by Law No. 309) <http://www.rfca.gov.kz>

¹⁴ RFCA Annual report for 2009-pg 62

¹⁵ Research developed under the Program on Enhancement of Investment Culture and Financial Literacy of the Population of the Republic of Kazakhstan for 2007-2011, available at Source: <http://www.rfca.gov.kz/7006>

	<p>The new Consumer Protection Law¹⁶ provides a role for consumer organizations to provide training programs for consumers. The National League of Consumers has been very innovative in delivering financial awareness and education programs, and has been able to build its financial resources based on some of these education programs. Following this example other smaller consumer organizations have expressed enthusiasm in providing training to consumers as they see that as a viable opportunity to raise funds for their operations.</p> <p>Nevertheless, the consumer financial literacy initiatives do not reach the grass root level and are limited to those residing in cities or having internet access.</p> <p>Since RFCA has only been in existence for 1 year, it is not possible to indicate how effective it has been. It will be useful to carry out baseline surveys and repeat them after 2- 3 years of awareness and literacy campaigns to measure the impact of financial literacy activities.</p>
Recommendation	<p>Impact evaluation mechanisms should be incorporated from the outset into all financial literacy initiatives in order to measure their effectiveness. It is important to develop effective targeted awareness programs to increase financial literacy of different segments of the population. Special effort should be put into developing consumer awareness and financial literacy initiatives to segments of the population living in rural areas or without access to internet services.</p> <p>Also, coordination should be strengthened among government authorities, consumer organizations and financial sector, to improve coordination and outreach and learn on lessons regarding effectiveness of implemented initiatives.</p>
Good Practice G.2	<p><i>Financial Education in Schools</i></p> <p>Schoolchildren should receive a planned and coherent program of financial education which is designed to give them the competence and confidence to manage their finances well during their adult lives.</p>
Description	<p>Financial education was introduced in the school curriculum for tertiary education some years back, but the impact of such measure has not been measured yet.</p> <p>The new CP Law requires that consumer protection be included in the school curriculum.</p> <p>.</p>
Recommendation	No recommendation.
Good Practice G.3	<p><i>Using a Range of Initiatives and Channels, including the Mass Media</i></p> <ol style="list-style-type: none"> a. A range of initiatives should be undertaken to improve people's financial capability. b. This should include encouraging the mass media to provide financial education, information and guidance.
Description	All form of media is being used whenever financial literacy activities are undertaken.

¹⁶ Law No. 274 –August, 2010

	<p>In particular, the National Consumer League keeps the media in the loop when carrying out financial consumer awareness programs.</p> <p>In terms of regular TV programs, there is a weekly program for seven minutes on the State TV channel that deals with consumer issues including financial services. Also a television show called “Your Exit” is aimed at raising awareness on all issues on financial matters and is broadcast in prime time since May 2009.</p> <p>RFCA has also used the media to promote consumer awareness on financial issues. In 2009 RFCA produced 5 video commercials (in Kazakh and Russian languages), including 4 video commercials on protection of rights of consumers of financial services and 1 covering the RFCA’s activity as a regulator of the financial system. Video commercials were transmitted 36 times per day during the period from January 1st until February 10 of 2009.</p> <p>However in general the media has no encouragement or specific incentive to provide financial education, information or guidance. Since there is no collaboration between the financial industry and the media in an effective way, the media has little reason to be engaged in financial literacy.</p>
Recommendation	There must be greater collaboration between the banking industry and the media.
Good Practice G.4	<p><i>Unbiased Information for Consumers</i></p> <p>a. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of financial products and services.</p> <p>b. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.</p>
Description	<p>AFN has published information on financial products and services through printed and electronic materials. In 2009, the AFN published 87 materials, interviews, taped news items, analytical materials. Every month, the AFN places on its website information containing key indicators of activities of financial organizations, number of complaints and appeals per financial organization, breaches of laws by financial organizations as well as sanctions taken.</p> <p>There is also a section on “Information for consumers of financial services” that consists of -</p> <ul style="list-style-type: none"> - “What does the consumer need to know” (video clips and instructions); - “To the attention of the consumer!”; - “Basics of financial literacy”; - “Financial dictionary”; - “Consumer complaints (analysis and statistics)”; - “Frequently asked questions” (with answers). <p>AFN has also published books/brochures to raise consumers’ awareness of financial</p>

	<p>matters. Unfortunately consumers complained that their content was legalistic, and asked consumer associations for help. Also there is little evidence of partnership between AFN and NGOs on improving consumer awareness in financial sector issues.</p> <p>The National Consumer League collaborates with the business community, mass media and other associations to carry out consumer awareness programs including weekly financial seminars at \$20. About 12-15 people attend the program weekly. The association also provides telephone lines in public places for consumers to seek information and assistance. In addition, there is no dedicated consumer association for financial services</p> <p>The new CP Law provides a role for consumer organizations to provide training programs for consumers.</p> <p>However, no information on key features, benefits and risks of different types of financial products and services are available for financial consumers.</p>
Recommendation	No recommendation.
Good Practice G.5	<p><i>Consulting Consumers and the Financial Services Industry</i></p> <ol style="list-style-type: none"> a. The government and state agencies should consult with consumers, industry associations and financial institutions to help them to develop programs that meet consumers' needs and expectations. b. They should also undertake consumer testing to try to ensure that proposed initiatives are likely to have their intended outcomes.
Description	<p>There is currently no independent publication by FIAK or consumer advocate group information on the costs, risks and benefits of financial products and services. Banks do not collaborate with consumer associations on financial literacy activities. Apart from that there is also no data on the financial literacy activities conducted by banks. In addition, there is no independent website that compares products, services, rates and charges of banks.</p>
Recommendation	<p>AFN or FIAK ought to provide the incentive to consumer protection association to collect and publish this data. This will help to improve competition and also bring down the rates in the long run as consumers become savvier.</p>
Good Practice G.6	<p><i>Measuring the Impact of Financial Capability Initiatives</i></p> <ol style="list-style-type: none"> a. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time. b. The effectiveness of key financial capability initiatives should be evaluated.
Description	<p>According to the research on financial literacy and investment culture of population in the framework of the Program on Enhancement of Investment Culture and Financial Literacy of Population for 2007-2011 conducted by Agency of the Republic of Kazakhstan on regulation of activities of the regional financial centre of Almaty city, the average level of financial literacy in the Republic of Kazakhstan is 20 points out of 32 points possible.¹⁷ The experts define this level as satisfactory.</p>
Recommendation	<p>It is important for RFCA to carry out well designed broad-based follow-up household surveys every 3-5 years to measure the impact of financial capability initiatives and</p>

¹⁷ Source: <http://www.rfca.gov.kz/6954>

	evaluate the need to refine or improve the design of such initiatives. It is also important that every financial capability initiative include a component on impact assessment to measure the effectiveness of the initiative.
SECTION H	COMPETITION AND CONSUMER PROTECTION
Good Practice H.1	<i>Financial Regulatory Policy and Competition Policy</i> Financial regulators and competition authorities should be required to consult with one another for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.
Description	There are clear provisions in the various laws to ensure collaboration between the financial regulatory policy and competition policy. A clear example can be found in the AFN Law. Article 15 provides for the interaction of the AFN with other Kazakh government bodies and bodies of other countries in charge of financial sector regulation and supervision . Law No. 144 Concerning Competition and Restriction of Monopoly Activities (January 19, 2001) is the main law that governs competition policy in Kazakhstan. The Competition Authority is in charge of implementing this law. The competition authority, the National Bank and AFN interact closely in the regulation of the financial system.
Recommendation	No recommendation.
Good Practice H.2	<i>Review of Competition</i> Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should: a. Monitor competition in retail banking. b. Conduct and publish periodic assessments of competition in retail banking, and make recommendations on how competition in retail banking can be enhanced.
Description	Under Article 6 of Law No. 144-2001 the Competition Authority manages the national policy for the development of commodity markets and competition; the prevention, restriction, and suppression of monopoly activities; <i>protection of the rights of consumers</i> ; supervision of compliance with antimonopoly legislation; regulation of prices; as well as coordinates the activities of other state bodies in this area. Articles 7 and 8 of the law equip the Competition Authority with sufficient powers to carry out its mandate. While monitoring may be done currently, there has been no report at the moment on the banking sector despite the persistent complaints from the public and also the move by AFN to bring in better consumer protection through its proposed 2010 amendments.
Recommendation	Given the key significance of the retail banking sector to the economy as a whole and to the welfare of consumers- the role of the competition authority is critical.

	<p>Kazakhstan's banking market is also highly concentrated. The top six banks control 78% of assets and the top three banks own 60% market share in the majority of products. The Competition Authority needs to monitor the banking sector rather closely and encourage better competition in the industry. It needs to also publish the assessment it carries out of the banking system.</p>
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CONSUMER PROTECTION IN THE SECURITIES SECTOR

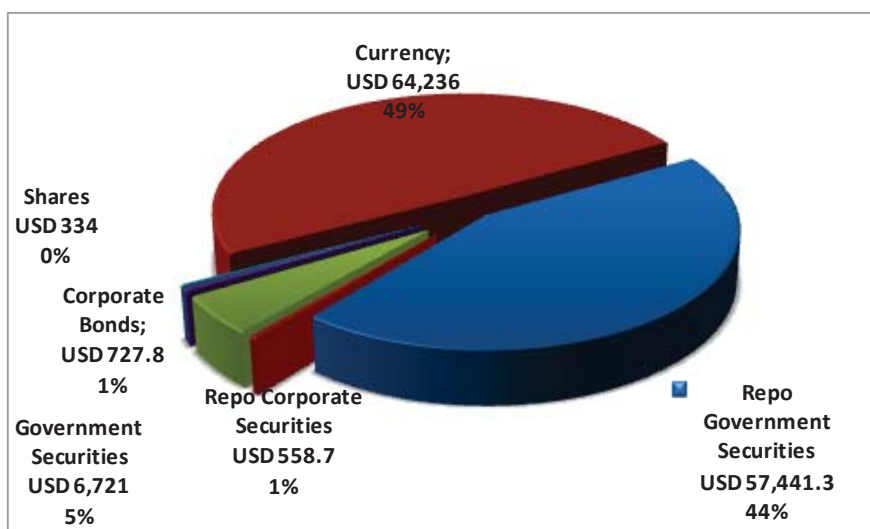
OVERVIEW

22. **Historically, consumer protection in the securities sector has developed somewhat differently than in the banking sector.** Bank customers in most countries enjoy deposit protection and strong prudential supervision of banks – factors that create a solid safety net for the customers. On the other hand, investors in securities are not guaranteed any returns, and hence, on average, are usually more sophisticated and financially educated than average bank customers. The most important market conduct regulations protecting the investors are those dealing with disclosure of a variety of investment information by industry intermediaries.

23. **AFN is the supervisory and regulatory authority for the financial sector.** AFN’s supervisory objectives are broadly “to ensure financial stability of the financial market and financial organizations and maintain confidence in the financial system in general; to ensure appropriate level of protection of interests of financial services consumers; and ensure a level-playing field for financial organizations with the aim to maintain bona-fide competition in the financial market”.

24. **The Kazakhstan Stock Exchange (KASE) was established in 1993 and is now a demutualized exchange that operates an organized market for foreign currency, government securities, corporate bonds and shares and derivatives.** Although KASE has substantial trade volume, most of the trade volume is in repos and foreign exchange. Securities market activity is dominated by debt issuances, mainly government and banking securities. The Ministry of Finance (MOF) issues government securities in dematerialized form, with the KASE serving as agent for the placement of the securities in the primary market. The government issues T-bills and bonds with various maturities of up to 5 years, Eurobonds, and discount papers and municipal bonds. The NBK also issues securities called short term notes for monetary purposes. Only some banks have access to primary auctions of NBK securities.

Figure 4 KASE Market Structure
(in USD million, as of 1 September 2010)



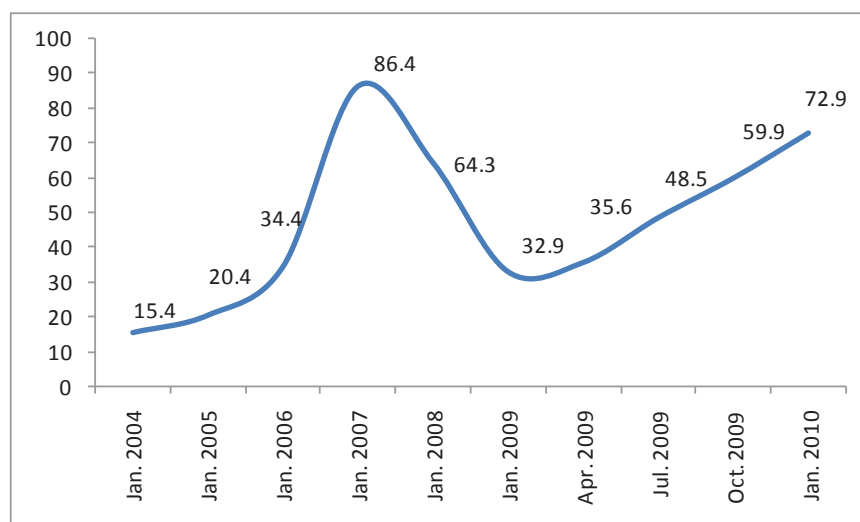
25. For 2009, debt securities represent the largest proportion of securities accepted for trading by KASE: corporate bonds 57%; government securities 24.8%; shares 17.7%; mutual funds 0.3% and securities of supranational financial organizations 0.2%.

Table 3 Securities accepted for Trading by the KASE

	Jan-2009		Jan-2010	
	Number of issues	Number of issuers	Number of issues	Number of issuers
Shares	98	74	98	72
Debt Securities	249	96	315	91
Securities of Investment Funds	1	1	2	2
Securities of Supranational Financial Organizations			1	1
Government Securities	89	2	137	2
Total	437	134	553	131

26. The KASE is relatively underdeveloped as an equity market with most of the best companies in Kazakhstan choosing to list in foreign markets. Among the reasons for the relative underdevelopment of the equity market are: attractive non-listed companies are state-owned which rely on banks for financing and prefer to list abroad; low shareholder value orientation of companies and weak corporate governance that leads to low market capitalization and trade velocity; limited access by international investors; low level of development of market infrastructure for equities and generally a lack of awareness and understanding by retail investors of share investments.

Figure 5: KASE capitalization to GDP (%)



27. The structure of securities holders in the Central Securities Depository (“CSD”) shows that the main holders of securities accounts are represented by state non-financial organizations (53.48%); non-residents (14.97%); financial organizations (banks, insurance companies, private pension funds, brokerage firms, pawnshops, exchange offices etc.; 13.6%) and deposit organizations (12.22%). The CSD is a not-for-profit joint stock company and is primarily responsible for providing

nominee services, settlement of trades that are executed on the stock exchange and OTC transactions involving CSD participants; providing depository services for securities; clearing of trades in the money market and stock market; acting as paying agent for redemptions of financial instruments and opening of bank accounts for participants for money transfers. Clearing and settlement is fully electronic and is done on a gross basis, i.e. for each individual transaction after it takes place (T+0). At present, neither CSD nor the KASE are considered SROs in Kazakhstan.

28. The Regional Financial Centre of Almaty (the “RFCA”) is a Government initiative to create a financial market operating according to internationally recognized standards of market regulation and best practices. It is a separate trading platform of the KASE with simplified access for non-residents and its own listing rules. The RFCA is managed and supervised by AFN and reports directly to the President. Disputes between RFCA members are solved either through the specialized financial court of RFCA or by way of arbitration.

29. A commodity exchange of Eurasian Trading System was set up in 2008 as a joint venture between the RFCA (40%) and the Russian Stock Exchange (60%) and offers spot and futures trading in agricultural products, petroleum products and metals. The commodity exchange is currently an institutional market even though there are plans to expand its investor base in the near future.

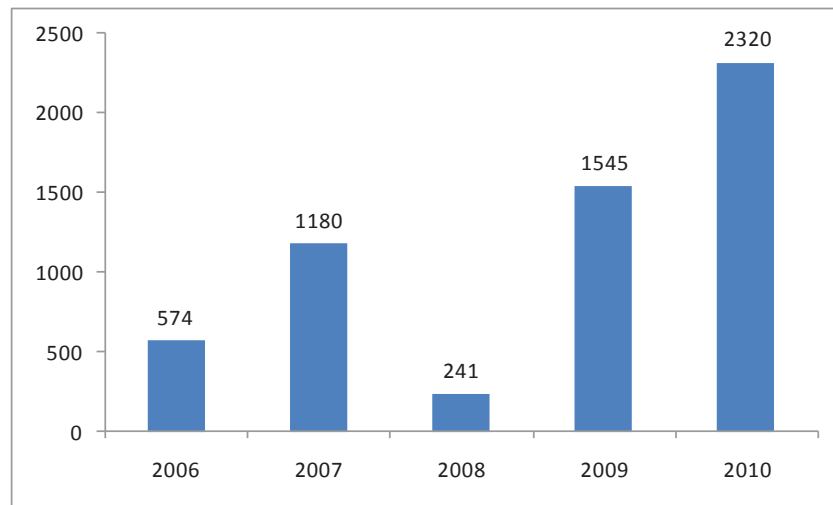
30. The fastest growing securities market product is mutual funds. As at 1 January 2010, there are 182 mutual funds out of which 143 were closed-end funds (KZT295.6 billion in assets), 16 were open-ended funds (KZT0.8 billion in assets and 41 joint-stock venture investment funds (KZT62.4 billion in assets). The closed-end mutual funds represent the largest portion of total mutual funds’ assets at 99% while the remaining 1% represents the open-end and interval type of mutual funds.

Table 4: Change in Assets by types of investment funds (KZT billion)

	Jan. 2009	Apr. 2009	Jul. 2009	Oct. 2009	Jan. 2010
Mutual Funds	154.4	178.5	299.4	305.6	298.5
Closed-end	150.7	175.5	296.9	302.7	295.6
Open-end	1.4	0.6	0.6	0.7	0.8
Interval	2.3	2.4	1.9	2.2	2.1
Joint-stock investment funds	165.6	96.3	104.3	59.1	62.4

Source: AFN

31. Nonetheless, the mutual fund industry is small. A handful of funds are open to the public (in the range of 20-25), a similarly limited number of fund managers and not many (according to some data, less than 5,000) retail investors. With few exceptions, fund management companies are a part of a securities business, and less so arms of large retail banks. Seemingly, most banks have not realised that providing mutual funds to their clientele may be an important tool of cross-selling.

Figure 6 Number of individuals investing in mutual funds

Source: AFN

32. The institutional investors in the securities markets are accumulation pension funds, tier two banks, insurance companies and professional participants in the securities market who place investments in liquid assets in compliance with prudential requirements.

LEGAL FRAMEWORK

33. **The Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations (AFN) is the agency responsible for implementing and enforcing consumer protection in the banking, securities, insurance and pensions sectors.** Its mandate under Article 3 of Law No. 474 of 2003 concerning the State of Regulation and Supervision of Financial Market and Financial Organizations (“AFN Law”) includes, among other things,

- To ensure stability of the financial markets and financial organizations and to maintain trust to the financial system as a whole; and
- To provide an appropriate level of protection for the interests of consumers of financial services and products.

34. **These provisions clearly establish the powers of the AFN in implementing and enforcing consumer protection in financial system.** In addition, Article 8 of the AFN Law states that one of the objectives of AFN is to implement measures associated with the prevention of violation of rights and legitimate interests of financial service users. Article 9(4) specifically authorizes AFN to prevent violation of the rights of users of financial services.

35. **The primary laws on the securities market in Kazakhstan are the Law on Securities Market (Law No. 461-II dated 2 July 2003), the Law on Investment Funds (Law No. 576-II dated 7 July 2004), the Law on Joint-Stock Companies (Law No. 415-II dated 13 May 2003) and a number of regulatory acts** issued by the AFN including among others, Resolution 317 Rules on Performing Broker-dealers Activities in the Securities Market (AFN Resolution No. 317 –August 27, 2005) and Resolution 209 on Regulation and Supervision of Financial Market and Financial Institutions, including risk

management rules contained therein (AFN Resolution No. 209 –September 26, 2009). Under the Law on Securities Market (SML), the AFN is charged with the authority to oversee stock exchanges, the CSD, broker dealers, fund managers, share registrars and transfer agents. The Investment Funds Law sets out the basic investment rules and limits for investment funds.

36. The AFN may carry out inspections of the activities of securities market participants to determine whether they are operating in compliance with the requirements of the securities laws. Article 108 of the SML provides that the AFN shall have the right to carry out inspections of activities of licensees for a number of reasons such as if there are complaints by investors; complaints by securities holders; complaints of professional participants of the securities market and self-regulatory organisations.

37. The Consumer Protection Department of the AFN is responsible for implementing, collecting, analyzing and dealing with complaints from users of financial services and products. The number of complaints and their breakdown is published in the AFN’s annual report. For the year 2009, AFN received 279 complaints from individuals and legal entities relating to the activities in the securities markets which represented 7.13% of the total number of complaints. Most complaints relate to alleged violation of shareholders’ rights by joint stock companies particularly in relation to the procedures for holding and convening general meetings of shareholders, the failure to pay dividends on shares by joint stock companies and the non-execution of client’s orders for securities transactions.

38. The Law on Joint Stock Companies (“JSCs”) imposes specific reporting and disclosure requirements on JSCs. In particular, JSCs are required to publish all information relating to payment of dividends and/or placement, conversion, or, in some cases, sale or re-purchase of shares. In addition, JSCs are required to publish their financial reports annually, and to report to the AFN semi-annually on the results of their share placements. Some stricter reporting requirements apply to public JSCs.

KEY RECOMMENDATIONS

39. A principles-based code of conduct should be developed for all participants in the securities industry and adopted by all industry participants. The code of conduct should be published and be part of the application form that is provided to investors. The FIAK should monitor its compliance by broker-dealers and impose fines in case of violations to the code of conduct. Consumer associations should also be encouraged to monitor the compliance with the code and highlight cases where insurers fail to comply.

40. Increased involvement of consumer organizations should be encouraged by providing them funding and resources, and by AFN engaging with them in its policy formulation responsibilities.

41. A financial ombudsman should be set up to provide a speedy, efficient and cost effective avenue for dispute resolution between the securities intermediaries and their customers. To ensure a high level of accountability and transparency, the ombudsman should be obliged to publish an annual report describing decisions taken by the ombudsman so that investors can identify the nature of the disputes referred to the ombudsman and assess the results of the ombudsman's actions.

42. As activities by unauthorized entities such as investment scams and unauthorized pyramid schemes can pose a serious threat to investor confidence in the capital market, the AFN should play a key role in alerting investors to illegal or fraudulent investment products. One useful approach would be to set up a “Consumer Affairs” section on the home page of its website that links to investor alerts, thus making it easy for investors (and their advocates) to identify possible scams and schemes from unauthorized entities —with regular distribution of press releases to the media. In addition, the law should be reviewed to empower the AFN to freeze assets of unauthorized activities that fall within its mandate so as to be able to prevent the dissipation of investors’ assets.

43. The AFN should educate other governmental agencies and investors as to its functions and responsibilities so that investors are clear as to whom they should send their complaints

particularly in regard to fraudulent investment schemes and pyramid schemes. In this regard, a high level coordinating committee between relevant agencies and AFN would be useful to ensure effective enforcement against investment scams and illegal pyramid schemes.

44. The law should be reviewed to introduce more detailed regulations to standardize the rights and duties of the securities brokers and investors across the industry. In addition, there should be more specific provisions in the regulatory framework relating to account transfers or the procedures for closing an account.

45. A standard industry-wide examination for determining the competency of individual sales persons in the securities industry should be required. In this regard, a “tiered” approach towards accreditation may be considered where different levels of complexity of financial products are required for different products.

46. A KYC rule should be required for the securities industry.

47. A suitability rule that establishes the due diligence responsibility of the securities intermediary should be required.

48. More detailed sales practice rules should be required for the securities industry as the current law appears to contain mostly general provisions relating to misrepresentation and misleading advertisements.

49. More capacity within AFN should be built to closely monitor advertising by securities intermediaries for securities products to ensure that they are not misleading or untrue.

50. The law should be reviewed to provide for more detailed requirements on the contents of the contract note on an industry-wide basis for securities.

51. The law should be reviewed to require more specific regulations on the procedure for contesting the accuracy of statements by the client of the securities intermediary.

52. The law should be reviewed to introduce clear provisions that require broker/dealers and management companies to immediately pay the customers any cash balances in their accounts and proceeds from sales when the payment is received by them.

53. AFN should specifically require that securities intermediaries provide information to their clients on how to seek a remedy, including redress, for problems arising out of interactions with the securities intermediaries. For example, the websites of such intermediaries should clearly identify portals for customer complaints and the intermediaries should also be required to prepare an annual report of compliance with their dispute-resolution policy.

54. FIAK should carry out concerted effort on consumer protection, participate with other voluntary organizations in financial literacy activities; accredit or carry out certification of specialized skills and provide information to consumers on financial products or services.

55. The media and the industry associations should be encouraged to promote consumer awareness of issues relating to consumer protection.

56. A broad-based follow-up household survey on financial literacy should be undertaken to measure the effectiveness of financial education and awareness initiatives in the financial sector.

REVIEW AGAINST GOOD PRACTICES IN THE SECURITIES SECTOR

	INVESTOR PROTECTION INSTITUTIONS
Good Practice A.1	<p><i>Consumer Protection Regime</i></p> <p>The law should provide for clear rules on investor protection in the area of securities markets products and services, and there should be adequate institutional arrangements for implementation and enforcement of investor protection rules.</p> <ol style="list-style-type: none"> There should be specific legal provisions in the law, which create an effective regime for the protection of investors in securities. There should be a governmental agency responsible for data collection and analysis (including complaints, disputes and inquiries) and for the oversight and enforcement of investor protection laws and regulations.
Description	<p>Consumer protection is recognized under Article 10 of the Civil Code which states that “the defense of the rights of the consumers is ensured by the means provided for in the present Code”. It also provides that “every consumer shall have the right to:</p> <ul style="list-style-type: none"> freely conclude contracts for the acquisition of goods and the performance of work and services; obtain proper quality of goods, services and work; obtain full and reliable information concerning goods, work or services; and form social organizations of consumers. <p>Until August 2010, consumer protection in financial system was governed by the 1991 Law on Consumer Protection. This law dealt with all consumer protection matters and was enforced by the courts. A consumer protection department in the government and an inspectorate were initially established but these were dissolved in 1996. The department was transferred to the Anti-Monopoly Commission but it was also dissolved later. Thus, there is no central body for consumer protection currently.</p> <p>In August 2010, a new consumer protection law was passed (Law No. 274 – August, 2010). Under Article 5 of the new law, the new body is mandated to -</p> <ul style="list-style-type: none"> ensure the implementation of state policies on consumer protection; submit proposals to the Government of Kazakhstan on the main directions of the state policy on consumer protection; carry out inter-sectoral coordination of public authorities on the improvement of legislation concerning the protection of consumer rights; take measures to improve the legislation concerning the protection of consumer rights; interact with the public associations of consumers, associations (unions) in the field of consumer protection; exercise other powers stipulated by laws , Acts of the President and the Government . <p>According to Article 2 of the new CP Law, consumer rights in the areas of financial sector are to be governed by the competent authority specified by the law relating to financial sector, which is AFN. Under Article 6, the State bodies overseeing specific areas of competence (among other bodies, the AFN) are in charge of enforcing the law, with the following responsibilities –</p>

- develop regulations to protect the rights of consumers;
- make proposals to the Government on improvement of legislation concerning the protection of consumer rights;
- examine the treatment of individuals or legal entities in the area of consumer protection;
- enforce the law on consumer protection;
- supervise the observance of the law concerning the protection of consumer rights; and
- exercise other powers stipulated by laws, Acts of the President and the Government.

The Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations (“AFN”) is the agency responsible for implementing and enforcing consumer protection in the banking, securities, insurance and pensions sectors. Its mandate can be found in the Law No. 474 of 2003 Concerning The State of Regulation and Supervision of Financial Market and Financial Organizations (AFN Law). Article 3 of the AFN Law provides that the purposes of state regulation and supervision of financial market and financial organizations shall be as follows:

- to ensure stability of the financial market and financial organizations and to maintain trust to the financial system as a whole; and
- to provide for the appropriate level of protection for the interests of financial services consumers.

These provisions clearly establish the power of AFN to implement and enforce consumer protection in financial system. In addition, Article 8 of the AFN Law states that one of the objectives of AFN is to, among other things, implement measures associated with the prevention of violation of rights and legitimate interests of financial service users. Article 9(2)(4) specifically authorizes the AFN to prevent violation of the rights of users of financial services.

Under the Law 461 Concerning Securities Market (“SML”), the AFN is charged in with the authority to oversee stock exchanges, the CSD, and brokerage firms. For the purposes of regulating and supervising securities market participants, some of the relevant powers of the AFN include:

- determine whether assets of the financial market constitute securities;
- carry out the public registration of the securities issuances except for those issued by the government;
- consider and approve the reports on the results of issuance and placement of shares, placement and payment of bonds, and annulment of the issues of securities;
- assign national identification numbers to government securities;
- determine the terms and the procedures for issuance, placement, circulation, and payment for securities, including derivatives;
- determine the terms and conditions and the procedure for suspension and renewal of the placement and circulation of securities and derivatives;
- keep the State Securities Registry and register of the licenses;
- carry out licensing of securities participants, and maintain the Register of Qualification Certificates;
- establish terms and conditions and the procedure for carrying out

	<ul style="list-style-type: none"> • professional activities in the securities market; • establish terms and conditions for firms involved in the management of pension assets and for institutional investors perform investment activities; • establish the procedures to carry out activities of securities tender organizers and self-regulated organizations; and • regulate and supervise the mutual funds industry. <p>The AFN may carry out inspections of the activities of securities market participants to determine whether they are operating in compliance with the requirements of securities laws. Article 108 of the SML provides that the AFN shall have the right to carry out inspections of activities of licensees for a number of reasons such as when it receives complaints from investors, securities holders, professional participants of the securities market and self-regulatory organisations.</p> <p>The Consumer Protection Department of the AFN is responsible for implementing, collecting, analyzing and dealing with complaints from users of financial services and products. The number of complaints and their breakdown is published in the AFN’s annual reports. For the year 2009, AFN received 279 complaints from individuals and legal entities relating to the activities in the securities markets which amount to 7.13% of the total number of complaints received. Most complaints relate to alleged violation of shareholders’ rights by joint stock companies particularly in relation to the procedures for holding and convening general meetings of shareholders, the failure to pay dividends and the non-execution of client’s orders for securities transactions.</p> <p>The Financial Institutions’ Association (FIAK) is perceived as an entity that promotes its members’ business interests rather than promoting high standards of business conduct in the industry. Its main objectives are to represent and advocate for the common interests of its members in governmental and other bodies, as well as to participate in efforts to improve legislation relating to the activities and interests of FIAK’s members. A majority of the financial market participants including banks, state financial development institutions, insurance companies, pension funds, securities market professional participants, leasing, mortgage, auditing and consulting companies, research and educational institutions, participate in FIAK.</p> <p>Consumer Associations</p> <p>Under Article 7 of the new Consumer Protection Law¹⁸, consumers have the right to establish public associations of consumers. Article 20 provides that consumers are entitled to join on a voluntary basis in voluntary associations of consumers. Article 22 indicates that the protection of rights and legitimate interests of consumers is carried out by relevant state authorities and courts or arbitration tribunals. According to Article 41, consumer associations are empowered to-</p> <ul style="list-style-type: none"> • make proposals for improving the legislation on protection of consumer rights to the authority and other government agencies; • apply to state agencies to assist in cases of violation of consumer rights • study the properties of consumer goods and the demand for them, and conduct polls to determine public opinion about the quality of goods (works, services)
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¹⁸ Law No. 274 –August, 2010

	<ul style="list-style-type: none"> • receive applications and complaints; • address state bodies in order to evaluate the quality of goods (work, service) in the case of income statements, consumer complaints; • represent consumer interests in government and in other public associations in the order determined by the laws; • sue in court for the benefit of consumers, including the benefit of an indefinite number of consumers; • investigate and disseminate information on consumer rights in the media; • implement social programs, projects and activities aimed at solving social problems, regarding the protection of consumer rights on the basis of state social orders. <p>Article 43 provides that violations of the consumer protection law are punishable by the Kazakh laws.</p> <p>A reading of the law suggests that the new consumer protection law is intended to pave the path for better funding, activities, sustainability of consumer associations and better improved consumer protection in Kazakhstan. The number of consumer protection associations has dwindled from 100 over in 1991 to 4/5 today, having only the National Consumer League of Kazakhstan dealing with financial products or services. These consumer organizations suffer from lack of membership, funding and collaboration with government, industry and regulators. Most of the organizations are very small operating with volunteers and less than 10 members (one association only had 4 members). Their major problem is the lack of funding and support to carry out their activities. Nevertheless, these grass root organizations are the only accessible points for the poor and socially disadvantaged citizens.</p> <p>The biggest flaw in the consumer protection regime of Kazakhstan is that there is no consumer court or consumer ombudsman that provides free consultation and service to consumers of securities products. Most consumers cannot afford to the service of a lawyer to represent the consumer in court. The National Consumer League of Kazakhstan is a strong institution with more than 7000 members and 125 institutional members. It collaborates closely with the business community and carries out activities to improve awareness and literacy amongst consumers. However financial entities do not collaborate with the institution and the association provides on its own, weekly financial literacy training for a fee.</p> <p>A general complaint from consumer associations is that the regulator does not actively seek or use their input, which is based on the need and experience of real consumers.</p>
Recommendation	<p>Even though the new Consumer Protection law recognizes that the competent authority for consumer protection for the financial sector would be the AFN, it would be useful to have explicit arrangements between the activities of the two agencies (the new Agency for Consumer Protection once it is established and the AFN) to ensure that there is clear accountability for consumer protection for the financial sector. Many jurisdictions have found that a MOU between the two agencies helps to clearly define their relationship, jurisdiction and responsibilities. It would be useful that AFN consider entering into such an MOU with the Agency for Consumer Protection, once it is established.</p>

	<p>It would be useful for AFN to seek the input of consumer organizations in developing policies on consumer protection as these consumer organizations have direct experience dealing with consumers of financial products.</p> <p>The Government should consider providing targeted funding and necessary resources for legitimate consumer associations to carry out consumer protection activities in Kazakhstan.</p>
Good Practice A.2	<p><i>Code of Conduct for Securities Intermediaries and Collective Investment Undertakings.</i></p> <ol style="list-style-type: none"> a. Securities Intermediaries and CIUs should have a voluntary code of conduct. b. Securities Intermediaries and CIUs should publicize the code of conduct to the general public through appropriate means. c. Securities Intermediaries and CIUs should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.
Description	<p>The stock exchange is currently not empowered as a SRO. The KASE used to have SRO powers before 2002, but these were abolished in a further reform to the SML as KASE in fact did not operate as a SRO as provided in the SML. The CSD is not recognized as a SRO in the SML and it falls under the regulation and supervision of the AFN.</p> <p>Interestingly, there are explicit provisions in the SML that envisage the role of a SRO to assist in dispute resolution, provide training and establish uniform rules of conduct for securities activities. Article 93 of the SML provides for the functions of a self-regulatory organization which among other things, include:</p> <p style="padding-left: 40px;">settlement of disputes between members and their clients; development of training modules and conducting training ; establishment of uniform rules and standards; and supervision of activities of its members in the securities markets and enforce compliance.</p> <p>Article 100 of the SML provides that a self-regulatory organisation shall carry out the protection of rights and interests of its members' clients by way of considering their petitions. The self-regulatory organisation shall also impose measures upon its defaulting members.</p> <p>Hence, it is left to FIAK to take steps to enhance conduct of business standards for the securities industry. However, FIAK is not perceived to be a body that champions the enhancement of professional standards and ethics of the financial services industry, as it is largely an organization that represents the business interests of its members and it is “bank-centric”.</p> <p>To-date, there is no standardized code that is applicable across the securities industry, with each broker/dealer creating its own internal procedures in compliance with the risk management framework that is required by AFN.</p> <p>It would be very useful for the existence of a standard industry-wide code of conduct to help achieve the set of consumer protection objectives in the AFN law although there is a general obligation for each securities market intermediary to</p>

	create an internal conduct regulation under the broad risk management framework that is imposed by the AFN pursuant to Resolution 209 and Resolution 317 ¹⁹ .
Recommendation	<p>To increase investor trust, a code of conduct would be useful in the current environment, particularly if it is published, and should be considered by the securities industry.</p> <p>FIAK needs to –</p> <ul style="list-style-type: none"> • Carry out concerted effort on consumer protection, participate with other voluntary organizations in financial literacy activity, accredit or carry out certification of specialized skills, provide information to consumers on financial products or services to customers. • Adopt a voluntary code of conduct. • Provide comprehensive information on its website that helps or promotes consumer literacy on financial products and services. • Take steps to improve conduct of business standards for broker/dealers and fund managers respectively; issue brochures and educational material in addition to the information on their website and improve level of skills in the securities industry through a training institute. • Take active steps to address the foregoing urgently to improve the conduct of business standards in the securities industry so that consumer protection can be driven by the market instead of being directed by AFN.
Good Practice A.3	<p><i>Other Institutional Arrangements</i></p> <ol style="list-style-type: none"> a. The judicial system should provide an efficient and trusted venue for the enforcement of laws and regulations on investor protection. b. The media should play an active role in promoting investor protection. c. The private sector, including voluntary investor protection organizations, industry associations and, where permitted, self-regulatory organizations should play an active role in promoting investor protection.
Description	<p>a. The judicial system is one of the venues for investors to bring complaints against securities intermediaries, but is expensive and time consuming and does not appear to be useful for small complaints by retail investors.</p> <p>The court system is a three-tier system composed of regional courts, district courts and the Supreme Court as the highest judicial body. The regional courts are of common jurisdiction and try most cases in the first instance. The judgments of regional courts may be appealed to the district courts, while decisions of district courts may be appealed to the Supreme Court. There are also specialized courts including the recently created economic courts. Cases that are in the competence of the specialized courts are judged in the first instance in the relevant specialized court.</p> <p>Despite these developments, there is strong perception that weaknesses of the overall judicial system remain where several rulings might suggest that judicial independence is very much open to doubt.</p> <p>b. The media comprising financial news and TV shows appear to cover financial sector news and developments.</p>

¹⁹ AFN Resolution 317 –August 27, 2005; AFN Resolution No. 209 –September 26, 2009

	<p>c. There is hardly any consumer organization that focuses on financial products or services. The number of consumer organizations in Kazakhstan has dwindled from 100 over in 1991 to 4/5 today. These consumer organizations suffer from lack of membership, funding and collaboration with government, industry and regulators. Most of these are very small operating with volunteers with less than 10 members except for the National Consumer League of Kazakhstan. Their major problem is the lack of funding and support to carry out their activities. Nevertheless, these grass root organizations are the only accessible points for the retail investors.</p>
Recommendation	<p>The media and the industry associations should be encouraged to promote consumer awareness of issues relating to consumer protection.</p> <p>Increased involvement of consumer organizations should be encouraged by providing them funding and resources and engagement with them by the AFN in its policy formulation responsibilities.</p> <p>In view of the weak capacity of the courts, the setting up of a financial ombudsman for the disputes between investors and securities intermediaries would be critical as it would provide a speedy, efficient and cost-effective avenue for dispute resolution between the securities intermediaries and their customers.</p>
Good Practice A.4	<p>Licensing</p> <p>a. All legal entities or physical persons that, for the purpose of investment or speculation, solicit funds from the public should be obliged to obtain a license from the supervisory agency.</p> <p>b. The securities supervisory agency should have broad powers to investigate fraudulent schemes.</p>
Description	<p>AFN's legal authority to investigate fraudulent schemes would appear to be limited. Article 9 (2)(5) of AFN Law confers on the AFN authority "to detect and prevent unauthorized activities associated with the rendering of financial services or the issue of financial instruments" in its audit of licensed entities and their affiliates. Hence, Article 4 of the AFN Law²⁰ prohibits unauthorized activities in the financial market by not allowing persons to carry on activities in the financial markets without first obtaining the appropriate licenses under Kazakh laws. The AFN Law even provides that transactions that are entered into by such unauthorized persons would be rendered invalid. Article 45 of the SML empowers the AFN to license persons who carry on the activities relating to dealing; depository functions; custodial activities; portfolio management; securities registration; pension fund management; and other types of activity specified by AFN. However, AFN lacks the power to freeze assets in order to prevent the dissipation of assets in the interest of investor protection.</p> <p>If an unauthorized investment or pyramid scheme is structured in such a way that it is selling a security, then Article 4 of the AFN Law could be used by the AFN to deal with such unauthorized schemes. Nonetheless, AFN's power in this regard would appear to be limited to invoking its supervisory powers in the type of measures it can take against such illegal activities.</p>

²⁰ Law No. 474 –July 4, 2003

	<p>Under the Civil Code, the solicitation or acceptance of money by unauthorized entities is deemed illegal and the enforcement of this provision would appear to fall on the financial police. The financial police however may lack the expert knowledge and skills to deal with such financial fraud. (to be verified)</p> <p>Activities by unauthorized entities such as investment scams and unauthorized pyramid schemes can pose a serious threat to investor confidence in the securities market. These investment scams can take on a variety of forms and are able to fall through the gaps in jurisdiction of the various government agencies. Even though interviews with stakeholders in Kazakhstan would suggest that at present, such unauthorized activities may not be a prevalent problem, adequate mechanisms should be put in place to ensure that there is no regulatory gap and there is effective enforcement by the relevant agencies.</p>
Recommendation	<p>AFN should educate other governmental agencies and investors as to its functions and responsibilities so that investors are clear as to whom they should send their complaints. A high level coordinating committee between relevant agencies would be useful to ensure effective enforcement.</p> <p>AFN should play a key role in alerting investors to illegal or fraudulent investment products. One useful approach would be to set up a “Consumer Affairs” page on the home page of its website. The page could link to consumer and investor alerts, thus making it easy for consumers (and their advocates) to identify possible scams and schemes from unauthorized entities — with regular distribution of press releases to the media.</p> <p>In addition, AFN should have the legal authority to freeze assets of unauthorized activities that fall within its mandate so as to be able to prevent the dissipation of investors’ assets.</p>
SECTION B	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	<p><i>General Practices</i></p> <p>There should be disclosure principles that cover an investor’s relationship with a person buying or selling securities, or offering to do so, in all three stages of such relationship: pre-sale, point of sale, and post-sale.</p> <ol style="list-style-type: none"> a. The information available and provided to an investor should inform the investor of: <ol style="list-style-type: none"> (i) the choice of accounts, products and services; (ii) the characteristics of each type of account, product or service; and (iii) the risks and consequences of purchasing each type of account, product or service. b. A securities intermediary or CIU should be legally responsible for all statements made in marketing and sales materials related to its products. c. A natural person acting as the representative of a securities intermediary or CIU should disclose to an investor whether he is licensed to act as such a representative and by whom he is licensed.
Description	<p>There is a broad and explicit requirement under Article 103 of the SML for the disclosure by a securities intermediary to its clients in regard to relevant information relating to risks and conflicts of interests. Article 103 of the SML provides that a securities intermediary must provide information to its clients regarding the</p>

	<p>accounts and services that it offers and the risks related to the products or services; and information affecting the client's rights and interests including any potential and actual conflicts of interest. Article 103 also states that the client must be provided with the opportunity to peruse all available information.</p> <p>Section 2(10) of Resolution 317 further elaborates on the type of information that must be given by a broker/dealer to an investor such as:</p> <ul style="list-style-type: none"> • the broker/dealer's financial statements for the last reporting period; • information relating to the broker/dealer's compliance with prudential standards dealer; and • information on sanctions taken by the AFN against the broker/dealer. <p>In addition, the internal documents of a broker/dealer may set additional duties concerning disclosure of information to his clients. This is also required of mutual funds under the Investment Funds Law (henceforth, IFL) (Law No. 576-II –July 7, 2004) and Resolution 209 (AFN Resolution No. 209 –September 26, 2009).</p> <p>For mutual funds, Article 42 of the IFL provides that the management company of an investment fund must disclose information regarding the fund in accordance with the requirements of the law. Article 45 of IFL further provides that information regarding the investment fund must include:</p> <ul style="list-style-type: none"> • Name of the investment fund; • Name, date and license number of the management company; • Information about the address and contact details of the management company; • Indication about value of shares/units and statement that the results of past investment performance is not indicative of future performance and that the state does not guarantee return on mutual funds; and • Warning to investor to assess the risks and rewards of investing in the investment fund before a commitment is made by the investor. <p>Resolution 209 requires, among other things, that the investment manager state in the “investment declaration” the following:</p> <ul style="list-style-type: none"> • goals and strategies of investing clients' assets; • a description and list of investment objects; • the position limits of investments by types of financial instruments and foreign exchange exposures; • conditions and limitations imposed on the investment activities, including the maximum allowable amount of the loss of client assets; • policy on hedging and asset diversification of clients' assets; • information on the major risks associated with investment activities; and • policy on remuneration. <p>Paragraph 13 of NBK Resolution 137 on the activities of investment portfolio management further provides that the manager of a portfolio is required to provide, among other things, the following information to a client:</p> <ul style="list-style-type: none"> • A notarized copy of its license; • Its latest financial statements; • Information regarding the level of compliance with prudential requirements by the manager; and
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	<ul style="list-style-type: none"> Information about any sanctions that may have been taken against the manager by AFN or the SRO. <p>Both the Civil Code and IFL are silent about the obligations of securities intermediaries regarding sales and promotional materials and the way in which such materials should be presented. The law also does not make explicit that such intermediaries must be legally responsible for all statements made in marketing and sales materials that they produce related to their products.</p>
Recommendation	The law should explicitly require that securities intermediaries be legally responsible for all statements made in marketing and sales materials related to their products.
Good Practice B.2	<p><i>Terms and Conditions</i></p> <p>Before commencing a relationship with an investor, a securities intermediary or CIU should provide the investor with a copy of its general terms and conditions, and any terms and conditions that apply to the particular account. Insofar as possible, the terms and conditions should always be in a font size and spacing that facilitates easy reading. The terms and conditions should disclose:</p> <ol style="list-style-type: none"> Details of the general charges; The complaints procedure; Information about any compensation scheme that the securities intermediary or CIU is a member of, and an outline of the action and remedies which the investor may take in the event of default by the securities intermediary or CIU; The methods of computing interest rates paid or charged; Any relevant non-interest charges or fees related to the product; Any service charges; Any restrictions on account transfers; and The procedures for closing an account.
Description	<p>The main provisions regulating broker/dealers are included in Article 63 of SML which provides that the relationship between a broker and its clients shall be on the basis of contract for brokerage services governed by agency and commission norms as established by the Civil Code.</p> <p>Resolution 317 makes it mandatory for the broker to provide a range of information to a client before he signs up for brokerage services including the broker/dealer's latest financial statements; information relating to its compliance with prudential requirements imposed by AFN; information regarding any sanction that may be taken by AFN against the broker/dealer; information pertaining to fees and any laws regulating activities of broker/dealers and procedures for registering deals with financial instruments. In the process of making and executing a brokerage agreement, a broker and (or) dealer is obligated to inform the client of any conflict of interests.</p> <p>During the course of the relationship that the client has with the broker/dealer, Resolution 317 provides that a brokerage agreement must contain terms on how clients' orders are to be given to a broker/dealer, procedures for the confirmation of orders by a broker/dealer and statements on fulfilling the clients' orders by a broker/dealer. The notification that the broker/dealer must send to the client must be in written form and sent by post, courier, email or by fax/telex/telegraph. There are no specific provisions related to account transfers or the procedures for closing an account.</p> <p>For management companies of investment funds, Resolution 209 specifies that a</p>

	<p>contract to manage an investment portfolio or investment declaration must make provisions for the goals and strategies of investing clients' assets; a description and list of investment objects; the limits of investing clients' assets by types of financial instruments and the share of foreign exchange exposure; the conditions and limitations imposed on the investment activities, including the maximum allowable amount of the loss of client assets; hedging and diversification of clients' assets policies; information on the major risks associated with investment activities and policy of remuneration and charges.</p> <p>Notwithstanding these provisions, more detailed regulations in this area would be useful in order to standardize the rights and duties of the securities intermediaries across the industry. It should not be left up to individual negotiations considering that the professional capacity of securities intermediaries still needs strengthening. In this regard, all investors and brokers should have the same rights and duties.</p>
Recommendation	<p>More detailed regulations are needed in this area in order to standardize the rights and duties of the securities brokers and investors across the industry. It should not be left up to individual negotiations. All investors and brokers should have the same rights and duties.</p> <p>In addition, there should be more specific provisions relating to account transfers or the procedures for closing an account.</p>
Good Practice B.3	<p><i>Professional Competence</i></p> <p>Regulators should establish and administer minimum competency requirements for the sales staff of securities intermediaries and CIUs, and collaborate with industry associations where appropriate.</p>
Description	<p>Even though the SML imposes minimum competency requirements for executives of a securities intermediary (those in senior management including the CEO, CFO etc.), it does not require sales staff in the securities industry to be accredited under competency exams. The situation is similar for agents who have arrangements with securities intermediaries to distribute investment fund products, in that the AFN expects the senior management of the securities intermediary to be responsible to ensure that they possess minimum competency besides their compliance with regulatory requirements.</p> <p>This was not the case prior to 2005 where the AFN set the minimum competency requirements and approved the curriculum. The rationale for the AFN's regulatory approach seems to be based on the expectation that management of the securities industry shall be responsible for its staff and sales personnel including as to whether they possess the requisite qualifications and competency. This is an approach that is adopted commonly in the banking sector.</p> <p>There is also no competency requirement or examination that is administered by an industry association. However, some large securities intermediaries give training to their staff or agents, but it is not mandatory.</p> <p>Hence, the current system in Kazakhstan puts responsibility on the broker/dealer or investment management company for training sales staff and they are liable for the conduct of the sales staff.</p> <p>One of the best ways to deal with complaints is provide investors with informed,</p>

	<p>objective advice at the beginning of the contract or investment in order to avoid misunderstanding or false expectations for returns on investments. By relying on intermediary liability to provide an incentive for good sales practices is not enough since investors would need to incur high litigation costs in pursuing claims in courts. For these reasons, there is much benefit in requiring that sales people be formally trained through a certified system.</p> <p>In this regard, some other markets have adopted a “tiered” approach towards accreditation where different levels of complexity of financial products are required for different products. Typically, for Tier 1 products that are simple products, training and supervision from the financial institution would be sufficient. Tier 2 would relate to complex products, such as pension funds, collective investment funds or life insurance that include a savings component. For this, training and certification could be done by the industry association under competency guidelines set by the supervisory agency. Tier 3 would be the highest level covering certified financial advisors (or planners). For Tier 3 certification, individuals would be obliged to complete extensive training conducted by the supervisory agency, or a program under the direct review by the supervisory agency. Tier 3 individuals would be able to sell any and all products offered by any financial institution.</p>
Recommendation	As the securities market develops in Kazakhstan and demands for different levels of skills and competence, a standard industry-wide examination for determining the competency of individual sales persons should be required. The requirements can be varied according to the level of complexity of the products applying a “tiered” approach.
Good Practice B.4	<p><i>Know Your Customer (KYC)</i></p> <p>Before providing a product or service to an investor, a securities intermediary or CIU should obtain, record and retain sufficient information to enable it to form a professional view of the investor’s background, financial condition, investment experience and attitude toward risk in order to enable it to provide a recommendation, product or service appropriate to that investor.</p>
Description	While there are requirements for the establishment of internal control procedures to assure compliance with the laws and regulations, as well as requirement of risk management capacity and procedures, securities intermediaries are not required to “know their customer” before providing specific advice to a customer. Furthermore, securities intermediaries are not required to treat all clients equally in cases where conflicts of interest arise between several of the firm’s clients.
Recommendation	A KYC rule should be incorporated into the regulatory framework for the securities industry.
Good Practice B.5	<p><i>Suitability</i></p> <p>A securities intermediary or CIU should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor.</p>
Description	Even though there are extensive provisions in the SML, IFL and the resolutions in relation thereto, regarding the nature of information to be disclosed by a securities intermediary to its clients in regard to their investments, there is no concept of “suitability” rule in the law and subsidiary laws and resolutions by AFN.

	<p>Different investors, due to factors such as age, health, investment goals and risk appetites, will have different suitability for different type of financial instruments. Determining which investments are appropriate for the investor requires full and clear disclosure of the characteristics of the investment and expert advice as to the benefits and risks with each investment. The situation is aggravated by the lack of training on the part of the staff offering the financial instruments and the fact that market-based financial instruments with high risk are being sold in an environment usually associated with low risk.</p> <p>However, the AFN is currently working on the definition of a “qualified” investor in the plan towards differentiating the due diligence burden that a securities intermediary must apply in determining suitability of investments for their clients.</p>
Recommendation	A suitability rule that establishes the due diligence responsibility of the securities intermediary should be incorporated into the regulatory framework for the securities industry.
Good Practice B.6	<p><i>Sales Practices</i></p> <p>Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, CIUs and their sales representatives should:</p> <ol style="list-style-type: none"> a. Not use high-pressure sales tactics; b. Not engage in misrepresentations and half truths as to products being sold; c. Fully disclose the risks of investing in a financial product being sold; d. Not discount or disparage warnings or cautionary statements in written sales literature; e. Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation. <p>Legislation and regulations should provide sanctions for improper sales practices.</p>
Description	There are provisions in the SML ²¹ , IFL, Resolutions 317 and 209 that deal with the responsibilities of the securities intermediary in regard to their brokerage and investment management activities. However, these provisions contain mostly general provisions related to misrepresentation and misleading advertisements. Detailed sales practice rules do not appear to be included in the regulatory framework for the securities markets.
Recommendation	More detailed sales practice rules should be put in the regulatory framework for the securities markets.
Good Practice B.7	<p><i>Advertising and Sales Materials</i></p> <ol style="list-style-type: none"> a. All marketing and sales materials should be in plain language and understandable by the average investor. b. Securities intermediaries, CIUs and their sales representatives should ensure their advertising and sales materials and procedures do not mislead the customers. c. Securities intermediaries and CIUs should disclose in all advertising, including print, television and radio, the fact that they are regulated

²¹ Law No. 461-II –July 2, 2003

	and by whom.
Description	<p>The new Consumer Protection Law establishes basic rights of a consumer (that would include a consumer of financial service) including the consumer's right to obtain complete, timely and accurate information about the product or service that is marketed to the consumer. If the consumer is provided inaccurate and misleading information about a product or service, the consumer is entitled to terminate the contract and demand for damages for his losses.</p> <p>Article 6 of the Law on Advertising²² stipulate that advertisements should be reliable and comprehensible by the general public without the benefit of technical knowledge. Article 14 of the Law on Advertising deals specifically with advertising of financial, insurance, investment and securities services and prohibits, among other things, the forecast or guarantee of future performance of profits of the market value of securities or if advertisements are misleading in the omission of material terms and conditions.</p> <p>Regarding securities regulation, pursuant to Resolution 317, a broker/dealer is prohibited from publishing in the mass media any unreliable or misleading information in relation to market prices, volume and other relevant information relating to financial instruments. However, there is no definition of the meaning of "unreliable or misleading".</p> <p>Article 41 of the IFL prohibits management companies of investment funds from publishing in advertisements and mass media, information on the profitability of its investments for a period less than one year. In addition, Article 45 IFL prohibits altogether any publication in mass media, and dissemination in the form of outdoor advertising, of information on investment funds of private equity, except for notifications to shareholders.</p> <p>The IFL has specific provisions that disallow the management company from providing false or misleading information in regard to investment funds-</p> <ul style="list-style-type: none"> • guarantees of future profitability of investment activity of incorporated investment fund or management company; • comparison of investment activity not based on actual calculations of profitability and net asset value of the investment fund; • statements with regard to its future investments that contain guarantees of investment security and stability of profits or expenses; • Exaggeration of strength of management skills or characteristics of incorporated investment fund or management company, as well as connection with state agencies. <p>Nonetheless, more guidance can be given in the IFL and the subsidiary legislation on what is meant by unreliability and misleading advertisement by securities companies. For example, there are no detailed regulations on permissible advertising practices in the securities sector other than the general requirement not to make misleading statements. The result of the lack of specific guidance is that</p>

²² Law № 508-II –December 19, 2003

	compliance with the abovementioned rules would inevitably be dependent on individual intermediaries' compliance capacity.
Recommendation	<p>More specific guidance can be provided by AFN in the form of policy explanatory notes to the industry on what may constitute legitimate advertising by securities intermediaries and what is meant by the “unreliable and misleading” advertisement rule under the SML.</p> <p>More capacity within AFN should be built to closely monitor advertisements by securities intermediaries to ensure that they are not misleading or untrue.</p>
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<i>Segregation of Funds</i> Funds of investors should be segregated from the funds of all other market participants.
Description	<p>The SML mandates the segregation of all securities holdings. Segregation of accounts is clearly stated in Article 45 paragraph 5: “Money and securities of the clients (deponents) must be accounted by a licensee separately from its own assets, which shall not be included in the liquidation mass in case of bankruptcy or voluntary liquidation of the licensee”.</p> <p>Segregation of accounts is also referenced in Articles 74 and 57. Nominal holding of securities is allowed to the CSD, custodian banks, brokers-dealers, having the right of opening customer accounts for nominal holding of securities. In Kazakhstan only commercial banks can be custodians.</p> <p>Resolution 209 (Article 8) provides that the risk management system to be maintained by the broker/dealer should provide for procedures to ensure compliance with accounting of client assets requirements and procedures aimed at preventing misuse of customer funds.</p> <p>Resolution 317 (Article 36) provides that funds belonging to clients must be maintained with a custodian (which is a licensed bank) that has a long-term credit rating not lower than "BB-" by the international scale of S&P or equivalent.</p>
Recommendation	No recommendation.
Good Practice C.2	<i>Contract Note</i> Investors should receive a detailed contract note from a securities intermediary or CIU confirming and containing the characteristics of each trade executed with them, or on their behalf. The contract note should disclose the commission received by the securities intermediary, CIU and their sales representatives (expressed as total expenses as a percentage of total assets purchased).
Description	Resolution 317 (Article 21) provides that a brokerage agreement should, among other things, spell out the ways in which the clients' orders are delivered to a broker/dealer and the procedures for the confirmation of the clients' orders by a broker/dealer and submission of reports upon fulfilling clients' orders”. In the event of dispute on the accuracy of the contract note, the client may deal with the broker/dealer directly.

	<p>Notwithstanding the above, the law does not have sufficiently specific requirements for the contents of the contract between a broker/dealer and its client. There are some general provisions in these rules, but they are not specific on the information that must be provided in the contract note to the client.</p> <p>However, many in the industry consider this to be an issue that is contractual in nature between the broker/dealer and the investor and that there may not be any need for additional regulation.</p>
Recommendation	More detailed requirements on the contents of the contract note on an industry-wide basis should be introduced.
Good Practice C.3	<p>Statements</p> <p>An investor should receive periodic, streamlined statements for each account with a securities intermediary or CIU, providing the complete details of account activity in an easy-to-read format.</p> <ol style="list-style-type: none"> a. Timely delivery of periodic securities and CIU statements pertaining to the accounts should be made. b. Investors should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period. c. When an investor signs up for paperless statements, such statements should also be in an easy-to-read and readily understandable format.
Description	<p>Resolution 209 requires broker/dealers to establish procedures to ensure compliance with proper accounting of clients' assets. In addition, Resolution 209 provides that a brokerage agreement should provide clarity as to how clients' orders are delivered to a broker and (or) dealer and the procedure for confirmation of clients' orders.</p> <p>The SML requires that nominal holders, including the CSD, are responsible for keeping records and confirmation of ownership rights, and should organize proper back-up and storage of electronic data following the relevant rules of the AFN. The legal basis for ownership transfers by means of book-entries is established in Article 36 of the SML. If both the buyer and the seller are clients of the same nominal holder, ownership rights are transferred from the moment a trade is registered in the system of that nominal holder. Otherwise, ownership is transferred after registering a deal in the CSD on the accounts of nominal holders</p> <p>If data was lost or destroyed a nominal holder must restore the information within the timeframe established by the AFN. In this regard, Article 61 of the SML provides that "A client of a nominee shall have the right to receive the statement on the status of his subaccount within the accounting system of the central depository".</p> <p>Where there is a discrepancy between information on numbers, type of securities presented in a statement of account within the accounting system of a nominal holding, and such information from the subaccount within the accounting system of the central depository, the information presented by the accounting system of the central depository shall take precedence.</p> <p>However, there are no specific provisions in the regulatory framework providing for a procedure by which a customer can dispute the accuracy of a statement, nor regarding paperless statements, although presumably clients are allowed to complain through the complaint procedures of the securities intermediary.</p>
Recommendation	More specific regulations as to the procedure for contesting the accuracy of

	<p>statements should be placed in the regulatory framework for the securities industry, as well as provisions for paperless statements.</p> <p>Currently, investment firm and customer can agree to exchange information electronically (<i>inter alia</i> through electronic statements) in the agreement on investment services. The content of electronic statements should include the same information as paper statements.</p>
Good Practice C.4	<p><i>Prompt Payment and Transfer of Funds</i></p> <p>When an investor requests the payment of funds in his or her account, or the transfer of funds and assets to another securities intermediary or CIU, the payment or transfer should be made promptly.</p>
Description	<p>While AFN Resolutions 317 and 209 contain detailed provisions on the risk management system that a broker/dealer must maintain including in regard to client's accounts, there is nonetheless no requirement in the law for a specific obligation to be imposed on the broker/dealer to promptly transfer funds belonging to clients to the clients' account or another account as specified by the clients. This has proven to be a problem in other jurisdictions where it is common practice for broker/dealers and management companies to benefit itself from the "float" i.e. investing customer assets and receiving income during the delay in paying the customer.</p>
Recommendation	<p>There should be clear provisions in the law that require broker/dealers and management companies to immediately pay the customers any cash balances in their accounts and proceeds from sales when the payment is received.</p>
Good Practice C.5	<p><i>Investor Records</i></p> <p>A securities intermediary or CIU should maintain up-to-date investor records containing at least the following:</p> <ol style="list-style-type: none"> a. A copy of all documents required for investor identification and profile; b. The investor's contact details; c. All contract notices and periodic statements provided to the investor; d. Details of advice, products and services provided to the investor; e. Details of all information provided to the investor in relation to the advice, products and services provided to the investor; f. All correspondence with the investor; g. All documents or applications completed or signed by the investor; h. Copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services; i. All other information concerning the investor which the securities intermediary or CIU is required to keep by law; and j. All other information which the securities intermediary or CIU obtains regarding the investor. <p>Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.</p>
Description	<p>Resolution 317 (Article 45) specifically provide that a broker/dealer must maintain a reliable and robust accounting system to keep records of several types of information including clients' orders and their execution; transactions entered into on behalf of clients, account records of clients' assets and receipts and distribution of incomes on financial instruments; clients' claims and measures taken to satisfy them; reports on of clients' orders that are sent to clients; brokerage agreements and nominal holding</p>

	<p>agreements made with clients.</p> <p>Article 46 of Resolution 317 provides that documents that are submitted by a client to the broker/dealer relating to his orders, documents relating to the opening and keeping of accounts as well as to changes of accounting data, are to be kept by the broker/dealer for five years from the date of the closing of a clients' account. In regard to management companies of investment funds, Resolution 209 requires the management company to have adequate procedures to ensure compliance with accounting of a client's assets requirements, accounting procedures for and procedures for determining and charging fees.</p>
Recommendation	No recommendation.
SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	<p><i>Confidentiality and Security of Customers' Information</i></p> <p>Investors of a securities intermediary or CIU have a right to expect that their financial activities will have privacy from unwarranted private and governmental scrutiny. The law should require that securities intermediaries and CIUs take sufficient steps to protect the confidentiality and security of a customer's information against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information.</p>
Description	<p>There are provisions in various laws dealing with privacy and data protection. They include-</p> <ul style="list-style-type: none"> • Constitution of the Republic of Kazakhstan; • Article 126, Chapter 55 of the Civil Code; • Administrative Code (fines for disclosure of information) • Law on Private Entrepreneurial Activity № 124-III dated 31 January 2006 (commercial and official secrecy); • Informatization Law № 217-III dated 11 January 2007; • Relevant provisions of the AFN Law that imposes secrecy requirements for information that is gathered by AFN in the course of its supervisory responsibilities; and • Article 42 of the Law on Securities Market № 461-II dated 2 July 2003. <p>Article 18 of the Constitution of Kazakhstan says that everyone has "a right to privacy of personal deposits, telephone conversations, letters and other messages". Article 126 of the Civil Code provides that "information shall constitute an official or work-related or commercial secret when the information has real or potential commercial value by virtue of it being unknown to third parties; there is no free access to such information on legal grounds; and the possessor of the information has taken steps to protect its confidentiality". Article 126 goes on to provide that persons who have received such information by illegal methods or where employees or parties to a contract divulge such information against the terms of the contract, they would be liable to compensate the damage that is caused.</p> <p>Article 13-1(22) of the AFN Law provides that the AFN's employees shall be prohibited to disclose or communicate to third parties of data obtained during the checking of an organization where such data constitutes legally protected secrets in accordance to the laws.</p>

	<p>Article 42 of the SML imposes secrecy obligations on a wide range of persons including employees of securities market entities, auditing firms, licensees carrying out securities transactions and state authority and self regulatory organizations. Article 27 of Resolution 317 provides that in the process of making and executing a brokerage agreement, a broker or dealer must maintain confidentiality of information about his client as well as confidentiality of information obtained from the client except if permitted by Kazakh legislation.</p>
Recommendation	No recommendation.
Good Practice D.2	<p><i>Sharing Customer's Information</i></p> <p>Securities intermediaries and CIUs should:</p> <ol style="list-style-type: none"> a. Inform an investor of third-party dealings in which they should share information regarding the investor's account, such as legal enquiries by a credit bureau, unless the law provides otherwise; b. Explain how they use and share an investor's personal information; c. Allow an investor to stop or "opt out" of certain information sharing, such as selling or sharing account or personal information to outside companies that are not affiliated with them, for the purpose of telemarketing or direct mail marketing, and inform the investor of this option.
Description	<p>Article 44 of SML imposes restrictions on professional participants of securities markets in disclosing information that is considered as "commercial and service secrets" (unless as required by law) as follows:</p> <ul style="list-style-type: none"> • A professional participant of securities markets in the course of rendering services to clients shall be obliged to ensure the compliance with the requirements that disallow misuse of information constituting commercial and service secrets in securities markets. • A professional participant of a securities market shall not have the right to use information which constitutes commercial and service secrets in securities markets that may violate price formation and destabilisation of the securities market. • Internal documents of a professional securities market participant must contain provisions for ensuring the safety of information constituting commercial and service secrets in securities markets and not allow for their use in the professional participant's, his employees' and third party personal interests. <p>Nonetheless, neither the SML or secondary legislation are specific nor are there explicit provisions and procedures regarding the sharing of customer information with third parties.</p>
Recommendation	The law should be strengthened to clearly set out the obligation of the securities intermediary to provide investors with information on sharing of information and any "opt-out" provisions in the interest of protecting clients' privacy.
Good Practice D.3	<p><i>Permitted Disclosures</i></p> <ol style="list-style-type: none"> a. The law should state specific procedures and exceptions concerning the release of customer financial records to government authorities. b. The law should provide for penalties for breach of investor confidentiality.
Description	Article 107 of SML provides that the AFN and the NBK is empowered to receive

	<p>information from an issuer, licensee and self-regulatory organisation for the purpose of ensuring effective supervision and that this information so received shall not be disclosed unless permitted by the laws of Kazakhstan.</p> <p>Article 14 of AFN law provides that the AFN’s representative and employees shall bear the responsibility for the disclosure of data obtained during the performance of their supervisory functions where such data may be considered “service secret, commercial secret, bank secret and any other legally protected secrets”, in accordance to the laws of Kazakhstan.</p>
Recommendation	No recommendation.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<p><i>Internal Dispute Settlement</i></p> <ul style="list-style-type: none"> a. An internal avenue for claim and dispute resolution practices within a securities intermediary or CIU should be required by the securities supervisory agency. b. Securities intermediaries and CIUs should provide designated employees available to investors for inquiries and complaints. c. Securities intermediaries and CIUs should inform their investors of the internal procedures on dispute resolution. d. The securities supervisory agency should provide oversight on whether securities intermediaries and CIUs comply with their internal procedures on investor protection rules.
Description	<p>Resolution 209 requires that the management of a securities intermediary establish a risk management system that would, among other things, lay down procedures to ensure best execution of customer orders; procedures for dealing with complaints of customers in a timely manner; procedures to ensure timely execution of trades at the expense of clients; procedure for determining and charging fees; procedures dealing with managing conflicts of interest and misuse of customer funds.</p> <p>There appears to be no legal requirement for a designated set of employees to deal with complaints from clients. However, to it seems to be common practice that there is a general complaints procedure for all types of complaints and a specific unit within the broker/dealer to handle the complaints.</p> <p>The AFN provides oversight of the internal procedures of the securities intermediaries through inspections. Article 108 of the SML provides that the complaints of investors and securities holders are a valid basis for the onsite inspection to be undertaken by the AFN.</p>
Recommendation	The AFN should specifically require that securities intermediaries provide information to their clients on whom to contact when having a complaint and how to seek a remedy, including redress, for problems arising out of interactions with the securities intermediaries. For example, the websites of such intermediaries should clearly identify contact persons or units to handle complaints, and include portals for customer complaints, and the intermediaries should also be required to prepare an annual report of compliance with their dispute-resolution policy.
Good Practice E.2	<i>Formal Dispute Settlement Mechanisms</i>

	<p>There should be an independent dispute resolution system for resolving disputes that investors have with their securities intermediaries and CIUs.</p> <ol style="list-style-type: none"> a. A system should be in place to allow investors to seek third-party recourse, such as an ombudsman or arbitration court, in the event the complaint with their securities intermediary or CIU is not resolved to their satisfaction in accordance with internal procedure, and it should be made known to the public. b. The independent dispute resolution system should be impartial and independent from the appointing authority and the industry. c. The decisions of the independent dispute resolution system should be binding upon the securities intermediaries and CIUs. The mechanisms to ensure the enforcement of these decisions should be established and publicized.
<p>Description</p>	<p>Consumers/investors can sue stock brokerage firms and investment brokers in civil court to resolve their disputes. Similarly, the Investment Funds Law²³ allows customers to sue management companies in civil court to settle their investment disputes. However, the costs of such litigation can be very high and may not be a viable alternative for complaints by smaller, retail investors.</p> <p>The Arbitrations Courts Law applies to disputes between residents of Kazakhstan and permits such disputes to be resolved by arbitration courts in Kazakhstan. Such arbitration courts are not state courts, but roughly analogous to private arbitration tribunals. The law regulates every stage of the arbitration proceedings and contains provisions for the process of enforcing such awards in the state courts.</p> <p>However, the Arbitration Courts Law prohibits arbitration of disputes involving state interests and disputes involving state enterprises or natural monopolies. Further, the Arbitration Courts Law specifically permits state courts to review an arbitration award on its merits if the court determines the award is not in compliance with Kazakhstani law or violates public policy.</p> <p>As a result, an arbitration award by a local arbitration court may not be final or enforceable. As a result, the ability to settle disputes through binding arbitration, and particularly the ability to enforce arbitration awards in Kazakhstan's courts, has been the subject of much uncertainty and controversy in recent years. For example, the Constitutional Council of Kazakhstan ruled in 2002 that an arbitration award may be appealed in the courts, due to the constitutional right to judicial protection. This made enforcement of arbitration awards virtually impossible. The Council later clarified that its ruling did not apply to foreign arbitration awards rendered in accordance with international treaties to which Kazakhstan is a party.</p> <p>Even if an investor resorts to arbitration in respect of their disputes with securities market intermediaries, due to the costs of hiring an attorney, paying for the arbiters' fees and the costs for the development of evidence, arbitration also does not appear to be practically available to a small retail investor.</p> <p>There is no ombudsman system in Kazakhstan for handling securities complaints, unlike what was introduced for the insurance industry in relation to mandatory motor vehicle insurance disputes. The low cost characteristic of an ombudsman for smaller retail investors could provide a useful and consumer friendly means of consumer protection for Kazakhstan. As an out-of-court mechanism, an ombudsman can take a more flexible approach than the courts. For example, an ombudsman can decide a case not just on the basis of legal rules but also issues of equity and fairness as well</p>

²³ Law No. 576-II –July 7, 2004

	as industry-accepted codes of conduct. The ombudsmen should be designed based on principles of transparency, due process, independence, legality and effectiveness.
Recommendation	An inexpensive means for investors to obtain redress for small claims should be created by the establishment of a financial ombudsman for the securities industry. To ensure a high level of accountability and transparency, the ombudsman should be obliged to publish an annual report describing decisions taken by the ombudsman so that consumers can identify the nature of the disputes referred to the ombudsman and assess the results of the ombudsman's actions.
SECTION F	GUARANTEE SCHEMES AND INSOLVENCY
Good Practice F.1	<p><i>Investor Protection</i></p> <ol style="list-style-type: none"> a. There should be clear provisions in the law to ensure that the regulatory authority can take prompt corrective action on a timely basis in the event of distress at a securities intermediary or CIU. b. The law on the investors guarantee fund, if there is one, should be clear on the funds and financial instruments that are covered under the law. c. There should be an effective mechanism in place for the pay-out of funds and transfer of financial instruments by the guarantee fund or insolvency trustee in a timely manner. d. The legal provisions on the insolvency of securities intermediaries and CIUs should provide for expeditious, cost-effective and equitable provisions to enable the timely payment of funds and transfer of financial instruments to investors by the insolvency trustee of a securities intermediary or CIU.
Description	<p>Article 3 of the SML confers on the AFN extensive powers of interventions in the event of contravention of prudential requirements by the securities intermediary, including the imposition of sanctions such as suspension and revocation of license. However, it would appear that the SML does not give the AFN the authority to take corrective action directly regarding the insolvency of a securities intermediary.</p> <p>There are no specific legal provisions in the law that provides for investors' guarantee scheme in the securities markets. In part, this may be due to the system where transactions effected on the stock exchange are settled on a RGTS basis with T + 0 settlement cycle. Hence, a guarantee fund is not needed to reduce or eliminate counterparty risk of default. However, this is about to change as the KASE is currently undergoing reengineering to increase liquidity in secondary market trading and attracting retail investors into its market. In addition, the investment fund segregation provisions should protect CIU investors.</p> <p>There is no guarantee and compensation scheme for securities in Kazakhstan. Most developed capital markets have compensation schemes to cover the investor losses due to bankruptcy of a broker-dealer holding funds on behalf of an investor. In this regard, in the event of insolvency of a broker/dealer or a management company of an investment fund, investors rank as unsecured creditors as provided under Article 51 of the Civil Code.</p> <p>However, at present, the market structure of Kazakhstan reveals a low level of participation retail customer. Therefore, it is important that any introduction of such an investor guarantee scheme and the timing of implementation be carefully considered and sequenced.</p>

Recommendation	With the strategic plan of KASE towards attracting more retail investors to participate in the securities market, consideration should be given to providing more explicit powers of the AFN in dealing with insolvent securities intermediaries so as to be able to take the full range of corrective actions in the event of insolvency of such intermediaries.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<p><i>Broadly based Financial Capability Program</i></p> <p>A broadly based program of financial education and information should be developed to increase the financial capability of the population.</p> <ol style="list-style-type: none"> a. A range of organizations –including the government, state agencies and non-governmental organizations– should be involved in developing and implementing the financial capability program. b. The government should appoint a ministry (e.g. the Ministry of Finance), the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.
Description	<p>The RFCA is the dedicated body and champion of financial literacy programs in Kazakhstan. The RFCA is created under statute with clear responsibilities to promote financial literacy among consumers in the financial sector. It is given healthy resources and funding by the Government and is well resourced and professionalized in undertaking financial literacy programs.</p> <p>AFN has also undertaken several initiatives on financial literacy, including for securities market. However, consumer associations mention that there is not enough coordination on initiatives.</p>
Recommendation	Special attention should be paid to increase dialogue and coordination among all stakeholders dealing with financial literacy.
Good Practice G.2	<p><i>Using a Range of Initiatives and Channels, including the Mass Media</i></p> <ol style="list-style-type: none"> a. A range of initiatives should be undertaken to improve people's financial capability. b. This should include encouraging the mass media to provide financial education, information and guidance.
Description	<p>The dissemination of financial education by AFN is done through a variety of medium including the mass media and TV shows. In 2009, the AFN published 87 materials, interviews, taped news items, analytical materials. Every month, the AFN places on its website information containing key indicators of activities of financial organizations, validity of complaints and appeals per each financial organization, breaches of laws by financial organizations as well as the sanctions taken. There is also a section on «Information for consumers of financial services» consists of -</p> <ul style="list-style-type: none"> - “What does the consumer need to know” (video clips and instructions); - “To the attention of the consumer!”; - “Basics of financial literacy”; - “Financial dictionary”; - “Consumer complaints (analysis and statistics)”; - “Frequently asked questions” (with answers). <p>5 video commercials (both in the state, and Russian languages), including 4 video commercials on protection of rights of consumers of financial services and 1 covering the RFCA’s activity as a regulator of the financial system were produced in</p>

	<p>2009. Video commercials were transmitted 36 times per day during the period from 1 January until 10 February, 2009 in Kazakh and Russian languages. AFN has also published books/brochures to raise consumers' awareness of financial matters.</p> <p>RFCA is the other agency that is set up by statute to promote financial literacy. It has been aggressive in providing financial education for the consumers throughout Kazakhstan. There is a hotline for consumers to call in with their problems. A television show called "Your Exit" is aimed at raising awareness on all issues on financial matters and is broadcast in prime time since May 2009. There are financial literacy training printed media (200,000 copies) twice a month that are distributed free of payment. RFCA has also published a variety of books/brochures relating to the protection of rights of consumers in the different sectors of the financial system.</p>
Recommendation	No recommendation.
Good Practice G.3	<p><i>Unbiased Information for Investors</i></p> <ol style="list-style-type: none"> a. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of financial products and services. b. Non-governmental organizations should be encouraged to provide investor awareness programs to the public regarding financial products and services.
Description	<p>The RFCA is the dedicated agency created by law to deliver financial literacy programs. It is professionalized and well resourced.</p> <p>The new Consumer Protection Law provides a role for consumer organizations to provide training programs for consumers. The National League of Consumers has been very innovative in delivering financial awareness education and is able to build its financial resources based on some of these education programs. Since the introduction of the new consumer protection laws, other smaller consumer organizations have expressed enthusiasm in participating in such programs.</p>
Recommendation	Consumer organizations should be strongly encouraged and supported by the Government and the competent authority for consumer protection under the new Consumer Protection Law to deliver financial education awareness programs to consumers.
Good Practice G.4	<p><i>Measuring the Impact of Financial Capability Initiatives</i></p> <ol style="list-style-type: none"> a. The financial capability of consumers should be measured through a broad-based survey that is repeated from time to time. b. The effectiveness of key financial capability initiatives should be evaluated.
Description	No survey is undertaken to measure the financial capability of consumers in Kazakhstan nor is there any assessment of the effectiveness of the many financial capability initiatives undertaken by the AFN and RFCA.
Recommendation	A broad-based survey should be undertaken to provide a "baseline" in measuring the effectiveness of financial education and awareness initiatives in the financial sector.

CONSUMER PROTECTION IN THE INSURANCE SECTOR

OVERVIEW

57. **The insurance industry is relatively undeveloped in Kazakhstan.** The insurance industry has gone through a challenging period during the financial crisis with the number of insurance companies decreasing during the period 2008-2009 even though the number of brokers and actuaries increased. As of January 1, 2010, 41 insurance/reinsurance organizations are licensed to engage in insurance, including 34 in general insurance sector and 7 in life insurance sector, and 13 insurance brokers. There are 232 branches that constitute the regional network of insurance organizations in Kazakhstan. The law requires that life insurance and general insurance businesses be separated.

Table 5. Basic Indicators of the Insurance Market
(Billion KZT, % GDP)

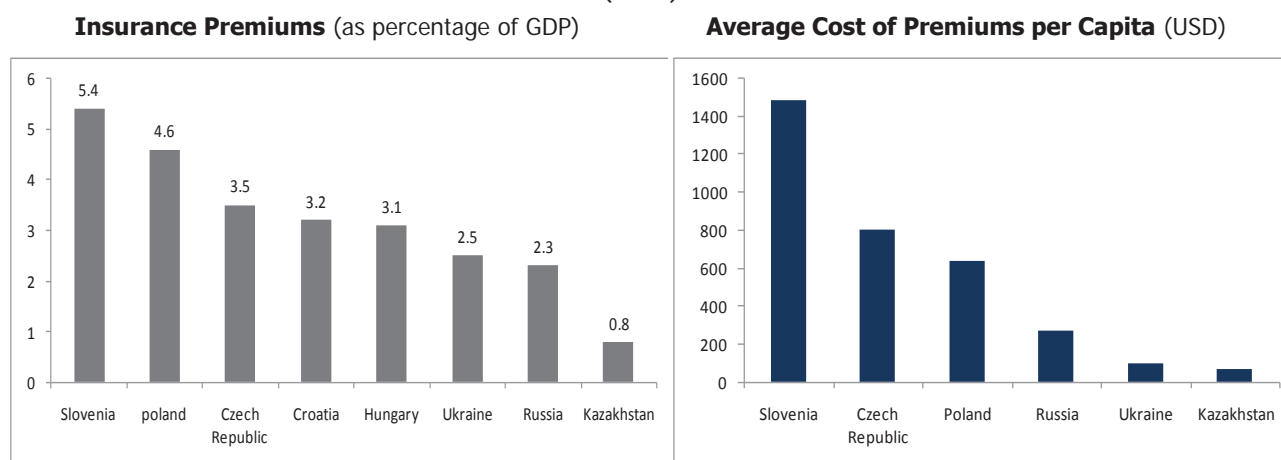
	2006	2007	2008	2009
Number of insurance companies	40	41	44	41
including on life insurance	5	7	8	6
GDP	9,739	13,315	15,855	17,412
Aggregate assets	135	224	269	298
Aggregate own equity	80	126	166	180
Insurance premiums	120	147	133	132
Insurance indemnities	14	49	56	28
Ratio of insurance premiums	1,2%	1,1%	0,8%	0,65%
Amount of insurance premiums	8,018	9,489	8,597	7,172
Ratio of aggregate assets to GDP	1,4%	1,7%	1,7%	1,7%
Ratio of own equity to GDP	0,8%	0,9%	1%	1%
Ratio of insurance indemnities to insurance premiums, %	12%	33%	42%	21%

Source: AFN

58. **Insurance penetration is very low in Kazakhstan, compared to other countries in Europe and Central Asia.** In 2009, the volume of insurance premiums stood at 0.7% of GDP compared with 0.8% in 2008, a low level compared to other countries in Europe and Central Asia. When comparing the average cost of premiums per capita in six Eastern European countries and Russia, Kazakhstan's per capita cost of premium is at the low end of the scale at US\$71 (Figure 7).

59. **The low development of the insurance industry is due to a number of factors** including the low demand of insurance services with the population not yet aware of the need to insure their income or property through policies that will cover them in case of illness or death; lack of trust by the public with protracted and slow pay-out processes by insurance companies and generally a fundamental lack of understanding and knowledge about insurance benefits. At the same time, the industry is challenged by the lack of insurance professionals as well as its unique social geography such as its vast territory, low population density, weak transportation infrastructure and under-developed middle class.

Figure 7: Comparison of Kazakh Insurance Market vs. Countries in Europe and Central Asia (2008)



60. **From the public trust viewpoint, a critical consumer protection issue is the common practice for banks to offer loans that are tied with a preferred insurer usually belonging to the same financial group as the bank.** It has been reported that these insurance policies are sold at inflated premiums. The AFN is currently in the process of preparing legislative changes to compel higher standards of disclosure to consumers particularly in relation to the effective cost of insurance to the consumers. Measures are also being considered by the AFN in requiring banks not to compel the taking out of a mortgage insurance policy if the “loan to value” ratio is less than 70%.

61. **In addition, agents who interact with customers are not required to have minimum professional qualifications even though AFN will require that starting from 2012.** Recent rules from AFN require that the insurance companies be responsible for the oversight of the agents but since agents can be affiliated with a number of insurance companies, the efficacy of this measure is questionable. The industry is also beset with weak market conduct practices, absence of “know your customer” and “cooling off” period requirements.

62. **A spate of legal reforms has been introduced since 2008 to promote the development of the insurance sector.** Such reforms include amendments to the Motor Third Party Liability Law to include direct settlements; damage assessment to be done by independent appraisers; creation of an insurance ombudsman; establishment of a single insurance database and the introduction of a *bonus-malus* system. As a result of such regulatory reforms, the insurance industry is consolidating with enhanced capital and operating within a much tighter prudential framework than before.

63. **Nonetheless, the insurance market is still highly concentrated.** In 2009, the five largest insurance companies accounted for 43.5% of aggregate premiums and 52% of total insurance indemnities. Total assets of insurance industry grew to KZT297, 252.2 million as at 1 January 2010, up 10.6% compared to 1 January 2009 due to an increase in the securities portfolio of insurance companies as securities constitute 41.5% of total investments of the insurance industry. The share of the 5 largest insurance companies in aggregate assets of the insurance market amounted to 51.3%.

Table 6: Top 10 Insurance Companies based on Insurance Premiums (including reinsurance)

Company	2008	2009	Growth	Share 2008	Share 2009
Eurasia	19,858	22,826	15%	13,2%	17,2%
Kazakhinstrakh	14,402	12,903	-10%	9,6%	9,7%
Victoria	18,244	7,572	-58%	12,2%	5,7%
Kazkommerts-Pohs	13,554	7,428	-45%	9,0%	5,6%
Allianz Kazakhstan	2,603	6,843	163%	1,7%	5,2%
NSK	6,522	6,544	0%	4,3%	4,9%
Astana Finance	83	6,198	7407%	0,1%	4,7%
NOMAD Insurance	2,540	6,017	137%	1,7%	4,5%
AIG Kazakhstan	5,341	5,547	4%	3,6%	4,2%
BTA Insurance	6,407	4,276	-33%	4,3%	3,2%
Total Top 10	89,554	86,152	4%	60%	65%
Total Market	150,011	132,476	-12%	100%	100%

64. **The largest share in the insurance premiums structure is in the general insurance sector, but it is still small.** The market share of the non-life insurance sector is XXX% as of XXX 2009. The Kazakh non-life segment remains small by international standards, with penetration ratios below 1 percent of GDP.

Table 7: Non-Life Insurance Sector

Non-Life Insurance Premiums	2006	2007	2008	2009
In KZT million	116,563	142,680	144,228	297,252
As share of total insurance market	???	???	???	???
As % GDP	1.15%	1.13%	0.95%	0.85%

Source: AFN

65. **The main non-life insurance product in the markets is property insurance.** This product represented 53.7% of the segment by end-2009. Property insurance is delivered through a small number of domestic firms

Table 8: Breakdown of Insurance Premiums by Types of Insurance (KZT million)

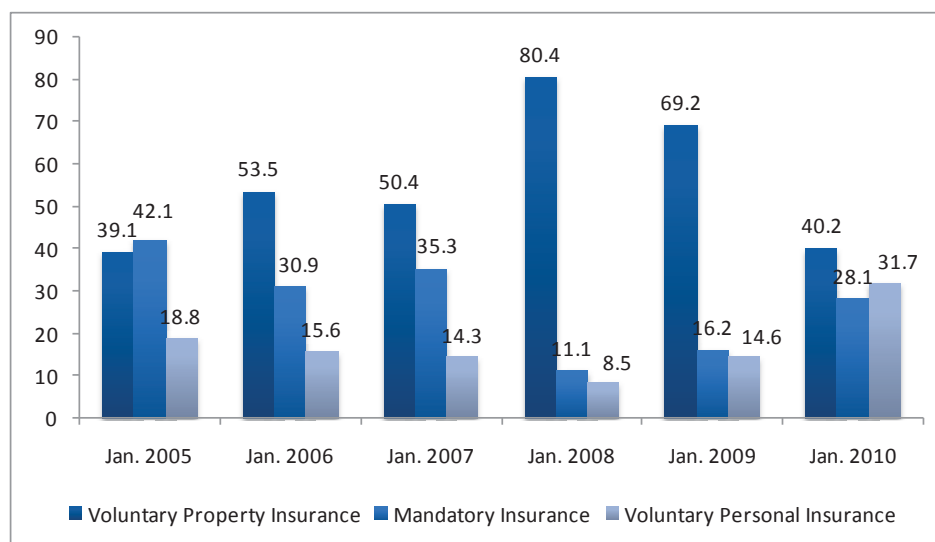
Insurance premiums collected	Jan. 2009		Jan. 2010		Change (%)
	Amount	Share,%	Amount	Share,%	
Total, including:	133,487.6	100.0	113,289.7	100.0	(15.1)
Mandatory insurance	29,989.3	22.5	30,509.1	26.9	1.7
Voluntary personal insurance	18,883.8	14.1	21,922.2	19.4	16.1
Voluntary property insurance	84,614.5	63.4	60,858.4	53.7	(28.1)

*The amount is specified less insurance taken under re-insurance contracts.

66. For the life segment of the insurance industry, market projections for its growth is very pessimistic as the population is reluctant to access long-term savings products as is reflected the low long-term savings rate and the small pensions funds market in Kazakhstan.

67. The largest share of benefit payments on mandatory insurance is made up by benefit payments on the employer's civil liability insurance against harm to life and health of a worker at 46.1%, while 69.1% in voluntary personal insurance is in the health insurance sector and a growing voluntary property insurance market.

Figure 8: Share of Insurance Benefit Payments by Insurance classes in the Total Amount of Insurance Benefit Payments (%)



LEGAL FRAMEWORK

68. The main laws governing the insurance sector include the law concerning insurance business; law on compulsory insurance of civil liability of vehicle owners; law on compulsory insurance of civil liability of carriers to passengers; law on the Fund of guaranteed insurance benefits; law on mutual insurance; law on compulsory insurance of civil liability of employers for damaging life and health of employees during employment; law in Advertising; law on Joint Stock Companies and the Civil Code also contain provisions on insurance. A number of secondary laws and resolutions also govern the insurance industry including regulations on accounting and financial reporting; licensing and consolidated supervision; regulations concerning obligatory type of insurance; resolution 130 on risk management framework for insurance companies.

69. AFN is the single supervisory and regulatory authority for the financial sector, and is financed with NBK budget. AFN is the main regulator of the financial services sector including insurance sector. It has a specific Consumer Protection Department that deals with consumer protection issues. AFN is responsible for implementing and enforcing consumer protection in the banking, securities, insurance and pensions sectors. Its mandate can be found in Article 3 of Law Concerning The State of Regulation and Supervision of Financial Market and Financial Organizations (“AFN Law”) which provides that the purposes of state regulation and supervision of financial market and financial organizations shall be to -

- ensure financial stability of the financial market and financial organizations and to maintain trust to the financial system as a whole;
- provide for the appropriate level of protection for the interests of financial services consumers; and
- establish equal conditions of financial organizations' activity which aims to support honest competition in the financial market.

70. These provisions clearly establish the power of AFN to implement and enforce consumer protection in the financial system. In addition, Article 8 of the AFN Law states that one of the objectives of AFN is to, among other things, implement measures that are associated with the prevention of violation of rights and legitimate interests of financial service users. Article 9(4) specifically authorizes the AFN to prevent violation of the rights of users of financial services. Under Article 11 of the AFN Law and Article 43 of the Law concerning Insurance Business, the AFN's remit in respect of the regulation and supervision of insurance activities would include the following:

- determine procedures for granting of consent for acquisition by individuals and legal entities of an insurance or re-insurance company;
- establish prudential and solvency requirements an insurance and reinsurance company;
- establish requirements with regard to the form and contents of insurance policies;
- define the procedure and conditions for increasing amounts of premiums based on actuary determination;
- establish requirements for insurance companies that carry on the business of accumulation insurance and loans to the insured;
- maintain a register of licensed insurance (reinsurance) companies, insurance brokers and actuaries; and
- establish procedures for insurance payment guarantee for obligatory insurance agreements.

KEY RECOMMENDATIONS

71. The law that governs all insurance contracts should include specific provisions which deal with consumer protection issues in a comprehensive manner. This would include the need to ensure that insurance contracts are presented to the consumer in plain language, and mandating disclosures that are clear, accurate and comprehensive, before the consumer makes a decision to conclude an insurance contract.

72. A principles-based code of conduct should be developed for all participants in the insurance industry and adopted by all industry participants. The code of conduct should be published and be part of the application form that is provided to consumers. FIAK should monitor its compliance by insurance companies and impose fines in case of violations to the code of conduct. Consumer associations should also be encouraged to monitor the compliance with the code and highlight cases where insurers fail to comply.

73. The law should be reviewed to require credit providers to inform consumers about their right to freely choose any insurance product. This could be done in the form of an acknowledgment statement that has the consumer's signature. More disclosures should be required, including the relationship between the bank or credit provider and the selected insurance provider; the benefits which the bank or credit provider will derive from the arrangement and a comparison of the costs to the consumer with the costs of a number of other alternatives. In addition, tariffs on credit insurance should be presented to customers of standard loan types.

74. More explicit requirements should be imposed on insurance companies **to disclose commissions to the customer** for non-mandatory insurance policies.
75. The law should make it explicit that **insurers must be legally responsible for all statements that are made in marketing and sales materials**.
76. **More capacity within AFN should be built to closely monitor advertising by insurance companies** for insurance products to ensure that they are not misleading or untrue. In addition, there should be regulatory limits on investment returns used in life insurance value projections for advertising and sales materials. More should be done in utilizing ongoing market intelligence at a local level to monitor market practices of agents and insurance companies.
77. **More specific guidance can be provided by AFN in the form of policy explanatory notes to the insurance industry** on what may constitute legitimate advertising by insurance companies and what is meant by the “unreliable and misleading” advertisement rule.
78. **A “KYC” rule should be incorporated into the regulatory framework**.
79. **A cooling-off period should be introduced** especially in respect of voluntary insurance products such as investment-style life insurance products so that consumers would have an opportunity to rethink their decisions in the face of high-pressure sales tactics. Typically these apply for up to 14 days after the contract becomes effective or a shorter period after the insurance contract is sent out (note – this is still to be verified).
80. **The insurance industry working with FIAK should develop key facts statements in plain language** for each class of life and non-life insurance products and agree on the content of the key facts statements with AFN. Insurance companies, brokers and agents should ensure that a key facts statement is part of the information that is given to applicants when an offer of insurance is made and when insurance contracts are finalized.
81. **AFN should consider requiring insurance companies to provide simplified financial statements** that will allow consumers without a technical background to make assessments about the financial viability of insurance companies.
82. **The insurance legislation should be reviewed to specify that for savings-type life insurance policies, policy holders should be entitled to receive statements of value at least annually**. Similarly, insurers should be required to notify insured persons about the need to renew policies that are due to expire and to provide a renewal notice to that effect.
83. **Insurance companies should be required to provide information to their clients** at the point of sale on how to seek a remedy, including redress, for problems arising out of interactions with the agents or insurance company. In addition, the website of insurance companies should clearly identify portals for customer complaints.
84. **Greater publicity should be given to the Ombudsman for compulsory insurance for civil liability of vehicle owners**, as it is a cost-effective, speedy and effective dispute resolution. The ombudsman system should be extended to all other types of insurance products in the insurance sector.
85. **Increased involvement of consumer organizations should be encouraged** by providing them funding and resources and engagement with them by the AFN in its policy formulation responsibilities. Consumer organizations should be strongly encouraged and supported by the Government and the competent authority for consumer protection to deliver financial education awareness programs throughout Kazakhstan.
86. **A baseline survey assessment should be conducted** to better identify the segment of the population that require particular attention, measuring the effectiveness of financial education and determine education needs.

REVIEW AGAINST GOOD PRACTICES IN THE INSURANCE SECTOR

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	<p><i>Consumer Protection Regime</i></p> <p>The law should provide for clear rules on consumer protection in the area of insurance and there should be adequate institutional arrangements for the implementation and enforcement of consumer protection rules.</p> <ol style="list-style-type: none"> a. There should be specific provisions in the law, which create an effective regime for the protection of retail consumers of insurance. b. The rules should prioritize a role for the private sector, including voluntary consumer organizations and self-regulatory organizations.
Description	<p>Consumer protection is recognized under Article 10 of the Civil Code which states that “the defense of the rights of the consumers is ensured by the means provided for by the present Code”. It also provides that “every consumer shall have the right to -</p> <ul style="list-style-type: none"> • freely conclude contracts for the acquisition of goods and the performance of work and services; • obtain proper quality of goods, services and work; • obtain full and reliable information concerning goods, work or services; and form social organizations of consumers. <p>b. Until August 2010, consumer protection in financial system was governed by the 1991 Law on Consumer Protection. This law dealt with all consumer protection matters and was enforced by the courts. A consumer protection department in the government and an inspectorate were initially established but they were dissolved in 1996. The department was transferred to the Anti-Monopoly Commission but it was also dissolved later. Thus, there is currently no central body for consumer protection.</p> <p>c. In August 2010, a new consumer protection law was passed (Law No. 274 – August, 2010). Under Article 5 of the new law, the new body is mandated to:</p> <ul style="list-style-type: none"> • ensure the implementation of state policies on consumer protection; • submit proposals to the Government of Kazakhstan on the main directions of the state policy on consumer protection; • carry out inter-sectoral coordination of public authorities on the improvement of legislation concerning the protection of consumer rights; • take measures to improve the legislation concerning the protection of consumer rights; • interact with the public associations of consumers, associations (unions) in the field of consumer protection; and • exercise other powers stipulated by laws , Acts of the President, and the Government. <p>According to Article 2 of the new Consumer Protection Law, consumer rights in the areas of financial sector are to be governed by the competent authority specified by the law relating to financial sector, which is the Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Organizations (“AFN”). Under Article 6, the State bodies overseeing specific areas of competence (among other bodies, the AFN) are in charge of enforcing the law, with the following responsibilities–</p>

	<ul style="list-style-type: none"> • develop regulations to protect the rights of consumers; • make proposals to the authority and the Government on improvement of legislation concerning the protection of consumer rights; • examine the treatment of individuals or legal entities in the area of consumer protection; • enforce the law on consumer protection; • supervise the observance of the law concerning the protection of consumer rights; and • exercise other powers stipulated by laws, Acts of the President and the Government. <p>AFN is the agency responsible for implementing and enforcing consumer protection in the banking, securities, insurance and pensions sectors. Its mandate can be found in Article 3 of Law No. 474 of 2003 Concerning The State of Regulation and Supervision of Financial Market and Financial Organizations (AFN Law). Article 3 of the AFN Law provides that the purposes of state regulation and supervision of financial market and financial organizations shall be as follows:</p> <ul style="list-style-type: none"> • to ensure financial stability of the financial market and financial organizations and to maintain trust to the financial system as a whole; • to provide for the appropriate level of protection for the interests of financial services consumers; • to establish equal conditions of financial organizations' activity which aims to support fair competition in the financial market. <p>These provisions clearly establish the power of AFN to implement and enforce consumer protection in financial system. In addition, Article 8 of the AFN Law states that one of the objectives of AFN is to, among other things, implement measures associated with the prevention of violation of rights and legitimate interests of financial service users. Article 9(2)(4) specifically authorizes the AFN to prevent violation of the rights of users of financial services.</p> <p>Under Article 11 of the AFN Law and Article 43 of the Law concerning Insurance Business, the AFN's remit in respect of the regulation and supervision of insurance activities include the following:</p> <ul style="list-style-type: none"> • determine procedures for granting of consent for acquisition by individuals and legal entities of an insurance or re-insurance company; • establish prudential and solvency requirements for insurance and reinsurance companies; • establish requirements with regard to the form and content of insurance policies; • define the procedure and conditions for increasing amounts of premiums based on actuary determination; • establish requirements for insurance companies that carry on the business of accumulation insurance and loans to the insured; • maintain a register of licensed insurance (reinsurance) companies, insurance brokers and actuaries; and • establish procedures for insurance payment guarantee for obligatory insurance agreements. <p>Article 41 of the AFN Law spells out that the fundamental objective of the state regulation in the sphere of insurance is the maintenance of a stable system and infrastructure for the insurance market. It also establishes firmly AFN's statutory mandate to regulate and supervise insurance activities and the protection of the rights and legitimate interest of insurance companies, the insured and their</p>
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	<p>beneficiaries.</p> <p>The Consumer Protection Department of the AFN is responsible for implementing, collecting, analyzing and dealing with complaints from users of financial services and products. The number of complaints and their breakdown is published in the AFN's annual reports. For the year 2009, AFN received 529 appeals of individuals and legal entities concerning activities of insurance/reinsurance companies, which represent 13.52% of total number of complaints received by the AFN. Most of these complaints were in respect of the delay in payment of insurance in relation to mandatory classes of insurance, including mandatory motor third party insurance; failure of insurance companies to implement court's decisions that are in favor of beneficiaries; discrepancies in assessment of the value of damage to transport facility as well as on an employer' civil liability insurance against causing life and health damage to a worker while at work.</p> <p>Upon determining breaches by the insurance companies based on the complaints, the AFN took enforcement measures against insurance companies in 2009, among them: 18 written instructions, 17 letters of commitment given by insurance companies, and 22 proceedings initiated against three insurance organizations.</p> <p>h. The Association for Financial Institutions of Kazakhstan (FIAK) is perceived as an entity that represents its members' business interests rather than the champion of promoting high standards of business conduct in the interests of protecting insurers. Its main objectives are to represent and advocate for the common interests of its members in governmental and other bodies, as well as to participate in efforts to improve legislation relating to the activities and interests of FIAK's members. A majority of the financial market participants including banks, state financial development institutions, insurance companies, pension funds, securities market professional participants, leasing, mortgage, auditing and consulting companies, research and educational institutions participate in FIAK.</p> <p>Consumer Associations</p> <p>Under Article 7 of the new Consumer Protection Law, consumers have the right to establish public associations of consumers. Article 20 provides that consumers are entitled to join on a voluntary basis in voluntary associations of consumers. Article 22 indicates that the protection of rights and legitimate interests of consumers is carried out by relevant state authorities and courts or arbitration tribunals. According to Article 41, consumer associations are empowered to-</p> <ul style="list-style-type: none"> • make proposals for improving legislation on protection of consumer rights to the authority and other government agencies • apply to state agencies to assist in cases of violation of consumer rights • study the properties of consumer goods and the demand for them, conduct polls to determine public opinion about the quality of goods (works, services) • receive applications and complaints; • engage with state bodies in order to evaluate the quality of goods (work, service) in the case of income statements, consumer complaints; • represent consumer interests in government and in other public associations in the order determined by the laws • sue in court for the benefit of consumers, including the benefit of an indefinite number of consumers; • investigate and disseminate information on consumer rights in the media;
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	<p>and</p> <ul style="list-style-type: none"> • implement social programs, projects and activities measures aimed at solving social problems, regarding the protection of consumer rights on the basis of state social orders. <p>Article 43 provides that violations of consumer protection law are punishable by Kazakh laws.</p> <p>A reading of the law suggests that the new consumer protection law is intended to pave the way for better funding, activities and sustainability of consumer associations and better improved consumer protection in Kazakhstan. The number of consumer associations in Kazakhstan has dwindled from 100 over in 1991 to 4/5 today, having only the National Consumer League of Kazakhstan dealing with financial products or services. These consumer organizations suffer from lack of membership, funding and meaningful collaboration with government, industry and regulators. Most of the organizations are very small operating with volunteers and less than 10 members (one association only had 4 members). Their major problem is the lack of funding and support to carry out their activities. Nevertheless, these grass root organizations are the only accessible points for the poor and socially disadvantaged citizens.</p> <p>The biggest flaw in the consumer protection regime of Kazakhstan is that there is no consumer court or consumer ombudsman that provides free consultation and service to consumers of insurance products. Most consumers cannot afford to the service of a lawyer to represent the consumer in court. The National Consumer League of Kazakhstan is a strong institution with more than 7000 members and 125 institutional members. It collaborates closely with the business community and carries out activities to improve awareness and literacy amongst consumers. However financial institutions do not collaborate with the association, and it ends up providing financial literacy weekly training on its own for a fee.</p> <p>A general complaint from consumer associations is that the regulator does not actively seek or use their input which is based on the need and experience of real consumers.</p>
<p>Recommendation</p>	<p>Even though the new Consumer Protection Law recognizes that the competent authority for consumer protection for the financial sector would be the AFN, it would be useful to have explicit arrangements between the activities of the two agencies (the new Agency for Consumer Protection once it is established and the AFN) to ensure that there is clear accountability for consumer protection for the financial sector. Many jurisdictions have found that a MOU between the two agencies helps to clearly define their relationship, jurisdiction and responsibilities. It would be useful that AFN consider entering into such a MOU with the Agency for Consumer Protection once it is established.</p> <p>It would be useful for AFN to seek the input of consumer organizations in developing policies on consumer protection as these consumer organizations have direct experience dealing with consumers of financial products.</p> <ol style="list-style-type: none"> 1. The Government should consider providing targeted funding and necessary resources for legitimate consumer associations to carry out consumer protection activities in Kazakhstan.

Good Practice A.2	<p><i>Contracts</i></p> <p>There should be a specialized insurance contracts section in the general insurance or contracts law, or ideally a separate Insurance Contracts Act. This should specify the information exchange and disclosure requirements specific to the insurance sector, the basic rights of the insurer and policyholder and allow for any asymmetries of negotiating power or access to information.</p>
Description	<p>The civil legislation of Kazakhstan that regulates contractual relations is mainly in the Civil Code (General Part) adopted on 27 December 1994 and enacted on 1 March 1995. On the whole, the Civil Code provides a legislative framework for market relations based on the following principles: equality of subjects of civil legal relations; free declaration of will as the basis of civil legal relations; generally permissible character of regulation of activities (i.e. participants of civil legal relations are entitled to do anything that is not explicitly prohibited by law); freedom of contract and the inviolability of property rights.</p> <p>While the Civil Code governs the basic principles of contractual relations among parties, the Law concerning Insurance Business (“LIB”) sets forth the basic principles for the insurance industry; and the formation, regulation and operations of insurance companies, reinsurers, brokers and other related parties. Therefore, in the absence of a specific insurance contracts law in Kazakhstan, the form and content of an insurance contract would be governed by the Civil Code. There is no mention in the Civil Code of the need for plain language and easily understandable terms for the consumer in the contract. Article 16 of the LIB spells out the obligation of the insurance company to provide information such as its financial statements before the conclusion of insurance contracts and the proper authorization documents of the agent that represents the insurance company. There are however more comprehensive provisions in regard to contractual terms and obligations of the insurance company in respect of mandatory insurance contracts, such as those included in the Law on Compulsory Insurance of Civil Liability of Vehicle Owners (“LCIVO”).</p> <p>In the event of a conflict between the Civil Code and the specific law (in this case, the LIB), the approach would seem to be that it is viewed as a purely technical matter by the courts. Some legal practitioners have stated that there had been instances where the specific laws run contrary to the general principles of civil law and that this problem would seem to have been aggravated by the adoption of a Law on Normative Legal Acts which puts codes on the same level with laws. In the event of any conflict between such normative legal acts and the Code, the normative legal acts will be applied as the norms of a more recent act, even if they may be in conflict with fundamental principles of civil law as expressed in the Civil Code.</p> <p>In view of this, there may be merit in considering establishing specific insurance contract provisions to provide certainty and removing all ambiguity in relation to the status of insurance contracts in Kazakhstan.</p>
Recommendation	<p>Consideration should be given to a specific law that has clear provisions that govern all insurance contracts and which deals with consumer protection issues in a comprehensive manner.</p> <p>This would include the need to ensure that contracts are presented to the consumer in plain language, and mandating disclosures that are clear, accurate and comprehensive, before the consumer makes a decision to conclude an insurance contract.</p>
Good Practice A.3	<p><i>Codes of Conduct for Insurers</i></p> <p>a. There should be a principles-based, statutory code of conduct for</p>

	<p>insurers that is devised in consultation with the insurance industry and with relevant consumer associations, and is monitored and enforced by a statutory agency.</p> <p>b. Insurers should publicize the statutory code of conduct to the general public through appropriate means.</p> <p>c. The statutory code should be limited to good business conduct principles. It should be augmented by voluntary codes on matters specific to insurance products or channels.</p>
Description	<p>There is no formal code of conduct for the insurance industry.</p> <p>FIAK has a number of rules on membership which cover some of the elements expected to be found in a code. Members of the association who have applied to join the association must agree to abide by the terms of the rules of the association. Notwithstanding this, FIAK's agenda appears to be dominated by commercial banks' issues and it operates more to advocate the interests of the financial industry, particularly the banking sector, rather than to promote best practices for the financial sector.</p> <p>Some insurance companies have adopted internal codes of conduct for different employees such as a code of conduct for agents and a code of conduct for management.</p> <p>A mandatory code of conduct for the insurance industry would help improve the image of the insurance industry.</p>
Recommendation	<p>It is recommended that a principles-based code of conduct be developed for all participants in the industry and adopted by all industry participants.</p> <p>As FIAK is an "umbrella" body that represents the insurance industry, an interim step may be for a working committee to be set up within FIAK to develop a code of conduct in consultation with AFN. The code should be based on good business conduct and members should be required to adopt this code on a mandatory basis.</p> <p>The code of conduct should be published and be part of the application form. FIAK should monitor its compliance by insurance companies and impose fines in case of violations to the code of conduct. Consumer associations should also be encouraged to monitor the compliance with the code and highlight cases where insurers fail to comply.</p>
Good Practice A.4	<p><i>Other Institutional Arrangements</i></p> <p>a. There should be a balance between prudential supervision and consumer protection.</p> <p>b. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection.</p> <p>c. The media and consumer associations should play an active role in promoting financial consumer protection.</p>
Description	<p>a. The Department for Supervision of the Insurance Market Entities and Other Financial Organizations of the AFN has responsibility for licensing and conducting off site and onsite supervision of the insurance companies, and for formulating regulatory policies and undertake research. Article 43 of the Law Concerning Insurance Business (Law No. 126 of 18th December 2000) gives clear mandate to AFN for the prudential regulation of insurance companies including establishing prudential standards and rules relating to minimum capital requirements, guarantee</p>

	<p>fund, solvency margin requirements. The Department for Supervision of Insurance carries out analysis, evaluation and monitoring of financial stability and solvency of insurance (reinsurance) organizations, among other things. Violations of the requirements imposed by prudential regulations are sanctioned. The Directorate for Consumers Protection is the specialized department within the AFN that is responsible for implementing, overseeing and enforcing consumer protection. It is also responsible for collecting and analyzing complaints.</p> <p>b. The court is one of the venues for customers of insurance companies to bring their complaints against insurance companies, but it is expensive and time consuming and does not appear to be useful for small complaints by consumers. The court system is a three-tier system composed of regional courts, district courts and the Supreme Court as the highest judicial body. The regional courts are of common jurisdiction and try most cases in the first instance. The judgments of regional courts may be appealed to the district courts, while decisions of district courts may be appealed to the Supreme Court. There are also specialized courts including the recently created economic courts. Cases that are in the competence of the specialized courts are judged in the first instance in the relevant specialized court. Despite these developments, there is strong perception that weaknesses of the overall judicial system remain, where several rulings might suggest that judicial independence is very much open to doubt.</p> <p>c. The media comprising financial news and TV shows appear to cover financial sector news and developments.</p> <p>There is hardly any consumer organization that focuses on financial products or services including insurance matters. The number of consumer organizations has dwindled from 100 over in 1991 to 4/5 today. These consumer organizations suffer from lack of membership, funding and collaboration with government, industry and regulators. Most of these are very small operating with volunteers with less than 10 members except for the National Consumer League of Kazakhstan. Their major problem is the lack of funding and support to carry out their activities. Nevertheless, these grass root organizations are the only accessible points for the retail investors.</p>
Recommendation	<p>The media and the industry associations should be encouraged to promote consumer awareness of issues relating to consumer protection.</p> <p>Increased involvement of consumer organizations should be encouraged by providing them funding and resources and engagement with them by the AFN in its policy formulation responsibilities.</p> <p>In view of the weak capacity of the courts, the coverage of the ombudsman's services that are available for mandatory third party motor vehicle liability should be extended to all other disputes between consumers and insurance companies as it provides a speedy, efficient and cost effective avenue for dispute resolution between the insured companies and their customers.</p>
Good Practice A.5	<p><i>Bundling and Tying Clauses</i></p> <p>Whenever an insurer contracts with a merchant or credit grantor (including banks and leasing companies) as a distribution channel for its contracts, no bundling (including enforcing adhesion to what is legally a single contract), tying or other exclusionary dealings should take place without the consumer being advised and able to opt out</p>
Description	It is common practice for banks to offer loans that are tied with a preferred

	<p>insurer usually belonging to the same financial group as the bank, and it has been reported that these insurance policies are sold at inflated premiums. Abusive practices have been reported in regard to banks utilizing mortgage protection policies to reimburse itself without even the knowledge of the estate of the insured.</p> <p>AFN is currently in the process of preparing legislative changes to compel higher standards of disclosure to consumers particularly in relation to the effective cost of insurance to consumers. Measures are also being considered by AFN in requiring banks not to compel the taking out of a mortgage insurance policy if the “loan to value” ratio is less than 70%.</p>
Recommendation	<p>The LIB should be revised to ensure that where consumers are required by banks or credit providers to insure with a particular company, adequate disclosures are made to the consumer. The disclosures should include the relationship between the bank or credit provider and the selected insurance provider, the benefits which the bank or credit provider will derive from the arrangement and a comparison of the costs to the consumer with the costs of a number of other alternatives.</p> <p>AFN should introduce the requirement to inform consumers about their right to freely choose a provider for any product independently. This could be done in the form of an acknowledgment statement for the buyer’s signature.</p> <p>2. In addition, tariffs on credit insurance should be presented to customers of standard loan types.</p> <p>3. NGOs and the media should be encouraged to engage in researching standardized quotes of insurance for different loan durations and amounts and provide the public with these comparisons.</p>
SECTION B	DISCLOSURE & SALES PRACTICES
Good Practice B.1	<p><i>Sales Practices</i></p> <ol style="list-style-type: none"> a. Insurers should be held responsible for product-related information provided to consumers by their agents (i.e. those intermediaries acting for the insurer). b. Consumers should be made aware of whether the intermediary selling them an insurance contract (known as a policy) is acting for them or for the insurer (i.e. in the latter case they have an agency agreement with the insurer). c. If the intermediary is a broker (i.e. acting on behalf of the consumer) then the consumer should be advised at the time of initial contact with the intermediary if commission will be paid by the underwriting insurer. The consumer should have the right to require disclosure of the commission and other costs paid to an intermediary for long term savings contracts. The consumer should always be advised of the amount of commission paid on single premium investment contracts. d. An intermediary should not be allowed to identically fill broking and agency roles for a given general class of insurance (i.e. life and disability, health, general insurance, credit insurance). e. Sanctions, including meaningful fines and, in the case of intermediaries, loss of license, should apply for breach of any of the above provisions.

<p>Description</p>	<p>The LIB has legal definitions of agent and broker. Under Article 3, an insurance agent is defined to be a natural person or a legal entity that carries out intermediary activities in the concluding of insurance agreements on behalf of, and on the instructions of, one or several insurance organizations. Article 3 defines a broker as “a legal entity representing the insurant associated with the conclusion and implementation of insurance agreements with an insurer pursuant to the instructions of the insurant, or on its own behalf carrying out intermediary activities with regard to rendering services associated with the conclusion of insurance or re-insurance agreements, as well as consultative activities on issues of insurance and re-insurance”. Article 17 prohibits an insurance broker to act as an insurance agent.</p> <p>Article 18(2) of LIB requires an insurance agent to present to a client his agency agreement certifying his capacity to conclude insurance agreements on behalf and under the order of the insurance company. An agent is also required to provide certain information regarding an insurance company that the agent represents, including a copy of the license of the insurance company. Interestingly, Article 18 of LIB obligates the agent to familiarize the client with the terms of the insurance agreement only if it is requested by the client.</p> <p>Article 18 also stipulates that an insurance company is fully responsible for the insurance agreement that is concluded on its behalf by the agent within the authority that is delegated to the agent. Accordingly, the insurance company is obliged to implement the terms of the insurance agreement. An insurance company is also required to keep a register of the insurance agents who are authorized by it.</p> <p>The provisions of LCIVO are also comprehensive in terms of the obligations and responsibilities of the insurance companies. For example, Article 17 of LCIVO provides that an insurer shall be obliged to familiarize the insured with the terms of compulsory insurance of vehicle owners’ liability and clarify his rights and duties arising from a compulsory insurance agreement of vehicle owners’ liability. Article 16 provides, among other things, that the insured shall have a right to demand from an insurer any clarification of terms of compulsory insurance; receive a duplicate of an insurance policy in case of its loss and enjoy the services of an independent expert to assess the amount of damage caused to health and/or property of the injured.</p> <p>There are provisions in the insurance laws that empower the AFN to revoke the licenses of insurance intermediaries in the event of breach of requirements that are imposed by law.</p> <p>Currently, agents are allowed to represent more than one insurance company as they are not tied agents. This has presented a situation where it may not provide the incentives for an insurance company to train and equip the agents up to professional standards. Even though the supervisory approach of AFN seems to be based on holding the board of directors and senior management of insurance companies responsible for the conduct of the agents, more can be done in utilizing ongoing market intelligence at a local level to monitor market practices of agents and insurance companies. There are also no explicit provisions that require agents or insurance companies to disclose the commissions to the consumer.</p>
<p>Recommendation</p>	<p>1. More should be done in utilizing ongoing market intelligence at a local level to monitor market practices of agents and insurance companies.</p>

	2. More explicit requirements should be imposed on insurance companies to disclose commissions to the customer for non-mandatory insurance policies.
Good Practice B.2	<p><i>Advertising and Sales Materials</i></p> <ul style="list-style-type: none"> a. Insurers should make sure that their advertising and sales materials and procedures do not mislead customers. Regulatory limits should be placed on investment returns used in life insurance value projections. b. Insurers should be legally responsible for all statements made in marketing and sales materials they produce related to their products. c. All marketing and sales materials should be easy to read and easy to understand by the general public.
Description	<p>The new Consumer Protection Law establishes basic rights of a consumer (that would include a consumer of financial service) including the consumer’s right to obtain complete, timely and accurate information about the product or service that is marketed to the consumer. If the consumer is provided with “inaccurate and misleading” information about a product or service, the consumer is entitled to terminate the contract and demand for damages for his losses.</p> <p>Article 6 of the Law on Advertising (Law No. 508-II –December 19, 2003) stipulates that advertisements should be reliable and comprehensible by the general public without the benefit of technical knowledge. Article 14 of the Law on Advertising deals specifically with advertising of financial, insurance, investment and securities services and prohibits, among other things, advertisements that are misleading due to the omission of material terms and conditions.</p> <p>Be that as it may, both the Civil Code and LIB are silent regarding the obligations of insurers regarding sales and promotional materials and the way in which such materials should be presented. The law also does not make explicit that insurers must be legally responsible for all statements made in marketing and sales materials that they produce related to their products.</p> <p>Guidance can be given in the regulatory framework on what is meant by unreliable and misleading advertisement by insurance companies. For example, there are no detailed regulations on permissible advertising practices in the insurance sector other than the general requirement not to make misleading statements. The result of the lack of specific guidance is that compliance with the abovementioned rules would inevitably be dependent on individual insurance’s compliance capacity.</p>
Recommendation	<p>The law should make it explicit that insurers must be legally responsible for all statements made in marketing and sales materials that they produce related to their products.</p> <p>More capacity within AFN should be built to closely monitor advertising by insurance companies for insurance products to ensure that they are not misleading or untrue. In addition, there should be regulatory limits on investment returns used in life insurance value projections for advertising and sales materials.</p> <p>More specific guidance can be provided by AFN in the form of policy explanatory notes to the insurance industry on what may constitute legitimate advertising by insurance companies and what is the meant by the “unreliable and misleading” advertisement rule.</p>

Good Practice B.3	<i>Know Your Customer</i> The sales intermediary or officer should be required to obtain sufficient information about the consumer to ensure an appropriate product is offered. Formal “fact finds” should be specified for long-term savings and investment products and they should be retained and available for inspection for a reasonable number of years.
Description	There is no concept of “know your customer” or “KYC” rule in the insurance laws in the determination of suitability of insurance products for consumers. There are only general requirements for the maintenance of records by the insurance company.
Recommendation	A “KYC” rule should be incorporated into the regulatory framework for the insurance industry, specifying formal “fact finds” for long-term savings and investment products.
Good Practice B.4	<i>Cooling-off Period</i> There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling.
Description	Cooling-off period for insurance contracts is required for accumulation insurance products only. (to be verified as cannot find the relevant rule in the law)
Recommendation	A cooling-off period should be introduced in the regulatory framework for all insurance contracts, especially for voluntary insurance products such as investment-style life insurance products so that consumers would have an opportunity to rethink their decisions in the face of high-pressure sales tactics. Typically these apply for up to 14 days after the contract becomes effective or a shorter period after the insurance contract is sent out (to remove if the cooling off regulatory requirement can be identified in Kazakhstan).
Good Practice B.5	<i>Key Facts Statement</i> A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.
Description	There is no standardized requirement for information to be given to a client at the point of sale such as key facts statement or product disclosure statement. There is also no standard format for finding facts about a client along the principles of simplicity and plain language. Providing consumers with simple, clear and understandable information about the services offered by insurance companies, how the products they offer meet the demands and needs of their customers and the reasons for any advice given should be a key priority. This is particularly important in the selling of life insurance products because investors should be made aware of the clear distinction between traditional life insurance products and investment-style products.
Recommendation	The insurance industry working with FIAK should develop key facts statements in plain language for each class of life and non-life insurance products. The insurance industry should agree on the content of the key facts statements with AFN. Insurance companies, brokers and agents should ensure that a key facts statement is part of the information given to applicants when an offer of insurance is made and when

	contracts for insurance are finalized.
Good Practice B.6	<p><i>Professional Competence</i></p> <ul style="list-style-type: none"> a. Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell. b. Educational requirements for intermediaries selling long-term savings and investment insurance products should be specified, or at least approved, by the regulator or supervisor.
Description	<p>There are currently no competency requirements that are imposed on agents or employees of insurance companies who are involved in selling and advising on insurance contracts even though there are specific competency requirements that are imposed on the management staff of an insurance company as well as for its risk management and internal control activities of the insurance company (Article 34 and Resolution 130 paragraphs 22 and 76). However, the AFN has recently introduced reforms that require agents of insurance companies to sit for examinations within a year from 2010. Nonetheless, there appears no requirement for qualifications that are aligned with the complexity of insurance service or products that are provided.</p> <p>The professional standards and competence of agents in the selling of insurance products is indeed of concern in Kazakhstan. Prior to regulatory interventions taken by AFN in 2008/2009, the perception of the professional standards of agents was rather negative. Nonetheless, large insurance companies do provide in-house training to their agents.</p> <p>Industry feedback suggests that there may be too little time for preparation of the insurance companies and agents to sit for certifying examinations.</p>
Recommendation	In the implementation of the new legal requirement for the qualifications of agents for the insurance industry, consideration should be given to requiring qualifications that are aligned with the complexity of the insurance service or products that are sold to consumers.
Good Practice B.7	<p><i>Regulatory Status Disclosure</i></p> <ul style="list-style-type: none"> a. In all of its advertising, whether by print, television, radio or otherwise, an insurer should disclose: (a) that it is regulated and (b) the name and address of the regulator. b. All insurance intermediaries should be licensed and proof of licensing should be readily available to the general public, including through the internet.
Description	<p>All insurance companies and reinsurance companies, brokers and actuaries are required to be licensed by the AFN under the LIB. An insurance company is required to maintain a register of agents which are tied to them. An agent is also required pursuant to Article 18 of the LIB and Article 17 of LCIVO to provide to a consumer the necessary documents to indicate the status of authorization of the agent and the insurance company he represents.</p> <p>AFN maintains a register of insurance companies, brokers and actuaries on its website. If a consumer wants to verify that he or she is dealing with a licensed entity, he may check through AFN's website.</p>
Recommendation	No recommendation.

Good Practice B.8	<p><i>Disclosure of Financial Situation</i></p> <ul style="list-style-type: none"> a. The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the insurance sector either as a special report or as part of the disclosure and accountability requirements under the law governing it. b. Insurers should be required to disclose their financial information to enable the general public to form an opinion with regards to the financial viability of the institution. c. If credible claims paying ability ratings are not available, the regulator or supervisor should periodically publish sufficient information on each insurer for an informed commentator or intermediary to form a view of the insurer’s relative financial strength.
Description	<p>The AFN publishes an annual report that provides its assessment of the state of the insurance industry in Kazakhstan including regulatory reforms that have been adopted or planned for the insurance industry. The nature of sanctions that are taken against an insurance company is also published both in the annual report as well as in AFN’s website. AFN’s website, which is available to the public in three languages, includes the list of licensed insurance and reinsurance companies and brokers and comprehensive information about the insurance market.</p> <p>Article 74 of the LIB requires an insurance company and broker to prepare their financial statements in accordance with international financial reporting standards. In addition, Article 75 makes it mandatory for the actuary report on insurance reserves to be an integral part of annual financial statements of an insurance company. Article 76 of LIB requires all insurance companies and brokers to publish their annual financial statements in accordance with requirements specified by the National Bank of Kazakhstan (“NBK”). However, such published financial statements would be far too complex for a consumer without sound financial background to understand. Since it is a legal requirement under the LIB for financial statements of an insurance company to be provided to a client upon his request, consideration should be given to requiring a more simplified set of accounts that are prepared in understandable terms for the individual consumers.</p>
Recommendation	<p>The AFN should consider requiring insurance companies to provide simplified financial statements that will allow consumers without a technical background to make assessments about financial viability of insurance companies.</p>
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<p><i>Customer Account Handling</i></p> <ul style="list-style-type: none"> a. Customers should receive periodic statements of the value of their policy in the case of insurance savings and investment contracts. For traditional savings contracts, this should be provided at least yearly, however more frequent statements should be produced for investment-linked contracts. b. Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period. c. Insurers should be required to disclose the cash value of a traditional savings or investment contract upon demand and within a reasonable time. In addition, a table showing projected cash values should be provided at the time of delivery of the initial contract and at the time of any subsequent adjustments. d. Customers should be provided with renewal notices a reasonable

	<p>number of days before the renewal date for non-life policies. If an insurer does not wish to renew a contract it should provide a reasonable notice period.</p> <p>e. Claims should not be deniable or adjustable if non-disclosure is discovered at the time of the claim but is immaterial to the proximate cause of the claim. In such cases, the claim may be adjusted for any premium shortfall or inability to recover reinsurance.</p> <p>f. Insurers should have the right to cancel a policy at any time (other than after a claim has occurred – see above) if material non-disclosure can be established.</p>
Description	<p>There appear to be no explicit rules covering an insurance company’s handling of policyholder funds. There are neither regulatory requirements for the production and delivery of statements by the insurance company nor provisions relating to the ability of the insured to dispute the accuracy of the statements and the timeframes within which to do so. Except for mandatory motor vehicle insurance, there are no explicit provisions in the law that gives the insured the right to require the insurer to provide specific information during the term of the contract of insurance. There are no specific requirements to require the insurer to give the insured notice of the impending expiration of the term of the policy or to issue a renewal notice even though industry practice suggests that it does occur.</p> <p>For savings-type life insurance policies, there are no requirements for reporting the value of policies to clients and there are no requirements for such policies to be treated any different from other forms of insurance.</p>
Recommendation	<p>1. The law should specify that for traditional savings-type life insurance policies, policy holders should be entitled to receive statements of value at least annually. The regulatory framework should also provide explicit requirements for the policy holder to be able to dispute the accuracy of the statement produced by the insurance company.</p> <p>2. The law should be reviewed to ensure that insurers are required to notify insured persons about the need to renew policies that are due to expire and to provide a renewal notice to that effect.</p>
SECTION D	PRIVACY & DATA PROTECTION
Good Practice D.1	<p><i>Confidentiality and Security of Customers’ Information</i></p> <p>Customers have a right to expect that their financial transactions are kept confidential. The law should require insurers to guarantee that they protect the confidentiality and security of personal data, against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.</p>
Description	<p>There are provisions in various laws providing for privacy and data protection. They include-</p> <ul style="list-style-type: none"> i. Constitution of the Republic of Kazakhstan; ii. Article 126, Chapter 55 of the Civil Code of Kazakhstan; iii. Administrative Code (fines for disclosure of information) iv. Law on Private Entrepreneurial Activity № 124-III dated 31 January 2006 (commercial and official secrecy);

	<p>v. Informatization Law № 217-III dated 11 January 2007;</p> <p>The privacy of individuals appears to be subject to the general rules of the Constitution of Kazakhstan, which in Article 18 says that everyone has a “right to privacy of personal deposits, telephone conversations, letters and other messages”.</p> <p>Article 126 of the Civil Code provides that “information shall constitute an employment or commercial secret when the information has real or potential commercial value by virtue of it being unknown to third parties; there is no free access to such information on legal grounds and the possessor of the information has taken steps to protect its confidentiality”. Article 126 of the Civil Code goes on to provide that persons who have received such information by illegal methods or where employees or parties to a contract divulge such information against the terms of the contract, they would be liable to compensate the damage that is caused.</p> <p>Article 14 of the AFN Law provides that the representative of AFN shall bear the responsibility for the disclosure of data obtained during his execution of supervisory functions which constitute service secret, commercial secret, bank secret or any other legally protected secret in accordance to the laws, including also within three years after termination of work at the authorized body. Article 13-1(22) of AFN Law prohibits AFN’s employees from disclosing or communicating to third parties of data obtained in the course of their employment. Article 13-1(23) provides that persons who conduct supervisory responsibility shall bear the responsibility for the disclosure of data in accordance to the national laws..</p> <p>Article 14 of AFN Law provides authority to AFN to obtain information. This article provides that in order to ensure quality and timely execution of functions of regulation and supervision of financial market and financial organizations, the AFN shall be entitled to obtain from physical persons and legal entities, as well as from state bodies, information that is necessary to perform its supervisory functions and that information that is so obtained shall not be disclosed by the AFN.</p>
Recommendation	No recommendation.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<p><i>Internal Dispute Settlement</i></p> <ol style="list-style-type: none"> a. Insurers should provide an internal avenue for claim and dispute resolution to policyholders. b. Insurers should designate employees to handle retail policyholder complaints. c. Insurers should inform their customers of the internal procedures on dispute resolution. d. The regulator or supervisor should provide oversight on whether insurers comply with their internal procedures on consumer protection rules.

Description	<p>There are no explicit requirements imposed on insurance companies for them to have complaints handling operations even though there is a broad requirement in the Risk Management Policy issued by AFN that requires insurance companies to have internal control and risk management systems. Resolution 130 requires the management of an insurance company to establish a risk management and internal control system that would, among other things, ensure that the operational procedures are clearly formulated and available to the respective employees for effective implementation. The internal audit functions of the insurance company include ensuring of compliance of these operational procedures and systems. There are no legal requirement for a designated set of employees to deal with complaints from clients, although this appears to be a common practice where there is a general complaints procedure for all types of complaints and a specific unit within the insurance company to handle the complaints.</p> <p>AFN provides oversight of the internal procedures of the insurance company through inspections pursuant to its authority under the LIB.</p>
Recommendation	<p>AFN should specifically require that an insurance company provides information to their clients on how to seek a remedy, including redress, for problems arising out of interactions with the agents or insurance company. For example, the website of such an insurance company should clearly identify portals for customer complaints and the insurance company should also be required to prepare an annual report of compliance with their complaints handling policy.</p>
Good Practice E.2	<p><i>Formal Dispute Settlement Mechanisms</i></p> <ol style="list-style-type: none"> a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, which could be an ombudsman or tribunal, in the event the complaint with the insurer cannot be resolved to the consumer’s satisfaction in accordance with internal procedures. b. The role of an ombudsman or equivalent institution <i>vis-à-vis</i> consumer disputes should be made known to the public. c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority and the industry. d. The decisions of the ombudsman or equivalent institution should be binding upon the insurers. The mechanisms to ensure the enforcement of these decisions should be established and publicized.
Description	<p>There is no ombudsman for insurance products other than for compulsory insurance of civil liability of vehicle owners.</p> <p>The main laws regulating the activity of Insurance Ombudsman are the Law on Insurance Business (Law No. 126 of 18th December 2000); Law on Compulsory Insurance of Civil Liability of Vehicles Owners (Law No. 444 –July 1, 2003) and the Regulation on Activity of Insurance Ombudsman that was approved by AFN on 23 August 2007. The scope of activities of the Insurance Ombudsman seems to be relatively limited, as it relates only to disputes concerning mandatory motor vehicle claims (these classes account for the majority of premium income in the non-life market segment) and to matters concerning the admissibility of claims and the assessment of the quantum of those claims.</p> <p>The Insurance Ombudsman is an individual who carries out mediation in regard to -</p> <ul style="list-style-type: none"> • disputes between insurers arising from the compulsory insurance of civil liability of the vehicle owners; and • disputes between beneficiaries (insurants) and insurers arising from the

	<p>compulsory insurance of civil liability of vehicle owners.</p> <p>The law provides for a broad framework for the operations of the Ombudsman where each insurer is represented in the council but it is the AFN who recommends the person who is independent of the insurance industry to be as the Ombudsman based on minimum competency qualification. The Insurance Ombudsman is elected for 2 years by the representatives' council and is eligible for re-election. The representatives' council reviews the operations and approves the funding of the Insurance Ombudsman's activities.</p> <p>The ombudsman system for this category of insurance policy in Kazakhstan would appear to be based on an "opt-in" model where insurance companies would sign an MOU with the Ombudsman that would entitle the Ombudsman to resolve disputes between insurance companies and their customers. The current ombudsman system for compulsory insurance of civil liability for vehicle owners appears to be simple, cost-free and speedy for the settlement of disputes for the customers of the insurance company, without these customers having to resort to lawyers. About 95% of cases brought before the Ombudsman are in favor of the insured.</p> <p>The current Ombudsman is an attorney who has more than 18 years of legal practice in the insurance field. Details about the availability and the scope of activities of the Ombudsman and applications are available on the website of the Ombudsman. The website of the Ombudsman provides statistics and useful information for the consumers to submit his claims and indeed, we are informed that a substantial number of claims have been submitted through the internet to the Ombudsman from out-of-town locations.</p> <p>Pursuant to Article 30 of LCIVO, the recommendations of the Ombudsman are binding on the insurance company but not on the consumer. In the event an insurance company fails to execute a decision of the Ombudsman within the prescribed period, the Ombudsman would inform the AFN immediately, but not later than three working days about the non-compliance of the insurance company and attach relevant documents to confirm the violation of the requirements of LCIVO. We are informed that there has been no incidence in which an insurer does not pay upon a decision by the Ombudsman that is in favor of the insured.</p> <p>There does not appear to be a similar dispute resolution bodies for brokers and agents.</p>
Recommendation	<p>Greater publicity should be given to the ombudsman for mandatory motor vehicle insurance.</p> <p>The mandate of the current insurance ombudsman should be expanded to other types of insurance products.</p>
SECTION F	GUARANTEE SCHEMES AND INSOLVENCY
Good Practice F.1	<p><i>Guarantee Schemes and Insolvency</i></p> <ol style="list-style-type: none"> a. With the exception of schemes covering mandatory insurances, guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry and the scope for moral hazard. Strong governance and supervision are better alternatives. b. Nominal defendant arrangements should be in place for mandatory insurances such as motor third party liability insurance. c. Assets covering life insurance mathematical reserves and investment

	contract policy liabilities should be segregated or at the very least earmarked, and long-term policyholders should have preferential access to such assets in the event of a winding-up.
Description	<p>Currently, the Law on the Fund of Guaranteed Insurance Benefit (Law No. 423-June 3, 2003) provides a payment guarantee to the claims of insured/creditors in respect of three types of compulsory insurance agreements in the event of insolvency of an insurance company. These are in respect of mandatory motor vehicle insurance policies, freight passenger insurance policies and tourist insurance policies. AFN is considering the inclusion of additional types of mandatory insurance under the insurance payment guarantee in the event of insolvency/liquidation of insurance companies.</p> <p>The winding-up of an insurance company is governed by the provisions in the LIB. Article 72 of the LIB spells out the ranking of payments to ensure a more orderly winding-up of an insurance company, and ranks the claims an insolvent insurance company to be as follows:</p> <ol style="list-style-type: none"> 1) Claims in relation to mandatory policies relating to life or health, by way of capitalization of the relevant periodic payments; 2) Payment of wages under employment agreements; 3) Claims of creditors under concluded insurance agreements; 4) Claims under property insurance agreements; 5) Claims of creditors under concluded insurance agreements, as well as the requirements of the fund guaranteeing the performance of insurance payments to insureds under obligatory insurance agreements; 6) Claims relating to obligations secured with pledge of property of the insurance organization; 7) Debts associated with taxes, levies and other obligatory payments; and 8) Settlements with other unsecured creditors. <p>Article 47 of LIB requires the maintenance of insurance reserves that must be used by an insurance company to settle claims.</p>
Recommendation	No recommendation.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<p><i>Unbiased Information for Consumers</i></p> <ol style="list-style-type: none"> a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand the financial products and services available to them. b. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of financial products and services. c. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.
Description	<p>The dissemination of financial education by AFN is done through a variety of medium including the mass media and TV shows as well as through written publications. In 2009, the Agency published 87 materials, interviews, taped news items, analytical materials. Every month, the AFN places on its website information containing key indicators of activities of financial organizations; validity of</p>

	<p>complaints and appeals for each financial organization; breaches of laws by financial organizations as well as the sanctions that AFN has taken. There is also a section on “Information for consumers of financial services” which consists of -</p> <ul style="list-style-type: none"> - “What does the consumer need to know” (video clips and instructions); - “To the attention of the consumer!”; - “Basics of financial literacy”; - “Financial dictionary”; - “Consumer complaints (analysis and statistics)”; - “Frequently asked questions” (with answers). <p>Altogether, 5 video commercials (both in the Kazakh and Russian languages) including 4 video commercials on protection of rights of consumers of financial services and one covering the AFN’s activity as a regulator of the financial system were produced in 2009. Video commercials were transmitted 36 times per day during the period from 1 January until 10 February, 2009 in Kazakh and Russian languages.</p> <p>AFN has also published a variety of books/brochures relating to the protection of rights of consumers in the different sectors of the financial system.</p> <p>The RFCA is the dedicated body and champion of financial literacy programs in Kazakhstan. The RFCA is created under statute with clear responsibilities to promote financial literacy among consumers in the financial sector. It is given healthy resources and funding by the GOK and is well resourced and professionalized in undertaking financial literacy programs.</p> <p>The new Consumer Protection Law provides a role for consumer organizations to provide training programs for consumers. The National League of Consumers has been very innovative in delivering financial awareness education and is able to build its financial resources based on some of these education programs. Since the introduction of the new consumer protection laws, other smaller consumer organizations have expressed enthusiasm in participating in such programs.</p>
Recommendation	Consumer organizations should be strongly encouraged and supported by the Government and the competent authority for consumer protection to deliver financial education awareness programs throughout Kazakhstan.
Good Practice G.6	<p><i>Measuring the Impact of Financial Capability Initiatives</i></p> <ol style="list-style-type: none"> a. Policymakers, industry and advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse b. The financial capability of consumers should be measured through a broad-based survey that is repeated from time to time. c. The effectiveness of key financial capability initiatives should be evaluated.
Description	No survey is undertaken to measure the financial capability of consumers in Kazakhstan nor is there any assessment of the effectiveness of the many financial capability initiatives undertaken by the AFN and RFCA.
Recommendation	A baseline survey assessment should be conducted to better identify the segment of the population that require particular attention, measuring the effectiveness of financial education and determine education needs.

CONSUMER PROTECTION IN THE PENSIONS SECTOR

OVERVIEW

87. **Kazakhstan was the first CIS country to reform its pension system.** It has a three-pillar pension system, with an old pay-as-you-go pillar disappearing (no new contributions collected, only benefits are paid), a mandatory pension pillar that was introduced in 1998. Facing an economic crisis and seeking to pursue the example of Chile, Kazakhstan embarked on an ambitious pension reform program in 1998. The reform discontinued the accumulation of pension rights in a traditional social security scheme that was publicly managed and provided universal coverage. The chosen pension reform in 1998 was implemented without fully considering the capital market preconditions necessary for success with the new pension fund system's parameters poorly calibrated in light of the Government's social policy objectives, existing liabilities, and the political economy of such structural changes. As a result, efforts are afoot today to review the entire pensions system in the light of the fiscal position of the country.

88. **From 1998, all pension contributions were diverted to the newly established second and third pension pillars. The second pillar comprises a number of privately managed and one state-owned defined contribution pension funds which collect and invest pension contributions as well as distribute benefits in the form of phased withdrawals and lump-sums.** Effective from July 1, 2005, an additional basic pension benefit was added to the second pillar, paying a uniform flat-rate of 10% benefit to all citizens above the retirement age (currently 63 and 58 years for men and women, respectively). Article 6 of the Law on Pensions System of 1997 (Law No. 136-I –June 20, 1997) requires that the Government guarantees obligatory contributions to the second pillar pension system, indexed to inflation).

89. **Pension funds undertake asset management, administration of accounts and transfer of payments for pension purposes.** They may outsource asset management to pension assets investment management companies (IMPAs) or manage money in-house: 5 have outsourced and 9 manage their own assets. Collection is centralised, so pension funds do not have to deal individually with employers. An independent custodian must also be employed, and audited annual accounts must be supplied. Private pension funds currently have 42 percent of their assets invested in state bonds, while securities of domestic private entities account for 37 percent of assets, and securities of foreign entities comprise 11 percent.

90. **Collection of pension contributions is centralized in the State Pension Payment Centre (SPPC) which is also responsible for transferring PAYG benefits to pensioners.** The SPPC and the reporting system of pension contributions is currently undergoing an overhaul which will reduce the number of transfers employers have to make and will also ensure better control over multiple or incorrect registration of insured. Whereas the internal data management systems of SPPC are well maintained, neither the institutional incentives nor systems are present at the SPPC or the Tax Authority to control under-reporting or coverage problems.

91. **In 2009, pension savings of contributors/beneficiaries grew 31% to reach KZT 1, 861 billion by 1 January 2010.** The monthly average growth of pension savings has increased from KZT 25 billion in 2007 to KZT 37 billion in 2009.

Table 9: Pension Savings
(KZT billion)

Date	Total pension savings	Growth over a year	Growth rate of pension savings, %
Jan. 2006	648.6	164.6	34

Jan. 2007	909.7	261.1	40.3
Jan. 2008	1208.1	298.4	32.8
Jan. 2009	1420.5	212.4	17.6
Jan. 2010	1860.5	440	31

Source: AFN

92. The number of individual pension accounts owned by contributors (beneficiaries) as at 1 January 2010 in respect of mandatory pension contributions totaled 7,732,128 out of 8.5 million economically active population of the country (as per the data provided by the Statistics Agency of the Republic of Kazakhstan).

93. **Overall, the pension system operates a complex system of benefits.** Kazakhstan citizens who have a full contribution history (25 years for men, 20 years for women) have an entry benefit equal to at least 60% of their best three consecutive years' average wage. People who retired before 1998 with partial work histories (mainly women) are eligible for a proportionally reduced pension. Those who retired after 1997 with a full work history get at least the Minimum Pension Guarantee (MPG). The MPG is KZT 7,236. The Basic Pension, introduced in July 2005 is paid to all pensioners, regardless of their date of retirement. The Basic Pension is KZT 3,000. Thus, someone with a full contribution history retiring after 1998 receives an entry pension of at least KZT 10,236. From 2011-2012 onward, combined minimum benefits will start to reduce. The Government's ultimate goal is to ensure that all citizens receive a benefit equal to at least 75% of the minimum wage.

Table 10: Benefits in Pension System of Kazakhstan

	Retired before 1998 with full PAYG contribution history	Retired before 1998 with partial PAYG contribution history	Retired after 1997 with full PAYG contribution history	Retired after 1997 with partial PAYG contribution history
60% of best 3 years	Yes	No	Yes	No
MPG	No	No	Yes	Yes, proportional
Basic Pension	Yes	Yes	Yes	Yes

Source: AFN

94. **The pensions fund market is highly concentrated.** Mandatory pension savings are collected by 13 privately managed and one state-owned accumulation pension funds (APFs), with the three largest funds accounting for 64% of assets. The state-owned pension fund has a regional network of 77 branches and 49 representative offices as at 1 January 2009. The state pension fund has been incorporated in early 2004 and is subject to similar regulation by the AFN as for the private pension funds.

95. **The revenue of pension funds arises from commissions based on assets under management (maximum 5 basis points per month) and on investment income** (maximum 15% of investment income). Their expenses include standard staff, office and marketing costs and fees paid to the custodian, and to the external asset manager if it is outsourced.

96. **In terms of investment returns, the pension funds' performance has been poor.** The reasons for this are manifold, but the more important factors include low yields on Government debt instruments (driven by favourable fiscal and macroeconomic conditions); low level of capital market development partly due to dominance of internal corporate resources and bank financing in meeting the corporate sector's financing needs, and highly restrictive portfolio regulations and rate of return rules which drive pension funds into domestic government debt instruments and discourage overseas investment. The result is that a complicated, expensive and inefficient private pension system exists and which underperforms and does not provide sufficient returns.

97. Some issues concerning the development of the private pension funds industry relate to:

- A shallow local securities market, low yields and high inflation, and a lack of international diversification lead to high concentration of portfolios into a few securities (including illiquid securities). With very low yields from investments in domestic government debt securities, a negative real accumulated returns is the result and invariably leads to the government's liability to compensate new retirees using taxpayers' money.
- Private pension fund returns are very low and this undermines incentives of the public to participate in the contributory system.
- Coverage is a problem and according to the Ministry of Labour and Social Protection, approximately 30% of the labour force is not contributing and will therefore be only eligible for the Basic Pension.
- Given the rather low level of financial literacy and the relatively small differences in investment policies, the switches by contributors are often driven by factors unrelated to performance differentials, such as marketing and the employer's preference for a particular financial services group or pension fund.
- No one knows how much loss is still hidden in pension fund portfolios. In the second half of 2008 and first part of 2009, serious devaluations happened to many local instruments. Three large financial institutions have had defaults, and a good number of other bonds have defaulted as well. Pension funds watch each other and try to figure out which may hold what exactly. Stories abound which claim that even already defaulted bonds may still be valued at artificially high prices in portfolios.
- Trading with related parties is often reported due to poor corporate governance standards.
- The provision of guarantee by the state may not bring about a culture of taking financial responsibility for one's financial situation nor does it provide the economic incentives for the funds to be managed to bring higher returns, resulting in a high proportion of assets that are allocated to low yield government securities and illiquid domestic corporate bonds.

LEGAL FRAMEWORK AND INSTITUTIONAL ARRANGEMENTS

98. The main law governing the private pensions fund industry is the 1997 Law on Pensions System. AFN is the main regulator of the financial services including accumulation pensions fund sector. The AFN's supervisory objectives are broadly "to ensure financial stability of the financial market and financial organizations, and maintain confidence in the financial system in general; to ensure appropriate level of protection of interests of financial services consumers; and leveling off the field for operations of financial organizations with the aim to maintain bona-fide competition in the financial market."

99. Major laws and regulations governing the pension funds industry are as follows:

- Law on Pensions System No. 136-I dated 20 June 1997;
- Law on Securities Market No. 461-II dated 2 July 2003;
- Regulation on carrying out activities of investment management of pensions assets and pensions savings funds (approved by AFN Decree No. 189 dated 5 August 2009);
- Decree of National Bank of Kazakhstan On Charter Capital of Pensions Saving Funds No. 96 dated 21 March 2003;
- Regulation on issuance of the consent to state registration of the pensions saving fund (approved by AFN Decree No. 123 dated 30 April 2007);

- Regulation on carrying out pensions payments from pension savings (approved by the AFN Decree No. 661 dated 4 July 2003).

100. For the purposes of regulation and supervision of the accumulation pension fund sector, article 13 of the Law on State Regulation & Supervision of financial Markets and Financial Organizations (AFN Law)²⁴ spells out some of the relevant powers of the AFN in relation to accumulation pension funds (“APF”):

- establish fit and proper requirements for sponsors, shareholders and management of APFs and licensing them;
- establish the minimum capital requirements of APFs;
- establish procedures for the maintenance and transfer for pension savings in individual pension accounts and regulating and supervising pension operators of APFs;
- coordinate pension rules of APFs;
- establish procedures for transfers of pension assets and liabilities under pension agreements of an APF that is reorganized or liquidated to another APF; and
- revoke licenses of pension fund operators and appointing a temporary administrator.

101. **AFN has a specific Consumer Protection Department that deals with consumer protection issues.** The AFN’s supervisory objectives are broadly “to ensure financial stability of the financial market and financial organizations, and maintain confidence in the financial system in general; to ensure appropriate level of protection of interests of financial services consumers; and leveling off the field for operations of financial organizations with the aim to maintain bona-fide competition in the financial market.”

102. **The Ministry of Labor and Social Protection oversees the policy framework of pensions in Kazakhstan and the public pensions system and the operations of the SPPC.** The Ministry of Labor and Social Protection of Population has two departments operating apparently for protection of pensioners: the Department of Social Provision and Social Insurance and the Department of Social Assistance and Social Services Provision.

KEY RECOMMENDATIONS

103. A code of conduct should be developed for providers of third pillar pension products.

104. **Sales and business practices of APFs and pension fund managers should also be strengthened.** Agents should be appropriately trained if they are selling individual voluntary pension products. As the pensions services market develops in Kazakhstan that make demand for different levels of skills and competence, a standard industry-wide examination for determining the competency of individual sales persons should be required.

105. **The pension fund industry working with the AFN should develop key facts statements in plain language and agree on the content of the Key facts statements.** The key facts statement should be a one- or two-page simple document that is made available to contributors when they are considering entering into a contract, and which will also allow prospective contributors to compare different offers more easily.

106. **There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract,** after the policy information is delivered, to deal with possible high pressure selling and mis-selling. Consumers should be able to easily compare offers by different APFs and pension fund managers.

²⁴ Law No. 474 –July 4, 2003

107. **The laws should provide specifically that the provider is legally responsible for the information that it provides to consumers** in its marketing and sales materials rather than rely on the broad risk management policy issued by AFN that holds the management of the APFs and pension fund managers responsible for the conduct of their agents/employees.

108. More capacity within AFN should be built to closely monitor advertising by the aforementioned entities to ensure that they are not misleading or untrue.

109. The content should be prescribed in regard to disclosures that must be made to the contributor regarding the status of his pension savings.

110. **A KYC rule should be required for the pension fund industry.**

111. **The AFN should have explicit requirements for APFs and IMPAs to establish complaints handling.** In addition, the AFN should specifically require that APF and IMPA provide information to their clients on how to seek a remedy, including redress, for problems arising out of interactions with the agents or APF and IMPA. For example, the websites of such companies should have clearly identified portals for customer complaints and these companies should also be required to prepare an annual report of compliance with their complaints handling policy to be publicized on its website.

112. **A financial ombudsman similar to the ombudsman structure** in the insurance industry for mandatory motor vehicle insurance should be considered.

113. **Financial education should be a top priority in pensions.** Total privately managed assets in the voluntary pension sector are still modest but they have the potential to grow rapidly if the population is properly educated. Financial education should include information regarding the risks and rewards available and clear understanding that voluntary pension fund products are an investment tool rather than a guaranteed savings vehicle.

114. **There is a need to ensure that consumer associations are more effective in the financial sector including the pensions sector,** particularly by providing them with sufficient resources and funding. There may be scope to encourage one or several of the current organizations to specialize in financial issues in recognition of the fact that this is a highly specialized field of activity.

REVIEW AGAINST GOOD PRACTICES IN THE PENSIONS SECTOR

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	<p><i>Consumer Protection Regime</i></p> <p>The legal system should recognize and provide for clear rules on consumer protection in the area of private pensions and there should be adequate institutional arrangements for the implementation and enforcement of consumer protection rules.</p> <ol style="list-style-type: none"> a. There should be specific provisions in the law, which create an effective regime for the protection of consumers who deal with pension management companies. b. There should be a general consumer agency or specialized agency responsible for the implementation, oversight and enforcement of consumer protection, and data collection and analysis (including complaints, disputes and inquiries). c. The legal system should provide for a role for the private sector, including voluntary consumer organizations and self-regulatory organizations.
Description	<p>Until August 2010, the consumer protection in financial system was governed by the 1991 Law on Consumer Protection. This law dealt with all consumer protection matters and was enforced by the courts. A consumer protection department in the government and an inspectorate was established but these were dissolved in 1996. The department was transferred to the Anti-Monopoly Commission but it was also dissolved later. Thus, there is no central body for consumer protection currently.</p> <p>In August 2010, a new consumer protection law was passed (Law No. 274 –August, 2010). Under Article 5 of the new law, a new consumer protection body is set up and mandated to –</p> <ul style="list-style-type: none"> • ensure the implementation of state policies on consumer protection; • submit proposals to the Government of Kazakhstan on the main directions of the state policy on consumer protection; • carry out inter-sectoral coordination of public authorities on the improvement of legislation concerning the protection of consumer rights; • take measures to improve the legislation concerning the protection of consumer rights; • interact with the public associations of consumers, associations (unions) in the field of consumer protection; • exercise other powers stipulated by Kazakh laws Acts of the President and of the Government . <p>According to Article 2 of the new Consumer Protection Law, consumer rights in the areas of financial sector are to be governed by the competent authority specified by the law relating to financial sector, which is AFN. Under Article 6, the State bodies overseeing specific areas of competence are in charge of enforcing the law, with the following responsibilities to –</p> <ul style="list-style-type: none"> • develop regulations to protect the rights of consumers; • make proposals to the authority and the Government on improvement of legislation concerning the protection of consumer rights; • examine the treatment of individuals or legal entities in the area of consumer protection; • apply measures of accountability for perpetrators of Kazakhstan legislation on

	<p>consumer protection;</p> <ul style="list-style-type: none"> • supervise the observance of the legislation concerning the protection of consumer rights; • exercise other powers stipulated by laws , Acts of the President and the Government . <p>AFN is the agency responsible for implementing and enforcing consumer protection in the financial system, including the pensions sector. Its mandate can be found in Article 3 of Law No. 474 of 2003 Concerning The State of Regulation and Supervision of Financial Market and Financial Organizations (“AFN Law”). Article 3 of the AFN Law provides that the purposes of state regulation and supervision of financial market and financial organizations shall be as follows:</p> <ul style="list-style-type: none"> • to ensure financial stability of the financial market and financial organizations and to maintain trust to the financial system as a whole; and • to provide for the appropriate level of protection for the interests of financial services consumers. <p>These provisions clearly establish the power of AFN to implement and enforce consumer protection in financial system.</p> <p>Article 8 of the AFN Law states that one of the objectives of AFN is to, among other things, implement measures associated with the prevention of violation of rights and legitimate interests of financial service users. Article 9(4) specifically authorizes the AFN to prevent violation of the rights of users of financial services. For the purposes of regulation and supervision of the accumulation pension fund sector, article 13 of the AFN Law spells out some of the relevant powers of the AFN in relation to accumulation pension funds (“APF”):</p> <ul style="list-style-type: none"> • establish fit and proper requirements for sponsors, shareholders and management of APFs and license them; • establish the minimum capital requirements of APFs; • establish procedures for the maintenance and transfer for pension savings in individual pension accounts; • regulate and supervise pension operators of APFs; • coordinate pension rules of accumulation pension funds; • establish procedures for transfers of pension assets and liabilities under pension agreements of an APF that is reorganized or liquidated to another APF; and • revoke licenses of pension fund operators and appoint a temporary administrator. <p>f. Major laws and regulations governing the pensions funds industry are as follows:</p> <ul style="list-style-type: none"> • Law on Pensions System No. 136-I dated 20 July 1997; • Law on Securities Market No. 461-II dated 2 July 2003; • Regulation on carrying out activities of investment management of pensions assets and pensions savings funds (AFN Decree No. 189 –August 5, 2009); • Decree of National Bank of Kazakhstan On Charter Capital of Pensions Saving Funds No. 96 dated 21 March 2003; • Regulation on issuance of the consent to state registration of the pensions saving fund (AFN Decree No. 123 -April 30, 2007); • Regulation on carrying out pensions payments from pension savings (AFN Decree No. 661 –July 4, 2003). <p>The Ministry of Labor and Social Protection oversees the policy framework of pensions in Kazakhstan, the public pensions system and the operations of the SPPC. The Ministry of Labor and Social Protection of Population has two departments operating apparently for protection of pensioners: the Department of Social Provision and Social Insurance and the Department of Social Assistance and Social Services Provision.</p>
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	<p>Pensioners could contact the Ministry to get advice relating various issues, inter alia, consultations on consumer protection in financial services.</p> <p>AFN may carry out inspections of the activities of APFs and pension fund investment managers to determine whether they are operating in compliance with the legal requirements on pension funds.</p> <p>The Consumer Protection Department of the AFN is responsible for implementing, collecting, analyzing and dealing with complaints from users of financial services and products. The number of complaints and their breakdown is published in AFN's annual report. For the year 2009, AFN received a total of 344 complaints in relation to the pension sector, which represents 8.79% of the total number of complaints received by the AFN in 2009. Most of the complaints relate to shrinkage of pension savings; transfer of mandatory pension contributions to those APFs that the complainant has not entered into pension contracts, and non-payment of pension savings.</p> <p>In 2009, AFN took various enforcement measures against APFs for violation of pension law requirements. Based on its offsite inspection, enforcement actions taken against the pension sector included the issuance of 22 written instructions, 32 letters of commitment, 17 written agreements and imposition of 4 administrative penalties. Based on AFN's onsite inspection, enforcement actions were taken against APFs in the form of 5 written instructions, 2 written agreements, 4 letters of administration, and 18 administrative penalties that were imposed on 4 APFs.</p> <p>Consumer Associations</p> <p>Under Article 7 of the new Consumer Protection Law²⁵, consumers have the right to establish public associations of consumers. Article 20 provides that consumers are entitled to join on a voluntary basis in voluntary associations of consumers. Article 22 indicates that protecting the rights and legitimate interests of consumers is carried out within the competence of relevant authorities and court or arbitration tribunal. According to Article 41 these associations are empowered to-</p> <ul style="list-style-type: none"> • make proposals to the relevant authority and other government agencies for improving legislation concerning protection of consumer rights • apply to state agencies to assist in cases of violation of consumer rights • study properties of consumer goods and the demand for them, and conduct polls to determine public opinion about the quality of goods (works, services) • receive applications and complaints; • address state bodies in order to evaluate the quality of goods (work, service) in the case of income statements, consumer complaints; • represent consumer interests in government and in other public associations in the order determined by the laws; • sue in court for the benefit of consumers, including the benefit of an indefinite number of consumers; • investigate and disseminate information on consumer rights in the media; and • implement social programs, projects and activities aimed at solving social problems, regarding protection of consumer rights on the basis of state social orders. <p>Article 43 provides that violations of the CP Law are punishable by the national laws..</p> <p>The new CP Law is intended to pave the path for better funding, activities,</p>
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²⁵ Law No. 274 –August, 2010

	<p>sustainability of consumer associations and improvement of consumer protection in Kazakhstan. The number of consumer organizations in Kazakhstan has dwindled from 100 over in 1991 to 4/5 today, and only the National Consumer League of Kazakhstan deals with financial products or services. These consumer organizations suffer from lack of membership, funding and collaboration with government, industry and regulators. Most of these are very small operating with volunteers and less than 10 members (one of the associations only had 4 members). Their major problem is lack of funding and support to carry out their activities. Nevertheless, these grass root organizations are the only accessible points for the poor and socially disadvantaged citizens.</p> <p>The biggest flaw in the consumer protection regime of Kazakhstan is that there is no consumer court or consumer ombudsman that provides free consultation and service to the people. Most consumers bear abuse as they cannot afford to take the service or goods provider to court. The National Consumer League of Kazakhstan is uniquely a strong institution with more than 7000 members and 125 institutional members. It collaborates closely with the business community and carries out activities to improve financial literacy and awareness amongst consumers. However financial entities do not collaborate with the institution and the association provides financial literacy weekly training on its own for a fee.</p> <p>A general complaint from consumer associations is that the regulator does not actively seek or use their input which is based on the need and experience of real consumers.</p>
<p>Recommendation</p>	<p>Even though the new Consumer Protection Law recognizes that the competent authority for consumer protection for the financial sector would be the AFN, it would be useful to have explicit arrangements between the activities of the two agencies (the new Agency for Consumer Protection once it is established and the AFN) to ensure that there is clear accountability for consumer protection for the financial sector. Many jurisdictions have found that a MOU between the two agencies helps to clearly define their relationship, jurisdiction and responsibilities. It would be useful that AFN consider entering into such a MOU with the Agency for Consumer Protection once it is established.</p> <p>It would be useful for AFN to seek the input of consumer organizations in developing policies on consumer protection as these consumer organizations have direct experience dealing with consumers of financial products.</p> <p>The Government should provide funding and necessary resources for legitimate consumer associations to carry out consumer protection activities in Kazakhstan</p>
<p>Good Practice A.2</p>	<p><i>Other Institutional Arrangements</i></p> <ol style="list-style-type: none"> a. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection. b. The media and consumer associations should to play an active role in promoting financial consumer protection.
<p>Description</p>	<p>The 2nd and 3rd pillar activities are highly regulated and enforced by the AFN under the Law on Pensions System²⁶ (“LPS”) and related secondary legislation which gives authority to AFN to take a broad range of administrative actions against the accumulated pension fund (“APF”) and pension assets investment management companies (“IMPA”) and their employees. In severe cases, these measures can include revocation of license or removal of a person from a managerial function.</p> <p>The NGOs’ involvement in the pension services area is not strong, largely due to the need for specialized technical expertise and the lack of financial resources. However, the recent global financial crisis with its negative financial impact on the APFs has</p>

²⁶ Law 136-I – June 20, 1997

	attracted much attention from the media wide coverage.
Recommendation	There is a need to ensure that voluntary consumer organizations are more effective in the financial sector including the pensions sector, by ensuring that they have sufficient expertise and resources to deal with financial sector issues. There may be scope to encourage one, or several, of the current organizations to specialize in financial issues in recognition of the fact that this is a highly specialized field of activity. The allocation of funding for consumer associations needs to be reviewed with a view to providing sufficient funding. The funding ought to be to further the government's strategy in the consumer protection area.
SECTION B	DISCLOSURE AND SALES PRACTICES
Good Practice B.1	<p><i>General Practices</i></p> <ol style="list-style-type: none"> a. There should be disclosure principles that cover the consumer's relationship with the pension management company in all three stages of such relationships: pre-sale, point of sale, and post-sale. b. There should be clear rules on solicitation and issuance of pension products. c. The information available and provided to the consumer should clearly inform the consumer of the choice of accounts, products and services, as well as the risks associated with each of the options or choices. d. The pension management company should be legally responsible for all statements made in marketing and sales materials related to their products, and for all statements made by any person acting as an agent for the company.
Description	<p>Article 6 of the LPS provides that one of the guarantees of safety of pension savings, among other things, is in the disclosure of material and relevant information to the contributor.</p> <p>Article 24 of LPS also requires agents to disclose to beneficiaries, information on the calculations and amount of accrued contributions and remitted mandatory pension contributions on a monthly basis not later than fifteenth day of a month following the reporting period.</p> <p>According to the LPS, APFs may appoint fund managers to invest part of the funds of the scheme ("IMPA"). IMPAs need to be authorized by AFN. Articles 27 and 41 impose an obligation on the APF and agents to provide information to the contributor regarding shareholders of the APF, IMPA and bank-custodian as well as the status of his pension savings once a year..</p> <p>In the standardized application forms to be signed by the contributor for the transfer of his savings from one APF to another, or to an insurance company, under the Rules for Transferring Pension Savings from APFs (AFN Resolution No. 240 – December 29, 2008), the contributor affirms in the application form that he is acquainted with the current rules on transferring pension's savings. However, it is not clear what kind of information is provided by the APF or its agents to the contributor in this regard.</p> <p>Article 55 of LPS prohibits the IMPAs from giving guarantee of future profits or publishing information containing guarantees or promises of income from investment of pension assets.</p> <p>Notwithstanding the above, there appear no explicit provisions that require agents to disclose and educate the contributor of the implications of applying for transferring from one APF to another APF. The LPS is silent on what occurs at the point of sale other than the conclusion of a contract. There are no specific provisions within the legislation that render the APF or agent being responsible for statements made in advertising, marketing or sales materials.</p>

	<p>During the term of the contract between the contributor and the APF, IMPA or the insurance company offering annuity products, Articles 29 and 31 of LPS require that the APF or the insurance company respectively establish procedures in relation to disclosure and notification of the status of pension savings to the contributor. However the LPS does not regulate the content of the disclosures.</p>
Recommendation	<p>The law should explicitly state the legal responsibility of the APF, or insurance companies offering annuity products, for the sales and marketing materials and their legal responsibility for the information that they provide to consumers in their marketing and sales materials.</p> <p>The content should be prescribed in regard to disclosures that must be made to the contributor regarding the status of his pension savings.</p>
Good Practice B.2	<p><i>Advertising and Sales Materials</i></p> <ul style="list-style-type: none"> a. Pension management companies should ensure that their advertising and sales materials and procedures do not mislead the customers. b. All marketing and sales materials should be easily readable and understandable by the average public.
Description	<p>The new Consumer Protection Law establishes basic rights of a consumer (that would include a consumer of financial service) including the consumer's right to obtain complete, timely and accurate information about the product or service that is marketed to the consumer. If the consumer is provided inaccurate and misleading information about a product or service, the consumer is entitled to terminate the contract and demand for damages caused by his losses.</p> <p>Article 6 of the Law on Advertising²⁷ stipulates that advertisements should be reliable and comprehensible by the general public without the benefit of technical knowledge. Article 14 of the Law on Advertising deals specifically with advertising of financial, insurance, investment and securities services and prohibits, among other things, the forecast or guarantee of future performance of profits of the market value of securities or if advertisements are misleading in the omission of material terms and conditions.</p> <p>Be that as it may, both the Civil Code and LIB are silent regarding the obligations of APFs, pension fund investment managers and insurance companies offering annuity products regarding sales and promotional materials and the way in which such materials should be presented. The law also does not make explicit that the aforementioned intermediaries must be legally responsible for all statements made in marketing and sales materials that they produce related to their products.</p> <p>Guidance can be given in the LPS and the subsidiary legislation on what is meant by unreliability and misleading advertisement by the abovementioned intermediaries. For example, there are no detailed regulations on permissible advertising practices in the pensions sector other than the general requirement not to make misleading statements. The result of the lack of specific guidance is that compliance with the abovementioned rules would inevitably be dependent on the compliance capacity of individual entities operating in the pensions sector.</p>
Recommendation	<p>The LPS should have explicit provisions that APFs, IMPAs and insurance companies that offer annuity products must be legally responsible for all statements made in marketing and sales materials that they produce related to their products.</p> <p>More capacity within AFN should be built to closely monitor advertising by the</p>

²⁷ Law № 508-II –December 19, 2003

	<p>above-mentioned entities to ensure that they are not misleading or untrue.</p> <p>More specific guidance can be provided by AFN in the form of policy explanatory notes to the pension fund industry on what may constitute legitimate advertising and what is meant by the “unreliable and misleading” advertisement rule.</p>
Good Practice B.3	<p><i>Key Facts Statement</i></p> <p>A Key Facts Statement should be presented by the pension management company before the employee signs a contract, disclosing the key factors of the pension scheme and its services.</p>
Description	<p>There is no requirement for standardized information to be given to a contributor at the point of sale such as key facts statement in relation to non-mandatory pension products. There is also no standard format for finding facts about a contributor that is underpinned by the principles of simplicity and plain language. Providing contributors with simple, clear and understandable information about the services offered by APFs, IMPAs and insurance companies offering annuity products; how the products they offer meet the demands and needs of their contributors; and the reasons for any advice given should be a key priority. This is particularly important because contributors should be made aware of the clear distinction between guaranteed mandatory pension products and investment style pension products.</p>
Recommendation	<p>The pension funds industry working with the AFN should develop key facts statements in plain language and agree on the content of the key facts statements. The key facts statement should be a one- or two-page simple document that is made available to contributors when they are considering entering into a contract, and which will also allow prospective contributors to compare different offers more easily.</p>
Good Practice B.4	<p><i>Special Disclosures</i></p> <ol style="list-style-type: none"> a. Pension management companies should disclose information relating to the products they offer, including investment options, risks and benefits, fees and charges, restrictions on transfers, fraud protection over accounts, and fees on the closure of an account. b. Clients should also be provided with meaningful, written information on essential terms of the agreement with the pension management company. c. Information on planned fee changes should be notified to the consumer a “reasonable period” before the date of change. d. Pension management companies should inform upfront the nature of any guarantee arrangements covering the pension products. e. Customers should be informed upfront on the time, manner and process of disputing information on statements and transactions.
Description	<p>Article 27 of LPS imposes an obligation on the APF and agents to provide information to the contributor regarding shareholders of the APF, IMPA and bank-custodian as well as the status of his pension savings, so that a contributor has an opportunity to familiarize himself with the APFs’ overall investment policy and the performance of APFs. In addition, since February 2009 the AFN requires that APFs and IMPAs, at the request of the contributor, provide him with information about the structure of the APF’s investment portfolio; specify the name and quantity of securities and the date and price for their purchase, including the proportion of such securities relative to the entire pension assets portfolio.</p> <p>At the request of the contributor, the APF and the IMPA are obligated to provide information regarding the status of the contributor’s pension savings once a year. Article 24 of LPS also requires agents to disclose to beneficiaries, information on the calculations and amount of accrued contributions and remitted mandatory pension contributions on a monthly basis not later than the fifteenth day of a month following the reporting period.</p> <p>LPS provides a guarantee of principal value by imposing an obligation on APFs to utilize</p>

	<p>its equity capital by crediting the relevant amount of money to contributors' accounts with a relevant fund, should the pension fund assets be in the negative.</p> <p>Effective from 1 January 2012, APFs and IMPAs are allowed to introduce portfolio choices including aggressive portfolios within pension funds. Given the low level of financial literacy and the population's apparent indifference to return differentials, it is important for meaningful disclosure requirements to be developed in the regulatory framework so as to provide meaningful comparison of the different portfolios' performances. However, there seems to be no requirement for the disclosure of fees of pillar III products or any changes thereto.</p> <p>For the custodial expenses to be incurred in relation to transfers from one APF to another APF, the LPS provides that these expenses are to be borne by the APF. For pension annuity agreements, Section 4 of the Rules for Pension Provision by Insurance Companies limits expenses incurred by an insurance company for the administration to be not more than 3% of the amount of insurance premium plus not more than 3% of each insurance benefit.</p> <p>Currently there is no provision in the LPS for providing information and setting up a dispute handling procedure. The broad risk management and internal control policy imposed by AFN on APFs and IMPAs does not make specific reference of the need for APFs and IMPAs to have internal dispute resolution procedures even though some companies have established in-house procedures.</p>
Recommendation	The AFN should have explicit requirements for APFs and IMPAs to establish a complaints handling procedures that are efficient, fair and well documented.
Good Practice B.5	<p><i>Professional Competence</i></p> <ul style="list-style-type: none"> a. Marketing personnel and officers selling and approving transactions should have sufficient qualifications and competence, depending on the complexities of the products they sell. b. The law should require agents to be licensed, or at least be authorized to operate, by the regulator or supervisor
Description	<p>There are currently no competency requirements that are imposed on agents or employees of APFs and insurance companies who are involved in selling and advising on pension contracts. In fact, these agents who are not tied agents do not appear to be certified by anyone.</p> <p>There are also no requirements for qualifications that are aligned with the complexity of pension products provided. The AFN's approach in this regard is to hold the management of APF, IMPA or the insurance company that offers annuity products responsible for the activities of the agent.</p> <p>However, some APFs do provide in house training to their agents.</p>
Recommendation	As the pensions services market develops in Kazakhstan that make demand for different levels of skills and competence, a standard industry-wide examination for determining the competency of individual sales persons should be required. The requirements can be varied according to the level of complexity of the products applying a "tiered" approach and the AFN should vet and approve the curriculum for the certification of the agents.
Good Practice B.6	<p><i>Know Your Customer</i></p> <p>Before recommending a particular pension product, the sales officer should examine important characteristics of the customer, such as age and financial position, and be aware of the consumer's risk appetite and his or her long-term objectives for retirement.</p>
Description	There is no concept of know your customer or "KYC" rule in the pensions laws in the determination of suitability of pensions products for consumers. It will become increasingly important as the pensions services industry is developed to be more market-

	based to ensure that customers are protected from the risk of the mis-selling of pension funds and annuity products.
Recommendation	A KYC rule should be incorporated into the regulatory framework for the pension's services industry.
Good Practice B.7	<i>Disclosure of Financial Situation</i> <ul style="list-style-type: none"> a. The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the pensions industry either as a special report or as part of their disclosure and accountability requirements under the law governing it. b. All pension management companies should disclose information regarding their financial position and profit performance.
Description	The AFN publishes an annual report that provides an assessment of the state of the pensions industry and the issues affecting the industry for the year and the initiatives it has taken or plans to take. Statistics and information are provided in the Annual Report on the actions the AFN takes against the pension's service providers and the type of sanctions it has taken. In addition, the AFN has a very comprehensive website where regular and periodical information regarding the pensions industry is provided.
Recommendation	No recommendation.
Good Practice B.8	<i>Contracts</i> There should be consistent contracts for pension products and the contents of a contract should be read by the customer or explained to the customer before it is signed.
Description	Contracts are tightly regulated by the AFN, leaving limited space for legal variations. Article 30 of the LPS provides for a pension contract that is signed between a contributor and an APF to be in standardized format, containing information such as name, address, and requisites of accumulative pension fund; rights and responsibilities of parties to contract; procedures and terms and conditions for making pension contributions; individual pension account number; procedures for accumulative pension funds to report status of pension savings; responsibilities of parties in the event of breach of obligations; effective period of the contract; and procedures and terms and conditions for amendment and termination of contract. Article 31-2 of LPS requires that a pension annuity agreement be within the format that is prescribed by law.
Recommendation	No recommendation.
Good Practice B.9	<i>Cooling-off Period</i> There should be a reasonable cooling-off period associated with any pension product.
Description	Cooling-off period is not required for pension products in Kazakhstan.
Recommendation	There should be a reasonable cooling-off period associated with any traditional investment or long term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling. Consumers should be able to easily compare offers by different APFs and pension fund managers.
SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	<i>Statements</i>

	<ul style="list-style-type: none"> a. Timely delivery of periodic statements and alerts pertaining to the accounts, and at frequencies and in the form agreed between the customer and the pension management company, should be made. b. Customers should receive a regular streamlined statement of their account that provides comprehensive details of account activity, in an easy-to-read format, making reconciliation easy. c. Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period. d. When customers sign up for paperless statements, the pension management company should ensure that the consumer is able to read and understand the online statements.
Description	<p>Article 24 of LPS also requires agents to disclose to beneficiaries, information on the calculations and amount of accrued contributions and remitted mandatory pension contributions on a monthly basis not later than the fifteenth day of a month following the reporting period.</p> <p>Articles 27 and 41 impose an obligation on the APF and agents to provide information to the contributor regarding shareholders of the APF, IMPA and bank-custodian as well as the status of his pension savings once a year as well as upon his/her request for information for any periods without charging him/her fees, and provide electronic or other means of access to information on his/her accumulated pension savings.</p> <p>In addition, since February 2009 the AFN requires that APFs and IMPAs, at the request of the contributor, provide him or her with information on the structure of the APF's investment portfolio, the name and quantity of securities and the date and price of their purchase, including the proportion of such securities relative to the entire pension assets portfolio. The form and content of the statements are not been regulated.</p> <p>Disputes between the contributor and the APF and IMPA are to be determined according to contractual arrangements entered into between them and should a out-of-court settlement be not possible, the parties would need to take their disputes to court.</p> <p>There do not appear any specific rules that lay down clear procedures for contributors to dispute the accuracy of the statements sent by the APFs or IMPAs.</p>
Recommendation	The LPS should be reviewed to specify the form and contents of those statements that are sent by APFs to contributors as well as providing a mechanism for contributors to dispute the accuracy of those statements.
SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	<p><i>Confidentiality and Security of Customers' Information</i></p> <p>Customers of pension management companies have a right to expect that their financial activities will have privacy from unwarranted private and governmental scrutiny and anyone else. The law should require pension management companies to ensure that they protect the confidentiality and security of a customer's information against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information that could result in substantial harm or inconvenience to any customer.</p>
Description	<p>There are provisions in various laws providing for privacy and data protection. They include-</p> <ul style="list-style-type: none"> i. Constitution of the Republic of Kazakhstan; ii. Article 126, Chapter 55 of the Civil Code of Kazakhstan; iii. Administrative Code (fines for disclosure of information) iv. Law on Private Entrepreneurial Activity № 124-III dated 31 January 2006 (commercial and official secrecy); v. Informatization Law № 217-III dated 11 January 2007;

	<p>vi. Law on Pensions System</p> <p>The privacy of individuals appears to be subject to the general rules of the Constitution of Kazakhstan, which in Article 18 says that everyone has a “right to privacy of personal deposits, telephone conversations, letters and other messages”.</p> <p>Article 126 of the Civil Code provides that “information shall constitute an employment or commercial secret when the information has real or potential commercial value by virtue of it being unknown to third parties; there is no free access to such information on legal grounds and the possessor of the information has taken steps to protect its confidentiality”. Article 126 goes on to provide that persons who have received such information by illegal methods or where employees or parties to a contract divulge such information against the terms of the contract, they would be liable to compensate the damage that is caused.</p> <p>Article 14 of the AFN Law provides that the representative of the authorized body shall bear the responsibility for the disclosure of data obtained during his execution of supervisory functions which constitute service secret, commercial secret, bank secret or any other legally protected secret in accordance to the laws, including also within three years after termination of work at the authorized body.</p> <p>Article 14 of the AFN Law provides AFN with authority to obtain information. This article provides that in order to ensure quality and timely execution of functions of regulation and supervision of financial market and financial organizations imposed to the authorized body (AFN), and to implement the requirements of this Law, the authorized body shall be entitled to gratuitously obtain from physical persons and legal entities, as well as from state bodies information necessary to perform its supervisory functions, these information being prohibited to be disclosed.</p> <p>The AFN’s employees shall bear the responsibility for the disclosure of data obtained during the performance of their supervisory functions and constituting service secret, commercial secret, bank secret and any other legally protected secrets, in accordance to the laws of Kazakhstan.</p> <p>In addition, Article 41 of the LPS imposes on APFs the duty to ensure confidentiality of information regarding the beneficiaries’ pensions saving account. Similarly, in view of the fact that custodians are banks, client’s confidentiality would be protected under the relevant banking laws. Article 50 of LPS clearly states that APFs and the SPPC shall guarantee the confidentiality of pension savings.</p>
Recommendation	No recommendation.
Good Practice D.2	<p><i>Sharing Customer’s Information</i></p> <ul style="list-style-type: none"> a. Pension management companies should inform the consumer of third-party dealings for which the pension management company intends to share information regarding the consumer’s account. b. Pension management companies should explain how they use and share customers’ personal information, and should be committed not to sell or share account or personal information to outside companies that are not affiliated with the pension management company for the purpose of telemarketing or direct mail marketing. c. The law should allow a customer to stop or "opt out" of certain information sharing and the pension management companies should inform the customers of their option. d. The law should prohibit the disclosure of information of customers by third parties.

Description	Article 50 states that APFs and the Center shall guarantee confidentiality of pension savings. Article 50-4 of the LPS states that confidentiality of pension savings applies to information on contributors (beneficiaries), cash balances and cash flows on individual pension accounts of contributors (beneficiaries), and that staff of APFs and SPPC, as well as other persons who in virtue of fulfillment of their duties have access to confidential data relating to pension savings, shall be prohibited to disclose confidential data relating to pension savings. In the event there is a breach, they shall be liable for disclosure of such information in accordance with Kazakh laws..
Recommendation	No recommendation.
Good Practice D.3	<i>Permitted Disclosures</i> <ol style="list-style-type: none"> a. The law should state specific procedures and exceptions concerning the release of customer financial records to government authorities. b. The law should provide for penalties for breach of confidentiality laws.
Description	Article 50-3 of LPS provides that confidentiality of pension savings can be disclosed to contributors who make pensions contributions, beneficiaries, and any other third parties on the basis of a written permission granted by beneficiary. Article 50-4 states that a statement of cash balances and cash flows on individual pension accounts can be released under the following persons: <ul style="list-style-type: none"> • Investigating agencies in relation to their investigation on criminal cases; • Court pursuant to a its decision in a court proceeding; • tax authorities – on matters relating to taxation of a person under scrutiny; • AFN in relation to an application by beneficiary or in connection with an audit of APF; • Public prosecutor based on a decision on inquiry within his authorities in connection with a case under his investigation; • Representatives of contributor (beneficiary) based on a notarized proxy; • The Center for the purpose of forming a database on contributors (beneficiaries) of mandatory pension contributions; and • Audit firms that are conducting annual mandatory auditing of APFs.
Recommendation	No recommendation.
SECTION E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	<i>Internal Dispute Settlement</i> <ol style="list-style-type: none"> a. An internal avenue for claim and dispute resolution practices within the pension management company should be required by the supervisory agency. b. Pension management companies should provide designated employees available to consumers for inquiries and complaints. c. The pension management companies should inform their customers of the internal procedures on dispute resolution. d. The regulator or supervisor should provide oversight on whether pension management companies comply with their internal procedures on consumer protection rules.
Description	There are no explicit requirements imposed on APFs, IMPAs or insurance companies offering annuity products for them to have complaints handling operations even though there is a broad requirement in the Risk Management Policy issued by AFN that requires them to have internal control and risk management systems. There is also no legal requirement for a designated set of employees to deal with complaints from contributors, although this appears to be a common practice --where there is a general complaints procedure for all types of complaints and a specific unit within the APF or IMPA to handle the complaints. The AFN provides oversight of the internal procedures of the insurance company through

	inspections pursuant to its authority under the LPS.
Recommendation	The AFN should specifically require that APFs and IMPAs provide information to their clients on how to seek a remedy, including redress, for problems arising out of interactions with the agents or APF and IMPA. For example, the websites of such companies should have clearly identified portals for customer complaints and these companies should also be required to prepare an annual report of compliance with their complaints handling policy to be publicized on its website.
Good Practice E.2	<i>Formal Dispute Settlement Mechanisms</i> A system should be in place that allows consumers to seek third-party recourse in the event that they cannot resolve an issue with the pension management company.
Description	Article 27 of LPS provides for a court-based dispute resolution mechanism in that a contributor of mandatory pension contribution or a beneficiary of pension payments from an APF has the right to, among other things, to appeal the APF's actions/decisions to the court. The LPS does not provide for a cost-effective mechanism dealing with disputes that contributors have with the pension service providers.
Recommendation	Dispute resolution system for contributors should be improved. The law should incorporate the manner in which contributors can resolve complaints or disputes. In this regard, a financial ombudsman similar to the ombudsman structure in the insurance industry for mandatory motor vehicle insurance should be considered.
SECTION F	GUARANTEE SCHEMES AND SAFETY PROVISIONS
Good Practice F.1	Guarantee and compensation schemes are less common in the pensions sector than in banking and insurance. There are more likely to be broader fiduciary duties and custodian arrangements to ensure the safety of assets. a. There should be a basic requirement in the law that pension management companies should seek to safeguard pension fund assets. b. There should be adequate depository or custodian arrangements in place to ensure that assets are safeguarded.
Description	In order to ensure safety of pension savings of contributors and obtain profitability on pension assets not below the minimum value, provides for an obligation of IMPA or APF to recover a negative difference between the minimum acceptable profitability rate across the system and a fund's profitability rate. The recovery is made using a fund's equity capital by crediting the relevant amount of money to contributors' accounts with a relevant fund. Article 31 of LPS states that an IMPA, in connection with the assets of APF under its management, or an APF that undertakes investment management of pension assets by itself, shall secure return on assets of no less than a minimum return on assets indicator. Article 6 of LPS explicitly states that the guarantee for safety of pension savings is to be provided by the licensing of APFs, IMPAs and custodians, and the stringent prudential requirements that are imposed on them; imposition of regulatory requirements on the management and specialists as well as significant shareholders of APFs and IMPAs; requirement that APFs must maintain contributors' funds separate from the APF or IMPA in a custodian's account; mandatory audit of financial statements of APFs and IMPAs; introduction on the limits on the amount of commission fees that APFs can receive. Article 25 of LPS requires that pension assets not be used for the purpose of debt recovery in connection with debts of any contributor, beneficiary, APF, bank-custodian and IMPA, including in the event of insolvency of those entities. Furthermore, Article 26 requires custodians to be responsible for monitoring the use of pension assets of APFs,

	and to block instructions of an IMPA or APF, as the case may be, if such instructions do not comply with the relevant laws, and immediately notify the AFN.
Recommendation	No recommendation.
SECTION G	CONSUMER EMPOWERMENT
Good Practice G.1	<i>Financial Education in Schools</i> Schoolchildren should receive a planned and coherent program of financial education which is designed to give them the competence and confidence to manage their finances well during their adult lives.
Description	Financial education was introduced in the school curriculum for tertiary education some years back, but the impact of such measure has not been measured yet. The new CP Law requires that consumer protection be included in the school curriculum
Recommendation	Financial education should include information regarding the risks and reward available, teach on the importance of private pensions as long-term savings mechanisms, but also differentiate that voluntary pension fund products are an investment tool rather than a guaranteed savings vehicle.
Good Practice G.2	<i>Using a Range of Initiatives and Channels, including the Mass Media</i> a. A range of initiatives should be undertaken to improve people's financial capability. b. This should include encouraging the mass media to provide financial education, information and guidance.
Description	All form of media is being used whenever financial literacy activities are undertaken. In particular, the National Consumer League keeps the media in the loop when carrying out financial consumer awareness programs. In terms of regular TV programs, there is a weekly program for seven minutes on the State TV channel that deals with consumer issues including financial services. Also a television show called “Your Exit” is aimed at raising awareness on all issues on financial matters and is broadcast in prime time since May 2009. RFCA has also used the media to promote consumer awareness on financial issues. In 2009 RFCA produced 5 video commercials (in Kazakh and Russian languages), including 4 video commercials on protection of rights of consumers of financial services. In addition, the recent global financial crisis with its negative financial impact on the APFs has attracted much attention from the media wide coverage
Recommendation	In order to improve understanding of the pensions system by the greater public, it is important to consider financial consumer awareness campaigns through the media. It is also useful that representatives of the regulator and the industry participate in media to explain the features of the pensions sector.
Good Practice G.3	<i>Unbiased Information for Consumers</i> a. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of financial products and services. b. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public in the area of pensions.
Description	The new Consumer Protection Law provides a role for consumer organizations to provide training programs for consumers. The National League of Consumers has been very

	innovative in delivering financial awareness education and is able to build its financial resources based on some of these education programs. Since the introduction of the new consumer protection laws, other smaller consumer organizations have expressed enthusiasm in participating in such programs.
Recommendation	Consumer organizations should be strongly encouraged and supported by the Government and the AFN to deliver financial education awareness programs throughout Kazakhstan to consumers.