金融消费者保护的良好经验

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Good Practices for Financial Consumer Protection

◎ 世界银行 著
◎ 中国人民银行金融消费权益保护局 译

Public Disclosure Authorized

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THE WORLD BANK

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致　　谢

《金融消费者保护的良好经验》由高级私人部门发展专家（Private Sector Development Specialist）Susan L. Rutledge 领导的一个工作组撰写。世界银行工作组核心成员包括 Nagavalli Annamalai（首席顾问）、Rodney Lester（高级顾问，已退休），Richard L. Symonds（资深顾问，已退休）。来自世界银行的 Eric Haythorne（首席顾问）、Juan Carlos Izaguirre Araujo（顾问）也加入了该团队。随后，柏林工业大学高级研究员 Nicola Jentzsch 也加入了该团队。来自英国金融服务局养老金管理和投资政策部门的 Milton Cartwright、英国公平贸易办公室的 David Stallibrass 对此也作出了重大贡献。还要特别感谢金融扫盲国际顾问、英国金融服务局金融能力部门前主管 Shaun Mundy；客座教授、国际金融监管悉尼中心首席执行官 Rosamund Grady；卡塔尔金融中心监管局保险监管副主管 John Pyne；人类家园国际组织（Habitat for Humanity International）亚洲/太平洋地区住房金融主管 Patrick McAllister。Marga O. De Loayza 和 Snigdha Verma 友情提供了编辑支持。

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缩略语

AML 反洗钱
ANEC 欧洲消费者标准化意见组织
APEC 亚太经济合作组织
API 阿拉伯支付倡议
APY 年度百分比收益率
ASBA 美洲国家银行监管协会
B2C 商家对消费者（即商业零售）
BEUC 欧洲消费者组织局
BIS 国际清算银行
BNPP 荷兰合作银行
CEMLA 拉丁美洲货币研究中心
CESR 欧洲证券监管委员会
CFT 打击恐怖主义融资
CGAP 扶贫协商小组
CISPI 独联体国家倡议
CIU 集合投资计划
COE 欧盟理事会
CPSS 支付结算体系委员会
DFID 英国国际发展部
EC 欧盟委员会
ECJ 欧盟法院
ERISA 美国雇员退休收入保障法
ESIS 欧洲标准化信息表
ETS 欧洲系列条约
FIMM 马来西亚投资经理联合会

EU 欧盟
FATF 金融行动专责小组
FCAC 加拿大金融消费者局
FDIC 美国联邦存款保险公司
FinCoNet 国际金融消费者权益保护网络
FINRA 美国金融业监管局
FIRST 金融部门改革和加强计划
FSA 英国金融服务管理局
FSAP 金融部门评估规划
FSB 金融稳定理事会
FTC 美国联邦贸易委员会
G20 二十国集团
GDP 国内生产总值
IADB 泛美开发银行
IAIS 国际保险监督官协会
ICO 英国信息专员办公室
ICP 保险核心原则
IDD 首次披露文件
IFC 国际金融公司
IFRS 国际财务报告准则
IOPS 国际养老金监督官协会
IOSCO 国际证监会组织
ISO 国际标准化组织
KYC 了解你的客户
LIBOR 伦敦银行间同业拆放利率
MAS 新加坡金融监管局
MiFID 金融工具市场指令
MSME 微型、小型、中型企业
NAIC 美国保险官协会
NASD 美国证券交易商协会
NGO 非政府组织

NPS 国家支付系统
OECD 经济合作与发展组织
OTC 场外交易
PIN 个人识别码
PHRD 日本人口与人力资源开发项目
SADC 南部非洲发展共同体
SAPI 南亚付款倡议
SEC 美国证券交易委员会
SECCI 欧洲消费信用信息标准
SECO 瑞士国家经济事务秘书处
SEEP 小企业的教育及推广网络
SEPA 单一欧元支付区
SFC 香港证券及期货事务监察委员会
SME 中小企业
SRO 自律组织
TILA 美国诚实借贷法
UCITS 可转让证券集合投资计划
UK 英国
UN 联合国
US 美国
USAID 美国国际开发署
USC 美国法典
WBG 世界银行集团
WHCRI 西半球信贷报告计划

目　　录

第一章　导　论

2007～2009年的金融危机发生前，全球每年大约新增1.5亿名金融消费者。虽然增长率曾一度下降，但其绝对数字仍保持快速增长。本次危机凸显了金融消费者保护对于全球金融体系长久稳定的重要性。同时，快速增长的金融服务表明，迫切需要加强金融监管和金融消费者教育，以保护消费者并提高消费者自我保护能力。在金融消费者保护缺位的情况下，金融包容性增加所带来的增长效益可能完全丧失，抑或严重削弱。

金融消费者保护为金融机构与其零售客户交易设定了明确的行为规则。它旨在确保消费者：（1）获得使他们作出知情选择的信息；（2）免予不公平或欺诈性行为误导；（3）获取争端解决机制的途径。额外的金融扫盲计划旨在帮助消费者了解利用金融服务的风险和收益，及他们在这方面的法律权利及义务的知识和技能。金融机构明确的行为规则，和为消费者制订的金融教育计划将共同持续提升消费者对金融市场的信任度，促进金融市场的发展。

国际社会近来更加关注金融消费者保护，并发布了G20高级原则。监管者已经注意到制定市场行为指南的急切需求，以用于衡量和评定现行政策、法律、规则、制度及活动。公认的指导原则的缺乏往往使政策制定者着眼于一小部分金融消费者保护问题，而忽视弥补其他方面缺陷。2011年2月举行的G20峰会期间，20国集团的财长和央行行长呼吁OECD、FSB和相关的国际组织在接下来举行的2011年10月的峰会上尽快制订出有关金融消费者保护的一般规则。10月份，G20发布了有关金融消费者保护的高级原则；同时，OECD有关金融消费者保护的相关工作也在不断推进（《金融消费者保护的良好经验》首版早于金融消费者保护高级原则的发布。但《良好经验》补充了高级原则，并且就如何在原则框架内实施《良好经验》提供了实用性的建议）。

为加强金融消费者保护，国际政府组织也进行着大量积极探索活动。2010年11月，G20领导人就曾要求FSB与OECD和其他国际组织共同探索加强金融

消费者保护的路径。2011 年 10 月，FSB 发布了题为《关注信贷的金融消费者保护》的报告，同时自 2005 年开始，OECD 就提出了关于金融教育和素养方面的良好经验建议以及有关信贷、保险和私人养老金等特定方面的良好经验。除此之外，OECD 还发布了大量有关金融扫盲和金融教育的实用性文件、报告，包括 2012 年工作报告——《金融教育国家战略的现状：各国的比较分析及相关实践》等。在欧洲，除了和消费金融有关的官方指令外，欧盟委员会也进行了一些有关零售金融服务的研究，其内容涵盖了零售投资咨询、消费者信用、金融服务远程营销、抵押贷款和金融服务方面的消费者教育。2011 年 11 月，欧盟保险和职业养老金管理局发布了有关保险企业投诉处理建议指南的公共咨询稿。美洲开发银行从多个方面支持加强金融消费者保护。与之相对应，俄罗斯政府已出资 1500 万美元设立了金融知识和金融教育信托基金，该基金由世界银行和 OECD 负责管理，主要用于以下方面：（1）开发评估发展中国家各类群体财务能力的方法；（2）通过将其广泛应用于世界银行客户国现有项目中，对其进行测试并不断完善；（3）通过网络、专题讨论会或其他方式宣传金融知识评估和提高方面的最佳经验。其首份报告将于 2012 年晚些时候出炉。

国际和地区非政府组织也在金融消费者保护方面扮演着日益重要的角色。“负责任的金融”论坛组织将金融消费者保护监管和财务能力列为负责任的金融框架三大支柱中的二支。2012 年 1 月，美洲国家银行监管协会（ASBA）发布了其关于金融监管和消费者保护最佳行为建议的草案。2011 年《金融包容玛雅宣言》承认金融消费者保护和赋权是确保所有人都能被纳入自己国家的金融服务中的关键支柱。2011 年，由金融包容同盟发起建立了消费者自我保护能力和市场行为工作小组，讨论研究关于消费者保护中出现的政策和监管问题，并不断检讨哪些赋权措施能增进金融便利、提升金融包容。国际消费者协会也发布了其金融消费者保护的建议书，内容包括：呼吁制定国际标准和指南，同时建立一个国际组织，分享最佳经验，并支持标准和指南的发展。另外，国际标准委员会也在研究制定一项关于消费金融披露的国际标准建议书，尤其是在移动电话金融服务和国际汇款领域。对于金融扫盲，2008 年 OECD 建立了国际金融教育网络，这将会使各国政策制定者们共同致力于金融教育事业。国际消费者协会和微型金融机会机构（MFO，Microfinance Opportunities）共同编制了帮助消费者维权的手册，帮助其获得更好的金融建议。这份摘要虽不全面，但阐明了很多有助于金融消费者保护的国际倡议，这些倡议有助于提高对金融消费

者保护不足的全球响应。尽管如此，民间社会组织仍然可以有很多金融消费者保护工作去做，尤其对那些在全球层面运作的此类机构而言。

世界银行正在通过基于金融消费者保护的国家经验和持续发展的技术手段完善《良好经验》，支持金融消费者保护的国际对话。世界银行的《良好经验》源于对国别金融消费者保护和金融扫盲的深度回顾。《欧洲和中亚消费者保护和金融扫盲的良好经验》最早始于捷克共和国 2006 年提出来的一项要求，如今已被用做进行（金融消费者保护和金融扫盲）国家评估的一项工具。这些良好经验主要基于很多国家解决零售金融市场的消费者保护中所取得的进展。之后，2010 年 11 月世界银行发起了一个有关消费者保护和金融扫盲的全球项目。如表 1 所示，作为全球计划的一部分，截至该报告公布日，18 个国家已如期完成评估。支持和补充国家评估的是一些额外的国家层面的技术手段，包括三项国家行动计划、两项实施方案及 18 项包括由前述俄罗斯信托基金支持在内的关于金融扫盲和消费者行为的家庭调查。此外，世界银行也批准了一项总额为 2800 万美元涉及两个国家（俄罗斯和马拉维）的消费者保护和金融扫盲项目而设的信贷额度。

表 1　　世界银行集团关于各国消费者保护和金融扫盲的国家评估

国家	公布年度	国家	公布年度
捷克	2007	波斯尼亚和黑塞哥维那	计划 2012
斯洛伐克	2007	哈萨克斯坦	计划 2012
保加利亚	2009	马拉维	计划 2012
罗马尼亚	2009	南非	计划 2012
立陶宛	2009	尼加拉瓜	计划 2012
阿塞拜疆	2009	乌克兰	计划 2012
克罗地亚	2010	亚美尼亚	计划 2012
俄罗斯	2010	莫桑比克	计划 2013
拉脱维亚	2010	塔吉克斯坦	计划 2013

《良好经验》首先旨在作为（一国金融消费者保护）监测评估工具。《良好经验》给国家监测评估提供了一个有用的参考标准，能够帮助政策制定者回答如下问题：一国关于金融消费者保护的法律和监管框架比之国际经验如何？没有任何国家会从零开始，因而一个世界范围内的有益经验的汇编，可以帮助一个国家发现增强本国金融消费者保护能力的机会。从这方面而言，《良好经验》

提供了一种加强金融消费者保护的具体的、实证的方法。利用世界银行金融消费者保护的国家经验以及依靠被实践证明运行良好的国际方式，展现了一个监管者可以努力加强金融服务领域的消费者保护的实用方法。《良好经验》并非意味着其是世界范围内的最好经验，它们往往是被证明在这个领域成功施行而被频繁使用的一种实践，因而这代表了一种鼓励金融机构在处理与其零售客户的关系方面，改善其行为的、简明而有用的方法的总结。人们希望《良好经验》将有助于推进“哪些有效方式可以不分国别提升金融消费者保护”的国际对话。

《良好经验》提供了一个全方位识别金融领域的消费者保护问题的评估手段。《良好经验》不能取代基本准则、指南、原则或其他特定领域的国际组织的有益实践。《良好经验》更专注贯穿于整个金融领域的消费者保护（和一般市场行为）问题和对特定领域指导原则进行补充。最重要的是，《良好经验》帮助政策制定者在各个错综复杂的金融领域准确识别消费者保护问题，并帮助他们设计一个条理清晰的、可理解的、协调的体制，从而增强对金融体系中的消费者保护。因众多金融机构合并为大型金融集团，全面的消费者保护方式的需求因而变得明显而突出。

金融消费者保护的良好经验，反映了世界银行集团六年多的工作进展。正如已经指出的那样，《良好经验》已经在全球 18 个国家广泛测试（包括 14 个中等收入国家和 4 个低收入国家），将继续在非洲（特别是撒哈拉以南非洲地区）、亚洲、拉丁美洲和加勒比地区等其他地区进行进一步的测试。在这些地区，提供的创新金融服务可能会给全球其他国家的学习提供宝贵的经验教训。世界银行集团的其他创新活动也被纳入了良好经验。这些包括（世界银行）发展经济学研究部、人类发展网络、金融包容实践（包括微型及中小企业融资和金融基础设施服务）、法律部门关于金融知识和金融教育的研究。除此之外，《良好经验》吸收了援助贫穷者专家组的主要教训，该专家组是世界银行集团中的一个政策和研究中心，致力于帮助微型金融部门发展及相关的消费者保护问题。

已经制定的《良好经验》凝聚了很多国际组织设计的现有的国际准则，及其他可接受的良好经验。它们包括：联合国、经合组织、欧盟委员会、亚太经济合作论坛、国际清算银行、国际保险监督官协会、国际养老金监管者组织、国际证监会组织的良好、最佳经验、原则、标准，以及 20 国集团组织关于创新

金融包容的原则。所有这些有关消费者保护的建议都已遴选汇集。

《良好经验》纳入了发达国家的做法和新兴经济体的改革经验。在过去的30年里，大多数金融消费者保护方案在工业化国家开展。然而，近年来，发展中国家和新兴市场特别是巴西、中国、哥伦比亚、印度、马来西亚、墨西哥、秘鲁、俄罗斯和南非都已进行了有价值的工作。世界各国的行之有效方法将被纳入《良好经验》的未来版本。

《良好经验》已经受到了国际社会的广泛评估和讨论。除了在国家层面的严格测试外，《良好经验》还得益于过去几年广泛的国际评论。《良好经验》首次是以2008年8月“欧洲和中亚消费者保护和金融扫盲的良好经验：一个评估依据”咨询草案形式面世，并于2010年8月最后完成。随后，《良好经验》经历了修订和更新，以反映最近在金融消费者保护领域的发展，以及拉丁美洲和非洲其他国家的评论见解。2011年3月金融消费者保护的良好经验作为协商草案发布。咨询期间，许多国际会议讨论了《良好经验》，其中包括2008年9月世界银行集团与CGAP在华盛顿特区举行的会议、2011年2月由世界银行学院主办的跨区域视频对话（发展问题辩论）、2011年5月国际金融消费者保护网络体系在多伦多举行的年度会议，以及2011年5月在香港举办的国际消费者大会。正如在致谢中指出的，全球超过25个监管机构提供了书面意见，并已纳入了最后草案。

首要注意的四个重点。首先，《良好经验》只适用于一国的受监管金融领域，而不包括非正规金融服务，如掠夺性贷款（高利贷）。其次，并非所有的良好经验将在所有国家都能充分适用，实施《良好经验》不可避免地需要根据有关国家的具体需要和目标予以调整。再次，《良好经验》并不穷尽所有金融产品和服务。相反，它们只对最常用的金融产品和服务提供消费者保护方面的建议。最后，《良好经验》有望根据未来的国家监测评估、原则、实践、政策文件和国际与国内组织对话，包括那些由非政府组织的研讨会，进一步演变和发展。

金融消费者保护的《良好经验》共分三个章节。第一章导论，总结了良好经验形成的国际背景，及其发展中所使用的方法。第二章提出了39条适用于整个金融消费服务领域的共性良好经验建议，为金融消费者保护国际原则的进一步发展提供了有益的支撑。第三章针对四个主要类型的金融服务商，即银行、证券、保险和非银行信贷部门分别提出了一套良好经验。附录1和附录2，提出

了私人养老金和信用报告领域消费者保护的良好经验，这两者仍处于发展的初期阶段。附录 3 提供了一个背景说明，包括：（1）导致各国金融监管日益重视消费者保护的时代背景；（2）适用于各国消费者保护框架设计的基本原理和基本原则；（3）制定《良好经验》中的问题；（4）国际社会未来可能面临的金融消费者保护工作领域。

第二章　金融消费者保护的通用良好经验

功能良好的金融消费者保护体制，能够为零售金融服务消费者提供有效保护，而确保消费者行使其权利，履行其法定义务。以下 39 条良好经验源自功能完善的金融消费者保护体制。

消费者保护制度

1. 法律为金融产品和金融服务提供清晰的消费者保护规则。而且要作出恰当的制度安排，保证这些规则得以完全、客观、及时和公正地实施（和执行）。

2. 特定金融行业的协会（必要时与金融监管当局和消费者协会协商），要为相关金融行业制定行为准则。这些行为准则应当得到行业内所有金融机构遵守，并由一个法定机构或者有效的行业自律组织监督实施。同时，一些金融机构设计的自愿行为准则扩大了这些行为准则内容。这些行为准则应当广泛宣传。

3. 审慎监管机构和金融消费者保护机构可以作为两个独立的机构，也可以置于同一个机构内。但是，无论机构如何设置，在审慎监管部门和金融消费者保护部门之间的资源分配必须能够保证有效地执行金融消费者保护规则。

4. 所有向消费者提供金融服务的法律实体必须取得特许执照（或登记），而且它们的市场行为（如涉及零售客户的营业行为）必须受到合适的监管当局的监管。

5. 司法系统必须确保能够在所有金融产品和金融服务的纠纷方面，为金融消费者提供可负担的、及时的和专业的最终解决途径。

6. 媒体和消费者协会应积极促进金融消费者保护。

披露和销售行为

7. 金融机构推荐特定金融产品或金融服务前，应从消费者处收集足够的信息，以确定这些产品或服务能够符合消费者的需求和资格。

8. 对于所有的金融产品和服务，消费者应收到一张 1 ~ 2 页、简单的、采

用通俗语言书写的纸质（或等同的电子形式）主要信息说明，用于描述关键的条款和条件，以及权利救济渠道。同时，这些说明还要达到业界公认的对于每一种类型的金融产品或金融服务最低限度的披露标准，方便不同金融服务供应商之间的比较。说明由金融机构提供。

9. 在消费者购买一个金融产品或金融服务前，金融机构要提供一份关于机构通用条款和条件的书面材料，以及关于该产品或服务的主要条款和条件的书面材料。

10. 法律专门禁止欺诈性销售行为，如金融产品和服务市场营销中的误导性广告。

11. 除证券和金融衍生品外，带有长期储蓄性质或者强迫销售的金融产品或金融服务要设立一个冷静期，在冷静期内，消费者可以不受处罚地解除合同。金融机构不能采取收取手续费的方式来弥补由此而带来的损失。

12. 无论在什么情况下，金融机构都不应将接受另一种产品或服务作为一个单独借款人购买金融产品时的附加条件，借款人有权自由挑选金融产品或金融服务的供应商。

13. 在广告中，金融机构要披露自己是受到监管的，并应表明相关的监管机构。

14. 直接与金融消费者进行交易的金融机构工作人员应当受到足够的教育，以使其能够胜任销售这些复杂金融产品或金融服务的工作。尤其是金融中介应当胜任他们销售的金融产品和服务的复杂性。

消费者账户的管理和维护

15. 金融机构要定期准备一份书面（或者电子的）确认书，其中包括每个消费者的交易条款，以及包含消费者金融交易主要细节的账户日常状况。对于投资产品，消费者还能够收到有关账户资产价值的定期报表。

16. 金融机构应当通过书面（或等同的电子形式）尽快逐个通知消费者有关利率、手续费和其他费用的变动情况，以及他们金融产品和服务的关键条款和条件。

17. 金融机构要保证消费者记录的及时更新，并向消费者提供免费或只收取合理费用的信息查询途径。

18. 零售交易的清算期必须基于明确的法律规定或受到有效自律规则的

约束。

19. 禁止金融机构对消费者采用恶劣的债务追讨方式。

隐私和数据保护

20. 法律必须明确在征信活动中个人信息的范围和更新时间，规定消费者应当可以有效地从征信机构获取其信用报告，明确消费者至少每年拥有一次免费的信息查询权，并明确异议处理程序。

21. 金融机构应当确保消费者信息的保密性，并采取相应的技术安全措施。法律应当为金融机构向政府相关部门提供消费者的记录制定特殊的规则和程序。

22. 对于征信活动，法律应当赋予消费者在信息共享方面的权利，包括规定消费者可以获取、修改、删除错误或过时的个人信息，以及禁止这些信息传播。法律应当为包括征信机构、信息报送机构和信用报告的用户在内的征信系统参与者之间的信息共享制定基本的规则。

23. 每个金融机构都应当向它们的消费者告知该机构在使用和共享消费者个人信息方面的政策。

24. 征信机构应当由适当的政府（或非政府）部门进行监管。

争端解决机制

25. 金融机构应有受理消费者投诉的途径以及明确的投诉解决程序，包括口头投诉。同时，金融机构也需要保持投诉记录的及时更新，并制定内部纠纷解决政策和方法，包括纠纷处理时限、纠纷处理结果的回复和客户回访等。

26. 应当为消费者提供一个经济、有效、权威和专业合适并匹配充足资源的争端解决机制，例如独立金融督察机构，或一个具有类似效率和执行力的机构。这个机构的行为应当是公正的，并独立于指派它的机构、业界和涉及投诉的金融机构，同时也独立于任何消费者和消费者组织。该机构或类似机构作出的决定对金融机构应当具有约束力。

27. 对消费者投诉的统计，包括这些投诉所涉及的违规行为，要定期编纂并由金融督察机构或金融监管机构公开。投诉应当依据产品类型编制，便于识别以帮助改进相应服务。

28. 监管机构有法定义务公开其金融消费者保护活动的统计信息和分析，并对改变监管方式和金融消费者教育方式提出建议，以从源头上避免发生系统性的消费者投诉。同时，行业协会也应在消费者投诉信息分析方面扮演一定的

角色，以避免系统性的消费者投诉再次发生。

保障和补偿计划

29. 法律应当确保金融监管机构在金融机构发生财务困境时能够采取合理的措施。

30. 法律对金融保险和保障基金的规定必须明确，应当包括保险人、被保险存款人的种类、保险覆盖的范围、保险基金的捐赠、赔付的触发事件、及时赔付被保险的存款人的机制等。

31. 在相关金融机构清算时，存款人、人寿保险投保人、证券及衍生品账户持有人、养老基金持有人应该比其他的无担保债权人享有优先权。

金融教育与消费者自我保护能力

32. 为提高全民的金融知识水平，应当制定一个广泛的金融教育和信息计划。

33. 在增强金融知识水平计划的制定和执行过程中应当包括一系列的机构，如政府、国家机构、非政府组织等。同时，政府应当指定一个政府部门（如财政部）、中央银行或者金融监管机构来领导和协调该计划的制定和执行。

34. 应采取一些创新的举措增强各年龄段消费者的金融知识水平，包括鼓励媒体报道有关消费金融的各类问题，如金融服务中的消费者保护。

35. 政府、国家机构应与消费者、行业协会、金融机构进行协商，以使增强民众金融知识水平的计划能够满足消费者的需求和期望。同时，政府应当进行消费者测试，以使该计划中的新举措，包括信息披露和纠纷解决等，能够达到预期的目的。

36. 消费者的金融知识水平和消费者自我保护能力的提升措施要通过长期、广泛的家庭调查来衡量，以了解当前政策是否具有对金融市场的预期影响。

竞争

37. 金融监管者和竞争管理机构要互相磋商。

38. 有关金融服务方面竞争的政策要考虑到其对消费者利益的影响，特别是可能引起或者实际存在的对消费者选择权的限制。

39. 竞争管理机构要组织和公布关于零售金融机构的定期评估，并对这些机构间何种程度的竞争才是最优提供建议。

第三章　不同金融服务中金融消费者保护的良好经验

一、银行业

商业银行与公众之间保持良好的商业关系，对一个国家银行体系的发展尤为重要。银行和消费者之间的相互信任和信心十分必要。如果某种程度上存在定价机制不透明，消费者认知和保护不足，或者纠纷解决机制成本高或者无效，那么银行体系将更加缺乏效率并且难以进入。

对银行业及其所处环境进行全面评估有助于确定下列一些经验是否与特定国家有关。这些经验是从各种渠道搜集而来，包括某些国家在银行业领域具有的良好消费者保护的普遍和公认做法。良好建议借鉴了国际上通用的良好建议和标准。需要注意的是，编写这些经验是为了使其在银行系统发达的国家和银行系统欠发达的国家都能使用。为确保这些经验有用，采取了概括方法和最低要求方法。保留了普通消费者面对银行系统的基本权利，同时确保了有关国家背景的相关性。

A. 消费者保护制度

A. 1. 消费者保护规则

法律应明确规定关于银行产品和服务的消费者保护规则，所有的制度安排应到位，以确保所有规则全面、客观、及时和公平地实施和执行。

a. 对任何金融产品或服务的消费者保护，具体的法定条文应建立一个有效的制度。

b. 普通消费者机构、金融监管部门或专门的金融消费者保护机构应该负责实施、监督和执行关于银行产品和服务的消费者权益保护，并收集和分析数据

（包括争议、投诉和调查）。

c. 指定机构经费应充足，使其能够高效和有效履职。

d. 指定机构应透明、负责任和完整地开展工作。

e. 经授权负责实施、监督、执行消费者保护以及金融体系监管的各机构之间应相互协调和合作。

f. 法律应提供，至少不禁止私人部门在银行产品和服务的消费者保护方面发挥作用，其中包括自愿的消费者组织和自律组织。

为识别、实施、监督和执行消费者保护提供法律基础是所有法律权利的基本前提，包括银行业中的消费者权利。类似地，金融系统中监督和执行消费者保护对保护消费者至关重要。在这方面，迄今为止开展的评估和世界各国的经验明确支持这样的观点：有必要设立专门的机构监督和执行消费者保护工作。

在很多国家，成立志愿组织的权利理所当然。志愿性消费协会和自律组织是消费者保护机制的重要支柱。法律应承认这些组织的作用和合法性，使它们能够获得资助或筹集资源。确认私人部门消费者保护的合法地位对银行部门同样适用，这样它们可以参与相关活动，否则会被当做非银行事务；为金融教育和相关消费者保护事宜配置充足的资金。

为撰写《良好经验》，分别参考了国际和各国指引，包括欧盟消费信贷协议指令（2008/48/EC），它废除了 87/102/EEC 指令；欧盟关于向消费者提供的产品价格方面的消费者保护指令（1998/6/EC）；欧盟消费者金融服务远程营销指令（2002/65/EC）；美国诚实信贷法和诚实储蓄法以及 2000 年英国金融服务和市场法（该法成立了英国金融服务局）。

A. 2. 银行行为准则

a. 应该有一个原则为基础的银行行为准则，如有可能，由所有银行或银行业协会与金融监管机构和消费者协会共同磋商制定。无论由法定机构还是有效的自律机构来管理，所有部门机构应正式地坚持该准则。

b. 以原则为基础的准则一旦形成，应广泛告知和传达给大众。

c. 以原则为基础的行为准则中应增加银行自愿行为准则，如便利消费者更换经常账户，制作描述银行收费、服务和产品的银行业常用术语表。

d. 同样，这样的自愿行为准则也应广而告之。

世界上许多银行业协会采用行为守则向大众说明该行业应提供的服务和服务标准。大多数情况下，协会列举一个大报表，该表与一般客户无关，是具体

的原则为基础的自愿行为守则，对消费者的保护具有积极影响。这些准则应采用朴实的语言，并清楚地向普通客户提供承诺。这些准则应在银行的网站上广泛宣传和公布，清楚表达银行遵守准则的承诺。

欧盟的大多数银行业协会没有采用原则为基础的银行业行为准则。原因可能是欧盟在信贷和其他服务供给方面的指令足够详细，确保做到了《良好经验》的要求。但许多发达国家和地区采用和执行了银行业行为准则，如澳大利亚、加拿大、新西兰和英国，还有中国香港以及一些中等收入国家（如南非）。

这些准则以原则为基础，在香港由监管当局负责这些准则的执行，而在南非和澳大利亚，受督察专员管辖。

准则通常包括：

- 准则的治理原则和目标
- 银行督察专员处理投诉的方案和机制
- 关于联系、隐私和披露的良好商业行为
- 产品和服务
- 有关检查问题
- 信贷供给问题
- 个人识别码和密码
- 银行卡、贷记卡和商人卡服务
- 网上银行
- 其他服务，如外汇服务
- 声明和账户信息

A. 3. 审慎监管和消费者保护之间的适当配置

无论银行业审慎监管和关于银行产品和服务的消费者保护职责是否分属不同机构，都应对这些职能合理配置资源，确保其有效履行。

对行为准则和消费者保护的监管通常不被视为是银行监管者的职能。中央银行法或者银行业监管机构法通常不会提及“消费者保护”是银行业监管者的职能，或者提到“公平”和“透明”的概念。但银行业监管者不应忽略消费者保护问题。如果银行提供了不合适或者不公平服务，如投资产品的不当销售，将会损害其声誉以及消费者忠诚度和信心。同时也可能说明银行管理和内部控制存在不足，导致银行遭受财务损失。因此，银行业监管者有兴趣鼓励建立《良好经验》的标准，银行业能够公平、合理地为客户提供服务。但是，监管

者必须考虑哪些领域需要监管，特别是在干预最好由竞争性市场力量处理或通过法庭解决的事务时要格外谨慎。相对第三方，银行业监管者更有能力实现其平衡，避免给银行业带来过多的监管负担。

A. 4. 其他制度安排

a. 司法制度应确保关于银行产品或服务的消费者保护争端得到经济、及时并专业的最终解决。

b. 媒体和消费者协会应在促进银行业消费者保护工作中发挥积极作用。

作为公正的最后保障，司法应是有效的最终裁决者。对任何关于银行产品或服务的投诉，法庭应被公认为有能力以专业、及时和经济有效的方式作出最终和具有约束力的判决。

许多国家的媒体和消费者协会在促进消费者保护方面发挥了积极作用。媒体通过“点名批评”，适当报道金融机构损害金融消费者权益，是促进消费者保护的一个有效途径。但重要的是，应教育记者要准确、充分地理解和传递金融事务信息。欧盟大部分国家，由消费者协会来处理金融服务投诉。

如果该协会达到欧共体 2004 年第 20 号决定第 7 条中各项标准，甚至可能得到欧盟的财政支持。而且，欧盟委员会设立了几个协商机构，如金融服务消费者集团；其常设委员包括每个欧盟成员国消费者组织的代表。他们被明确要求，在制定欧盟金融服务政策时须充分考虑消费者利益。

A. 5. 许可

向消费者提供金融服务的银行业金融机构应接受许可和监管制度，确保其金融安全和稳健经营，以及有效地提供金融服务。

该《良好经验》为银行业执行消费者保护工作奠定了基础。行政许可当局有权设定标准以拒绝不合格机构的设立申请。除许可外，应持续监管银行机构的活动及其提供服务的态度。在大多数国家，银行服务被视为基础服务，适当监管是必要的。

B. 披露和销售行为

B. 1. 客户信息

a. 在向客户介绍产品时，银行应从客户那里充分地收集、记录信息，使银行为消费者提供正确的产品和服务。

b. 银行收集消费者信息的范围：

ⅰ. 与给客户建议的或客户想要的产品或服务的性质和复杂程度相适应。

ⅱ. 使银行能够为消费者提供与消费者能力相当的专业服务。

这不仅是对提供服务的基本要求，同时也是对遵守国际清算银行（BIS）巴塞尔核心原则第 18 条和金融行动特别工作组（FATF）发布的标准的基本要求。FATF 是个政府间组织，成立的目的是打击洗钱和恐怖融资活动。FATF 标准包括关于洗钱的 40 条建议和关于恐怖融资的 9 条特殊建议。

正确可靠地识别客户比 FATF 相关的事务更重要，但对于那些没有发行国家 ID 卡的低收入国家是个挑战。一些银行，如印度和马拉维，使用生物识别手段来识别客户。通过移动电话操作的银行交易建立了自己的可靠客户识别规则。

B. 2. 可负担能力

a. 当银行向客户介绍产品或服务时，提供的产品或服务应符合客户需求。

b. 应给消费者一个选择范围满足其需求。

c. 应向消费者提供充分的金融产品或服务信息，使消费者选择最适合并买得起的金融产品或服务。

d. 当提供的信贷产品或服务明显增加消费者承担的债务时，应准确评估消费者的信用。

该《良好经验》旨在抑制消费者过度负债，帮助消费者对其融资需求作出正确决策。金融消费者保护机构应号召金融服务供应商公平对待客户，确保消费者有能力偿还贷款；如果消费者没有如此待遇，则确保他们能够立即联系放贷人或者一个自由独立的咨询机构。欧盟消费合同不公平条款指令（1993/13/EEC）和欧盟消费协议指令（2008/48/EC）提供了这方面的指引。

特别是在低收入国家，支付能力可能涉及过度负债的可能性。在某些国家，并不要求放贷人如小额贷款公司询问借款人的其他债务余额，或者这样的贷款不在信贷系统登记。结果可能会导致消费者过度负债，拆东墙补西墙。在秘鲁，监管机构发布了 6941 – 2008 规定（对零售小额借款人的管理规定），确保不经常使用信用卡或其他形式信贷的消费者不过度负债。

B. 3. 冷静期

a. 对于长期储蓄产品或服务，或者强迫销售协议产品（除非消费者事先以书面形式明确弃权），在银行和消费者签订协议之后，银行应给消费者一个“冷静期”。

b. 在冷静期，允许消费者书面通知银行取消或视合同无效，而且无任何

罚则。

这个重要保障使得个人能够“有罪不罚”地撤销合同，这对于含有长期储蓄因素的或者由于强迫销售行为的金融产品或服务尤为重要。消费者往往在没有货比三家后就去抢购银行提供的看似诱人的条件或回报的融资安排。这在那些服务或产品条款不经常提供或者没有可比条件的国家尤为重要。因此，冷静期提供了类似无条件退货的理念。然而，对于具有市场风险的银行产品和服务，消费者若要取消合同则要赔偿银行的处理费用。几个欧盟成员国关于冷静期的描述请参见关于消费信贷指令修正讨论稿。

B. 4. 捆绑和搭售条款

a. 银行应尽可能地避免捆绑服务和产品，以及在合同中限制消费者选择的搭售条件。

b. 特别是，借款人被迫购买产品，包括保单作为从银行获得贷款的前提条件时，借款人应自由选择产品的提供方，而且该信息应告知借款人。

搭售是指两个或两个以上的产品一起打包销售，且至少有一种产品不能单独销售。市场调查发现，大多数欧盟成员国的大部分银行将活期账户与按揭、个人贷款和中小企业贷款捆绑销售。零售业务中的捆绑销售将削弱竞争力。第一，搭售会增加成本，进而可能降低消费者流动。第二，“绑架”客户从同一个银行购买各种产品，很有可能打击新消费者和小额消费者的进入。第三，介绍额外的或者不需要的产品，将降低价格透明度和对服务供应商进行比较。在欧盟国家，买一赠一或买一赠多承诺的产品可能构成《欧共体条约》第 102 条的排他性滥用优势。

捆绑是指两个或两个以上产品打包销售，但市场上每个产品也可以单独销售。公司捆绑销售有很多原因，如规模经济、价格歧视、需求管理或利用市场支配力进入其他市场。捆绑本身不是反对竞争的，它甚至对消费者有积极影响(如果捆绑价格低于非捆绑价格，且更加便利)。但捆绑可能导致无法比较价格，消费者也可能被迫接受不需要的服务或产品，而且必须发生与维持捆绑产品或服务的相关费用和其他成本。

B. 5. 权利保留

除法律允许外，在任何银行与消费者的沟通和协议中，银行不能排除或限制，或者试图排除或限制：

ⅰ. 专业、认真、勤勉地向消费者提供金融服务或产品的义务；

ⅱ. 或者向消费者提供金融服务或产品时，对由于不能专业、认真、勤勉地履行义务而引发的任何责任。

该《良好经验》考虑了银行公平、诚实对待客户的义务、消费者隐私和数据保护权利。这个标准要求禁止强迫减少消费者权利的合同条款。该做法反映在 OECD 关于消费者隐私和数据跨界流动指引中的问责原则（第 14 段），以及 APEC 隐私框架中的问责原则Ⅺ，要求数据管理者有责任遵守 OECD 和 APEC 之中的规定。

欧盟不公平 B2C 商业行为指引提出，违反专业、勤勉要求的商业行为是不公平的。指引还指出，如果某种商业行为忽略了普通消费者做出正确决策需要的重要信息，那么该商业行为是错误的。指引中描述的其中一种重要信息是“违背专业勤勉要求的付款、交付、履职和投诉处理政策”。

B. 6. 监管状态的披露

在所有的广告宣传中，无论是通过报刊、电视、广播或其他方式，银行应披露其受监管的事实，以及监管者的名称和联系方式。

这符合负责任和公平的广告行为。消费者可以核实登广告人发布的声明。具体参见《2000 年英国金融服务与市场法案》和《1974 年消费者信贷法案》。

B. 7. 条款和条件

a. 在消费者开立存款、活期或贷款账户前，银行应向消费者提供一份关于普通条款和条件的一份书面文件，以及申请开立账户时的全部条款和条件。概括起来这些条款包括：

ⅰ. 披露银行一般收费的细节；

ⅱ. 银行投诉流程；

ⅲ. 说明银行业督察专员或类似机构的存在，及其流程和程序的基本信息；

ⅳ. 关于银行作为成员之一的赔偿机制；

ⅴ. 对消费者违约，银行采取的行动和补救措施；

ⅵ. A. 2 中提到的以原则为基础的行为准则；

ⅶ. 向消费者支付或收取利息的算法、向消费者提供产品的非利息收费或费用；

ⅷ. 消费者支付的服务收费，消费者账户转移的限制以及销户的流程等；

ⅸ. 清楚地规定消费者在无授权交易、信用卡被盗事件中应遵循的报告流程以及此类事件中银行的责任。

b. 条款及条件应以通俗易懂的语言和方便读者理解的字体大小和间距书写。

很多国际指引为该《良好经验》提供支持，包括欧盟消费信贷协议指令（2008/48/EC）、欧盟消费信贷指令（87/102/EEC）、欧盟内部市场不公平的B2C 商业行为指令（2006/114/EEC）、欧盟消费金融服务远程营销指令（2002/65/EEC）、欧盟远程合同消费者保护指令（1997/7/EEC），以及美国《诚实信贷法》和《诚实储蓄法》。

《诚实信贷法》旨在通过要求披露信贷条款、统一标准化借款成本计算和披露方式，来促进消费者信贷的知情使用。该法还为美国消费者提供了取消特定信贷交易的权利，这些交易涉及消费者主要住所留置权；该法对特定信用交易进行监管，为公平、及时解决信贷结算纠纷提供了渠道。

《诚实储蓄法》要求清楚、统一地披露利率（年收益率或 APY）和储蓄账户费用，这样消费者可以进行比较。比如，向想开立存单账户的消费者提供阶梯利率信息（存款额度越小，利率越低），以及提前提取部分或全部资金的罚息。

B. 8. 关键事实说明

a. 银行应有一个简要说明，如对每个账户、每种贷款和其他服务的关键事实说明，并提供给客户和潜在客户。

b. 关键事实说明应使用通俗易懂的语言，用 1 ~ 2 页具体简述银行产品或服务的主要条款和条件。

c. 在消费者开立账户或签订贷款协议前，消费者应提交有签字的声明，证明他/她已接受、阅读和理解了银行的相关简要说明。

d. 整个银行业的简要说明应统一，这样方便消费者进行比较。

简要说明，如关键事实说明，为消费者提供了银行产品或服务协议主要信息的简单标准披露，有助于消费者更好地理解金融产品或服务。关键事实说明还使得消费者在购买一种银行产品或服务之前，对不同银行的价格进行比较。该说明还为后期金融产品或服务提供了一个有用的摘要，以供日后参考。对于信贷产品，关键事实说明为消费者知晓其基本权利、信用报告制度和不确定信息存在的可能性提供了有效途径。这对于无经验的金融消费新手尤其重要。

不少国家为关键事实说明提供了模板。英国 FSA 开发了适合房贷产品的强制性的首次披露文件（IDD）格式。IDDs 受《按揭商业银行法》（MCOB）的支持。

该法提供了关于预先披露和提供文件的措辞介绍。在欧盟，欧盟消费信贷合同指令（2008/48/EC）包括一个建议的格式，称为欧洲消费信贷信息标准格式（SECCI）。欧洲消费者协会和欧洲信贷部门协会开发了欧洲标准信息表（ESIS），对签订房屋贷款合同前应提供的信息给出了一个建议格式。美国《诚实信贷法》（附录 G－10）包含了信用卡“舒默盒模型”（Schumer Box）。秘鲁开发了简表，加纳遵循类似的关键事实说明原则，开发了“贷款合同前披露声明”。

在某些国家，需要用当地人经常使用的语言向消费者提供基本信息。例如，南非一家大银行的 ATM 用了 11 种官方语言中的 6 种向消费者提供信息，但没有南非语。南非语是这个国家最经常使用的第三大语言。类似地，在安第斯地区，玻利维亚、哥伦比亚、厄瓜多尔和秘鲁，没有用西班牙语，但很多家庭都在说西班牙语。同样在马拉维，虽然大多数人说奇契瓦语，但除英语外，很少银行的书面信息使用奇契瓦语。

有必要测试消费者对强制性披露声明的理解。美联储开发了一个简单易懂的模式，针对信用卡披露信息开展了广泛的消费者测试。

B. 9. 广告和销售材料

a. 银行确保其宣传和销售资料及其流程没有误导客户。

b. 银行所有宣传和销售资料应让大众简单易懂。

c. 银行应对其宣传和销售资料中的所有陈述负法律责任。

对于披露和销售的经验，其中一个主要政策涉及了误导和竞争性广告。欧盟几个指引要求金融机构对其公共宣传的内容负责。这些指令包括：金融服务远程销售指令（2002/65/EC），欧盟误导性和比较性广告指令（2006/114/EEC）和不公平商业行为指令（2005/29/EEC）。在许多发达和中等收入国家，越来越多的银行通过经纪人来营销他们的产品，如单位信托基金和信用卡，这些通常发生在银行营业场所以外的地方——包括超市和展览会。因此，确保银行对其经纪人行为负责尤为重要。

B. 10. 第三方担保

除非银行和提供担保的第三方有合法的强制性协议，银行不能宣传实际或未来存款或存款应付利率是有担保的或者部分担保的。如果确有协议，银行的宣传应声明：

ⅰ. 担保的范围。

ⅱ. 担保人的名称和担保协议细节。

ⅲ. 担保人与银行关系的真实性质。

对于投资“回报”来说，“担保”是一个有说服力的因素。但目前对该词的使用并不严格。而且，普通顾客很难理解担保的实际条款。银行宣传应确保向消费者清楚地披露了第三方担保这一事实，使消费者对担保的用途或相关性作出正确决策。

B. 11. 专业资格

a. 为了避免与事实不符事件的发生，任何直接与消费者交易的银行员工，或者负责银行宣传的人，或者销售银行服务或产品的人，应对与其工作相关的法律、监管和行为守则的要求，以及银行产品或服务的细节非常熟悉。

b. 监管者和银行业协会应合作建立和执行银行员工最低资格要求，这些员工包括：（ⅰ）直接与客户交易的人，（ⅱ）负责关键事实说明和宣传的人，（ⅲ）销售银行服务和产品的人。

专业销售标准不仅取决于银行产品或服务，而且与提供产品或服务的人的知识和技术能力有关。金融产品日益复杂，产品重叠，银行和非银行金融产品之间的界限也不再明显。因此，让消费者在购买产品之前充分理解该产品非常重要，复杂的产品尤其如此。通常，希望银行业能够确保提供产品和服务的员工充分理解其产品和服务，能够向消费者解释其中细微的差别。银行业普遍设置了专业资格认证流程。

C. 消费者账户管理和维护

C. 1. 报表

a. 银行应发出并免费提供一份关于客户在该银行每个账户的报表，除非银行收到客户事先签署的相反授权。

b. 每份报表应：（ⅰ）载明报告期该账户所有的交易记录；及（ⅱ）提供报告期适用该账户的利率信息。

c. 如果信用卡持有者仅支付最低还款额，每个信用卡账户报表应载明最低还款额要求和总的应付利息成本。

d. 每个按揭或其他贷款账户应该清楚地说明报告期应付金额、应付贷款余额、本金和利率的分配，如果适用，还有缴税的累计额。

e. 银行应通知客户账户长期闲置的情况。如果这笔钱将作无人认领处理，银行应向客户发出一份合理的最终书面通知。

f. 当客户签署无纸化报表，那么该报表应通俗阅读，容易理解。

银行报表是客户交易的最有用记录和证据。因此，报表内容应不言自明和清晰，使消费者理解报表中数字的财务含义并采取必要的行动。这对于信用卡和贷款账户报表尤为重要，这些报表有载明收费、罚息及违约或迟付导致的严重后果。

银行应有义务提供月度报表。然而，使用网上银行和电话银行的客户，可能会选择接收季度报表。这由顾客来选择。此外，如果客户选择无纸化报表，报表存取、报表格式和细节应可以公平地代替纸质报表。

C. 2. 利率和非利息收费通知

a. 如果有以下变动，银行应书面通知客户：

ⅰ. 一旦客户账户的应付或应收利率发生变动；以及

ⅱ. 在客户账户的非利息收费变动生效日前一段合理时间。

b. 如果客户不同意条款的变更，在权利有效期内，客户有权利免费取消合同。

c. 每当做出 a 中的变更通知时，银行应告知客户上述权利。

很多国家的银行根据协议提供至少 1 ~3 个月的通知。大多数国家中，银行在其要约文件和贷款协议中表述了利率是固定还是浮动，还是逐日参考挂钩利率（如 LIBOR）。在这种情况下，应事先协商好利率变动通知的最短期限。不符合合同规定的加息通知是无效的，对客户没有约束力。行为准则应包括这个要求。客户取消合同的权利引自《欧盟消费者保护指引》第 17 条 ~ 第 19 条。

C. 3. 客户记录

a. 银行应保留每个客户的最新记录，包括：

ⅰ. 用来识别客户和提供客户简介的文件副本；

ⅱ. 客户地址、电话号码和客户其他联系方式；

ⅲ. 为遵守任何法律、法规或行为守则而准备的任何客户资料或文件；

ⅳ. 银行提供给客户的产品或服务的详细信息；

ⅴ. 客户给银行的信件副本、银行给客户的信件副本，以及向客户提供的关于银行介绍或提供给客户的产品或服务的其他信息或资料；

ⅵ. 客户签字和提交给银行的所有文件和填写的银行申请；

ⅶ. 为支持客户申请某一银行产品或服务，客户提交的原始文件副本；以及

viii. 关于客户的其他相关信息。

b. 法律或法规应规定保留这些记录的最低期限。在期限内，向客户随时提供这些记录应免费或合理收费。

虽然许多国家做到了上述内容，但起步的银行系统往往不能保留客户及其交易的全部信息。上述内容看起来是指令性的，但其要求应被视为最低要求，确保为提供消费者保护保留充分信息。更多资料，见《良好经验》C.2 节的注释。

C.4. 纸质和电子支票

a. 法律和行为准则应为纸质支票的签发和结算制定清晰的规则，包括：

i. 对资金不足账户签发的支票；

ii. 签发资金不足支票的后果；

iii. 清算后支票贷记客户账户的期限；

iv. 客户取消或止付支票的程序；

v. 银行签发和结算支票的收费情况；

vi. 支票欺诈情况下各方的责任；以及

vii. 错误更正。

b. 客户开立支票账户时，应告知客户签发不足额资金纸质支票的后果。

c. 银行应向客户提供清楚的、容易使用和理解的电子支票资料以及使用成本。

d. 关于电子或信用卡支票，银行应告知每个客户：

i. 信用卡支票与信用卡的区别；

ii. 适用的利率，以及对于信用卡消费是否收取利率有区别；

iii. 何时收取利息，是否有免息期，如果有，是多长时间；

iv. 有没有额外的利息和收费，如果有，依据什么收费，收多少；以及

v. 对用信用卡支票购物给予的消费者保护，与用信用卡购物给予的保护是否有区别，如果有，区别具体是什么。

e. 没有消费者的事先书面同意，信用卡支票不能寄给客户。

f. 应明确规定处理验证、纠错和诈骗案件的程序。

《良好经验》已经征求过一些国际和国家指引意见。这些指引包括《美国21 世纪支票结算法》以及澳大利亚和南非的重要银行行为准则。支票清算所制度为《良好经验》提供了指引。但这些制度用来指导银行，而没有向公众披

露。因此，重要的是银行要遵守银行家基本原则，并告知客户这些方面的权利和义务。

《良好经验》的形成背景包括：欧盟内部市场支付服务指令（2007/64/EC）、美国 E 监管条例、国际清算银行和世界银行的《国际汇款服务一般原则》。然而，《良好经验》没有覆盖支付、汇款以及供应商的所有领域。想要完整内容，参见《一般原则》的全文。同样，涉及所有基础支付系统方面的可以参见国际支付结算体系委员会（CPSS）和国际证监会组织（IOSCO）《金融市场基础设施的原则》（2012）、CPSS《国家支付体系发展一般指引》（2006）、世界银行《政府支付项目一般指引》（2012）。

C. 5. 信用卡

a. 对发行信用卡和相关消费者披露要求应有法律规定。

b. 银行作为信用卡发行人，应确保在所有信用卡要约包含了个性化的披露要求，包括费用和收费（包括融资收费）、信用额度、罚息利率和每月最低还款额的计算方法。

c. 银行不应对客户还没有确认的需要预先核准的信用卡收费。

d. 在每月的账单中，应向消费者提醒最低还款额度，如果消费者只偿还最低还款额时将发生的利息成本总额。

e. 法律规定应：

ⅰ. 限制对没有独立收入来源的青年人发行和营销信用卡或附加额外条件；

ⅱ. 要求对费用发生变动和增加利率时作必要提醒；

ⅲ. 禁止对全部现有余额适用新的高额罚息，其中包括以前低利率的消费；

ⅳ. 限制强加费用，比如当客户透支时收取的费用；

ⅴ. 禁止“双周期收费”，即信用卡发行人收取两个计费周期而不是一个计费周期利息；

ⅵ. 禁止信用卡发行人按最高利率收费来分配每月还款额；

ⅶ. 对发行给信用不好的人的次级信用卡，限制前期收费。

f. 对错误纠正、无授权交易和信用卡被盗报告应清晰规定，确保消费者接受信用卡之前清楚自己的义务。

g. 银行和发行人应针对滥用信用卡、信用卡过度负债以及防止欺诈进行消费者认知宣传计划。

在很多国家，信用卡逐步代替了硬通货，成为一种普遍的支付工具。由于

其不良做法、缺乏透明度以及信用卡账户条款和条件披露不足，信用卡也一直处在风口浪尖。这是低储蓄率和高消费国家的一个特有问题。目前一些国家采取更新信用卡适用制度的措施，清楚地表明这些领域消费者保护的重要性。

消费者应以明确和突出的格式、在最需要的时候获得有关信用卡的关键信息。不足 21 岁的年轻人如果想申请自己的信用卡账户，必须找一个成年人共同签字，或者提供他/她自己独立的还款来源。每月账单上的计费方式和披露的信息应清楚，帮助客户对其债务作出明智的选择。

信用卡适用越来越广泛，在发行人管辖范围外，信用卡被盗和欺诈事件越来越多。因此，提升消费者这方面的意识和知识十分重要。

也可参见《良好经验》C. 4 的注释。

C. 6. 网上银行和手机银行

a. 提供网上银行和手机银行（移动银行）服务应有一个健全的法律和监管框架予以支持。

b. 监管者应确保银行或金融服务供应商提供网上银行和手机银行服务时有合适的安全计划，确保：

ⅰ. 数据隐私、保密及数据真实；

ⅱ. 身份验证、交易对手的识别和进入控制；

ⅲ. 交易确定；

ⅳ. 营业持续性计划；

ⅴ. 无法提供服务时应充分告知。

c. 银行还应开展监督程序，以监督第三方的内控情况和表现，尤其是通过代理人开展手机银行业务的时候更应该如此。

d. 银行应告知客户收费是否适用于网上银行或手机银行，如果适用，收费依据是什么以及收费多少。

e. 应对错误纠正和欺诈程序明确规定。

f. 监管当局应鼓励银行和服务供应商采取措施提高消费者关于网上银行和手机银行交易意识。

网上银行和手机银行提供的服务和产品，提高了银行的效率和竞争力。它们增加了现有和潜在客户支付交易的便利程度。银行可能会面临互联网和手机银行所产生的与传统银行不同的风险。此外，依靠网上银行和移动电话银行服务的客户可能更不能容忍系统的不可靠或不能提供准确和及时信息。

除其他事项外，应通过制度来确保消费者权益保护：（ⅰ）限制可能威胁金融市场稳定或破坏支付体系信心的系统性风险和其他风险。（ⅱ）鼓励机构教育客户了解自己的权利和责任，以及如何在网上和使用手机时保护自己的隐私。（ⅲ）鼓励开发有效的、低风险、低成本和支付便捷的金融服务，客户和企业能够通过互联网和利用移动电话办理银行业务。

也可以参考《良好经验》C.4 的注释。

C.7. 电子资金转账和汇款

a. 应明确规定任何电子资金转账业务中各方的权利、义务和责任。

b. 银行应以方便和易于理解的形式向消费者提供电子资金转账、汇款价格和服务功能的信息。信息应尽可能地包括：

ⅰ. 总价格（例如，汇款人和收款人的费用、汇率和其他成本）；

ⅱ. 资金到达收款人花费的时间；

ⅲ. 汇款者和接收者接入点的位置；

ⅳ. 适用客户的电子资金转账服务的条款及条件。

c. 为了确保透明度，应明确告知汇款人价格或者服务的其他方面是否根据不同情况而有所不同。银行应向消费者披露此信息，且不强加任何要求。

d. 发送或接收电子转账或汇款的银行应当记录有关转账的所有必要的信息，并将该信息一经要求应无偿提供给发送或接收电子转账或汇款的客户。

e. 有关转账和汇款的错误和欺诈案件，应有一个明确、公开和容易适用的程序。

f. 应告知客户在国外使用信用卡/借记卡的条款和条件，包括可能适用外国的交易手续费和外汇汇率。

国际和国内汇款的不断增加，需要在这方面得到更多的保护。收取的费用、资金到达受益人的时间、追索机制程序是需要检讨的几个关键问题。也可以参考《良好经验》C.4 的注释。

C.8. 债务追偿

a. 禁止银行、银行代理人及任何第三方对银行客户采取任何恶劣收债手段，包括使用虚假陈述和不公平做法，或者向他人提供虚假信用信息。

b. 当银行和客户之间签订的信贷协议导致债务时，应向银行客户说明以银行的名义收取债务的类型、收债人以及收债方式。

c. 收债人在没有得到收债授权的情况下，不能与第三方联系银行客户债务

有关事宜以及搜索债务人信息。

d. 如果法律允许未经借款人同意可以出售或者转让债务，那么借款人应被：

ⅰ. 在合理的天数内通知其债务被出售；

ⅱ. 告知借款人仍有偿还债务的义务；

ⅲ. 提供付款地址以及买方或受让方的联系信息。

很多国家对恶劣收债的保障措施薄弱：（ⅰ）导致还款程序更复杂；（ⅱ）收债不得不中止；（ⅲ）博取法庭的同情。导致的结果是，收债成为一个长期过程，增加了融资成本。建立健全的收贷机制，有助于确保消费者不再遭遇恶劣的非法收债。

一些国家依赖合同神圣和法庭的威严来维护借款人的权利和防止贷款方滥用权利，而其他国家通过法律、监管机构指令，或消费者保护机构指引解决这一问题。

C. 9. 按揭或抵押财产的止赎

a. 当银行对贷款抵押品行使止赎权力时，银行应提前书面通知涉及的程序、银行止赎抵押品财产的过程及结果。

b. 同时，银行应告知消费者在止赎程序方面的可供选择的法律补救措施。

c. 如果适用，银行应提醒消费者注意，在抵押物卖出价值不足以偿还债务余额的情况下，银行有到期收回债权余额的合法权利。

d. 在抵押合同或收费协议允许银行未经法院帮助就可以执行合同的情况下，银行应确保它采用专业的手段和法律手段强制执行该合约，包括出售抵押物。

2007～2009 年的金融危机及其对美国家庭的影响凸显了确保抵押贷款止赎程序公平、适当的重要性。美国政府随后采取的立法措施强调了止赎程序保障不足的危害。许多国家努力平衡业主保护家园的权利与银行回收拖欠贷款的权利。因此，是采取对银行有利的允许庭外执行还是采取对消费者有利的司法止赎呢？无论公众感受如何，在处置抵押品过程中确保保障措施和正当的程序，建立规则和程序是非常重要的。若干关键要素，包括有足够的通知以及一个公平、成本有效的过程。

C. 10. 个人破产

a. 银行应及时、书面通知个人客户破产的依据、将要采取的步骤和个人破

产的后果。

b. 银行应向每一个人客户提供足够的通知和信息，避免客户破产。

c. 无论是直接或通过银行协会，每家银行都应该向已破产或有可能破产的客户提供咨询服务。

d. 法律应使个人：

ⅰ. 宣布他或她提出债务人申请破产的一份声明意图；

ⅱ. 提出债务协议；

ⅲ. 提出个人破产协议；或

ⅳ. 进入自愿破产。

e. 作为受托负责管理和监管个人破产制度的任何机构，应向消费者提供在其破产事件中可供他们选择与处理自己债务的充分信息。

破产会对个人造成严重影响，对其社会和经济地位造成很大的负面影响。在许多国家，被宣告破产的主体，会限制其旅行，并禁止担任政府职务及参加某些经济活动。

在一些国家，银行客户承认对自己被宣告破产的可能性及其后果知之甚少。在许多国家，破产过程缺乏透明度，以至于消费者甚至可能不知道其被宣布破产，直到其下次贷款申请被拒时才知道。向有可能破产的消费者提供咨询，使消费者避免破产，或者至少可以更好地管理破产过程。如果可能，法律也应该为破产人提供恢复程序。

D. 隐私和数据保护

D. 1. 客户信息的安全性和保密性

a. 银行要为客户的所有银行交易保密。

b. 法律应要求银行确保它可以保护其客户个人资料的保密性和安全性，防止这些信息的安全性或完整性可能受到威胁或危害，以及防止未经授权的访问。

几个国际准则和指引提供了对可识别个人信息隐私的保护。包括 OECD《个人资料隐私和跨国界流动保护准则》（第 2 条准则的适用范围），欧盟关于涉及个人资料处理的个体保护指令 1995/46/EC，APEC 个人隐私保护框架（第二部分，适用范围）。

D. 2. 共享客户信息

a. 银行应以书面形式通知其客户：

ⅰ. 银行有义务与交易外第三方共享其客户账户信息，如信用机构依法查询；

ⅱ. 将如何使用和共享客户的个人信息。

b. 未经客户事先书面同意，银行不得向不隶属于银行的任何一方为了促销或直接邮件营销而出售顾客的账户或个人信息。

c. 法律应允许银行客户停止或“退出”银行共享某些客户信息，任何首次共享这些信息前，要求每家银行书面告知每一个客户这方面的权利。

d. 法律应禁止第三方披露银行客户具体信息。

欧盟委员会建立了标准化的条款和合同范本（见《关于实施委员会个人信息流向第三国的标准合同条款的决定的委员会工作人员工作文件》）。这为个人信息保护机构处理和共享信息提供了范本。

D. 3. 允许披露

法律应当规定：

ⅰ. 向政府机构披露银行客户记录的具体制度和程序；

ⅱ. 政府机构可以和不能处理客户记录的规则；

ⅲ. 如果有的话，适用于这些规则和程序的例外情况；

ⅳ. 对违反这些规则和程序的银行和政府机关的处罚。

银行在与消费者签署合同前，应以通俗易懂的语言告知客户银行可以披露那些信息。同样，对所有共同借款人及个人担保人也是如此。另外，个人数据保护机构应在教育公众有关信用信息共享中发挥重要作用。可以从联邦贸易委员会和英国信息专员办公室（ICO）获得相关案例。

D. 4. 信用报告

a. 需有足够权威的执法机构对信用报告进行适当的监督。

b. 信用报告系统应具有准确、及时和足够的数据。该系统也应对数据的安全性和可靠性执行严格的标准。

c. 信用报告制度的整体法律和监管框架应该是：（i）明确、可预测的、非歧视性的、适度的支持消费者权益；（ii）得到有效司法或诉外争端解决机制的支持。

d. 在促进信贷数据跨境传输时，信用报告制度应提供适当的保护。

e. 适度和受支持的消费者权益应包括下列消费者权利：

ⅰ. 在了解该机构信息共享做法的基础上，准许信息共享；

ⅱ. 接受适当的识别程序后，免费获取他/她的信用报告（至少每年一次）；

ⅲ. 了解由于信用报告信息而导致的对信贷决策不利的行为，或者次优条件/价格；

ⅳ. 在一段时间内，如半年，可以获知所有查询情况；

ⅴ. 纠正事实上不正确的信息，或者将其删除，或者标记该信息具有争议；

ⅵ. 有合理的信用记录保留期，例如正面信息保留 2 年和负面信息保留 5 ~ 7 年；

ⅶ. 信息保密，并有足够的安保措施以防止未经授权的访问、数据误用、丢失或销毁。

f. 信用登记部门、监管机构和银行协会应开展宣传和教育活动，以帮助消费者维护自己上述方面的权益，以及告知消费者个人信用不良记录的后果。

信用报告制度的设计是为了减少信贷风险，并通过保持消费者信用行为记录来改善信用环境。信用报告制度的透明度是该系统良好治理的重点。同时，应对个人资料保护进行监管。信用报告日益成为越来越普遍的活动，决定了消费者获得金融服务的程度和他或她接受的所有最终贷款协议的条款，从而影响消费者的经济生活。

公共政策应该在消费者数据保护和处理个人信息的经济逻辑之间找到合适的平衡点。《良好经验》吸收了信用报告标准制定专责小组与世界银行合作开发的信用报告一般原则。

E. 争端解决机制

E. 1. 内部投诉程序

a. 每家银行都应该制定一个妥善处理客户投诉的书面投诉程序和指定联络点，以及构成 B. 7 中提到银行条款和条件的投诉流程简要说明，以在银行条款和条件中指导消费者怎样能容易获得投诉流程的完整说明。

b. 银行收到投诉后短期内，应该：

ⅰ. 以书面通知客户/投诉者收到投诉这一事实；

ⅱ. 向投诉者提供银行指定负责处理投诉的一个或多个人的名字，直至投诉被解决或该投诉不能在银行内部进一步处理为止。

c. 银行应在合理的时间间隔内，向投诉者定期提供投诉调查最新进展情况的书面说明。

d. 在几个工作日内完成投诉调查后，银行应以书面形式通知客户/投诉人

调查结果，并在适当的情况下，向客户/投诉人解释解决的方式。

e. 银行也应告知客户/投诉者金融申诉服务或其他形式的争议解决服务的可用性。

f. 当银行收到口头投诉后，它应提供给客户/投诉人与上述书面投诉受到同等银行待遇的投诉机会。但是，银行不能要求投诉人提供书面投诉。

g. 银行应有这些记录，以备银行监管机构要求检查。

内部投诉程序是疏导受委屈客户的第一道防线，尽量确保纠纷内部解决。强大的内部投诉程序可改善客户关系，增加银行体系信任度和降低裁决成本。因此，它们是保护消费者的重要组成部分。

许多银行监管机构根据行为守则或通过它们的一般监管权限来处理客户投诉。例如，亚洲的银行监管机构在银行分支机构留有投诉表格，这样消费者可以直接投诉。即使银行监管者没有明确把消费者保护作为一项职责，有些监管者仍设立专门部门来处理其监管下银行的消费者投诉。《良好经验》中的指引来自欧盟委员会关于双方均同意庭外解决消费者冲突中参与方的原则推荐，2001/310/EC。

E. 2. 正式的争端解决机制

a. 应该建立这样一种制度，允许消费者寻求经济和有效的第三方诉求机制，如消费者对通过以上内部程序解决其投诉不满意时，可以向督察专员或仲裁庭申诉。

b. 存在银行业督察专员或同等机构及有关过程和程序的基本信息，应在上述 B. 7 中的每家银行的条款和条件中告知消费者。

c. 一旦客户要求，银行应向客户提供关于督察专员或同等机构的详细资料，以及其适用的流程和程序，包括其结果和机制具有约束力，可以确保结果的执行。

d. 对银行业督察专员或同等机构应合理配置资源，并公正地履行其职能。

e. 银行业督察专员或同等机构的决定对消费者投诉的机构具有约束力。

很少有客户了解如何实现他们的权利不受侵害，即使他们知道侵权，很少有途径提出他们的诉求。因此，根据 E. 1 节所述，银行应授权建立一个内部争端解决或处理投诉的机制。除非有自愿的消费者协会拥有足够的资源和技能，帮助消费者对他们的银行进行投诉或采取法律行动，否则消费者没有太多的途径寻求帮助。在很多国家案例中，小额索赔法院（Small Claims Courts）的缺乏

阻止了普通消费者采用可能负担得起的途径起诉商业银行。

因此，世界各地越来越多的银行体系正在寻求建立资源充足的督察专员办公室，以求迅速、独立、低成本地处理没有得到银行内部专业解决的消费者纠纷。现在，这些办公室的设立和可持续发展被普遍视为健全保护消费者权益的基本要求。督察专员还可以识别数量很少，但对金融体系中消费者信心影响大的投诉，从而使有关当局采取有效措施，以纠正这种情况。

然而，没有明确的行为守则和标准化合约，导致专员办公室难以有效地履行其职责。在许多国家，行为守则（对所有银行都具有约束力）为督察专员的管辖范围奠定了基础，为其解决争端提供了指引。

E. 3. 公布消费者投诉信息

a. 督察专员、金融监管机构或消费者保护机构应定期编制和公布消费者投诉统计和数据，包括那些涉及违反任何银行业行为守则的投诉。

b. 监管机构应公布与他们活动相关的银行产品和服务在涉及消费者保护方面的数据、资料和分析，以从根源上减少系统性的消费者投诉和纠纷。

c. 银行业协会也应对投诉的统计资料和数据进行分析，并提出措施，以避免再次发生系统性的消费者投诉。

除了提供有用的定量信息，统计数据还提供所需的预测和估计，这些是政策决策的重要因素。然而，仅有统计和数据收集是不够的。需要公开统计资料和数据，告知公众影响消费者的普遍问题，增加消费者知识，提高消费者认知。

通过分析统计资料和数据，监管机构和银行可以识别银行经营中经常出现的问题和不足。他们可以采取措施解决产生问题的根源。分析对于监管机构也非常重要，可以识别消费者投诉提出的问题与影响银行业自身稳健性的系统性问题的相关性。

F. 保障机制和清算

F. 1. 存款人保护

a. 当银行不能履行义务包括不能归还存款时，法律应确保监管机构可以采取必要的措施保护存款人。

b. 如果有存款保险法，应清楚地表明以下内容：

ⅰ. 保险人；

ⅱ. 被保的储户种类；

ⅲ. 保险覆盖范围；

ⅳ. 救助资金的持有人；

ⅴ. 基金出资人；

ⅵ. 动用救助资金的触发条件；

ⅶ. 确保及时救助存款人的机制；

ⅷ. 拒绝救助存款人的情形。

c. 在一个持续的基础上，存款保险机构应直接或通过投保银行或投保商业银行协会，提高公众的存款保险制度意识，以及了解该制度如何运作，包括其优点和局限性。

d. 除其他事项外，公众认知项目（public awareness）应该教育公众了解存款保险覆盖的金融工具和金融机构，存款保险的覆盖面和限制，以及赔偿过程。

e. 存款保险机构应与会员银行和其他金融安全网参与者紧密合作，以确保向消费者提供信息的一致性，并持续地最大限度地提高公众认知。

f. 存款保险机构应接受和指导对公众认知项目或活动，并对成效进行定期评估。

决策者们可以选择他们将如何保护储户及对金融体系的稳定作出贡献。相比隐形担保，明确、覆盖面有限的存款保险（存款保险制度）已成为首选。存款保险制度明确了官方对储户的义务，限制了相机决策的范围，能够提高公众信心，有助于遏制解决破产机构的成本，并能提供一个有序的处理银行倒闭的程序。

当一个国家的银行体系健康和机构环境稳健时，引进或改革存款保险制度会更成功。为使其可信，存款保险制度需要成为构建良好的金融体系安全网的一部分，并合理设计和实施。它也需要稳健的审慎监管、健全的会计和信息披露制度、有效的法律执行等制度的支持。公众充分了解其存在好处和局限性也是一个有效的存款保险制度的支撑。存款保险制度能够处理有限数量银行的同时倒闭，但解决系统性银行危机需要金融体系安全网参与者携手共同参与才会有效。2005 年 9 月发布的国际清算银行 23 条核心原则、欧盟存款保障计划指令 1994/19/EC，APEC2005 年存款保险为该《良好经验》提供了指导。

F. 2. 破产清算

a. 在银行破产清算过程中，储户比其他无担保债权人享有更高的优先权。

b. 处理银行破产清算的法律，应规定迅速、成本有效和公平的条款，确保

储户及时地获得退款。

国际清算银行关于问题银行处置的监管指引和 F. 1 注释中提到的其他国际指引为《良好经验》提供了背景。

G. 消费者自我保护能力与金融扫盲

G. 1. 基础广泛的金融扫盲计划

a. 应制定一个基础广泛的金融教育和信息计划，以提高人们的金融素养。

b. 一系列的组织，包括政府、国家机构和非政府组织，应当参与制定和执行金融扫盲计划。

c. 政府应任命一家机构，如中央银行或金融监管机构领导和协调国家金融扫盲计划的发展和实施。

金融教育、信息和指导，可以帮助消费者对他们的收入进行预算和管理、储蓄、投资和保护自身抵御风险，以避免成为金融诈骗和欺诈的受害者。随着金融产品和服务变得更加复杂，家庭对其财务状况承担更大的责任，个人很好地管理自己的资金也变得越来越重要，不仅有助于保护自己和家人的金融福利，而且有利于金融市场和经济功能顺利运作。

据 OECD 分析，很多人对影响到他们生活的金融事务只有很少的了解。OECD 已在关于私人养老金和保险的金融教育新实践上达成一致，呼吁政府和企业共同努力推动金融扫盲计划，以便给人们保障未来生活提供所需要的工具。在这点上，通过举办重要的会议和研讨会提高金融素养，包括金融教育国际会议（新德里，2006 年 9 月），推进金融扫盲计划的八国集团会议（莫斯科，2006 年 11 月），风险意识与保险教育的国际研讨会（伊斯坦布尔，2007 年 4 月），金融消费者保护和教育的国际论坛（布达佩斯，2007 年 10 月），经合组织和美国财政部的金融教育国际会议（华盛顿特区，2008 年 5 月），经合组织和印尼银行的国际金融教育大会（巴厘岛，2008 年 10 月），经合组织和 IEFP 的金融教育研讨会（2009 年 5 月），经合组织和巴西的金融教育国际会议（2009 年 12 月），经合组织和印度储备银行的金融教育研讨会：挑战、方法和工具（班加罗尔，2010 年 3 月），经合组织和意大利银行关于金融扫盲的研讨会：提高金融教育的效率（罗马，2010 年 6 月），经合组织和黎巴嫩银行的金融教育国际会议：构建个人的金融能力（贝鲁特，2010 年 10 月），经合组织和 FCAC 的金融扫盲会议：共同合作将金融扫盲计划转变为实际行动（多伦多，

2011 年 5 月）。为了协助决策者，经合组织建立了金融教育的国际组织来描述、分析和评估金融扫盲计划的有效性。

欧盟也认识到提高人们金融知识的重要性。“金融扫盲”一词意味着有能力管理自己的钱，了解个人的财务，提前做计划，选择适当的金融产品和服务，了解金融事务。金融扫盲计划是消费者保护法规的补充而不是其替代品。根据他们的年龄、收入水平、教育程度和文化等因素的不同，提高人们金融知识的有效方法也不同。需要一系列办法以反映人们不同的需要和倾向。

这些方法既要着眼于人的态度，也要考虑到金融教育、信息和技能。例如，人们仅知道如何储蓄是不够的，他们还需要了解储蓄能给他们自己和家人的好处，意识到推迟当期消费值得，并受到激励进行定期储蓄。同样重要的是一些基本问题，如预算、储蓄、提前计划和选择产品，而不是仅仅提供特定类型的金融产品和服务的信息。

有许多机构——如政府、国家机构和非政府组织——都有兴趣增强人们的金融知识。它们应该在这个问题上通力合作，采取一系列的措施，随着时间的推移，这将有助于提高人们管理个人财务的能力。

政府应任命一个政府部门（例如，财政部）、中央银行或金融监管机构领导和协调国家金融扫盲计划的制定和实施。该组织应提供动力和激励，确保其他组织广泛积极参与，并确保优先次序，避免不必要的重复，使现有资源得到最经济的使用。

G. 2. 使用包括大众媒体在内的一系列措施和渠道

a. 相关部门或机构应该采取一系列举措来提高人们有关银行产品和服务的金融素养。

b. 相关部门或机构应该鼓励通过大众传媒向公众提供银行产品和服务的金融教育、信息和指导。

c. 在提供银行产品和服务的金融教育、信息和指导时，政府应该提供适当的激励措施，并鼓励政府机构、银行监管机构、银行业和消费者协会之间的合作。

应该制定一系列的金融扫盲措施。这些可以包括：（i）小学生金融教育计划；（ii）针对年轻人（如大学生）的计划；（iii）金融教育演示和其他便利在工作场所和当地社区的学习（由“培养‘培训师’”计划支持）；（iv）出版物和网站；（v）电视、广播和戏剧作品。

学校可以提供金融教育，从而使学生收获管理钱财的知识、技能和信心，因为它们需要对自己的金融事务管理负责任。不太可能在所有课程中将金融教育设置为一个独立的学科。然而，金融教育可以纳入其他科目，如数学、生活技能和公民课程。

如果金融教育是互动的（例如，通过参与研究和解决问题），且在可预见的未来与年轻人的生活息息相关，年轻人将更有可能积极参与。因此，例如，相比于支付退休金和抵押贷款，高年级的学生更有可能对为度假、买车、支付教育费用而储蓄作出积极的反应。

媒体，特别是电视和广播，可以在提供金融教育和信息中发挥重要作用。监管机构或行业协会可以通过向媒体提供当前关注的信息和不同类型的金融服务和产品来支持这些措施。

G. 3. 提供消费者公正无偏的信息

a. 如果成本可行的话，监管机构和消费者协会应该通过网络、印刷出版物提供关于主要银行产品和服务的关键特征、收益和风险的独立信息。

b. 相关部门或机构应采取多种措施，如提供比较价格信息、开展教育活动，以确保消费者更好地理解银行机构提供的产品和服务。

c. 相关部门或机构应采取政策，鼓励非政府组织向公众提供有关银行产品和服务的消费者认识计划。

如果消费者和潜在消费者能够获取到真实、客观的信息，就更有可能对购买合适的金融产品和服务充满信心。而金融监管部门恰有条件提供这种渠道。例如，英国金融服务局的消费者网站 Money Made Clear 介绍了一系列的金融产品；提供下载工具和订阅传单工具（也可电话订阅）；也发布了很多客观的表格，人们可以用来比较不同机构相似金融产品的成本和其他特征。此外，全球、区域和国家关于汇款价格的数据库也在汇兑成本上给消费者提供有价值的信息。

G. 4. 征询消费者和金融服务机构的意见

a. 相关部门或机构应当咨询消费者、银行业协会和银行机构，共同推进金融扫盲计划，以满足消费者的需求和期望。

b. 相关部门或机构应对消费者进行测试，确保推行的措施达到其预期的目的。

在制订金融扫盲计划中，多方协商是非常有用的，可以充分考虑到消费者、金融服务公司、贸易协会的观点。在那些具有信息灵通、有效的消费者组织的

国家里，自然需要咨询消费者组织的意见。

为确保消费者能够积极参与到政策的制定过程中，建议由政府或私人部门或者两者共同出资支持非政府组织，成立一个专门的组织来代表消费者在政策制定过程中发言。

为确保措施将产生预期的效果，对最终用户（即该措施预期作用的人群样本）进行测试是非常有益的。这样做所用到的技术包括小组讨论和试点研究。

G. 5. 衡量金融扫盲计划的影响

a. 通过广泛的家庭调查及反复的神秘购物方式（mystery shopping trips）衡量金融扫盲的消费者。

b. 相关部门或机构应该反复地评估关键的金融扫盲措施的效果。

为了衡量教育和信息的影响，应该采取多次重复的大规模市场研究的方法来衡量样本人群的金融素养。金融扫盲措施需要花费一段时间才能对公众的金融素养产生可衡量的影响，所以每四到五年进行一次重复调查就足够了。

此外，应该评估关键的金融扫盲措施，以估量其对目标人群的影响。这有助于政策制定者和资助者在知情的基础上决定应该继续哪些措施（或者扩大）、应该修改或终止哪些措施。

H. 竞争和消费者保护

H. 1. 监管政策和竞争政策

监管机构和竞争管理当局应相互磋商，以便共同制定、使用和执行关于金融服务监管的政策。

在很多国家，一般的立法（包括消费者的法律和欧盟竞争政策）需要保护消费者的经济利益，如保护免受误导性的广告和不公平的合同条款损害。所有限制、阻止或者扭曲竞争的商业行为都会受到审查。

H. 2. 关于竞争的审查

鉴于零售银行业对整体经济和消费者福利的重要性，竞争管理当局应该：

ⅰ. 监测零售银行业的竞争；

ⅱ. 调查并公布一般消费，定期评估零售银行业务的竞争（如不同银行特定产品的利率范围）；

ⅲ. 就如何加强零售银行中的竞争提出建议。

见 H. 1 以上的说明。

许多国际准则为这项《良好经验》的发展提供了指导方针，如《欧盟条约》第 102 条；根据第 1/2003 号条例第 17 条欧盟委员会关于零售银行业部门的调查；经合组织关于竞争法规和政策非强制性的建议；以及经合组织在卡特尔调查中的信息交流上的先进做法。经合组织的建议和先进做法往往成为政府重大变革的催化剂（表 2 是这些建议和做法的概览）。

H. 3. 竞争政策对消费者保护的影响

竞争管理机构和监管机构应该就竞争政策对于消费者福利的影响程度进行评估，尤其是那些关于在利息和收费上限制客户的选择和进行合谋的行为。

尽管竞争监管机构监控政策的合规性，并且执行贯彻，然而其中很多机构并不就政策对消费者福利、幸福度的影响进行评估。选择便利、合理的收费会增加消费者的福利。如果不开展影响评估，竞争政策的效果就不能衡量。

表 2 是主要的国际上、美国和英国银行部门消费者保护法规概览。

表 2　　银行业消费者保护法规概览

国际组织或一国政府	法律、条例、指令和准则
国际清算银行	巴塞尔银行监管委员会：《有效银行监管的核心原则》，1997 年 9 月，2006 年 10 月修订
	《处理问题银行的监管准则》，2002
国际清算银行 – 世界银行	《国际汇款服务通则》，2007
联合国	《消费者保护准则》（1999 年扩充）
经合组织	《关于个人资料的隐私保护和跨界流动的准则》，1980
	《监管质量与绩效指引原则》，2005
	《竞争主管当局关于国际核心卡特尔调查信息正式交换的最佳经验》，2005
	《理事会关于并购审查的建议》，2005
	《理事会关于管控行业结构分离的建议》，2001
	《理事会关于有效打击国际核心卡特尔的建议》，1998
	《理事会对成员国间关于影响国际贸易的反竞争行为之合作的建议》，1995
亚太经济合作组织	《APEC 隐私框架》，2005
	《APEC 关于存款保险战略对话：重要的政策结论》，2004

续表

国际组织或一国政府	法律、条例、指令和准则
欧盟	《消费者信贷指引》，1987/102/EEC 修订
	《消费者信贷合同指引》，87/102/EEC 废除 2008/48/EC 指引
	《有关消费产品向消费者进行价格提示》，1998/6/EC
	《消费合同不公平条款指令》，1993/13/EEC
	《欧盟内部市场不公平的 B2C 商业行为指令》，2005/29/EC
	《误导性和比较性广告指令》，2006/114/EEC
	《消费金融服务远程营销指令》，2002/65/EC
	《欧盟内部市场支付服务指令》，2007/64/EC
	《存款保障计划指令》，1994/19/EC
	《远程合同消费者保护指令》，1997/7/EC
	《个人资料的处理和数据的自由流动保护指令》，1995/46/EC
	《委员会关于法庭外团体参与消费者纠纷的协商一致决议的原则建议》，2001/310/EC
	委员会通讯—根据第 1/2003 号条例第 17 条欧盟委员会关于零售银行业部门的调查
	《关于庭外调解消费者纠纷的建议》，1998/257/EC
	《电子货币指令》，2009/110/EC
	《关于个人数据流向第三国的标准合同条款的委员会工作文件》2001/497/EC 和 2002/16/EC SEC（2006）95
	《建立欧洲共同体条约（欧共体条约）》，1957 年修订
金融行动专责委员会	《反洗钱的四十项建议》，2003
	《反恐怖主义融资九项特别建议》，2001 年和 2004 年扩充
美国	2010 年《多德—弗兰克华尔街改革与消费者保护法案》
	2009 年《信用卡问责、责任和信息披露法》
	《诚实借贷法》，1968
	《诚实储蓄法》，1991
	《21 世纪支票清算法》，2003
	《公平债务催收作业法》，1977
	《E 条例——电子资金转移法》，1966
	《联邦贸易委员会法》，1914
	《平等信贷机会法》，1974
英国	《金融服务与市场法》，2000
	《消费信贷法》，1974
世界银行	《信用报告总则》，2011

二、证券业

多年来，证券业的消费者保护对证券市场深度和诚信的发展至关重要[①]。向客户提供投资服务和产品的实体如中介、投资顾问或集合投资计划（CIU），这些实体与客户之间的关系是证券市场公平、合理和有效运作的基础。维护和实现它们之间诚信关系已经成为政府监管行动和国际合作的长期主题，也是这些《良好经验》发展的基础。

A. 投资者保护制度

A. 1. 消费者保护规则

在证券市场的产品和服务领域，法律应规定明确的规则保护投资者，并且对投资者保护规则的实施和执法应该有适当的体制安排。

a. 应该有具体的法律规定，以建立一个保护证券投资者的有效制度。

b. 应该有一个政府机构，负责数据收集和分析（包括投诉、纠纷和调查）及投资者保护的法律和法规的监督和执行。

已达成普遍共识：证券市场投资者/消费者保护需要具备法律框架，并且应该由一个政府机构监管。来源：国际证监会组织原则 1 – 5。

A. 2. 证券中介机构、投资顾问和集合投资计划行为守则

a. 证券中介机构、投资顾问和集合投资计划应该有一个自愿的行为守则。

b. 如果存在这样的行为守则，证券中介机构、投资顾问和集合投资计划应通过适当的途径向普通公众宣传守则。

c. 证券中介机构、投资顾问及集合投资计划应遵守守则，并建立适当的激励机制以便于遵守守则。

除了政府监管，证券市场专业人士应该有一个行为守则，为其行为提供指导，并为其客户提供评估方法。来源：国际证监会组织规则 25 – 29；欧洲证券监管委员会标准 10 和第 17 条；美国金融业监管局的手册收编的纳斯达克规则

① 本部分中“证券”一词是指证券的衍生工具，以及商品证券。如果一个司法管辖区允许零售客户参与场外交易（OTC）、衍生工具或外汇衍生品交易，由于本部分的目的，这些工具也将视做“证券”。本部分不包括没有金融特性的商品衍生产品。

第 2000 条商务行为；马来西亚投资经理联合会单位信托业职业道德规范和专业操守标准。

A. 3. 其他制度安排

a. 对投资者保护的法律和法规，司法系统应提供有效和可信的实施场所。

b. 媒体应在推动投资者保护方面发挥积极作用。

c. 在推动投资者保护方面，包括保护投资者志愿组织、行业协会、经允许的自律组织等私人部门应发挥积极作用。

一个公平、有效的司法系统对于任何管理系统的运作是至关重要的。新闻媒体有关金融体系的开放和自由讨论，对全面评估金融系统在某种程度上为投资者提供的保护，也是至关重要的。此外，私营机构是以有效方式向消费者传播信息的重要手段，并应在法制范围内予以鼓励。来源：美国金融业监管局的手册收编的纳斯达克规则第 2000 条和第 3000 条，以及 SEC1934 年证券交易法第 15A 条。

A. 4. 许可

a. 以金融工具作为投资目的的所有法人或自然人，从公众募集资金必须获得监管机构许可。

b. 提供投资意见并持有客户资产的法人或自然人，应受到证券监管当局许可。

c. 如果某个司法管辖区不需要对只提供投资建议的法人或自然人许可，这类人群应由行业协会或自律组织监督，证券法或消费者保护法的反欺诈条款应适用于这类人群的行为。

防止出现财务金字塔的一个关键措施是，对所有与公众接触并吸收投资或投机资金的实体提出许可要求。但是，应当区分朋友和家人之间的私人募集与不确定投资者的公开募集。对于后者，不同的司法管辖区使用不同门槛，以确定什么是“不确定”，但门槛一般是在 15 名和 50 名之间的投资者。募集多于 50 名投资者资金的所有法人和自然人，应须在金融监管机构登记，并且其行为须获得许可。

提供投资咨询、但没有居间证券的法人和自然人，已成为投资者保护的严重问题。如果这些人士持有客户资产，他们应当由证券主管机关许可。如果他们只提供意见，这些人士的监督在不同司法管辖区之间差别很大。这些人应受到监督，并遵守道德标准，对此已经形成共识。这些可以由证券监管机构、自

律组织或行业协会完成。为了使这种监督有效，这些人至少应该遵守证券法及消费者保护法的反诈骗条款。

B. 信息披露和销售行为

B. 1. 一般经验

披露原则应该涵盖投资者与提供证券发行、证券买卖，或提供投资咨询的人的关系，贯穿于这种关系的所有阶段，包括售前、售中和售后。

a. 可获信息和向投资者提供告知信息包括：

ⅰ. 账户、产品和服务的选择；

ⅱ. 各类账户、产品或服务的特点；

ⅲ. 使用每种类型的账户、产品或服务的风险和后果；

ⅳ. 在出售证券或其他金融产品时使用杠杆的风险和后果，杠杆通常被称为保证金；

ⅴ. 投资于衍生产品（如期货和期权）的特定风险。

b. 证券中介机构、投资顾问或集合投资计划应该对其产品营销材料中涉及的所有陈述负有法律责任。

c. 一个自然人或法人作为证券中介机构的代表或关联经纪人时，投资顾问或集合投资计划应向投资者披露：此人是否被授权作为代表；此人是经谁授权。

d. 如果证券中介机构、投资顾问或集合投资计划向其他法人或自然人，委托或授权其任何职务或行为的，该委托或授权应向投资者充分披露，包括：此人经委派职务或活动后，是否授权以该资格采取行动；此人是经谁授权。

证券中介机构、投资顾问或集合投资计划客户的各种相关信息披露，是证券业消费者保护的最重要方面之一。在帮助客户选择中介、顾问或集合投资计划时，向客户提供服务的完整信息至关重要。来源：（a）国际证监会组织原则23，财务顾问及代表行为准则，新加坡金融管理局的指引；CESR 标准 37 – 39 条；（b）国际证监会组织原则 1；（c）CESR 标准 35 条和欧盟金融工具市场指令第 19 条款；（d）美国证券交易委员会 Form N – 1A 开放式投资管理公司的注册。

B. 2. 条款和条件

a. 与投资者建立关系前，证券中介、投资顾问或集合投资计划应提供通用条款和条件的副本，以及适用于特定账户的所有条款及条件。

b. 条款及条件的字体大小和间距应适合于阅读方便。

c. 应披露的条款及条件：

ⅰ. 一般收费的细节；

ⅱ. 投诉程序；

ⅲ. 有关任何补偿计划中，证券中介机构或集合投资计划作为其成员的详细信息，以及投资者可在证券中介或集合投资计划的违约事件中采取行动和补救措施的概要信息；

ⅳ. 支付或收取的利率计算方法；

ⅴ. 涉及产品的任何相关的非利息费用或酬金；

ⅵ. 各类服务费用；

ⅶ. 提供给客户的各类杠杆或保证金条款细节，以及杠杆程度；

ⅷ. 任何转账限制；

ⅸ. 销户程序。

在有关顾客签署具体合同详细细节中，B. 1 列明了一般披露要求。销售时点披露是销售过程披露的关键时刻，因为它对客户作出投资决定有直接影响。来源：国际证监会组织原则 23 条，CESR 标准 78 ~ 79 和第 80 条规则，欧盟金融工具市场指令第 19 条款。

B. 3. 专业资格

监管机构应建立和管理证券中介机构、投资顾问和集合投资计划员工的最低资格要求，并与行业协会尽可能开展合作。

由于销售人员是中介、顾问或集合投资计划与客户之间的直接联系者，销售人员应该具备适当资格并了解他们正在销售的产品。来源：欧盟金融工具市场指令第 9 条款（只需要投资公司经理符合专业资格要求），FINRA 手册收编的纳斯达克规则第 1030 条 ~ 第 1032 条。

B. 4. 了解你的客户[①]

证券中介机构、顾问或集合投资计划向投资者提供产品或服务之前，应获得、记录和保留足够的资料，以便形成投资者背景、财务状况、投资经验和对

① “了解你的客户”，根据上下文有不同含义。最初形成于证券业，它是指中介机构应采取积极步骤从客户处取得客户有关复杂性、风险偏好和财务状况的信息。客户可以拒绝提供这些信息。在拒绝的情况下，中介机构可以选择拒绝交易或者提醒顾客，就具体的投资是否适合，它并没有足够信息正确建议客户。

风险态度的专业观点，确保其能够向投资者提供适当的建议、产品或服务。

已经达成共识：证券中介机构、投资顾问或集合投资计划应该从他们的客户处获取信息，使他们能够根据客户情况以适当方式对待。来源：国际证监会组织原则 23 条，CESR 标准 62 条和规则 63 ~ 70 条，欧盟金融工具市场指令第 19 条和 FINRA 手册收编的纳斯达克规则第 2310 条。

B. 5. 适当性

证券中介机构、投资顾问或集合投资计划应确保，考虑到投资者披露的事实及其知道的其他相关事实，向投资者提供的任何建议、产品或服务适合于该投资者。

已达成共识：证券中介机构应提醒客户，根据其财务状况和投资目标，某些类型的投资不适合他们。来源：国际证监会组织原则 23 条、CESR 标准 72 ~ 74 条和规则 75 ~ 77 条、欧盟金融工具市场指令第 19 款、FINRA 手册收编的纳斯达克规则第 2310 条为此《良好经验》提供了参考。

B. 6. 销售行为

a. 法律和法规应包括证券推荐、出售和购买中不当做法的明确规则。因此，证券中介机构、投资顾问、集合投资计划和他们的销售代表应：

ⅰ. 不使用高压销售策略；

ⅱ. 销售的产品不得出现歪曲和部分歪曲现象；

ⅲ. 充分披露正在出售的金融产品的投资风险；

ⅳ. 不能低估或忽视销售说明书中的书面警告或警示性文字；

ⅴ. 不排除或限制，或寻求排除或限制，应对投资者承担的任何法律责任或注意义务，可适用的法律允许除外。

b. 法律和法规应对不当销售行为进行制裁。

c. 证券监管机构应该有广泛的权力调查欺诈阴谋。

已达成共识：公平和诚实对待客户的义务，包括销售过程中做到不欺骗、不诈骗或不强迫客户作出投资决策的责任。为了确保有效执行，违反该义务应受到法律制裁。来源：国际证监会组织原则一般责任 23 条和欧盟金融工具市场指令第 19 条。更具体地说，上述 a. 点已参考下列准则：CESR 标准 18 第 23 条；CESR 标准 29 第 31 条，FINRA 第 2020 条；CESR 标准 51 和 52，规则 53 和 54；香港证券及期货事务监察委员会持牌人或注册人行为守则 2010。

证券监管机构应该有广泛的权力调查“庞兹计划”和其他“金字塔”计划

(它是指一种欺诈性的投资计划，该计划所承诺的高收益率来自新投资者投入的资金，而并非来自稳健的投资。当新投资者的投入资金不足以支付原投资者时，这种计划即告破灭——译者注)，然后协助刑事检控机关。法律应确定多层销售计划构成“金字塔”计划，如果：(1) 该计划规定招募新销售员加入计划有权获得报酬；(2) 有库存负荷，也就是说，新的销售员应该购买不合理数量的产品或服务；(3) 要求购买服务才能加入该计划。来源：国际证监会组织原则 8、12，CESR 标准 35。

B. 7. 广告和销售材料

a. 所有营销和销售材料应该通俗易懂，便于普通投资者理解。

b. 证券中介机构、投资顾问、集合投资计划和他们的销售代表应确保其广告和销售资料及程序不误导客户。

c. 证券中介机构、投资顾问和集合投资计划应该在包括印刷品、电视和广播等所有广中告披露他们接受监管和受谁监管的情况。

广告、营销和销售资料中足够的信息披露是证券业消费者保护的另一个重要方面。来源：(a) CESR 标准 25；(b) CESR 标准 29 和第 31 条，FINRA 手册收编的纳斯达克规则第 2210 条，印度证券委员会第 13 章，2011 年共同基金主要通告；(c) CESR 标准 35，欧盟金融工具市场指令第 19 条。

B. 8. 关系和冲突

a. 证券中介机构、投资顾问或集合投资计划应当向客户披露影响客户账户的所有关系，如维护和管理账户的银行、托管人、顾问或中介机构。

b. 证券中介机构、投资顾问或集合投资计划应披露涉及与客户的所有利益冲突和冲突解决方式。

为了评估向投资者提供的服务，影响客户账户的市场机构的身份应该充分透明。某种程度上，与这些机构、法人和自然人相关的人与投资者发生冲突，冲突和他们处理的方式应当向投资者披露。来源：证券投资顾问法第 204 - 3 条；欧盟 UCITS 指令第 14 条；欧盟金融工具市场指令第 18 条。

B. 9. 集合投资计划的特别披露

a. 集合投资计划应该向潜在和现有投资者披露：

ⅰ. 集合投资计划有关投资者频繁交易政策及该政策对投资者的风险；

ⅱ. 收到的使用某些中介机构或其他金融机构的任何激励，如“软钱(soft - money)”的安排；

ⅲ. 公平和诚实描述集合投资计划不同阶段的投资行为，准确地反映集合投资计划的投资表现。

b. 此外，集合投资计划应为每个基金提供主要事实陈述，以清晰的语言向客户简明扼要地阐明该基金。这些文件是法律规定的其他披露文件以外的。

客户在集合投资计划中从事频繁交易的能力会影响到长期投资者。有关该做法和连带风险的集合投资计划政策，将对投资者的交易决策产生影响，应当向投资者披露。来源：美国证券交易委员会表格 N－1A。（b）付给集合投资计划或顾问的激励以使用市场服务，例如经纪服务，有时也被称为“软钱”：付款可以造成一个利益冲突，并影响集合投资计划或顾问给出公正投资建议的能力。这种关系应向投资者披露，使他们能够正确评估集合投资计划或顾问服务。来源：欧盟金融工具市场指令第 26 款；美国证券交易委员会投资顾问第 204－3 条。（c）为了避免“随意选取”集合投资计划最佳业绩期，应当采用几个中性事件时期的表现赋予投资者评估集合投资计划的长期持有能力。来源：美国证券交易委员会表格 N－1A，根据 1933 年“证券法”第 482 条。

为了给出集合投资计划目标、管理和业绩的清晰蓝图，已经达成一个普遍的共识：应在购买或出售集合投资计划股份前向投资者进行关键信息的简短、明确声明。来源：欧盟 UCITS 指令第 78 条；美国证券交易委员会表格 N－1A，香港证监会手册有关单位信托及互惠基金第 6 章。

B. 10. 投资顾问的特别披露

a. 投资顾问应向潜在和现有客户披露：

ⅰ. 投资顾问是否以另一种身份注册，并且是否以另外一个注册身份处理客户账户；

ⅱ. 投资顾问建议的金融工具是否自身持有，或者与顾问有关的法人或自然人持有。若果有，他们从何处购买或向何处出售。

b. 投资顾问应提供潜在和现有客户每一个在售产品或服务的关键事实声明，并且以简洁清晰的语言解释产品或服务。

除了顾问执照，许多投资顾问有经纪牌照，他们以经纪人的资格与接受建议的客户打交道。这种双重的关系应向客户披露，使客户可以评估意见的客观性。来源：SEC 证券投资顾问法第 206（3）条。

为了以清晰、简明的语言表达提供的服务，顾问的服务和产品的关键要素说明应该提供给客户，使得客户对是否聘请顾问作出明智决定。来源：新加坡金融

管理局（MAS），财务顾问法案，财务顾问及其代表的行为标准准则第6部分。

C. 消费者账户管理和维护

C.1. 基金的隔离

投资者的资金应当与所有其他市场参与者的资金隔离。

在证券中介机构、投资顾问、集合投资计划或其他市场参与者的破产事件中，为了保护客户资金，客户资金应该与中介、顾问或集合投资计划的资产隔离开，以该方式来保护其资产，防止其成为中介、顾问和集合投资计划破产财产的一部分。来源：国际证监会组织原则23；欧盟金融工具市场指令第13（7）（8）款提供了保障客户资金的安排，但没有隔离的说明；FINRA手册收编的纳斯达克规则第2330条；美国证券交易委员会1934年证券交易法和据此颁布的15c3－3规章。

C.2. 合同说明

a. 投资者应该从证券中介或集合投资计划处收到详细的合同说明，确认和包含他们执行的或是代表他们执行的每一笔交易的特点。

b. 合同说明应披露证券中介机构、集合投资计划及其销售代表收到的佣金和总费用比率（表示为总费用占购买的资产总额的百分比）。

c. 此外，合同说明应注明交易发生的场所和是否（i）在贸易中，中介担任交易经纪人，（ii）中介或集合投资计划担任其客户的交易对手，或（iii）中介进行客户之间的内部交易。

客户应具有其账户中任何交易的即时信息，以及交易的条款。这使客户能够验证：客户授权的交易是否被执行。如果获取上述信息耗时太长，将会削弱客户与中介或集合投资计划纠正交易错误的能力。来源：国际证监会组织原则23条，CESR标准55条和规则第58条、第59条，FINRA手册收编的纳斯达克规则第2230条，美国证券投资委员会证券投资顾问规则第206（3）－2条。

C.3. 报表

a. 投资者应获得其在证券中介机构或集合投资计划中每个账户的定期、简明报表，以方便阅读的形式提供账户活动的完整细节。

ⅰ. 应定期报送证券和集合投资计划有关账目的报表；

ⅱ. 在规定期限内，投资者可以通过渠道质疑声明中记录交易的准确性；

ⅲ. 当投资者签署了无纸化报表，这些报表也应该是易于阅读和容易理解

的格式。

b. 只提供投资建议给客户的法人或自然人同时也持有客户资产，应由资产托管人准备客户声明并发布，而不是投资顾问发布。

客户需要获得有关账户的信息。作为提供信息的最佳手段，人们普遍接受定期向客户提供常规报表（根据账户的活动）。来源：国际证监会组织原则第23条，CESR标准56和第59条；FINRA手册收编的纳斯达克规则第2340条，NASD成员公告98－3成员与客户之间的电子信息传送。

客户应该对顾问提供给他们的信息准确性抱有信心。因此，客户账户的报表应当直接由基金托管人送交客户，以避免向客户传递不正确信息的可能性。来源：美国证券交易委员会证券投资顾问法第206（4）－2条。

C. 4. 及时付款和资金转移

投资者要求通过他或她的账户支付资金，或转移资金和资产到其他证券中介机构或集合投资计划，付款或转让应当及时作出。

投资者可能需要立即使用他们的资金，以偿还其他金融机构的和个人的债务。账户支付或账户决算的延迟会降低人们对证券市场诚信的信心和认知。来源：国际证监会组织原则第23条，FINRA手册收编的全美证券交易商协会规则第11870条。

C. 5. 投资者记录

a. 证券中介机构、投资顾问或集合投资计划应保持及时更新的投资者记录，至少包含以下内容：

ⅰ. 投资者的身份证明文件和所需文件的副本；

ⅱ. 投资者的联系方式；

ⅲ. 向投资者提供的所有合同通知书和定期报表；

ⅳ. 向投资者提供咨询、产品和服务的详细信息；

ⅴ. 提供给投资者的意见、产品和服务的所有细节信息；

ⅵ. 与投资者的所有通信记录；

ⅶ. 由投资者完成或签署的所有文件或申请；

ⅷ. 由投资者提交的为申请咨询、产品或服务的所有原始文件副本；

ⅸ. 法律要求证券中介或集合投资计划必须持有的所有涉及投资者的其他信息；

ⅹ. 证券中介或集合投资计划获得的所有有关投资者的其他资料。

b. 个别交易的详情应在交易日后保留合理的年份。以上 a 到 j 的其他所需记录应与投资者的交易关系结束之日起保留合理年份。投资者记录应完整且便于获得。

账簿和记录对于中介机构、集合投资计划和其他市场参与者的适当监管是非常重要的，以及个别客户账户审查亦是如此。没有保存这些记录，监管体系将是无效的，客户保护也将无从谈起。来源：国际证监会组织原则第 23 条，CESR 标准 10 第 15 条，要求交易日后保留 5 年的交易细节；美国证券交易委员会 1934 年证券交易法案，以及据此颁布的规例 17A－3；FINRA 手册收编的纳斯达克规则第 31 条。

D. 隐私和数据保护

D. 1. 客户信息的保密性和安全性

证券中介、投资顾问或集合投资计划的投资者有权期待，他们的金融活动受到保密，免受不必要的私人和政府审查。法律应当规定，证券中介机构、投资顾问和集合投资计划应采取足够的措施来保护客户信息的保密和安全，防止任何针对信息安全性和完整性的潜在威胁或危害，并防止未经授权的客户信息被访问或使用。

已经达成一个共识：客户有金融隐私的权利，免受无端地侵入其隐私。因为中介机构和集合投资计划知道他们客户的要求，证券市场的专业人士经常是其客户财务状况信息的最大来源。因此，中介机构和集合投资计划有责任保护客户金融信息安全，免受来自中介和集合投资计划的内部人和外部人未经授权的访问。来源：欧盟电子通信行业处理个人资料和隐私保护指令 2002/58/EC 部分，美国证券交易委员会 1934 年证券交易法，以及据此颁布的规则 S－P。

D. 2. 共享客户信息

证券中介机构、投资顾问和集合投资计划应该：

ⅰ. 通知投资者第三方要求共享有关投资者账户的信息，如信贷局的依法询问，法律另有规定的除外；

ⅱ. 解释他们如何使用和共享投资者的个人信息；

ⅲ. 允许投资者阻止或“选择退出”某些信息共享，如基于促销或直接邮件营销为目的，向不隶属于他们的外部公司出售或分享个人账户或信息，并告知投资者选择权。

客户应该知道什么样的信息可以与第三方金融集团的附属公司或内设部门共享。这些共享的用途很多，可以是有利于客户，但是如果客户没有发现这样的信息共享是有益或有利于他或她的，应有权停止或禁止此类信息的共享。来源：欧盟电子通信行业处理个人资料和隐私保护指令2002/58/EC部分，美国证券交易委员会1934年证券交易法，以及据此颁布的规则S－P。

D. 3. 允许披露

a. 如果存在任何具体程序和例外涉及向政府部门提供客户财务记录，这些程序和例外应在法律规定之内。

b. 法律应该对侵害投资者隐私行为进行处罚。

为监管和执法目的，政府监管当局需要获得客户信息。这些允许的情况应在法律中明确说明，包括通知的程序或无须通知的程序情况。违反法律隐私规则的实施，应作出有效的民事、行政和刑事处罚。来源：欧盟电子通信行业处理个人资料和隐私保护指令2002/58/EC部分，美国证券交易委员会1934年证券交易法，以及据此颁布的规则S－P。

E. 争端解决机制

E. 1. 内部争端解决

a. 证券中介机构、投资顾问和集合投资计划应当按照证券监管机构的要求建立索赔和争端解决的内部渠道。

b. 证券中介机构、投资顾问和集合投资计划应该指定员工处理投资者的询问和投诉。

c. 证券中介机构、投资顾问和集合投资计划应将争端处理的内部程序告知投资者。

d. 证券监管机构应规定监督证券中介机构、注册投资顾问和集合投资计划是否遵守其投资者保护规则的内部程序。

许多顾客的投诉来自误解或有关他们账户的信息缺乏，这些投诉可以通过中介机构、顾问和集合投资计划进行内部澄清。高效的内部程序应公正和迅速地处理客户投诉。来源：国际证监会组织原则23；如存在某种程序（如仲裁时），CESR标准78第80条；国际证监会组织原则1－5。

E. 2. 正式争端处理机制

应当具有独立的争端解决制度处理投资者与证券中介机构、顾问和集合投

资计划间的争端。

a. 投诉按照证券中介机构、投资顾问或集合投资计划的内部程序解决不能令投资者满意的，该机制应允许投资者寻求第三方渠道追索，如督察专员或仲裁庭。该机制应为公众所知。

b. 独立争端解决制度应该是公正的，且独立于指派机构和业界。

c. 独立争端解决制度的决定对证券中介机构和集合投资计划应具有约束力。确保这些决定执行的机制应当建立并公开。

散户投资者经常进行小额投资，司法程序的费用可以使任何有关款项的成功索赔变得毫无意义。因此，建立一种快速、高效、廉价解决纠纷方法对散户投资者十分重要，由此他们的权利才能得到实现。来源：欧盟金融工具市场指令第 53 条，FINRA 客户纠纷仲裁程序法典 12000。

F. 保障机制和清算

F. 1. 投资者保护

a. 法律中应该明确规定，监管机构在证券中介机构、投资顾问或集合投资计划的困难事件时可以采取及时补救措施。

b. 如果有关于投资者保障基金的法律，在法律规定范围内应该明确该基金和承保的金融工具。

c. 应有担保基金或破产受托人及时支付资金和转移金融工具的有效机制。

d. 为确保通过证券中介或集合投资计划的破产受托人实现资金的及时支付和金融工具转移至投资者，证券中介机构、投资顾问和集合投资计划破产法律应提供快捷、有效和公平的规定。

一旦中介机构和集合投资计划破产，应保护其中的客户资金。破产程序应提供公平和快速的客户资金支付机制。如果法律允许，为确保投资者的资金受到保护，并及时返回给他们，投资者保障基金可以提供一个独立、有效机制。来源：国际证监会组织原则第 24 条，欧盟投资者补偿计划指令，SEC1970 年证券投资者保护法。

G. 消费者自我保护能力与金融扫盲

G. 1. 基础广泛的金融扫盲计划

a. 应制订一个基础广泛的金融教育和咨询方案，以增加民众的金融素养。

b. 包括政府、国家机构和非政府组织等在内的各类组织应当参与制定和实施金融扫盲计划。

c. 政府应指定一家机构（如中央银行或金融监管机构），领导和协调国家金融扫盲计划的制定和实施。

金融教育、咨询和指引可以帮助消费者预算和管理自己的收入用于储蓄、投资，保护自身抵御风险，避免成为金融欺诈和诈骗的受害者。由于金融产品和服务日益复杂，并且家庭对其财务事务承担了更大的责任，因此个人合理管理财产愈发重要，不仅有助于保护自己和家庭的金融状况，而且促进了金融市场和经济的平稳运行。

公共和私人部门的许多组织对提高人们的金融知识持有兴趣。他们应该在这个问题上相互协作，通过一系列的举措，逐渐帮助人们提高管理个人账务的能力。

G. 2. 运用各种措施和渠道，包括大众媒体

a. 应采取一系列举措，提高人们的金融知识水平。

b. 这应包括鼓励大众传播提供金融教育、资讯和指导。

人们的学习方式不同。最有效的途径和渠道可能是符合不同人的年龄、收入水平、文化和学习方式情况的最合理的学习方式。他们难以消化所有第一次看到或听到的相关资讯和指导，以各种不同的方式反复提供资讯，可以帮助强化关键信息。

就证券市场和市场参与者方面而言，媒体是向客户提供教育和持续信息的最有效手段之一。监管者应该将媒体视做与广大投资者沟通的一种有效手段，应该向媒体提供开放式渠道，向公众投资者传播非保密信息。

G. 3. 对投资者的公正无偏信息

a. 在成本可行的情况下，金融监管者应该通过互联网和印刷出版物提供主要类型的金融产品和服务的特点、利益和风险的独立信息。

b. 应该鼓励非政府组织就金融产品和服务向公众提供消费者认知项目。

监管机构应在消费者教育中发挥积极作用，作为其保护消费者角色的一部分。消费者应在投资之前作出明智的决定以更好地保护他们的利益和投资，而不是投资发生错误以后进行诉讼。来源：国际证监会组织原则 4。

G. 4. 衡量金融扫盲活动的影响

a. 消费者的金融知识效果，应通过大量的、经常的住户调查进行评估。

b. 重要的金融扫盲计划的成效应该进行评估。

有关金融知识的人口抽样应通过全国范围的住户调查，反复不断衡量（每隔四年到五年），以评估金融扫盲计划的影响。重要金融扫盲的措施也应进行评估，以衡量其对目标人群的影响。这可以帮助政策制定者和资助者在知情的基础上，决定哪些活动应继续或扩大以及哪些应修改或中止。

主要的国际消费者权益保护立法概述和证券业监管见表 3。

表 3　　证券业消费者保护立法概述

机构	法律、条例、指令和准则
国际证监会组织	证券监管的目标和原则，1998 年 9 月，更新截至 2008 年 2 月 IOSCO 目标和原则执行情况的评估方法，2003 年 10 月，更新截至 2008 年 2 月
欧盟	《欧盟电子通信行业处理个人资料和隐私保护指令》，2002/58/EC 《远程合同消费者保护指令》，1997/7/EEC 《消费金融服务远程营销指令》，2002/65/EC 《误导性和竞争性广告指令》，2006/114/EEC 《金融工具市场指令》，2004/39/EC（正在修订） 《投资者赔偿计划指令》，1997/9/EC 《可转让证券集合投资计划指令》，2009/65/EC，重述 1985/611/EEC 计划（UCITS）
欧洲证券和市场管理局	欧洲投资者保护制度的建议：业务行为规则的统一，CESR，2002 年 4 月
美国金融业监管局	FINRA 手册：FINRA 规则，包括 NASD 规则和被编入 FINRA 手册的 NYSE 规则
美国证券交易委员会	1933 年《证券法》及据此颁布的条例 1934 年《证券交易法》及据此颁布的条例 1940 年《投资公司法》及据此颁布的条例 1940 年《投资顾问法》及据此颁布的条例 1970 年《证券投资者保护法》，该法经修订创建了证券投资者保护公司
美国商品期货交易委员会	商品交易所法
印度证券委员会	2011 年共同基金主要通告
马来西亚投资经理联合会	单位信托业职业操守的道德和标准守则
新加坡金融管理局	财务顾问及代理人的行为标准指引
香港证券及期货事务监察委员会	2010 年证券及期货事务监察委员会持牌人或注册人操守守则

三、保险业

虽然保险深度（即保费占 GDP 的比重）在很大程度上取决于收入水平，在机动车强制险和医疗保险的推动下，伴随着信贷供应和小额保险技术的发展，许多新兴和发展中国家的保险市场已成为快速增长的消费领域。由于历史上的监管薄弱、避税和资本转移目的滥用，甚至直接诈骗，保险业所吸引的客户有时不尽合意。这些事态的发展，必然导致具体的保险消费者保护法律和制度的引进（虽然往往在这一步之前是敏感的政治丑闻）。

通过加强消费者保护能够避免行业中很多常见的不良做法。这些不良做法包括不切实际地夸大收益、产品真实成本的披露不足、误导性广告、不公平的理赔做法。在保险行业中，机构奖励可以成为产品种类和销售数量的主要驱动力。此外，通过家人、朋友搭售和捆绑（特别是依法适用附合原则时）的多层次销售，可以限制消费者的选择和流动。

在英语国家，保险市场行为立法非常发达，这在很大程度上反映了激进的媒体和一个庞大的判例法动态目录，包括如英国一些衡平法的备受瞩目的案例。随着欧盟关于民事案件和商事案件特定方面调解指令 2008/52/EC 的通过和更广泛的保护消费者议程对话的进行，欧盟最近已开始介入这一领域。在发展中国家和新兴市场，消费者保护相对于部门发展和审慎监管而言，往往处于次要地位。

小额保险的快速发展，迫使需要对低收入个人和家庭的新兴主流消费者保护监管模式的适用性进行审查，这些低收入个人和家庭往往很少或根本没有保险的概念。一些监管者、非政府组织和包括秘鲁、南非、巴西、印度的机构已开始通过 SEEP、CGAP、Finmark 信托和小额保险网络（后者与 IAIS 联合）着手一些创新工作。从广义上讲，小额保险监管考虑以一种更宽松方法对待产品设计、分销、捆绑和品牌，但要求更高的信息披露标准（理想情况下，包括产品设计中对目标市场的一些前期参与）和强大的救济机制。表 4 列出了保险业有关消费者权益保护的一系列重点读物。

表 4　　遴选的保险业消费者权益保护的重点读物

美国国家保险专员协会（NAIC），个人业务的监管框架，2006 年 9 月
Monti，Alberto，“中华人民共和国保险合同相关法律：保单持有人权利的比较分析”，环球法学家论题，第 1 卷，第 3 版，2001 年
英国议会和健康服务督察专员，公平生活：监管失灵的十年，2008 年 7 月
英国和苏格兰法律委员会——保险合同法：联合文件，2005 年（http：//www. scotlawcom. gov. uk/downloads/cp_ insurance. pdf）
澳大利亚法律改革委员会，提请财政部 1984 年保险合同法审查，2003 年，2004 年
Tarr，A A.，保险法和消费者，邦德大学法律评论，第 1 卷，1989 年

A. 消费者保护制度

A. 1. 消费者保护规则

法律应对保险领域消费者保护的所有事项作出明确规定，还应对消费者保护法的实施和执法有足够的制度安排。

a. 法律应当作出具体规定，为保护保险零售消费者权益创建一个有效的规则。

b. 规则应优先考虑私人部门的作用，包括消费者自愿组织和自律组织。

由于保险合同的不透明性（他们有时在签订合同之后提供一种或有无形服务）、标准合同的强制使用（有时受附合规则制约）和相关法律的复杂性（不论是基于《民法典》或《普通法》），《良好经验》要求保险公司提供零售产品和服务应处于以保护消费者为目的的监管之下。2003 年版的《国际保险监督官协会核心原则和方法》（ICP 25 – 消费者权益保护）表述如下：

“监管机构为保险公司和中介机构在处理其职责范围内的消费者，包括外国保险公司的跨境销售产品设置了最低要求。这些要求包括在合同签订之前为消费者提供及时、完整和相关的信息，以便合同项下的所有义务能得到满足。”

A. 2. 合同

在普通保险或合同法律中应当有一个专门的保险合同部分，或理想情况下有一个独立的保险合同法。它应该专门规定保险业的信息交流和披露要求，保险和零售保单持有人的基本权利和义务，并考虑讨价还价的权力或获取信息方面的不对称。

由于其高度的专业性和悠久的历史，保险在很大程度上仍然是法律中独立

部分。在民法典国家，保险合同通常是民法典中独立一节，它常常会参照法典其他有关章节中的条款。民法典可以由处理监管和审慎事项的保险法的更多特定部分加以补充。一些普通法国家有独立的保险合同法，这些可以作为混合法系中民法典的一个补充（如捷克共和国）。

因为商业和工业保险通常早于消费（零售）保险市场的发展，在大多数发展中国家和许多转型市场中，保险法的主体没有充分涵盖 B2C 的情形，这些国家往往最终借鉴工业化国家的模式。除了规定最低限度的保险合同内容外，有益的 B2C 合同规定区分重大和非重大不告知，并明确规定：什么时候合同生效（包括保单情景）；什么时候投保额不足能够使（计算赔偿的）比例计算法有正当理由；保险公司希望取消或更改合同的告知要求；发生争议时合同将如何解释；使用通俗文字的最低要求；什么条款可能不被列入（如授权条款，对保险公司强制仲裁的条款等）。可行的方法如下：

- 有单独合同法的东欧国家——德国、奥地利、捷克共和国、拉脱维亚；
- 有独立保险合同法的其他主要国家——英国、澳大利亚；
- 在保险法中包含保险合同的主要国家——中国、印度、美国、巴西、俄罗斯、加拿大；
- 民法典/债权法——意大利、土耳其。

A. 3. 保险公司的行为守则

a. 应当通过与保险业或相关消费者协会的协商，制定规范保险公司行为的、以原则为基础的行为守则，由一个法定机构或一个有效的自我监管机构监测和执行。

b. 如果已有规范保险公司行为的原则性行为守则存在，保险公司应当通过适当的途径将其向公众宣传。

c. 如果合适，原则性行为守则应当借助保险公司专门涉及保险产品或渠道事项的自愿行为守则予以增强。

d. 每一个这样的自愿行为守则同样应该公开和传播。

欧洲立法中没有具体要求保险业制定行为守则，也没有规定要求业界和消费者协会合作。其他一些司法管辖区如澳大利亚和马来西亚的监管者和法定消费者保护机构都认可行为守则。表 5 汇集了精选的保险业行为守则。

具体的制度安排，取决于立法（例如，是否有规定行为规范的法律制度）。在一些欧洲法律中，仅仅具有行为准则不足以完全合规（COE 公约）。

表 5　　保险业行为守则精选

国家	机构	行为准则
澳大利亚	全国保险经纪人协会 澳大利亚金融规划协会保险理事会	一般保险经纪人行为守则，一般保险行为守则，财务策划师职业道德规范和职业行为规则
印度	印度人寿保险理事会	印度人寿保险公司的最佳行为守则
马来西亚	马来西亚人寿保险协会	道德规范和行为（由马来西亚中央银行批准）
俄罗斯	俄罗斯机动车保险业协会	各种行为准则，针对曾被投诉的保险代理人和保险经纪人制作的登记簿；名为“提高 MTPL 市场服务水平”的专业操守；涵盖受害者索赔审查和支付赔偿的规则
南非	南非人寿保险公司协会	行为守则——第 24 章，涵盖了产品和活动范围
英国	英国保险协会	各种法规和指引，包括长期护理保险的最佳实践声明、养老保险政策评论守则、重大疾病保险最佳实践声明、分红债券的最佳实践指南

资料来源：世界银行研究和金融系统评估项目（FSAPs）。

A. 4. 其他制度安排

a. 审慎监管和消费者保护可归口于独立或单一的机构，但审慎监管和消费者保护之间资源分配应该能够充分确保消费者保护规则的有效实施。

b. 司法系统应当提供金融消费者保护规则执法的公信力。

c. 媒体和消费者协会应在促进保险领域的消费者保护方面发挥积极作用。

在一些国家，同时具有市场行为和审慎监管职责的机构监管保险公司，需要在这两者职能之间找到平衡。例如，英国金融服务管理局在最近重组之前负责资本要求和消费者事务，类似于美国认证州立保险部门的国家保险专员协会（NAIC）。现场核查人员需要检查审慎行为和市场行为方面的指控。FSA 和在美国的许多州立监管部门为保险消费者提供网络支持。理论上，将这些职责分离会更好（如 Wallis 调查—澳大利亚），但许多国家的现实体制表明，只有金融市场对家庭有比较深的渗透，并建立正式的督察专员或等同督察专员制度时，审慎监管才能成为消费者默认的求助对象（例如英国和澳大利亚）。

媒体和消费者协会在促进工业化国家的金融消费者保护方面往往发挥了积极作用。在所有欧洲国家中，消费者协会还需处理金融服务，欧洲委员会提供了这一概述。根据 20/2004/EC 第 7 款，如果特定条件得到满足，某个组织甚至可能会得到欧盟财政支持［截至 2008 年 8 月，它支持了两个组织，欧洲消费者

组织（BEUC）和欧洲标准化消费者之声（ANEC）]。

此外，欧盟已经创建了一些咨询机构，如金融服务消费者组织，它是现有的欧洲消费者咨询组织的子组织。这些都是永久性的委员会，成员来自各成员国消费者组织的代表。他们被特别要求，确保在欧盟的金融服务政策中，消费者的利益要得到适当考虑。国际消费者协会的网站上可以找到世界各地消费者协会的地址。

A. 5. 捆绑和搭售条款

当保险公司与零售商或信贷授予人（包括银行和租赁公司）达成合同作为其分销渠道时，任何捆绑、搭售或其他排他性交易在没有告知消费者或其能够选择退出之前都不允许发生。

消费者保护可避免占主导地位的市场参与者滥用支配力。纵向限制包括不同行业企业之间的反竞争的搭售和捆绑。构成捆绑销售或搭售的交叉销售会带来积极需求和供应方效应，但也可能阻碍竞争和客户流动性。捆绑是将两种商品放在一起销售。公司捆绑销售的原因是多方面的（包括规模经济、价格歧视、需求管理或将某市场支配力引入另一市场的杠杆）。保险产品人为的捆绑销售也已被用来掩盖相关信贷或商品的真实价格，特别是在适用附合原则的民法典国家。

捆绑和搭售，限制了消费者的选择，并在监管薄弱的市场上普遍存在，因此应该作为消费者保护评估时的评价要素之一。捆绑会导致无法进行价格比较。捆绑本身并非反竞争的，但可以减少竞争和限制消费者的选择，尤其是在具备同时购买商品 A 和商品 B 条件的情况下（例如，抵押合同附加失业和/或人寿保险）。捆绑导致的两个结果对竞争政策尤为重要：（i）对消费者选择的限制，及（ii）其他的竞争对手是否遭阻碍。欧盟竞争政策下的处理捆绑和搭售做法的细节，请参阅欧盟条约第 102 条。

当捆绑服务的价格低于非捆绑产品且能带来便利时，对消费者来说捆绑产品在需求方面的积极影响是存在的。供应方效益可能来自于提供捆绑式服务降低了成本。

B. 披露和销售行为

B. 1. 销售行为

a. 保险公司应对其代理人（即代表保险公司的中介机构）向消费者提供产

品相关的信息负责。

b. 消费者应当被告知中介销售给他们的保险合同（称为保单）是代表他们还是为保险公司代言（在后一种情况下，中介与保险公司签订代理协议）。

c. 如果中介是经纪人（即代表消费者利益），那么消费者在与中介初次接触时，应被告知是否由承保保险公司向中介支付佣金。消费者应有权要求披露佣金和为其他长期储蓄合同支付给中介的其他费用。消费者应被告知用于支付任何趸交保费投资合同（single premium investment contract）的佣金和其他费用的数额。

d. 禁止中介机构在某一给定的一般类保险（即人寿和残疾险、健康险、一般保险、信用保险）中同时扮演保险经纪和代理角色。

e. 当银行作为中介机构时，整个销售过程中应确保消费者在任何时候都明确他或她购买的不是银行产品或由银行担保的产品。

f. 制裁，包括有意义的罚款，作为中介机构，任何违反上述规定的行为可吊销牌照。

欧盟保险销售指引主要来源于综合人寿保险指令（第四章和附件三）和有关非寿险保险、机动车保险的众多指令和调解指令。人寿保险指令附件 III 中特别要求，人寿保险在销售时应告知消费者申诉机制。一些欧盟成员国如英国，有信息披露和销售做法机制，包括要求保持完整的销售交易记录（有时还包括录音），这些机制远强于人寿保险指令和调解指令机制。

其他的重要指令包括：欧盟金融服务远程营销指令 2002/65/EC；欧盟比较广告指令 1997/55/EE 和欧盟不公平商业行为指令 2005/29/EC，不公平商业行为指令附件第 6 款和第 7 款通过 23 个案例规定了误导性商业行为，第 8 款和第 9 款通过 8 个案例规定了侵略性行为。第 10 款明确指出，不公平的商业行为可以通过行为守则加以约束。此外，还可以诉诸庭外和解，但后者不等同于司法或行政诉求。

除欧盟及其附属机构外，规章的主要来源是普通法下的工业化国家，特别是美国和澳大利亚，尽管在美国出现了“强制转嫁保险”问题（即贷款机构是投保人和受益人，并将成本传递给客户）。加拿大已在更大程度上依赖于广泛的宣传，制定行业道德守则和建立一个长期的消费者调查中心。中国已将消费者保护作为其最近更新的保险监管模式的核心要素，并对特定销售（包括某些类型的代理商、银行分支机构等）和保单类型组合提出一些最新要求。创新（手

段）包括，要求新的投保人亲自确认“他们理解其签订合同的条款”，要求保险公司随后核实这一情况。

银行保险业正在成为许多国家新业务增长的主要来源，尤其是寿险，保守来讲，寿险运作所需的规则仍处于消极的待开发阶段。问题的关键是要确保消费者明白，他们买的不是银行发行或担保的产品。实现这一目标的方法，包括要求保险公司员工或银行自己的经纪公司员工从事销售（最好是与存、贷款柜台位置不同），要求高级培训人员销售投资组合和长期储蓄合同时，确保保险公司的名称在销售材料和保单文件中清晰披露。

B. 2. 广告和销售材料

a. 保险公司应确保其广告、销售的资料和程序不要误导客户。对寿险价值预测的投资回报率应有监管限制。

b. 保险公司应对关乎其产品的市场营销和销售资料中作出的所有陈述负有法律责任。

c. 所有的市场营销和销售资料应当通俗易懂。

欧盟的几个指令约束金融机构对其披露的内容负责。这些指令包括金融服务市场指令 2002/65/EC 和比较性广告指令 1997/55/EEC。

保险销售资料和合同的措辞要求在普通法国家已非常完善，这些国家判例法支持这些概念：原义解释（一致共识）、违反诚信和公平交易、禁止保险公司使其自身免责的授权条款。普通法国家有相当大的范围去处理在财产、责任（侵权）和信贷相关的保险合同下可能出现的大量各类交易。民法典国家往往依靠民法典专门章节或单独合同法（债权法），有时也依靠对交易和销售资料的严格监管/监督。

B. 3. 了解客户需求

销售中介机构或经办人员应获得有关消费者的足够信息，确保为消费者提供适当的产品。长期储蓄和投资产品应有正式的“了解事实”，它们应予以保留并且在合理年限内可以检查。

FSA 已经率先在保险业中运用这些概念。FSA 使用这些术语是去了解客户（保护消费者权益而非反洗钱），即“了解你的客户。这也被称为‘了解事实’，它是指在给予客户意见之前，取得有关客户个人、财务状况的足够信息。”

在反洗钱背景下，了解客户的标准应当由国家监管机构实施，金融机构有一定程度的自由来设计他们受理客户政策。此项涉及保险业关键部分的政策可

在 IAIS ICP 28——反洗钱以及专门打击恐怖主义融资文件中可以找到，后者明确承认了特别组织的作用。实践中，尽管保险业产生了庞大的国际资金流动，该部门相对未受反洗钱和打击恐怖主义融资的影响。

B. 4. 冷静期

在政策信息公布之后，涉及传统投资或长期生活储蓄的合同应该有一个合理的冷静期，以应对可能的高压销售和不当销售。

冷静期（又称免费检查期）主要是作为一个消费者保护机制，虽然它也被认为具有经济效益。

撤销权体现在欧盟消费者金融服务远程营销指令的第六条。根据其规定，消费者有权在没有任何理由的情况下撤回合同而不受到惩罚。该期限根据具体产品而不同，保险合同和养老金产品合同的撤销期限更长。在订立合同初期，撤回权即存在，通常为两个星期（上述指令均表示 14 天内）。欧盟人寿保险指令在“合同签订之后”指定了一个 14 ~ 30 天的冷静期。

在工业化国家和一些新兴市场国家如新加坡，长期保险产品（如寿险）的冷静期非常普遍，并广泛覆盖了其他保险产品，如澳大利亚。通常，由于许多传统型寿险储蓄合同具有高额的提前终止违约金，长期保险产品的冷静期要长于证券（包括投资型寿险合约）的冷静期。在其他国家，如日本，某些产品的设计中（如可变年金）也吸纳了冷静期规则。

B. 5. 关键事实说明

所有的销售和合同文件应当附带产品的关键事实说明，用大号字体披露有关保险产品或服务的关键情况。

英国对产品关键事实说明的要求最为发达，它反映了对一些重大公开丑闻的政治回应。关键事实说明也被称为初始披露文件或 IDDs。在其他国家（如澳大利亚），标准化 B2C 保险合同依法成立，若没有充分披露可导致权利减损。美国的一些州明确禁止将使保险公司避免其他合法索赔的某些字眼（如保证条款）。美国的一些州还率先运用了公平交易的概念。

B. 6. 专业资格

a. 销售人员和中介机构应该有足够的资格，对保险合同提供销售和咨询意见，这取决于他们销售产品的复杂性。

b. 对出售长期储蓄和投资型保险产品中介机构的资质，应作出指定或至少由监管机构批准。

提供服务的标准，不仅取决于产品，而且取决于个人提供服务的知识和技术诀窍。由于销售人员是中介或保险公司和客户之间的直接联系人，销售人员应当具有合适资格，并了解他们所销售的产品。金融产品正变得越来越复杂，因此消费者在购买前充分了解这些复杂的产品是十分重要的。

B. 7. 监管身份信息披露

a. 在其所有的广告中，无论是通过报刊、电视、广播或以其他方式，保险公司应披露：（i）它受到监管；（ii）监管机构的名称和地址。

b. 所有保险中介的授权和许可证明，应随时向公众提供，包括通过互联网途径。

这是与负责和公平的商业惯例一致的。身份披露非常重要，它反映了公司诚信和机构监管情况。

B. 8. 财务状况披露

a. 规则制定者或监管者应依法公布保险业发展、状况、实力和深度的年度公开报告，无论是作为一个专题报告或披露和问责规定的一部分。

b. 保险公司应披露其财务信息，确保公众对该机构财务的成长性形成一个全局的认识。

c. 如果没有关于偿付能力的可信评级，监管机构应定期公布来自知情评论员或中介机构有关各保险公司的充分信息，从而对保险公司的相对财务实力有整体感知。

IAIS ICP 26（信息披露和市场透明度）涵盖了信息披露，归纳如下：

“监管当局要求保险公司及时披露有关信息，以便让利益相关者知晓他们的业务活动和财务状况，从而了解他们所面临的风险。”

几乎每个国家都要求保险公司至少每年一次在纸质媒体上公布其年度财务报表（通常为摘要）。在大多数工业和新兴市场中，主要的保险公司都有自己的网站并公布产品和定期的财务报表，包括年报。遗憾的是，会计和精算准则在大多数新兴市场和发展中国家仍然没有达到国际水平。在工业化国家，国际会计准则仍然在争论之中，特别是负债的公允价值。不管怎么样，由于复杂程度高，故需要解释所提供的财务信息。一些国家（如巴基斯坦），要求对所有保险公司的支付能力进行评级，虽然有关规则并不总是指定国际评级机构。

在一些工业国家可得到详细的技术数据，最引人注目的是美国。但在一些其他国家（如澳大利亚），某些信息如“索赔流量三角形”迫于行业压力已

撤回。

C. 消费者账户管理和维护

C. 1. 消费者账户管理

a. 在保险储蓄和投资合同的情况下，客户应该得到保单价值的定期报表。对于传统的储蓄合同，应至少每年提供；与投资有关的合同，应更为频繁地提供。

b. 客户在规定的期限内应该有质疑声明中记录交易的准确性的途径。

c. 应要求保险公司在合理时间内根据需求，披露传统储蓄或投资合同的现金价值。此外，在合同原始交付时和任何后续调整时，应提供预计现金价值表。

d. 在非寿险保单续期之前合理时间内，应向客户提供续期提示。如果保险公司不希望续约，也应该合理提前通知。

e. 如果在索赔时才发现未如实告知，且此告知对于索赔的直接原因无关紧要，则索赔不应拒绝或调整。在这种情况下，索赔可按照保险费不足情况或不能进行再保险情况进行调整。

f. 如果构成重大未如实告知，保险公司应有权随时取消保单（除索赔发生后——见上文）。

保险法很少涉及客户账户的任何细节处理——部分地反映了保险协议的可能变化。欧盟人寿保险指令要求告知投保人所获红利状态，但是这似乎并不意味着单个投保人会被定期告知其合同的现金价值。传统寿险产品的较高销售成本往往意味着几年时间内合同没有价值，寿险业对于已生效的合同有抵制头 5 年期或更长期限的现金价值披露的强烈动机。随着市场的发展，保险公司往往会区分纯粹风险和长期合同储蓄/投资部分，改善披露标准。

D. 隐私和数据保护

D. 1. 客户信息的保密性和安全性

客户有权期待其金融交易保密。保险公司应保护个人资料的保密性和安全性，免受任何可能的威胁，防止这些信息的安全性或完整性受到危害，并防止未经授权的获取。

根据一些国际法规，个人身份信息的保密性即任何已识别或可识别的个人信息受到保护，如经合组织准则规定了个人资料的隐私和跨境流动的保护（准

则第2条规定），1990年12月14日在联合国大会上通过（A原则部分陈述了国家立法应提供的最低保障）的联合国准则关于电子化个人数据档案的监管。

此外，重要的法规还有欧盟有关个人资料处理的个体保护指令1995/46/EC（第一章，第1条～第3条）、COE公约有关个人资料自动处理的个体保护（ETS 108号，1981年1月28日，第一章总则）和亚太经济合作组织隐私框架（第二部分）。

上述准则和指示都要求技术的安全性。更详细的指引见OECD准则信息系统和网络安全部分：建立安全文化。

在美国，联邦贸易委员会已经建立了维护客户信息的标准指引，责成金融机构安全、保密地持有客户信息。

人身相关的风险评级、承保或拒绝有关的医疗和遗传（生物）信息的使用，是当前争论的一个主要领域，但不在《良好经验》的讨论范围内。

E. 争端解决机制

E.1. 内部争端解决机制

a. 保险公司应当为投保人提供内部争端解决和索赔的途径。

b. 保险公司应指定员工处理零售保单持有人的投诉。

c. 保险公司应告知其客户内部争端解决程序。

d. 监管机构应调查保险公司是否遵守其内部有关消费者保护的程序。

很少有客户意识到自身权利受到侵害，即使他们意识到这一点，通常也缺乏索赔途径。因此，保险公司应建立一个内部争端解决或投诉处理机制，作为解决纠纷的第一级。除非有自愿的消费者协会有足够的资源和技能协助其对保险公司进行投诉或采取法律行动，一般消费者鲜有寻求补偿的途径。

保险公司应有书面的争端解决政策。书面政策约束保险公司承担其公开宣布的责任。这项政策应为消费者提供联系方式，并可在办公时间无需等待的沟通（最好是通过一个专门的呼叫中心），用通俗易懂的语言告知客户解决争端的主要步骤，提供确定、合理的时间流程，保证处理顾客纠纷的公平性，说明任何督察专员和/或监管当局的协调，用通俗易懂的语言解释整个过程中的消费者权利。消费者争端解决，不应使消费者产生时间和金钱方面的不合理费用。

欧盟人寿保险指令要求告知投保人他们具有追索权，然而，此类具体规定在一般保险法中并不常见。尽管在某些情况下保险交易可能被排除在外（如克

罗地亚消费者权益保护法的最新版本，官方公报 125/2007），消费者权益保护法有时不规定权利告知。

E. 2. 正式的争端解决机制

a. 应当建立一个系统，当消费者对保险公司内部程序处理投诉不满意时，允许消费者寻求经济、高效的第三方追索途径，如督察专员或仲裁庭。

b. 督察专员或同等机构面对面解决消费纠纷的作用，应为公众所知。

c. 督察专员或同等机构必须公正，且独立于任命机构和业界。

d. 督察专员或同等机构的决定对保险公司应该具有约束力。应建立机制以确保这些决定的执行和公开。

一个专门的保险督察专员或保险理赔和调查服务（在英国是作为综合督察专员服务的一部分）正日益被视为健全的消费者权益保护的一项基本要求。目前有 28 个国家是金融督察专员计划的国际网络成员。然而，在保险行为没有标准化合约和明确规范的情况下，督察专员有效地调解和改善投保人面临的问题十分困难。目前澳大利亚是具有最先进的（投诉）处理系统的国家之一，基于 SRO 保险调查和投诉解决系统已经演变成一个不折不扣的金融系统督察专员。一些国家也借助小额索赔法庭，为普通消费者提供一个应对销售商、服务提供商和企业的经济可行的维权方法。然而，这样的法庭往往缺乏足够的透明度，或是保险问题的专业知识。

F. 保障机制和清算

F. 1. 保障计划和清算

a. 由于行业不透明性、监督和治理不力而产生的纳税人财政风险、道德风险，除涉及强制性保险计划（也可能是长期保险）外，不鼓励针对保险业的清算保障计划。强有力的治理和审慎监管是更好的选择。

b. 强制保险，如机动车第三者责任保险，应当有名义被告，以覆盖没有参与保险的有罪方情形（即无法确定肇事者时，由保险清算保障计划作为名义被告——译者注）。

c. 承保寿险精算储备和投资合同保单的资产应分开或至少预留，以保证清盘时长期保单持有人优先获得这些资产。

非寿险在承保人无力偿债事件中往往受到正常的商业清盘规则约束，随后的理赔过程通常由专门公司处理。投保人通常与相关市场的其余保险公司协商

新的保险。然而，大多数国家对于强制性保险都有索赔保障安排，如机动车第三者保险。这些安排覆盖那些由于保险公司破产或因违法司机/车辆不能确定情境下（即担保基金充当“名义被告”）而难以落实的索赔。

人寿保险通常需要做补充规定，因为它可以代表个人或家庭的重要资产，也可以作为贷款抵押品。在这种情况下，通常主要是通过寿险和非寿险保险公司的分离和严格的审慎监管来加以保护。然而，综合性保险公司（寿险和非寿险保单）在许多国家已不受新规定限制，在这种情况下特殊附加协议是必要的。欧盟指令对保险业重组及清盘的规定相对薄弱，保险业要求标记界定寿险负债的资产，而在南非、巴基斯坦和澳大利亚，则要求保险公司预留完全独立的法定基金。此外，寿险投保人在债权人的优先权中通常排名靠前。大多数国家或者规定寿险储备资产的投资限制，或者在风险监管中要求资本分配反映资产组合的风险特征。

G. 消费者自我保护能力与金融扫盲

G. 1. 基础广泛的金融扫盲计划

a. 应制定一个基础广泛的金融教育和信息计划，以提高公众的金融素养。

b. 各类组织，包括政府、国家机构和非政府组织，都应当参与到金融扫盲计划的制订和实施中。

c. 政府应指定一家机构（如中央银行或金融监管机构），来领导和协调国家金融扫盲计划的制定和实施。

金融教育、信息和指导，可以帮助消费者规划和管理自己的收入、储蓄、投资及保护自身抵御风险和免受金融欺诈。由于金融产品和服务变得更加复杂，家庭在财务状况方面所承受的责任越来越大，对于个人来说，管理好他们的财产变得越来越重要，这不仅有助于保障他们自身和家人的财务状况，还便利了金融市场和经济的顺利运作。

许多公共和私人机构都对提高人们的金融知识很感兴趣。在这个问题上，他们可以团结一致，采取一系列措施。随着时间的推移，这将会帮助人们提高理财能力。

G. 2. 提供消费者公正无偏的信息

a. 消费者尤其是其中最易受伤害的，应获得足够资源了解提供给他们的金融产品和服务。

b. 如果经济上可行，金融监管机构需通过网络或印刷出版物来提供关于主要金融产品和服务的主要特征、收益和风险的独立信息。

c. 应鼓励非政府组织向公众提供关于金融产品和服务的消费者认知项目。

金融监管机构作为保障消费者的一部分，在消费者教育方面应发挥积极的作用。如果消费者能获得可靠、客观的信息，他们可能会更有信心去购买适合自身的保险产品。

G. 3. 衡量金融扫盲计划的影响

a. 政策制定者、业界和志愿者应了解不同市场的金融扫盲，特别是最易受侵害的市场（群体）。

b. 消费者金融扫盲效果应当通过经常性的大规模住户统计调查进行衡量。

c. 应评估关键的金融扫盲措施的有效性。

人口抽样金融扫盲应通过经常性的全国范围内住户统计调查来衡量（每隔四年到五年），以评估金融扫盲计划的效果。应评估重点金融扫盲措施，以衡量其对目标人群的影响。这可以帮助政策制定者和投资者在知情的基础上，决定哪些措施应继续或扩大，哪些措施应修改或中止。

表 6 给出了全球范围内主要的保险法律和条例。

表 6　　保险业消费者保护法规概览

机构	法律、条例、指令和准则
联合国	联合国大会 1990 年 12 月 14 日第 45/95 号决议通过的监管电子化个人信息档案的联合国准则
国际保险监督官协会	保险核心原则和方法，2003 年 10 月 保险公司公开披露准则 4 号文件，2002 年 1 月
经合组织	《提高风险意识和保险问题上的教育的良好经验》，2008 《证券信息系统和网络安全准则：迈向安全文化》，2002 《保险索赔管理良好经验指南》，2004 年 11 月
亚太经合组织	APEC 隐私框架，2005
欧盟	《寿险指令》，2002/83/EC 《非寿险和机动车保险指令》 《保险代理人和经纪人指令》，1977/92/EC 《保险调解的指令》，2002/92/EC 《保险业重组与清算的指令》，2001/17/EC

续表

机构	法律、条例、指令和准则
欧盟	《电子通信行业有关处理个人资料和隐私保护指令》，2002/58/EC 《远程合同消费者保护指令》，1997/7/EEC 《消费金融服务远程营销指令》，2002/65/EC 《误导性和比较性广告指令》，2006/114/EEC 《个人资料的处理和数据自由流动时个人保护指令》，1995/46/EC 《关于负责庭外和解消费者纠纷机构的建议》，98/257/EC 《关于涉及消费者纠纷协商一致决议时的庭外机构的建议》，2001/310/EC 《欧盟零售金融服务绿皮书》：Com（2007）226 终版 《金融服务和保险委员会政策声明：寿险和意外险传销活动的性质和结果》，1997 年 5 月 30 日 项目组——向欧盟委员会提交的欧洲保险合同法重述——共同参考框架草案（CFR）："保险合同" http：//www. restatement. info/
欧盟理事会	关于自动处理个人资料时的个人保护公约（ETS108 号，1981 年 1 月 28 日，1985 年 10 月 1 日生效）和解释性报告
其他主要司法管辖区	美国保险监督官协会（NAIC）——市场行为监督示范法，2004 FTC——保护客户信息准则，2002 澳大利亚——保险合同法，1984 年修订 加拿大阿尔伯达省——基于保险法的公平行为监管，128/2001 联邦存款保险公司（美国）法律法规—343 部分—保险销售时的消费者保护 拉脱维亚——保险合同法，1998 年 9 月修订 捷克共和国——保险合同法，2003 年 12 月 捷克共和国——保险中介及损失核算法，2003 年 12 月

四、非银行信贷机构

非银行信贷机构提供的消费金融，在信贷市场中占据了日趋重要的部分。不同国家对非银行信贷机构采取不同的监管方式，一些国家由中央银行或银行业监管部门监管，其他的国家由消费者保护机构或经济发展部或当地政府监管。在大多数情况下，非银行信贷机构提供消费信贷，但不吸收公众存款。因此，它们不属于审慎监管的范围。非银行信贷机构的法律形式多样，但通常包括小

额信贷机构、消费金融公司（包括信用卡公司）、租赁公司、抵押贷款公司、典当行和信用社。各国情况不同，可能难以识别非银行信贷机构。政府当局应该设立相关机制以确保识别所有的非银行信贷机构。

加强消费者权益，可以避免非银行信贷机构的一些不良行业做法。这些做法包括掠夺性贷款、歧视性定价、对产品成本的信息披露不足和误导性广告。此外，搭售和捆绑销售的做法也会限制消费者的选择和流动。

在欧洲和美国，非银行信贷机构的立法得到了很好的发展。因此，《良好经验》的实例和背景主要来自欧洲和美国的立法。此外，它们还依赖国际机构（如国际清算银行）的指引和准则（见表 8）。

A. 消费者保护制度

A. 1. 消费者保护规则

对于非银行信贷机构，法律应规定明确的消费者保护准则，并且要有适当的体制安排，以确保彻底、客观、及时和公平地实施和执行所有这些准则，以及相关制裁来有效遏制违反规则的行为。

a. 应有具体的法律规定，为非银行信贷机构的消费者保护建立一个有效的制度。

b. 应有一个政府负责实施、监督和执行非银行信贷机构领域的消费者保护。

c. 非银行信贷机构的监管当局应该有一个列有非银行信贷机构名称的登记簿。

d. 应该授权不同机构之间协调与合作，以实施、监督和执行消费者保护和金融部门的管理与监督。

e. 法律应当规定，或至少不禁止私人部门的作用，包括消费者协会和自律组织在非银行信贷机构消费者保护方面的作用。

不同国家对非银行信贷机构是否受金融监管部门的监督做法不同。在一些国家，消费贷款被认为是银行活动，开展此类业务需有银行监管部门的许可证。在另一些国家，非银行信贷机构只需注册，由消费者保护部门进行较宽松的监管。

为达到保护消费者的目的，《良好经验》要求对非银行信贷机构进行监管，以避免通过利用由于不同机构分类引发的金融产品和服务的规则缺乏或薄弱来

侵蚀银行业的现有规则（实质反映了避免“监管套利”问题——译者注）。

在欧洲，非银行信贷机构并未豁免遵守消费者保护条款，尤其体现在欧盟消费信贷合同指令 2008/48/EC，取代了指令 87/102/EEC。然而，不同国家法律执行方式有所区别，且取决于其制度安排。

通常，该行业可自由设立其行为准则，无需严格参照上述指令要求。

A. 2. 非银行信贷机构的行为守则

a. 非银行信贷机构应有原则性的行为准则，由非银行信贷机构和相关消费者协会商讨制定，并受法定部门或有效自律机构的监督。

b. 如果已存在原则性的行为准则，则应公布并向公众传播。

c. 原则为基础的行为准则中应增加针对特定机构（信用社、信用合作社、其他非银行信贷机构）事务的自愿行为准则。

d. 类似的自愿性准则也应公布并传播。

欧洲的法律体系中，并没有对建立借贷行为准则的特定要求，也没有要求行业与消费者协会之间合作的规定。然而，有原则性的准则，比如英国融资租赁协会的准则。该准则适用于许多产品（如贷款、存储卡、信用卡、个人贷款），覆盖贷款、信息和市场行为。体制安排取决于立法（例如，其是否为法律机构提供行为准则）。然而，关于个人信息保护的 COE 公约指出，只有准则并不足以保证完全合规。表 7 列举了欧盟的部分借贷行为准则。

表 7　　欧盟部分借贷行为准则

国家	文件名
比利时	行为准则 比利时央行评论
保加利亚	道德准则
塞浦路斯	银行行为准则 银行及中小型银行行为准则
捷克共和国	银行与客户关系行为准则 捷克银行业协会道德准则
芬兰	银行良性运营准则
匈牙利	道德准则

续表

国家	文件名
爱尔兰	商业账户转换准则 账户转换行为准则 按揭拖欠行为准则
卢森堡	消费者保护准则
荷兰	金融机构处理个人信息行为准则 抵押贷款行为准则 支持转换服务
英国	贷款准则 生息账户广告行为准则 融资租赁协会行为准则
欧盟	欧盟国家关于住房贷款先合同信息的自愿行为准则

资料来源：欧洲信用研究所。

A. 3. 其他制度安排

a. 无论非银行信贷机构是否由金融监管机构监管，应该合理分配金融监管和消费者保护之间的资源，能保证这两项工作都能有效开展。

b. 司法系统应该确保对非银行信贷机构消费者保护问题的最终经济、及时、专业处理。

c. 非银行信贷机构的监管当局应鼓励媒体和消费者协会发挥积极作用，推动消费者保护工作。

在许多国家，媒体和消费者协会对推动金融消费者保护发挥着积极作用，包括在非银行信贷和微型金融方面。欧盟所有国家都有处理金融服务问题的消费者协会。如果满足了一些具体标准，这些组织甚至可以得到欧盟的资金支持。

此外，欧盟还建立了一些咨询机构，如消费者金融服务组织，该团体隶属于现有的欧洲消费者咨询机构。常设委员会成员包括欧盟各成员国消费者组织的代表。它们特别强调确保欧盟金融服务政策应正确考虑消费者的利益。另一个团体是欧洲消费者债务关系网，这是一个由不同国家的债务顾问组成的网络。国际消费者网站上可以找到世界各地的消费者协会的网址。

A. 4. 非银行信贷机构的许可

所有开展任何类型家庭信贷的金融机构都需由金融监管当局颁发许可证。

监管当局有权设定标准并有权拒绝不符合标准的设立申请。监管当局应该核实金融机构的实际拥有者（控股者）以及高级管理人员满足适当人选的最低要求，并且没有破产和犯罪记录。

B. 披露和销售行为

B. 1. 消费者信息

a. 当给消费者建议时，非银行信贷机构应收集、记录、归档来自消费者的充足的信息，从而能够给消费者提供合适的产品和服务。

b. 非银行信贷机构收集的消费者信息的内容应该：

ⅰ. 与推荐的或消费者寻求的产品和服务的特征与复杂性匹配；

ⅱ. 使得机构能够向消费者提供与其消费能力相适应的专业服务。

这一良好经验是提供服务的基本要求，也能确保遵守反洗钱财务行动特别小组有关客户尽职调查和记录保存的建议。根据建议 5，金融机构应进行客户尽职调查，包括识别和验证客户和实际拥有人的身份，以及获取与业务关系的目标特征相关的信息。通常，尽职调查的程度取决于与交易和特定的客户相联系的风险。虽然不吸收存款的非银行金融机构不能用于洗钱，但由于高欺诈风险，客户身份识别依然对其有利。

虽然准确可靠的客户身份鉴定对打击欺诈行为很重要，但当前对于某些低收入国家来说这是个难题，因为这些国家还未颁发身份证。例如，在印度和马拉维，一些信贷机构使用生物措施识别客户。另外，通过移动电话进行的交易在客户身份识别的可靠性方面上也产生了问题。在许多发展中国家（例如，印度、马尔代夫和南非等），监管机构已开始进行降低小额交易账户的 KYC 要求的试验。然而，目前没有一个如何最优开展的国际准则。

B. 2. 可负担能力

a. 非银行信贷机构向消费者做出产品或服务建议时，它所提供的产品或服务应符合消费者的需求。

b. 应当向消费者提供足够的产品或服务信息，使其选择最合适并负担得起的产品或服务。

c. 当非银行信贷机构提供的新信贷产品或服务大大增加了消费者承担的债务数额时，应正确评估消费者的信用。

承受能力是指考虑其每月净收入和生活开支（包括租金或按揭付款）以外

消费者是否能够负担得起额外的债务。在将当期收入用于债务还本付息方面，居民可能有不同的承受能力。信用涉及违约评估或拖欠风险并且是贷款责任的一个组成部分。欧盟消费信贷协议（第八条）要求债权人从相关数据库（如信用局）和消费者那里获取信息，并以这些信息为基础评估消费者的信用。该指令的条款适用于所有贷款者，包括非银行信贷机构，覆盖的产品范围包括 200～75000 欧元的所有信贷合同。这些条款只适用于那些消费者需要支付利息的合同，但包括递延支付卡（deferred payment cards）和抵押贷款。

在美国，一系列消费者保护规定相继出台，如修订有关不公平或欺骗性行为法的 AA 条例、诚实信贷法和诚实储蓄法。例如，美国联邦储备委员会已经批准修订 TILA，旨在保护抵押贷款市场可靠的贷款。其中的关键条款是，贷款人有责任通过检查收入和不包括抵押财产在内的其他资产来评估借款人的还款能力。

负担能力与对消费者可能过度负债的担心相关。在一些国家，非银行信贷和小额信贷机构不需要询问消费者其他重要的债务，或者这些债务未登记在信用报告体系中。结果造成已经过度负债的消费者，依靠一项贷款去偿还另一项贷款。在秘鲁，监管机构已颁布了 2008 年 6941 号规定（债务人过度负债风险管理规则），以确保消费者不会使用容易获取的信用卡或其他形式的信贷形成过度负债。在南非，2006 年 5 月 31 日颁发的《国家信贷管理条例》第三章第四部分对过度负债、非理性的借贷及信贷辅导有专门的规定。这项法律规定哪些信息应提交给全国信贷登记处以及债务顾问。根据第四部分第 24 条第 7 款，如果消费者每月总债务支出超过其纯收入扣除最低生活费的数额，则被认为是过度负债。

B. 3. 冷静期

a. 对于一项带有长期储蓄成分的金融产品或服务，或者那些受到高压销售的金融产品或服务（除非由消费者明确地书面弃权），非银行信贷机构和消费者签署协议后，机构应给消费者提供一个合理的冷静期（至少 3～5 个工作日）。

b. 在冷静期内，一旦消费者书面通知非银行信贷机构，其可以取消或修改消费协议，而不须承担任何责任。

在许多情况下，借款人匆忙地签订金融产品或服务协议，只是因为非银行信贷机构提供了看似有吸引力的条款和回报，而消费者并未通读金融合同或寻求建议。这在那些服务和产品的条款还难以轻易获得或者无法作比较的国家尤

为严重。因此，冷静期类似于购物中的“无条件”退货政策。然而，对涉及市场风险的产品和服务，消费者在冷静期内取消合同，应赔偿非银行信贷机构的有关损失。一些欧盟国家对冷静期的描述，可参考欧盟委员会关于消费信贷的87/102/EEC 修正指令的讨论材料。

《欧盟远程金融市场服务指引》第六章保留了撤销的权力，规定消费者有权撤销合同，并不受任何惩罚，无须给出任何原因。撤销期限通常始于在签订合同两周内（欧盟指令规定 14 天），冷静期的长度取决于销售的金融产品的种类。对于具有长期储蓄成分的产品和受到如传销等销售系统支配的产品，应给予更长的冷静期，因为这些大多与高压销售策略有关。

B. 4. 捆绑条款

a. 非银行信贷机构应尽可能避免在合同中使用搭售条款限制消费者的选择。

b. 特别是，如果非银行信贷机构要求借款人购买任何产品必须包括保险，以此作为获得贷款的先决条件，那么借款人有选择保险产品的自由，并且应得到告知。

c. 此外，非银行信贷机构与零售商签订合同，作为其信贷合同的销售渠道时，不允许任何排他性交易。

交叉销售，如捆绑销售或搭售可以产生积极的供需方效应。然而，也可能阻碍竞争和顾客的流动性。当每个产品都可以单独在市场上销售时，同时销售两个或两个以上产品即构成捆绑销售。公司捆绑销售有以下几个原因，如规模经济、价格歧视、需求管理，或一市场支配力进入另一市场的杠杆。需求上的正面影响在于捆绑销售的产品和服务的价格比分拆销售低，以及捆绑销售提升了便利度。捆绑销售本身不是反竞争的，但如果利用市场支配力来损害对手则是反竞争的。

搭售是指两个或两个以上的产品同时销售，并且其中至少有一个产品不单独销售。金融机构会使用搭售来减少竞争并限制消费者的选择，特别是当购买产品 B 需要购买产品 A 作为一个条件时（例如，一个抵押合同附加支付保险）。此外，通过模糊消费者成本和导致价格无法进行比较，捆绑销售会提高定价。然而，消费者保护可以避免市场主导者的滥用市场支配力。

在市场竞争较弱时，限制消费者选择的捆绑销售往往是普遍的，因此对消费者保护开展诊断性检查时，应该对捆绑销售加以评估。需着重考虑的两个标

准是：一是对消费者选择的限制；二是是否阻碍其他竞争对手。在欧盟，根据《欧盟委员会条约》第102条的捆绑和搭售做法可能包括对支配地位的排他性滥用。

B. 5. 关键事实说明

a. 非银行信贷机构应该为每个类型的账户、贷款或其他产品或服务进行关键事实说明；

b. 关键事实说明应用通俗易懂的语言编写，有一到两页总结产品或服务的主要条款，并便利消费者比较不同机构所提供的产品。

关键事实说明能够以简洁、标准化方式向消费者披露金融产品或服务合同的关键信息，有助于消费者更好地了解产品或服务。关键事实说明也让消费者在购买前可比较不同金融机构所提供的金融产品或服务，并提供一个有用的摘要供日后参考。对于信贷产品，关键事实说明是一种告知消费者他们的基本权利、信用报告系统、争议信息当前状态的有效方式。这对于一些国家缺乏经验的金融消费新手来说非常重要。

举几个世界各地关键事实说明的例子，如欧盟对消费者信贷的SECCI框架，欧洲消费者协会和欧洲信贷行业协会制定的住房贷款合同前信息的ESIS框架，美国的信用卡“舒默盒”，秘鲁的“胡珈概要”。

在一些国家特别关注的是，需要采用当地居民广泛使用的语言向消费者提供一个基本的信息。这有助于测试消费者对强制性披露声明的理解。更多信息可参见《良好经验》银行部分中的第五节。

B. 6. 广告和销售资料

a. 非银行信贷机构需确保其广告和销售资料及程序没有诱导消费者；

b. 所有广告和销售资料应该便于公众理解；

c. 非银行信贷机构应对广告和销售资料中的任何声明负法律责任（如虚假或误导性声明应受到法律处罚）。

对于信息披露和销售行为，主要的政策问题之一涉及误导和比较性广告。欧洲几个指令中都涉及金融机构公示的内容，包括欧盟消费金融服务远程营销指令（2002/65/EC）、欧盟误导和比较性广告指令（2006/114/EEC）和不正当金融行为指令（2005/29/EC）。

一些国家的非银行信贷机构使用代理推广及分销其产品，如信用卡或预付费卡。这些业务发生在信贷机构之外的其他地方，包括在超市、药店和交易协

会。因此，确保非银行信贷机构对其代理人的行为承担责任是关键。

B. 7. 一般做法

披露和销售行为的具体规则，应包括在非银行信贷机构的行为守则里，由有关主管机关监督。

欧盟消费信贷合同指令（2008/48/EC）规定合同里应包括什么信息（第 9 条“合同前的信息”）。在美国，1986 年的 TILA 和《联邦贸易委员会法》（第五部分）也有类似的规定。欧盟不公平商业行为指令定义了误导行为（第 6 ~ 7 章）和掠夺行为（第 8 ~ 9 章），并给出了几个例子说明（见附件）。此指令还明确规定，不公平的商业行为可以通过行为守则控制（第 10 章）。一旦存在行为守则，非银行信贷机构应结合自己的情况开展公平的披露和销售行为。

B. 8. 财务状况的披露

a. 有关监管机关应公布年度公开报告，披露非银行信贷机构的发展、健康、实力和渗透力，该报告可作为一个特殊的报告，也可作为信息披露和问责制要求的一部分。

b. 非银行信贷机构应披露其财务信息，使公众形成对该机构的财务可行性判断。

在一些国家，非银行信贷机构必须对其财务状况进行定期报告。然而，存在的一个共性问题是，非银行信贷机构编制的财务报表往往不提供足够的信息，使消费者很难对有关机构的投资组合质量或可持续发展水平形成有效的判断。例如小额信贷机构，往往通过捐赠和无息贷款履行社会责任。一般情况下，非银行金融机构使用与银行不同的贷款方法。因此，非银行信贷机构提出信息的可用性、明确性和可比性是重要的。例如，CGAP 已开发出一套较可行的小额信贷机构财务报告内容指引。

C. 消费者账户管理和维护

C. 1. 报表

a. 除非收到客户事先相反的授权，否则非银行信贷机构应每月向客户发布和提供关于其账户经营情况的报表。

b. 每个报表应该包括：一是报表期间内账户的所有交易信息；二是报表期间内账户的利率的详细信息。

c. 如果持卡人只需支付最低还款额，每个信用卡账单就应列明所需的最低

还款额和将产生的总利息成本。

d. 每个按揭或其他贷款账户对账单应清楚地表明所涉期间信息，未偿还金额尚欠的本金和利息、已支付的金额，以及根据具体情况，包括截至目前已付税收的累计值。

e. 非银行信贷机构应通知存在长期闲置账户的客户，如果资金被转移到政府，应以书面形式向客户提供合理的最后通知。

f. 客户签署的无纸化合同，应用易读且便于理解的格式。

报表被认为是最有效的记录客户交易的证据，因此报表应清晰明了。对于可能产生财务费用、罚息、违约或延迟付款的严重后果的信用卡对账单和贷款对账单来说，这一点尤为重要。随着互联网和手机银行的使用，有些客户可能会选择按季而不是按月接收报表，这个选择取决于客户。此外，当客户选择无纸化报表时，其格式和细节应该完全等同纸质报表。

C. 2. 利率和非利息费用变动的通知

a. 非银行信贷机构应以书面形式通知以下任何变化：

ⅰ. 尽可能快地通知客户账户各种可能支付和收取的利率；

ⅱ. 在通知客户利率变动生效前应给予一段合理的免息期。

b. 如果修改后的条款客户不能接受，在合理期限内客户有权毁约而不承担任何责任。

c. 无论何时发生 a 中的任何变化，非银行金融机构应告知客户上述权利。

根据协议，一些国家的信贷机构提供 1 ~3 个月的通知。如果利率为可变利率，且与日常广泛公布的参考利率挂钩（如伦敦银行同业拆借利率），贷款协议上应规定利率变化的最低范围，达到该范围就应通知客户。没有按照合同规定通知的加息信息，其对客户无效也没有约束力。行为准则应该包括这一要求。消费者退出合同的权利来自《联合国消费者保护指引》第 17 条和第 19 条。

C. 3. 客户记录

a. 非银行信贷机构要保持每个顾客的记录更新，包括以下内容：

ⅰ. 客户身份以及客户概况的所有文件的复印件；

ⅱ. 客户地址、电话以及其他联系信息；

ⅲ. 按照相关法律法规或行为准则处理与客户有关的所有信息和文件；

ⅳ. 非银行信贷机构向客户提供所有产品和服务的详细内容；

ⅴ. 客户与非银行信贷机构间往来记录和与提供给客户的产品和服务相关

的任何其他信息详细内容的副本；

ⅵ. 客户签署和提交的，并由非银行信贷机构完成的所有文件和申请；

ⅶ. 客户提交产品和服务申请的原始文件的副本；

ⅷ. 有关客户的任何其他相关信息。

b. 在法律法规规定的保留此类信息的最低期限内，客户有权免费查询所有记录。

上述要求可以是指令性的，但应被视为保护消费者提供的足够信息的最低要求。有关进一步介绍，可参阅《良好经验》第三节第二条注释。

C. 4. 信用卡

a. 对信用卡的发售和相关的客户信息披露要求应有明确的规定。

b. 非银行信贷机构作为信用卡的发行方，应确保个人的信息披露需要，包括手续费和其他费用（含财务费）、信用额度、罚款利率和每月最低还款额。

c. 在预先批准的信用卡未被客户接受的情况下，非银行信贷机构不允许强制收费。

d. 如果客户只偿还最低还款额，应向客户提示个人每月最低还款额和总利息支出。

e. 除其他事项外，还应包括以下规则：

ⅰ. 限制对没有独立收入来源的青年人发行和营销信用卡或附加额外条件；

ⅱ. 要求对费用发生变动和增加利率做必要提醒；

ⅲ. 禁止对全部现有余额适用新的高额罚息，其中包括以前低利率的消费；

ⅳ. 限制强加费用，比如当客户透支时收取的费用；

ⅴ. 禁止“双周期收费”，即信用卡发行人收取两个计费周期而不是一个计费周期利息；

ⅵ. 禁止信用卡发行人按最高利率收费来分配每月还款额；

ⅶ. 对发行给信用不好的人的次级信用卡，限制前期收费。

f. 对错误纠正、无授权交易和信用卡被盗报告应清晰规定，确保消费者接受信用卡之前清楚自己的义务。

g. 非银行信贷机构和发行人应针对滥用信用卡、信用卡过度负债以及防止欺诈进行消费者认知宣传计划。

信用卡正逐步取代许多国家的硬通货。信用卡业缺乏透明度和对信用卡账户的条款及条件未充分披露的不良做法也成为众矢之的。对于一些低储蓄和高

消费的国家，以及低收入消费者更容易获得零售商、消费金融公司、小额信贷机构和其他非银行信贷机构提供信用卡的国家来说，这更是个问题。近来在很多国家采取的不断更新信用卡规则的措施清楚地表明，在这些方面保护消费者的重要性。

消费者应该通过明确、醒目的格式，在有用的时机获得信用卡的关键信息，这对其很重要。任何 21 岁以下的人开立信用卡账户需有成人共同签署，或者证明其有独立的还款能力。计费方法和信息应每月清晰披露，以便于客户对其债务作出明确的决策。

随着在互联网和发行辖区之外使用信用卡的增多，导致信用卡被盗和诈骗行为也增多。因此提高消费者认知和知识十分重要。

C. 5. 债务追偿

a. 所有非银行类贷款机构、代理商和第三方应杜绝雇人用任何恶劣的手段追债，包括采用虚假声明、不公平的做法以及向他们提供虚假信息。

b. 非银行信贷机构和客户签订会引起债务的信贷协议时，应向客户表明可代非银行信贷机构追收债务的类型、可追债的人和方式。

c. 收债人在没有通知以下情况下，不得就非银行信贷机构客户的债务联系第三方：（i）收债人有权力这样做；（ii）收债人正在收集此类信息。

d. 如果法律允许未经借款人同意可以出售或意转让债务，那么贷款人应：

ⅰ. 在合理的天数内告知债务出售情况；

ⅱ. 告知借款人仍有偿还债务的义务；

ⅲ. 提供付款地址以及买方或受让方的联系信息。

很多国家对恶劣收债的保障措施薄弱：（i）导致还款程序更复杂；（ii）收债不得不中止；（iii）博取法庭的同情。导致的结果是，收债成为一个长期过程，增加了融资成本。建立健全的收贷机制，有助于确保消费者不再遭遇恶劣的非法收债。

当前一些国家依靠合同约束和法院来确保消费者的权利，免受暴力催债，另一些国家通过法律、监管机构的指令以及消费者保护机构的指引来保护消费者［参见：美国联邦贸易委员会（FTC）和英国金融服务管理局（FSA）网站上的《美国公平债务催收作业法》］。

D. 隐私和数据保护

D. 1. 客户信息的保密性和安全性

a. 非银行信贷机构应对其每个客户的金融交易保密。

b. 法律应要求非银行信贷机构保护个人数据的机密和安全，使这些信息的安全性和保密性免受任何预期威胁或危害，并防止未经授权的访问。

私人身份信息的保密性，就是可识别或辨认的个人信息，受到许多国际法的保护。包括 OECD 保护私人资料隐私和跨界流动的准则（第 2 条 适用范围）和联合国大会 1990 年 12 月 14 日通过的监管电子化个人数据资料的准则（A 部分，关于国家立法需要订立的最低保障原则）。

其他重要法规都包含在欧盟有关个人数据处理以及关于这些数据自由流动的个人保护指令 1995/46/EC（第一章，第 1 ~ 3 条例）；关于自动处理个人资料时的个人保护公约（ETS108 号，1981/1/28，第一章一般规定）；和 APEC 隐私框架（第二部分）。

上述准则和指令对技术安全也有所要求。关于此类安全更详尽的准则参见 OECD 信息系统和网络安全准则：迈向安全文化。

在美国，FTC 颁布的保护客户信息的标准（2002）指出，金融机构有义务保证客户信息安全和机密。

D. 2. 信用报告

a. 信用报告需有足够的执法权威机构对其进行适当的监督。

b. 信用报告系统应具有准确、及时和足够的数据。该系统在安全性和可靠性方面也应保持严格的标准。

c. 信用报告系统整个的法律和监管框架应该是：（i）清晰、可预见、非歧视性、适当支持消费者的权益；（ii）通过有效的司法或诉外争端解决机制来支持。

d. 适度和受支持的消费者权益应包括下列消费者权利：

ⅰ. 有权在对机构的信息分享行为有所了解的基础上同意进行信息分享；

ⅱ. 通过适当的身份证明，有权免费获得个人信用报告（至少每年一次）；

ⅲ. 有权了解在信贷决策中的不利行为或低于信用报告信息中的最佳条件/价格；

ⅳ. 有权在一定期限内——譬如六个月——得以告知所有查询情况；

v. 有权改正或删除错误信息及标记（标示）尚有争议的信息；

vi. 有权在合理期限内留存信息；

vii. 有权要求信息保密，采取有效安全措施以防止无授权获取、数据滥用、数据丢失或毁灭。

e. 信用登记部门、监管机构和行业协会应开展宣传和教育活动，以帮助消费者维护自己上述方面的权益，以及告知消费者个人信用不良记录的后果。

信用报告系统旨在减少信贷风险，通过详细记录每个消费者的信贷行为，增加其信贷的可获得性。信用报告制度的透明度对这一系统的管理非常重要，但同时也应注意私人数据的保护。信用报告已成为一项越来越普遍的活动，它通过决定消费者对金融的获取程度和任何最终贷款协议的条款来影响消费者的经济生活。非银行信贷机构参与信用报告系统极其重要，这样一来，消费者的信用报告就涵盖了消费者在整个金融系统内的所有信用交易信息。《良好经验》吸收了信用报告标准制定专项工作组与世界银行合作开发的信用报告一般原则。

E. 争端解决机制

E. 1. 内部投诉程序

投诉解决程序应该包括在非银行信贷机构的行为守则中并且受监管机构监督。

非银行信贷机构应该具备书面政策，以妥善处理和解决所有的客户投诉。书面政策会使得非银行信贷机构信守对其公布的政策。这个政策应该为客户提供办公时间可利用的联系方式，避免不必要的等待时间，用通俗易懂的语言说明处理客户纠纷的主要步骤，提供稳定、合理的时间表，保证公平处理客户纠纷，表明其与督察专员和监管当局的合作，并且用浅显的语言解释在此过程中消费者的权利。解决客户纠纷不能造成客户不合理的时间和金钱成本。健全的内部投诉程序会改善客户关系，增加客户对非银行信贷机构的信任，减少司法成本。

E. 2. 正式的争端解决机制

a. 如果消费者不满意内部程序解决与非银行信贷机构的纠纷时，需要建立合适的体系帮助顾客寻找经济和高效的第三方求助，如督察专员。

b. 公众应该了解督察专员或者同等机构在处理客户纠纷中的作用。

c. 督察专员或者同等机构应该公正，并独立于任命机构、行业和纠纷

各方。

d. 督察专员或者同等机构的决定应该对非银行信贷机构具有约束力。应该建立和公布相关机制，确保这些决定得以执行。

很少有消费者会意识到自己的权利受到侵犯，即使认识到，他们也少有途径去实现他们的要求。如果客户提出了对非银行信贷机构的投诉，但对投诉的解决没有使其满意，客户通常没有高效、经济的救济途径。因此，世界各地的一些非银行信贷机构正在寻求参与到督察专员计划中，从而能够迅速、独立、专业、经济地处理那些在机构内部未能解决的客户纠纷。这些计划的建立和可持续发展被视为健全消费者保护的基本要求。督察专员计划还可以识别那些数量少但对维护金融消费者信心来说很重要的投诉，从而使相关主管部门能够采取有效措施，补救这种状况。

F. 消费者自我保护能力与金融扫盲

F. 1. 基础广泛的金融扫盲计划

a. 应该制订一个具有广泛基础的金融教育和信息计划，以增强公众的金融素养。

b. 应当有一系列的组织，包括政府、国家机构、非政府组织，参与制定和实施金融扫盲计划。

c. 政府应该任命一家机构（如中央银行或金融监管机构），来领导和协调国家金融扫盲计划的发展和实施。

金融教育、信息和指导可以帮助消费者预算和管理自己的收入，用于储蓄、投资和保护自身抵御风险，并避免成为金融欺诈和诈骗的受害者。随着金融产品和服务变得更加复杂以及家庭对其金融事务承担起更大的责任，对个人而言，管理好自己的钱财就变得越来越重要，这不仅可以帮助他们自身及其家庭保持良好的财务状况，同时也有利于金融市场和经济的平稳运行。

许多机构——如政府、国家机构和非政府组织——都有兴趣加强金融知识宣传。它们应该在这个问题上通力合作，采取一系列的措施，随着时间的推移，这将有助于提高人们管理个人财务的能力。

F. 2. 使用包括大众媒体在内的一系列措施和渠道

a. 相关主管部门应该采取一系列措施来提高公众（尤其是低收入社区公众）的金融素养。

b. 相关主管部门应该鼓励大众媒体提供金融教育、信息和公众引导，包括非银行信贷机构以及它们提供的产品和服务。

c. 在提供金融教育、信息和引导消费者时，政府应该提供适当的激励措施并鼓励政府机构、非银行信贷机构的监管部门、非银行信贷机构协会和消费者协会之间合作。

应该制定一系列的金融扫盲措施，包括面向年轻人、企业家、农民、地方社区主管、员工的针对性计划，以及包括使用互联网、广播、电视、出版物等在内的多种宣传渠道。

媒体，特别是电视和广播，可以在提供金融教育和信息中发挥重要作用。这在低收入社区尤为如此，在这些地方，广播通常比电视和互联网拥有更广泛的访问量，并且在很多情况下广播节目会完整地读到报纸的某些部分。监管机构和行业协会通过为媒体提供当前关注的不同类型金融服务与产品的信息，可以支持这些宣传活动。

F. 3. 提供消费者公正无偏的信息

a. 消费者，尤其是那些弱势群体，应有充足的资源了解可获得的金融产品和服务。

b. 如果成本可行的话，监管机构和消费者协会应该通过网络和印刷出版物提供主要金融产品和服务（包括那些由非银行信贷机构提供的）的关键特征、收益与风险的独立的信息。

c. 鼓励非政府面向大众提供有关非银行信贷机构提供的金融产品和服务意识的消费者认知项目。

如果消费者和潜在的消费者能够得到可靠客观的信息，那么他们就更可能对购买适合他们的金融产品和服务充满信心。非银行信贷机构的监管当局应该在这个领域发挥作用，或者提供公正无偏的行业信息，或者协调其他金融监管部门或非政府组织，以确保非银行信贷部门的信息包括在消费者认知方案以及印刷出版物和在线出版物中。

F. 4. 征询消费者和金融服务机构的意见

相关主管部门应该咨询消费者协会和非银行信贷机构协会，以帮助主管部门制订金融扫盲计划，满足金融消费者的需求和期望，尤其是非银行信贷机构所服务的那些消费者。

在制订金融扫盲计划时，协商有利于考虑到消费者（特别是那些来自非银

行信贷机构的消费者）的观点，以及金融机构和其行业协会的观点。在那些消费者组织信息灵通、有效的国家里，自然需要咨询消费者组织的意见。

为确保消费者能够积极参与到政策的制定过程中，建议由政府或私人部门或者两者共同出资支持非政府组织。

F. 5. 衡量金融扫盲计划的影响

a. 政策制定者、行业和消费者保护志愿机构应该理解市场不同部分（尤其是那些易受到侵害的部分）的金融扫盲。

b. 在其他事项中，应该通过不时反复地开展具备广泛家庭基础的调查来衡量消费者的金融素养。

c. 相关主管部门应该不时地对关键金融扫盲计划的成效进行评估。

为了衡量金融教育和信息的影响，应该采取多次重复的大规模市场研究的方法来衡量样本人群的金融素养。金融扫盲措施需要花费一段时间才能对公众的金融素养产生可测量的影响，所以每四年到五年进行一次重复调查就足够了。

此外，应该评估关键的金融扫盲措施，以估量其对目标人群的影响。这有助于政策制定者和资助者在知情的基础上决定应该继续哪些措施（或者扩大）、应该修改或终止哪些措施。

表 8 是非银行信贷机构主要法规的概览。

表 8　　非银行信贷机构消费者保护法规概览

政府或机构	法律、条例、指令和准则
联合国	联合国大会 1990 年 12 月 14 日第 45/95 号决议通过的监管电子化个人信息档案的联合国准则
经合组织	信息系统和网络安全的准则：迈向安全文化，2002 个人数据隐私和跨境流动保护的准则，1980
国际清算银行	巴塞尔银行监管委员会：综合 KYC 风险管理，2004 年 10 月 巴塞尔银行监管委员会：银行对客户的尽职调查，2001 年 10 月
亚太经合组织	APEC 隐私框架，2005
欧盟	《消费信贷指令》，1998/7/EC，修订指令 87/102/EEC 《消费信贷指令》，2008/48/EC 《消费信贷合同指令》，2008/48/EC，废除指令 87/102/EEC 《消费合同不公平条款指令》，1993/13/EEC 《欧盟内部市场不公平的 B2C 商业行为指令》，2005/29/EC

续表

政府或机构	法律、条例、指令和准则
欧盟	《个人资料处理和数据的自由流动的保护指令》，1995/46/EC 《电子通信行业有关个人资料处理和隐私保护指令》，2002/58/EC 《远程合同消费者保护指令》，1997/7/EEC 《消费金融服务远程营销的指令》，2002/65/EC 《金融工具市场指令》，2004/39/EC（MiFID） 建立欧洲共同体条约（欧共体条约），1957 年修订
欧盟理事会	自动处理个人数据保护公约（ETS108 号，1981 年 1 月 28 日，1985 年 10 月 1 日生效）和解释性报告
美国	《多德—弗兰克华尔街改革与消费者权益保护法案》，2010 年 7 月，H. R. 4173，2010 年 7 月 《2009 年信用卡问责、责任与披露法》，H. R. 627，2009 年 5 月 《消费信贷保护法》（15 USC，第 41 章），1968 《诚实借贷法》（TILA）（15 USC § 1601），1968 《公平信用账单法》（15 USC § 1637），1968 《公平信用报告法》（15 USC § 1681），1970 《平等信贷机会法》（15 USC § § 1691 – 1691e），1974 《联邦贸易委员会法》（15 USC § § 41 – 58），1914 《公平债务催收作业法》（15 USC § § 1692 – 1692o），1977 《联邦贸易委员会—保护客户信息的标准》，2002

附录 1：私人养老金部门

对于家庭而言，养老金计划通常是一项单笔最大的金融投资，但在缺乏有力的消费者保护的情况下，参与养老金计划的家庭可能会发现这些计划并不能满足他们退休以后的收入需求。然而，关于私人养老金方面的消费者保护工作仍处于起步阶段。相关规定也往往是针对特定国家，在一系列的丑闻（例如安然事件）和 2007 年 9 月的金融危机后，很多有关补充养老金作用和结构的假设需要重新审视。

在设计一个适当的消费者保护制度时，应该考虑养老金部门许多特有属性。这包括以下内容：

- 强制性的养老金储蓄位于养老金体系的第二支柱之下或者等同。
- 参与其中的成员有幸成为生存固定给付型安排中的一员，融资水平可能不适用正常的保险精算标准（如很多国家的公共部门安排）。
- 如果该计划是基于雇主的（即职业安排），则成员或会员在养老金计划里面涉及的如何积累资金、投资、管理或支配方面可能很少或甚至没有发言权。
- 该计划可由受托人安排支配，也可全交给用人单位，通过管理机构支配。
- 该系统需要同时考虑生命周期的积累阶段和消退阶段。截至目前，许多国家几乎完全关注的是积累阶段，这在一定程度上是因为发展养老金制度的一个次要目标是资本市场的发展。

由于缺乏意见一致的做法，到目前为止，私人养老金评估所采取的良好经验仍依赖的是保险业（尤其是有关固定收益计划和终身年金）和证券业（固定缴费计划和投资基金）的做法。然而，最近的经验已经证实，私人养老金的消费者保护所涉及的其他问题也至关重要，包括在确定适当的投资和筹资战略时需要了解风险和生命周期的作用。

有关养老金的其他具体问题包括：（1）消费者转换养老金计划的服务提供商（养老金管理公司）的灵活性和选择权；（2）与养老金管理公司签订的投资合同的条款及协议；（3）给付处理阶段的条款；（4）控制从养老基金中扣除的任何费用；（5）养老金管理公司之间的竞争水平；（6）当变更雇主时，累积权

益的可转移性。

监管也是私人养老金消费者保护方面的一个关键问题。养老金可由审慎监管机构或税务机关监管，或是由二者共同监管（例如澳大利亚、加拿大、秘鲁）。证券监管者负责养老金监管的例子（如俄罗斯联邦）或者由独立的保险和证券监管者共同监管（如土耳其）也存在。当然还有少数例外（如美国），政府不给私人养老金投保。因此，目前该领域并不存在既定的国际方法甚至一定区域的方法。然而，最近正在进行的全球研究已经着手确定私人养老金安排的良好经验，这将最终导致与其他金融部门一样达成共识。在此期间，下面所述的良好经验将提供一个有用的开端。迄今为止，这些做法在 WBG 的推动下，已在 5 个国家（保加利亚、克罗地亚、拉脱维亚、罗马尼亚和俄罗斯）进行了消费者保护方面的检查测试。

A. 消费者保护制度

A. 1. 消费者保护规则

法律应当承认并在私人养老金方面提供明确的消费者保护规定，并安排足够的制度与之匹配：

a. 应该在法律中作出具体规定，以建立有效的制度来保护与养老金管理公司直接相关的消费者和职业（养老金）计划的成员或会员。

b. 应有一般的消费者保护机构或专门机构来负责养老金方面消费者保护规则的执行、监督和实施，以及数据收集和分析（包括争议、投诉和调查）。

c. 法律应规定或者至少是不禁止私人部门，包括消费者自愿组织和自律组织，在私人养老金消费者保护方面发挥作用。

A. 2. 其他制度安排

a. 司法系统应该确保养老金消费者保护规则执行的公信力。

b. 在促进养老金消费者保护的过程中，媒体和消费者协会应发挥积极作用。

B. 披露和销售行为

B. 1. 一般经验

a. 应建立信息披露的原则和做法，涵盖消费者与养老金管理公司或职业（养老金）计划在售前、售中、售后三阶段的关系。

b. 在宣传和发行养老金产品时，应当有明确的规则。

c. 在提供给消费者的可用资料中，应明确告知消费者有关账户、产品和服务的可选项，以及与每个选项相关的风险。

d. 在任何职业养老金安排中，雇主应确保新加入计划的成员充分认知其权利和义务。

e. 雇主应当尽快将福利给予员工，以避免发生不良的人事行为（如恰好在雇主即将支付其分担养老金之前终止雇用）。

f. 雇主应有义务确保妥善收集、核算缴款，并交给养老保险基金经理。

B. 2. 广告和销售资料

a. 养老金管理公司应确保其广告和销售资料及程序不存在误导消费者的情况。

b. 养老金管理公司的所有市场营销和销售资料对于公众应通俗易懂。

c. 养老金管理公司应对其在与产品相关的市场营销和销售资料中的声明以及任何作为公司代理人发表的声明负有法律责任。

B. 3. 关键信息声明

在消费者签署合同之前，养老金管理公司应该声明关键事实，披露养老金计划和服务的关键事实。

B. 4. 特别披露

a. 养老金管理公司应当披露与其提供的产品有关的信息，包括投资选择、风险和收益、手续费和其他费用、关于转让的限制条件或处罚、防止账户欺诈的保护，以及终止账户的费用。

b. 任何预计要改变手续费和其他费用的信息，应该在变更的生效日期之前的一个合理期限通知到客户。

c. 养老金管理公司应提前告知消费者任何涉及他们养老金产品的保障安排的情况。

d. 应该提前通知和向客户说明，交易中易起争议的信息，如时间、方式和程序。

e. 在销售或正加入职业（养老金）计划时，应书面告知客户，当他们决定改变雇主、搬家或退休时，他们的可选项有哪些。

B. 5. 专业资格

a. 营销人员，销售和批准参与交易的人员及代理商，根据他们所销售产品

的复杂性应具备足够的资格和能力。

b. 法律应要求代理商须持有牌照，或至少由监管机构或主管部门批准实行授权经营。

c. 负责职业（养老金）计划的人事部门至少有一个合格的人既可以为成员解读计划，又可以接洽第三方公司（如资产管理公司）。

B. 6. 了解你的客户

销售人员应审查潜在客户的重要特征，如年龄、职业前景及财务状况，并了解客户的风险偏好和他或她退休的长期目标，并据此对其建议相关的金融产品。

B. 7. 财务状况的披露

a. 主管部门或监管机构应根据法律规定公布有关养老金行业发展、健康和实力的年度公开报告，该报告可作为一个特别报告，也可作为信息披露和问责制要求的一部分。

b. 所有的养老金管理公司都应披露有关其财务状况和盈利表现的信息。

c. 固定收益型计划的筹资水平的精算报告应按年提供，对于成员或会员则采用简单明确的书面报告来告知其有关计划的运行状况。

d. 固定缴费型计划的投资报告至少应符合共同基金报告的最佳经验。

B. 8. 合同

养老金产品应有一致的合同或会员形式，且在签署之前客户应阅读了整个合同或由销售人员把合同内容解释给客户。理论上，客户应签字确认表示他们已理解了养老金合约计划的条款。

B. 9. 冷静期

任一款个人养老金产品都应有一个合理的冷静期。

C. 消费者账户管理和维护

C. 1. 报表

a. 固定缴费型养老金计划的成员和会员在表示改变投资方向的愿望一定时期（如一周）后，不应仍被束缚在特定的投资形态中。

b. 客户或职业（养老金）计划成员应收到一个简单易懂的、可定期提供有关他们账户活动完整细节（包括标准化的投资业绩）的简化报表，方便客户对账。

c. 客户在规定期限内应有途径质询报表中交易记录的精确性。

d. 客户签署的无纸化声明应采用简单易懂的格式。

D. 隐私和数据保护

D. 1. 客户信息的保密性和安全性

a. 养老金管理公司里每个客户的财务活动都应严格保密，并避免私人和政府的不必要审查。

b. 法律应规定养老金管理公司应确保客户信息的保密性和安全性，免予遭受对客户个人信息的保密性和安全性产生可预期的威胁或危害，或是未经授权的访问和使用这些可能会导致客户信息产生实质性损害，而给客户带来不便的情况。

D. 2. 共享客户信息

a. 养老金管理公司在与第三方交易过程中共享消费者账户信息时，应告知消费者。

b. 养老金管理公司应向客户解释他们如何使用和分享客户的私人信息。

c. 养老金管理公司应禁止出售（或共享）客户账户或个人信息给那些不隶属于养老金管理公司的其他任何外部公司，方便其进行电话销售或直邮营销。

d. 法律应允许客户阻止或“退出”养老金管理公司对客户某些信息共享的行为，养老金管理公司应告知客户他们有选择退出的权利。

e. 法律应禁止第三方披露客户信息。

D. 3. 允许披露

a. 法律应说明客户的财务记录对政府部门公开的具体程序和例外条款。

b. 法律应规定对违反保密法规的处罚。

E. 争端解决机制

E. 1. 内部争端解决机制

a. 监管机构应要求养老金管理公司内部建立索赔途径和争端解决措施。

b. 养老金管理公司应派指定的员工来处理消费者查询和投诉事宜。

c. 养老金管理公司应告知客户内部争端解决程序。

d. 主管部门或监管机构应调查养老金管理公司是否遵守其内部争端解决的程序。

E. 2. 正式的争端解决机制

一个完善的系统应允许消费者向第三方求助来解决其与雇主或养老金管理公司间的相关问题。

F. 保障计划及安全规定

F. 1. 保障计划及安全规定

相比银行和保险部门，养老金部门的保障和补偿计划没那么普遍。它更多的是基于受托职责和托管安排来确保资产安全。

a. 法律应设置一个基本要求，规定养老金管理公司应确保养老基金资产安全得到保障。

b. 还应该有严格的保管或托管安排到位，以确保资产安全。

G. 消费者自我保护能力与金融扫盲

G. 1. 使用一系列措施和渠道，包括大众媒体

a. 应采取一系列措施以提高人们的金融知识。

b. 有关当局应鼓励大众传媒向公众提供金融教育、信息和指导，包括私人养老金部门方面。

c. 政府应提供适当的激励措施，鼓励私人养老金的政府主管部门、监管机构、私人养老金业和消费者协会加强合作，尤其是在私人养老金方面为消费者提供金融教育、信息和指导。

G. 2. 为消费者提供公正无偏的信息

a. 如果成本可行的话，金融监管部门和消费者协会应通过互联网和印刷出版物，提供不同类别金融产品和服务的关键特征、收益、风险及成本的独立信息，包括私人养老金。

b. 有关当局应采取措施鼓励非政府组织对公众进行养老金领域的消费者认知项目。

G. 3. 征询消费者和金融服务业意见

有关当局应征询消费者协会和私人养老金行业的意见，以帮助当局制订金融扫盲计划来满足金融消费者，特别是养老基金成员和会员的需求和期望。

附录 2：信用报告系统

信用报告是现代金融体系的一个重要组成部分，是向消费者提供贷款的一个有效关键驱动因素。高效、准确的信用报告系统能为消费者提供益处，使他们在有利的条款和条件下获得信贷，并能通过监视债务水平来使他们避免高负债。信用报告制度的透明度对这一系统的管理非常重要，但同时，也应注意保护私人资料。信用报告已成为一项越来越普遍的活动，它通过决定消费者获取金融服务的准入条件和条款，来影响消费者的经济生活。公共政策应该在消费者数据保护和处理私人信息的经济缘由间找到一个平衡点。截至 2011 年，虽然已有一些国际数据保护条例提供了指引（见表 9），但对于信用报告中的消费者保护方面来说，仍没有可行的国际良好做法和经验。

表 9　　信用报告系统消费者保护法规概览

政府或机构	法律、条例、指令和准则
联合国	《世界人权宣言》第 12 条 《公民权利和政治权利国际公约》第 17 条，1966 年 12 月 16 日 《联合国监管电子化个人信息档案的联合国准则》，1990 年 12 月 14 日第 45/95 号大会决议通过
经合组织	《信息系统和网络安全的准则：迈向安全文化》，2002 《理事会关于隐私和个人数据跨境流动保护指引的建议》，1980 年 9 月 23 日通过 《隐私和个人数据跨境流动保护指引》，1980 《跨境数据流动宣言》，1985 《全球网络隐私保护部长宣言》，1998
世界银行	《信用报告系统的原则和指引》，2004 《有效清算和债权人/债务人制度的原则》，2011 《信用报告的一般原则》，2011
亚太经合组织	APEC 隐私框架，2005
欧盟	《个人资料处理和数据自由流动的保护指令》，1995/46/EC 《消费者信贷指令》，1998/7/EC，修订指令 87/102/EEC
欧洲理事会	《自动处理个人数据保护公约》（ETS108 号，1981 年 1 月 28 日，1985 年 10 月 1 日生效）和解释性报告 《允许欧洲共同体成员加入的 ETS108 号条约修正案》（1999 年 6 月 15 日通过，在所有缔约方接受后生效）及解释性备忘录

续表

政府或机构	法律、条例、指令和准则
欧洲理事会	《有关监管机构和数据跨界流动的 ETS108 号修正条约的附加议定书和解释性报告》（ETS181 号，2001 年 11 月 8 日签署） 《关于保护个人数据收集和处理的建议和解释性备忘录》R（2002）9 《用于支付等业务的个人资料的保护建议 R（90）19 号和解释性备忘录》，1990 年 9 月 13 日
欧盟—美国	安全港框架，2000
美国	《公平信用报告法》（15 USC § 1681），1970 《公平准确信用交易法》，2003

很多举措将进一步改善信用报告。西半球信贷报告倡议行动（WHCRI）定义了次区域一体化的信贷和贷款报告制度的政策和行动。到目前为止，已经在 8 个拉丁美洲国家（巴西、智利、哥伦比亚、哥斯达黎加、墨西哥、秘鲁、特里尼达和多巴哥、乌拉圭）进行了评估。WHCRI 计划最终要涵盖整个拉丁美洲地区。此外，国际金融公司（世界银行集团的一部分）已经建立了全球征信机构项目，支持全球 100 多个国家的征信机构。世界银行集团还建立了非洲的信用报告和财务信息基础设施计划，以完善非洲借款人资料的质量和可用性。中东也有一个类似的计划。

而且，在国际清算银行的支持下，由世界银行大力推动的信用报告标准制定专责小组，致力于制定一套信用报告的国际标准。此做法是为了贯彻 2011 年 9 月公布的信用报告通则，该通则涵盖了消费者保护的许多基本要素，他们也是便利信用报告系统运转的重要因素。

此外，欧盟委员会于 2008 年 6 月成立专家组，确定在欧盟范围内进行信用信息准入和交换壁垒，并向委员会提出建议。

本附件中的《良好经验》是基于有关数据保护策略的国际惯例。这些惯例包括联合国、经济合作与发展组织、亚太经合组织、欧盟和欧洲理事会的基本原则。通过 100 个国家的信用报告监管比较，可选的监管模式也已被纳入考虑范围。因此，在广泛的政策和学术研究、跨国的法律评价及基于多数国家实践分析的基础上，消费者保护的良好做法已经建立起来了。

良好做法注重对隐私和数据保护，这也是信用报告体系中健全的消费者保护的核心。但是，还有其他很重要的问题也值得我们考虑。特别是信用报告系

统应受到具有执行权的部门的适当监督。另外一些值得关注的问题包括消费者保护机构的可行性、消费者信息的适当披露和征信机构接洽、客户信息的报告和管理、争端解决机制，消费者认知和自我保护能力及征信机构间的竞争等。

A. 隐私与数据保护

A. 1. 信用报告中的消费者权利

法律法规应明确规定消费者的基本权利。这些权利包括：

a. 消费者有权在对机构的信息分享行为知晓的基础上同意进行信息分享。

b. 通过适当的身份证明，个人有权免费获得个人信用报告（至少每年一次）。

c. 有权了解在信贷决策中由于信用报告信息导致的不利行为或不利条件/价格。在此过程中，应向消费者提供征信机构的名称与地址。

d. 有权在一定期限内得以告知咨询情况，如六个月。

e. 有权改正或删除错误信息。

f. 有权标记（标示）尚有争议的信息。

g. 有权决定能否将消费者的信用信息（不以信用授予为目的）分享给第三方。

h. 有权对敏感信息进行特别保护（不包括在信用报告内），如种族、政治和哲学观点、宗教信仰、健康信息、性取向或者工会会员。

i. 有权在合理期限内留存信息，如将正面信息保留至少两年，或负面信息保留五年至七年等。

j. 有权要求信息保密，要求采取有效安全措施以防止无授权获取、数据滥用、数据丢失或毁灭。

知情同意是构建信息处理透明度的必要前提。《联合国准则》条款3中的相关文件指出“一个文件要服务的目的和关于这个目的的效用应该被具体指明且合法，并且当它制定时，需要进行大量宣传，引起有关人士的关注”。这项规定保证了所有被处理的个人信息都与要求的目的相关，不存在秘密数据库，也不存在未经当事人同意的情况下使用数据。但将信息交流给以监管为目的的公共信用登记机构时除外。不过，这种情况下至少应告知消费者用于交流的信息的类型及适用的法律条款。

纵观全球，这一保护消费者的《良好经验》体现在大多数数据保护法律

中，如《欧盟数据保护指令》(*EU Data Protection Directive*)(在 27 个欧盟成员国以及一些拉丁美洲国家中实施)，许多非欧洲国家的法律、《COE 公约》以及《经合组织关于隐私保护与个人信息跨界流动准则的公开原则》第 12 条。

获取个人信息和信用报告及评分的权利，由《联合国指引》的原则 4 做了解释（利益相关人获取，需要适当的身份证明)。“获取与修改权利”由所有主要的国际数据保护机构提供（联合国、经合组织、欧盟和亚太经合组织的原则)。现在越来越多先进的信用报告制度能够满足向消费者解释信用评分的要求(如美国正在实践当中)。这可以以符合成本效益的方式实施，但应该针对行业的发展阶段。由于所在行业刚刚开始运作，公司不应该负担过重的准入要求，必须保证有一个过渡时期。

大多数有数据保护法的国家保障个人对自己信息的获取。

获取信息是争端解决与纠正的前提条件。所有与数据保护有关的主要国际法律文件中都确立了这一基本权利的地位，如《联合国客户准则》（原则 2 与原则 4）和《经合组织关于隐私保护与个人信息跨界流动准则》（个人参与原则 13)。后者认为个人有权确认信息是来自数据控制者的信息已存入，且对当事人的通知是以合理的方式和时间表来进行的。世界银行的有效破产与债权人/债务人准则（准则 B1.4）也提到了获取权。另外，纠正的成本是由数据控制者承担(联合国原则 4)。根据 Jentzsch（2007）的研究，在 40 多个国家和地区都有信息纠错权。

限制存在争议的信息的权利也是信用报告制度中常见的。2005～2006 年，已有 25 个国家落实了这项权利。表明信息争议对债权人而言是一个额外的质量信号。知道信息向谁公开的权利已经在 44 个国家中实现（Jentzsch，2007)。

在许多案例中，共识的原则包括这一规定：个人可以阻止与信用授予无关的信息处理，如市场营销。有 23 个国家实行了市场限制（涉及进入或退出)。允许自愿退出能提高市场参与率，而它取决于问题的框架。例如，亚太经合组织的原则 4“个人信息的使用”就要求除非得到当事人的允许，否则信息只能用于事先说明过的搜集目的。

敏感信息受特殊保护这一权利是大多数主要国际法律文件的内容之一，如经合组织的报告（对隐私保护准则的说明)、《联合国原则》(*UN Principles*)(原则 5)、《COE 公约》（条款 6)、《欧洲数据保护条例》（条款 8）以及《欧美安全港框架协议》(*EU – US Safe Harbor Framework*)。《世界银行原则》(*World*

Bank Principles）（原则 15）还讨论了反歧视的法律管理问题。只有《亚太经合组织的隐私框架协议》（*APEC Privacy Framework*）没有要求对个人的敏感信息进行额外的保护。

主要的国际法律文件还要求对信息搜集和销售加以限制，如《经合组织关于隐私保护与个人信息跨界流动准则》（原则 10）、《联合国指引》（原则 3）、亚太经合组织隐私框架协议（原则 3 搜集限制）和《COE 公约》。举例而言，最后一个在其条款 5e 中指出，资料数据被保存在一个合适的形式下，而不再为了某个目的而保存。公司总有过度搜集个人信息的动机，这可能会导致次优的市场结果。因此，寻找合适的时间限制、设置数据搜集的限制是一种好的做法。

在所调查的国家的子样本中，负面信息的国际（保留时间）平均值是破产七年，民事诉讼五年，刑事判决六年。世界银行通常建议五年到七年的时间范围（原则 17）。而根据以上原则，积极信息不应被保留过久，以免丧失其预测功能。

美国和欧洲部分立法要求，在信贷决策出现不利行为时，金融机构有义务通知其客户。但根据 Jentzsch（2007）的研究，只有七个国家有这一条款（在 2005～2006 年的研究时段内），部分原因是欧盟近来才在《欧盟消费者信贷指令》（*EU Directive on Credit Agreements for Consumers*）的条款 9 中引进这一内容。

根据该指令，债权人应立即且免费地将数据库查阅的结果及详细情况告知消费者。告知消费者没能获得（信贷）最优条件是美国法规规定的附加责任。“仅仅在产生不利举动时”告知消费者对于数据保护是不够的。

另外，应注意保证公共部门和私人部门的信用登记在对个人信息使用方面都能提供相同层次的消费者保护。这两类信息系统都应在提供数据时能够进行身份识别，并都应向消费者提供同样高品质的金融服务。

B. 消费者自我保护能力与金融扫盲

B. 1. 提供消费者公正无偏的信息

金融监管机构应该通过互联网和印刷出版物为消费者提供一些独立信息，以增强消费者对于主动管理信用报告的知识。

有关信用报告的教育可以包括多项活动，如向消费者解释他们的隐私选择及其影响，以及权利和义务的关键信息手册。下面是来自联邦贸易委员会的一些例子：

- 您的个人财务信息的隐私选择
- 建立一个更好的信用报告
- 信用变更：自助可能是最好的选择
- 如何处理消费者举报信息？新规则将告诉您答案

让消费者了解这一点非常重要，就是一旦信用评分反映了一个较低的信贷风险，以及如何能做到这一点，就可以减少信贷融资成本。关于信用报告的教育也应包括披露影响信用评分的主要因素。美国、南非和英国的监管机构一直积极开展公众宣传活动。

B. 2. 信用报告的认知

为了确保金融消费者保护和教育措施是适当的，有必要进行定期重复的关于信用报告和评分的金融知识的大规模问卷调查。

信用报告在经济活动中越来越普遍，有关信用报告知识的问题应列入金融知识调查，以确保信用报告的公众宣传活动务求完美。然而，到目前为止还没有很好的国际实践先例。

附录 3：背景

i．金融消费者保护与全球金融监管

全球零售金融市场的发展

2007～2009 年金融危机爆发前，全球每年都会增加大约 1.5 亿金融消费者。危机之后，其增长速度虽然有所放缓但增长依然明显。大多数新的消费者来自金融消费者保护尚处起步阶段的发展中国家。在 20 世纪 90 年代的前半段，全球消费者债务占 GDP 的 12%～14%，但近几年，这一数据已上升至 18%。按揭债务依然增长迅速——从 2000 年占 GDP 的 46% 增长到 2007 年的 70% 以上。在此期间，家庭在扩大它们对证券、投资基金和保险投资的同时，也开始更多地投资于自身的退休金。此外，特别是在低收入国家，家庭增加了它们对支付服务及汇款的使用。

消费金融的兴起有利于经济增长，增强金融包容性。金融服务为所有家庭提供了两个关键功能，即风险管理和跨期消费。通过使用这样的服务，消费者能够“熨平”短缺时期的消费，从而无须动用他们的生产性资本。另外，金融服务允许消费者借入资金投资于新资产，包括那些他们自己的业务，无论规模多小。此外，正规金融服务的使用带来了金融交易的高效率。然而，全球大约有 27 亿工作年龄的成年人得不到任何正规的金融服务，只能依靠那些不可靠且往往价格昂贵的不正规金融服务的供应商。

消费金融对金融稳定的风险

2007～2009 年的全球金融危机凸显了金融消费者保护对金融体系和全球经济长期稳定的重要性。评论家指出，不受约束的金融创新，全球流动性过剩以及长期积累的宏观经济和金融失衡，共同造成了财务杠杆和风险的不可持续性增长。过去十年迅速增长的家庭贷款也加剧了金融危机。金融机构也将其金融风险转移给家庭，使其越来越受到新型风险的影响，比如以不同利率借入外汇贷款涉及的风险。在发达的抵押贷款市场上，复杂的金融产品和服务（如混合浮动利率抵押贷款）被出售给借款人，在这些借款人中，有许多人信用记录较差。在当前的内部联系密切的金融市场上，这种家庭信贷的证券化将家庭金融的风险扩散到了全球金融体系的其余部分。此外，因为金融市场在确保资本有

效配置中的核心作用，相比于其他市场的缺陷，金融市场的不完善很可能对经济的其余部分带来更大的影响。

过去的十年中，在许多低收入市场和新兴市场中，正规金融服务使用的扩张加剧了风险。金融包容水平的提高为正规金融市场带来了新的消费者，新兴经济体的金融消费者保护往往很薄弱。另外，技术导致许多金融消费新手所需要的保护形式发生变化。例如，当正规金融服务难以获得时，通过移动电话传递的金融服务已经满足了消费者的迫切需求。然而，这种传递引发了消费者的信息披露和追索权问题。

与此同时，对消费者的金融扫盲没有跟上消费者对金融服务日益广泛地使用，尤其是在低收入市场。金融扫盲的程度明显滞后于大多数消费者为了解可用金融产品和服务的要求，以及使他们对了解自己所购买的产品充满信心的要求。在许多新兴市场上，很大一部分公众缺少使用基本的金融产品和服务的经验，更不用说复杂的金融产品和服务了。对于许多第一次金融消费的人来说，他们的家族和朋友圈中没有人曾经签署过长期金融合同，比如住房抵押贷款。此外，即使是基本的金融产品和服务也会对缺乏经验的消费者带来挑战，因为他们需要理解使用正规金融服务过程中所涉及的内在风险和收益。

金融消费者保护，金融体系发展和风险缓释

金融消费者保护促进了金融零售市场的高效、透明和深化。授予消费者信息和基本权利、明确其责任——这为金融市场提供了市场纪律的重要渊源，鼓励金融机构通过提供有用的金融产品和服务展开竞争，进而增进消费者对正规金融服务市场的信任与参与。

金融消费者保护，旨在增强金融包容性，促进平等增长。有力的消费者保护有利于确保金融服务越来越多地广泛使用，使所有的消费者获益，并且不会对家庭产生不必要的风险。此外，脆弱的金融消费者保护会导致消费金融产品和服务增加带来的积极作用彻底消失或大打折扣。脆弱的保护损害了消费者的信心和公众的信任，进而阻碍家庭购买金融产品和服务，同时会增加消费者所购买的产品和服务不能满足其需求和目标的可能性。

消费者保护也改善了金融机构的治理。通过加强提供金融服务的透明度和金融机构的问责性，消费者保护有利于在金融体系中建立起对良好治理的要求和对企业标准的强化。

此外，消费者保护可以帮助金融机构更好地面对在与零售客户交易过程中

出现的许多风险。在其 2008 年 4 月的报告中，巴塞尔银行监管委员会、国际证监会组织、国际保险监督官协会联合论坛确定了关于向零售客户“不当销售”金融产品和服务的三个潜在的关键风险，分别是：（1）法律风险，如源自客户集体行动或监管机构执法行动的成功诉讼产生了经济补偿或罚款的义务。（2）短期流动性风险和长期偿债能力风险，如零售客户受到不公正对待，进而选择避开金融机构并从中撤出其业务。（3）交叉传染风险，如一家金融机构（或一种金融产品）的问题蔓延至整个金融体系。有效的消费者保护有助于确保金融机构的行为免予受到对“不当销售”的批评。尤其是在小额信贷部门，需要有最低限度的消费者保护管理，避免当借款人过度负债时出现的声誉风险。

最后，消费者保护可以使金融体系免受政府过度反应的风险。在英国和澳大利亚的保险和养老金丑闻中，消费者保护缺乏的影响变得十分明显，引发了对监管改革建议的广泛研究，其中包括对消费者的披露要求。对部分金融体系崩溃的政治回应或许是伴随沉重监管的过度补偿。作为对公众要求提高消费者保护措施力度的一个回应，许多政府已经对消费信贷利率设置上限，进而阻碍了信贷市场的发展。虽然在高收入和中等收入国家不当销售问题更为重要，但这依然适用于低收入国家。例如，在印度和尼加拉瓜，小额信贷的不当营销导致了政府对借款人收债行为的限制。

ii．设计金融消费者保护方案

关键要素

金融消费者保护的重点在于零售客户和金融机构之间的关系和相互作用。在设计成功的消费者保护体系时，区分无知的（甚至是未受过教育的）零售客户与成熟的企业客户十分重要。许多可能损害家庭和个人的问题并不会影响企业客户与金融机构之间的交易。因此，金融服务零售市场（有时也称为“企业对消费者”或“B2C”市场）才是金融消费者保护的中心。

实质上，金融消费者保护源于消费者与其金融服务供应商之间能力、信息和资源的不平衡，导致消费者处于劣势。金融机构非常了解自己的产品，但是对个体零售消费者而言，获取充分的关于其金融交易的信息非常困难并且成本很高。此外，由于近年来金融产品和服务复杂性的加剧，导致其越来越难以理解。而且，消费者通常会发现对公司诉讼以执行个人合同是昂贵的且充满不确定性。

消费者与供应商之间的能力不平衡在金融市场上尤为显著。某种程度上，这是因为金融产品和服务的复杂性，它们对客户通常是一种延期偿付，而且在许多情形下，一些金融产品很少被购买。住房按揭贷款就是一个很好的例子。如果消费者在其一生中曾经有过住房抵押贷款，那也只有少数几次而已。这就使得消费者很难从他们的错误中吸取教训并实现金融扫盲，至少在不动产抵押贷款方面是这样。了解到消费者获悉事情真相需要很长的时间，银行和其他金融机构就更容易从欺骗性或劣质产品中获利。同时，涉及风险评估和未来价值估算的金融产品与服务的决策，即使对成熟的零售消费者来说也是相当复杂的。即使在高度发达的市场上，薄弱的金融消费者保护会造成家庭容易受到金融机构不公正和滥用行为的影响，其中包括金融欺诈。消费者可能会遇到涉及巨额债务（尤其是外币）信息披露不充分的情况。

一个高效且管理良好的金融体系应该为消费者提供五个关键要素：

（1）透明度，通过提供全面、清楚、充分和可比较（以及通俗易懂）的关于金融产品和服务价格、条款以及条件（和内在风险）的信息。

（2）选择，通过确保在金融产品与服务的营销和广告以及收债过程中公平、非强制、合理的行为。

（3）救济，通过提供低成本和快速的处理投诉和解决纠纷的机制。

（4）隐私，通过确保针对第三方获取个人金融信息的保护。

（5）信任，通过确保金融机构行动专业并履行其承诺。

金融消费者保护可以通过两种方式提供：一是金融监管；二是金融教育。这种金融监管即市场行为监管，如有关规范金融机构向消费者提供金融产品和服务的商业行为的法律与规章。商业行为规章包括政府规章，即由金融监管机构和消费者保护机构等政府机构颁发的法律和规章；还包括自律性规章，即行业协会通过的金融行为自愿性守则，以鼓励金融机构改进其业务行为。金融教育包括金融扫盲计划，以帮助消费者了解使用金融产品和服务时的风险与收益、权利与义务。

金融监管

对金融市场的监管是必需的。正如 Dani Rodrik（2007）所说的，市场并不会自主发挥作用。因此需要各类机构来监管市场，稳定市场，补偿损失，提供安全保障，没有这些，市场将既不合法也不高效。此外，与金融机构缺少有效金融消费者保护的监管相比，由于风险更加合理分散，机构更加地谨慎行事，

金融消费者保护有利于市场更有效地发挥作用。

竞争政策本身并不会完全地解决消费者保护问题。Mark Armstrong（2008）指出，在竞争性市场上，竞争政策足以确保公司通过为客户提供他们想要的产品和服务便能获得成功。然而，Armstrong 也认为，零售金融市场不同于其他的市场，需要更多的政策来确保其效率。他指出，需要政府政策来确保：（1）提供给消费者可比性信息，（2）消费者了解市场状况，（3）消费者搜索成本降低，（4）阐明隐性成本。如果政策到位，消费者就可以获取必要的信息以作出明智的决策。这是至关重要的第一步。然而，建立起对金融体系的信任需要更多，包括禁止误导性、欺诈性营销的政策。

当前的挑战是在政府监管与市场竞争力量之间取得适当的平衡。当政府干预经济可行且（机构）自我监管能力不足时，可以考虑采用政府干预。监管规则应当主动地去防止滥用行为，而不仅仅是对过去的问题作出反应。特别是，这要求使违反规定的行为得到处罚，以达到至少阻止未来侵权行为的目的。同时，不必要的监管会阻碍金融创新。正如美国联邦储备委员会主席伯南克在 2009 年 4 月所提到的，监管机构应当“为达到消费者保护的最高标准而努力，且同时不消除消费者选择和获得信贷方面的可靠创新所取得效益”。应该分析资源的可得性以及金融消费者保护的改革计划的成本和收益，并考虑对竞争、创新和增长的预计直接或间接的影响。这种分析有助于确保拟议条例的有效性和高效性。

虽然自我监管有利于改善金融机构的商业行为，但它永远不能取代政府监管来保护消费者。机构首先同意在它们之间建立起与消费者交易的商业行为的自愿性准则，然后审查机构遵守准则要求的范围，这时，金融机构的监管，或者称为“自我监管”就出现了。行为守则可以鼓励金融机构对待零售消费者时恪守道德准则。行为准则通常由行业协会制定并实施。市场行为准则主要是对金融监管的补充，尤其是在管理者（或监管者）对准则和报告的有效性进行监管时。但是，特别是在发展中国家，因为行业协会的机构能力往往有限以及金融市场高度集中且由少数机构支配，自我监管通常是无效的。如果自愿性准则不足以改善商业行为，政府可能会考虑制定类似于准则的法律，以强化金融服务的法律框架，并确保法律和规章得到有效利用和实施。

长期来看，审慎监管和消费者保护监管相辅相成。金融监管的逻辑根本上依赖于减轻系统性风险、保护消费者包括个体投资者的目标。在大多数状况下，这两个目标相互补充。例如，存款保险计划可以在降低系统风险的同时保护零

售存款。但是，在某些情况下，这两个目标会冲突。例如，通过要求银行资本的更高水平，保护存款人的措施可能会减少对经济的信贷供应或者降低市场流动性，从而加剧宏观系统性风险。然而，长期来说，审慎监管与商业行为监管是相互补充的。确保消费者获得最低限度的法律保障和金融教育将会加强金融机构零售组合的质量，进而加强金融体系的稳定性。

此外，审慎监管不适用的领域需要进行商业行为监管。过去十年，金融中介的角色迅速扩张。它们多种多样，它们的角色范围从银行支付代理到住宅按揭贷款的抵押贷款经纪人。这样的中介机构给金融体系带来了风险，但是它们并不受到审慎监管，它们应该受商业行为（如消费者保护）管理和监管。

金融消费者保护措施的设计也应该考虑最近行为经济学的研究。行为经济学有助于政策制定，它也有利于公正无偏地提供支配消费者作出消费决策的消费者信息（比如关于最低支付的信息）。认知偏见，包括错误的信念，可能会影响消费者决策，做出既不理性也不是最佳的选择。例如，消费者可能认为利率收费或罚款并不适用于他们，或者对他们的财务前景过度乐观，从而无法准确预测其未来的财务状况。个人往往高估自己的财务能力，包括他们对货币时间价值概念以及远期复利影响的认识。消费者也会沦为预测偏见的受害者，即对未来个人偏好的预测。其他相关问题分别是双曲贴现（消费者对其未来收入采用高贴现率，从而使他们的储蓄现值降低到一个不合理的低水平）、冲动消费、自我控制薄弱。研究指出，需要开展金融扫盲和消费者支出习惯的调查，以此作为制定消费者信息政策和金融教育计划的必要背景。

金融教育

金融扫盲是金融消费者保护的重要部分。金融教育不能代替消费者保护监管。但是，金融教育和消费者保护相互补充，两者应该结合于金融消费者保护改革计划中。考虑改善金融消费者保护的措施，却不寻求加强金融扫盲的方法，这是不切实际的。一个受过良好教育的消费者能够理解信息披露、风险和回报，以及相关的法律权利和责任。总之，一个具备金融知识的消费者应能够做出关于金融产品和服务的明智决策。这类消费者在选择比较最优金融产品和服务，以及满足其需求的最佳供应商方面具有主动地位。然而，金融教育并不是万能的。即使金融教育的最优规划也不能代替基本的、行之有效的、重大影响力的金融机构商业行为准则，比如对实际利率的充分披露。

消费者的金融教育应该着眼于金融产品和服务的恰当利用。特别复杂的金

融产品和服务如浮动利率的长期住房抵押贷款，比起诸如银行储蓄账户之类的简单金融产品，需要更加深入的理解。金融教育计划应该作出相应调整。这有助于识别金融教育的特定目标群体，特别是那些最脆弱和易受伤害的群体，包括失业者、移民和那些遭受生活意外的人，这些生活意外会削弱其财务状况，包括收入的突然下降、离婚或家庭损失等。对这样的人群，金融教育应该包括与突发支出、收入来源和潜在过度负债有关的风险的讨论。

公众的金融教育十分重要，但却处于金融消费者保护针对性计划的范围之外。金融教育的一般性规划教导家庭如何准备家庭预算和计划，以满足他们的金融需求和目标。这些技能对建立和维持金融福利至关重要。他们应该是对针对性金融消费者保护措施的补充（但某些部分不直接补充）。

提高金融方面的素质需要持续的长期努力。虽然发达国家超过三十年的经验——发展中国家才刚刚起步，已经确认了消费者保护中“什么行得通，什么行不通”的经验，尽管正在进行的研究预计会提供新见解，但是我们几乎不了解什么对提高长期金融素质起作用（什么不起作用）。专栏 1 总结了若干初步的措施，这些措施表明在金融教育计划中已经实现的成功。

专栏 1　确保金融教育计划成功的措施

国家金融教育规划应该由金融监管机构领导，但同时应包括所有的利益相关者。这些金融监管者最了解金融扫盲的弱点以及这些弱点给金融业发展带来的问题。然而，国家规划需要所有利益相关者的积极参与，包括金融服务行业及其专业协会、消费者权益保护组织、政府部门和机构（尤其是教育部门）以及大众媒体。

发达国家的经验表明，金融教育应该着眼于“教育时机”。要想取得成功，金融教育需要“在消费者希望的时间，用消费者希望的形式”提供信息。在他们生活中某些特定时刻，消费者往往容易接受金融教育，例如，当他们第一次申请住房抵押贷款、组建家庭或计划退休时。

金融教育应该针对消费者金融素质和专业知识的水平。尤其是在低收入国家，金融教育计划应该针对性地满足那些一般性金融知识水平低下且金融服务使用经验有限的消费者的需要。

任何旨在改善金融教育的计划都应经过严格的测试。在过去的 30 年中，提供金融教育的技术在美国、欧洲和其他地区得到了很好的测试，但是它们对金融素养水平的影响尚不明晰，更不明晰的是对有关消费者行为的金融教育的影响。因此，应该鼓励金融教育，但是需要在短期及长期对其进行严格的测试和评估。

国家金融教育战略应该包括政府和公民社会的职责。明确的准则同时还需要由金融服务提供商、政府和消费者组织提供的各类信息和人力资源。金融体系内部的行业协会，比如银行业协会，往往对为消费者提供金融教育和培训非常感兴趣。作为国家战略的一部分，这值得鼓励，以改善金融教育。应当考虑强化消费者组织的方法，并确保它们拥有一个长期和稳定的资金来源，使其在金融消费者保护和教育中发挥关键作用。

iii. 金融消费者保护的良好经验设计

金融消费者保护的《良好经验》试图抓住什么被普遍认为是处理金融消费者保护问题的有效方法，他们试图阐述那些可以让监管机构之间达成一般性协议的措施。因此，实质性的辩论在处理与金融消费者保护的相关问题上仍然是最好的方式，之前这个问题没有被列入。例如，对金融监管的最佳体制结构有广泛的意见，包括商业行为监管。Nier（2009）进行初步分析表明，相比于那些只有一家单一的综合监管机构同时负责消费者保护和审慎监管的国家，具备相互独立的消费者保护和审慎监管机构（称为“双峰”模式）的国家普遍能更好地经受住金融危机的考验。但是 30 国集团和英国金融服务管理局 Turner 的评论持有不同的观点。因此，该主题仍将是深度讨论的议题之一。《良好经验》也不包括金融产品设计的审批问题，无论是在产品发行前或发行后。有些监管部门禁止那些他们认为对金融消费者“有毒”的金融产品和服务，但关于此类金融产品批准或禁止的标准，并不存在国际共识。

《良好经验》只涉及零售客户和金融机构（或他们的代理人和中介机构）之间的直接关系。因此，《良好经验》并不包括抵押登记。虽然抵押登记是金融体系基础设施的重要组成部分，但它并不直接涉及消费者和金融机构间的关系。小企业，尤其是独资企业，也未被明确地包含在《良好经验》中，但消费者保护的建议通常也会有助于保护小型企业。然而，由于很难区分微型企业贷款与消费者贷款，小额信贷的借款人被包含在《良好经验》中（作为非银行信贷机构《良好经验》的一部分）。

《良好经验》只涵盖正规的金融体系。虽然《良好经验》适用于不同形式的受监管的非银行信贷机构（例如微型金融放贷人、信用合作社、信贷联盟和投资俱乐部），但是非正规金融服务提供商，如掠夺式贷款（高利贷），仍处于《良好经验》的涵盖范围之外。同时，任何从事金融产品或服务销售的实体，

都应受到适当的监管。否则，当金融实体采用经过特别设计可利用监管缺陷的商业模式，向消费者提供金融产品和服务时，消费者自身权益会受损。

金融体系关键部分的《良好经验》已经整理就绪。每个主要部门——银行、证券、保险、非银行信贷机构——详细的《良好经验》附带解释，已经给出了识别各自良好经验的基础。面临的挑战是选择一套针对消费者所有金融问题的通用的良好经验，还是针对具体部门的良好经验。由于多数国家的法律和监管部门针对具体的不同类型的金融机构，所以，《良好经验》是按部门划分的。这种做法也有利于专精于一两个领域的专家的评审工作。但是，也应考虑到针对特定产品和服务的良好经验。当然，某些共同的元素存在于所有类型的零售金融产品和服务中，即使对特定的零售产品或服务，它们的方针和总体目标也会相似。但是，金融市场的每一部门都有其自身的特殊性，一套通用的方法会忽视重要的细节。然而，消费者保护是贯穿金融部门的整体性问题。因此，有效的市场行为监督，需要政府机构之间的密切合作，以统一所监管的相互关联的金融市场。在这一方针的指导下，《良好经验》已经设计成型。

消费者保护制度的一个日益重要的问题是“监管套利”。在这种情况下，监管机构可能因混淆金融产品和服务的属性而漏掉重要的商业行为问题。投资连结保险（也称为可变年金）就是一个很好的例子。从法律角度来看，它们属于保险产品，因此，应该使用适用于保险政策的规定来监管它们。然而，从功能角度来看，它们与投资基金难以区分。可是通常将这种投资连结保险产品视为保险产品进行监管，并无须遵循适用于投资基金的严格的披露要求。类似的问题还出现在抵押贷款和抵押贷款的替代品上，如建筑储蓄贷款或与房屋建设整修有关的特定消费贷款。随着越来越复杂的金融产品和服务的面世，以及消费者利益日益受到打包产品的监管套利活动的威胁，一个跨部门的解决方法变得越来越重要。

《良好经验》允许一个国家将自身的金融消费者保护框架与国际经验对比。《良好经验》为涉及金融消费者保护的法律、法规和有关机构进行系统分析提供了一个有效的工具，并且使得不同国家间的详细比较得以进行。因此，《良好经验》为国家开展对金融消费者保护框架的自我评估提供了依据。由于提供了未出现在重要“原则”中的一些细节，相比于国际惯例，《良好经验》为评估一国消费者保护框架和决定需要做什么提供了一套精确且系统的方法。但是，《良好经验》的价值在于，它不仅为政府部门，同时也为金融机构与协会以及

消费者组织带来了具体明确的建议。之后则由各个国家的部门、机构和组织来决定步伐和战略选择，以完成改革的实施路线图，实施的细节则完全取决于该国的具体情形。表 1 的 18 个国家中，有 3 个国家的评估检查引起了详细的国家级行动计划以及强化立法和制度能力的实施方案的发展。所有的评估都促进了政府政策、国家法律或制度结构的实质性改变。

然而，《良好经验》的执行应当结合具体国家的需要和目标。虽然适当改革的实施工作必然针对各国具体的国情，但是基本思想是根本的、普遍适用的。因此，它们应该是全世界各国消费者保护战略的一部分。在许多低收入国家，如撒哈拉以南非洲，处于监管下的金融体系仅仅为不到 20% 的人口提供服务，其余人口必须依靠政府监管之外的非正式的金融服务供应商。在正规金融服务未被广泛应用的国家，消费者保护管理和监管的设计，应该采用增加金融服务的获取渠道和增强消费者对正规金融体系信任的方式。此外，众所周知，没有当地“志愿者”推行满足国家需求和目标的计划，任何源于外部的建议都不可能被实施。国家行动计划还需要考虑到这些“志愿者”的政治力量和意志。在大多数国家，最好的解决方法可能是分阶段的改革方案。例如，CGAP 建议，在监管能力低的国家，这种分阶段的方案应该建立在以下基础上：一是关键问题的识别；二是对国家制定规则、调查监测涉嫌违反规则的行为、制裁被发现违反规则的金融机构的能力的评估。这也有利于粗略地估计改革对金融服务可得性和可用性的预期影响。

iv．国际社会今后工作的可能领域

《良好经验》不可避免地需要进一步完善和发展。未来的工作可能包括提炼细化私人养老金和信用报告方面的良好经验（除了其他良好经验的未来版本）。这些良好经验也是住房抵押贷款发放所必需的。这可能有助于加大对消费者有关信用卡、借记卡和预付卡等权益保护的讨论。尤其是在处理有关预付卡和移动支付产品的账户关闭和没收未使用的余额的操作步骤等具体问题上特别有益。此外，未来《良好经验》的改进将受益于我们在现有草案上得到的建议，以及低收入国家或其他一些仅有有限金融监管资源国家的成功方法的例子。也可以考虑增加超越不同类型的金融服务的良好经验的一致性，并阐明不同服务之间差异的原因。《良好经验》也将受益于正在进行的国际工作，包括国际金融消费者保护网络体系、金融教育国际网络、经合组织金融消费者保护专责

小组以及世界银行牵头的消费者破产专家组等所进行的工作。同时，世界范围内——尤其在美国和欧盟——一个有关未来的金融监管（包括市场行为，即保护消费者权益）的激烈辩论正在进行。金融监管辩论的最终解决将大大影响《良好经验》的未来修订。

关于消费者保护主要问题的调查研究也悄然兴起。例如包括有发现认为，同时兼卖保险和证券产品的销售人员的薪酬结构，对其决定更倾向于卖哪种产品给消费者时，有巨大的影响力。未来的《良好经验》可能会建议向金融顾问支付基础收费（而非佣金）。

侧重于支持低收入国家特殊需要的重要报告也是非常必需的。特别是在低收入国家，研究如何提高对金融服务不足的家庭的服务深度的方法是非常有益的。这可能包括，比如说，应当给予每一位消费者拥有最低限度服务的银行账户的权利，虽然应当对像这样类似的法律规定可能产生的影响进行分析。同样重要的还有对银行保险（有时也被称为“银行保险模式”）在新兴市场迅速发展的分析。对低收入国家来说，未来的工作还可能包括用习惯法（customary law）作为替代补救机制的应用分析，如口头争端解决方面。

考虑如何增强市民社会作用的办法。自律组织（如行业协会）在消费者保护和金融教育等方面应发挥显著作用。还应当制定措施，以确保消费者权益保护组织和其他非政府组织在加强金融消费者权益保护等项目的有效参与——并保证他们能为其持续经营获得稳定的资金来源。对于那些正在实施金融消费者保护项目的国家而言，国际社会（包括公民社会）应当提供一定的技术援助和培训。

制定衡量整个国家的金融消费者保护水平的发展指标将是有益的。作为一个国家金融消费者保护框架的一个简介，总结金融消费者保护的法律、法规和体制框架的发展水平的指标将可作为一个跨国分析的有用形式。除了对立法和体制结构的分析，纳入对国家金融扫盲和消费行为的调查，以及关于金融服务的消费者投诉的层次和类型的调查结果也可能是有用的。

开发帮助监管部门从繁杂的建议中选择最应优先解决的事项的工具将是有益的。各国政府往往能够找出金融消费环境的薄弱点并确定做出什么样的改变来改善原有环境。然而，各国政府的资源都是有限的。因此我们需要工具来协助各国政府挑选出最有潜力能够产生积极影响的改革方式。这些工具应包括风险分析和影响评估，以及金融服务公司合规操作的成本预算分析，以便帮助合

理预测金融体系变化预期的性质和时机。这些工具也可能为那些正准备对自身的金融消费者保护框架进行评估的国家提供指导。

工具还应包括对金融消费者保护措施的影响进行严格的测试和度量。金融扫盲和消费行为的住户调查为衡量金融消费者保护改革方案的影响和成效提供一个有用的基线评估。重要的是，调查的目标之一应是询问消费者在使用正规金融服务上的信心。然而，消费者对金融产品和服务信息的了解程度也应进行评估，通过消费者的认知和可用性测试——利用消费者测试的结果进行设计。在美国，联邦储备委员会广泛开展了对信用卡信息强制披露的测试，之后便发布了详细的有关信息披露政策法规。对其他国家进行类似的测试，包括在低收入经济体和金融知识水平低的群体中进行测试，将是有益的。除了住户调查和神秘购物方式外，考虑其他定性和定量的评估技术（包括人种学的研究工具）可能也是非常有益的。对不同方法的试验，包括通过私人部门金融机构和大众媒介提供金融教育，也将是有益的。然而，提供金融教育所使用的实验方法所产生的影响应当进行衡量和评估，如可行的话，内容应包括通过随机对照试验来完成。此外，有关不同产品和服务的改革最终影响的消费者研究和测试将会非常有用。特别是在低收入国家，创新可能会产生提供金融服务的新途径，调查研究将有助于确定消费者在使用新的金融产品和服务时的收益和风险。

Good Practices for Financial Consumer Protection

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Acronyms & Abbreviations

AML	Anti-money laundering
ANEC	European Association for the Co-ordination of Consumer Representation in Standardization
APEC	Asia Pacific Economic Cooperation
API	Arab Payments Initiative
APY	Annual percentage yield
ASBA	Asociación de Supervisores Bancarios de las Américas (Association of Supervisors of Banks of the Americas)
B2C	Business to Consumer
BEUC	Bureau Européen des Unions des Consommateurs (European Consumers' Organisation)
BIS	Bank for International Settlements
BNPP	(World) Bank Netherlands Partnership Program
CEMLA	Centro de Estudios Monetarios Latinoamericanos
CESR	Committee of European Securities Regulators
CFT	Combating the financing of terrorism
CGAP	Consultative Group to Assist the Poor
CISPI	Commonwealth of Independent States Initiative
CIU	Collective Investment Undertaking
COE	Council of Europe
CPSS	Committee on Payment and Settlement Systems
DFID	United Kingdom Department for International Development
EC	European Commission
ECJ	European Court of Justice
ERISA	US Employee Retirement Income Security Act

ESIS	European Standardized Information Sheet
ETS	European Treaty Series
FIMM	Federation of Investment Managers Malaysia
EU	European Union
FATF	Financial Action Task Force
FCAC	Financial Consumer Agency of Canada
FDIC	US Federal Deposit Insurance Corporation
FinCoNet	International Financial Consumer Protection Network
FINRA	US Financial Industry Regulatory Authority
FIRST	Financial Sector Reform and Strengthening Initiative
FSA	UK Financial Services Authority
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
FTC	US Federal Trade Commission
G20	Group of Twenty
GDP	Gross domestic product
IADB	Inter-American Development Bank
IAIS	International Association of Insurance Supervisors
ICO	UK Information Commissioner's Office
ICP	Insurance Core Principle
IDD	Initial disclosure document
IEFP	Institut pour l'Education Financière du Public
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
IOPS	International Organisation of Pensions Supervisors
IOSCO	International Organization of Securities Commissions
ISO	International Organization for Standardization
KYC	Know Your Customer
LIBOR	London Inter-bank Offered Rate
MAS	Monetary Authority of Singapore
MiFID	Markets in Financial Instruments Directive

MSME	Micro, Small and Medium Enterprises
NAIC	US National Association of Insurance Commissioners
NASD	US National Association of Securities Dealers
NGO	Non-government organization
NPS	National Payments System
OECD	Organisation for Economic Co-operation and Development
OTC	Over-the-Counter
PIN	Personal identification number
PHRD	Japan Population and Human Resources Development Program
SADC	Southern African Development Community
SAPI	South Asia Payments Initiative
SEC	US Securities and Exchange Commission
SECCI	Standard European Consumer Credit Information
SECO	Swiss State Secretariat for Economic Affairs
SEEP	Small Enterprise Education and Promotion Network
SEPA	Single Euro Payments Area
SFC	Securities and Futures Commission of Hong Kong
SME	Small and medium enterprises
SRO	Self-regulatory organization
TILA	US Truth in Lending Act
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom
UN	United Nations
US	United States of America
USAID	United States Agency for International Development
USC	United States Code
WBG	World Bank Group
WHCRI	Western Hemisphere Credit and Loan Reporting Initiative

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Chapter 1 Introduction

Until the financial crisis of 2007 – 09, the global economy was adding an estimated 150 million new consumers of financial services each year. Rates of increase have since slowed but growth continues apace. The financial crisis highlighted the importance of financial consumer protection for the long – term stability of the global financial system. At the same time, rapid increases in the use of financial services have pointed to the need for strengthened financial regulation and consumer education to protect and empower consumers. In the absence of strong financial consumer protection, the growth-enhancing benefits of expanded financial inclusion may be lost or severely undermined.

Financial consumer protection[1] sets clear rules of conduct for financial firms regarding their retail customers. It aims to ensure that consumers: (1) receive information to allow them to make informed decisions, (2) are not subject to unfair or deceptive practices and (3) have access to recourse mechanisms to resolve disputes. Complementary financial literacy initiatives are aimed at giving consumers the knowledge and skills to understand the risks and rewards of using financial products and services—and their legal rights and obligations in using them. Clear rules of conduct for financial institutions, combined with programs of financial education for consumers, will increase consumer trust in financial markets and will support the development of these markets.

The international community has recently increased its focus on financial consumer protection with the release of the G20 High Level Principles. Regulators have noted the pressing need for a set of guidelines of market conduct against which

existing policies, laws and regulations, institutions and initiatives can be measured and assessed. The lack of recognized guidelines has often led policymakers to focus on only a few of the many consumer protection issues while failing to close gaps in other areas. During their February 2011 meeting, the Group of 20's Finance Ministers and Central Bank Governors called on the Organisation for Economic Co-operation and Development (OECD), the Financial Stability Board (FSB) and relevant international organizations to develop common principles on consumer protection in financial services in time for their October 2011 meeting.[2] In October 2011, the G20[3] released its *High-Level Principles on Financial Consumer Protection*[4] and ongoing work by the OECD Task Force on Financial Consumer Protection continues. (The first version of the *Good Practices for Financial Consumer Protection* was published prior to the release of the High Level Principles for Financial Consumer Protection. However the Good Practices complement the High Level Principles and provide practical advice on ways to implement the concepts within the Principles.)

Numerous other initiatives are also underway to strengthen financial consumer protection by international government organizations. In November 2010, the G20 Leaders also asked the FSB to work with the OECD and other international organizations to explore options to advance consumer finance protection.[5] In October 2011, the FSB published its report on *Consumer Finance Protection with particular focus on credit*.[6] Also starting in 2005, the OECD developed Recommendations on Good Practices for Financial Education and Awareness as well as specific good practices on financial education and awareness relating to credit, insurance and private pensions.[7] In addition, the OECD has issued numerous working papers and other reports on financial literacy and financial education, including the 2012 Working Paper on *Current Status of National Strategies for Financial Education: A Comparative Analysis and Relevant Practices*.[8] In Europe in addition to the Directives related to consumer finance, the European Commission has conducted studies on retail financial services, including retail investment advice, consumer credit, distance marketing of financial services, mortgages and consumer education in financial services.[9] In November 2011, the European Insurance and Occupational Pensions Authority launched

a public consultation on proposed Guidelines on Complaints-Handling by Insurance Undertakings.[10] The Inter-American Development Bank supports the strengthening of financial consumer protection in various projects.[11] In addition, the Government of the Russian Federation has provided a $15 million Financial Literacy and Financial Education Trust Fund, administered by the World Bank and the OECD, to: (1) develop methodologies for measuring the financial capabilities of a variety of groups in developing countries, (2) test and refine these methods through their application in a range of existing programs in Bank client countries and (3) disseminate information on best practices in financial literacy[12] measurement and enhancement through websites, workshops and other means. Initial reports from the Trust Fund will be disseminated starting in late 2012.

International and regional non-government organizations are also playing an increasingly important role in financial consumer protection. The Responsible Finance Forum lists financial consumer protection regulation and financial capability as two of the three pillars of the framework for Responsible Finance.[13] In January 2012, the Association of Supervisors of Banks of the Americas (ASBA) released its draft paper on Supervision and Consumer Protection Best Practices and Recommendations. The 2011 Maya Declaration on Financial Inclusion recognizes consumer protection and empowerment as "key pillars of financial inclusion efforts to ensure that all people are included in their country's financial sector".[14] Also in 2011 the Alliance for Financial Inclusion launched the Consumer Empowerment and Market Conduct Working Group to discuss emerging policy and regulatory issues about consumer protection and review empowerment measures that promote financial access and improve the quality of financial inclusion. Consumers International has released recommendations on financial consumer protection, including a call for international standards and guidelines as well as development of an international organization to share best practice and support the development of standards and guidelines.[15] In addition, the International Organization for Standardization (ISO) Committee on consumer policy (ISO/COPOLCO) is in the process of developing a proposal to develop new international standards on consumer financial disclosure, particularly on

mobile telephone-based financial services and international remittances.[16] On financial literacy, in 2008 the OECD created the International Network on Financial Education,[17] which brings together policy-makers working on financial education worldwide. Consumers International and Microfinance Opportunities together have developed a handbook to assist consumer advocates in their work on financial counseling.[18] This summary is not exhaustive but helps illustrate the many ongoing international initiatives that support financial consumer protection. All the initiatives are helpful in strengthening the global response to weaknesses in financial consumer protection. Nevertheless, still more could be done by civil society organizations, particularly those operating at a global level.

The World Bank is also supporting the international dialogue on financial consumer protection through development of Good Practices based on country-level experience and ongoing technical assistance. The World Bank's Good Practices are based on in-depth country-level reviews of consumer protection and financial literacy. Initially developed in 2006 at the request of the Czech Republic, *Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia* have been used as an assessment tool for country diagnostic reviews. These Good Practices were largely based on developments in a number of countries that had begun to address consumer protection in retail financial markets. Subsequently, in November 2010, the World Bank launched a Global Program for Consumer Protection and Financial Literacy. As noted in Table 1, as part of the Global Program, a total of 18 country reviews have been completed as of the date of this publication. Supporting and complementing the country reviews are additional country-level technical assistance, including three country action plans, two implementation programs and 18 household surveys of financial literacy and consumer behavior, including the household surveys financed by the Russian Trust Fund.[19] In addition, the World Bank has approved a total of $28 million in loans and credits for consumer protection and financial literacy programs two countries (Russian Federation and Malawi).[20]

Table 1 **WBG Country Diagnostic Reviews of Consumer Protection and Financial Literacy**

Country	Year of Publication	Country	Year of Publication
Czech Republic	2007	Bosnia & Herzegovina	Planned 2012
Slovakia	2007	Kazakhstan	Planned 2012
Bulgaria	2009	Malawi	Planned 2012
Romania	2009	South Africa	Planned 2012
Lithuania	2009	Nicaragua	Planned 2012
Azerbaijan	2009	Ukraine	Planned 2012
Croatia	2010	Armenia	Planned 2012
Russian Federation	2010	Mozambique	Planned 2013
Latvia	2010	Tajikistan	Planned 2013

The Good Practices are intended to be used primarily as a diagnostic tool. The Good Practices provide a useful reference point for preparation of the country diagnostic reviews and thus assist policy-makers in answering the question, "How does the country's legal and regulatory framework for financial consumer protection compare to international practice?" Since no country is starting from scratch, a compilation of helpful approaches worldwide may help identify opportunities for specific countries in strengthening financial consumer protection. In this respect, the Good Practices provide concrete, evidence-based methods of strengthening financial consumer protection. Using the country-level experience of the World Bank Group in strengthening financial consumer protection and relying on international approaches that appear to work well in practice, the Good Practices for Financial Consumer Protection present a practical approach that regulators can use in their efforts to strengthen consumer protection in financial services. The Good Practices are not intended to be "best practice" worldwide. Rather they are a compilation of the most frequently used practices that have been successfully carried out in the field. They thus represent a rough summary of useful approaches in encouraging the improvement of conduct of financial institutions in dealing with their retail customers. It is hoped that the Good Practices will contribute to the evolving global dialogue on what constitute effective approaches to improving financial consumer protection in any country context.

The Good Practices provide a comprehensive diagnostic tool to help identify the consumer protection issues in all parts of the financial sector. The Good Practices are not intended to supersede benchmarks, guidelines, principles or good practices of any sector-specific international organization. Rather the Good Practices focus solely on issues related to consumer protection (and market conduct generally) across all financial services and complement the sector-specific guidance. Most importantly, the Good Practices help policy-makers in identifying cross-cutting consumer protection issues in the various parts of the financial sector and thus assist them in designing coherent, comprehensive and coordinated regimes for the improvement of consumer protection in the financial system. The need for a comprehensive approach to consumer protection is highlighted by the integration of many financial institutions into conglomerates.

The Good Practices for Financial Consumer Protection reflect more than six years' work in development by the World Bank Group. As already noted, the Good Practices have now been tested in 18 countries worldwide (14 middle-income countries and four low-income countries). [21] Further testing will continue for reviews to be conducted elsewhere in Africa (particularly sub-Saharan Africa), as well as in Asia, Latin America and the Caribbean, where innovations in the delivery of financial services will likely provide valuable lessons learned for countries worldwide. Other World Bank Group activities have also been incorporated into the Good Practices. These include studies on financial literacy and financial education through the Development Economics Research Group, [22] the Human Development Network, the Financial Inclusion Practice (including the Micro & SME Finance and Financial Infrastructure Service Lines), [23] the Legal Department, and units providing access-to-finance advisory and investment services throughout the International Finance Corporation. [24] In addition, the Good Practices incorporate key lessons from the work of Consultative Group to Assist the Poor (CGAP), a policy and research center housed at the World Bank that supports the development of, and related consumer protection issues for, the microfinance sector. [25]

The Good Practices have been formulated with input from existing international

benchmarks and other accepted Good Practices developed by a wide range of organizations. They include the good/best practices, principles, benchmarks and recommendations of the United Nations, OECD, the European Commission, the Asia-Pacific Economic Cooperation forum, the Bank for International Settlements, the International Association of Insurance Supervisors, International Organisation of Pension Supervisors, the International Organization of Securities Commissions, and the G20 on Principles for Innovative Financial Inclusion. From all of these, recommendations related to consumer protection have been selected and brought together.

The Good Practices incorporate both the approaches of developed countries and the experiences of reforming emerging economies. Over the last 30 years, most programs on financial consumer protection have been undertaken in industrialized countries. However in recent years, valuable work has been conducted in developing countries and emerging markets, notably Brazil, China, Colombia, India, Malaysia, Mexico, Peru, Russia, and South Africa. As effective approaches become evident from countries worldwide, they will be incorporated into future revisions of the Good Practices.

The Good Practices have been subject to substantial international review and comment. In addition to rigorous testing at the country level, the Good Practices have benefitted from extensive international comment over several years. The Good Practices were first publicly released as a Consultative Draft, *Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool* in August 2008 and they were finalized in August 2010.[26] Subsequently, the Good Practices were revised and updated to reflect recent developments in financial consumer protection as well as insights from additional country reviews in Latin America and Africa. *Good Practices for Financial Consumer Protection* were then released as Consultative Draft in March 2011. During the consultation period, the Good Practices were presented and discussed at numerous international conferences, including the World Bank Group-CGAP conference in Washington D. C. in September 2008, a cross-regional video-dialogue (Development Debates) hosted by the World Bank

Institute in February 2011, the annual meeting of FinCoNet in Toronto in May 2011 and the World Congress of Consumers International in Hong Kong also in May 2011. As noted in the Acknowledgements, over 25 regulators worldwide have also provided written comments, which have been incorporated into the final draft.

Four important points are worth noting at the outset. First, the Good Practices apply only to a country's regulated financial system and not to informal financial services, such as loan sharking. Second, not all of the Good Practices are expected to be applied in full in all countries. Implementation of the Good Practices should inevitably be tailored to relevant country-specific needs and objectives. Third, the Good Practices do not cover an exhaustive list of financial products and services. Instead, they set out suggestions for consumer protection regarding only the most commonly used financial products and services. Fourth, the Good Practices are expected to further evolve and develop based on future country diagnostic reviews as well as the principles, practices, policy papers and seminars of international and national organizations, including those from non-government organizations.

Good Practices for Financial Consumer Protection **is presented in three chapters.** Chapter 1 provides an introduction, summarizing the international context for the development of the Good Practices and the methodology used in their development. Chapter 2 proposes 39 common Good Practices that apply across the spectrum of consumer financial services and may provide useful input into further development of international principles for financial consumer protection. Chapter 3 presents a set of Good Practices for each of four main types of financial services, namely banking, securities, insurance and non-bank credit. Annexes I and II present Good Practices for Private Pensions and Credit Reporting, both of which are still in the early stages of development. Annex III provides a background note covering: (1) the context underlying the growing importance of consumer protection in the financial regulatory agenda of all countries, (2) the rationale and underlying principles applied in designing consumer protection frameworks in any country context, (3) issues in the design of the Good Practices and (4) areas for possible future work in financial consumer protection by the international community.

Chapter 2 Common Good Practices for Financial Consumer Protection

A well-functioning consumer protection regime provides effective safeguards for retail financial services consumers while empowering consumers to exercise their legal rights and fulfill their legal obligations. Summarized below are 39 basic Good Practices found in a well-functioning financial consumer protection regime.

Consumer Protection Institutions

1. The law provides clear consumer protection rules regarding financial products and services. The necessary institutional arrangements are in place to ensure thorough, objective, timely, and fair implementation (and enforcement) of the rules.

2. Codes of conduct for sector-specific financial institutions are developed by the sector-specific association (in consultation with the financial supervisory agency and consumer associations, if possible). Monitored by statutory agencies or effective self-regulatory agencies, these codes are formally adhered to by all sector-specific institutions. The codes may be augmented by voluntary codes of conduct devised by individual financial institutions for their own operations. The codes are widely publicized.

3. Prudential supervision and consumer protection supervision may be placed in separate agencies or lodged in a single institution. However regardless of the institutional structure, the allocation of resources between prudential supervision and consumer protection is adequate to enable the effective implementation of consumer protection rules.

4. All legal entities that provide financial services to consumers are licensed (or registered) and supervised with regard to their market conduct (i. e. their business practices in relation to retail customers) by the appropriate financial supervisory authority.

5. The judicial system ensures that the ultimate resolution of any consumer protection dispute regarding a financial product or service is affordable, timely and delivered in a professional manner.

6. The media and consumer associations actively promote financial consumer protection.

Disclosure and Sales Practices

7. Before a financial institution makes a recommendation to a consumer regarding a specific financial product or service, it gathers sufficient information from the customer to ensure that the product or service is likely to meet the needs and capacity of that consumer.

8. For all financial products or services, consumers receive a short one or two page summary statement (or electronic equivalent), presented in a legible font and written in plain language, describing the key terms and conditions, including recourse mechanisms, applicable to the financial product or service. Summaries are based on industry-agreed standards for the minimum types of information to be published for each type of financial product or service—and allow easy comparison among financial service providers. Summaries are distributed by financial institutions.

9. Before a consumer purchases a financial product or service, the financial institution provides a written copy of the institution's general terms and conditions, as well as the specific terms and conditions that apply to the product or service.

10. The law specifically prohibits the use of fraudulent sales practices, such as misleading advertising, in the marketing of financial products and services.

11. Except for securities and derivatives, financial products or services with a long-term savings component—or those subject to high-pressure sales practices—have a "cooling-off" period, during which the consumer may cancel the contract without penalty. Nothing prevents a financial institution from recovering any processing fees incurred.

12. Whenever an individual borrower is obliged by a financial institution to purchase a product or service as a pre-condition for receiving another product or service, the borrower is free to choose the provider for the product or service.

13. In their advertising, financial institutions disclose that they are regulated and the advertising materials identify the relevant regulatory or supervisory agency.

14. Staff of financial institutions who deal directly with consumers receive adequate training, suitable for the complexity of the products or services they sell. In particular, financial intermediaries are qualified as appropriate for the complexity of the financial product or service they sell.

Customer Account Handling and Maintenance

15. Financial institutions prepare regular statements for each customer account regarding key details of customer financial transactions as well as written (or electronic) confirmations of the terms of each transaction. For investment products, customers receive periodic statements of the value of the assets in their account.

16. As early as possible, customers are individually notified in writing (or by electronic means) of changes in interest rates, fees, and charges or other key terms and conditions of their financial products or services.

17. Financial institutions maintain up-to-date customer records and provide customers with ready access to their records, either without charge or for a reasonable fee.

18. Clearing and settlement of retail payments is based on clear statutory and regulatory rules—or is subject to effective self-regulatory arrangements.

19. Financial institutions are prohibited from employing abusive collection or debt recovery practices against their customers.

Privacy and Data Protection

20. For credit registries, the law specifies the extent and timeliness of the updating of customer information, gives customers ready and free access to their credit reports from credit registers (at least once a year), and provides procedures for correcting mistakes in credit reports.

21. Financial institutions are required to protect the confidentiality and technical security of customer data. The law states specific rules and procedures concerning the release of customer records to any government authority.

22. The law provides consumer rights regarding information sharing, including access, rectification, blocking and erasing of errors, and outdated personal information. The law also sets out basic rules of information sharing among participants of the credit reporting system, including credit registers, reporting institutions, and users of credit reports.

23. Every financial institution informs each of its customers of its policies for the use and sharing of the customer's personal information.

24. Credit bureaus are subject to oversight by the appropriate government (or non-government) authority.

Dispute Resolution Mechanisms

25. Every financial institution has a designated contact point with clear procedures for handling customer complaints, including complaints submitted verbally. Financial institutions also maintain up-to-date records of all complaints they receive and develop internal dispute resolution policies and practices, including processing time deadlines, complaint response, and

customer access.

26. Consumers have access to an affordable, efficient, respected, professionally qualified and adequately resourced mechanism for dispute resolution, such as an independent financial ombudsman or equivalent institution with effective enforcement capacity. The institution acts impartially and independently from the appointing authority, the industry, the institution with which the complaint has been lodged, the consumer, and the consumer association. Decisions by the financial ombudsman or equivalent institution are binding on the financial institution.

27. Statistics of customer complaints, including those related to breaches of codes of conduct, are periodically compiled and published by the ombudsman or financial supervisory authority. The complaints are compiled by product type to facilitate identification of patterns and opportunities for improvements of service.

28. Regulatory agencies are legally obliged to publish aggregate statistics and analyses related to their activities regarding consumer protection—and propose regulatory changes or financial education measures to avoid the sources of systemic consumer complaints. Industry associations also play a role in analyzing the complaint statistics and proposing measures to avoid recurrence of systemic consumer complaints.

Guarantee and Compensation Schemes

29. The law provides that the regulator can take appropriate measures to protect consumers in the event of financial distress of a financial institution.

30. Any law on financial insurance or a guarantee fund is clear on the insurer, the classes of depositors who are insured, the extent of insurance coverage, the contributor (s) to the fund, each event that will trigger a payout, and the mechanisms to ensure timely payout to all insured persons.

31. Depositors, life insurance policyholders, securities and derivatives account

holders, and pension fund members enjoy higher priority than other unsecured creditors in the liquidation process of a relevant financial institution.

Financial Literacy & Consumer Empowerment

32. A broad-based program of financial education and information is developed to increase the financial literacy of the population.

33. A wide range of organizations (including government, state agencies and non-governmental organization) are involved in developing and implementing the financial literacy program. The government appoints 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 program.

34. Initiatives are undertaken to improve financial literacy of consumers of all ages. This includes encouraging the mass media to cover issues related to consumer finance, including consumer protection in financial services.

35. Government and state agencies consult consumers, industry associations and financial institutions to develop proposals that meet consumers' needs and expectations. They also undertake consumer testing to try to ensure that proposed initiatives, including those regarding pre-contractual consumer disclosure and dispute resolution, are likely to have their intended outcomes.

36. The financial literacy of consumers and the impact of consumer empowerment measures are measured through broad-based household surveys that are repeated from time to time to see if the current policies are having the desired impact on the financial marketplace.

Competition

37. Financial regulators and competition authorities consult with one another.

38. Competition policy in financial services considers the impact of competition issues on consumer welfare, and especially planned or actual limits on

choice.

39. Competition authorities conduct and publish periodic assessments of competition among retail financial institutions and make recommendations on how competition among retail financial institutions can be optimized.

Chapter 3 Good Practices for Financial Consumer Protection by Financial Service

I. BANKING SECTOR

Good business relationships between commercial banks and the public are crucial for the development of any country's banking system. Needed are mutual trust and confidence between banks and consumers. To the extent that transparent pricing is absent, consumer awareness and protection is inadequate, or dispute resolution mechanisms are costly or ineffective, banking systems are less efficient and accessible than they would otherwise be.

A full assessment of the banking sector and the environment in which it operates is critical to determine whether some of the practices listed below are relevant for a particular country. These practices have been distilled from various sources, including prevailing and accepted practices in countries reputed to have good consumer protection in the banking sector. The Good Practices also draw on the international Good Practices and standards wherever applicable and appropriate. [27] It is important to note that the practices have been crafted to enable their use in both countries with well-developed banking systems and those with less-developed systems. To ensure the usefulness of these Good Practices, a certain degree of generalization and a minimum requirement approach has been taken. The fundamental rights of the common consumer *vis-à-vis* the banking system are thereby preserved, while relevance in the context of the country concerned is also ensured.

A. Consumer Protection Institutions

A. 1. Consumer Protection Regime

The law should provide clear consumer protection rules regarding banking products and services, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.

a. Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.

b. A general consumer agency, a financial supervisory agency or a specialized financial consumer agency should be responsible for implementing, overseeing and enforcing consumer protection regarding banking products and services, as well as for collecting and analyzing data (including inquiries, complaints and disputes).

c. The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.

d. The work of the designated agency should be carried out with transparency, accountability and integrity.

e. There should be co-ordination and co-operation between the various institutions mandated to implement, oversee and enforce consumer protection and financial system regulation and supervision.

f. The law should also provide for, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding banking products and services.

The legal foundation for recognizing, implementing, overseeing and enforcing consumer protection is the primary prerequisite for any legal rights, including consumer rights in banking. Similarly, supervision and enforcement of the protection of consumer affairs in the financial system is critical for ensuring consumer protection. In this regard, the assessments carried out so far and the experience of countries around the world clearly support the view that it is necessary to have an agency dedicated to overseeing and enforcing consumer protection.

The right to form voluntary organizations is taken for granted in many countries. Voluntary

consumer associations and self-regulatory organizations are important pillars in the consumer protection regime. Their role should be recognized in the law in order to provide them with legitimacy and enable them to obtain funding or gather resources. The role of the private sector is also emphasized to provide legitimacy to banks so that they can participate in activities that would otherwise be considered non- banking matters and to enable them to allocate sufficient funding for financial literacy and related consumer protection pursuits.

International and national guidelines have been consulted for the development of this Good Practice. They include: *EU Directive on Credit Agreements for Consumers*, 2008/48/*EC*, *repealing Directive* 87/102/*EEC*; *EU Directive on Consumer Protection in the Indication of the Prices of Products offered to Consumers*, 1998/6/*EC*; *EU Directive on the Distance Marketing of Consumer Financial Services*, 2002/65/*EC*; *the US Truth in Lending and Truth in Savings Acts*; *and the UK Financial Services and Markets Act of* 2000 (*which set up the Financial Services Authority*). [28]

A. 2. Code of Conduct for Banks

a. There should be a principles-based code of conduct for banks that is devised by all banks or the banking association in consultation with the financial supervisory agency and consumer associations, if possible. Monitored by a statutory agency or an effective self-regulatory agency, this code should be formally adhered to by all sector-specific institutions.

b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.

c. The principles-based 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.

d. Every such voluntary code should likewise be publicized and disseminated.

Many banking associations around the world adopt codes of conduct to inform the public of the services and standard of services to be expected from the industry. In most cases, the associations adopt lists of grand statements that are not relevant to the average

customer, whereas specific principles-based voluntary codes of conduct generally have a positive impact on consumer protection. These codes use plain language and provide commitments that are clear to the average customer. The codes should be widely disseminated and published on the websites of banks, clearly indicating banks' commitments to comply with them.

Most banking associations operating in the EU have not adopted principles-based codes of banking practices. The reason may be that the EU directives on credit and provision of other financial services are detailed enough to ensure Good Practices. However, codes of banking practices have been adopted and enforced by many developed countries, such as Australia, Canada, New Zealand and the United Kingdom, as well as by the Special Administrative Region of China known as Hong Kong, and by some middle-income countries such as South Africa.

These codes are principles-based and their compliance is monitored by the regulatory authority in the case of Hong Kong or subject to the jurisdiction of the ombudsman, in the case of South Africa and Australia. [29]

The codes generally comprise the following:

- *Governing principles and objectives of the code*
- *The banking ombudsman scheme and mechanisms to deal with complaints*
- *Good business conduct relating to communication, privacy and disclosure*
- *Product and services*
- *Issues relating to checks*
- *Issues on provision of credit*
- *PINs and passwords*
- *Cards, liability and merchant card services*
- *Internet banking*
- *Other services such as foreign exchange services*
- *Statements and account information*

A. 3. Appropriate Allocation between Prudential Supervision and Consumer Protection

Whether prudential supervision of banks and consumer protection regarding banking products and services are the responsibility of one organization or two institutions, the allocation of resources to these functions should be adequate to enable their effective implementation.

The oversight of a code of conduct or consumer protection is not generally seen as being part of the responsibilities of banking supervisors. The laws of central banks or banking supervisory agencies typically contain no reference to "consumer protection" as a function of the banking supervisor or to the concepts of "fairness" and "transparency". However, consumer protection issues should not be ignored by regulators. If a bank provides an unsuitable or unfair service, this may damage its reputation, as well as customer loyalty and confidence. This may also indicate weaknesses in management and internal controls and expose the bank to financial loss, e. g. as a result of "mis-selling" of investment products. Thus, a banking regulator does have an interest in encouraging standards of good banking practice, whereby banks act fairly and reasonably in relation to their customers. The regulator, however, has to determine where to draw the line and, in particular, has to be careful about intervening in matters that are best dealt with through competitive market forces or resolved through courts. Banking regulators are very often better placed than a third party to strike the balance and avoid undue regulatory burden on the industry.

A. 4. Other Institutional Arrangements

a. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter in respect of a banking product or service is affordable, timely and professionally delivered.

b. The media and consumer associations should play an active role in promoting banking consumer protection.

As the ultimate bastion of justice, the judiciary should be an effective final arbiter. For any consumer complaint about a banking product or service, the courts should be widely recognized as capable of rendering a final and binding decision in a professional, timely

and cost effective manner.

Media and consumer associations play an active role in promoting financial consumer protection in many countries. Proper media coverage of consumer mistreatment by financial institutions is an effective tool in promoting consumer protection through "naming and shaming". However, it is important that journalists be educated to understand and transmit information on financial issues accurately and adequately. In most European countries, there are consumer associations that deal with financial services.[30] *If, as in Article 7 of Decision No. 20/2004/EC, specific criteria are fulfilled, the organization might be even supported financially by the EU. Furthermore, the EC has created several consultative bodies, such as the Financial Services Consumer Group; and its permanent committees include representatives of consumer organizations from each of the EU Member States. They are specifically asked to ensure that consumer interests are properly taken into account in the formulation of EU financial services policy.*

A. 5. Licensing

All banking institutions that provide financial services to consumers should be subject to a licensing and regulatory regime to ensure their financial safety and soundness and effective delivery of financial services.

This good practice forms the basis and foundation for the enforcement of consumer protection in the banking system (see Basel Core Principle 3). The licensing authority should have the power to set criteria and reject applications for establishments that do not meet the standards set. Apart from licensing, ongoing regulation and supervision of the activities of the banking institution and its manner of delivering its services need also to be regulated. In most countries, banking services are regarded as essential and, as such, appropriate regulatory and supervisory arrangements should be in place.

B. Disclosure and Sales Practices

B. 1. Information on Customers

a. When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer.

b. The extent of information the bank gathers regarding a consumer should:
   i. be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and
   ii. enable the bank to provide a professional service to the consumer in accordance with that consumer's capacity.

This is a basic requirement not only for the delivery of services but also for the purposes of complying with the Basel Core Principle 18[31] *issued by the Bank for International Settlements (BIS) and with the standards issued by the Financial Action Task Force (FATF). The FATF is an inter-governmental body created for the purpose of combating money laundering and terrorism financing. The FATF Standards comprise Forty Recommendations on Money Laundering and Nine Special Recommendations on Terrorist Financing.* [32]

Accurate and reliable customer identification is important for more than FATF-related issues but can present a special challenge for low-income countries where national ID cards have not yet been issued. Some banks, for example in India and Malawi, use biometric measures to identify customers. In the case of banking transactions conducted through mobile telephones create their own rules regarding reliable customer identification.

B. 2. Affordability

a. When a bank makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.
b. The consumer should be given a range of options to choose from to meet his or her requirements.
c. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.
d. When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.

This good practice aims to avoid consumer over-indebtedness and to help consumers make appropriate decisions on their financial needs. It is not uncommon for consumer protection agencies to call on financial service providers to treat customers fairly, make sure that consumers can afford the credit they receive and, if not, ensure that they contact their lender or a free independent advice agency immediately.[33] *The EU Directive on Unfair Terms in Consumer Contracts* 1993/13/*EEC and EU Directive on Credit Agreements for Consumers*, 2008/48/*EC provide guidance regarding this Good Practice.*

Particularly in low-income countries, affordability may also be related to concerns over possible over-indebtedness. In some countries, lenders such as microfinance institutions are not required to ask borrowers about other outstanding debts—or such debts may not be registered in the credit bureau system. The result may be consumers who become over-indebted, relying on one loan to pay off another. In Peru, the regulator has issued Regulation 6941-2008 (*Rules for administration of over-indebtedness risk of retail debtors*) *to ensure that consumers do not use easy access to credit cards or other forms of credit to become over-indebted.*

B. 3. Cooling-off Period

a. For financial products or services with a long-term savings component, or those subject to high-pressure sales contracts, (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 (at least 3-5 business days) immediately following the signing of any agreement between the bank and the consumer.

b. On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.

This important safeguard enables an individual to withdraw from an arrangement with impunity. This is particularly important for financial products or services with a long-term savings component—or those subject to high-pressure sales practices. Borrowers tend to rush into financial arrangements with their banks that provide seemingly attractive terms or returns without the benefit of shopping around. This is especially serious in countries

where the terms of services and products are not readily available or cannot be compared. Thus, the cooling-off period provides relief similar to a "no-questions-asked" return policy for goods. However, for banking products and services that involve market risk, a consumer who cancels his or her contract during the cooling-off period should be required to compensate the bank for any processing fees. For a description of cooling-off periods in several EU Member States, see the EC's Discussion Paper for the amendment of the Directive 87/102/*EEC concerning consumer credit.* [34]

B. 4. Bundling and Tying Clauses

a. As much as possible, banks should avoid bundling services and products and the use of tying clauses in contracts that restrict the choice of consumers.

b. In particular, 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 and this information should be made known to the borrower.

Tying occurs when two or more products are sold together in a package and at least one of these products is not sold separately. Market surveys suggest that in most EU Member States, the majority of banks tie a current account to mortgages, personal loans and SME loans[35]*. Product tying in retail banking may weaken competition. First, tying raises costs and therefore is likely to reduce customer mobility. Second, by binding customers into buying several products from the same bank, tying is likely to discourage the entry of new players and growth of smaller players. Third, by introducing additional and perhaps unnecessary products into the transaction, tying reduces price transparency and comparability among providers. Product tying by one or more undertakings in a particular EU Member State may constitute an exclusionary abuse of dominance under Article* 102 *of the Treaty establishing the European Community (EC Treaty), where such undertakings have a dominant position.*

Bundling occurs when two or more products are sold together in a package, although each of the products can also be purchased separately on the market. Firms bundle for several reasons (including economies of scope, price discrimination, demand

management or leverage of market power into other market segments). Bundling is not per se anti-competitive and it can even have positive effects on the consumer (if the price of bundled services is lower than for unbundled ones, and if convenience is increased). However, bundling also has the potential to render price comparisons impossible, thus hindering competition. Also customers might be forced to accept services and products that they do not need and thus they would have to incur in fees and other costs associated with maintaining the bundled product or service.

B. 5. Preservation of Rights

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:

i. 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

ii. any liability arising from the bank's failure to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to the consumer.

This good practice concerns the obligation to deal fairly and honestly with customers, and the right of privacy and data protection of consumers. This standard requires that consumers cannot be forced to accept contractual clauses that would reduce their rights. This is reflected in the Accountability Principle of the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data's (Paragraph 14), and the APEC Privacy Framework's Accountability Principle IX, which state that the data controller should be accountable for complying with the measures stated in the OECD and APEC guidelines.

The EU Directive on Unfair Business-to-Consumer Commercial Practices states that a commercial practice shall be deemed unfair if it is contrary to the requirements of professional diligence (Article 5). The Directive also indicates that a commercial practice is regarded as misleading if it omits material information that the average consumer needs in order to take a decision. One of several kinds of material information described in the Directive are "the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional

diligence" (*Article* 7).

B. 6. Regulatory Status Disclosure

In all of its advertising, whether by print, television, radio or otherwise, a bank should disclose the fact that it is a regulated entity and the name and contact details of the regulator.

This is in line with responsible and fair advertisement practices. The consumer should be able to verify the claims made by the advertiser. For example, see the UK Financial Services and Markets Act 2000 *or the UK Consumer Credit Act* 1974.

B. 7. Terms and Conditions

a. Before a consumer opens a deposit, current (checking) or loan account at a bank, the bank should make available to the consumer 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 include:
   i. disclosure of details of the bank's general charges;
   ii. a summary of the bank's complaints procedures;
   iii. a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures;
   iv. information about any compensation scheme that the bank is a member of;
   v. an outline of the action and remedies which the bank may take in the event of a default by the consumer;
   vi. the principles-based code of conduct, if any, referred to in A. 2 above;
   vii. 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;
   viii. 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; and
   ix. clear rules on the reporting procedures that the consumer should follow in the case of unauthorized transactions in general, and stolen cards in particular,

as well as the bank's liability in such cases.

b. The Terms and Conditions should be written in plain language and in a font size and spacing that facilitates the reader's comprehension.

A number of international guidelines provide the background for this Good Practice, including the EU Directive on Credit Agreements for Consumers 2008/48/*EC*; *the EU Directive on Consumer Credit* 87/102/*EEC*; *the EU Directive concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market* 2005/29/*EC*; *the EU Directive on Misleading and Comparative Advertising* 2006/114/*EEC*; *the EU Directive on the Distance Marketing of Consumer Financial Services* 2002/65/*EC*; *the EU Directive on Protection of Consumers in Respect of Distance Contracts* 1997/7/*EEC*; *as well as the US Truth in Lending Act (TILA) and the Truth in Savings Act.*

The purpose of TILA is to promote the informed use of consumer credit by requiring disclosures about its terms and by standardizing the manner in which costs associated with borrowing are calculated and disclosed. TILA also gives US consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes.

The US Truth in Savings Act requires clear and uniform disclosure of the rate of interest (annual percentage yield or APY) and fees that are associated with a savings account, so that the consumer is able to make a meaningful comparison between potential accounts. For example, a customer opening a certificate of deposit account should be provided with information about ladder rates (smaller interest rates with smaller deposits) and penalty fees for early withdrawal of a portion or all of the funds.

B. 8. Key Facts Statement

a. A bank should have a summary statement, such as a Key Facts Statement, for each of its accounts, types of loans or other products or services and provide these to its customers and potential customers.

b. The summary statement should be written in plain language and summarize in a page or two the key terms and conditions of the specific banking product or service.

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, read and understood the relevant summary statement from the bank.

d. Summary statements throughout the banking sector should be written in such a way as to allow consumers the possibility of easily comparing products that are being offered by a range of banks.

A summary statement, such as a Key Facts Statement, provides consumers with simple and standard disclosure of key contractual information of a banking product or service, contributing to the consumers' better understanding of the product or service. Key Facts Statements also allow consumers to easily compare offers provided by different banks before they purchase a banking product or service. Such statements also provide a useful summary for later reference during the life of the financial product or service. For credit products, Key Facts Statements constitute an efficient way to inform consumers about their basic rights, the credit reporting systems and the existing possibilities for disputing information. This is of special importance in countries with new financial consumers who are inexperienced.

Several countries provide formats on Key Facts Statements. The UK FSA has developed mandatory key facts statements in the form of initial disclosure documents (or IDDs) applicable to housing credit products, including residential mortgage credit. IDDs are supported by a regulation on Mortgage: Conduct of Business (MCOB). The regulation provides recommendations for wording pre-disclosure and offering documents. In the European Union, the Directive on Credit Agreements for Consumers (2008/48/EC) includes a recommended format, namely the Standard European Consumer Credit Information (SECCI) form. Also the European Associations of Consumers and the European Credit Sector Associations have developed the European Standardized Information Sheet (ESIS) which provides a recommended format for pre-contractual information on home loans. In the US, the Truth in Lending Act (Appendix G-10) includes models for the "Schumer Box" for credit cards. [36] *Peru has developed the "Hoja Resumen" (Summary Sheet)* [37] *and Ghana the "Pre-Agreement Truth in Lending Disclosure Statement"* [38]

following similar key-fact-statement principles.

Of special concern in some countries is the need to provide basic information to consumers in a language that is widely used by local populations. For example, one of the largest banks in South Africa provides consumer information at its ATMs in six of the country's 11 *official languages-- but not in Afrikaans which is the third most common language spoken in the country.*[39] *Similarly, in the Andean Region of Bolivia, Colombia, Ecuador and Peru, Quechua—not Spanish—is the language of many households. Likewise, in Malawi, although Chichewa is spoken by a majority of the population, little written banking information is available other than in English.*

It may also be helpful to test consumer understanding of mandatory disclosure statements. In the US, the Federal Reserve Board has conducted extensive consumer testing of credit card disclosure information in order to develop an easily understood format.[40]

B. 9. Advertising and Sales Materials

a. Banks should ensure that their advertising and sales materials and procedures do not mislead customers.
b. All advertising and sales materials of banks should be easily readable and understandable by the general public.
c. Banks should be legally responsible for all statements made in their advertising and sales materials (i. e. be subject to the penalties under the law for making any false or misleading statements).

For disclosure and sales practices, one of the main policy issues relates to misleading and comparative advertisement. Several directives in Europe hold financial institutions responsible for the content of their public announcements. These include the EU Directive on the Distance Marketing of Financial Services 2002/65/*EC, the EU Directive on Misleading and Comparative Advertising* 2006/114/*EEC and the Unfair Commercial Practices Directive* 2005/29/*EEC.*

Increasingly, in many developed and middle-income countries, banks use agents to market their products such as unit trusts and credit cards. These solicitations take place

outside the bank premises- including at supermarkets and fairs. Thus, ensuring that banks are liable for the acts of their agents is critical.

B. 10. Third-Party Guarantees

A bank should not advertise either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless there is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee. In the event such an agreement exists, the advertisement should state:

i. the extent of the guarantee;

ii. the name and contact details of the party providing the guarantee; and

iii. in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.

The word "guarantee" can be a persuasive element when it comes to "returns" on investment. There is a tendency, however, for the term to be used loosely. Furthermore, the actual terms of a guarantee can be difficult for the average customer to understand. Thus, advertisements should ensure that the fact of the third-party guarantee is clearly disclosed to the public so as to enable the consumer to make an informed decision about the usefulness or relevance of the guarantee.

B. 11. Professional Competence

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 materials of the bank for external distribution), 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.

b. Regulators and associations of banks should collaborate to establish and administer minimum competency requirements for any bank staff member who: (i) deals directly with consumers, (ii) prepares any Key Facts Statement or any advertisement for the bank, or (iii) markets the bank's services and products.

The standard of professional delivery depends not only on the product or service but also on the knowledge and technical know-how of the individual delivering the product or service. Financial products are increasingly complicated, products overlap, and the delineation between banking and non-banking products is no longer clear. Thus, it is important that consumers fully understand any product, let alone a complex product before buying it. Typically, the banking industry is expected to ensure that its employees who deliver products and services are fully knowledgeable about these products and services and are able to explain the nuances to the consumer. In most cases, the industry sets competency standards through certification processes.

C. Customer Account Handling and Maintenance

C. 1. Statements

a. Unless a bank receives a customer's prior signed authorization to the contrary, the bank should issue, and provide the customer free of charge, a monthly statement of every account the bank operates for the customer.

b. Each such statement should: (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.

c. 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.

d. 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.

e. 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 treated as unclaimed money.

f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

Statements from a bank can be regarded as the most valid record and evidence of a transaction for a customer. Thus, statements need to be self-explanatory and clear. They should allow the customer to comprehend the financial consequences of the "number" in the statement and take necessary action based on the statement. This is particularly important in the case of credit card statements and loan accounts statements that carry finance charges, penalty interest and serious consequences of default or delayed payment.

Banks should be obligated to provide monthly statements. However, with access to the internet and telephone banking, some customers may opt to receive statements on a quarterly basis. The choice should be left to the customers. Also, when customers choose paperless statements, the access to the statements, their format and details should be a fair substitute to paper statements.

C. 2. Notification of Changes in Interest Rates and Non-interest Charges

a. A customer of a bank should be notified in writing by the bank of any change in:
   i. the interest rate to be paid or charged on any account of the customer as soon as possible; and
   ii. a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.
b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.
c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.

Banks in many countries provide at least 1 *to* 3 *months of notice depending on the agreement. In most countries, banks indicate in their offer documents and loan agreements whether the interest rate is fixed or variable and whether it is linked to a daily reference rate that is widely published such as LIBOR, etc. In such cases, the minimum notice that should be given in the event of a change in the interest rate should be agreed upfront. Interest rate increases that do not comply with the contractually stipulated notice are, therefore, invalid and will not be binding on the consumer. The code of conduct*

should include this requirement. A consumer's right to exit a contract is taken from Guidelines 17 and 19 of the UN Guidelines for Consumer Protection.

C. 3. Customer Records

a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:

i. a copy of all documents required to identify the customer and provide the customer's profile;

ii. the customer's address, telephone number and all other customer contact details;

iii. any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;

iv. details of all products and services provided by the bank to the customer;

v. 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 to any product or service offered or provided to the customer;

vi. all documents and applications of the bank completed, signed and submitted to the bank by the customer;

vii. 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

viii. any other relevant information concerning the customer.

b. 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 access to all such records free of charge or for a reasonable fee.

While the above can be assumed in many countries, rudimentary banking systems often do not keep comprehensive information regarding customers and their transactions. The list may seem prescriptive but its requirements should be regarded as the minimum in order to ensure that sufficient information is kept for the purpose of providing customer protection. For more information, see annotation on good practice C. 2.

C. 4. Paper and Electronic Checks

a. The law and code of conduct should provide for clear rules on the issuance and

clearing of paper checks that include, among other things, rules on:

i. checks drawn on an account that has insufficient funds;

ii. the consequences of issuing a check without sufficient funds;

iii. the duration within which funds of a cleared check should be credited into the customer's account;

iv. the procedures on countermanding or stopping payment on a check by a customer;

v. charges by a bank on the issuance and clearance of checks;

vi. liability of the parties in the case of check fraud; and

vii. error resolution.

b. A customer should be told of the consequences of issuing a paper check without sufficient funds at the time the customer opens a checking account.

c. A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well the cost of using them.

d. In respect of electronic or credit card checks, a bank should inform each customer in particular:

i. how the use of a credit card check differs from the use of a credit card;

ii. of the interest rate that applies and whether this differs from the rate charged for credit card purchases;

iii. when interest is charged and whether there is an interest free period, and if so, for how long;

iv. whether additional fees or charges apply and, if so, on what basis and to what extent; and

v. whether the protection afforded to the customer making a purchase using a credit card check differs from that afforded when using a credit card and, if so, the specific differences.

e. Credit card checks should not be sent to a consumer without the consumer's prior written consent.

f. There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.

A number of international and national guidelines have been consulted regarding this Good Practice. These include the US Check Clearing for the 21st Century Act and important Codes of Banking Practices in Australia and South Africa.[41] *The check clearing house rules provide guidelines on this Good Practice. However, these rules are designed to guide banks and are not disclosed to the public. Thus, it is important that basic principles for bankers, such as the ones stated above, are followed by banks and customers are told of their rights and liabilities in these respects.*[42]

The background for this Good Practice is provided by the EU Directive on Payment Services in the Internal Market 2007/64/EC, the US Regulation E and the BIS-World Bank's General Principles for International Remittance Services. However, the Good Practices do not cover the full range of payment/remittance services and providers. For completeness, see the full text of the General Principles.[43] *Equally relevant for an understanding of all the underlying payment system aspects are the CPSS-IOSCO Principles for Financial Market Infrastructures* (2012)[44], *the CPSS General Guidance for National Payment System Development* (2006)[45], *and the World Bank General Guidelines for the Development of Government Payment Programs* (*consultative report*, 2012).[46]

C. 5. Credit Cards

a. There should be legal rules on the issuance of credit cards and related customer disclosure requirements.

b. Banks, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment.

c. Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.

d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.

e. Among other things, the legal rules should also:

i. restrict or impose conditions on the issuance and marketing of credit cards to young adults who have no independent means of income;

ii. require reasonable notice of changes in fees and interest rates increase;

iii. prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;

iv. limit fees that can be imposed, such as those charged when consumers exceed their credit limits;

v. prohibit a practice called "double-cycle billing" by which card issuers charge interest over two billing cycles rather than one;

vi. prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and

vii. limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.

f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.

g. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over- indebtedness and prevention of fraud.

Credit cards have become the common payment mechanism and are replacing hard currency in many countries. The credit card industry has also been in the limelight for its harmful practices, lack of transparency and of disclosure of terms and conditions of credit card accounts. This is particular problem in countries with low rates of savings and high consumer spending. The recent measures taken by many countries[47] *to update the rules applicable to credit cards clearly indicate the importance of consumer protection in these respects.*

Consumers should get key information about credit card terms in a clear and conspicuous format and at a time when it is most useful to them. Anyone under 21 *should get an adult to co-sign on the account if he or she wants to open his or her own credit card account or show proof that he or she has his or her own independent means to repay the card debt. Billing methods and information disclosed in the monthly statement should be*

clear and help customers to make informed choices on their indebtedness.

The increasing use of credit cards over the internet and outside the issuers' jurisdiction increases the incidence of stolen cards and fraud. Thus, improving consumer awareness and knowledge of these problems is important.

See also annotation on good practice C. 4.

C. 6. Internet Banking and Mobile Phone Banking

a. The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework.

b. Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures:

   i. data privacy, confidentiality and data integrity;

   ii. authentication, identification of counterparties and access control;

   iii. non-repudiation of transactions;

   iv. a business continuity plan; and

   v. the provision of sufficient notice when services are not available.

c. Banks should also implement an oversight program to monitor third-party control conditions and performance, especially when agents are used for carrying out m-banking.

d. A customer should be informed by the bank whether fees or charges apply for internet or m-banking and, if so, on what basis and how much.

e. There should be clear rules on the procedures for error resolution and fraud.

f. Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.

Internet and mobile phone banking improve a bank's efficiency and competitiveness in the provision of services and products. They allow existing and potential customers an increased degree of convenience in effecting banking and payment transactions. A bank may be faced with different levels of risks and expectations arising from internet and mobile phone banking as opposed to traditional banking. Furthermore, customers who rely on internet and mobile phone banking services may have greater intolerance for a

system that is unreliable or one that does not provide accurate and current information.

Consumer protection should be ensured through rules that among other things: (i) limit systemic and other risks that could threaten the stability of financial markets or undermine confidence in the payment system; (ii) encourage institutions to educate customers about their rights and responsibilities and how to protect their own privacy on the Internet and when using mobile phones; and (iii) encourage the development of effective, low risk, low cost and convenient payment and financial services to customers and businesses through the Internet and by utilizing mobile phone banking.

See also annotation on good practice C. 4.

C. 7. Electronic Fund Transfers and Remittances

a. There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.

b. Banks should provide information to consumers 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:

   i. the total price (e. g. fees for the sender and the receiver, 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; and

   iv. the terms and conditions of electronic fund transfer services that apply to the customer.

c. To ensure transparency, it should be made clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose this information without imposing any requirements on the consumer.

d. A bank that sends or receives an electronic fund transfer or remittance should document all essential information regarding the transfer and make this available to the customer who sends or receives the transfer or remittance without charge and on demand.

e. There should be clear, publicly available and easily applicable procedures in cases

of errors and frauds in respect of electronic fund transfers and remittances.

f. A customer should be informed of the terms and condition of the use of credit/debit cards outside the country including the foreign transaction fees and foreign exchange rates that may be applicable.

The rise in international and domestic remittance calls for greater protection in this area. The fees to be charged, the time taken for the funds to reach the beneficiary, and recourse mechanism procedures are some of the key issues that need to be reviewed. See also annotation on good practice C. 4.

C. 8. Debt Recovery

a. A bank, agent of a bank and any third party should be prohibited from employing 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. A debt collector should not contact any third party about a bank customer's debt without informing that party of the debt collector's right to do so; and the type of information that the debt collector is seeking.

d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:

   i. notified of the sale or transfer within a reasonable number of days;

   ii. informed that the borrower remains obligated on the debt; and

   iii. provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.

In a number of countries, weak safeguards against abusive debt collection: (i) strengthens the call for a more cumbersome recovery process; (ii) leads to moratoriums on collection; and (iii) earns the sympathy of courts. As a result, debt collection becomes a prolonged process that increases the cost of financing in the long-run. Sound

rules on debt collection are required so as to help ensure that consumers are not subject to abusive and illegal collection practices.

While some countries rely on the sanctity of the contract and on the courts to uphold the right of borrower and to prevent abuses by lenders, other countries deal with this issue through the law, a directive of a regulator, or guidance provided by a consumer protection agency (see the US Fair Debt Collection Practices Act, as well as the US Federal Trade Commission (FTC) and the UK Financial Services Authority (FSA) websites).[48]

C. 9. Foreclosure of Mortgaged or Charged Property

a. In the event that a bank exercises its right to foreclose on a property that serves as collateral for a loan, the bank should inform the consumer in writing in advance of the procedures sinvolved, and the process to be employed by the bank to foreclose on the property it holds as collateral and the consequences thereof to the consumer.
b. At the same time, the bank should inform the consumer of the legal remedies and options available to him or her in respect of the foreclosure process.
c. If applicable, the bank should draw the consumer's attention to the fact that the bank has a legal right to recover the balance of the debt due in the event the proceeds from the sale of the foreclosed property are not sufficient to fully discharge the outstanding amount.
d. In the event the mortgage contract or charge agreement permits the bank to enforce the contract without court assistance, the bank should ensure that it employs professional and legal means to enforce the contract, including regarding the sale of the property.

The financial crisis of 2007-09 *and its impact on Unites States' homeowners highlight the importance of ensuring a fair and adequate process in the foreclosure of mortgages. The subsequent legislative measures taken by the US government also underscore the dangers of inadequate safeguards in the foreclosure process. Many countries struggle to balance the rights of homeowners to keep their homes and the rights of banks to collect on defaulted loans. As a result, the pendulum swings between permitting out-of-court enforcement*

favoring banks and court foreclosures that favor borrowers. Regardless of the popular sentiment, it is important to have rules and procedures that ensure safeguards and due process in the enforcement of the rights of the party in a mortgage. Some of the key elements include sufficient notice and a fair and cost-effective process.

C. 10. Bankruptcy of Individuals[49]

a. A bank should inform its individual customers in a timely manner and in writing on what basis the bank will seek to render a customer bankrupt, the steps it will take in this respect and the consequences of any individual's bankruptcy.

b. Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy.

c. Either directly or through its association of banks, every bank should make counseling services available to customers who are bankrupt or likely to become bankrupt.

d. The law should enable an individual to:

i. declare his or her intention to present a debtor's petition for a declaration of bankruptcy;

ii. propose a debt agreement;

iii. propose a personal bankruptcy agreement; or

iv. enter into voluntary bankruptcy.

e. Any institution acting as the bankruptcy office or trustee responsible for the administration and regulation of the personal bankruptcy system should provide adequate information to consumers on their options to deal with their own debt and rehabilitation process in the event of bankruptcy.

Bankruptcy carries serious implications for an individual and can have a significant negative impact on his or her social and economic standing. In many countries, being declared bankrupt also entails travel restrictions and a prohibition on being named to official positions and participating in certain economic activities.

In some countries, customers of banks who default on their loans have little knowledge of the likelihood of being declared bankrupt and its consequences to their lives. In many countries, the process lacks transparency and a consumer may not even know that he or

she has been declared bankrupt until his or her subsequent application for a credit has been turned down. By making counseling available to those who are likely to become bankrupt, consumers may be able to avoid bankruptcy or at least manage the process better. The law ought to also provide for rehabilitation process for bankrupt persons, if possible. [50]

D. Privacy and Data Protection

D. 1. Confidentiality and Security of Customers' Information

a. The banking transactions of any bank customer should be kept confidential by his or her bank.

b. The law should require a bank to ensure that it protects the confidentiality and security of the personal data of its customers against any anticipated threats or hazards to the security or integrity of such information, as well as against unauthorized access.

The confidentiality of identifiable personal information is protected under several international guidelines and directives. These include the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (Article 2 Scope of Guidelines), the EU Directive on the Protection of Individuals with regard to the Processing of Personal Data 1995/46/*EC, and the APEC Privacy Framework (Part ii, Scope).*

D. 2. Sharing Customer Information

a. A bank should inform its customers in writing:

   i. of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and

   ii. as to how it will use and share the customer's personal information.

b. Without the customer's prior written consent, a bank should not 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 by a third party of any banking-specific information regarding a customer of a bank.

The EC creates legal security by publishing standardized clauses and model contracts (see Commission Staff Working Document on the Implementation of the Commission Decisions on Standard Contractual Clauses for the Transfer of Personal Data to Third Countries 2001/497/*EC and* 2002/16/*EC). For information processing and sharing, this could serve as an example for a personal data protection agency.*

D. 3. Permitted Disclosures

The law should provide for:

i. the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;

ii. rules on what the government authority may and may not do with any such records;

iii. the exceptions, if any, that apply to these rules and procedures; and

iv. the penalties for the bank and any government authority for any breach of these rules and procedures.

Each consumer should be informed in plain and understandable language about what can be disclosed by his or her bank before concluding any contract with the bank. This holds as well for all co-borrowers and personal guarantors. Again, the personal data protection agency should play an important role in educating the public about credit information sharing. Examples can be derived from the FTC and the UK Information Commissioner's Office (ICO).

D. 4. Credit Reporting

a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.

b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.

c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.

d. In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection.

e. Proportionate and supportive consumer rights should include the right of the consumer:

   i. to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;

   ii. to access his or her credit report free of charge (at least once a year), subject to proper identification;

   iii. to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;

   iv. to be informed about all inquiries within a period of time, such as six months;

   v. to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;

   vi. to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and

   vii. to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.

f. The credit registries, regulators and associations of banks should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.

Credit reporting systems are designed to reduce credit risk and improve access to credit by keeping record of consumers' credit behavior. Transparency of credit reporting systems is important for good governance of these systems. At the same time, controls should exist to

protect personal data. Credit reporting is becoming an ever more pervasive activity that affects a consumer's economic life by determining the extent of his or her access, if any, to finance and the terms of any eventual loan agreement that he or she may receive.

Public policy should find the right balance between consumer data protection and the economic rationale of processing personal information. The Good Practice incorporates the General Principles for Credit Reporting, developed by the Credit Reporting Standards Setting Task Force, coordinated by the World Bank.

E. Dispute Resolution Mechanisms

E. 1. Internal Complaints Procedure

a. Every bank should have in place a written complaints procedure and a designated contact point 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 and an indication in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure.

b. Within a short period of time following the date a bank receives a complaint, it should:

   i. acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and

   ii. 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. The bank should also inform the customer/complainant of the availability of the services of a financial ombuds service or other form of alternative dispute resolution.

f. 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 should not require, however, that a complaint be in writing.

g. A bank should maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.

h. The 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.

i. The bank should make these records available for review by the banking supervisor or regulator when requested.

Internal complaints procedures act as the first line of possible relief for any aggrieved customer and ensure that disputes are resolved in-house as much as possible. Robust in-house complaints procedures improve customer relationships, increase trust in the banking system and reduce the cost of adjudication. Thus, they are important components of consumer protection.

Many banking supervisors deal with customer complaints based upon the code of conduct, if any, or through their general supervisory power. For instance, banking supervisors in Asia leave complaint forms in bank branches so that consumers will send their complaints directly to them. Some supervisors have a special unit dedicated to deal with consumer complaints against supervised banks, even if the objectives of the banking supervisor do not explicitly mention consumer protection as a mandate. Guidance on this Good Practice derives from the European Commission Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, 2001/310/EC.

E. 2. Formal Dispute Settlement Mechanisms

a. A system should be in place that allows customers of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of one or more of customers is not resolved in accordance with the procedures outlined in E. 1 above.

b. The existence of the banking ombudsman or equivalent institution and basic information relating to the process and procedures should be made known in every bank's Terms and Conditions referred to in B. 7 above.

c. Upon the request of any customer of a bank, the bank should make available to the customer the details of the banking ombudsman or equivalent institution, and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions.

d. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.

e. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.

Few customers have the knowledge to realize that their rights have been infringed and, even if they are aware of the infringement, they typically have very few avenues to pursue their claims. Thus, as indicated in E. 1 above, banks should be mandated to have an internal dispute resolution or complaint handling mechanism. Unless there are voluntary consumer associations that have the resources and skills to assist individuals with their complaints or legal actions against their banks, consumers do not have many venues to seek redress. The absence of small claims courts, as is the case in many countries, prevents an affordable means for the average customer to bring action against banks.

Thus, more and more banking systems around the world are seeking to establish an adequately resourced office of Ombudsman to deal expeditiously, independently, professionally and inexpensively with consumer disputes that do not get resolved internally by banks. The establishment and sustainability of such offices are now generally regarded as fundamental requirements for sound consumer protection. An Ombudsman can also identify complaints that are few in number but high in importance for consumer confidence in the financial system, thereby enabling the relevant authorities to take effective action to remedy the situation.

Without clear codes of conduct and standardized contracts, however, it becomes difficult for the Ombudsman's office to perform its role effectively. In many countries, the code of conduct (that is binding on all banks) forms the basis for the Ombudsman's jurisdiction

and provides guidance in the resolution of disputes.

E. 3. Publication of Information on Consumer Complaints

a. Statistics and data of customer complaints, including those related to a breach of any code of conduct of the banking industry should be periodically compiled and published by the ombudsman, financial supervisory authority or consumer protection agency.

b. Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services so as, among other things, to reduce the sources of systemic consumer complaints and disputes.

c. Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.

Apart from providing useful quantitative information, statistics also provide the tools needed for predictions and forecasting that form essential input for policy decision-making. However, the collection of statistics and data alone is not sufficient. Publication of the statistics and data is required to inform the public of common problems affecting consumers and to increase the knowledge and awareness of consumers.

By analyzing the statistics and data, regulators and banks can identify recurring problems and areas of weakness in banking practices. They can then take steps to deal with the source of the problems. The analysis is also critical for regulators to identify the correlation between the issues raised in the consumer complaints and systemic issues or weaknesses that may affect the soundness of the banking system itself.

F. Guarantee Schemes and Insolvency

F. 1. Depositor Protection

a. The law should ensure that the regulator or supervisor can take necessary measures to protect depositors when a bank is unable to meet its obligations including the return of deposits.

b. If there is a law on deposit insurance, it should state clearly:

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;

vi. each event that will trigger a payout from this fund to any class of those insured;

vii. the mechanisms to ensure timely payout to depositors who are insured; and

viii. the circumstances when insured depositors would be denied payment of their deposits.

c. On an on-going basis, the deposit insurer should directly or through insured banks or the association of insured commercial banks, if any, promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations.

d. Public awareness should, among other things, educate the public on the financial instruments and institutions covered by deposit insurance, the coverage and limits of deposit insurance and the reimbursement process.

e. The deposit insurer should work closely with member banks and other safety-net participants to ensure consistency in the information provided to consumers and to maximize public awareness on an ongoing basis.

f. The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.

Policymakers have choices regarding how they can protect depositors and contribute to financial system stability. Explicit, limited-coverage deposit insurance (a deposit insurance system) has become the preferred choice compared to reliance on implicit protection. A deposit insurance system clarifies the authority's obligations to depositors, limits the scope for discretionary decisions, can promote public confidence, helps to contain the costs of resolving failed institutions, and can provide an orderly process for dealing with bank failures.

The introduction or the reform of a deposit insurance system can be more successful when a country's banking system is healthy and its institutional environment is sound. In order

to be credible, a deposit insurance system needs to be part of a well-constructed financial system safety net, properly designed and well implemented. It also needs to be supported by strong prudential regulation and supervision, sound accounting and disclosure regimes, and the enforcement of effective laws. An effective deposit insurance system should also be supported by a high level of public awareness about its existence, its benefits and its limitations. A deposit insurance system should be able to deal with a limited number of simultaneous bank failures, but the resolution of a systemic banking crisis requires that all financial system safety-net participants work together effectively. The BIS Core Principle 23 *issued in September* 2005, *the EU Directive on Deposit Guarantee Schemes* 1994/19/*EC*, *and the key conclusions of the APEC Policy Dialogue on Deposit Insurance in* 2005 *provide guidance for this Good Practice.* [51]

F. 2. Insolvency

a. Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.
b. The law dealing with the insolvency of banks should provide for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.

The BIS Supervisory Guidance on Dealing with Weak Banks and other international guidelines stated in the annotation of F. 1 *above provide the background for this Good Practice.*

G. Consumer Empowerment & Financial Literacy

G. 1. Broadly based Financial Literacy Program

a. A broadly based program of financial education and information should be developed to increase the financial literacy of the population.
b. A range of organizations, including those of the government, state agencies and non-government organizations, should be involved in developing and implementing the financial literacy program.
c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national

financial literacy program.

Financial education, information and guidance can help consumers to budget and manage their income, to save, invest and protect themselves against risks, and to avoid becoming victims of financial fraud and scams. As financial products and services become more sophisticated and households assume greater responsibility for their financial affairs, it becomes increasingly important for individuals to manage their money well, not only to help secure their own and their family's financial well-being, but also to facilitate the smooth functioning of financial markets and the economy.

According to OECD analysis, many people have a poor understanding of the financial issues that affect their lives. OECD countries have agreed on new Good Practices on financial education relating to private pensions and insurance, which call on governments and businesses to work together to improve financial literacy in order to give people the tools they need to secure their future.[52] *Important conferences and seminars have been organized to raise awareness on this issue, including the International Conference on Financial Education (New Delhi, September* 2006), *the G8 Conference on Improving Financial Literacy (Moscow, November* 2006), *the International Seminar on Risk Awareness and Education on Insurance Issues (Istanbul, April* 2007), *the International Forum on Financial Consumer Protection and Education (Budapest, October* 2007), *the OECD-US Treasury International Conference on Financial Education (Washington, D. C., May* 2008), *the OECD-Bank Indonesia International Conference on Financial Education (Bali, October* 2008), *the OECD-IEFP Symposium on Financial Education (May* 2009), *the OECD-Brazilian International Conference on Financial Education (December* 2009), *the OECD-Reserve Bank of India Workshop on Delivering Financial Literacy: Challenges, Approaches and Instruments (Bangalore, March* 2010), *the OECD-Bank of Italy Symposium on Financial Literacy: Improving Financial Education Efficiency (Rome, June* 2010), *the OECD-Banque du Liban International Conference on Financial Education: Building Financially Empowered Individuals (Beirut, October* 2010) *and the FCAC-OECD Conference on Financial Literacy: Partnering to Turn Financial Literacy into Action (Toronto, May* 2011). *In order to assist policymakers, the OECD has established the*

International Gateway for Financial Education to describe, analyze and assess the effectiveness of programs to improve financial literacy.

The EU has also recognized the importance of improving people's financial literacy[53]*. The term "financial literacy" means the ability to manage one's money, keep track of one's finances, plan ahead, choose appropriate financial products and services and stay informed about financial matters*[54]*. Financial literacy initiatives are complementary to, not a substitute for, consumer protection regulation. The most effective ways of improving people's financial literacy vary according to factors such as their age, income level, educational attainment and culture. A range of approaches are needed which reflect the diversity of people's needs and aptitudes.*

These approaches should focus on people's attitudes, as well as on financial education, information and skills. For example, it is not sufficient that people know how to save; they also need to understand the benefits that savings can bring them and their families, to recognize that it is worth deferring current expenditure, and to be motivated to set aside money on a regular basis. It is also important to cover basic issues such as budgeting, saving, planning ahead and choosing products, rather than merely to provide information about particular types of financial products and services.

There are many bodies-from government, state agencies and non-governmental organizations-which have an interest in improving people's financial literacy. They should work together on this issue, so that there is a range of initiatives which, over time, will help to improve people's ability to manage their personal finances.

The government should appoint a ministry (for example, the Ministry of Finance), the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial literacy program. This organization should provide drive and momentum; secure the active engagement of a broad range of other organizations; and ensure that priorities are identified and that unnecessary duplication is avoided, so that the most cost-effective use is made of available resources.

G. 2. Using a Range of Initiatives and Channels, including the Mass Media

a. A range of initiatives should be undertaken by the relevant ministry or institution to

improve people's financial literacy regarding banking products and services.

b. The mass media should be encouraged by the relevant ministry or institution to provide financial education, information and guidance to the public regarding banking products and services.

c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, banking regulators, the banking industry and consumer associations in the provision of financial education, information and guidance regarding banking products and services.

A range of financial literacy initiatives should be developed. These can include: (i) financial education programs for schoolchildren; (ii) programs aimed at young people, such as university and college students; (iii) financial education presentations and other facilitated learning in workplaces and local communities (supported by "train the trainer" programs); (iv) publications and websites; and (v) television, radio and dramatic productions.

Financial education can be provided in schools so that schoolchildren gain the understanding, skills and confidence to manage their money as they take on responsibility for managing their own financial affairs. There is unlikely to be room in the curriculum for financial education to be included as a separate subject. However, financial education can be incorporated into other subjects, such as mathematics, life skills and citizenship curriculum.

Young people are more likely to find financial education engaging where it is interactive (for example, by involving research and problem-solving) and where it relates to issues they regard as relevant to their lives in the reasonably foreseeable future[55]*. So, for example, older students are more likely to react positively to issues regarding saving for a holiday or for a car or to pay for their education, than issues relating to pensions or mortgages.*

The media-particularly television and radio-can play an important role in providing financial education and information. Regulators and/or industry associations can support initiatives by providing the media with information about current concerns and about

different types of financial services and products.

G. 3. Unbiased Information for Consumers

a. Regulators and consumer associations 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 banking products and services.

b. The relevant authority or institution should encourage efforts to enable consumers to better understand the products and services being offered to consumers by banking institutions, such as providing comparative price information and undertaking educational campaigns.

c. The relevant authority or institution should adopt policies that encourage non-governmental organizations to provide consumer awareness programs to the public regarding banking products and services.

Consumers and potential consumers are more likely to have the confidence to purchase financial products and services which are suitable for them if they have access to information which is reliable and objective. Financial regulators are well-placed to provide this. For example, the UK Financial Services Authority's consumer website Money Made Clear includes information on a range of products[56]*; provides a facility to download or order leaflets (which can also be ordered by telephone)*[57]*; and includes impartial tables*[58] *which people can use to compare the costs and some other features of similar financial products from different companies. In addition, global, regional and national data-bases of remittance prices provide valuable comparable information to consumers on the costs of sending remittances.* [59]

G. 4. Consulting Consumers and the Financial Services Industry

a. The relevant authority or institution should consult consumers, banking associations and banking institutions to help them develop financial literacy programs that meet banking consumers' needs and expectations.

b. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.

In developing financial literacy programs, consultations will be helpful in order to take

into account the perspectives of consumers, as well as those of financial services firms and/or their trade associations. In countries where there are informed and effective consumer organizations, those organizations will naturally need also to be consulted.

To ensure that consumers are actively involved in the policy development process, it is recommended that the government or private sector organizations or both provide appropriate funding to non-governmental organizations for this purpose and create a special entity to lobby on behalf of consumers in the policy-making process.

It can also be very beneficial to test proposed initiatives with end-users (that is, a sample of the type of person that the initiative in question is intended to reach) to try to ensure that the initiative will have the intended impact. Among the techniques for doing so are the use of focus groups and pilot studies.

G. 5. Measuring the Impact of Financial Literacy Initiatives

a. The financial literacy of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time.
b. The effectiveness of key financial literacy initiatives should be evaluated by the relevant authorities or institutions from time to time.

In order to measure the impact of financial education and information, the financial literacy of a sample of the population should be measured by means of large-scale market research that gets repeated from time to time. Initiatives will take some time to have a measurable impact on the financial literacy of a population, so it is likely to be sufficient to repeat the survey every four to five years.

In addition, key financial literacy initiatives should be evaluated to assess their impact on those people they are intended to reach. This can help policymakers and funders to decide, on an informed basis, which initiatives should be continued (and perhaps scaled up) and which should be modified or discontinued.

H. Competition and Consumer Protection

H. 1. Regulatory Policy and Competition Policy

Regulators and competition authorities should be required to consult one another for the

purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.

In many countries, general legislation, including consumer laws as well as the EU competition policy, requires protection of the economic interests of consumers. This includes, for instance, protection from misleading advertising and unfair contract terms. All business practices that restrict, prevent or distort competition are subject to scrutiny. [60]

H. 2. Review of Competition

Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should:

i. monitor competition in retail banking;

ii. conduct, and publish for general consumption, periodic assessments of competition in retail banking (such as the range of interest rates across banks for specific products); and

iii. make recommendations publicly available on enhancing competition in retail banking.

See annotation of good practice H. 1 *above.*

Many international guidelines provide guidance for the development of this Good Practice including, the EC Treaty's Article 102; *the EC's Sector Inquiry under Art* 17 *of Regulation* 1/2003 *on retail banking; the OECD's non-binding Recommendations on competition law and policy; as well as the OECD's Best Practices on information exchange in cartel investigations. The OECD's Recommendations and Best Practices are often catalysts for major change by governments (see Table* 2 *for an overview of these recommendations and best practices).*

H. 3. Impact of Competition Policy on Consumer Protection

The competition authority and the regulator should evaluate the impact of competition policies on consumer welfare, especially regarding any limitations on customer choice and collusion regarding interest and other charges and fees.

While competition authorities monitor the compliance of their policies and enforce them, not many of them carry out systematic evaluation of the impact of the policies on consumer welfare or well-being. Availability of choice and reasonable fees and charges increases the well-being of consumers. Unless the impact evaluation is done, the outcome of the competition policy cannot be measured.

An overview of the main international and US and UK consumer protection legislation and regulation for the banking sector is presented in Table 2.

Table 2 Overview of Consumer Protection Regulation for the Banking Sector

International Institution or National Government	Laws, Regulations, Directives and Guidelines
BIS-Bank for International Settlements	Basel Committee on Banking Supervision, Core Principles for Effective Banking Supervision, September 1997, revised October 2006 Supervisory Guidance on Dealing with Weak Banks, 2002
BIS-World Bank	General Principles for International Remittance Services, 2007
United Nations	Guidelines for Consumer Protection (as expanded in 1999)
OECD-Organisation for Economic Cooperation and Development	Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, 1980 Guiding Principles for Regulatory Quality and Performance, 2005 Best Practices for the Formal Exchange of Information Between Competition Authorities in Hard Core Cartel Investigations, 2005 Recommendation of the Council concerning Merger Review, 2005 Recommendation of the Council concerning Structural Separation in Regulated Industries, 2001 Recommendation of the Council concerning Effective Action against Hard Core Cartels, 1998 Recommendation of the Council concerning Co-operation between Member Countries on Anticompetitive Practices affecting International Trade, 1995
APEC-Asia Pacific Economic Cooperation	APEC Privacy Framework, 2005 APEC Policy Dialogue on Deposit Insurance: Key Policy Conclusions, 2004
EU-European Union	Directive on Consumer Credit, 1987/102/EEC, as amended Directive on Credit Agreements for Consumers, 2008/48/EC, repealing Directive 87/102/EEC

concluded

International Institution or National Government	Laws, Regulations, Directives and Guidelines
EU-European Union	Directive on Consumer Protection in the Indication of the Prices of Products offered to Consumers, 1998/6/EC Directive on Unfair Terms in Consumer Contracts, 1993/13/EEC Directive concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, 2005/29/EC Directive on Misleading and Comparative Advertising, 2006/114/EEC Directive on the Distance Marketing of Consumer Financial Services, 2002/65/EC Directive on Payment Services in the Internal Market, 2007/64/EC Directive on Deposit Guarantee Schemes, 1994/19/EC Directive on Protection of Consumers in Respect of Distance Contracts, 1997/7/EC Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such data, 1995/46/EC Commission Recommendation on the Principles for Out-of-court Bodies involved in the Consensual Resolution of Consumer Disputes, 2001/310/EC Communication from the Commission - Sector Inquiryunder Art 17 of Regulation 1/2003 on Retail Banking, COM (2007) 33 final Recommendation 1998/257/EC: out-of-court settlement of consumer disputes Directive on Electronic Money 2009/110/EC Commission Staff Working Document on the Implementation of the Commission Decisions on Standard Contractual Clauses for the Transfer of Personal Data to Third Countries 2001/497/EC and 2002/16/EC, SEC (2006) 95 Treaty establishing the European Community (EC Treaty), 1957 as amended
FATF-Financial Action Task Force	Forty Recommendations on Money Laundering, 2003 Nine Special Recommendations on Terrorism Financing, 2001 as expanded in 2004
US-United States of America	Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010 Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act of 2009), 2009 Truth in Lending Act (TILA), 1968 Truth in Savings Act, 1991 Check Clearing for the 21st Century Act, 2003 Fair Debt Collection Practices Act, 1977

concluded

International Institution or National Government	Laws, Regulations, Directives and Guidelines
US-United States of America	Regulation E-Electronic Fund Transfers, 1966 Federal Trade Commission Act, 1914 Equal Credit Opportunity Act, 1974
UK-United Kingdom	Financial Services and Markets Act, 2000 Consumer Credit Act, 1974
World Bank	General Principles for Credit Reporting, 2011

II. SECURITIES SECTOR

Consumer protection in the securities sector has been recognized as critical to the development of the depth and integrity of the securities[61] markets for many years. The relationship between an entity providing investment services and products to customers, such as an intermediary, investment adviser or collective investment undertaking (CIU)[62] and its customers is the basis for the fair, sound and efficient functioning of the securities markets. The maintenance and enforcement of the integrity of that relationship has been the subject of governmental regulatory action and international cooperation for many years and is the basis for the development of these Good Practices.

A. Investor Protection Institutions

A. 1. Consumer Protection Regime

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 the implementation and enforcement of investor protection rules.

a. There should be specific legal provisions which create an effective regime for the protection of investors in securities.

b. 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.

A general consensus has developed that investor/consumer protection in the securities markets requires a legal framework and should be regulated by a governmental agency. Source: *IOSCO Principles* 1-5.

A. 2. Code of Conduct for Securities Intermediaries, Investment Advisers and Collective Investment Undertakings

a. Securities intermediaries, investment advisers and CIUs should have a voluntary code of conduct.

b. If such a code of conduct exists, securities intermediaries, investment advisers and CIUs should publicize the code to the general public through appropriate means.

c. Securities Intermediaries, Investment Advisers and CIUs should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.

In addition to the governmental regulation, market professionals in the securities market should have a code of conduct that can provide guidance for market professionals and a means by which their customers can evaluate them. Sources: *IOSCO Rules* 25-29; *CESR Standard* 10 *and Rule* 17; *FINRA Manual incorporating NASD Rules Section* 2000 *Business Conduct and FIMM, Code of Ethics and Standards of Professional Conduct for the Unit Trust Industry.*

A. 3. Other Institutional Arrangements

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.

A fair and efficient judicial system is critical for the functioning of any regulatory system. An open and free discussion regarding the financial system in the information media is also critical for a full evaluation of the extent to which a financial system

provides protection for investors. In addition, private sector organizations are an important means of disseminating information to consumers in a cost effective manner and should be encouraged within the context of the legal system. Sources: FINRA Manual incorporating NASD Rules Sections 2000 *and* 3000, *and SEC Securities and Exchange Act of* 1934 *Section* 15*A.*

A. 4. Licensing

a. All legal entities or physical persons that, for the purpose of investment in financial instruments, solicit funds from the public should be obliged to obtain a license from the supervisory authority.

b. Legal entities or physical persons that give investment advice and hold customer assets should be licensed by the securities supervisory authority.

c. If a jurisdiction does not require licensing for legal entities or physical persons that give only investment advice, such persons should be supervised by an industry association or self-regulatory organization and the anti-fraud provisions of the securities laws or other consumer laws should apply to the activity of such persons.

A key measure in preventing the emergence of financial pyramids is the requirement for licensing of all entities that contact the public and solicit funds for investment or speculation. However, a distinction should be made between private solicitations of friends and family versus a public solicitation to an indeterminate number of investors. For the latter, different jurisdictions use different thresholds to identify what is an "indeterminate number", but the threshold is generally between 15 *and* 50 *investors. All persons, legal and physical, that solicit funds from more than* 50 *investors should be required to be registered with the financial supervisory agency and be obliged to obtain a license for their activities.*

Legal entities and physical persons that provide investment advice but don't intermediate securities have become a serious issue for the protection of investors. If such persons hold customer assets, they should be licensed by the securities authority. If they only give advice, the oversight of such persons varies greatly between jurisdictions. A consensus has developed that there should be oversight and ethical standards for these persons. This can be done by securities authorities, self-regulatory organizations, or industry associations. In

order for this oversight to be effective, at the least, such persons should be subject to the anti-fraud provisions of the securities and consumer protection laws.

B. Disclosure and Sales Practices

B. 1. General Practices

There should be disclosure principles that cover an investor's relationship with a person offering to buy or sell securities, buying or selling securities, or providing investment advice, in all three stages of such relationship: pre-sale, point of sale, and post-sale.

a. The information available and provided to an investor should inform the investor of:
   i. the choice of accounts, products and services;
   ii. the characteristics of each type of account, product or service;
   iii. the risks and consequences of purchasing each type of account, product or service;
   iv. the risks and consequences of using leverage, often called margin, in purchasing or selling securities or other financial products; and
   v. the specific risks of investing in derivative products, such as options and futures.
b. A securities intermediary, investment adviser or CIU should be legally responsible for all statements made in marketing and sales materials related to its products.
c. A natural or legal person acting as the representative or tied-agent of a securities intermediary, investment adviser or CIU should disclose to an investor whether the person is licensed to act as such a representative and who licenses the person.
d. If a securities intermediary, investment adviser or CIU delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person.

Disclosure of all relevant information to a customer of a securities intermediary, investment adviser or CIU is one of the most important aspects of consumer protection in

the securities sector. Full information about the services provided to the customer is critical in giving the customer the ability to make an informed decision as to which intermediary, adviser or CIU to use. Sources: (*a*) *IOSCO Principle* 23 *and Guidelines on Standards of Conduct for Financial Advisers and Representatives, Monetary Authority of Singapore; CESR Standards* 37-39; (*b*) *IOSCO Principle* 1; (*c*) *CESR Standard* 35 *and MiFID Article* 19; *and* (*d*) *SEC Form N-1A Registration of Open-Ended Investment Management Companies.*

B. 2. Terms and Conditions

a. Before commencing a relationship with an investor, a securities intermediary, investment adviser or CIU should provide the investor with a copy of its general terms and conditions, as well as any terms and conditions that apply to the particular account.

b. The terms and conditions should always be in a font size and spacing that facilitates easy reading.

c. The terms and conditions should disclose:

i. details of the general charges;

ii. the complaints procedure;

iii. 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;

iv. the methods of computing interest rates paid or charged;

v. any relevant non-interest charges or fees related to the product;

vi. any service charges;

vii. the details of the terms of any leverage or margin being offered to the client and how the leverage functions;

viii. any restrictions on account transfers; and

ix. the procedures for closing an account.

This sets out the general disclosure requirements of B. 1. in more detail regarding the specific contract that the customer enters into. The point-of-sale disclosure is recognized as

the critical moment in sales disclosure due to its immediate impact on the customer to make the decision to invest. Sources: *IOSCO Principle* 23, *CESR Standards* 78-79 *and Rule* 80, *and MiFID Article* 19.

B. 3. Professional Competence

Regulators should establish and administer minimum competency requirements for the sales staff of securities intermediaries, investment advisers and CIUs, and collaborate with industry associations where appropriate.

Since the sales person is the direct link between the intermediary, adviser or CIU and the customer, the sales persons should be properly qualified and knowledgeable about the products that they are selling. Sources: *MiFID Article* 9 (*only requires managers of investment firms to be qualified*) *and FINRA Manual incorporating NASD Rules* 1030-1032.

B. 4. Know Your Customer[63]

Before providing a product or service to an investor, a securities intermediary, adviser 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.

There is a general consensus that a securities intermediary, investment adviser or CIU should obtain information from their customers so that they can deal with them in a manner appropriate to their circumstances. Sources: *IOSCO Principle* 23, *CESR Standard* 62 *and Rules* 63-70, *MiFID Article* 19 *and FINRA Manual incorporating NASD Rule* 2310.

B. 5. Suitability

A securities intermediary, investment adviser 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.

There is a general consensus that a securities intermediary should warn customers that

certain types of investments are not suitable for them based on their financial situation and investment goals. Sources: IOSCO Principle 23, *CESR Standards* 72-74 *and Rules* 75-77, *MiFID Article* 19 *and FINRA Manual incorporating NASD Rule* 2310 *provide background for this Good Practice.*

B. 6. Sales Practices

a. Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, investment advisers, CIUs and their sales representatives should:
   i. not use high-pressure sales tactics;
   ii. not engage in misrepresentations and half-truths as to products being sold;
   iii. fully disclose the risks of investing in a financial product being sold;
   iv. not discount or disparage warnings or cautionary statements in written sales literature; and
   v. 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.
b. Legislation and regulations should provide sanctions for improper sales practices.
c. The securities supervisory agency should have broad powers to investigate fraudulent schemes.

There is a general consensus that the obligation to deal fairly and honestly with customers includes the obligation to use sales practices that do not deceive, defraud or unduly pressure customers to make investment decisions. This obligation should be enforced with legal sanctions in order to make the obligation effective. Source: General duty IOSCO Principle 23 *and MiFID Article* 19. *More specifically, for point (a) above, the following guidelines have been consulted: CESR Standard* 18 *Rule* 23; *CESR Standard* 29 *Rule* 31 *and FINRA Rule* 2020; *CESR Standards* 51 *and* 52, *Rules* 53 *and* 54; *and Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission of Hong Kong* 2010.

The securities supervisory agency should have broad powers to investigate Ponzi and other pyramid schemes and then assist the criminal authorities in prosecution. The law needs to identify a multi-level sales scheme as a pyramid scheme if: (1) the scheme requires a

payment for the right to receive compensation for recruiting new salespersons into the plan; (2) *there is inventory loading*, *that is*, *new salespersons should purchase an unreasonable quantity of a product or service*; *and* (3) *purchases of services are required as a condition of entry into the scheme. Sources*: *IOSCO Principles* 8 *and* 12, *CESR Standard* 35.

B. 7. Advertising and Sales Materials

a. All marketing and sales materials should be in plain language and understandable by the average investor.

b. Securities intermediaries, investment advisers, CIUs and their sales representatives should ensure their advertising and sales materials and procedures do not mislead the customers.

c. Securities intermediaries, investment advisers and CIUs should disclose in all advertising, including print, television and radio, the fact that they are regulated and by whom.

Disclosure of adequate information in advertising, *marketing and sales materials is another important aspect of consumer protection in the securities sector. Sources*: (*a*) *CESR Standard* 25; (*b*) *CESR Standard* 29 *and Rule* 31, *FINRA Manual incorporating NASD Rule* 2210, *and Securities Board of India Chapter* 13, *Master Circular for Mutual Funds* 2011; *and* (*c*) *CESR Standard* 35 *and MiFID Article* 19.

B. 8. Relationships and Conflicts

a. A securities intermediary, investment adviser or CIU should disclose to its clients all relationships that it has which impact on the client's account, such as banks, custodians, advisers or intermediaries which are used to maintain and manage the account.

b. A securities intermediary, investment adviser or CIU should disclose all conflicts of interest that it has with the client and the manner in which the conflict is being managed.

In order for investors to evaluate the services being offered to them, *there should be full transparency as to the identity of the market institutions that will have an impact on their*

account. To the extent that any of these institutions and legal entities and physical persons associated with them have conflicts with the investor, such conflicts and the manner in which they are being dealt with should be disclosed to the investor. Sources: SEC Investment Advisers Act Rule 204-3; *EU UCITS Directive Article* 14; *EU MiFID Directive Article* 18.

B. 9. Specific Disclosures by CIUs

a. CIUs should disclose to prospective and existing investors:

i. the CIU's policies with regard to frequent trading and the risks to investors from such policies;

ii. any inducements that it receives to use particular intermediaries or other financial firms, such as "soft-money" arrangements; and

iii. a fair and honest description of the performance of the CIU's investments over several different periods of time that accurately reflect the CIU's performance.

b. In addition, a CIU should provide a Key Facts Statement for each fund that it is offering to the client that succinctly explains the fund in clear language. Such document is in addition to any other disclosure documents required by law.

The ability of clients to engage in frequent trading in a CIU can have an effect on long-term investors. A CIU's policies regarding such practices and the attendant risks would have an impact on an investor's decision to trade and should be disclosed to the investor. Source: SEC Form N-1A. (b) Inducements paid to a CIU or adviser to use market services, such as brokerage services, sometimes referred to as — soft-money: payments could create a conflict of interest and affect the ability of the CIU or adviser in giving impartial investment advice. Such relationships should be disclosed to investors to enable them to evaluate the services of the CIU or Adviser properly. Sources: EU MiFID Directive Article 26; *SEC Investment Advisers Rule* 204-3. *(c) To avoid "cherry picking" the best performance periods for a CIU, performance should be given for several event-neutral periods of time to give an investor the ability to evaluate the CIU over short and long holding periods. Sources: SEC Form N-1A and Rule* 482 *under the Securities Act of* 1933.

In order to give a clearer picture as to the goals, management and performance of a CIU, a general consensus has developed that a short, clear statement of key information should be given to an investor before purchasing or selling a share or unit of a CIU. Sources: EU UCITS Directive Article 78; *SEC Form N-1A and Hong Kong SFC Handbook for Unit Trusts and Mutual Funds Chapter* 6.

B. 10. Specific Disclosures by Investment Advisers

a. Investment advisers should disclose to prospective and existing clients:

   i. whether the investment adviser is also registered in another capacity and whether the adviser deals with the client's account in the second registered capacity; and

   ii. whether the financial instruments that the investment adviser is recommending are held in the adviser's own inventory or the inventory of a legal or natural person related to the adviser-and if they will be bought from, or sold to, its own inventory or the inventory of a related party.

b. An investment adviser should provide prospective and existing clients with a Key Facts Statement for each product or service that is being offered or sold to the client that succinctly explains the product or service in clear language.

Many investment advisers have brokerage licenses in addition to their adviser's licenses and will deal with their advisee clients while in their capacity as a broker. This dual relationship should be disclosed to the client so that the client can evaluate the objectiveness of the advice given. Source: SEC Investment Advisers Act Section 206 (3).

In order to provide a clear, concise statement as to the services that a provider is offering, a key facts statement as to the adviser's services and products should be given to the client to allow the client to make a well informed decision as to whether to engage the adviser. Source: MAS, Financial Advisers Act, Guidelines for Standards of Conduct of Financial Advisers and Representatives, Section 6.

C. Customer Account Handling and Maintenance

C. 1. Segregation of Funds

Funds of investors should be segregated from the funds of all other market participants.

In order to protect customer funds in the event of insolvency of a securities intermediary, investment adviser, CIU or other market participants, customer funds should be segregated from the assets of the intermediary, adviser or CIU in a manner to protect the assets from being a part of the bankruptcy estate of the intermediary, adviser and CIU. Sources: IOSCO Principle 23; *MiFID Article* 13 (7) *and* (8) *that provide arrangements to safeguard client funds, but no statement of segregation; FINRA Manual incorporating NASD Rule* 2330; *and SEC Securities and Exchange Act of* 1934 *and Regulation* 15*c*3-3 *promulgated thereunder.*

C. 2. Contract Note

a. 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.

b. The contract note should disclose the commission received by the securities intermediary, CIU and their sales representatives, as well as the total expense ratio (expressed as total expenses as a percentage of total assets purchased).

c. In addition, the contract note should indicate the trading venue where the transaction took place and whether (i) the intermediary for the transaction acted as a broker in the trade, (ii) the intermediary or CIU acted as the counterparty to its customer in the trade, or (iii) the trade was conducted internally in the intermediary between its clients.

Customers should have immediate information as to any transactions in their accounts as well as the terms of the transactions. This enables customers to verify whether the transaction was executed pursuant to the authorization given by the customer. Waiting for such information for a long time period reduces the ability of the customer and intermediary or CIU to correct any mistakes in the transaction. Sources: IOSCO Principle 23, *CESR Standard* 55 *and Rules* 58 *and* 59, *FINRA Manual incorporating NASD Rule* 2230, *and SEC Investment Adviser Rule* 206 (3) -2.

C. 3. Statements

a. 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.

i. Timely delivery of periodic securities and CIU statements pertaining to the accounts should be made.

ii. Investors should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.

iii. When an investor signs up for paperless statements, such statements should also be in an easy-to-read and readily understandable format.

b. If a legal or natural person who provides only investment advice to customers also holds client assets, the client statements should be prepared by and sent from the custodian for the assets and not from the investment adviser.

Customers need access to the information regarding their accounts. Providing customers with regular statements on a periodic basis (depending on the activity in the account) has been generally accepted as the best means to provide this information. Sources: IOSCO Principle 23, *CESR Standard* 56 *and Rule* 59; *FINRA Manual incorporating NASD Rule* 2340; *NASD Notice to Members* 98-3 *Electronic Delivery of Information between Members and their Customers.*

Customers should have confidence that the information that an adviser is giving them is accurate. Consequently, the account statements for the customer accounts should be sent directly from the custodian of the funds to the clients to avoid the possibility of incorrect information being given to clients. Source: SEC Investment Advisers Act Rule 206 (4)-2.

C. 4. Prompt Payment and Transfer of Funds

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.

Investors may need immediate access to their funds in order to meet other financial and personal obligations. The delay in payment of account balances or the closing of accounts reduces confidence and the perception of the integrity of the securities markets. Sources: IOSCO Principle 23 *and FINRA Manual incorporating NASD Rule* 11870.

C. 5. Investor Records

a. A securities intermediary, investment adviser or CIU should maintain up-to-date

investor records containing at least the following:

i. a copy of all documents required for investor identification and profile;

ii. the investor's contact details;

iii. all contract notices and periodic statements provided to the investor;

iv. details of advice, products and services provided to the investor;

v. details of all information provided to the investor in relation to the advice, products and services provided to the investor;

vi. all correspondence with the investor;

vii. all documents or applications completed or signed by the investor;

viii. copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services;

ix. all other information concerning the investor which the securities intermediary or CIU is required to keep by law;

x. all other information which the securities intermediary or CIU obtains regarding the investor.

b. 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.

The maintenance of books and records is vital to the proper regulation of intermediaries, CIUs and other market participants, as well as the review of the events in individual customer accounts. Without the maintenance of these records, the regulatory system would be ineffective and customer protection would be minimized. Sources: IOSCO Principle 23; *CESR Standard* 10 *Rule* 15, *requiring the retention of the details of transactions for* 5 *years after the date of the transaction*; *SEC Securities and Exchange Act of* 1934, *and Regulation* 17*a*-3 *thereunder*; *and FINRA Manual incorporating NASD Rule* 3110.

D. Privacy and Data Protection

D. 1. Confidentiality and Security of Customer's Information

Investors of a securities intermediary, investment adviser or CIU have a right to expect

that their financial activities will remain private and not subject to unwarranted private and governmental scrutiny. The law should require that securities intermediaries, investment advisers 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.

A consensus has developed that customers have a right to financial privacy and to be free from unwarranted intrusions into their privacy. Because of the requirement for intermediaries and CIUs to know their customers, securities markets professionals often have some of the largest sources of information regarding the financial situation of their customers. Therefore, it is very important that the intermediaries and CIUs have an obligation to keep the financial information of their clients secure from unwarranted access by internal persons in the intermediary and CIU and from external persons. Sources: EU Directive Concerning Processing Personal Data and Protection of Privacy in the Electronic Communication Sector 2002/58/*EC, and SEC Securities and Exchange Act of* 1934 *and Regulation S-P thereunder.*

D. 2. Sharing Customer's Information

Securities intermediaries, investment advisers and CIUs should:

i. inform an investor of third-party dealings in which they are required to share information regarding the investor's account, such as legal enquiries by a credit bureau, unless the law provides otherwise;

ii. explain how they use and share an investor's personal information;

iii. 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.

Customers should be aware of how information can be shared with third parties and within the various units or subsidiaries of a financial conglomerate. Many of these shared uses can be beneficial for a customer, but a customer should have the right to stop or prohibit such information sharing if the customer does not find such information sharing

to be useful or beneficial to him or her. Sources: EU Directive Concerning Processing Personal Data and Protection of Privacy in the Electronic Communication Sector 2002/58/*EC, and SEC Securities and Exchange Act of* 1934 *and Regulation S-P thereunder.*

D. 3. Permitted Disclosures

a. If there are to be any specific procedures and exceptions concerning the release of customer financial records to government authorities, these procedures and exceptions should be stated in the law.

b. The law should provide for penalties for breach of investor confidentiality.

Governmental regulatory authorities have the need to obtain customer information for regulatory purposes and law enforcement purposes. The instances where this is permitted should be clearly stated in the law, as well as procedures for notification or situations where notification is not required. Enforcement for violation of the privacy rules has to be made effective by civil, administrative and criminal penalties, for violations of the law. Sources: EU Directive Concerning Processing Personal Data and Protection of Privacy in the Electronic Communication Sector 2002/58/*EC, and SEC Securities and Exchange Act of* 1934 *and Regulation S-P thereunder.*

E. Dispute Resolution Mechanisms

E. 1. Internal Dispute Settlement

a. An internal avenue for claim and dispute resolution practices within a securities intermediary, investment adviser or CIU should be required by the securities supervisory agency.

b. Securities intermediaries, investment advisers and CIUs should provide designated employees available to investors for inquiries and complaints.

c. Securities intermediaries, investment advisers 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, registered investment advisers and CIUs comply with their internal procedures on investor protection rules.

Many customer complaints come from misunderstandings or lack of information about

their accounts, which can be cleared up internally with the intermediary, adviser and CIU. Efficient internal procedures should be in place to handle customer complaints fairly and quickly. Sources: IOSCO Principle 23; *CESR Standard* 78 *Rule* 80 *where a procedure exists, such as arbitration; and IOSCO Principles* 1-5.

E. 2. Formal Dispute Settlement Mechanisms

There should be an independent dispute resolution system for resolving disputes that investors have with their securities intermediaries, investment advisers and CIUs.

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, investment adviser 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 on the securities intermediaries and CIUs. The mechanisms to ensure the enforcement of these decisions should be established and publicized.

Retail investors frequently invest small sums and the expense of judicial processes can render any successful claim regarding those sums meaningless. Consequently, it is important for retail investors to have an alternate method of dispute resolution that is quick, efficient and inexpensive so that their rights can be enforced. Sources: MiFID Article 53 *and FINRA Rule* 12000 *Code of Arbitration Procedure for Customer Disputes.*

F. Guarantee Schemes and Insolvency

F. 1. Investor Protection

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, investment adviser 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, investment advisers 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.

Customer funds should be protected in the event of the insolvency of intermediaries and CIUs where their funds are placed. The insolvency proceedings should provide for a fair and rapid mechanism for the pay out of customer funds. Where permitted by law, an investor guarantee fund can provide an independent, effective mechanism for ensuring that investor funds are protected and returned to them promptly. Sources: IOSCO Principle 24, *EU Directive on Investor-Compensation Schemes, and SEC Securities Investor Protection Act of* 1970.

G. Consumer Empowerment & Financial Literacy

G. 1. Broadly Based Financial literacy Program

a. A broadly based program of financial education and information should be developed to increase the financial literacy of the population.

b. Arange of organizations-including government, state agencies and non-governmental organizations-should be involved in developing and implementing the financial literacy program.

c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial literacy program.

Financial education, information and guidance can help consumers to budget and manage their income, to save, invest and protect themselves against risks, and to avoid becoming victims of financial fraud and scams. As financial products and services become more sophisticated and households assume greater responsibility for their financial affairs, it becomes increasingly important for individuals to manage their money well,

not only to help secure their own and their family's financial well-being, but also to facilitate the smooth functioning of financial markets and the economy.

Many organizations in both the public and private sector have an interest in improving people's financial literacy. They should work together on this issue, so that there is a range of initiatives which, over time, will help to drive up people's ability to manage their personal finances.

G. 2. Using a Range of Initiatives and Channels, including the Mass Media

a. A range of initiatives should be undertaken to improve people's financial literacy.

b. This should include encouraging the mass media to provide financial education, information and guidance.

People learn in different ways. The approaches and channels likely to be most effective will vary according to (among other things) people's age, income level, culture and the style of learning with which they are most comfortable. They are unlikely to absorb all relevant information and guidance the first time they see or hear it: providing the information a number of times, and in a variety of different ways, can help to reinforce key messages.

The media is one of the most efficient means of providing education and ongoing information to customers regarding the state of the securities markets and market participants. The regulator should view the media as an effective means of communicating its regulatory activity to a broad cross-section of investors and should provide the media with open access to public, non-confidential information for dissemination to the investing public.

G. 3. Unbiased Information for Investors

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 regarding financial products and services.

The regulator should take an active role in consumer education as part of its role to

protect consumers. Consumers are better able to protect their interests and investments by making informed decisions prior to their investments, rather than engaging in litigation after an investment has gone awry. Source: IOSCO Principle 4.

G. 4. Measuring the Impact of Financial Literacy Initiatives

a. The financial literacy of consumers should be measured through a broad-based household survey that is repeated from time to time.

b. The effectiveness of key financial literacy initiatives should be evaluated.

The financial literacy of a sample of the population should be measured by means of a nationwide household survey that gets repeated from time to time (every four to five years), in order to measure the impact of financial literacy programs. Key financial literacy initiatives should also be evaluated to assess their impact on those people they are intended to reach. This can help policymakers and funders to decide, on an informed basis, which initiatives should be continued or scaled up and which should be modified or discontinued.

An overview of the main international consumer protection legislation and regulation for the securities sector is presented in Table 3.

Table 3 Overview of Consumer Protection Regulation for the Securities Sector

Institution	Laws, Regulations, Directives and Guidelines [64]
IOSCO-International Organization of Securities Commissions	Objectives and Principles of Securities Regulation, September 1998 updated as of February 2008 Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation, October 2003 updated as of February 2008
EU	Directive Concerning Processing Personal Data and Protection of Privacy in the Electronic Communication Sector, 2002/58/EC Directive on Protection of Consumers in Respect of Distance Contracts, 1997/7/EEC Directive on the Distance Marketing of Consumer Financial Services, 2002/65/EC Directive on Misleading and Comparative Advertising, 2006/114/EEC

concluded

Institution	Laws, Regulations, Directives and Guidelines
EU	Directive on Markets in Financial Instruments, 2004/39/EC (MiFID) (currently under revision) Directive on Investor-Compensation Schemes, 1997/9/EC Directive on Undertakings in Collective Investments in Transferrable Securities, 2009/65/EC, recasting 1985/611/EEC (UCITS)
European Securities and Markets Authority (formerly CESR)	CESR, A Proposal for a European Regime of Investor Protection: The Harmonization of Conduct of Business Rules, April 2002
FINRA-US Financial Industry Regulatory Authority	FINRA Manual: FINRA Rules, including NASD Rules and NYSE Rules being incorporated into the FINRA Manual
SEC-US Securities and Exchange Commission	Securities Act of 1933, and regulations promulgated thereunder Securities Exchange Act of 1934, and regulations promulgated thereunder Investment Company Act of 1940, and regulations promulgated thereunder Investment Advisers Act of 1940, and regulations promulgated thereunder Securities Investors Protection Act of 1970, as amended, which created Securities Investors Protection Corporation
CFTC-US Commodity Futures Trading Commission	Commodity Exchange Act
SEBI-Securities Board of India	Master Circular for Mutual Funds 2011
FIMM-Federation of Investment Managers Malaysia	Code of Ethics and Standards of Professional Conduct for the Unit Trust Industry
MAS-Monetary Authority of Singapore	Guidelines on Standards of Conduct for Financial Advisors and Representatives
SFC-Securities and Futures Commission of Hong Kong	Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission 2010

III. INSURANCE SECTOR

While insurance penetration (i. e. premium as a percentage of GDP) is largely

dependent on income levels, insurance markets in many emerging and developing countries now have rapidly growing consumer components, driven by the introduction of compulsory motor and health insurance, links with credit provision and the growth of micro-insurance technology. Due to a history of weak regulation and misuse for taxation and capital transfer purposes, or even direct fraud, the insurance sector has also sometimes attracted less than desirable proprietors. These developments inevitably lead to the introduction of specific insurance consumer protection laws and systems (although this step sometimes follows rather than precedes politically sensitive scandals).

There are a number of common undesirable industry practices that can be avoided through strengthening consumer rights. These are unrealistic benefit illustrations, poor disclosure of the real costs of products, misleading advertisements, unfair claims settlement practices and not selling to identified needs. Insurance is an industry where agency incentives can be the main driver of the kind of product and quantity sold. Further, multi-level sales through family and friends and tying and bundling (especially if adhesion principles apply under the law), can limit a consumer's choice and mobility.

Insurance market conduct legislation is most developed in the English speaking world, largely reflecting activist media and an enormous and dynamic case law inventory including a number of high profile cases such as Equitable in the UK. The EU has more recently become engaged in this area with the passage of the Directive on Certain Aspects of Mediation in Civil and Commercial Matters 2008/52/EC and an ongoing dialogue on the broader consumer protection agenda. In developing and emerging markets, consumer protection tends to be secondary to sectoral development and prudential oversight.

The rapid development of microinsurance is forcing a review of the applicability of the emerging mainstream consumer protection regulatory model for low income individuals and families, who often have had little or no prior exposure to the insurance concept. Innovative work has recently been carried out by a range of supervisors, NGOs and institutions including in Peru, South Africa, Brazil and India, through

SEEP, CGAP, the Finmark Trust and the Microinsurance Network (the latter working with IAIS). In broad terms, microinsurance regulation contemplates a more relaxed approach to product design, distribution, bundling and branding while requiring higher standards of disclosure (ideally including some prior involvement of the target markets in product design) and strong recourse mechanisms. Table 4 presents a list of key readings related to consumer protection for the insurance sector.

Table 4 Selected Key Readings on Consumer Protection for the Insurance Sector

US National Association of Insurance Commissioners (NAIC), *Personal Lines Regulatory Framework*, September 2006
Monti, Alberto, "The Law of Insurance Contracts in the People's Republic of China: A Comparative Analysis of Policyholder's Rights", *Global Jurists Topics*, Volume 1, Edition 3, 2001
UK Parliamentary and Health Services Ombudsman, *Equitable Life: A Decade of Regulatory Failure*, July 2008
English and Scottish Law Commissions-Insurance Contract Law: A Joint Scoping Paper, 2005 (http://www.scotlawcom.gov.uk/downloads/cp_ insurance.pdf)
Australian Law Reform Commission, *Submissions to the Department of Treasury Review of the Insurance Contracts Act* 1984 (Cth), 2003 and 2004
Tarr, A A., Insurance Law and the Consumer, Bond University Law Review, Volume 1, 1989

A. Consumer Protection Institutions

A. 1. Consumer Protection Regime

The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules.

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.

Good practices demand that insurers offering retail products and services are under supervision for consumer protection purposes because of the essentially opaque nature of

insurance contracts (they offer a contingent intangible service delivered sometimes well after the contract is entered into), the enforced use of standard contracts (sometimes subject to adhesion rules), and the complexity of the relevant law (whether civil code or common law based). The 2003 version of the International Association of Insurance Supervisors (IAIS) Core Principles and Methodology (ICP 25-Consumer Protection) expresses this as follows:

"The supervisory authority sets minimum requirements for insurers and intermediaries in dealing with consumers in its jurisdiction, including foreign insurers selling products on a cross-border basis. The requirements include provision of timely, complete and relevant information to consumers both before a contract is entered into through to the point at which all obligations under a contract have been satisfied."

A. 2. Contracts

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 and obligations of the insurer and the retail policyholder and allow for any asymmetries of negotiating power or access to information.

Because of its highly specialized nature and very long history, insurance remains largely subject to a separate specialized body of law. In Civil Code countries, insurance contracts are typically covered by a separate section of the Civil Code, which will often refer to relevant sections elsewhere in that code. The Civil Code may be supplemented by more specific sections in the insurance law dealing with supervisory and prudential matters. Some common law countries have separate insurance contracts laws, and these may supplement a Civil Code in mixed law jurisdictions (e. g. Czech Republic).

Because commercial and industrial insurance usually precedes the development of consumer (retail) insurance markets, the corpus of the insurance law in most developing and many transition markets does not adequately cover B2C situations and such countries often eventually draw on industrial country models. Aside from specifying the minimal contents of an insurance contract (ideally differentiated by the fundamental nature of the

coverage-long term, *liability*, *property*, *etc.*), *helpful B2C contract regulations differentiate between material and non-material non-disclosure*, *and specify clearly*: *when the contract goes into force* (*including cover note situations*); *when underinsurance justifies the application of average*; *notification requirements when an insurer wishes to cancel or alter a contract*; *how contracts will be interpreted in the event of dispute*; *minimum requirements regarding use of plain words*, *typeface*, *etc.*; *and what clauses may not be included* (*e. g. warranty clauses*, *compulsory arbitration on the insurer's terms*, *etc.*). *Possible approaches are shown below*:

- *Eastern European Countries with separate contracts law-Germany*, *Czech Republic*, *Austria*, *Latvia*;
- *Major other countries with separate insurance contracts law-UK*, *Australia*;
- *Major countries with Insurance Contracts section in Insurance Law-China*, *India*, *US*, *Brazil*, *Russia*, *Canada*;
- *Civil Code/ Law of Obligations only-Italy*, *Turkey*.

A. 3. Code of Conduct for Insurers

a. There should be a principles-based code of conduct for insurers that is devised in consultation with the insurance industry and with relevant consumer associations, and that is monitored and enforced by a statutory agency or an effective self-regulatory agency.

b. If a principles-based code of conduct exists, insurers should publicize and disseminate it to the general public through appropriate means.

c. The principles-based code should be augmented where appropriate by voluntary codes for insurers on matters specific to insurance products or channels.

d. Every such voluntary code should likewise be publicized and disseminated.

In European legislation, *there is no specific demand for establishing codes of conduct in the insurance sector*, *nor are there provisions that demand the cooperation of the industry and consumer associations. Codes are acknowledged by supervisors and statutory consumer bodies in some other jurisdictions*, *such as Australia and Malaysia. A selection of codes of conduct for the insurance sector is presented in Table* 5.

The exact institutional arrangement depends on legislation (*for instance*, *whether there*

is provision for the legal institution of a code of conduct). In some European legislation, the existence of codes alone is not sufficient for full compliance (COE Convention).

Table 5 Selected Codes of Conduct for the Insurance Sector

Country	Institution	Code of Conduct
Australia	National Insurance Brokers' Association Insurance Council of Australia Financial Planning Association	General Insurance Brokers' Code of Practice General Insurance Code of Practice Financial Planners' Code of Ethics and Rules of Professional Conduct
India	Life Insurance Council of India	Code of Best Practice for Indian Life insurers
Malaysia	Life Insurance Association of Malaysia	Code of Ethics and Conduct (approved by Bank Nagara)
Russia	Russian Association of Motor Insurers	Various codes, including developing a register of insurance agents and insurance brokers against whom complaints have been made; rules of professional conduct entitled "Improving the level of service in the MTPL market"; rules covering the review of claims made by victims and the payment of compensation
South Africa	Life Offices' Association of South Africa	Code of Conduct -24 chapters covering a range of products and activities
UK	Association of British Insurers	Various codes and guidance notes, including Statement of Best Practice for Long-term Care Insurance, Code of Practice for Endowment Policy Reviews, Statement of Best Practice for Critical Illness Insurance, Best Practice Guide on With-Profit Bonds

Source: World Bank Research and Financial System Assessment Programs (FSAPS).

A. 4. Other Institutional Arrangements

a. Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution, but allocation of resources between prudential supervision and consumer protection should be adequate to enable the effective implementation of consumer protection rules.

b. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection.

c. The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.

In countries where insurers fall under the supervision of a body with both market conduct and prudential responsibilities, a balance needs to be found. For instance, in the UK, the FSA was responsible for capital requirements and consumer matters before its recent restructuring.[65] *Similar duties are held by the National Association of Insurance Commissioners' (NAIC) certified state insurance departments in the US. On-site inspectors are required to examine both prudential and market conduct aspects of their charges. Both the FSA and many state supervisors in the US provide web-based support to insurance consumers.*[66] *Theoretically it is better to separate these roles (e.g. the Wallis Inquiry-Australia), but institutional reality in many countries means that the prudential supervisor becomes the default recourse for consumers until financial markets have relatively deep penetration into the household sector and formal ombudsmen or equivalents are established (e.g. the UK and Australia*[67]*).*

Media and consumer associations often play an active role in promoting financial consumer protection in industrial countries. In all European countries, there are consumer associations that also deal with financial services, and an overview is provided by the European Commission.[68] *If, as under Article 7 of Decision No. 20/2004/EC, specific criteria are fulfilled, an organization might even be supported financially by the EU (this holds for two organizations as of August 2008, the European Consumers' Organization (BEUC) and the European Association for the Co-ordination of Consumer Representation in Standardization (ANEC)).*

Further, the EC has created several consultative bodies, such as the Financial Services Consumer Group, a sub-group of the already existing European Consumer Consultative Group.[69] *These are permanent committees that encompass representatives of consumer organizations from each of the Member States. They are particularly asked to ensure that consumer interests are properly taken into account in EU financial services policy. Worldwide addresses of consumer associations can be found on the website of Consumers International.*[70]

A. 5. Bundling and Tying Clauses

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.

Consumer protection can be used to avoid market power abuse by the dominant players.[71] *Vertical restraints between companies of different industries include anti-competitive tying and bundling. Cross-selling that constitutes bundling or tying can have positive demand and supply-side effects, but may also hamper competition and customer mobility. Bundling is the sale of two goods together in a bundle. Firms bundle for several reasons (including economies of scope, price discrimination, demand management or leverage of market power into other market segments). Bundling of faux insurance products has also been used to disguise the real price of associated credit or goods, particularly in Civil Code countries where the doctrine of adhesion applies.*

Bundling and tying that limits consumer choice is widespread in markets with weak competition enforcement and should therefore be one of the components to be evaluated when conducting diagnostic reviews of consumer protection. Bundling further has the potential to render price comparisons impossible. Bundling is not per se anti-competitive, but can reduce competition and limit consumer choice, especially if there is a condition to purchase good B together with good A (for instance, a mortgage contract together with unemployment and/or life payment insurance).

Two results of bundling are particularly important for competition policy: (i) the limitation of consumer choice, and (ii) whether other competitors are hindered. For details of the EU approach to bundling and tying practices under competition policy refer to Article 102 of the EC Treaty.

Positive effects on the demand side can exist, when the price of bundled/tied services is lower for consumers than for unbundled goods and if convenience is increased. Supply-side effects may result from reduced costs of providing bundled services.

B. Disclosure and Sales Practices

B. 1. Sales Practices

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 informed 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 the intermediary has 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 a commission will be paid to the intermediary 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 any commission and other expenses paid on any single premium investment contract.

d. An intermediary should be prohibited from identically filling broking and agency roles for a given general class of insurance (i. e. life and disability, health, general insurance, credit insurance).

e. When a bank is the intermediary, the sales process should ensure that the consumer understands at all times that he or she is not purchasing a bank product or a product guaranteed by the bank.

f. Sanctions, including meaningful fines and, in the case of intermediaries, loss of license, should apply for breach of any of the above provisions.

The main sources of guidance on insurance sales practices in the EU are the consolidated Life Assurance Directive (Chapter 4 and Annex III), the numerous directives covering non-life insurance and motor insurance and the Mediation Directive. Annex III of the Life Assurance Directive in particular requires that life insurance consumers are advised of recourse mechanisms at the time of sale. Some EU members, such as the UK, have disclosure and sales practices that are substantially stronger than those of the Life Assurance Directive and the Mediation Directive, including requiring that full records

(sometimes including recordings) of sales transactions are maintained.

Other important directives include: EU Directive on the Distance Marketing of Financial Services, 2002/65/EC; EU Directive on Comparative Advertising, 1997/55/EE; and EU Directive on Unfair Commercial Practices, 2005/29/EC, which sets out misleading practices (Articles 6 and 7) with 23 examples in the Annex, and aggressive practices (Articles 8 and 9) with 8 examples. In Article 10, it is explicitly stated that unfair commercial practices may be controlled through codes of conduct. Further, there can be recourse to out-of-court settlement, but the latter is not equivalent to judicial or administrative recourse.

Outside the EU and its affiliates, the main sources of regulation are, again, the common law industrial countries, and the US and Australia in particular, although there appear to be issues in the US for "force-placed insurance" (i.e. where a lending institution is the policyholder and beneficiary and passes on the cost to its customer). Canada has relied to a greater extent on widely publicized and accessible industry codes of ethics and a long established consumer inquiries center.[72] China has made consumer protection a core element of its recently updated insurance regulatory model and is pioneering some cutting edge requirements for certain distribution (including certain types of agents, including bank branches) and policy type combinations (including investment linked and participating contracts where benefit illustrations are provided). Innovations include requiring new policyholders to write in their own hand that they understand the terms of the contract they are entering into and requiring insurers to follow up after a short period to verify this.

Bancassurance is becoming a major source of new business growth in many countries, particularly for life insurance and the required rules of operation are still being developed, often on a reactionary basis. The key issue appears to be ensuring that consumers understand that they are not buying a product issued or guaranteed by the bank. Methods of achieving this include requiring that insurance staff, or staff of a bank-owned broker, do the selling (ideally in a different location to deposit and loan counters), requiring higher levels of training for staff selling investment-linked and long-term savings contracts and ensuring that the name of the insurer is clearly disclosed

in the sales material and policy document.

B. 2. Advertising and Sales Materials

a. Insurers should ensure 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 easily readable and understandable by the general public.

Several directives in Europe hold financial institutions responsible for the content of their public announcements. These are the Directive on the Distance Marketing of Financial Services 2002/65/*EC and the Directive on Comparative Advertising* 1997/55/*EEC.*

The treatment of wordings in insurance sales material and contracts is most developed in common law countries, where case law has supported the introduction of such concepts as plain meaning interpretations (consensus ad idem), violation of good faith and fair dealing (mala gestio), and bans on warranty clauses that could otherwise enable insurers to avoid claims. Common law countries have considerable scope to deal with the enormous range of potential transaction types that can arise under property, liability (tort) and credit-related insurance arrangements. Civil code countries tend to rely on specific sections of their Civil Codes or separate Contracts Law (Law of Obligations) and sometimes on strict regulatory/supervisory oversight of transaction and sales material.

B. 3. Understanding Customers' Needs

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 be available for inspection for a reasonable number of years.

The FSA has pioneered these concepts in the insurance sector.[73] *It uses the term know your customer, KYC (in the consumer protection as opposed to the money laundering sense) as follows: "Know your customer (KYC). In the context of advising customers, this is*

also known as 'factfinding'. It refers to obtaining sufficient information about a customer's personal and financial situation before giving the advice."[74]

KYC standards in the money laundering sense should be implemented by the national supervisory authorities, whereby financial institutions have different degrees of freedom to design their own customer acceptance policies. The key elements of the policy as it relates to the insurance sector can be found in IAIS ICP 28-Anti Money Laundering, Combating the Financing of Terrorism, which specifically acknowledges the role of the FATF. In practice, and despite the huge international financial flows the insurance sector generates (part of which is known to involve funds transfer), this sector has been relatively untouched by the AML/ CFT community.

B. 4. Cooling-off Period

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.

Cooling-off periods (also known as free look periods) are seen primarily as a consumer protection mechanism, although it has been argued that they are also economically efficient.[75]

The right of withdrawal is enshrined in the Article 6 of the EU Distance Marketing of Consumer Financial Services Directive. According to its provisions, the consumer has the right to withdraw from a contract without penalty and without giving any reasons. The periods vary with product and are longer for insurance contracts and pension products. The period of withdrawal typically begins with the conclusion of the contract and typically is in the range of two weeks (14 calendar days as stated in the aforementioned directive). The EU Life Assurance Directive specifies a cooling off period of between 14 and 30 days after the "contract has been concluded".

Cooling-off periods are not uncommon for long-term insurance products (i. e. life insurance) in industrial countries and some emerging markets, such as Singapore, and cover a relatively wide range of insurance products in others, such as Australia.[76] *Typically, cooling-off periods for long-term insurance products are longer than cooling-*

off periods for securities (including investment-linked life contracts) because of the onerous early termination penalties that apply to many traditional life insurance savings contracts. In other countries, such as Japan, certain products, such as variable annuities, have cooling-off periods incorporated into their design.

B. 5. Key Facts Statement

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.

The key facts (and features if intermediary and product are differentiated) requirements are most developed in the UK and reflect the political response to a number of very public scandals, including Equitable.[77] *Key facts statements are also known as initial disclosure documents or IDDs*[78]*. In other countries (e. g. Australia), standardized B2C insurance contracts are established by law, with the right of derogation provided that this is fully disclosed. Some states in the US specifically ban certain wordings (such as warranty clauses) that would enable an insurer to avoid an otherwise legitimate claim. Some US states also lead the way in applying fair dealing concepts.*

B. 6. Professional Competence

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.

The standard of service delivery depends not only on the product but also on the knowledge and technical know-how of the individual delivering the service. Since the sales person is the direct link between the intermediary or the insurer and the customer, the sales personnel should be properly qualified and knowledgeable about the products that they are selling. Financial products are becoming increasingly complicated. Thus, it is important that consumers fully understand these complex products before buying them.

B. 7. Regulatory Status Disclosure

a. In all of its advertising, whether by print, television, radio or otherwise, an

insurer should disclose: (i) that it is regulated, and (ii) 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.

This is in line with responsible and fair commercial practices. The status disclosure is important to signal the trustworthiness of the company and indicate the authority that regulates it.

B. 8. Disclosure of Financial Situation

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.

IAIS ICP 26 (*Information, Disclosure and Transparency towards the Market*) *covers disclosure and is summarized as follows*:

"*The supervisory authority requires insurers to disclose relevant information on a timely basis in order to give stakeholders a clear view of their business activities and financial position and to facilitate the understanding of the risks to which they are exposed.*"

Virtually every country requires insurers to publish their annual financial statements (or more often summaries thereof) in the print media at least annually. In most industrial and emerging markets, the leading insurers already have websites that include their product offerings and periodic financial statements, including annual reports. Unfortunately, accounting and actuarial standards are still not at international levels in the majority of

emerging and developing countries. In industrial countries, the relevant IFRS remains mired in controversy, particularly in accounting for the fair value of liabilities. Regardless of context, a high degree of sophistication is required to interpret the financial information provided. As a fallback, some countries (e. g. Pakistan) require that claims paying ability be rated for all insurers, although the relevant rules do not always specify that international rating agencies should be employed.

Detailed technical data are available in some industrial countries, most notably in the US, although in other countries (e. g. Australia) certain information such as claims run-off triangles[79] *has been withdrawn under industry pressure.*

C. Customer Account Handling and Maintenance

C. 1. Customer Account Handling

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 number of days before the renewal date for non-life policies. If an insurer does not wish to renew a contract it should also provide a reasonable notice period.

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.

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.

Insurance law rarely deals with customer account handling in any detail-partly reflecting the huge variation in insurance arrangements that are possible. The EU Life Assurance Directive does require that policyholders are advised of bonus developments, but this does not appear to mean that individual policyholders are regularly advised of the cash value of their contracts. The heavy selling costs associated with traditional life insurance products often means that a contract has no value for some years and there are strong incentives for the life insurance sector to resist cash value disclosure for the first 5 or more years a contract is in force. As markets develop, insurers tend to unbundle the pure risk, and savings/investment components of long-term contracts and disclosure standards often improve.

D. Privacy and Data Protection

D. 1. Confidentiality and Security of Customers' Information

Customers have a right to expect that their financial transactions are kept confidential. Insurers should 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.

The confidentiality of personally identifiable information, that is any information about an identified or identifiable individual, is protected under several international statutes, such as the OECD Guidelines governing the Protection of Privacy and Transborder Flows of Personal Data (Article 2 Scope of Guidelines) and the UN Guidelines for the regulation of computerized personal data files, adopted by the General Assembly on 14 December 1990 (Section A Principles concerning the minimum guarantees that should be provided in national legislations).

Further, important statutes are the EU Directive on the Protection of Individuals with regard to the Processing of Personal Data 1995/46/EC (Chapter 1, Articles 1-3), the COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 28 January 1981, Chapter 1 General Provisions) and the APEC Privacy Framework (Part ii, Scope).

Technical security is also demanded under the above guidelines and directives. A more

detailed guideline on such security has been provided by the OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security.

In the US, the FTC has established guidelines in the form of Standards for Safeguarding Customer Information, which obligates financial institutions to hold customer information secure and confidential. [80]

The use of medical and genetic (biometric) information for the acceptance/ decline and rating of life-related risks is now a major area of debate, but is not within the scope of the Good Practices.

E. Dispute Resolution Mechanisms

E. 1. Internal Dispute Settlement

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 investigate whether insurers comply with their internal procedures regarding consumer protection.

Few customers have the knowledge to realize that their rights have been infringed and, even if they become aware of this, they typically have few avenues to pursue their claims. Thus, insurers should be mandated to have an internal dispute resolution or complaint handling mechanism, which provides a first level of dispute resolution. Unless there are voluntary consumer associations that have the resources and skills to assist customers with their complaints or legal actions against insurers, consumers do not have many ways in which to seek redress.

Insurers need to have written policies in place for dispute settlement. A written policy should hold the insurer liable for the policy publicly announced by the insurer. This policy should offer contact points for the consumer that are accessible during business hours without undue waiting time (ideally through a dedicated call center), state in plain

language the main steps of customer dispute resolution, provide firm and reasonable timelines, guarantee fairness in handling a customer dispute, state the coordination with any ombudsman and/or supervisory authority, and explain in plain language the consumer's rights in the process. Consumer dispute settlement should not lead to unreasonable costs in terms of time and money for the consumer.

The EU Life Assurance Directive requires that policyholders are advised of their right of recourse; however specific provisions of this type are uncommon in insurance law. Consumer protection law sometimes does provide for notification of rights, although insurance transactions may be excluded in certain circumstances (e. g. the latest version of the Croatian Consumer Protection Act, Official Gazette 125/2007).

E. 2. Formal Dispute Settlement Mechanisms

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 *vis-à-vis* 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.

A specialized insurance Ombudsman or insurance claims and inquiries service (sometimes as part of an omnibus Ombudsman service as in the UK) is increasingly regarded as a fundamental requirement for sound consumer protection. Twenty eight countries are currently members of the International Network of Financial Ombudsman Schemes[81]. *However, it can be difficult for an Ombudsman to mediate and ameliorate the problems faced by policyholders effectively without clear codes of insurance practice and standardized contracts. One of the most advanced systems is to be found in Australia, where an SRO-based insurance inquiries and complaints resolution system has evolved*

into a fully-fledged financial system ombudsman.[82] *Some countries also use small claims courts to provide an affordable means for the average customer to bring action against sellers, service providers and corporations. However such courts often lack sufficient transparency or specialized expertise in insurance issues.*

F. Guarantee Schemes and Insolvency

F. 1. Guarantee Schemes and Insolvency

a. With the exception of schemes covering mandatory insurance (and possibly long-term insurance), insolvency guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry, the resulting fiscal risk to taxpayers where supervision and governance are not adequate, and the scope for moral hazard. Strong governance and prudential supervision are better alternatives.
b. Nominal defendant arrangements should be in place for mandatory insurances such as motor third party liability insurance to cover situations where there is no insured guilty party.
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.

Non-life insurance is typically subjected to normal commercial wind-up rules in the event of insurer insolvency, and the subsequent claims settlement process is usually handled by specialist run-off companies. Policyholders normally arrange new coverage with the remaining solvent insurers in the market concerned. However, most countries do have claims guarantee arrangements for mandatory consumer classes, such as motor third party insurance. These cover claims that cannot be settled due to insurer bankruptcy or because the guilty driver/ vehicle cannot be identified (i. e. the guarantee fund acts as "nominal defendant").

Life insurance is also often deemed to require supplementary arrangements because it can represent a significant asset for the individual or household and may also serve as loan collateral. In this case the usual protection is primarily afforded through separation of life

and non-life insurers and strong prudential oversight. However, composites (insurers writing both life and non-life policies) have been grandfathered in numerous countries and special additional arrangements are required in this situation. This may range from the relatively weak EU Directive on Reorganization and Winding-up of Insurance Undertakings, which requires that the assets covering defined life insurance liabilities are earmarked, to the requirement that completely separate statutory funds are maintained, as in South Africa, Pakistan and Australia. In addition, life policyholders normally rank very high in terms of creditor priority. Most countries also either specify investment limits for the assets covering life insurance mathematical reserves or, where risk-based supervision already operates, require that capital allocated reflects the risk characteristics of the asset portfolio.

G. Consumer Empowerment & Financial Literacy

G. 1. Broadly Based Financial Literacy Program

a. A broadly based program of financial education and information should be developed to increase the financial literacy of the population.
b. A range of organizations-including government, state agencies and non-governmental organizations-should be involved in developing and implementing the financial literacy program.
c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial literacy program.

Financial education, information and guidance can help consumers to budget and manage their income, to save, invest and protect themselves against risks, and to avoid becoming victims of financial fraud and scams. As financial products and services become more sophisticated and households assume greater responsibility for their financial affairs, it becomes increasingly important for individuals to manage their money well, not only to help secure their own and their family's financial well-being, but also to facilitate the smooth functioning of financial markets and the economy.

Many organizations in both the public and private sector have an interest in improving people's financial literacy. They should work together on this issue, so that there is a

range of initiatives which, over time, will help to drive up people's ability to manage their personal finances.

G. 2. Unbiased Information for Consumers

a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand 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.

Financial regulators should take an active role in consumer education as part of its role to protect consumers. Consumers are more likely to have the confidence to purchase insurance products which are suitable for them if they have access to information which is reliable and objective.

G. 3. Measuring the Impact of Financial Literacy Initiatives

a. Policymakers, industry and advocates should understand the financial literacy of various market segments, particularly those most vulnerable to abuse.
b. The financial literacy of consumers should be measured through a broad-based household survey that is repeated from time to time.
c. The effectiveness of key financial literacy initiatives should be evaluated.

The financial literacy of a sample of the population should be measured by means of a nationwide household survey that gets repeated from time to time (every four to five years), in order to measure the impact of financial literacy programs. Key financial literacy initiatives should also be evaluated to assess their impact on those people they are intended to reach. This can help policymakers and funders to decide, on an informed basis, which initiatives should be continued or scaled up and which should be modified or discontinued.

Table 6 gives key insurance laws and regulations worldwide.

Table 6 Overview of Consumer Protection Regulation for the Insurance Sector

Institution	Laws, Regulations, Directives and Guidelines
UN-United Nations	UN Guidelines for the Regulation of Computerized Personal Data Files, adopted by the General Assembly Resolution 45/95 of 14 December 1990
IAIS-International Association of Insurance Supervisors	Insurance Core Principles and Methodology, October 2003 Guidance Paper No. 4 on Public Disclosure by Insurers, January 2002
OECD	Good Practices for Enhanced Risk Awareness and Education in Insurance Issues, 2008 Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security, 2002 Guidelines for Good Practices for Insurance Claims Management, November 2004
APEC	APEC Privacy Framework, 2005
EU	Directive concerning Life Assurance, 2002/83/EC Directives on Non Life Insurance and Motor Insurance Directive on Insurance Agents and Brokers, 1977/92/EC Directive on Insurance Mediation, 2002/92/EC Directive on Reorganization and Winding-up of Insurance Undertakings, 2001/17/EC Directive Concerning Processing Personal Data and Protection of Privacy in the Electronic Communication Sector, 2002/58/EC Directive on Protection of Consumers in Respect of Distance Contracts, 1997/7/EEC Directive on the Distance Marketing of Consumer Financial Services, 2002/65/EC Directive on Misleading and Comparative Advertising, 2006/114/EEC Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such data, 1995/46/EC Recommendation on the Principles applicable to the Bodies responsible for Out-of-court Settlement of Consumer Disputes, 98/257/EC Recommendation on the Principles for Out-of-court Bodies involved in the Consensual Resolution of Consumer Disputes, 2001/310/EC

concluded

Institution	Laws, Regulations, Directives and Guidelines
EU	Green Paper on Retail Financial Services in the EU: Com (2007) 226 Final Policy statement: Nature and consequences of pyramid activitiesin life and accident insurance: Commission on Financial Services and Insurance, 30 May 1997 The Project Group - Restatement of European Insurance Contract Law submission to the European Commission - Draft Common Frame of Reference (CFR): "Insurance Contract": http: //www. restatement. info/
COE - Council of Europe	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108 of 28 January 1981, entered into force on 01 October 1985) and Explanatory Report
Other leading jurisdictions	US National Association of Insurance Commissioners (NAIC) -Market Conduct Surveillance Model Law, 2004 FTC-Standards for Safeguarding Customer Information, 2002 Australia-Insurance Contracts Act, 1984 as amended Alberta, Canada-Fair Practices Regulation under Insurance Act, 128/ 2001 FDIC (US) Laws and Regulations - Part 343—consumer protection in sales of insurance Latvia- Insurance Contracts Law, September 1998 as amended Czech Republic-The Insurance Contract Act, December 2003 Czech Republic-Act on Insurance Intermediaries and Loss Adjusters, December 2003

IV. NON-BANK CREDIT INSTITUTIONS

Consumer finance provided by non-bank credit institutions is an ever more important segment of the credit market. Countries follow different approaches in the regulation of non-bank credit institutions. Some fall under the supervision of the central bank or banking supervisory agency. Others are under the general consumer protection agency or the economic development ministry or local government authorities. Non-bank credit institutions conduct consumer lending in most cases without taking cash deposits from

the public. Thus, they fall outside the scope of prudential regulation. The range of legal forms of the non-bank credit institutions varies, but typically they encompass microfinance institutions, consumer finance companies (including credit card companies), leasing firms,[83] mortgage lenders, pawn shops and credit cooperatives. Depending on the country, there may be difficulties in identifying non-bank credit institutions. Government authorities should establish mechanisms that ensure the identification of all non-bank credit institutions.

A number of undesirable industry practices by non-bank credit institutions can be avoided by strengthening consumer rights. These practices include predatory lending, discriminatory pricing, poor disclosure of costs of products and misleading advertisement. Further, tying and bundling practices can limit a consumer's choice and mobility.

Legislation regarding non-bank credit institutions is especially developed in Europe and in the US. Thus, the examples and background for the Good Practices are primarily drawn from European and US legislation. In addition, they also rely on guidelines and guidance from international institutions such as the BIS (see Table 8).

A. Consumer Protection Institutions

A. 1. Consumer Protection Regime

The law should provide clear consumer protection rules in the area of non-bank credit institutions, and there should be adequate institutional arrangements to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules, as well as of sanctions that effectively deter violations of these rules.

a. There should be specific statutory provisions, which create an effective regime for the protection of consumers of non-bank credit institutions.
b. There should be a government authority responsible for implementing, overseeing and enforcing consumer protection in the area of non-bank credit institutions.
c. The supervisory authority for non-bank credit institutions should have a register which lists the names of non-bank credit institutions.
d. There should be coordination and cooperation among the various institutions

mandated to implement, oversee and enforce consumer protection and financial sector regulation and supervision.

e. The law should provide for, or at least not prohibit, a role for the private sector, including voluntary consumer associations and self-regulatory organizations, in respect of consumer protection in the area of non-bank credit institutions.

It differs from country to country whether non-bank credit institutions are under the supervision of a financial supervisory agency. In some countries, lending to consumers is considered a banking activity and a license from the banking regulator is needed to conduct such activities. In other countries, non-bank credit institutions are only required to be registered, and are lightly supervised by a consumer protection agency or a department within a ministry.

Good practices demand that non-bank credit institutions be supervised for consumer protection purposes in order to avoid eroding existing rules in banking by taking advantage of weaker or non-existent rules regarding the provision of financial products and services by reason simply of being established under a different institutional category.

Non-bank credit institutions in Europe are not exempt from consumer protection provisions, which exist especially in the EU Directive 2008/48/*EC on Credit Agreements for Consumers, repealing Directive* 87/102/*EEC. However, the enforcement of the law differs from country to country and depends on national institutional arrangements.*

In general, the industry is free to create its own codes of conduct, which are not specifically demanded by the above quoted directives.

A. 2. Code of Conduct for Non-Bank Credit Institutions

a. There should be a principles-based code of conduct for non-bank credit institutions that is devised in consultation with the non-bank credit industry and with relevant consumer associations, and that is monitored by a statutory agency or an effective self-regulatory agency.

b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.

c. The principles-based code should be augmented by voluntary codes on matters

specific to the industry (credit unions, credit cooperatives, other non-bank credit institutions).

d. Every such voluntary code should likewise be publicized and disseminated.

In European legislation, there is neither a specific requirement to establish codes of conduct on lending, nor are there provisions that demand the cooperation of the industry and consumer associations. However, there are principles-based codes, such as from the Finance & Leasing Association in the UK. This code, which applies to a number of products (e. g. loans, store cards, credit cards, personal loans), covers lending and information and marketing practices. The institutional arrangements depend on legislation (for instance, whether it provides for the legal institution in terms of a code of conduct). However, the COE Convention on the protection of personal data notes that the existence of codes alone is not sufficient for full compliance. Table 7 lists selected lending codes of conduct in Europe.

Table 7 Selected Codes of Conduct for Lending in Europe

Country	Original Title
Belgium	Code of Conduct Comment changer de banque facilement
Bulgaria	Ethical Code
Cyprus	Code of Banking Conduct Code for Conduct between Banks and Small and Medium-sized Enterprises
Czech Republic	Code of Conduct on Relations Between Banks and Clients Ethical Code of the Czech Banking Association
Finland	Good Banking Practice
Hungary	Code of Ethics
Ireland	Business Account Switching Code Code of Practice on Switching Accounts Code of Practice on Mortgage Arrears
Luxembourg	Consumer Protection Code
Netherlands	Code of Conduct for the Processing of Personal Data by Financial Institutions Code of Conduct on Mortgage Credit Switch Support Service

concluded

Country	Original Title
UK	Lending Code Code of Conduct for the Advertising of Interest Bearing Accounts Code of Conduct of the Finance & Leasing Association
Europe	European Agreement on a Voluntary code of conduct Pre-contractual Information for Home Loans

Source: European Credit Research Institute.

A. 3. Other Institutional Arrangements

a. Whether non-bank credit institutions are supervised by a financial supervisory agency, the allocation of resources between financial supervision and consumer protection should be adequate to enable their effective implementation.

b. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter with a non-bank credit institution is affordable, timely and professionally delivered.

c. The supervisory authority for non-bank credit institutions should encourage media and consumer associations to play an active role in promoting consumer protection regarding non-bank credit institutions.

Media and consumer associations play a very active role in promoting financial consumer protection in many countries, including with regards to non-bank credit and microfinance institutions. In all European countries, there are consumer associations that deal with financial services.[84] *Organizations might even be supported financially by the EU if specific criteria are fulfilled (e. g. Article 7 of the EU Decision No.* 20/2004/*EC establishing a General Framework for Financing Community Actions in support of Consumer Policy for the Years* 2004 *to* 2007 *and Article* 5 *of the EU Decision No.* 1926/2006/*EC establishing a Programme of Community Action in the field of Consumer Policy* 2007-2013).

Furthermore, the EC has created several consultative bodies, such as the Financial Services Consumer Group, a sub-group of the already existing European Consumer Consultative Group.[85] *Permanent committees encompass representatives of consumer*

organizations from each of the EU Member States. They are specifically asked to ensure that consumer interests are properly taken into account in the EU financial services policy. Another group is the European Consumer Debt Network, a network of debt counselors in different countries. Addresses of worldwide consumer associations can be found on the website of Consumers International. [86]

A. 4. Licensing of Non-Bank Credit Institutions

All financial institutions that extend any type of credit to households should be licensed by a financial supervisory authority.

The authority should have the power to set criteria and reject applications for establishments that do not meet the standards set. The authority should verify that the significant owners (and those who control ownership), as well as the senior managers of the financial institutions, satisfy minimal fit and proper requirements, including no history of bankruptcy or criminal conviction.

B. Disclosure and Sales Practices

B. 1. Information on Customers

a. When making a recommendation to a consumer, a non-bank credit institution should gather, file and record sufficient information from the consumer to enable the institution to render an appropriate product or service to that consumer.

b. The extent of information the non-bank credit institution gathers regarding a consumer should:

   i. be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and

   ii. enable the institution to provide a professional service to the consumer in accordance with that consumer's capacity.

This good practice is a basic requirement for the delivery of services as well as to ensure compliance with the FATF Recommendations on Customer Due Diligence and Record-keeping. According to Recommendation 5, financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers and of the beneficial owners, as well as obtaining information on the purpose

and intended nature of the business relationship.[87] *Typically, the degree of due diligence depends on the risks associated with the transaction and the particular client. Although non-bank financial institutions that are not deposit-taking cannot be used for money laundering, identification of customers is in their interest due to high fraud risk.*

Although accurate and reliable customer identification is important to fight against frauds, it can present a special challenge for low-income countries where national ID cards have not yet been issued. Some credit institutions, for example in India and Malawi, use biometric measures to identify customers. In addition, transactions conducted through mobile telephones create their own issues regarding reliable customer identification. In some developing countries, regulators have started to experiment with a decrease in KYC requirements for small transaction accounts (e. g. in India, Maldives and South Africa, among others). However, there are no international guidelines about how this is best conducted.

B. 2. Affordability

a. When a non-bank credit institution makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.
b. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.
c. When a non-bank credit institution offers a new credit product or service that significantly increases the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.

Affordability looks at whether a consumer can afford additional debt obligations once the monthly income net of financial and living expenses (including rent or mortgage payments) is considered. Households might have different tolerances with respect to the share of current income they want to devote to debt-servicing. Creditworthiness involves estimating default or delinquency risks and is a component of responsible lending. The EU Directive on Credit Agreements for Consumers (Article 8) requires a creditor to assess the consumer's creditworthiness based on information obtained from the consumer as well as

from a relevant database, such as a credit bureau. The provisions of this Directive hold for all lenders, including non-bank credit institutions. Products covered include all credit contracts between €200- €75000. [88] *The provisions only apply to contracts in which the consumer has to pay interest. Deferred payment cards and mortgage credit are not included.*

In the US, a number of consumer protection provisions have been introduced as amendments to Regulation AA on Unfair or Deceptive Acts or Practices, the Truth in Lending Act (TILA) and the Truth in Savings Act. For example, the Federal Reserve Board has approved an amendment to TILA that aims to ensure responsible lending in mortgage markets. One of the key provisions is a lender's responsibility to assess the repayment ability of a borrower by checking income and other assets, excluding the value of the property being mortgaged.

Affordability may also be related to concerns over possible over-indebtedness. In some countries, non-bank credit and microfinance institutions are not required to ask borrowers about other outstanding debts—or such debts may not be registered in the credit reporting system. The result may be consumers who become over-indebted, relying on one loan to pay off another. In Peru, the regulator has issued Regulation 6941-2008 *(Rules for administration of over-indebtedness risk of retail debtors) to ensure that consumers do not use easy access to credit cards or other forms of credit to become over-indebted. In South Africa, over-indebtedness, reckless lending and debt counseling are regulated in Chapter* 3 *Part D of the National Credit Act Regulations of May* 31, 2006. *This legislation regulates what information should be sent to the National Credit Register as well as what information should be submitted to debt counselors. Under Part D,* 24 (7), *a consumer is considered to be over-indebted if his or her total monthly debt payments exceed the balance derived by deducting minimum living expenses from net income.*

B. 3. Cooling-off Period

a. For financial products or services with a long-term savings component, or those subject to high-pressure sales contracts (unless explicitly waived by the consumer in writing), a non-bank credit institution should provide the consumer a cooling-off

period of a reasonable number of days (at least 3-5 business days) immediately following the signing of an agreement between the institution and the consumer.

b. On his or her written notice to the non-bank credit institution during the cooling- off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.

In many cases, borrowers rush into financial arrangements with non-bank credit institutions that provide seemingly attractive terms or returns without the benefit of shopping around, reading thoroughly over the financial contract or asking for advice. This is especially serious in countries where the terms of services and products are not readily available or cannot be compared. Thus, the cooling-off period provides relief similar to a "no-questions-asked" return policy for goods. However, for products and services that involve market risk, a consumer who cancels his or her contract during the cooling-off period should be required to compensate the non-bank credit institution for any losses. For a description of cooling-off periods in several EU Member States, see the EC's Discussion Paper for the amendment of the Directive 87/102/EEC concerning consumer credit.

The right of withdrawal is enshrined in Article 6 of the EU Distance Marketing of Financial Services Directive, which states that the consumer has the right to withdraw from a contract without penalty and without giving any reasons. The period of withdrawal typically begins with the conclusion of the contract and is usually in the range of two weeks (14 calendar days as stated in the EU Directive). The length of the cooling-off period should depend on the type of financial product being sold. The period should be longer for products which involve long-term savings and may be subject to distribution systems such as "multi-level selling", which are often associated with high pressure sales tactics.

B. 4. Bundling and Tying Clauses

a. As much as possible, non-bank credit institutions should avoid the use of tying clauses in contracts that restrict the choice of consumers.

b. In particular, whenever a borrower is required by a non-bank credit institution to purchase any product, including an insurance policy, as a pre-condition for

receiving a loan, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.

c. Also, whenever a non-bank credit institution contracts with a merchant as a distribution channel for its credit contracts, no exclusionary dealings should be permitted.

Cross-selling that constitutes bundling or tying can have positive demand and supply-side effects. However, it may also hamper competition and customer mobility. Bundling occurs when two or more products are sold together, although each product can also be purchased separately in the market. Firms bundle for several reasons, such as economies of scope, price discrimination, demand management or leverage of market power into other market segments. Positive effects on demand exist when the price of bundled products or services is lower for consumers than for unbundled goods and if convenience is increased. Bundling is not per se anti-competitive -it only becomes anti-competitive if market power is leveraged to the detriment of competitors.

Tying occurs when two or more products are sold together in a package and at least one of these products is not sold separately. Tying can be used by financial institutions to reduce competition and limit consumer choice, especially if there is a condition to purchase good B together with good A (for instance, a mortgage contract together with payment insurance). Furthermore tying can increase pricing by obscuring costs for consumers and rendering price comparisons impossible. However, consumer protection can be used to avoid market power abuse by dominant players. [89]

Tying and bundling practices that limit consumer choice is often widespread in markets with weak competition enforcement and should therefore be evaluated when conducting diagnostic reviews of consumer protection. Two criteria are important for consideration: (i) the limitation of consumer choice and (ii) whether other competitors are hindered. In the EU, bundling and tying practices may constitute an exclusionary abuse of dominance under Article 102 of the EC Treaty.

B. 5. Key Facts Statement

a. Non-bank credit institutions should have a Key Facts Statement for each type of

account, loan or other products or services.

b. The Key Facts Statement should be written in plain language, summarizing in a page or two the key terms and conditions of the specific financial product or service, and allowing consumers the possibility of easily comparing products offered by different institutions.

A Key Facts Statement provides consumers with simple and standard disclosure of key contractual information of a financial product or service, contributing to the consumers' better understanding of the product or service. Key Facts Statements also allow consumers to compare offers provided by different financial institutions before they purchase a financial product or service and provide a useful summary for later reference during the life of the financial product or service. For credit products, Key Facts Statements constitute an efficient way to inform consumers about their basic rights, the credit reporting systems and the existing possibilities for disputing information. This is of special importance in countries with new financial consumers who are inexperienced.

There are several examples of Key Facts Statements worldwide, such as the SECCI form for consumer credits in the European Union, the ESIS format for pre-contractual information on home loans developed by the European Associations of Consumers and the European Credit Sector Associations, the "Schumer Box" for credit cards in the US, the "Hoja Resumen" for consumer credits in Peru.

Of special concern in some countries is the need to provide basic information to consumers in a language that is widely used by local populations. It may also be helpful to test consumer understanding of mandatory disclosure statements. For further information, see annotation of good practice B. 5 in the banking section.

B. 6. Advertising and Sales Materials

a. Non-bank credit institutions 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. Non-bank credit institutions should be legally responsible for all statements made in

advertising and sales materials (i. e. be subject to the penalties under the law for making any false or misleading statements).

For disclosure and sales practices, one of the main policy issues relates to misleading and comparative advertisement. Several directives in Europe hold financial institutions responsible for the content of their public announcements. These include the EU Directive on the Distance Marketing of Consumer Financial Services 2002/65/*EC, the EU Directive on Misleading and Comparative Advertising* 2006/114/*EEC and the Unfair Commercial Practices Directive* 2005/29/*EC.*

In some countries non-bank credit institutions use agents to market and distribute their products, such as credit or pre-paid cards. These solicitations take place outside the institutions' premises -including at supermarkets, drugstores and fairs. Thus, ensuring that non-bank credit institutions are liable for the acts of their agents is critical.

B. 7. General Practices

Specific rules on disclosure and sales practices should be included in the non-bank credit institutions' code of conduct and monitored by the relevant supervisory authority.

The EU Directive on Credit Agreements for Consumers 2008/48/*EC mandates what information has to be included in contracts with consumers* (*Article* 9 *on pre-contractual information*). *In the US, provisions can be found in the TILA of* 1968 *and the Federal Trade Commission Act* (*Section* 5). *The EU Unfair Commercial Practices Directive defines misleading practices* (*Articles* 6-7) *and aggressive practices* (*Articles* 8-9), *and presents several examples that illustrate such practices* (*Annex*). *This Directive also explicitly states that unfair commercial practices may be controlled through codes of conduct* (*Article* 10). *Once a code of conduct exists, non-bank credit institutions should bind themselves to fair disclosure and sales practices.*

B. 8. Disclosure of Financial Situation

a. The relevant supervisory authority should publish annual public reports on the development, health, strength and penetration of the non-bank credit institutions, either as a special report or as part of the disclosure and accountability requirements under the law that governs these.

b. Non-bank credit institutions should be required to disclose their financial information to enable the general public to form an opinion regarding the financial viability of the institution.

In several countries, non-bank credit institutions are required to report their financial situation periodically. However, a common problem is that the financial statements prepared by non-bank credit institutions often do not provide enough information to enable a consumer to form an opinion about an institution's portfolio quality or level of sustainability. This is particularly true for microfinance institutions that pursue a social mission that is often supported by grants or soft loans. It is also true, in general, for financial institutions that use loan methods different from those of banks. Thus, it is important that non-bank credit institutions present information that is meaningful, clear and comparable. For example, CGAP has developed a useful set of guidelines for the content of financial reporting for microfinance institutions. [90]

C. Customer Account Handling and Maintenance

C. 1. Statements

a. Unless a non-bank credit institution receives a customer's prior signed authorization to the contrary, the non-bank credit institution should issue, and provide the customer with, a monthly statement regarding every account the non-bank credit institution operates for the customer.

b. Each such statement should: (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.

c. 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.

d. 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.

e. A non-bank credit institution should notify a customer of long periods of inactivity of any account of the customer and provide reasonable final notice in writing to the customer if the funds are to be transferred to the government.

f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

Statements can be regarded as the most valid record and evidence of a transaction for a customer. Thus, statements need to be self-explanatory and clear. This is particularly important in the case of credit card statements and loan accounts statements that carry finance charges, penalty interest and serious consequences of default or delayed payment. With increased use of internet and mobile banking, some customers may opt to receive statements on a quarterly rather than monthly basis. The choice should be left to customers. Also, when customers choose paperless statements, the access to the statements, their format and details should be a fair substitute to paper statements.

C. 2. Notification of Changes in Interest Rates and Non-interest Charges

a. A customer of a non-bank credit institution should be notified in writing by the non-bank credit institution of any change in:

   i. the interest rate to be paid or charged on any account of the customer as soon as possible; and

   ii. a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.

b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.

c. The non-bank credit institution should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the institution.

Credit institutions in several countries provide from 1 to 3 months of notice, depending on the agreement. In cases where the interest rate is variable and linked to a daily reference rate that is widely published (e. g. LIBOR), the minimum notice to be given of a change in the rate should be stated in the loan agreement. Interest rate increases that do not comply with the contractually stipulated notice must, therefore be, invalid and not

binding on the consumer. The code of conduct should include this requirement. A consumer's right to exit a contract is taken from Guidelines 17 *and* 19 *of the UN Guidelines for Consumer Protection.*

C. 3. Customer Records

a. A non-bank credit institution should maintain up-to-date records in respect of each customer of the non-bank credit institution that contain the following:

   i. a copy of all documents required to identify the customer and provide the customer's profile;

   ii. the customer's address, telephone number and all other customer contact details;

   iii. any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;

   iv. details of all products and services provided by the non-bank credit institution to the customer;

   v. a copy of all correspondence from the customer to the non-bank credit institution and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer;

   vi. all documents and applications of the non-bank credit institution completed, signed and submitted to the non-bank credit institution by the customer;

   vii. 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 non-bank credit institution; and

   viii. any other relevant information concerning the customer.

b. 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 free access to all such records.

The list above may seem prescriptive, but the requirements should be regarded as the minimum in order to ensure that sufficient information is kept for the purpose of providing customer protection. For more information, see annotation on good practice C. 2.

C. 4. Credit Cards

a. There should be clear rules on the issuance of credit cards and related customer disclosure requirements.

b. Non-bank credit institutions, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment.

c. Non-bank credit institutions should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.

d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.

e. Among other things, the rules should also:

   i. restrict or impose conditions on the issuance and marketing of credit cards to young adults who have no independent means of income;

   ii. require reasonable notice of changes in fees and interest rates increase;

   iii. prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;

   iv. limit fees that can be imposed, such as those charged when consumers exceed their credit limits;

   v. prohibit a practice called "double-cycle billing" by which card issuers charge interest over two billing cycles rather than one;

   vi. prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and

   vii. limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.

f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.

g. Non-bank credit institutions and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and

prevention of fraud.

Credit cards are progressively replacing hard currency in many countries. The credit card industry has also been in the limelight for its harmful practices, lack of transparency and inadequate disclosure of terms and conditions of credit card accounts. This is a particular problem in countries with low rates of savings and high consumer spending, as well as in countries where low-income consumers have easier access to finance by acquiring credit cards offered by retailers, consumer finance companies, microfinance providers and other non-bank credit institutions. The recent measures taken by many countries[91] *to update the rules applicable to credit cards clearly indicate the importance of consumer protection in these respects.*

Consumers should get key information about credit card terms in a clear and conspicuous format and at a time when it is most useful to them. Anyone under 21 *should get an adult to co-sign on the account if he or she wants to open his or her own credit card account or show proof that he or she has his or her own independent means to repay the card debt. Billing methods and information disclosed in the monthly statement should be clear and help customers to make informed choices on their indebtedness.*

The increasing use of credit cards over the internet and outside the issuers' jurisdiction increases the incidence of stolen cards and fraud. Thus, improving consumer awareness and knowledge of these problems is important.

C. 5. Debt Recovery

a. All non-bank credit institutions, agents of a non-bank credit institutions and third parties should be prohibited from employing any abusive debt collection practice against any customer of the non-bank credit institution, 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 non-bank credit institution, 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 non-bank credit institution when the credit agreement giving rise to the debt is entered into between the non-bank

credit institution and the customer.

c. A debt collector should not contact any third party about a non-bank credit institution customer's debt without informing that party of: (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, the borrower should be:

i. notified of the sale or transfer within a reasonable number of days;

ii. informed that the borrower remains obligated on the debt; and

iii. provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.

In a number of countries, weak safeguards against abusive debt collection: (i) strengthens the call for a more cumbersome recovery process, (ii) leads to moratoriums on collection, and (iii) earns the sympathy of courts. As a result, debt collection becomes a prolonged process that increases the cost of financing in the long run. Sound rules on debt collection are required so as to help ensure that consumers are not subject to abusive and illegal collection practices.

While some countries rely on the sanctity of the contract and on the courts to uphold the right of borrower and to prevent abuses by lenders, other countries deal with this issue through the law, a directive of a regulator, or guidance provided by a consumer protection agency (see the US Fair Debt Collection Practices Act, as well as the US Federal Trade Commission (FTC) and the UK Financial Services Authority (FSA) websites).

D. Privacy and Data Protection

D. 1. Confidentiality and Security of Customers' Information

a. The financial transactions of any customer of a non-bank credit institution should be kept confidential by the institution.

b. The law should require non-bank credit institutions to ensure that they protect the confidentiality and security of personal data of their customers against any anticipated threats or hazards to the security or integrity of such information, and

against unauthorized access.

The confidentiality of personally identifiable information, that is, any information about an identified or identifiable individual, is protected under several international statutes. These include the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (Article 2 Scope of Guidelines) and the UN Guidelines for the regulation of computerized personal data files adopted by the General Assembly on 14 December 1990 (Section A, Principles concerning the minimum guarantees that should be provided in national legislations).

Other important statutes are included in the EU Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such data 1995/46/EC (Chapter 1, Articles 1-3); the COE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 28 January 1981, Chapter 1 General Provisions); and the APEC Privacy Framework (Part ii, Scope).

Technical security is also demanded under the above guidelines and directives. The OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security offer a more detailed guideline on technical security.

In the US, the FTC has issued the Standards for Safeguarding Customer Information (2002), which obligates financial institutions to hold customer information secure and confidential. [92]

D. 2. Credit Reporting

a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.

b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.

c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.

d. Proportionate and supportive consumer rights should include the right of the consumer:

i. to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;

ii. to access his or her credit report free of charge (at least once a year), subject to proper identification;

iii. to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;

iv. to be informed about all inquiries within a period of time, such as six months;

v. to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;

vi. to reasonable retention periods of credit history; and

vii. to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.

e. The credit registers, regulator and associations of non-bank credit institutions should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.

Credit reporting systems are designed to reduce credit risk and improve access to credit by keeping a detailed record of each consumer's credit behavior. Transparency of credit reporting systems is important for good governance of these systems. At the same time, controls should exist to protect personal data. Credit reporting is becoming an ever more pervasive activity affecting every consumer's economic life by determining the extent of his or her access, if any, to finance and the terms of any eventual loan agreement that he or she may receive. It is critically important that non-bank credit institutions participate in the credit reporting system so that the credit reports of consumers include information of all their credit transactions in the financial system. The Good Practice incorporates the General Principles for Credit Reporting, developed by the Credit Reporting Standards Setting Task Force, coordinated by the World Bank.

E. Dispute Resolution Mechanisms

E. 1. Internal Complaints Procedure

Complaint resolution procedures should be included in the non-bank credit institutions' code of conduct and monitored by the supervisory authority.

Non-bank credit institutions should have written policies in place for the proper handling and resolution of any customer complaint. A written policy will hold the non-bank credit institution liable for the announced policy. This policy should offer contact points for the consumer that are accessible during business hours without undue waiting times, state in plain language the main steps of customer dispute resolution, provide firm and reasonable timelines, guarantee fairness in handling the customer dispute, state the coordination with any ombudsman and/or supervisory authority, and explain in plain language the consumer's rights in the process. Consumer dispute settlement should not lead to unreasonable costs in terms of time and money for the consumer. Robust internal complaints procedures improve customer relationships, increase trust in the non-bank credit institutions and reduce the cost of adjudication.

E. 2. Formal Dispute Settlement Mechanisms

a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, such as an ombudsman, in the event the complaint with the non-bank credit institution is not resolved to the consumer's satisfaction in accordance with internal procedures.
b. The role of an ombudsman or equivalent institution in dealing with 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, the industry and the parties to the dispute.
d. The decisions of the ombudsman or equivalent institution should be binding upon non-bank credit institutions. The mechanisms to ensure the enforcement of these decisions should be established and publicized.

Few customers have the knowledge to realize that their rights have been infringed and, even if they are aware of the infringement, they typically have very few avenues to pursue

their claims. If the consumer raises a complaint with the non-bank credit institution and it is not resolved to the consumer's satisfaction, consumers usually do not have many venues to seek fast and inexpensive redress. Thus, several non-bank credit institutions around the world are seeking to participate in ombudsman schemes to deal expeditiously, independently, professionally and inexpensively with consumer disputes that do not get resolved internally by the institutions. The establishment and sustainability of such schemes are regarded as fundamental requirements for sound consumer protection. Ombudsman schemes can also identify complaints that are few in number but high in importance for consumer confidence in the financial sector, thereby enabling the relevant authorities to take effective action to remedy the situation.

F. Consumer Empowerment & Financial Literacy

F. 1. Broadly based Financial Literacy Program

a. A broadly based program of financial education and information should be developed to increase the financial literacy of the population.

b. A range of organizations-including government, state agencies and non-governmental organizations-should be involved in developing and implementing the financial literacy program.

c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial literacy program.

Financial education, information and guidance can help consumers to budget and manage their income, to save, invest and protect themselves against risks, and to avoid becoming victims of financial fraud and scams. As financial products and services become more sophisticated and households assume greater responsibility for their financial affairs, it becomes increasingly important for individuals to manage their money well, not only to help secure their own and their family's financial well-being, but also to facilitate the smooth functioning of financial markets and the economy.

Many organizations in both the public and private sector have an interest in improving people's financial literacy. They should work together on this issue, so that there is a

range of initiatives which, over time, will help to drive up people's ability to manage their personal finances.

F. 2. Using a Range of Initiatives and Channels, including the Mass Media

a. A range of initiatives should be undertaken by the relevant authority to improve the financial literacy of the population, and especially from low-income communities.

b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on non-bank credit institutions and the products and services they offer.

c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for non-bank credit institutions, the associations of non-bank credit institutions and consumer associations in the provision of financial education, information and guidance to consumers.

A range of financial literacy initiatives should be developed, including targeted programs aimed at young people, entrepreneurs, farmers, local community chiefs, employees, as well as using several delivery channels including Internet, radio, television, publications, etc..

The media-especially television and radio- can play an important role in providing financial education and information. This is particularly true in low-income communities, where radio is generally more widely accessed than television or internet, and in many cases sections of newspapers are entirely read in radio programs. Regulators and industry associations can support initiatives by providing the media with information about current concerns and about different types of financial services and products.

F. 3. Unbiased Information for Consumers

a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.

b. Supervisory authorities and consumer associations 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, including those offered by non-bank credit institutions.

c. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public regarding financial products and services, including those offered by non-bank credit institutions.

Consumers and potential consumers are more likely to have the confidence to purchase financial products and services which are suitable for them if they have access to information which is reliable and objective. The authorities supervising non-bank credit institutions have a role to play in this area, either directly providing unbiased information about the sector, or coordinating with other financial regulators and non-government organizations, to make sure that information of the non-bank credit sector is included in consumer awareness programs as well as printed and online publications.

F. 4. Consulting Consumers and the Financial Services Industry

The relevant authority should consult consumer associations and associations of non-bank credit institutions to help the authority develop financial literacy programs that meet the needs and expectations of financial consumers, especially those served by non-bank credit institutions.

In developing financial literacy programs, consultations will be helpful in order to take into account the perspectives of consumers, particularly those from non-bank credit institutions, as well as the perspectives of financial institutions and their trade associations. In countries where there are informed and effective consumer associations, they will also need to be consulted.

To ensure that consumers are actively involved in the policy development process, it is recommended that the government or private sector organizations or both provide appropriate funding to non-government organizations for this purpose.

F. 5. Measuring the Impact of Financial Literacy Initiatives

a. Policymakers, industry and consumer advocates should understand the financial literacy of various market segments, particularly those most vulnerable to abuse.

b. The financial literacy of consumers should be measured, amongst other things, by broadly based household surveys that are repeated from time to time.

c. The effectiveness of key financial literacy initiatives should be evaluated by the

relevant authority from time to time.

In order to measure the impact of financial education and information initiatives, the financial literacy of a sample of the population should be measured by means of large-scale market research that gets repeated from time to time. Initiatives will take some time to have a measurable impact on the financial literacy of a population, so it is likely to be sufficient to repeat the survey every four to five years.

In addition, key financial literacy initiatives should be evaluated to assess their impact on those people they are intended to reach. This can help policymakers and funders to decide, on an informed basis, which initiatives should be continued (and perhaps scaled up) and which should be modified or discontinued.

Table 8 provides a summary of key regulation for non-bank credit institutions.

Table 8 Overview of Consumer Protection Regulation for Non-Bank Credit Institutions

Institution or Government	Laws, Regulations, Directives and Guidelines
UN	UN Guidelines for the Regulation of Computerized Personal Data Files adopted by the General Assembly Resolution 45/95 of 14 December 1990
OECD	Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security, 2002 Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, 1980
BIS	Basel Committee on Banking Supervision, Consolidated KYC Risk Management, October 2004 Basel Committee on Banking Supervision, Customer Due Diligence for Banks, October 2001
APEC	APEC Privacy Framework, 2005
EU	Directive on Consumer Credit, 1998/7/EC, amending Directive 87/102/EEC Directive on Consumer Credit, 2008/48/EC Directive on Credit Agreements for Consumers, 2008/48/EC, repealing Directive 87/102/EEC Directive on Unfair Terms in Consumer Contracts, 1993/13/EEC Directive concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, 2005/29/EC Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such data, 1995/46/EC Directive Concerning Processing Personal Data and Protection of Privacy in the Electronic Communication Sector, 2002/58/EC

concluded

Institution or Government	Laws, Regulations, Directives and Guidelines
EU	Directive on Protection of Consumers in Respect of Distance Contracts, 1997/7/EEC Directive on the Distance Marketing of Consumer Financial Services, 2002/65/EC Directive on Markets in FinancialInstruments, 2004/39/EC (MiFID) Treaty establishing the European Community (EC Treaty), 1957 as amended
COE	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108 of 28 January 1981, entered into force on 1 October 1985) and Explanatory Report
US	Dodd-Frank Wall Street Reform and Consumer Protection Act, H. R. 4173, July 2010 Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act of 2009), H. R. 627, May 2009 Consumer Credit Protection Act (15 USC, Chapter 41), 1968 Truth In Lending Act (TILA) (15 USC § 1601), 1968 Fair Credit Billing Act (15 USC § 1637), 1968 Fair Credit Reporting Act (15 USC § 1681), 1970 Equal Credit Opportunity Act (15 USC § § 1691-1691e), 1974 Federal Trade Commission Act (15 USC § § 41-58), 1914 Fair Credit Debt Collection Act (15 USC § § 1692-1692o), 1977 FTC-Standards for Safeguarding Customer Information, 2002

References

Akerlof, George A., "'The Market for Lemons': Quality Uncertainty and the Market Mechanism", *Quarterly Journal of Economics*, 1970.

Alliance for Financial Inclusion, *Consumer Protection: Leveling the playing field in financial inclusion*, Policy Note, 2010.

Anagol, Santosh, Shawn Cole, and Shayak Sarkar, Bad Advice: *Explaining the Persistence of Whole Life Insurance*, February 2011.

Ardic, Oya Pinar, Joyce Ibrahim and Nataliya Mylenko, *Consumer Protection Laws and Regulations in Deposit and Loan Services: A Cross-Country Analysis with a New Data Set*, Policy Research Working Paper No. 5536, World Bank, January 2011.

Armstrong, Mark, "Interactions between Competition and Consumer Policy", *Competition Policy International*, Volume 4, Number 1, Spring 2008.

Asian Development Bank Institute, Hannig, Alfred and Jansen, Stefan, *Financial Inclusion and Financial Stability: Current Policy Issues*, ADBI Working Paper Series No. 259, December 2010.

Australian Government Publishing Service, *The Financial System Inquiry Final Report* ("Wallis Report"), March 1997.

Bakker, Marie Renée and Alexandra Gross, *Development of Non-bank Financial Institutions and Capital Markets in European Union Accession Countries*, World Bank Working Paper No. 28, World Bank, February 2004.

Bellman, S., E. J. Johnson, G. L. Lohse, — On site: to opt-in or opt-out?: It depends on the question, *Communications of the ACM*, Volume 44 , Issue 2 25-27,

February 2001.

Bank for International Settlements, Committee on Payment and Settlement Systems, *Retail Payment Systems in Selected Countries: a Comparative Study*, September 1999.

——, *Clearing and Settlement Arrangements for Retail Payments in Selected Countries*, September 2000.

——, *Policy Issues for Central Banks in Retail Payments*, March 2003.

——, *General Guidance for National Payment System Development*, January 2006.

Bank for International Settlements, Committee on Payment and Settlement Systems, and World Bank, *General Principles for International Remittance Services*, January 2007.

Benston, George, "Consumer Protection as Justification for Regulating Financial Services Firms and Products", *Journal of Financial Services Research*, 17 (3): 277-301, 2000.

Block-Lieb, Susan, *Best Practices in the Insolvency of Natural Persons*, The World Bank Insolvency and Creditor/Debtor Regimes Task Force Meetings, Rapporteur's Synopsis, January 2011.

Brix, Laura and Katharine McKee, *Consumer Protection Regulation in Low-Access Environments: Opportunities to Promote Responsible Finance*, CGAP Focus Note No. 60, February 2010.

Brown, Sarah, G. Garino, K. Taylor and S. W. Price, *Debt and financial expectations: An individual and household level analysis*, Working Paper No. 03/05, University of Leicester, February 2004.

California Budget Report, Locked Out 2008: *The Housing Boom and Beyond*, February 2008.

Centre for European Policy Studies and Van Dijk Management Consultants, *Tying and other potentially unfair commercial practices in the retail financial service sector*, Final Report submitted to the European Commission, DG Internal Market and Services,

ETD/2008/IM/H3/78, November 2009.

Center for the Study of Financial Innovation, *Microfinance Banana Skins* 2011: *The CSFI survey of microfinance risk*: *Losing its fairy dust*, February 2011.

Cirasino, Massimo, "The Committee on Payment and Settlement Systems and the World Bank General Principles on International Remittance Services", *Access Finance*, Issue No. 11, May 2006.

Cirasino, Massimo, Jose A. Garcia, Mario Guadamillas and Fernando Montes-Negret, *Reforming Payments and Securities Settlement Systems in Latin America and the Caribbean*, World Bank, 2007.

Cole, Shawn and Gauri Kartini Shastry, *If You Are So Smart, Why Aren't You Rich? The Effects of Education, Financial Literacy, and Cognitive Ability on Financial Market Participation*, October 2007.

Collins, Daryl, Nicola Jentzsch and Rafael Mazer, *Incorporating Consumer Research into Consumer Protection Policy Making*, CGAP Focus Note No. 74, November 2011.

Consultative Group to Assist the Poor, *Advancing Financial Access for the World's Poor*: *Annual Report* 2011, 2012.

Consultative Group to Assist the Poor/The World Bank Group, *Financial Access* 2010: *The State of Financial Inclusion Through the Crisis*, September 2010.

Consumers International, *Safe, fair and competitive markets in financial services*: *recommendations for the G20 on the enhancement of consumer protection in financial services*, March 2011.

——, *Financial education counselling-Counsellor's handbook*, January 2012.

Deb, Anamitra and Mike Kubzansky, *Bridging the Gap*: *The Business Case for Financial Capability*, Citi Foundation, March 2012.

Demirguc-Kunt, Asli and Klapper, Leora, *Measuring Financial Inclusion*: *The Global Findex Database*, World Bank Policy Research Working Paper No. 6025, World Bank, 2012.

References

European Commission, *Communication on Financial Education* COM (2007) 808.

——, *Discussion paper for the amendment of Directive* 87/102/*EEC concerning consumer credit*, 2001.

——, *EU Consumer Policy strategy* 2007-2013 COM (2007) 99 final, March 2007.

——, *Eurobarometer* 2003.5, *Financial Services and Consumer Protection*, May 2004.

——, *Green Paper on Retail Financial Services in the Single Market*, COM (2007) 226 final, April 2007.

——, *Special Eurobarometer No.* 252, *Consumer protection in the Internal Market*, September 2006.

——, *Survey of Financial Literacy Schemes in the EU*27, November 2007.

——, Directorate-General for Competition, *Report on the retail banking inquiry*, Commission Staff Working Document, SEC (2007) 106, January 2007.

European Parliament, *Report on Improving consumer education and awareness on credit and finance* (2007/2288 (*INI*)), 18 November 2008.

Fardoust, Shahrokh, Yongbeom Kim and Claudia Sepúlveda (eds.), *Post-Crisis Growth and Development*: *A Development Agenda for the G*-20, World Bank, November 2010.

Financial Services Authority, *The Turner Review*: *A regulatory response to the global banking crisis*, March 2009.

Financial Stability Board, *Consumer Finance Protection with particular focus on credit*, 26 October 2011.

FIN-USE, *Response to the Green Paper on Retail Financial Services in the Single Market*, 2007.

Grifoni, A. and Messy, F., *Current Status of National Strategies for Financial Education*: *A Comparative Analysis and Relevant Practices*, OECD Working Papers on Finance, Insurance and Private Pensions, No. 16, OECD Publishing, 2012.

Gross, Karen, "Financial Literacy Education: Panacea, Palliative, or Something Worse?", *St. Louis University Public Law Review* 24 (2): 307-312, 2005.

Group of Thirty, *Financial Reform: A Framework for Financial Stability*, January 2009.

Hadfield, Gillian K, Robert Howse and Michael J Trebilcock, "Information-Based Principles for Rethinking Consumer Protection Policy", *Journal of Consumer Policy* 21: 131-169, 1998.

Herring, Richard J. and Anthony M. Santomero, "What is Optimal Financial Regulation?", *Wharton Financial Institutions Center Working Paper Series*, Working Paper No/ 00-34, May 1999.

Hilgert, Marianne A. and Jeanne M. Hogarth, "Household Financial Management: The Connection between Knowledge and Behavior", *Federal Reserve Bulletin*, July 2003.

International Finance Corporation, *Credit Bureau Knowledge Guide*, 2006.

——, *Global Practices in Responsible and Ethical Collections*, IFC Working Paper, August 2009.

International Monetary Fund, Independent Evaluation Office, *IMF Performance in the Run-Up to the Financial and Economic Crisis: IMF Surveillance in* 2004-07, January 2011.

Jentzsch, Nicola, *Financial Privacy—An International Comparison of Credit Reporting Systems*, October 2007.

Joint Forum of Basel Committee on Banking Supervision, International Organization of Securities Commission and International Association of Insurance Supervisors, *Customer suitability in the retail sale of financial products and services*, April 2008.

Klapper, Leora and Georgios Panos, *Financial Literacy and Retirement Planning: The Russian Case*, August 2011.

Klapper, Leora, Annamaria Lusardi and Georgios Panos, *Financial Literacy and the*

Financial Crisis, *Evidence from Russia*, March 2011.

Llewellyn, David T., "The Economic Rationale for Financial Regulation, Financial Services Authority", *FSA Occasional Papers in Financial Regulation*, No. 1: 1-57, April 1999.

Loewenstein, George, T. O'Donoghue and M. Rabin, "Projection Bias in Predicting Future Utility", *Quarterly Journal of Economics* 118 (4): 1209-1248, 2003.

Lusardi, Annamaria and Olivia Mitchell, "Financial Literacy and Retirement Preparedness: Evidence and Implications for Financial Education", *Business Economics* 42 (1): 35-44, January 2007.

Mandell, Lewis, *Financial Literacy: Are We Improving? Results of the* 2004 *National Jump $tart Survey*, Jump $tart Coalition for Personal Financial Literacy, 2004.

——, *The Financial Literacy of Young American Adults: Results of the* 2008 *National Jump $tart Coalition Survey of High School Seniors and College Students*, Jumpstart Coalition, 2009.

McKay, Claudia and Mark Pickens, *Branchless Banking* 2010: *Who's Served? At What Price? What's Next?* CGAP Focus Note No. 66, September 2010.

Miller, Margaret J. (ed.), *Credit Reporting Systems and the International Economy*, Massachusetts Institute of Technology, 2003.

Mundy, Shaun, *Financial Education in Schools: Analysis of Selected Current Programmes and Literature-Draft Recommendations for Good Practices*, in proceedings of OECD-US Treasury International Conference on Financial Education, Washington DC, 7-8 May 2008, Volume II.

Nier, Erlend Walter, *Financial Stability Frameworks and the Role of Central Banks: Lessons from the Crisis*, IMF Working Paper WP/09/70, International Monetary Fund, April 2009.

Organisation for Economic Co-operation and Development, *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*, 2003.

——, *Improving Financial Literacy: Analysis of Issues and Policies*, 2005.

——, *Recommendation of the Council on Principles and Good Practices for Financial Education and Awareness*, 2005.

——, *Best Practices for Consumer Policy: Report on the Effectiveness of Enforcement Regimes*, 2006.

——, *Policy Guidance for Addressing Emerging Consumer Protection and Empowerment Issues in Mobile Commerce*, 2007.

——, *Consumer Education*, 2007.

——, *Financial Literacy and Consumer Protection: Overlooked Aspects of the Crisis*, 2008.

——, *Improving Financial Education and Awareness on Insurance and Private Pensions*, 2008.

——, *Recommendation of the Council on Good Practices for Financial Education related to Private Pensions*, 2008.

——, *Recommendation of the Council on Good Practices for Enhanced Risk Awareness and Education on Insurance Issues*, 2008.

——, *Consumer Education: Policy Recommendations of the OECD's Committee on Consumer Policy*, 2009.

——, *Financial Consumer Protection*, 2009.

——, *Insurance Intermediaries and financial education and protection of Consumers*, 2009.

——, *Issue Note on Insurance Intermediaries and Consumers' Insurance Education and Protection* 2009.

——, *OECD Strategic Response to the Global Financial and Economic Crisis: Consumer Issues*, 2009.

——, *Preliminary Draft Good Practices on Insurance Intermediaries and Consumers*

Insurance Education and Protection, 2009.

——, *Recommendation of the Council on Good Practices on Financial Education and Awareness relating to Credit*, 2009.

——, *Addressing Financial Consumer Protection Deficiencies in the Post Crisis Era*, 2010.

——, *Consumer Protection and Financial Innovation: A Few Basic Propositions*, 2010.

——, *Protecting and Empowering Consumers in the Internet Economy Options for Advancing the Review of the* 1999 *OECD Guidelines*, 2010.

Rajan, Raghuram G., *Has Financial Development Made the World Riskier?* NBER Working Paper No. 11728, National Bureau of Economic Research, November 2005.

——, *Fault Lines: How Hidden Fractures Still Threaten the World Economy*, Princeton University Press, 2010.

Rekaiti, Pamaria and Roger Van den Bergh, "Cooling-Off Periods in the Consumer Laws of the EC Member States. A Comparative Law and Economics Approach", *Journal of Consumer Policy* 23 (4): 371-408, November 2004.

Responsible Finance Forum, *Advancing Responsible Finance for Greater Development Impact: A Stock-Taking of Strategies and Approaches among Development Agencies and Development Finance Institutions*, Consultation Draft, January 27, 2011.

Rutledge, Susan L., *Consumer Protection and Financial Literacy: Lessons from Nine Country Studies*, Policy Research Working Paper No. 5326, World Bank, June 2010.

——, *Country Studies Provide Powerful Lessons in Financial Consumer Protection*, Knowledge Brief No. 26, World Bank, July 2010.

Rutledge, Susan L, N. Annamalai, R. Lester and R. Symonds., *Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool*, ECSPF Working Paper 001, World Bank, August 2010.

Task Force on Financial Literacy, Report of Recommendations on financial literacy, *Canadians and their money: Building a brighter future*, December 2010.

Taylor, Curtis R., "Consumer Privacy and the Market for Customer Information", *RAND Journal of Economics*, 35 (4): 631-50, 2004.

Thomas, David and Frizon, Francis, *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman-A practical guide based on experience in western Europe*, World Bank, 2012.

——, *Resolving disputes between consumers and financial businesses: Current arrangements in central and eastern Europe*, World Bank, 2012.

Tiwari, Akhand, Anvesha Khandelwal and Minakshi Ramji, *How Do Microfinance Clients Understand their Loans?*, Centre for Micro Finance at the Institute for Financial Management and Research, Chennai, India, October 2008.

UK Financial Services Authority, *Reforming Conduct of Business Regulation*, Consultation Paper, October 2006.

——, *The Turner Review: A regulatory response to the global banking crisis*, March 2009.

US Department of Housing and Urban Development and Department of Treasury Joint Task Force, *Curbing Predatory Home Mortgage Lending*, June 2000.

United Nations, Department of Economic and Social Affairs, *United Nations Guidelines for Consumer Protection (as expanded in* 1999), 1999.

Weinstein, Neil, "Unrealistic Optimism About Future Life Events", *Journal of Personality and Social Psychology* 39 (5): 806-820, 1980.

Willis, Lauren E., "Against Financial Literacy Education", *University of Pennsylvania Law School, Public Law and Legal Theory Research Paper Series*, Research Paper No. 08-10, November 2008.

World Bank, *Finance for All? Policies and Pitfalls in Expanding Access*, 2008.

——, *General Principles for Credit Reporting*, September 2011.

References

——, *Migration and Remittances Factbook* 2011, November 2010.

——, *Principles for Effective Insolvency and Creditor/Debtor Regimes*, January 2011.

——, *Report on the Treatment of Insolvency of Natural Persons*-Working Group on the Treatment of the Insolvency of Natural Persons, World Bank, Nov. 2011 (forthcoming).

World Bank Group, Financial and Private Sector Development Vice Presidency, Payment Systems Development Group, *Payment Systems Worldwide: a Snapshot. Outcomes of the Global Payment Systems Survey 2008*, 2008.

Annex I: Private Pensions Sector

Pensions plans are typically the largest single financial investment for households and, in the absence of strong consumer protection, households may find their plans are inadequate to meet their retirement income needs. However, work on consumer protection in private pensions remains at a nascent stage[93]. What regulation there is tends to be country-specific and, following a number of scandals (e. g. Enron) and the financial crisis of 2007-09, a number of assumptions underlying the role and structuring of supplementary pensions need to be reviewed.

The pensions sector has a number of attributes that need to be considered in designing an appropriate consumer protection regime. These include the following:

- Pension savings may be compulsory under a 2nd pillar[94] or an equivalent.
- Where the member is fortunate enough to be in one of the surviving defined benefit arrangements, the funding level may not be subject to normal actuarial standards (e. g. public sector arrangements in a number of countries).
- The member/ affiliate may have little or no say in how the pension plan is funded, invested, administered or governed if the plan is employer-based (i. e. an occupational arrangement).
- The plan may be governed under a trustee arrangement or governance may be left entirely to the employer working through the managing institutions.
- The system needs to allow for both accumulation and decumulation life cycle stages. To date many countries have focused entirely on the accumulation stage, partly because a secondary objective in developing pension systems has been the development of capital markets.

Based on the lack of an agreed approach, the Good Practices employed in private pension assessments to date have relied on practices in use for the insurance sector (especially related to defined benefit plans and life annuities) and the securities sector (for defined contribution plans and investment funds). Recent experience has demonstrated, however, that other issues are at least as important for consumer

protection in private pensions including, critically, the need to understand the roles of risk and lifecycle stage in determining appropriate investment and funding strategies.

Other pension specific issues include: (1) flexibility and options for consumers to switch among service providers of pension plans (pension management companies), (2) the terms and conditions of investment contracts with pension management companies, (3) treatment of the decumulation (pay-out) phase, (4) controls over any fees that are deducted from the pension fund, (5) levels of competition among pension management companies, and (6) portability of full accumulated entitlements when changing employer.

Supervision is also a key issue for consumer protection in private pensions. Pensions may be supervised by the prudential supervisor, or the taxation authorities, or a combination thereof (e. g. Australia, Canada and Peru). There are also examples of the securities supervisor having responsibility for pensions (e. g. the Russian Federation) or a combination of separate insurance and securities supervisors (e. g. Turkey). With only a few exceptions (such as the US), private pensions are not insured by the state. Thus, no established international approach or even range of approaches currently exists. However, recent ongoing global research has begun to identify Good Practices for private pension arrangements and this will ultimately lead, as with the other financial sector elements, to a consensus. In the interim, the Good Practices noted below provide a useful starting point. These have so far been tested in five consumer protection diagnostic reviews (Bulgaria, Croatia, Latvia, Romania and the Russian Federation) carried out by the WBG.

A. Consumer Protection Institutions

A. 1. Consumer Protection Regime

The law should recognize and provide for clear rules on consumer protection in the area of private pensions and there should be adequate supporting institutional arrangements:

a. There should be specific provisions in the law, which create an effective regime for the protection of consumers who deal directly with pension management companies and members/ affiliates of occupational plans.

b. There should be a general consumer protection agency or a specialized agency, responsible for the implementation, oversight and enforcement of pension consumer protection, as well as data collection and analysis (including inquiries, complaints and disputes).

c. The law should provide, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding private pensions.

A. 2. Other Institutional Arrangements

a. The judicial system should provide credibility to the enforcement of the rules on pension consumer protection.

b. The media and consumer associations should play an active role in promoting pension consumer protection.

B. Disclosure and Sales Practices

B. 1. General Practices

a. There should be disclosure principles and practices that cover the consumer's relationship with the pension management company or occupational plan 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. Employers should be responsible for ensuring that new plan members are made fully aware of their rights and obligations under any occupational pension arrangements.

e. Employers should be required to vest benefits with employees relatively quickly so as to avoid undesirable personnel practices (such as terminating employment just as employer contributions are about to vest).

f. Employers should be obliged to ensure that contributions are properly collected, accounted for and passed on to the pension fund's managers.

B. 2. Advertising and Sales Materials

a. Pension management companies should ensure their advertising and sales materials and procedures do not mislead the customers.

b. All marketing and sales materials of pension management companies should be easily readable and understandable by the average public.

c. The pension management company should be legally responsible for all statements made in marketing and sales materials related to its products, and for all statements made by any person acting as an agent for the company.

B. 3. Key Facts Statement

A Key Facts Statement disclosing the key factors of the pension scheme and its services should be presented by the pension management company before the consumer signs a contract.

B. 4. Special Disclosures

a. Pension management companies should disclose information relating to the products they offer, including investment options, risk and benefits, fees and charges[95], any restrictions or penalties on transfer, fraud protection over accounts, and fee on closure of account.

b. Customers should be notified of any planned change in fees or charges a reasonable period in advance of the effective date of the change.

c. Pension management companies should inform consumers upfront of the nature of any guarantee arrangements covering their pension products.

d. Customers should be informed upfront regarding the time, manner and process of disputing information on statements and in respect of transactions.

e. Customers should be informed in writing, at the time of sale or when joining an occupational plan, of the options available to them if they decide to change employer, move or retire.

B. 5. Professional Competence

a. Marketing personnel, officers selling and approving transactions, and agents, 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.

c. Personnel departments with responsibility for occupational arrangements should have at least one suitably qualified individual who can explain the plan to members and deal with third-party providers such as asset management companies.

B. 6. Know Your Customer

The sales officer should examine important characteristics of any potential customer, such as age, employment prospects and financial position, and be aware of the customer's risk appetite and his or her long-term objectives for retirement, and recommend relevant financial products accordingly.

B. 7. Disclosure of Financial Situation

a. The regulator or supervisor should publish annual public reports on the development, health and strength of the pensions industry either as a special report or as part of its disclosure and accountability requirements under the law that governs these.

b. All pension management companies should disclose information regarding their financial position and profit performance.

c. Actuarial reports on funding levels should be required annually for defined benefit plans and members and affiliates should be advised of the condition of the plan in a short and clear written report.

d. Investment reports for defined contribution plans should at least match best practice mutual fund reporting.

B. 8. Contracts

There should be consistent contracts or membership forms for pension products and the contents of a contract should be read by the customer or explained to the customer before it is signed. Ideally, the customer should be required to confirm in their own handwriting that they understand the terms of the pension contract plan.

B. 9. Cooling-off Period

There should be a reasonable cooling-off period associated with any individual pension

product.

C. Customer Account Handling and Maintenance

C. 1. Statements

a. Members and affiliates of a defined contribution pension plan should not be locked into a specified investment profile (and shares in their employer in particular) for more than a short period (e. g. one week) after providing notification of a desire to switch investment profiles.

b. Customers or occupational plan members should receive a regular streamlined statement of their account that provides the complete details of account activity (including investment performance on a standardized basis) in an easy-to-read format, making reconciliation easy.

c. Customers should have a means to dispute the accuracy of any transaction recorded in the statement within a reasonable, stipulated period.

d. When customers sign up for paperless statements, such statements should be in an easy-to-read and readily understandable format.

D. Privacy and Data Protection

D. 1. Confidentiality and Security of Customer's Information

a. The financial activities of any customer of a pension management company should be kept confidential and protected from unwarranted private and governmental scrutiny.

b. The law should require pension management companies to ensure that they protect the confidentiality and security of personal information of their customers 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.

D. 2. Sharing Customer's Information

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 to customers how they use and share customers' personal information.

c. Pension management companies should be prohibited from selling (or sharing) account or personal information to (or with) any outside company not affiliated with the pension management company for the purpose of telemarketing or direct mail marketing.

d. The law should allow a customer to stop or "opt out" of the sharing by the pension management company of certain information regarding the customer, and the pension management company should inform its customers of their opt-out right.

e. The law should prohibit the disclosure of information of customers by third parties.

D. 3. Permitted Disclosures

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.

E. Dispute Resolution Mechanisms

E. 1. Internal Dispute Settlement

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 company should inform its customers of the internal procedures on dispute resolution.

d. The regulator or supervisor should investigate whether pension management companies comply with their internal procedures regarding dispute resolution.

E. 2. Formal Dispute Settlement Mechanisms

A system should be in place that allows consumers to seek third-party recourse in the event they cannot resolve a pensions-related issue with their employer or a pension management company.

F. Guarantee Schemes and Safety Provisions

F. 1. Guarantee Schemes and Safety Provisions

Guarantee and compensation schemes are less common in the pensions sector than in banking and insurance. There are more likely to be fiduciary duties and custodian arrangements to ensure the safety of assets.

a. There needs to be a basic requirement in the law to the effect that pension management companies should seek to safeguard pension fund assets.
b. There should also be adequate depository or custodian arrangements in place to ensure that assets are safeguarded.

G. Consumer Empowerment & Financial Literacy

G. 1. Using a Range of Initiatives and Channels, including the Mass Media

a. A range of initiatives should be undertaken to improve people's financial literacy.
b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on the private pensions sector.
c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for private pensions, the private pension industry and consumer associations in the provision of financial education, information and guidance to consumers, particularly on the private pensions sector.

G. 2. Unbiased Information for Consumers

a. Financial regulators and consumer associations 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, including private pensions.
b. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public in the area of pensions.

G. 3. Consulting Consumers and the Financial Services Industry

a. The relevant authority should consult consumer associations and the private pension industry to help the authority develop financial literacy programs that meet the needs and expectations of financial consumers, especially pension fund members and affiliates.

Annex II: Credit Reporting Systems

Credit reporting is a crucial component of modern financial systems and a critical driver for efficiency in lending to consumers. Efficient and accurate credit reporting systems provide valuable benefits for consumers, enabling them to obtain increased access to credit at favorable terms and conditions and the ability to monitor their levels of debt to ensure that they avoid high levels of indebtedness. Transparency of credit reporting systems is important for good governance of these systems and, at the same time, controls should exist to protect personal data. Credit reporting is becoming an ever more pervasive activity that affects a consumer's economic life by determining access and terms of financial services. Public policy should find the right balance between consumer data protection and the economic rationale of processing personal information. As of 2011, there were no international Good Practices for consumer protection in credit reporting, although a number of international data protection instruments provide useful guidance (see Table 9).

Table 9 Overview of Consumer Protection Regulation for Credit Reporting Systems

Institution or Government	Laws, Regulations, Directives and Guidelines
UN	Art. XII of the Universal Declaration of Human Rights Art. 17 of the International Covenant on Civil and Political Rights of 16 December 1966 UN Guidelines for the Regulation of Computerized Personal Data Files, adopted by the General Assembly Resolution 45/95 of 14 December 1990
OECD	Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security, 2002 Recommendation of the Council concerning guidelines governing the protection of privacy and trans-border flows of personal data, adopted by the Council 23 September 1980 Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, 1980 Declaration of Transborder Data Flows, 1985 Ministerial Declaration on the Protection of Privacy on Global Networks, 1998

concluded

Institution or Government	Laws, Regulations, Directives and Guidelines
World Bank	Principles and Guidelines for Credit Reporting Systems, 2004 Principles for Effective Insolvency and Creditor/Debtor Regimes, 2011 General Principles for Credit Reporting, 2011
APEC	APEC Privacy Framework, 2005
EU	Directive on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such data, 1995/46/EC Directive on Credit Agreements for Consumers, 2008/48/EC repealing Directive 87/102/EEC
COE	Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108 of 28 January 1981, entered into force on 1 October 1985) and Explanatory Report Amendment to Convention ETS No. 108 allowing theEuropean Communities to accede (adopted 15 June 1999, entered into force after acceptation by all Parties) and Explanatory Memorandum Additional Protocol to Convention ETS No. 108 on Supervisory Authorities and Trans-border Data Flows and Explanatory Report (ETS No. 181, opened for signature on 8 November 2001) Recommendation No. R (2002) 9 on the protection of personal data collected and processed for insurance purposes (18 September 2002) and Explanatory Memorandum Recommendation No. R (90) 19 on the protection of personal data used for payment and other operations (13 September 1990) and Explanatory Memorandum
EU-US	Safe Harbor Framework, 2000
US	Fair Credit Reporting Act, 1970 Fair and Accurate Credit Transaction Act, 2003

Several initiatives are underway to improve credit reporting. The Western Hemisphere Credit and Loan Reporting Initiative (WHCRI)[96] defines policies and actions for sub-regional integration of credit and loan reporting systems. To date, assessments have been conducted in eight countries in Latin America (Brazil, Chile, Colombia, Costa Rica, Mexico, Peru, Trinidad and Tobago, and Uruguay.)[97] WHCRI plans eventually to cover all the countries of the Latin America Region. In addition, the IFC (as part of the WBG) has developed the Global Credit Bureau Program, which supports credit bureaus in more than 100 countries worldwide.[98] The WBG has also

established the African Credit Reporting and Financial Information Infrastructure Program to improve the quality and availability of data on borrowers in Africa. A similar program is also envisaged for the Middle East.

In addition, the Credit Reporting Standards Setting Task Force was launched by the World Bank, with support of the BIS, with the objective of defining a core set of international standards for credit reporting. This exercise led to the General Principles for Credit Reporting, published in September 2011, which includes elements of consumer protection as an instrument to facilitate credit reporting systems[99].

In addition, in June 2008 the European Commission set up an Expert Group on Credit Histories to identify barriers to the access to, and exchange of, credit information within the EU and to make recommendations to the Commission. [100]

The Good Practices in this Annex are based upon international approaches regarding data protection policies. These include the basic principles by the United Nations, Organization for Economic Co-operation and Development, the Asia-Pacific Economic Cooperation, the European Union and the Council of Europe. Alternative regulatory models have been taken into account through the comparison of credit reporting regulations in 100 countries. [101] Thus, the Good Practices have been developed based upon a broad range of policy and academic literature, cross-country law evaluation, as well as practical experience from a number of country-based analyses. [102]

The Good Practices focus on the issues of privacy and data protection, which lie at the core of sound consumer protection in credit reporting systems. It is recognized, however, that other issues are also important and should be considered. In particular, credit reporting systems should be subject to appropriate oversight with sufficient enforcement authority. Additional issues include the viability of consumer protection institutions, questions of adequate disclosure to consumers and accessibility to credit bureaus, reporting and handling of customer information, dispute resolution mechanisms, consumer awareness and empowerment, and competition among credit bureaus.

A. Privacy and Data Protection

A. 1. Consumer Rights in Credit Reporting

Laws and regulations should specify basic consumer rights in these respects. These rights should include:

a. The right of the consumer to consent to information-sharing based upon the knowledge of the institution's information-sharing practices.
b. The right to access the credit report of the individual, subject to proper identification of that individual and free of charge (at least once a year).
c. The right to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information. In this process, consumers should be provided with the name and address of the credit bureau.
d. The right to be informed about all inquiries within a period of time, such as six months.
e. The right to correct factually incorrect information or to have it deleted.
f. The right to mark (flag) information that is in dispute.
g. The right to decide if the consumer's credit information (for purposes not related to the granting of credit) can be shared with third parties.
h. The right to have sensitive information especially protected (not included in the credit report), such as race, political and philosophical views, religion, medical information, sexual orientation or trade union membership.
i. The right to reasonable retention periods such as those for positive information (for example, at least two years) and negative information (for example, 5-7 years).
j. The right to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.

Informed consent is the necessary pre-condition for creating transparency of information processing. Article 3 of the UN Guidelines regarding files states that "the purpose which a file is to serve and its utilization in terms of that purpose should be specified, legitimate and, when it is established, receive a certain amount of publicity or be brought to the

attention of the person concerned." This ensures that all processed personal data is relevant to the purpose stated, there are no secret databases, and no data is used without the consent of the data subject. This right can be waived in the context of sharing information with a public credit register for supervisory purposes. However, the consumer should at least be informed about that type of information sharing and be referred to the articles in law applicable to it.

Throughout the world, this Good Practice for consumer protection is reflected in most data protection laws, such as the EU Data Protection Directive (implemented in the 27 *EU Member States and some Latin American countries), many non-European laws,*[103] *the COE Convention, as well as in the Openness Principle* 12 *of the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.*

The right to access personal information, and in this context the credit report and score, is justified by Principle 4 *of the UN Guidelines ("interested-person access" that demands proper proof of identity). "Access and correction rights" are provided by all major international data protection instruments (UN, OECD, EU and APEC principles). More advanced credit reporting regimes are implementing the requirement to explain to consumers the credit score (for instance, as is done in the US). This can be implemented in a cost-effective way, but should be tailored to the development stage of the industry so that, where the industry has just started to operate, companies are not over-burdened with access requirements. In these cases, a transition period would be warranted.*

Access by an individual to his or her information is granted in most countries that have a data protection law.

Access is the pre-condition to dispute resolution and correction. These basic rights are established in all major international instruments relevant for data protection, such as in the UN Guidelines (Principles 2 *and* 4*) and OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (Individual Participation Principle* 13*). In the latter, it is stated that the individual has the right to obtain confirmation whether information has been stored from the data controller and to have it communicated within*

a reasonable manner and timeframe. Access is also mentioned in the World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes (Principle B1.4). [104] In addition, the cost of correction is to be borne to the data controller (UN Principle 4). According to Jentzsch (2007), the right to have information corrected was laid out in more than 40 countries.

The right to block information in cases of dispute is also common in credit reporting regimes. Between 2005 and 2006, this right was implemented in 25 countries. Blocked or flagged information indicating a dispute is an additional quality signal for creditors. The right to know to whom the information was disclosed was implemented in 44 countries (Jentzsch, 2007).

The consent principle in many cases includes the provision that individuals can stop information processing for purposes unrelated to credit granting, such as marketing. Marketing restrictions (in terms of opt-in or opt-out) were in place in 23 countries. Opt-out increases marketing participation rates and depends on the framing of the question. [105] For instance, APEC's Principle IV Uses of Personal Information) demands that information is only used for the purposes of collection stated beforehand, except where the individual has given consent.

The right to have sensitive information specifically protected is part of most major international instruments, such as the OECD reports (Comment to Guidelines on the Protection of Privacy), UN Principles (Principle 5), the COE Convention (Article 6), the EU Data Protection Directive (Article 8), and the EU-US Safe Harbor Framework. Legal controls against anti-discrimination are also discussed in the World Bank Principles (Principle 15). Only the APEC Privacy Framework does not demand extra protection of personal sensitive information.

The major international instruments also demand a limitation on information collection and distribution, e.g. OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (Principle 10), UN Principles (Principle 3), APEC Privacy Framework (Principle III Collection Limitation), and the COE Convention. The latter, for instance, states in Article 5 e. that data are "preserved in a form which permits

identification of the data subjects for no longer than is required for the purpose for which those data are stored." Companies have an incentive to collect personal information excessively and this can lead to sub-optimal market results.[106] *Therefore, it is good practice to find time limits that set a limitation on data collection.*

International averages for negative information are seven years for bankruptcy, five years for lawsuits, and six years for judgments for a sub-sample of the surveyed countries. The World Bank typically proposes a range of five to seven years (Principle 17). According to the above principle of purpose specification, positive information should not be stored excessively as it loses its predictive power.

The duty of financial institutions to inform customers in case of adverse action in credit decisions is now part of US and European legislations. According to Jentzsch (2007), only seven countries had this clause (during the time of research in 2005-2006), partly because it was only recently introduced in Europe in the Article 9 of the EU Directive on Credit Agreements for Consumers.

According to the Directive, creditors should inform the consumer immediately and free of charge about the result of database consultation and the particulars of the databases consulted. The additional duty to inform consumers about less than optimal conditions is part of US regulations.[107] *Informing consumers "only in adverse action situations" is not sufficient for adequate data protection.*

Also, care should be taken to ensure that public sector and private sector credit registers provide the same level of consumer protection on the use of personal data. Both types of information systems provide data that allow for identification of individuals and both should provide the same high quality of protection for consumers of financial services.

B. Consumer Empowerment & Financial Literacy

B. 1. Unbiased Information for Consumers

Financial regulators should provide, via the internet and printed publications, independent information for consumers that seek to improve their knowledge for actively managing the credit report.

Education on credit reporting may comprise several activities, such as the key information brochure that explains to consumers their privacy choices and their impacts, as well as rights and obligations. Some examples from the FTC are the following:

- *Privacy Choices for Your Personal Financial Information*
- *Building a Better Credit Report*
- *Credit Repair: Self Help May Be Best*
- *Disposing of Consumer Report Information? New Rule Tells How*

It would be important to help consumers understand that credit financing costs could be reduced once the credit score reflects a better credit risk and how this can be achieved. Education on credit reporting should also include a disclosure of the main factors that have an impact on the credit score. Public information campaigns have been actively pursued by regulators in the US, South Africa, and the UK.

B. 2. Awareness of Credit Reporting

In order to ensure that financial consumer protection and educational initiatives are appropriate, it is necessary to measure financial literacy with large-scale surveys that are repeated periodically. These surveys should include questions on credit reporting and scoring.

Credit reporting is becoming an ever more pervasive activity in the economy. Therefore, questions about knowledge regarding credit reporting should be included in financial literacy surveys, in order for public information campaigns on credit reporting to be tailored as best as possible. There is, however, no international precedent for this Good Practice.

Annex III: Background

I. Financial Consumer Protection and Global Financial Regulation

Global Retail Financial Market Development

Until the financial crisis of 2007-09, the global economy was adding an estimated 150 million new consumers of financial services each year. Rates of increase have since slowed but growth continues apace. Most new consumers are in developing countries, where financial consumer protection is still in its infancy. Global consumer debt stood at 12-14 percent of GDP in the first half of the 1990s but it has increased to 18 percent in recent years. Mortgage debt rose still more rapidly—from 46 percent of GDP in 2000 to over 70 percent in 2007. [108] At the same time, households have become increasingly responsible for funding their own retirement pensions, while expanding their investments in securities, investment funds and insurance policies. In addition, particularly in low-income countries, households have increased their use of payments services and remittances. [109]

By supporting the expansion of financial inclusion, the rise of consumer finance contributes to economic growth. Financial services provide two key functions for all households, namely, risk management and inter-temporal consumption smoothing. By employing such services, consumers are able to "smooth out" consumption in periods of scarcity and thus do not need to consume their productive capital. In addition, financial services allow consumers to borrow funds to invest in new assets, including

those of their businesses, however small-scale. Furthermore, the use of formal financial services results in efficiency of financial transactions. [110] Yet an estimated 2. 7 billion working-age adults worldwide lack access to any formal financial services, relying on unreliable and often expensive informal financial service providers. [111]

Consumer Finance and Risk to Financial Stability

The global financial crisis of 2007-09 highlighted the importance of financial consumer protection for the long-term stability of the financial system and the global economy. Commentators have pointed to a combination of unconstrained financial innovation, excessive levels of global liquidity, and an extended period of accumulating macroeconomic and financial imbalances that supported unsustainable increases in financial leverage and risks. [112] Contributing to the financial crisis was the rapid growth of household lending over the last decade. [113] Financial institutions also transferred their financial exposures to households, which increasingly became subject to new types of risks, such as those involved in borrowing in foreign currencies and at variable interest rates. [114] In developed mortgage markets, complex financial products and services (such as hybrid adjustable-rate mortgages) were sold to borrowers, some of whom had troubled credit histories. In today's deeply interconnected financial markets, the securitization of such household credit spread the weaknesses in household finance to the rest of the global financial system. [115] Furthermore imperfections in the financial market are likely to have a greater impact on the rest of the economy than weaknesses in other markets due to the financial market's central role in ensuring efficient allocation of capital.

Over the last decade, risk has been exacerbated by the expansion in many low-income and emerging markets of the use of formal financial services. Increased levels of financial inclusion have brought new consumers into formal financial markets, which in emerging economies often have weak financial consumer protection. In addition, technology has changed the types of protection needed by many first-time financial consumers. For example, where access to formal banking services is difficult, financial services delivered via cellular/mobile telephones have filled a critical need for

consumers. Such delivery, however, raises issues of consumer disclosure and recourse. [116]

At the same time, financial literacy of consumers has not caught up with consumers' expanded use of financial services, especially in low-income markets. The extent of financial literacy significantly lags behind what is required for most consumers to understand the available financial products and services—and what is needed for consumers to be confident that they know what they are buying. In many emerging markets, a significant portion of the public lacks any history of using basic, let alone sophisticated, financial products and services. For many first-time financial consumers, no member of their circle of friends and extended family has ever entered into a long-term financial contract, such as a home mortgage loan. Furthermore, even basic financial products and services may challenge the ability of inexperienced consumers to understand the inherent risks and rewards involved in using formal financial services.

Financial Consumer Protection, Financial System Development and Risk Mitigation

Financial consumer protection promotes the efficiency, transparency and deepening of retail financial markets. Consumers who are empowered with information and basic rights—and who are aware of their responsibilities—provide an important source of market discipline to the financial system, encouraging financial institutions to compete by offering useful products and services. In turn, this promotes consumer trust and engagement with the formal financial services market.

Financial consumer protection is needed to ensure that expanded financial inclusion results in equitable growth. Strong consumer protection helps to ensure that increased use of financial services benefits all consumers and does not create undue risk for households. Furthermore, weak financial consumer protection can cause the growth-promoting benefits of expanded access to consumer financial products and services either to be lost or else greatly diminished. [117] Weak protection undermines consumers' confidence and public trust, thus discouraging households from purchasing

financial products and services—and increasing the likelihood that the products and services they purchase fails to meet their needs and objectives.

Consumer protection also improves governance of financial institutions. By strengthening transparency in the delivery of financial services and the accountability of financial institutions, consumer protection helps build demand for good governance and the strengthening of business standards in the financial system.

In addition, consumer protection helps financial institutions face the many risks that arise in dealing with retail customers. In its April 2008 report, the Joint Forum of the Basel Committee on Banking Supervision, the International Organization of Securities Commission and the International Association of Insurance Supervisors identified three potential key risks related to "mis-selling" financial products and services to retail customers.[118] They are: (1) legal risk, if successful lawsuits from collective action by customers or enforcement actions by supervisory agencies result in obligations to pay financial compensation or fines; (2) short-term liquidity risk and long-term solvency risk, if retail customers are treated unfairly and, thus, shun a financial institution and withdraw their business from it; and (3) contagion risk, if the problems of one financial institution (or type of financial product) spread across the financial system.[119] Effective consumer protection can help ensure that the actions of financial firms do not make them subject to criticisms of mis-selling. Specifically in the microfinance sector, minimum consumer protection regulation is needed to avoid the reputational risk that arises when borrowers become over-indebted.[120]

Last but not least, consumer protection protects the financial system from the risk of government over-reaction. The impact of too little consumer protection became evident during the insurance and superannuation scandals in the United Kingdom and Australia respectively, resulting in extensive studies on recommendations for regulatory reform, including consumer disclosure.[121] The political response to a collapse of a part of the financial system may be to over-compensate with heavy regulation. As a reaction to increasing public pressure to adopt consumer protection measures, some governments have resorted to imposing interest rate caps for consumer loans, thus undermining development of credit markets. While the issues of mis-selling

are particularly important in high-income and middle-income countries, they also apply to low-income countries. For example, in India and Nicaragua mis-selling of microcredit has resulted in government regulation restricting the ability of lenders to collect repayments. [122]

II. Designing Financial Consumer Protection Programs

Key Elements

The focus of financial consumer protection is on the relationship and interaction between a retail customer and a financial institution. When designing successful consumer protection, it is important to distinguish between unsophisticated retail (and possibly even illiterate) consumers versus highly sophisticated corporate customers. Transactions between corporate customers and financial institutions are not subject to many of the problems that can potentially harm households and individuals. Thus it is the retail market for financial services (sometimes called the business-to-consumer or "B2C" market) that is the focus of financial consumer protection.

At its heart, the need for financial consumer protection arises from *an imbalance of power*, *information and resources* between consumers and their financial service providers, placing consumers at a disadvantage. Financial institutions know their products well but individual retail consumers find it difficult and costly to obtain sufficient information regarding their financial purchases. [123] In addition, financial products and services tend to be difficult to understand, compounded by increasing complexity and sophistication in recent years. Also consumers typically find it expensive and problematic to launch lawsuits to sue firms to enforce the terms of individual contracts.

The imbalance of power between consumers and providers is particularly marked in financial markets. In part, this is due to the complex nature of financial products and services which often have a deferred expected pay-off to the consumer

and, in many cases, are purchased only rarely. Residential mortgages are a good example. Most consumers enter into a home mortgage just a few times in their lifetimes, if at all. This makes it hard for consumers to learn from their mistakes and become financially literate, at least with respect to collateral on their immoveable property. It also makes it easy for a bank or other financial firm to profit from deceptive or poor quality products, knowing that much time will likely pass before the consumer learns the truth. Also, decisions about financial products and services involve assessments of risk and estimates of future values that are complex even for sophisticated retail consumers. Even in well-developed markets, weak financial consumer protection can render households vulnerable to unfair and abusive practices of financial institutions, including financial frauds and scams. Consumers may also experience inadequate disclosure of the risks involved in taking on large debts, particularly in foreign currency.

An efficient and well-regulated financial system should provide consumers with five key elements:

(1) ***Transparency***, by providing full, plain, adequate and comparable (and understandable) information about the prices, terms and conditions (and inherent risks) of financial products and services;

(2) ***Choice***, by ensuring fair, non-coercive and reasonable practices in the selling and advertising of financial products and services, and collection of payments;

(3) ***Redress***, by providing inexpensive and speedy mechanisms to address complaints and resolve disputes;

(4) ***Privacy***, by ensuring protection over third-party access to personal financial information; and

(5) ***Trust***, by ensuring that financial firms act professionally and deliver what they promise.

Financial consumer protection is delivered in two ways: (1) financial regulation and (2) financial education. Such financial regulation consists of market conduct regulation, i. e. laws and regulations regarding the business conduct of financial

institutions in delivering financial products and services to consumers. Business conduct regulation includes *government regulation*, i. e. laws and regulations issued by government agencies such as financial supervisors and consumer protection agencies. It also includes *self-regulation*, that is, the voluntary codes of conduct and other responsible finance practices adopted by industry associations as a means of encouraging improved business practices by financial institutions. Financial education consists of programs of financial literacy to help consumers understand the risks and rewards, as well as their rights and obligations, in using financial products and services.

Financial Regulation

Some regulation of financial markets is needed. As stated by Dani Rodrik (2007), "Markets will not work on their own. You need all the institutions that regulate markets, stabilize markets... compensate losers and provide the safety nets, without which markets can neither be legitimate (n) or, for that matter, efficient...."[124] Furthermore, financial consumer protection can help markets work more effectively since risks are less likely to be misallocated, and financial institutions are more likely to act carefully, than they would in the absence of strong regulations for financial consumer protection.

Competition policy will not fully address consumer protection issues on its own. Mark Armstrong (2008) observes that in most competitive markets, competition policies are sufficient to ensure that firms succeed by providing consumers with the products and services they want. However, Armstrong argues that retail financial markets are different from other markets and more is required to ensure their efficiency. He notes that, in financial markets, government policies are needed to ensure that: (1) comparable information is provided to consumers, (2) consumers become aware of market conditions, (3) consumer search costs are reduced and (4) hidden costs are clarified. Where such policies are in place, consumers can access essential information on which to make informed decisions.[125] This is an important first step. However, building trust in the financial system requires still more, including policies

to prevent misleading and fraudulent marketing.[126]

The challenge is to strike the right balance between government regulation and the forces of market competition. Government intervention should be considered when it is both feasible and cost-effective—and when there is inadequate capacity for self-regulation. Rules need to be proactive to prevent abuses and not simply react to problems of the past. In particular, this requires that violations of regulations are sufficiently punished with the aim at least of deterring future infringements. At the same time, undue regulation can stifle financial innovation. As noted by US Federal Reserve Board Chairman Ben Bernanke in April 2009, regulators should "strive for the highest standards of consumer protection without eliminating the beneficial effects of responsible innovation on consumer choice and access to credit."[127] Where resources are available, the costs and benefits of the proposed financial consumer protection reforms should be analyzed, taking into account the estimated direct and indirect effect on competition, innovation and growth. Such analysis will help ensure that the proposed regulation is both effective and efficient.

Although self-regulation can be useful in improving the business practices of financial institutions, it can never be a substitute for government regulation to protect consumers. Regulation by financial institutions, or what is known as "self-regulation", occurs when institutions agree among themselves first to establish voluntary codes for the business conduct of their dealings with consumers, and then to review the extent to which the institutions follow the requirements of the codes. Codes of conduct can encourage financial institutions to follow ethical standards in the treatment of retail customers. The codes are generally developed and implemented by industry associations. Market conduct codes primarily act to complement financial regulation, particularly if the regulator (or supervisor) oversees the codes and reports on their effectiveness. However, particularly in developing countries, self-regulation is frequently ineffective since institutional capacities of industry associations are often limited and financial markets are highly concentrated and dominated by a small number of institutions. If the voluntary codes are not sufficient to improve business practices, the government may wish to consider enacting legislation inspired by elements of the

codes in order to strengthen the legal framework for financial services and then ensure that the laws and regulations are effectively applied and enforced.

In the long-run, prudential regulation and consumer protection regulation complement each other. The rationale for financial regulation ultimately rests on the objectives of mitigating systemic risk and protecting consumers, including retail investors. In most circumstances, the two objectives are complementary. For example, deposit insurance schemes can reduce systemic risk while protecting retail deposits. In some instances, however, the objectives may be in conflict. For example, by requiring high levels of bank capital, measures to protect depositors may reduce the availability of credit for the economy or reduce market liquidity and, thus, contribute to macro-systemic risk.[128] However, over the long-term, prudential and business conduct supervision are complementary. Ensuring that consumers have minimum legal protections and access to financial education will strengthen the quality of the retail portfolios of financial institutions and thereby strengthen the stability of the financial system.

Furthermore, business conduct supervision is needed where prudential supervision is not applicable. The last decade has seen a rapid expansion in the role of financial intermediaries. They are diverse and their roles range from payment agents for banking to mortgage brokers for residential mortgage underwriting. Such intermediaries create risk for the financial system, but they cannot be supervised using prudential oversight. Such financial intermediaries should be subject to business conduct (i. e. consumer protection) regulation and supervision.[129]

The design of financial consumer protection measures should also take into account recent research in behavioral economics. Behavioral economics can help frame policies. It can also help de-bias presentation of consumer information that empowers consumers in their decision-making (such as information regarding minimum payments). Psychological biases, including mistaken beliefs, may influence consumers to make choices that are neither rational nor optimal. Consumers, for example, may assume that interest rate charges or penalties will not apply to them or they may be over-optimistic about their financial futures and, thus, unable to forecast

their future financial status accurately. [130] Individuals often over-estimate their financial capabilities, including their understanding of the concept of the time value of money and the impact of compound interest over time. [131] Consumers also fall victim to projection bias, namely the prediction of personal preferences into the future. [132] Other related problems are hyperbolic discounting (where consumers apply a high discount rate to their future income and, thus, reduce the present value of their savings to an unreasonably low level), impulse purchasing and weaknesses in self-control. The research points to the need for surveys of financial literacy and consumer spending habits as essential background for designing consumer information policies-as well as programs of financial education.

Financial Education

Financial literacy is an important part of financial consumer protection. Financial education cannot substitute for consumer protection regulation. However, financial education and consumer protection regulation are complementary and should be combined in a program of reform of financial consumer protection. [133] It is not practical to consider measures to improve financial consumer protection without also looking for ways of strengthening financial literacy. A well-educated consumer should be able to understand consumer disclosures, the risks and rewards, and the legal rights and obligations that are involved. In short, a financially literate consumer should be able to make informed decisions about financial products and services. [134] Such empowered consumers should play an active role in shopping for the best financial products and services—and the best providers—that meet their needs. However, financial education is not a panacea. Even the best programs of financial education cannot replace basic, well-tested and high-impact rules of business conduct for financial institutions, such as adequate disclosure of effective interest rates.

Financial education for consumers should focus on the appropriate use of financial products and services. Particularly complex financial products and services, such as long-term residential mortgages with adjustable rates of interest, require more in-depth understanding than simple products such as bank savings accounts. Financial

education programs should be adjusted accordingly. It may also be helpful to identify specific target groups for financial education, in particular those most fragile and vulnerable, including the unemployed and migrants and those exposed to accidents of life which weaken their financial situation, such as a sudden drop of income, divorce or a loss in the family. For such populations, financial education should include discussion of the risks related to episodic expense and revenue streams and the potential for over-indebtedness.

General financial education is important but lies outside the scope of targeted programs of financial consumer protection. General programs of financial education should teach households how to prepare family budgets and plans to meet their financial needs and goals. These skills are critically important in establishing and maintaining financial well-being. They should be complementary to (but not directly part of) targeted financial consumer protection initiatives. [135]

Building financial literacy requires a sustained long-term effort. While the experience of industrialized countries over the last thirty years—and more recently in developing countries—has identified lessons of "what works and what does not" in consumer protection, little is clearly understood as to what works (and what does not) in improving financial literacy over the long-term, although ongoing research is expected to provide new insights. [136] Box 1 summarizes some initial measures that have pointed to success being realized in financial education programs. [137]

Box 1 Measures to Ensure Success of Financial Education Programs

National financial education programs should be led by the financial regulators but involve all stakeholders. It is the financial regulators who are most aware of the weaknesses in financial literacy—and the issues that these weaknesses create for financial sector development. However, national programs need the active involvement of all stakeholders, including the financial services industry and their professional associations, consumer advocacy organizations, government ministries and agencies (and particularly the education ministry) as well as the mass media.

Experience in developed countries suggests that financial education should be focused on "teachable moments." To be successful, financial education needs to provide information "at the time the consumer wants it and in the form the consumer wants it." Consumers are often receptive to financial education at certain points in their lives, for example, when they first take a residential mortgage, start a family, or plan for retirement.

Financial education should be tailored to consumers' levels of literacy and expertise. Particularly in low-income countries, financial education programs need to be tailored to meet the needs of consumers with low levels of general literacy and limited experience in using financial services.

Any program to improve financial education should be rigorously tested. Techniques of delivering financial education have been well tested in the US, Europe and elsewhere over the last 30 years, but their impact on levels of financial literacy is still unclear. Even more unclear is the impact of financial education on consumer behavior. Financial education should, therefore, be encouraged, but it should be rigorously tested and evaluated in the short and long-term.

National financial education strategies should include a role for both government and civil society. Clear guidelines are also needed on the types of information and personnel resources that should be provided by financial service providers, government and consumer organizations. The industry associations within the financial system, such as banking associations, are often keenly interested in providing financial education and training for consumers. This should be encouraged as part of a national strategy to improve financial education. Consideration should also be given to ways of strengthening consumer organizations and ensuring that they have a long-term and stable funding source that will allow them to play a vital role in protecting and educating financial consumers.

III. Design of the Good Practices for Financial Consumer Protection

The Good Practices attempt to capture what are generally agreed to be effective approaches to treating financial consumer protection. They seek to state

measures that evoke general agreement among regulators. As a result, where substantial debate still remains over the best way (s) of dealing with an issue related to financial consumer protection, that issue has not been included. For example, there are wide-ranging views on the best institutional structure for financial regulation, including regulation of business conduct. Nier (2009) provides preliminary analysis showing that countries with separate consumer protection and prudential regulators (known as the "Twin Peak" approach) generally weather financial crises better than those with a single integrated regulatory agency with both prudential and consumer protection mandates. [138] However, differing views are provided by the Group of 30 and the FSA's Turner Review. [139] Thus, the subject remains one for further debate. The Good Practices also do not include issues of approval of product design—either before or after a financial product is issued. Some regulators prohibit financial products and services that they consider to be "toxic" for financial consumers, but there exists no international consensus on the parameters for any such financial product approval or prohibition.

The Good Practices relate only to the direct relationships between retail customers and financial institutions (or their agents and intermediaries). Thus, the Good Practices do not include collateral registries. Although they are important parts of financial system infrastructure, collateral registries are not directly involved in relations between consumers and their financial institutions. Small firms, especially sole proprietorships, are also not specifically covered under the Good Practices but the recommendations for consumer protection will generally also help to protect small businesses. However, microfinance borrowers are covered (as part of the Good Practices for Non-Bank Credit Institutions) due to the difficulty in separating loans for micro businesses from credits for consumers.

The Good Practices cover only the formal financial system. Although the Good Practices apply to various forms of regulated non-bank financial institutions (such as microfinance lenders, credit cooperatives, credit unions and investment clubs), informal service providers, such as "loan sharks", lie beyond the scope of the Good Practices. At the same time, any entity that engaged in selling financial products or

services should be subject to appropriate regulation. If not, consumers may be vulnerable to entities offering financial products or services using business models that are specifically designed to take advantage of regulatory gaps.

Good Practices for key parts of the financial system have been prepared. Detailed Good Practices for each major sector—banking, securities, insurance, and non-bank credit institutions—are presented with annotations to identify the basis for each Good Practice. [140] One of the challenges has been to choose between a common set of Good Practices for all consumer finance and Good Practices that are sector-specific. The Good Practices are broken down by sector since most laws and regulatory agencies are specific to different types of financial institutions. Such an approach also facilitates the work of assessors who are generally specialists in one or two sectors. Consideration could also, however, be given to product or service-specific Good Practices. Certainly many common elements are present in all types of retail financial products and services and the approach and general objectives are similar regardless of the specific retail product or service. However, each sector of the financial market has its own peculiarities and a common approach misses important subtleties. However consumer protection is a systemic issue across the financial sector. As a result, effective market conduct supervision requires close cooperation among government agencies to align with the interconnected financial markets they must supervise. The Good Practices have been designed with this approach in mind.

An increasingly important issue for consumer protection regimes is "regulatory arbitrage". In such cases, regulators may miss important business conduct issues regarding financial products and services that look like one type of product but are legally another. Unit-linked insurance policies (also called variable annuities) are a case in point. From a legal perspective, they are insurance products and are therefore regulated under the rules that apply to insurance policies. However, from a functional perspective, they are indistinguishable from investment funds. Yet such unit-linked products are generally regulated as insurance products and are not subject to the stringent disclosure requirements that typically apply to investment funds. Similar issues arise for mortgages and mortgage alternatives, such as building savings loans or

specific consumer credit related to home building or renovation. A cross-sector approach is likely to become increasingly significant as more sophisticated financial products and services become available and consumer well-being ever more threatened by regulatory arbitrage in packaging products.

The Good Practices allow a country to compare its financial consumer protection framework to international practice. The Good Practices provide an effective tool for systematic analysis of the laws, regulations and institutions involved in financial consumer protection, as well as allow detailed comparisons across different countries. The Good Practices thus provide the basis for countries to conduct self-assessments of their financial consumer protection frameworks. By providing a level of detail not generally found in overarching "principles", the Good Practices afford a precise and systematic methodology for assessing a country's consumer protection framework compared to international practice—and, thus, for determining what needs to be done. However, the value of the Good Practices is in generating specific advice not only for government authorities but also for financial industry institutions and associations, as well as consumer organizations. It is then up to the authorities, institutions and organizations in each country to determine the pace and strategic choices to complete a road-map of reform implementation, with the details of implementation dependent entirely on the country context. In three out of the 18 countries noted in Table 1, the diagnostic reviews have led to the development of detailed country-level action plans and implementation programs for strengthening legislative and institutional capacity. All of the diagnostics have stimulated substantive changes to government policies, national laws or institutional structures.

However, implementation of the Good Practices should be tailored to a country's needs and objectives. While the work of carrying through on appropriate reforms is necessarily country-context specific, the basic ideas are fundamental and universally applicable. They should, therefore, be part of consumer protection strategies for countries worldwide. In some low-income countries, such as those of sub-Sahara Africa, the regulated financial system serves less than 20 percent of the population and the rest are obliged to rely on informal financial service providers that

fall outside government regulation. In countries where formal financial services are not widely used, consumer protection regulation and supervision should be designed in ways that increase access to financial services and strengthen consumer trust in the formal financial system. Furthermore, it is well-recognized that no recommendations coming from an outside source can be implemented without local "champions" pursuing programs that meet the country's needs and objectives. Also country action plans need to take into account the political strength and will of these champions. In most countries, the best solution is likely to be a phased-in reform program. CGAP suggests, for example, that in countries with low supervisory capacity, such phasing-in should be based on: (1) identification of key issues and (2) assessment of government's capacity to develop rules, investigate and detect alleged breaches of the rules, and sanction financial institutions found to have broken the rules.[141] It would also be helpful to prepare even rough estimates of the expected impact of reforms on the affordability and availability of financial services.

IV. Possible Areas for Future Work by the International Community

The Good Practices should inevitably be further refined and developed. Future work might include refinement of the Good Practices for private pensions and credit reporting (in addition to future revisions of the other Good Practices.) Good Practices are also needed for residential mortgage underwriting. It may be helpful to expand the discussion of consumer protection for credit cards to debit cards and prepaid cards. In particular, specific issues on prepaid cards and mobile money products related to procedures for closing accounts and forfeiture of unused balances. In addition, future revisions of the Good Practices will benefit from comments received on the existing drafts, as well as from examples of successful approaches in low-income economies or other countries where resources for financial system supervision are especially limited. Consideration could also be given to increasing the consistency of the Good Practices across the different types of financial services, and clarifying the reasons for the differences among different services. The Good Practices will also benefit from the

results of ongoing international work, including that of FinCoNet, the International Network on Financial Education, the OECD Task Force on Financial Consumer Protection and the World Bank-led task force on consumer insolvency. At the same time, there is an active ongoing debate-particularly in the US and EU-about the future of financial regulation and supervision (including that for market conduct, i. e. consumer protection). The final resolution of the debate on financial regulation and supervision will substantially influence future revisions of the Good Practices.

New research is also emerging on key consumer protection issues. Examples include the finding that the structure for remuneration for those selling both insurance and securities products has a strong influence in determining which products are sold to consumers. A future Good Practice might suggest that financial advisers be paid on a fee (rather than commission) basis. [142]

Needed also are supporting papers focused on the specific needs of low-income countries. Particularly in low-income countries, it would be useful to look at measures that increase the depth of services for under-served households. This might include, for example, giving all consumers the right to a minimum-service bank account, although analysis should be made of the likely impact of any such legal stipulation. Also important would be an analysis of the rapid development of bank assurance (sometimes called the "bank insurance model") in almost all emerging markets. For low-income countries, future work might also include an analysis of the use of customary law in alternative redress mechanisms, such as oral dispute resolution.

Consideration should be given to ways of expanding the role of civil society. Self-regulatory organizations (such as industry associations) should be active in consumer protection and financial education. Measures should also be developed to ensure that consumer advocacy organizations and other non-government organizations (NGOs) are effective participants in programs to strengthen financial consumer protection—and that they have access to stable sources of funding for their ongoing operations. For countries with programs in financial consumer protection, technical assistance and training should be provided by the international community, including through civil society.

Developing indicators for measuring the levels of financial consumer protection across countries would be useful. As a snapshot of a country's financial consumer protection framework, indicators summarizing the level of development of the legal, regulatory and institutional framework for financial consumer protection would be useful as a form of cross-country analysis. In addition to analysis of legislation and institutional structures, it may also be helpful to incorporate the findings of national surveys of financial literacy and consumer behavior, as well as levels and types of complaints regarding consumer financial services.

The Developing tools to help regulators define priorities for choosing among the recommendations would be useful. National governments are often well-equipped to identify weak points and define what changes are needed to improve the financial consumer environment. However, all governments have limited resources. Tools are, therefore, needed to assist governments in selecting the reforms with the best potential for positive impact. Such tools should include analyses of risk and impact assessments, as well as estimates of the cost of compliance for financial service firms, so as to help reasonably predict the expected nature and timing of changes in the financial system. The tools might also provide guidance to countries in preparing self-assessments of their financial consumer protection frameworks.

The tools should also include rigorous testing and measurement of the impact of financial consumer protection measures. Household surveys of financial literacy and consumer behavior provide a useful baseline assessment against which the impact and effectiveness of financial consumer protection reform programs can be measured. Importantly, one of the objectives of the surveys should be to ask about consumer confidence in the use of formal financial services. However, the extent of consumer understanding of the information for financial products and services should also be assessed, using consumer cognitive and usability testing-and the findings should be used to inform the design of consumer disclosures.[143] In the US, the Federal Reserve Board has conducted extensive testing of mandatory disclosure of credit card information prior to the release of detailed regulations on disclosure. It would be useful to conduct similar testing in other countries, including in low-income economies and in

those with low levels of financial literacy. In addition to household surveys and mystery shopping, it may be useful to consider other quantitative and qualitative evaluation techniques, including ethnographic research tools. Experimentation of different approaches, including delivery of financial education through private sector financial institutions and via mass media, would also be helpful.[144] However, the impact of using experimental methods to provide financial education should be measured and evaluated, including, where possible, through randomized controlled trials. Also, consumer research and testing of the ultimate impact of reforms with different products and services would be particularly useful. Innovation may lead to new approaches in the delivery of financial services, particularly in low-income countries, and research would help to identify the benefits and risks for consumers in using new financial products and services.

Notes

[1] Consumer protection regulation/supervision is often also called "market conduct" regulation/supervision or "business conduct" regulation/supervision.

[2] G20 Communiqué: Meeting of the Finance Ministers and Central Bank Governors, Paris, 18-19 February 2011, available at http://www.g20.org/Documents2011/02/COMMUNIQUE-G20_MGM%20_18-19_February_2011.pdf.

[3] The Group of Twenty (G20) Finance Ministers and Central Bank Governors was established in 1999 to bring together systemically important industrialized and developing economies to discuss key issues in the global economy. The G20 consists of the Ministers of Finance and Central Bank Governors of 19 countries, namely: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, United Kingdom and United States of America, as well as the European Union, represented by the rotating Council presidency and the European Central Bank. The World Bank participated in both the OECD and FSB consultative advisory groups in preparation on the G20 High Level Principles and the FSB report on consumer finance protection.

[4] See http://www.oecd.org/dataoecd/58/26/48892010.pdf.

[5] At the September 2009 G20 summit, leaders noted the need to strengthen the international financial regulatory system: "Far more needs to be done to protect consumers, depositors, and investors against abusive market practices, promote high quality standards, and help ensure the world does not face a crisis of the scope we have seen. We are committed to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage." (G20 Leaders' Statement: the Pittsburgh USA Summit, September 24-25, 2009.) In November 2010, the G20 summit "asked the FSB (Financial Stability Board) to work in collaboration with the OECD and other international organizations to explore, and report back by the next summit on, options to advance consumer finance protection through informed choice that includes disclosure, transparency and education; protection from fraud, abuse and errors; and recourse and

advocacy." (G20 Seoul, Republic of Korea, Summit Leaders' Declaration, November 11-12, 2010.) For further information, see http://www.g20.org/pub_communiques.aspx

[6] See http://www.financialstabilityboard.org/publications/r_111026a.pdf

[7] The section on References provides a partial listing of the OECD's reports, official instruments, and policy proposals related to financial education and financial consumer protection. See also http://www.oecd.org/department/0,3355,en_2649_15251491_1_1_1_1_1,00.html for a discussion of OECD's workshops and papers on financial education and consumer protection.

[8] See Grifoni and Messy (2012) available at http://dx.doi.org/10.1787/5k9bcwct7xmn-en

[9] See http://ec.europa.eu/consumers/rights/fin_serv_en.htm

[10] See https://eiopa.europa.eu/en/newsletters/news-alerts/eiopa-launches-consultation-on-guidelines-on-complaints-handling-by-insurance-undertakings/index.html

[11] See for example projects in the Caribbean (http://www.iadb.org/en/projects/project,1303.html?id=RG-M1062), Ecuador (http://www.iadb.org/en/projects/project,1303.html?id=EC-M1049), Guatemala (http://www.iadb.org/en/projects/project,1303.html?id=GU-M1034) and Honduras (http://www.iadb.org/en/projects/project,1303.html?id=HO-M1027)

[12] Technically speaking, financial literacy refers to skills related to using consumer finance while financial capability covers not only skills but also attitudes and behavior. However in common use, the terms are used interchangeably. This is also the approach used in this report.

[13] See http://www.ifc.org/ifcext/gfm.nsf/AttachmentsByTitle/Responsible+Finance+Report/$FILE/ResponsibleFinanceReport.pdf

[14] See http://www.afi-global.org/sites/default/files/mayadeclaration_30sep2011.pdf?op=Download

[15] See Consumers International, *Safe, fair and competitive markets in financial services: recommendations for the G20 on the enhancement of consumer protection in financial services*, March 2011, available at www.consumersinternational.org/media/669348/cifinancialreport2011.pdf

[16] ISO/COPOLCO discussed standardization of consumer information on financial services, mobile financial service provision and international remittances at its plenary meeting in May 2012. See http://www.iso.org/sites/eNewsletters/COPOLCO/ISO-COPOLCO_enews_010.html

[17] See http://www.financial-education.org

[18] Consumers International, Financial education counselling-Counsellor's handbook, January 2012, available at http://www.consumersinternational.org/news-and-media/publications/financial-education-counselling-counsellor%27s-handbook

[19] See http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALPROTECTION/0,contentMDK:22079158~menuPK:6963602~pagePK:210058~piPK:210062~theSitePK:282637,00.html

[20] The diagnostic reviews, household survey reports, action plans, as well as materials from dissemination seminars, can be found at http://www.worldbank.org/consumerprotection

[21] The 18 countries comprised Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Kazakhstan, Latvia, Lithuania, Malawi, Mozambique, Nicaragua, Romania, the Russian Federation, Slovakia, South Africa, Tajikistan and Ukraine.

[22] See Demirguc-Kunt and Klapper (2012) on the Global Financial Inclusion Database (Global Findex) available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2012/04/19/000158349_20120419083611/Rendered/PDF/WPS6025.pdf

[23] See Annex II on Credit Reporting.

[24] The Development Economics Group has conducted research on financial education available at http://econ.worldbank.org. The Human Development Department is responsible for administering a $15 million Financial Literacy and Financial Education Trust Fund from the Russian Federation. From the Fund, $3.2 million is administered by the OECD. The Trust Fund finances two areas of development: (1) an instrument to measure levels of financial literacy in low-income settings and populations and (2) a methodology to evaluate results from financial education and capability programs in these settings. In addition, the World Bank has provided a $25 million loan to the Russian Federation for Financial Literacy and Financial Education. Additional information can be found at http://www.worldbank.org/consumerprotection Regular reports on the WBG activity are found at http://www/worldbank.org/consumerprotection

[25] For CGAP resources regarding microfinance, see http://www.cgap.org/p/site/c/about/ CGAP has published consumer protection reports on six countries as well as policy notes on consumer protection. See http://www.cgap.org/p/site/c/template.rc/1.11.6053/ In collaboration with ACCION International, CGAP has developed the Smart Campaign for client protection in microfinance, which includes a set of principles as well as programs for certification and self-assessments by microfinance institutions. See http://www.smartcampaign.org/ In addition, in 2011 CGAP prepared a White Paper on *Global Standard-Setting Bodies and Financial Inclusion for the Poor for* the G20 Global Partnership on Financial Inclusion. See http://www.cgap.org/gm/document-1.9.55147/CGAP_WhitePaper_Global_Standard_Setting_Bodies.pdf

[26] See Rutledge, Annamalai, Lester and Symonds (2010) http://siteresources.worldbank.org/INTECAREGTOPPRVSECDEV/Resources/GoodPractices_August2010.pdf

[27] See for instance-International standards and Good Practices- Basel Core Principles, BIS Supervisory Guidance on Dealing with Weak Banks, BIS Core Principles for Effective Deposit Insurance Systems, BIS Enhancing corporate governance for banking organizations, World Bank General Principles for International Remittance Services, World Bank General Principles for Credit Reporting, IMF-An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency.

[28] See also the OECD Forum, *Balancing Globalization*, May 22-23, 2006 in Paris and the International Forum on Financial Consumer Protection and Education.

[29] For examples of codes of banking practices, see https://www.fnb.co.za/legallinks/legal/cobp.html and http://www.bankers.asn.au/Default.aspx?ArticleID=446

[30] For an overview see: http://ec.europa.eu/consumers/cons_org/associations/index_en.htm

[31] Basel Core Principle 18: *Abuse of financial services*. Supervisors must be satisfied that banks have adequate policies and processes in place, including strict "know-your-customer" rules that promote high ethical and professional standards in the financial system and prevent the bank from being used, intentionally or unintentionally, for criminal activities.

[32] See http://www.fatf-gafi.org/document/28/0, 3343, en_32250379_32236930_33658140_1_1_1_1, 00.html and http://www.fatf-gafi.org/document/9/0, 3343, en_32250379_32236920_34032073_1_1_1_1, 00.html

[33] See FSA's Money Advice Service website: http://www.moneyadviceservice.org.uk/yourmoney/

[34] Available at http://ec.europa.eu/consumers/cons_int/fina_serv/cons_directive/cons_cred1a_en.pdf

[35] See Centre for European Policy Studies and Van Dijk Management Consultants, *Tying and other potentially unfair commercial practices in the retail financial service sector*, available at http://ec.europa.eu/internal_market/consultations/docs/2010/tying/report_en.pdf

[36] See http://www.fdic.gov/regulations/laws/rules/6500-1360.html#fdic6500appendixgtopart226new

[37] See Regulation No. 1765-2005, as amended in January 2010, available at http://www.sbs.gob.pe

[38] See the Bank of Ghana's Borrowers and Lenders Act, Act No. 773 of 2008. Available at http://www.bog.gov.gh/privatecontent/IDPS/banking%20and%20financial%20laws%20of%20ghana%202006%20-%202008.pdf

[39] About 25% of South Africans speak isiZulu, 18% speak isiXhosa and 13% speak Afrikaans.

[40] See details at http://www.federalreserve.gov/newsevents/press/bcreg/20070523a.htm

[41] Available at https://www.fnb.co.za/downloads/legal/COBP071105.pdf
http://www.bankers.asn.au/Default.aspx?ArticleID=446 and https://www.fnb.co.za/

legallinks/legal/cobp. html

[42] See World Bank Group, Financial and Private Sector Development Vice Presidency, Payment Systems Development Group, *Payment Systems Worldwide: a Snapshot. Outcomes of the Global Payment Systems Survey* 2008, 2008.

[43] See http://www. bis. org/press/p070123. htm

[44] See http://www. bis. org/publ/cpss101. htm

[45] See http://www. bis. org/press/p060109a. htm

[46] See http://web. worldbank. org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0, contentMDK: 23196436 ~ pagePK: 148956 ~ piPK: 216618 ~ theSitePK: 282885, 00. html

[47] Especially measures by United States- Credit Card Act of 2009 and Regulation Z (Truth in Lending).

[48] For a global overview of practices related to debt collections, see *Global Practices in Responsible and Ethical Collections*, IFC Working Paper, August 2009. http://smartlessons. ifc. org/uploads/documents/IFC%20Ethical%20collections%20%20White%20paper_Final. pdf

[49] In some countries, individual bankruptcy may be referred to as "insolvency".

[50] See World Bank, *Report on the Treatment of Insolvency of Natural Persons*, Working Group on the Treatment of the Insolvency of Natural Persons (*forthcoming*) and Susan Block-Lieb, *Best Practices in the Insolvency of Natural Persons*, The World Bank Insolvency and Creditor/Debtor Regimes Task Force Meetings, Rapporteur's Synopsis, January 2011 Available at http://siteresources. worldbank. org/EXTGILD/Resources/WB_TF_2011_Consumer_Insolvency. pdf

[51] See http://www. apec. org/apec/documents_reports/finance_ministers_process/2004. html

[52] See OECD, *Improving Financial Literacy: Analysis of Issues and Policies*, September 2005.

[53] See European Commission, *Communication on Financial Education*, 2007

[54] This definition, as amended here slightly, is used on the website of the UK Financial Services Authority.

[55] See Shaun Mundy, *Financial Education in Schools: Analysis of Selected Current Programmes and Literature-Draft Recommendations for Good Practices*, published in proceedings of OECD-US Treasury International Conference on Financial Education, Washington DC, 7-8 May 2008, Volume II.

[56] See http://www. moneymadeclear. fsa. gov. uk

[57] See http://www. moneymadeclear. fsa. gov. uk/publications

[58] See http://www. moneymadeclear. fsa. gov. uk/tools/compare_products. html

[59] See http://remittanceprices. worldbank. org and http://sendmoneyafrica. worldbank. org maintained by the World Bank. See also http://148. 245. 102. 209/enviacentroamerica (covering

Central America) as well as national databases of Australia/New Zealand, Italy and Norway.

[60] See European Commission, Directorate-General for Competition, *Report on the retail banking sector inquiry*, Commission Staff Working Document, SEC (2007) 106, 31 January 2007.

[61] The term security as used in this section includes derivatives on securities, including securities linked to commodities. If a jurisdiction permits over-the-counter (OTC) derivatives or foreign exchange derivatives to be sold to retail customers, they would also be included in the term securities for the purposes of this section. This section does not cover commodity derivative products that are not financial in character.

[62] For the purposes of this section, a collective investment undertaking (CIU) refers to any entity that solicits money or other assets from the public for the purpose of investing in financial instruments. Depending on the jurisdiction, CIUs can have a variety of legal forms and names.

[63] "Know Your Customer" has various meanings depending on the context. Originally developed in the securities sector, it refers to the duty of the intermediary to take affirmative steps to obtain information from the customer regarding the customer's sophistication, experience, appetite for risk and financial situation. The customer can refuse to give this information. In the event of such refusal, the intermediary can then choose not to deal with the customer or warn the customer that it does not have sufficient information to properly advise the customer as to the suitability of specific investments.

[64] References to national legislation and other sources are intended to be representative and not exhaustive.

[65] The FSA will largely transfer its consumer protection role to a new Consumer Protection and Markets Authority.

[66] See for example the New Jersey Department of Banking and Insurance, Division of Insurance-Consumer Protection Services, http://www.nj.gov/dobi/enfcon.htm

[67] See Australian Financial Ombudsman Service, http://www.fos.org.au/centric/home_page.jsp

[68] See http://ec.europa.eu/consumers/cons_org/associations/index_en.htm

[69] The website of the sub-group can be found at http://ec.europa.eu/internal_market/finservices-retail/fscg/index_en.htm

[70] See http://www.consumersinternational.org/Templates/Internal.asp? NodeID=97533.

[71] See Bakker and Gross (2004).

[72] See http://www.insurance-canada.ca/index.php

[73] See for example Chapter 14 of FSA, *Reforming Conduct of Business Regulation*, Consultation Paper, October 2006, available at http://www.fsa.gov.uk/pubs/cp/cp06_19.pdf.

[74] See http://www.fsa.gov.uk/smallfirms/your_firm_type/credit/library/jargon.shtml

[75] See Rekaiti and Van den Bergh (2004).

[76] See http://www.asic.gov.au/fido/fido.nsf/byheadline/Cooling+off+rights?openDocument)

[77] See http://www.moneymadeclear.fsa.gov.uk/home.html

[78] See http://www.fsa.gov.uk/pubs/other/icob_forms/icob4_annex1.pdf

[79] Run-off triangles usually arise (particularly in nonlife insurance) where it may take some time after a loss occurs before the full extent of the claims is known.

[80] The document can be downloaded from the FTC's website: http://www.ftc.gov/os/2002/05/67fr36585.pdf

[81] http://www.networkfso.org/Links.html

[82] http://www.fos.org.au/centric/home_page.jsp

[83] Leasing is captured in the Good Practices where it is allowed to be directly provided to private persons for purposes other than professional (i.e. for consumption purposes).

[84] For an overview see http://ec.europa.eu/consumers/cons_org/associations/index_en.htm

[85] See http://ec.europa.eu/internal_market/finservices-retail/fscg/index_en.htm

[86] See http://www.consumersinternational.org/Templates/Internal.asp?NodeID=97533

[87] The FATF also suggests that the principles set out in the Basel Committee's Customer Due Diligence for Banks could apply to other financial institutions when relevant.

[88] Guarantors are excluded.

[89] See Bakker and Gross (2004).

[90] See http://www.cgap.org/gm/document-1.9.2785/Guideline_disclosure.pdf

[91] Especially measures by United States- Credit Card Act of 2009 and Regulation Z (Truth in Lending).

[92] See http://www.ftc.gov/os/2002/05/67fr36585.pdf

[93] The International Organisation of Pensions Supervisors (IOPS) has only been in existence for a few years. The European Union has a Directive covering occupational arrangements, but not individual accounts. IOPS/OECD have also produced some broad supervisory guidelines. The US has the ERISA rules and related supervisory structures.

[94] A 2nd pillar scheme is typically an employer funded supplementary arrangement established under a defined contribution structure.

[95] Fees and charges are a particularly contentious issue as many are typically disguised and the basis of charging (e.g. on contributions or assets under management) can have an enormous impact on the sum accumulated at the retirement date.

[96] See http://www.whcri.org

[97] The project is conducted by the World Bank together with the Centro de Estudios Monetarios Latinoamericanos (CEMLA).

[98] International Finance Corporation, *Credit Bureau Knowledge Guide*, 2006.

[99] See http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf

[100] See http://ec.europa.eu/internal_market/finservices-retail/credit/history_en.htm

[101] See for example Jentzsch, N., *Financial Privacy—An International Comparison of Credit Reporting Systems*, 2007. Jentzsch found that 80 out of 100 countries in the sample had constitutional privacy protection clauses, 35 had general data protection laws, 7 had credit reporting laws, 6 had statutory codes and 22 had industry codes of conduct.

[102] See also Miller (2003).

[103] For example, the US Fair Credit Reporting Act (1970) and the Consumer Reporting Employment Clarification Act (1998).

[104] See http://siteresources.worldbank.org/INTGILD/Resources/ICRPrinciples_Jan2011.pdf

[105] See Bellman, Johnson, and Lohse (2001).

[106] See Taylor (2004).

[107] See "risk-based pricing notices", Section 311 (a) of the Fair and Accurate Credit Transaction Act of 2003 and Notice of proposed rulemaking for correction of this Act (Fair Credit Reporting Risk-Based Pricing Regulations, 2008).

[108] See Rutledge (2010).

[109] World Bank, *Migration and Remittances Factbook* 2011, November 2010.

[110] Fardoust, Kim, and Sepúlveda (2011). See also Demirgü.-Kunt and Maksimovic (1998) on link to firm growth; Beck, Demirgüc.-Kunt, and Levine (2007) on impact on income inequality; Menon (2004) on consumption smoothing and Koivu (2002) on relationship between financial system and economic growth in transition countries.

[111] CGAP, *Advancing Financial Access for the World's Poor: Annual Report* 2011, 2012.

[112] Independent Evaluation Office of the International Monetary Fund, *IMF Performance in the Run-Up to the Financial and Economic Crisis: IMF Surveillance in* 2004-07, January 10, 2011.

[113] See California Budget Report, Locked Out 2008: The Housing Boom and Beyond, 2008. As many as half of all subprime residential mortgage borrowers in the US had high enough credit scores to qualify for standard, lower-cost bank mortgages. See also Remarks by US Federal Reserve Board Governor Edward M. Gramlich at the Financial Services Roundtable Annual Housing Policy Meeting, Chicago, Illinois May 21, 2004.

[114] Statement of Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation, on Modernizing Bank Supervision and Regulation before the US Senate Committee on Banking, Housing and Urban Affairs, March 19, 2009 "As the current crisis demonstrates, increasingly complex financial products combined with frequently opaque marketing and disclosure practices result in problems not just for consumers, but for institutions and investors as well."

[115] Remarks by Vice Chairman Martin J. Gruenberg, United States Federal Deposit Insurance Corporation at World Bank Group Global Seminar on Consumer Protection and Financial Literacy, Washington, D. C., September 2008.

[116] Additional insight on the issues of mobile banking is provided by McKay and Pickens (2010).

[117] See Alliance for Financial Inclusion, Consumer Protection at http://www.afi-global.net/dev/policy-areas-consumer-protection.htm Consumer protection and financial literacy is also listed as one of the nine principles for innovative financial inclusion. See http://www.microfinancegateway.org/gm/document-1.9.44743/Innovative_Financial_Inclusion.pdf

[118] The term "mis-selling" generally refers to a sale of a product by a firm to a client that is not suitable for that client, whether or not a recommendation by the firm to the client is made.

[119] Joint Forum of Basel Committee on Banking Supervision, International Organization of Securities Commission and International Association of Insurance Supervisors, *Customer suitability in the retail sale of financial products and services*, April 2008.

[120] Center for the Study of Financial Innovation, *Microfinance Banana Skins* 2011: *The CSFI survey of microfinance risk*: *Losing its fairy dust*, February 2011.

[121] For additional discussion of scandals, see the Case Studies in the April 2008 report of the Joint Forum of Basel Committee on Banking Supervision et al.

[122] See http://microfinanceafrica.net/tag/microfinance-in-andhra-pradesh/ and http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35379430

[123] Technically speaking, asymmetric information raises two main problems: adverse selection and moral hazard. Adverse selection is also referred to as the "lemon problem". The academic literature notes that, with imperfect information on the part of lenders or prospective car buyers, borrowers with weak repayment prospects or sellers of low-quality cars ("lemons") crowd out everyone else from the market. See the seminal article by Akerlof (1970). This is a different issue from that of borrowers lacking sufficient information to make wise and well-informed financial decisions.

[124] PBS News Hour, Graduate Students Recount Experiences with Globalization, June 1, 2007.

[125] For example, on its website, the banking, insurance and private pension funds supervisor of Peru publishes offers by different institutions (as well as a data-base of permitted and prohibited contract

terms). See http://www.sbs.gob.pe/0/modulos/JER/JER_Interna.aspx? ARE=0&PFL=0&JER=152 and http://www.sbs.gob.pe/0/modulos/JER/JER_Interna.aspx? ARE=0&PFL=1&JER=980 and http://www.sbs.gob.pe/repositorioaps/0/0/jer/regu_clausulas_sbs/clausulas_prohibidas_SBS.doc. See also the worldwide remittances price data base maintained by the Payment Systems Development Group of the World Bank. Available at http://remittanceprices.worldbank.org

[126] See Armstrong (2008).

[127] Chairman Ben S. Bernanke's Speech Financial Innovation and Consumer Protection at the Federal Reserve System's Sixth Biennial Community Affairs Research Conference, Washington, D.C. April 17, 2009.

[128] See Nier (2009).

[129] Rajan (2005) has pointed to the benefits in the expansion of the variety of intermediaries and financial transactions leading to improved risk-sharing, increased access to capital, and expanded diversity of opinions expressed in the marketplace. However, he also notes that any form of intermediation introduces a layer of management between the investor and the investment. The key question is whether the incentives of the managers are aligned with those of the investors. Where such incentives are misaligned, there is a higher risk of highly costly financial downturn. Nier (2009) also points to weaknesses in the originate-certify-distribute model of residential mortgage financing. He notes that for mortgage brokers and rating agencies, prudential regulation is not appropriate. Instead, what is needed is business conduct regulation.

[130] See Brown, Garino, Taylor, Price (2004) and Weinstein (1980).

[131] See Mandell (2004). Also see ANZ Banking Group, *ANZ Survey of Adult Financial Literacy in Australia*, Melbourne (2003).

[132] See Loewenstein, O'Donoghue and Rabin (2003).

[133] See Rutledge (2010).

[134] Furthermore, strong financial literacy may help consumers to weather financial crises, as seen in recent research on Russia. See Klapper, Lusardi and Panos (2011).

[135] For a recent summary of current work on financial education, see Deb and Kubzansky (2012).

[136] For a summary of academic research on the limited effectiveness of financial education in the US, see Cole and Shastry (2007). Other analysts go further and argue that financial education fails to improve consumer decision-making and may even be harmful by developing consumer over-confidence. See Willis (2008).

[137] Additional insights will be gained from ongoing work on financial education, including that financed by the Russian Trust Fund for Financial Literacy and Financial Education.

[138] See Nier (2009).

[139] The Group of 30, formally known as "The Consultative Group on International Economic and Monetary Affairs, Inc." was founded in 1978. It is a private, nonprofit, international body composed of senior representatives of the private and public sectors and academia. See http://media.washingtonpost.com/wp-srv/business/documents/g30report.pdf For the Turner Review, see http://www.fsa.gov.uk/pubs/other/turner_review.pdf

[140] Proposed Good Practices for private pensions and credit reporting systems were also prepared, but they are presented as annexes due to the preliminary nature of the work. Further refinement will be made in the course of future revisions to the Good Practices.

[141] Additional ideas on application of consumer protection regulation in low-income countries may be found in Brix and McKee (2010).

[142] Recent research has shown that remuneration in the sale of both insurance and securities products is clearly influenced by remuneration structures. See for example, Anagol, Cole and Sarkar (2010) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1786624

[143] In the US, the Federal Reserve Board has conducted extensive testing of mandatory disclosure of credit card information prior to the release of detailed regulations on disclosure. Regarding results of testing of consumer understanding of credit card disclosure in the US, see http://www.federalreserve.gov/dcca/regulationz/20070523/Execsummary.pdf http://www.ftc.gov/be/workshops/mortgage/presentations/Hogarth_Jeanne.pdf For insights into the comprehension of microfinance borrowers, see Tiwari, Khandelwal and Ramji (2008). In addition, CGAP has prepared a policy note summarizing its experience with testing financial consumer disclosure in six countries—four in Africa plus Mexico and the Philippines. See Collins, Jentzsch and Mazer (2011) available at http://www.cgap.org/gm/document-1.9.55701/FN74.pdf

[144] The Financial Literacy and Financial Education Trust Fund is financing a number of evaluation impact surveys, whose reports are scheduled to be completed by December 2012. See http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CHYQFjAB&url=http%3A%2F%2Fsiteresources.worldbank.org%2FSOCIALPROTECTION%2FResources%2F280558-1235510454189%2FRFLTF-M-E_CfP_1Mar.docx&ei=91yoT8vwOafE0AGZvKWrBQ&usg=AFQjCNEAhzZMdYA_KYrDsJ3FQ62d8YES8w

后　记

次贷危机以来，金融消费权益保护成为全球金融监管改革的重要内容。世界银行2012年6月发布了涵盖银行、证券、保险、非银行信贷机构的《金融消费者保护的良好经验》（以下简称《良好经验》），为各国开展金融消费者保护工作提供了有益参考。

按照人民银行党委委员、纪委书记王华庆的要求，金融消费权益保护局布置西安分行对《良好经验》进行翻译。在翻译过程中，西安分行郭新明行长、王兆有副行长、王晓红巡视员等领导高度重视，指导西安分行金融消费权益保护处、金融研究处组织精干力量，出色完成了《良好经验》的翻译工作。

本书翻译过程中，金融消费权益保护局局长焦瑾璞、副局长孙天琦进行了详细指导；金融消费权益保护局相关人员承担了译校、版面设计、出版联络等工作；世界银行北京代表处积极就授权、出版等问题协调世行总部，对书稿的翻译、译校给予了大力帮助。在此向所有参与此项工作的人员一并表示感谢。

限于时间原因和译者水平，本书难免有疏漏和错误，希望读者多提意见与建议，共同推动我国金融消费权益保护工作的发展。

金融消费权益保护局
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