

KINGDOM OF ESWATINI

Market Conduct Diagnostic Review

Pricing transparency and disclosure, and fairness of fees
and charges for savings and transaction accounts

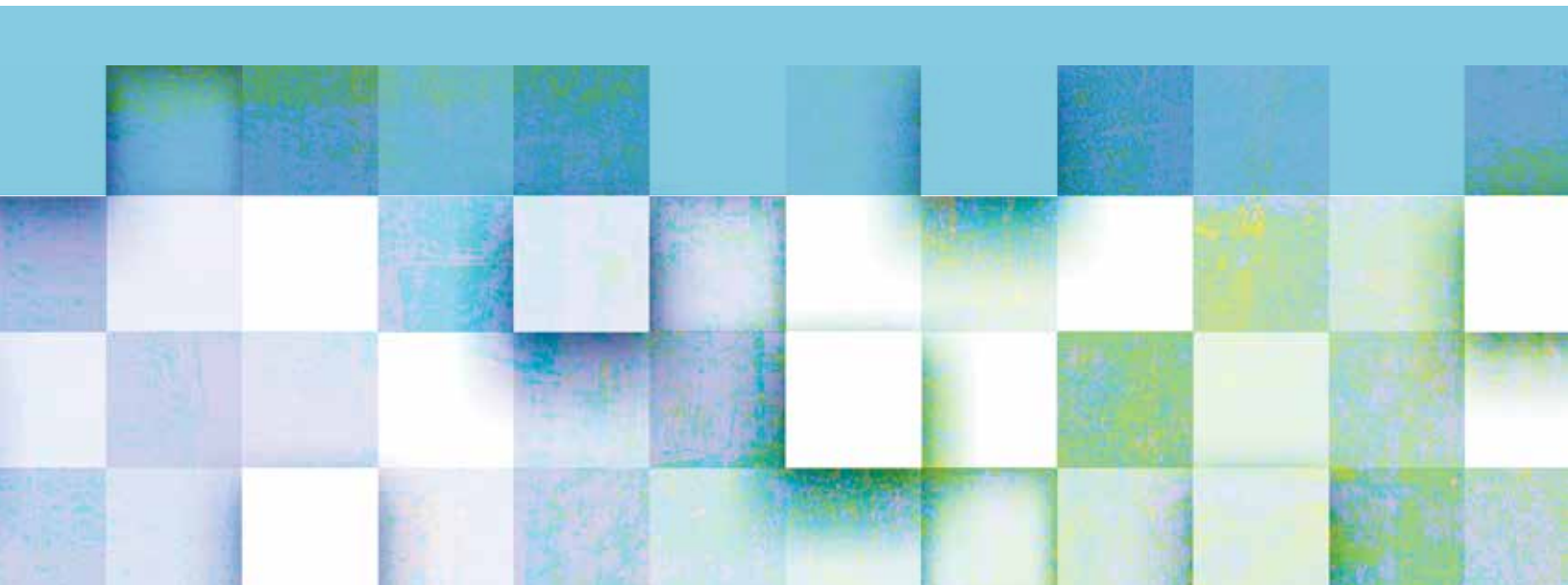
OCTOBER 2019

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ACKNOWLEDGMENTS

This report contains the findings from a World Bank Group diagnostic review of current Eswatini regulatory requirements and business practices relating to savings and transaction accounts (including payments accounts but not credit products). The aim was to identify key gaps and deficiencies in pricing transparency and disclosure (both product costs and returns) and fairness of fees and charges while keeping in mind international good practices for financial consumer protection. The review took place primarily during a mission to Mbabane, Eswatini, August 4–16, 2019. Except where stated otherwise, the report reflects research undertaken up to October 2019, and it does not cover developments after that time.

This diagnostic report was prepared by a team from the World Bank Group's Finance, Competitiveness & Innovation Global Practice comprising Ros Grady (Senior Consultant) and Arpita Sarkar (Consultant), with support from Gian Boeddu (Senior Financial Sector Specialist and Technical Lead) and Ayanda Mokgolo (Financial Sector Specialist and project Task Team Leader). Administrative support was provided by Nokuthula Mathobela (Administrative Assistant), from Pretoria.

The technical assistance for this diagnostic was provided as part of the FIRST Initiative Increasing Financial Inclusion Project. This project supports the Government of Eswatini in implementing reforms geared toward improving financial inclusion under the government's Financial Sector Development Implementation Plan of 2017. The team is grateful for the support provided by the FIRST Initiative.

The team also expresses its appreciation for the cooperation and collaboration of the Eswatini authorities, including the Ministry of Finance, Central Bank of Eswatini, and Financial Services Regulatory Authority. For assistance and support, team members also thank the government, industry, and civil society stakeholders with whom they met and corresponded.

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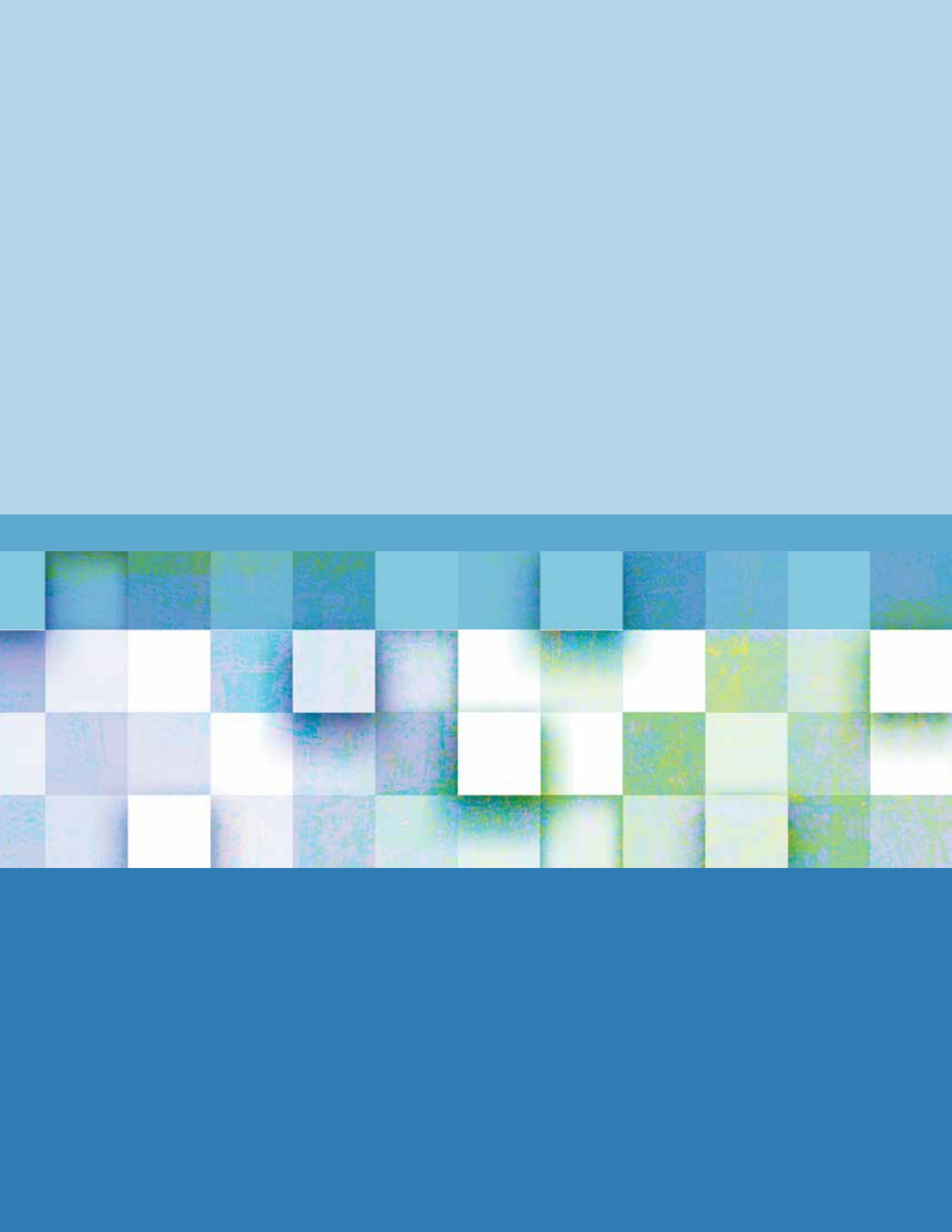
ABBREVIATIONS AND ACRONYMS

ATM	automated-teller machine
CBE	Central Bank of Eswatini
CMA	Common Monetary Area
CPMC	Consumer Protection Market Conduct
ECC	Eswatini Competition Commission
ECCP	Electronic Communications Consumer Protection
ESCCOM	Eswatini Communications Commission
FCP	financial consumer protection
FI	financial institution
FICP	Financial Inclusion and Consumer Protection
FSDIP	Financial Sector Development Implementation Plan
FSRA	Financial Services Regulatory Authority
FT	fair trading
ICR	internal complaint resolution
KFS	key facts statement
MMSP	mobile money service provider
NFIS	National Financial Inclusion Strategy
PAYT	pay as you transact
POS	point of sale
SACCO	savings and credit cooperative society
SBS	Swaziland Building Society

Currency Equivalents

(exchange rate effective September 30, 2019):

US\$1 = 15.1327 Eswatini Emalangen





EXECUTIVE SUMMARY

The Government of Eswatini has a commendable commitment to the promotion of full-price transparency for banking and non-banking services. This objective is a recommended policy action in the government's Financial Sector Development Implementation Plan of 2017 and identified as a key focus for the Eswatini FIRST Initiative Increasing Financial Inclusion Project. During the mission for the diagnostic review, the Central Bank of Eswatini and other stakeholders confirmed the need to improve price transparency in the relevant sectors with a view to facilitating product comparisons and more competitive pricing and encouraging financial inclusion.

The objectives of the diagnostic review were twofold: (i) to assess current Eswatini regulatory requirements and business practices relating to savings and transaction accounts against international good practices for financial consumer protection with a view to identifying key gaps and deficiencies in pricing transparency and disclosure (both product costs and returns) and fairness of fees and charges; and (ii) to provide recommendations to address the identified gaps and deficiencies.

The focus was on savings and transaction accounts (including payments accounts and mobile money accounts) offered by banks, Eswatini's only building society, savings and credit cooperative societies, and mobile network operators. As requested, credit products were not covered. Further, consideration was not given to savings-type products offered by non-banks such as insurance companies and retirement funds, although in some cases they appear to be the economic equivalent of fixed-term deposits. Consideration was not given to other investment-type products, including treasury bills and bonds sold to individuals. Price-transparency issues with all these types of products could, however, be considered by the Central Bank of Eswatini and Financial Services Regulatory Authority with regard to the issues identified in this report.

The review was based primarily on the World Bank's 2017 Good Practices for Financial Consumer Protection.¹ Consideration was also given to the G20 High-Level Principles on Financial Consumer Protection,² as well as other international good practices.

A broad range of stakeholders was consulted for the purposes of the review. They included the Ministry of Finance, Central Bank of Eswatini, and Financial Services Regulatory Authority, as well as other government agencies and representatives of the banking sector, savings and credit cooperative societies, the Eswatini Bankers Association, and civil society representatives. Annex 1 lists all stakeholders consulted.

Comments have been provided separately on the proposed Central Bank of Eswatini Bill and Financial Institutions Bill. Multiple new financial-sector bills and other instruments relevant to pricing transparency and disclosure and fairness of fees are close to finalization. They include the Central Bank of Eswatini Bill and the Financial Institutions Bill, as well as the proposed Financial Services Regulatory Authority Bill of 2019, the Building Societies Bill of 2019, the Financial Stability Bill of 2017, and the Agent Banking Guidelines of 2019. The draft laws are not otherwise covered in this report.

KEY FINDINGS AND RECOMMENDATIONS

The accompanying table sets out a high-level summary of key findings and recommendations resulting from the diagnostic review. Some of these recommendations are more urgent than others from a policy perspective. Hence, suggested priority levels (high, medium, low) have been assigned to most recommendations, along with institutional responsibility. All relevant stakeholder groups (government, regulators, industry, and civil society) should be consulted as the new rules are developed. There should also be public-awareness campaigns for protected consumers. Further, it should be noted that the report is written on an exceptions basis, identifying potential major gaps in the regulatory framework and conduct, rather than seeking to describe all good practices not requiring intervention. Finally, it is to be noted that the recommendations are based on the understanding that the Government of Eswatini has decided that the Central Bank of Eswatini will be responsible for prudential and market-conduct regulation and supervision of banks while the Financial Services Regulatory Authority will be responsible for prudential and market-conduct supervision of non-bank financial institutions.

For completeness, it is also noted that low levels of financial literacy were also stressed as a key concern. This was mentioned as an especially important issue given the country's ambitious financial-inclusion targets and the rapid development of digital financial products and services. However, financial literacy issues were not within the scope of the diagnostic review.

NOTES

1. In the interests of brevity, specific sections of the World Bank's Good Practices for Financial Consumer Protection: 2017 Edition are not always cited. Instead, reference is made more broadly to international good practice. Details of the Good Practices are at WBG 2017b. For country reports, see <http://responsiblefinance.worldbank.org/diagnostic-reviews>.
2. OECD 2011.

SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

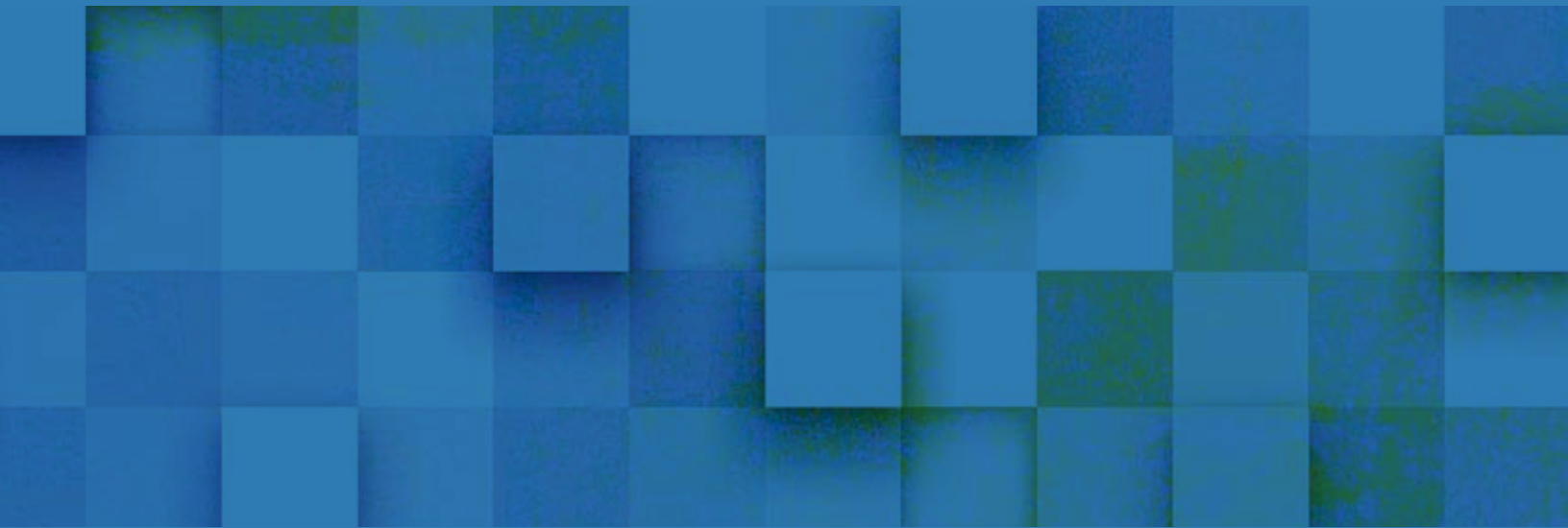
SUMMARY OF KEY FINDINGS	RECOMMENDATION	PRIORITY	RESPONSIBLE AGENCIES
Overall Legal And Regulatory Framework			
<p>Financial consumer protection (FCP) rules for banks exist but have gaps. For example, there are gaps in relation to product-comparison tools, rules governing unfair terms and statements of account, and the Guideline on Banking Practice 2018 (Banking Guideline) is not yet currently fully implemented or supervised.</p> <p>FCP rules for mobile money service providers (MMSPs) overlap: MMSPs must comply with the MMSP Practice Note and, if they are banks, the Banking Guideline.</p> <p>FCP general principles exist for financial institutions (FIs) regulated by the Financial Services Regulatory Authority (FSRA) (that is, building societies and savings and credit cooperative societies). However, rules on pricing transparency and disclosure, and fair fees, are not in place.</p>	<p>Legislative/regulatory amendments: Amendments are needed to cover the specific issues identified below. This should be done with a view to meeting international good practices while also reflecting the Eswatini context. There are various degrees of urgency for these amendments, which are indicated by their classification as high, medium, or low priority. <i>See section 3 of this report and specific key findings and recommendations below.</i></p>	<p>Priorities are as per recommendations below</p>	<p>Ministry of Finance/CBE/FSRA</p>
<p>The FCP legal and regulatory framework does not define which “consumers” are to have the benefit of the framework. Terms used in relevant laws include <i>customers, stakeholders, and complainants</i>, but none of these terms is defined.</p>	<p>Protected consumers: A clear definition of a <i>protected consumer</i> should be developed for the purposes of any new market-conduct rules. The simplest approach would be to protect individuals regardless of their personal or business objectives. <i>See section 3 of this report.</i></p>	<p>High</p>	<p>Ministry of Finance/CBE/FSRA</p>
<p>There are overlaps in regulatory responsibility for pricing transparency and disclosure and fair-fee issues. The primary regulators are the Central Bank of Eswatini (CBE) and FSRA. Other relevant regulators include the Eswatini Competition Commission (ECC), the Eswatini Communications Commission (ESCCOM), and the Cooperatives Commissioner.</p>	<p>Consultation and coordination between regulators: Develop arrangements for close consultation and coordination between regulators. At a minimum, there should be a comprehensive memorandum of understanding between CBE and FSRA covering issues such as consultation on ongoing supervisory issues, regulatory reforms to market-conduct rules, and sharing of information. <i>See sections 2 and 3 of this report.</i></p>	<p>High</p>	<p>CBE/FSRA</p>
	<p>Building society and savings and credit cooperative society (SACCO) overlaps: Relevant laws should be amended to remove the apparent overlaps in responsibility for SACCOs between FSRA and the Cooperatives Commissioner and for the Eswatini Building Society between CBE and FSRA. <i>See section 2 of this report.</i></p>	<p>Medium</p>	<p>Ministry of Finance/CBE/FSRA</p>
	<p>MMSPs: Resolve the overlap in regulatory responsibility for consumer-protection matters relevant to MMSPs between CBE and ESCCOM. <i>See section 2 of this report.</i></p>	<p>Low</p>	<p>Ministry of Finance/CBE/ESCCOM</p>
<p>Pricing competition issues: Although a market-competition analysis was not within scope of the diagnostic review, various stakeholders commented on pricing competition issues. The 2019 Retail Banking Market Inquiry Report by ECC was also considered. Otherwise, only one competition issue was identified—that is, concerning “off-us” fees for automated-teller machines (ATMs). See below.</p>	<p>Consideration of competition issues: As pricing competition remains of ongoing importance, CBE and FSRA should carefully consider competition issues that they become aware of, as well as those that are raised by other authorities such as ECC. A particular focus should be on the potential impact of competition issues on pricing and transparency.</p>	<p>Medium</p>	<p>CBE/FSRA/ECC</p>

SUMMARY OF KEY FINDINGS	RECOMMENDATION	PRIORITY	RESPONSIBLE AGENCIES
FCP Supervision and Capacity			
CBE does not have an explicit mandate to regulate FCP matters in its principal objectives. However, CBE has power to supervise regulated FIs “to the end of promoting a sound financial structure” (s. 4[g] of CBR Order) and has explicit powers on a few pricing-related matters. Further, the preamble to the Financial Institutions Act of 2005 states that it is “to provide for the regulation and supervision of financial institutions.”	CBE FCP mandate: Provide CBE with an express FCP mandate in its principal objectives under the CBE Order. <i>See section 3 of this report.</i>	High	Ministry of Finance/CBE
CBE currently has very limited supervisory capacity or expertise in relation to FCP matters, but CBE’s Executive Committee has approved the establishment of a Consumer Protection Market Conduct (CPMU) Unit. The CBE Board is expected to consider the CPMC Unit proposal in the near future.	CBE FCP supervisory capacity and resources: Develop CBE’s FCP supervisory capacity and resources through the proposed CPMC Unit. <i>See section 3 of this report.</i>	High	CBE
FSRA appears to have limited FCP supervisory capacity and expertise.	FSRA FCP supervisory capacity and expertise: The extent to which these areas need to be developed should be considered in conjunction with the development of the market-conduct rules proposed to be covered by the amendments to the FSRA Act currently under consideration. <i>See section 3 of this report.</i>	Medium	FSRA
Pricing Transparency and Disclosure			
There are various concerns with industry practices relating to price transparency. They include not providing key disclosures relevant to a specific account type for comparison purposes or at account opening; published fee information not being complete or comparable; complex fee structures; not publishing deposit rates, all required fee information, or standard terms and conditions; and not always providing free periodic statements of account or receipts. There are also concerns about the lack of rules covering clear and simple disclosures that can be understood easily, and that there are no requirements for disclosures to be in a particular language.	Key facts statement: FIs should be required to provide consumers with a short (one- or two-page), account-specific, standardized, and consumer-tested key facts statement (KFS) for common savings and transaction accounts summarizing key features, fees and charges (including price bundles), and deposit rates. The KFS should be provided to consumers enquiring about the account and when the account is opened. <i>See section 4.6 of this report.</i> <i>Given the focus of the diagnostic review, this is the highest-priority recommendation from a policy perspective for banks and the Swaziland Building Society (SBS), as it deals with key disclosure issues and could be implemented and supervised relatively easily.</i>	High for banks and SBS Low for MMSPs, future building societies, and SACCOs	Ministry of Finance/CBE/FSRA
	Account-opening disclosures: FIs should also be required to disclose at account opening standard terms and conditions, fees and charges (including any price bundles), and deposit rates. <i>See section 4.7 of this report.</i>	High for banks, SBS, and MMSPs Low for future building societies and SACCOs	Ministry of Finance/CBE/FSRA
	Deposit rate disclosures: Actively enforce the Banking Guideline requirements for pricing transparency and disclosure. <i>See section 4.5 of this report.</i>	High	CBE
	Published fee information: Information about fees and charges should be published and made available to customers on a “per-account type” basis. <i>See section 4.4 of this report.</i>	Medium	CBE
	Standard terms and conditions: They should be available on the websites of FIs and in branches. <i>See section 4.7 of this report.</i>	Medium	CBE/FSRA

SUMMARY OF KEY FINDINGS	RECOMMENDATION	PRIORITY	RESPONSIBLE AGENCIES
	Advertisements: Require FIs to include minimum pricing information in all advertisements for savings and transaction accounts. <i>See section 4.3 of this report.</i>	Medium	CBE/FSRA
	Local languages: Consider requiring pricing documentation and KFSs to be made available in both English and siSwati and that oral explanations be in a language the consumer can understand. <i>See section 4.2 of this report.</i>	Medium	CBE/FSRA
	Statements of account: Require banks, building societies, and SACCOs to provide periodic statements of account. Also, require MMSPs to provide on request account balance and information about recent transactions. <i>See section 4.8 of this report.</i>	Medium	CBE/FSRA
	Transaction receipts: Require FIs to provide detailed transaction receipts for electronic payments transactions, as well as confirmation of a transaction before it occurs. <i>See section 4.9 of this report.</i>	Medium	CBE/FSRA
	Changes: Require FIs to provide advance notice of changes to fees and charges and terms and conditions. <i>See section 4.10 of this report.</i>	Medium	CBE/FSRA
	Over the counter payments: Require FIs to provide receipts for over-the-counter payments transactions such as deposits. <i>See section 4.9 of this report.</i>	Low	CBE/FSRA
	Advertising regime: Consider developing a comprehensive regime applicable to advertising of savings and transaction accounts. <i>See section 4.3 of this report.</i>	Low	CBE/FSRA
	Price-comparison website: Consider developing a price-comparison website for savings and transaction accounts with banks. <i>See section 4.6 of this report.</i>	Low	CBE
Fair Fees and Charges			
There are various concerns with industry practices relating to fair-fee matters. They include potentially unfair fees for early withdrawals of term deposits and temporary excesses; failing to display “off-us” ATM fees before a transaction is completed; and not always providing free periodic statements of account.	Unfair fees: Review fees and charges for banks, building societies, and MMSPs with aim of identifying and prohibiting unfair fees. <i>See section 5.2 of this report.</i>	High	CBE/FSRA
	ATM fees: Require FIs to ensure that consumers who use another bank’s ATM are informed of the fee applicable to the transaction before they have completed the transaction. <i>See section 5.5 of this report.</i>	High	CBE
Pricing bundles are difficult to compare. Pricing bundles are offered by some banks, typically to customers with salaries higher than those in the lower-income segments, but comparisons between them are difficult; benefits but not costs are highlighted; and references to “free withdrawals” and “unlimited” transactions are not clear.	Pricing bundles: Require pricing bundles to be clearly described in all pricing information (including a KFS). Also, consider whether FIs should be required to inform customers when the maximum number of “free” transactions is exceeded. <i>See section 5.4 of this report.</i>	Medium	CBE
A review of a sample of current FI terms and conditions indicates various examples that could be considered “unfair.” Examples include terms that allow fees to be changed without notice and others that say all fees are nonrefundable unless agreed by the FI.	Unfair terms: Unfair terms relating to pricing (and other) matters should be void (of no effect) in standard form contracts for savings and transaction accounts. This change should be implemented after conducting a market review of a broad sample of such contracts. <i>See section 5.3 of this report.</i>	Medium	CBE/FSRA

SUMMARY OF KEY FINDINGS	RECOMMENDATION	PRIORITY	RESPONSIBLE AGENCIES
<p>Banks are also subject to an operational cap on some fees under Legal Notice No. 62. The cap applies to all customers (individuals and small and large businesses). There appear to be high standards of compliance, although the prohibition on fees for cash deposits is of significant concern to industry. These caps may produce adverse outcomes: banks may charge up to the maximum for penalty fees and increase fees on other services in order to compensate for the lack of income from cash deposits.</p>	<p>Caps on fees and interest rates: Consider removing provisions in the CBE Order providing for controls over interest rates and fees and charges. <i>See section 5.2 of this report.</i></p>	Low	Ministry of Finance/CBE
Complaints and Dispute Resolution			
<p>Banking Guideline requirements for internal complaint-resolution (ICR) processes have not been fully implemented, and compliance is not actively supervised by CBE. However, several banks confirmed that they have ICR policies and processes that can be accessed through different channels. Further, MMSPs are subject to overlapping ICR requirements in the MMSP Practice Note, the Electronic Communications Consumer Protection Regulation, and, for banks, the Banking Guideline.</p>	<p>Internal complaints handling by banks and MMSPs: The Banking Guideline and MMSP Practice Note ICR requirements should be actively monitored and enforced. Further, they should be made consistent with each other (as well as with international good practices as they relate to the Eswatini context). <i>See section 6.1 of this report.</i></p>	High (CBE/ECC)	CBE
<p>FSRA does not require regulated FIs to have standardized ICR processes. This is a clear gap and inconsistent with the rules for CBE-regulated entities.</p>	<p>Internal complaints handling for building societies and SACCOs: ICR rules for these entities should be developed, as for banks and MMSPs. <i>See section 6.1 of this report.</i></p>	Medium	FSRA
<p>The CBE Ombudsman has limited resources and powers. This is a concern, as the demand for ombudsman services is likely to increase as FCP rules are developed.</p>	<p>CBE Ombudsman: Legislative clarity should be provided in relation to the CBE Ombudsman's scope of application, operational rules, transparency requirements, and investigative and enforcement powers. The ombudsman's resource needs should also be reviewed, and public awareness of the role increased. <i>See section 6.2 of this report.</i></p>	Medium (Ministry of Finance/CBE)	CBE
<p>The FSRA Ombudsman covers disputes with FSRA-registered entities and seems to be fully operational. However, the definitions of a "dispute" and an eligible "complainant," and the ombudsman's enforcement powers, need to be clarified.</p>	<p>FSRA Ombudsman: The jurisdiction and enforcement powers of the FSRA Ombudsman should be clarified and public awareness of its role raised. <i>See section 6.2 of this report.</i></p>	Medium (Ministry of Finance/FSRA)	FSRA
<p>FIs are not required to give complaints data to regulators. Good practices require FIs to maintain records of the complaints they handle and to make regular reports to the relevant regulator.</p>	<p>Complaints reports: Require FIs to make regular reports on complaints to the relevant regulator. <i>See section 6.1 of this report.</i></p>	Low	CBE/FSRA
<p>CBE and FSRA Ombudsmen are both housed in the relevant regulator. Although this may be resource efficient, there are concerns about a perceived lack of independence and the potential for internal conflicts between complaints-handling and supervision functions.</p>	<p>Options for independent financial sector ombudsman: Options for an independent ombudsman should be considered in the longer term. Careful consideration would need to be given to the ombudsman's proposed functions and powers and the need for legislative changes and regulatory time and resources, as well as stakeholder consultations. <i>See section 6.1 of this report.</i></p>	Low	Ministry of Finance/CBE/FSRA

FINDINGS AND RECOMMENDATIONS





1

ESWATINI CONTEXT

The Government of Eswatini has a commendable commitment to the promotion of full-price transparency for banking and non-banking services. This objective was a recommended policy action in the Government of Eswatini's Financial Sector Development Implementation Plan (FSDIP) of 2017 and identified as a key focus for the Eswatini FIRST Initiative Increasing Financial Inclusion Project. During the mission, the Central Bank of Eswatini (CBE) and other stakeholders confirmed the need to improve price transparency in the relevant sectors with a view to facilitating product comparisons and more competitive pricing and encouraging financial inclusion.

The abovementioned commitment is based on the government's overall commitment to financial inclusion and financial consumer protection (FCP). Eswatini's National Financial Inclusion Strategy (NFIS), 2017–22, highlights consumer protection as a key enabler for Eswatini's financial-inclusion strategy and includes the protection of consumers as one of five "immediate and urgent priorities."³ The "very limited protections in place for consumers of financial services" is also noted as a key gap in the FSDIP.⁴ The policy actions recommended in the FSDIP also stressed the need for market-conduct and consumer-protection rules, with a focus for banks on "1) transparency of pricing information, 2) effective and speedy alternative dispute resolution mechanisms, 3) financial literacy to strengthen consumer awareness and protections."⁵

The Eswatini government's focus on FCP is consistent with the approach being taken internationally. As shown by the World Bank's 2017 Global Financial Inclusion and Consumer Protection (FICP) Survey,⁶ a legal framework for FCP exists in 121 of 124 jurisdictions surveyed. The most common approach is to have consumer-protection provisions within broader financial-sector laws (for example, a banking law, present in 94 jurisdictions). The FICP Survey also shows that jurisdictions pursue various institutional arrangement models for FCP. The most common approach is an integrated sectoral financial sector authority model, reported by 55 responding jurisdictions (45 percent), including Eswatini. In this model, FCP-supervision responsibilities fall

under multiple financial-sector authorities, each responsible for all aspects of supervision (for example, prudential and FCP) for financial institutions (FIs) operating within a given financial sub-sector (such as banking). Eighty-six of the relevant responding jurisdictions (75 percent) report having a specialized unit dedicated to FCP within an institution that has a broader remit. Seventeen jurisdictions (21 percent) report having established the unit since 2013. It is understood that the CBE is considering the establishment of such a unit, as discussed below.

FCP is especially important where there is potential for rapid innovation in financial services and their delivery channels in countries like Eswatini. The use of new delivery channels for financial services and FinTech can help fulfil important financial-inclusion objectives. However, these innovations may add a degree of complexity and risk for consumers with low levels of financial literacy who often don't understand the products being offered. This is especially likely where new product types are bundled with other products such as insurance or airtime products. It is accordingly important that any new FCP measures take into consideration these innovations.

Key features of relevant parts of Eswatini's retail-regulated banking and non-bank financial institutions sectors are as follows.

BANKING SECTOR

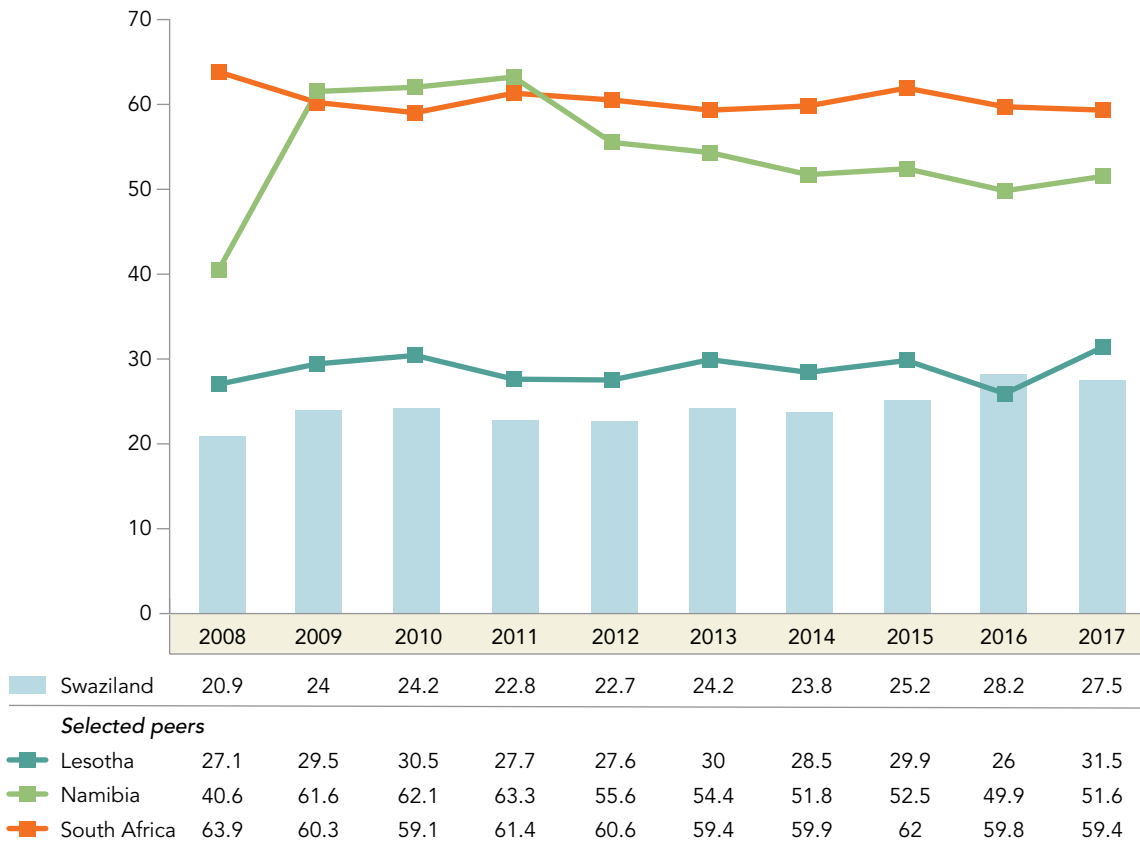
The banking sector in Eswatini comprises five commercial banks. Farmers Bank is the newest licensed bank, but it has not yet commenced operations. Three of the other four banks are subsidiaries of South African banks, with Eswatini Bank (a savings and development bank) being 100 percent owned by the government. The mission team was told that the Swaziland Building Society (SBS), Eswatini's only building society, has also applied for a banking licence. It is also understood that the Eswatini Posts and Telecommunications Corporation is interested in leveraging its postal network to start its own banking operations in the future.⁷

The banking sector offers a wide range of banking products and services. They include ordinary savings accounts; purpose-oriented savings accounts (for example, for students); fixed- or flexible-term investment savings accounts (which may roll over automatically); notice-based savings accounts; group savings accounts; time-based deposit accounts; current accounts; and e-wallets and prepaid cards and vouchers. Related services include automated-teller machines (ATMs), debit cards, remittance-type services, and Internet and mobile phone-based banking. Two banks are also providing services through agents, one of which uses the Eswatini Posts and Telecommunications Corporation. The other uses a variety of corporate agents, including a retail supermarket chain.

Bank deposits relative to the gross domestic product have been historically low in Eswatini in comparison with other Common Monetary Area (CMA) countries. Figure 1.1 compares the bank deposits in Eswatini (referred to as Swaziland in the chart) with other CMA countries as a percentage of each country's gross domestic product.

FIGURE 1.1 Domestic Bank Deposits as a Percentage of Gross Domestic Product in CMA Countries

Domestic Bank Deposits / GDP (%)



Source: WBG 2019.

NON-BANKS (Building Societies and Savings and Credit Cooperative Societies)

There is only one building society in Eswatini: SBS. It is understood that SBS has applied for a banking license. SBS is in a somewhat unusual position, as it was registered in 1962 by the then governor of the Monetary Authority of Eswatini (now CBE) when SBS was first formed.⁸ The potential overlap between CBE and the Financial Services Regulatory Authority (FSRA) in relation to SBS is discussed in section 2. Given the unique position of SBS, several of the mission team’s findings in relation to market conduct, while referring to “banks,” are applicable to SBS as well.

FSRA has licensed 52 savings and credit cooperative societies (SACCOs),⁹ and the mission team was told that the Cooperatives Commissioner has also registered 115 “financial co-operatives.”¹⁰ The potential regulatory overlap is discussed below. The two SACCOs met during this diagnostic review offer ordinary and specific-purpose savings products (such as for school fees and retirement), as well as loans. The ordinary savings products are usually used as

collateral for loans and are subject to strict withdrawal limits and frequencies. It is understood that exceptions may be made on a case-by-case basis subject to prior approval of the SACCO board.

MOBILE MONEY PROVIDERS

Two non-banks provide mobile money products in Eswatini. One of the providers is relatively new, whereas the other became operational in 2011 and is growing rapidly (around 30 percent in the last year), with around 415,000 active users out of 612,000 registered users. Both mobile money products have cash-in, cash-out functions as well as the ability to make funds transfers, buy airtime, pay bills from specified utilities and other service providers, and buy goods from retailers. One of the products allows for payments at merchants through a “tap and pay” facility and also allows businesses to use the product for bulk disbursements. Customers may also be eligible for promotions (such as discounts and vouchers). Both the non-bank mobile money service providers (MMSPs) also provide digital credit to their customers.

Both non-bank providers use agent networks to sign up customers and provide cash-in, cash-out facilities. One of the providers has around 7,000 agents, including agents that have kiosk-type premises and those that do not (for example, those operating by the side of the road or in markets).

Some banks are also providing prepaid e-wallets and electronic voucher facilities to consumers. It is not necessary to have a bank account to buy a prepaid card. These cards can be used to withdraw cash at ATMs and to make in-store and online purchases. In at least one case, the card is linked to MasterCard and can be used internationally. Other digital payments products are services that allow users to send cash vouchers to anyone with a mobile phone number. One allows the voucher to be cashed at specified supermarket chains (which may be more accessible than branches or agents).

NOTES

3. Kingdom of Eswatini 2017b, paragraphs 16 and 24.
4. Kingdom of Eswatini 2017a, page 20.
5. Kingdom of Eswatini 2017a, page 64.
6. WBG 2017a.
7. As per discussions between the mission team and stakeholders.
8. Kingdom of Eswatini 1962, section 2, definition of Registrar and related registration provisions.
9. See list of FSRA-licensed SACCOs at <http://www.fsra.co.sz/sectors/csi/licensed/sacco.php>, accessed October 1, 2019.
10. It is understood that many of the financial cooperatives are similar to SACCOs, while many have additional functions that makes them eligible to be registered as “multi-purpose” societies.



2

LEGAL AND REGULATORY FRAMEWORK

SUMMARY OF INTERNATIONAL GOOD PRACTICES

International good practice suggests that either a stand-alone legal framework for FCP or FCP-specific provisions in the general legal framework are necessary to address consumer-protection issues specific to the financial sector effectively. Each of these options should provide a consistent “level playing field” approach and be flexible enough to provide for innovation in the future. Ideally, the legal and regulatory framework should also be specific to financial-sector products and services. The preferred approach should also complement other regulatory measures that typically apply to the financial sector, such as prudential regulation. There is, however, no one-size-fits-all approach for all countries, and it is acknowledged that some countries continue to rely only on a general consumer-protection law.

The legal and regulatory framework should cover key consumer-protection principles. There should be a focus on issues such as transparency and disclosure, business conduct, data protection, and recourse mechanisms. Further, there should be provisions addressing issues specific to different types of consumer products. They should include responsible lending requirements for credit products and provisions addressing the risks associated with payments products, such as the need to safeguard customer funds held in e-wallets issued by non-banks and to deal with agent-related risks and unauthorized and mistaken transactions. The scope of application of the framework should also be clear. (For example, the term *consumer* should be defined clearly so that it is clear who is to obtain the protection of the relevant laws.)

Ideally, the legal and regulatory framework should apply to all FIs on a “level playing field” (activities) basis, rather than by reference to the type of institution. Such an approach can minimize the risk of regulatory arbitrage, provide consistency and ease of compliance and understanding by industry and consumers alike, and facilitate competition. Where protections

for consumers are found in multiple laws (for example, covering different subsectors), regulators should ensure they are comprehensive enough to cover all relevant consumer-protection issues and harmonize their provisions to the greatest extent possible. This is so that consumers using different types of financial-service products are protected based on similar consumer-protection principles as far as appropriate.

Key Findings: Cross-cutting

The legal and regulatory framework applicable to pricing transparency and fair fees is as described below. A summary of relevant parts of the legal and regulatory framework is provided, and details of relevant laws are in annex 3. Further, except where stated otherwise, a reference to industry practices by banks should be taken to include SBS. This approach has been taken given the similarity in the products provided by licensed banks and SBS, while acknowledging there are some differences. (For example, SBS does not provide check facilities.)

The Constitution of Swaziland 2005 provides that CBE “shall, among other things . . . (d) supervise the operations of financial institutions in the Kingdom” (s. 206[1][d]). The term *financial institutions* is not defined. For completeness, it is also noted that the constitution sets out certain fundamental rights and freedoms in Chapter III, “Protection and Promotion of Fundamental Rights and Freedoms.” However, none is directly relevant to pricing transparency and disclosure, or fair fees.

The Fair Trading (FT) Act of 2011 contains broad fair-trading rules of general application but is not actively supervised by the Eswatini Competition Commission (ECC) insofar as FIs are concerned. The FT Act contains broad prohibitions on misleading and deceptive conduct, false representations, and bait advertising. The services that are the subject of the FT Act expressly include, in summary, a contract between a bank and a customer (s. 2[2]). However, due to a lack of complaints, ECC does not actively supervise the banking sector in relation to compliance with the FT Act. However, it is developing a memorandum of understanding with CBE covering cooperation in matters of mutual interest and the sharing of information.

The FCP legal and regulatory framework does not define which “consumers” are to have the benefit of the framework. For example, the Regulation of Banking Fees and Charges Notice of 2016 (Legal Notice No. 62) and the Guideline on Banking Practice 2018 (Banking Guideline) refer to “customers” but do not define this term; the market-conduct provisions in the FSRA Act refers to “stakeholders” and “complainants” but do not define these terms, and the FT Act has a single undefined reference to “consumers.” It appears that both individuals and businesses, no matter how well resourced, would be protected under the current framework. This approach has potential to be problematic given the limitations in regulatory resources and the cost of compliance for industry. Arguably, only individuals and small or micro businesses that are likely to be in a poor bargaining position or have information deficiencies as compared to FIs should be protected.

Key Findings: Banks

The CBE powers of most relevance to pricing transparency and disclosure, and fair fees, for savings and transaction accounts are in section 41 of the CBE Order. Under this section, CBE has broad powers to regulate the following:

- Methods of computation, and maximum and minimum interest payable for deposits and other similar liabilities
- Minimum and maximum commissions, service charges, and other fees for any class of transactions with the public
- The manner of disclosure to depositors of the “effective annual interest rate” (This term is not defined.)

Section 41 has been used as the basis for issuing Legal Notice No. 62. However, CBE has not otherwise sought to rely on its section 41 powers. Legal Notice No. 62 imposes a cap on some fees and requires public disclosure of fees and charges. These rules appear to be operational and supervised. Legal Notice No. 62 requires the following:

- **Price transparency and disclosure:** A bank must display all fees and charges on its website and at its place of business and further publish the fees semi-annually in local print media in the format prescribed by CBE (s. 3).
- **Caps on fees and charges:** No fee or charge is permitted for cash deposit-related services, irrespective of the product. However, Legal Notice No. 62 expressly states that fees and charges for “withdrawal services from any product or account” are unprescribed. Penalty fees for dishonored checks or debit orders are capped at E 100 per defaulted transaction.

In general, industry stakeholders interviewed were aware of the requirements of Legal Notice No. 62 and were seeking to comply. However, significant concerns were expressed about the rule that fees cannot be charged for cash deposits. As discussed below under “Price Caps,” these caps may have a financial-inclusion benefit, but they have the potential to produce adverse outcomes (such as banks charging up to the maximum for penalty fees and increasing fees on other services in order to compensate for the lack of income from cash deposits).

The Banking Guideline contains extensive provisions relevant to pricing transparency and disclosure and fair fees. The provisions cover the following topics (sections below deal with specific issues):

- Clear explanations of the key features, risks and terms of the products, and applicable fees, commissions, or charges must be made available (s. 5.2).
- Terms and conditions must be readily available and provided on application “as far as possible” (s. 7.4).
- Fees and charges must be “reasonable” and also “in line with” applicable legislation. They must also be displayed at the bank’s principal place of business and branches and on its website, as well as in newspapers as required by legislation; separately advised to customers if not standard; and promptly advised to customers after being debited (s. 8).
- At least five business days’ notice must be given to customers of any change to fees and charges. Individual notice is preferred (which can be in writing or delivered via email, account

statement, or SMS), but press advertisements or notices in branches, on ATM screens, or on a website or via a phone message are provided for where individual notice is not feasible (ss. 7.10 and 8).

- There are requirements to display interest rates applicable to deposit products and to disclose them to customers.
- Banks must inform customers of details relevant to time deposits, such as how interest payments will be made and withdrawal costs for time deposits. Customers must also be advised of changes to interest rates through notices in branches, account statements, or press advertisements (s. 20).
- There are also specific disclosure obligations in relation to card products (including debit cards).

There are significant gaps in the Banking Guideline, and existing provisions have not yet been implemented. The gaps relate to such matters as product-comparison tools (such as the standardized key facts statements discussed in section 4.6), unfair terms, and statements of account. A further significant concern is that industry adoption of the Banking Guideline seems to be very limited and compliance is not yet being actively supervised by CBE. The mission team understands that supervision has been delayed pending the establishment of the proposed Market Conduct Consumer Protection Unit bracket. (See below.)

The FI Act does not contain provisions dealing specifically with pricing and transparency issues or unfair fees. Further, none of the specific subjects covered by the regulation and bylaw-making powers deals with these topics (ss. 62 and 63).

For completeness, it is noted that banks are not currently obliged to offer any specific transactional account type mandated by regulation (such as a basic banking account). However, it is noted that the FSDIP includes as a proposed policy action consideration of the introduction of a low-cost, no-frills bank account with minimal balance requirements.¹¹ This issue is not considered further in this report.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

FSRA-regulated entities must comply with broad statements of principle applicable to their market conduct. The FSRA Act contains broad statements of principle concerning the conduct of business by a financial services provider, including that they must “observe high standards of market conduct” and take reasonable steps to give stakeholders “in a comprehensible way, any information needed to enable the stakeholder to make a reasonable and informed decision” (s. 46 [d] and [f]). Apart from this general obligation, there is no reference to the need to give customers pricing information or to ensure that fees are fair.

There are no rules relating to pricing transparency and disclosure under the FSRA Act or under sector-specific legislation applying to building societies or SACCOs. FSRA also has power to prescribe rules “for regulating the market practice of authorized financial services providers” (s. 49[1]). However, the mission team was told that no such rules have been prescribed.

Further, neither the Building Societies Act, the Co-ops Act, nor the FSRA Guidelines for Savings and Credit Co-operatives of 2018 (SACCO Guidelines) contain any provisions dealing specifically with pricing transparency and disclosure or unfair fees. For completeness, it is noted that there is not a separate SACCO Act, although it is understood that one has been under development for some years. The SACCO Guidelines seem to be an interim step pending finalization of the act.

The current overall position is that numerous gaps in the pricing transparency and disclosure and unfair-fees regimes could apply to FSRA-regulated entities. There are, for example, gaps in relation to rules concerning advertising; disclosures of terms and conditions, fees, and charges; product-comparison tools; periodic statements of account; penalty fees; potentially anticompetitive fees; and unfair terms. These issues are discussed in more detail in this report.

Key Findings: Mobile Money Service Providers

Both CBE and the Eswatini Communications Commission (ESCCOM) have issued regulations relating to pricing and transparency matters affecting MMSPs, which can be banks or non-banks. The regulations include the following:

- **The MMSP Practice Note 2019** applies to any MMSP licensed or authorized by CBE (including banks and non-banks) (s. 4).
- **The Electronic Communications Consumer Protection (ECCP) Regulations 2016** apply to “electronic commerce” providers. Broadly speaking, this term covers commercial transactions processed through electronic means. This could include mobile network operators that provide mobile money services and are also licensed by CBE under its payments mandate. It could potentially also include banks, as there does not seem to be a specific exclusion for them. ESCCOM is aware of the potential overlap and noted that it is in the course of revising the regulations.

Relevant obligations concerning pricing transparency and disclosure include the following:

- **MMSP Practice Note:** An MMSP must prominently display all fees and service charges for mobile money services at its head office, branches, and other places of business. Agents have a similar obligation. MMSPs must also have a written, signed agreement with customers (ss. 22.1 and 22.3).
- **ECCP Regulations:** These regulations contain various provisions relevant to price transparency and disclosure, including requirements to provide information about costs of transactions and clear and complete terms and conditions, and consumers must be given an adequate opportunity to review them before entering into the contract (ss. 10, 11 and 12).

SUMMARY OF LEGAL AND REGULATORY FRAMEWORK

In summary, the legal and regulatory framework applicable to pricing transparency and disclosure and fair-fees issues in Eswatini has significant gaps and overlaps. Table 2.1 provides a general overview of the laws that currently apply to banks and relevant parts of the non-bank sector.

There are clear inconsistencies and overlaps in the FCP legal and regulatory framework applicable to banks, building societies and SACCOs, and MMSPs. For example, there is no equivalent to the Banking Guideline for building societies or SACCOs, and the Banking Guideline has some overlaps with the MMSP Practice Note. These differences may be compounded in the future if FSRA issues detailed market-conduct rules. This is a concern given the wide recognition (as mentioned above) that the regulatory framework should provide a level playing field (consistency) applicable to different forms of financial institutions. Although memorandums of understanding are in place for coordination between regulators, steps are yet to be taken to harmonize the regulations and guidelines applicable to institutions offering similar products. In an ideal situation, consistency would be achieved by having an “activities-based approach” to FCP rules, rather than the current “institution-based” approach. However, it is recognized that an activity-based approach may not be realistic in the current context of Eswatini.

Multiple new financial-sector bills relevant to pricing transparency and disclosure and fairness of fees are also in the process of development. They include a new CBE Bill and FI Bill, as well as the Financial Services Regulatory Authority Bill of 2019, the Building Societies Bill of 2019, the Financial Stability Bill of 2017, and the Agent Banking Guidelines of 2019. It is understood that these bills and other instruments are to be finalized in the near future. Comments have been provided on relevant aspects of the CBE Bill and the FI Bill separately. The draft laws are not otherwise covered in this report.

TABLE 2.1: Overview of Eswatini Bank and NBFi Sectors and Regulatory Framework¹²

INSTITUTION TYPE	NUMBER	REGULATOR/ MINISTRY	KEY LAWS/REGULATIONS/GUIDELINES
Banks	5 ¹³	CBE/Finance	CBE Order FI Act Banking Guideline Legal Notice No. 62 MMSP Practice Note FT Act Competition Act ECCP Regulations
Building societies	1	CBE ¹⁴ /FSRA/Finance	FSRA Act Building Societies Act FT Act Competition Act And, for SBS, potentially the CBE Order and Legal Notice No. 62
SACCOs	52 licensed by FSRA ¹⁵ 113 “financial co-operatives” or “multi-purpose societies” registered by the Cooperatives Commissioner ¹⁶	FSRA/Cooperatives Commissioner ¹⁷ /Finance	FSRA Act SACCO Guidelines FT Act Competition Act
Non-bank MMSPs	2	CBE/ESCCOM	MMSP Practice Note Communications Commission Act ECCP Regulations Competition Act

Recommendations

Legislative or regulatory amendments should be made to cover the issues identified in this report with a view to meeting international good practices while having regard to the Eswatini context. High priority should be given to implementation of the recommendations concerning key facts statements (KFSs) to be issued by banks, the CBE mandate, and pre-contractual and account-opening disclosures, with other recommendations to follow. Where the report recommends legal measures to address an issue, it is envisaged that these would be implemented, in the case of banks, initially through amendments to the CBE Order (including the proposed new CBE Bill), the Banking Guideline, or the MMSP Practice Note, as relevant. In the longer term, the proposed approach should be reflected in market-conduct rules under the amendments to be made to the FI Act. For FSRA-supervised institutions, it is envisaged that the proposed changes should be covered by market-conduct rules to be made under the FSRA Act.

It is also important that there be close consultation and coordination between CBE and FSRA (and other relevant authorities) to ensure consistency in how the different types of FIs are regulated in relation to FCP matters and especially pricing and transparency matters. At a minimum, there should be a comprehensive memorandum of understanding between CBE and FSRA covering such issues as consultation on ongoing supervisory issues (see section 2), regulatory reforms to market-conduct rules, and sharing of information. Arrangements to deal with other overlap issues should be considered over time. In both cases, the adequacy of any existing memorandum of understanding should be reviewed. A uniform and consistent approach will help ensure that there is a level playing field in the relevant regulatory frameworks. This should help reduce the risk of regulatory arbitrage, provide consistency and ease of compliance and understanding by industry and consumers alike, and encourage competition. Ultimately, this approach may also encourage efficient use of regulatory resources.

All relevant stakeholder groups should be consulted as the new rules are developed. This should include close consultation with banks, building societies, SACCOs, and non-bank MMSPs, as well as all affected regulators, industry groups, and relevant civil society groups.

There should also be public-awareness campaigns for protected consumers. This is especially important given the financial literacy issues mentioned in section 4.1. Of first importance will be consultation in relation to the KFSs proposed in section 4.6. World Bank studies have shown that KFSs can be particularly useful in helping customers with relatively low levels of financial capability.¹⁸

There should be a clear definition of a protected “consumer” for the purposes of any new market-conduct rules. The simplest approach would be just to protect individuals, regardless of the personal or business purpose of the opening and use of the account. The alternative would be to protect small and micro businesses also. However, this broader approach would require a clear definition of such an enterprise (for example, a definition based on the assets, turnover, or employees of the entity in question). Further, it may be complex and costly to supervise and comply with such an approach.

NOTES

11. Kingdom of Eswatini 2017a, page 29.
12. Only building societies and SACCOs are considered for the purposes of this report.
13. The mission team was advised that Farmers Bank is the newest licensed bank but has not yet commenced operations.
14. See below for a discussion of the overlaps in responsibility for building societies.
15. <http://www.fsra.co.sz/sectors/csi/licensed/sacco.php>, accessed August 28, 2019.
16. As advised by the Cooperatives Commissioner during the mission.
17. See below for a discussion of the overlaps in responsibility for SACCOs.
18. See, for example, Gine, Cuellar, and Mazer 2017.



3

FCP SUPERVISION AND CAPACITY

SUMMARY OF INTERNATIONAL GOOD PRACTICES

The mandate of the relevant FCP supervisory authority should be clear, and there should not be any overlaps or inconsistencies between institutional mandates.¹⁹ Regardless of the institutional arrangements for FCP, it is important that an FCP supervisory authority has a clear legal mandate to supervise the FCP legal and regulatory framework, and one that does not conflict or overlap with the mandate of other authorities. Although responsibility for FCP in some countries falls to a general consumer-protection agency, this is not a recommended approach. This is because such an agency may lack the necessary resources, skills, and expertise to be able to focus effectively on the financial sector, given the breadth of its responsibilities.

Good practice suggests it is important to have either a specialized FCP agency or a specialized unit within the overall financial industry supervisor, in each case with appropriate resources and capacity. Regardless of the model chosen, it is important that such a unit or agency is independent from the relevant prudential supervision unit or agency while coordinating and communicating appropriately with each other. The unit or agency should also be adequately resourced. Staff members should have the required FCP-specific training and expertise (which could be developed over time). The need for independence is driven by concerns related to a potential conflict of interests between prudential and market conduct/FCP oversight. Such a conflict may arise, for example, where measures to protect financial consumers may be detrimental to the profit of a financial institution or could indirectly affect its soundness.

The FCP regulator's enforcement powers and tools, and the actions taken against FIs by the regulator, should create a credible threat of enforcement. In particular, the regulator should have a wide range of civil and administrative enforcement powers and supervisory tools, processes, and procedures specific to consumer protection.

Key Findings: Cross-cutting

There are currently multiple supervisors with functions relevant to pricing disclosure and transparency matters that appear to overlap to some extent, highlighting the need for consultation and coordination. The primary regulators are CBE and FSRA. Other regulators with a potential role under the current framework include ECC, ESCCOM, and the Cooperatives Commissioner. The mission team was told that various memorandums of understanding cover some consultation and coordination issues, but it is not clear to what extent they cover issues relevant to this diagnostic review or, indeed, how effective they are in practice.²⁰ These issues are discussed in more detail below.

It is the mission team's understanding that the Government of Eswatini has decided that the current financial-sector reforms should provide for a clearer integrated sectoral financial sector authority model. Under this model, CBE will be responsible for prudential and market-conduct regulation and supervision of banks, and FSRA will be responsible for prudential and market-conduct supervision of non-bank financial institutions. This is the model reflected in the draft financial-sector laws reviewed by the mission team.²¹ However, the overall need for consultation and coordination in relation to the design and implementation of these reforms is stressed.

Key Findings: Banks

CBE does not have a clear mandate to regulate FCP, although a few provisions provide related powers. The uncertainty as to CBE's mandate exists because the CBE Order does not include an express FCP or market-conduct mandate in CBE's principal objectives. There is, however, a provision providing for CBE to "supervise, banks, credit institutions and other financial institutions to the end of promoting a sound financial structure" (s. 4[g]). CBE also has explicit powers on a few FCP-related matters (such as interest rates, fees and charges, and public disclosure of fees, details of which are mentioned below). Further, the FI Act provides for the regulation and supervision of financial institutions.

CBE currently has very limited supervisory capacity or expertise in relation to FCP matters but is considering the establishment of a Consumer Protection Market Conduct (CPMC) Unit. The CPMC Unit will be responsible for the development, implementation, and supervision of all financial conduct of business regulation. It will be housed in the Enforcement Division of CBE's Financial Regulation Department (separate from bank supervision). The proposal has been approved by CBE's Executive Committee, and it is understood that the CBE Board had approved the concept at the time of writing.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

In contrast to CBE, FSRA (which is responsible for non-banks) has an express market-conduct mandate. FSRA's principal objects under the FSRA Act cover market conduct-related matters relevant to pricing transparency and disclosure. They include the fostering of "the highest standards of conduct of business by financial services providers"; "the promotion of fair competition between different financial services providers for the benefit of stakeholders"; and "the fairness, efficiency and orderliness of the Swaziland non-bank financial sector" (s. 4).

Further, FSRA functions include the regulation and supervision of “the conduct of the business activities of financial service providers” and also investigations and measures to suppress “illegal, dishonorable and improper practices, market abuse and financial fraud” (s. 5).

FSRA objects and functions relate to a “financial service provider,” which is defined as a “non-bank financial services provider.” The latter term is then defined by reference to the types of institutions listed in the Second Schedule (for example, insurers, retirement funds, and SACCOs) and any other declared by the Minister for Finance.

However, FSRA’s market-conduct mandate does not appear to have been exercised in relation to pricing and transparency and unfair-fees issues. Specifically, FSRA has not issued any relevant market-conduct rules, although it is understood that the need for Treating Customers Fairly rules is being considered in the context of current proposed amendments to the FSRA Act. When this is done, FSRA will clearly need to develop its FCP-specific supervisory capacity and resources, which currently appear to be limited.

The present position appears to be that FSRA is also intended to have supervisory responsibility for new building societies, although the position could be clearer. Although building societies are not listed in the Second Schedule to the FSRA Act as regulated “non-bank financial services providers,” section 83(2) makes it clear that FSRA is intended to take on the role of Registrar of Building Societies. It is understood that proposed amendments to the FSRA Act will make it clearer that FSRA has supervisory responsibilities for building societies.

However, it is not clear who has supervisory responsibility for SBS, which is Eswatini’s only registered building society. SBS was registered in 1962 by the then governor of the Monetary Authority of Swaziland in his capacity as Registrar of Building Societies under the Building Societies Act of 1962. The mission team was advised that CBE considers SBS should comply with the regulatory framework applicable to the banking-type services it provides, including Legal Notice No. 62 and the Banking Guideline. This is notwithstanding that section 3(1)(b) of the current FI Act provides that that Act does not apply to a building society. Further, SBS advised that it complies with the Banking Guideline requirements on a voluntary basis, in light of its application to become a licensed bank. SBS is also a member of the Eswatini Bankers Association.

There also appears to be considerable market confusion as to the extent to which the Cooperatives Commissioner retains regulatory responsibility for SACCOs. Although the Co-ops Act provides for the registration of cooperatives, the rights and duties of cooperatives and their members, and incidental matters, the FSRA Act also applies to SACCOs. They are listed as regulated “non-bank financial services providers” in the Second Schedule to the FSRA Act, and section 83(1) expressly states that “the Co-operatives Societies Act, 2003, shall not apply to a SACCO.” This confusion is evidenced by the fact that FSRA has licensed 52 SACCOs, and the mission team was told that the Cooperatives Commissioner has also registered 115 “financial cooperatives.” It is understood that at least some of the latter group may be mixed-purpose cooperatives. There is accordingly a concern that some entities may be seeking to avoid supervision by FSRA through registration. This is potentially a form of undesirable regulatory arbitrage.

Key Findings: Mobile Money Service Providers

CBE has supervisory responsibility for providers of mobile money services pursuant to its payments mandate. The CBE Order provides in this regard that the objects of the Bank include to “promote, regulate and supervise the efficient and secure operation of payment systems” (s. 4[f]). This mandate is understood to cover both bank and non-bank providers of relevant payments services, including mobile money services.

CBE’s mandate has potential to overlap with that of ESCCOM. ESCCOM has regulatory and supervisory responsibility for mobile network operators registered by ESCCOM, including those who provide mobile money services. This jurisdiction appears to be derived from ESCCOM’s regulatory responsibility for providers of “electronic commerce.”²² However, notwithstanding the potential for overlap, it seems to be widely accepted that CBE’s supervisory responsibilities extend to those who provide mobile money services. This is reflected in the MMSP Practice Note 2019 (discussed below). It is understood that CBE consulted ESCCOM when the practice note was developed. Further, ESCCOM and CBE have a memorandum of understanding that the mission team was told covers cooperation and information-sharing arrangements.²³

Recommendations

It is recommended that, in the short term, the CBE Order be amended to include an express consumer-protection mandate in the CBE’s principal objectives. This change is a high-priority recommendation and could be achieved in the new CBE Bill that is understood to be under development. The aim would be to provide clear support for market-conduct powers provided to the central bank. This mandate is especially important given the mission team’s understanding that the proposed FI Bill will provide CBE with express market-conduct powers. (See especially the proposed provisions in part 12 of the FI Bill, “Consumer Protection and Market Conduct.”) Annex 2 contains FCP mandate examples from a wide variety of countries.

The apparent overlap between CBE and ESCCOM in relation to MMSPs should also be considered in the longer term. At a minimum, consideration should be given as to whether legislative amendments are necessary to make it clear that CBE has responsibility for consumer-protection issues affecting payment service providers.

CBE’s FCP capacity and resources should be developed as a high priority. This could be done through the proposed CPMC Unit. Ideally, the unit would consider the enforcement of requirements relating to pricing transparency and disclosure and fair fees as a high priority.

FSRA’s supervisory capacity and expertise also appear to need development. This should be considered in conjunction with the market-conduct rules proposed to be covered by the amendments to the FSRA Act currently under consideration.

There is a clear medium-priority need to clarify regulatory and supervisory responsibility for building societies (including SBS) and SACCOs and to remove any overlaps. This might also be achieved in the current round of amendments to financial-sector laws, and especially the changes being made to the FSRA Act. Consequential changes would of course also need to be made to other laws.

Finally, and importantly, arrangements should be put in place for clear consultation and coordination between the various supervisors with responsibility for the market-conduct issues covered by this report (and more generally), and especially between CBE and FSRA. This is a high-priority need for both supervisory and legal framework purposes. See section 3 for more detailed findings and recommendations.

NOTES

19. WBG 2017b, chapter 1, section A2.
20. The mission team has not reviewed copies of these memorandums of understanding.
21. The mission team was not asked to comment on this aspect of the proposed reforms.
22. Kingdom of Eswatini 2010a, section 6(b) and related definitions in section 2.
23. A copy of the memorandum of understanding was not provided.

PRICING TRANSPARENCY AND DISCLOSURE

4.1. INTRODUCTION

Proportionate disclosure requirements can help foster a more informed consumer marketplace and facilitate financial inclusion. Disclosure requirements should focus on provision of specific, individualized information at the precontractual, contractual, and post-contractual stages of a financial institution's dealings with a consumer and on disclosures in sales and advertising materials. It is important that disclosure requirements are proportionate in the sense of reflecting the risks of the relevant activity and the literacy or capability level of the relevant consumers, and do not impose compliance costs that outweigh their intended benefits.

Disclosures can also enable product comparisons and encourage competition. The focus should be on disclosures that reflect key information, are easily understandable, and for pre-contractual disclosures, are comparable between providers. This is especially important for consumers with low levels of financial capability and in relation to innovative financial services (such as mobile money).

Further, consumers are often at a significant disadvantage in understanding the legal terms and conditions in the customer agreement. Unless terms and conditions are drafted in a very plain, non-legalistic manner, the likelihood is high that consumers who lack legal or financial-sector experience will not comprehend product contracts fully. There is a significant risk that such customers will not make an informed purchase decision and may not purchase a product suitable to their needs. It can also result in customers incurring unforeseen fees and charges, as well as complaints or disputes with the bank throughout the life of the product.

Even comprehensive terms and conditions written concisely and in plain language can be daunting for consumers, particularly those with limited education or literacy. Thus, in order to ensure that customers truly understand the terms and conditions in a contract, oral communication is often most effective. For example, it could be appropriate to require providers to take reasonable steps to explain key terms and conditions orally to a consumer on request or if it is clear he or she does not understand the contract. This could be assisted by the provision of a standardized summary document or KFS, as discussed below, with the obligation being to explain key aspects as set out in that statement.

Potential differences in the nature and method of delivery of digital financial services such as payment products and services should also be considered in developing disclosure requirements. For example, there should be flexibility to allow for electronic contracts and disclosures. Disclosure requirements should allow for delivery of information to consumers through a variety of channels (such as mobile communications, websites, call centers, ATMs, and agents) while also ensuring that necessary information is still made available to consumers in a form they can keep for future reference. Further, there should be provision for applications and supporting documents to be provided to consumers electronically and for contracts to be formed electronically.

For the sake of completeness, this report also stresses the importance of the financial literacy or financial-capability²⁴ levels of customers. It is important for customers to have financial-capability or financial literacy levels that are sufficient for them to understand any disclosure documents provided to them in relation to pricing transparency, as well as an awareness of their related rights and obligations. This can help ensure the effectiveness of disclosures to consumers and may also enhance financial inclusion, financial stability, and the effective functioning of financial markets. These considerations have been widely recognized internationally. According to the 2017 FICP Survey, financial-capability (or literacy or education) strategies are reported to be in place in 44 jurisdictions and under development in 27 jurisdictions. Eighty responding jurisdictions (67 percent) report having undertaken a nationally representative survey of individuals and/or households covering financial capability. In 35 responding jurisdictions (30 percent), financial education has been integrated into at least one government-provided social assistance program.

The above observations respond to recurring comments from many stakeholders met by the mission team about the need for FCP regulatory reforms to go hand in hand with financial literacy and consumer awareness. It is, however, to be noted that the terms of reference for the diagnostic review do not include a review of financial literacy issues. This topic is accordingly not considered further, apart from the recommendations relating to the need for public-awareness programs covering proposed regulatory reforms.²⁵ Box 4.1 provides background.

BOX 4.1**Effective Disclosure and Financial Literacy**

The most recent global financial crisis has highlighted the need for FCP and consumer financial literacy all over the world. On the one hand, FCP ensures that consumers receive information allowing them to make informed decisions, are not subject to unfair and deceptive practices, and have access to recourse mechanisms to resolve disputes. On the other, financial literacy initiatives give consumers the knowledge, skills, and confidence to understand the information they receive and evaluate the risks and rewards inherent in each type of financial service and product.

Disclosure is an important component of FCP—that is, effective disclosure of the pricing, key features, terms and conditions, and risks of financial products and services allows customers to comparison-shop and make informed purchases

that are suitable to their needs. Several scholarly works have pointed to the importance of financial literacy as a condition for effective financial disclosure (Lusardi and Mitchell 2014), and to the role of financial literacy to enable customers to weigh their options between various financial products (Calvet, Campbell, and Sodini 2009) in various parts of the world. The general consensus has been that financially literate consumers have the knowledge, skills, attitudes, and confidence to understand disclosures to make informed decisions and act in their own best financial interest.

Box 4.2 provides further information on financial-literacy initiatives across the world.

Sources: Rutledge 2010; Lusardi and Mitchell 2014; and Calvet, Campbell, and Sodini 2009.

4.2. FORMAT AND LANGUAGE OF DISCLOSURES**Summary of International Good Practices**

As noted in the World Bank's Good Practices, the format and manner of disclosure is as critical to achieving transparency as the actual content of the disclosed information.²⁶ Disclosure is likely to be ineffective due to factors such as small font sizes, complex language, and lengthy text. Attention to the format and manner of disclosure is also relevant for oral, visual, and electronic communications. Further, these general practices should apply to both paper-based and electronic documents, although some adaptations may be necessary for disclosures made by digital means (such as mobile phones). It is also the case that these general principles should apply to all means and types of disclosure to customers, including advertisements, contracts, statements, and receipts. Understandable disclosure requirements are important for all customers, but especially for those who are inexperienced in the financial sector or have low literacy.

The need to use clear, objective, and simple language and format is especially important with respect to pricing information. This is given the importance of this information for choosing a product that fits the financial capacity of customers best.

A related issue concerns the need to make disclosures, or at least provide explanations, in a language the customer can understand. Approximately 63 percent of jurisdictions have some form of local language requirements in place as part of a broader disclosure regime, according to the FICP Survey. However, the extent to which use of local languages should be mandated in all cases will depend on the country context. For example, a country may have too many local or official languages for it to be practical to require that all documents be translated into each language.

BOX 4.2

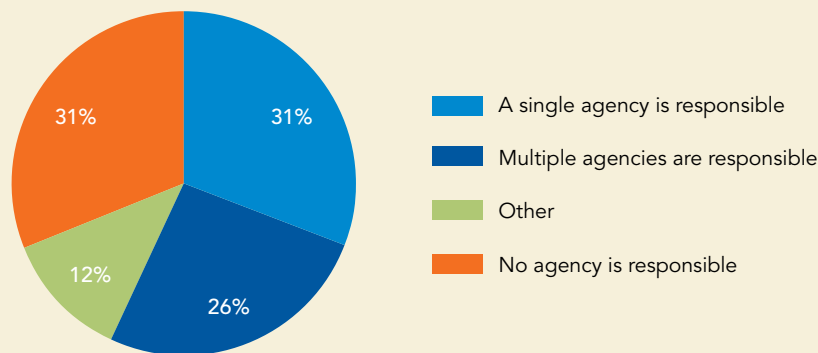
Financial literacy Initiatives across the World

As per the FICP Survey, given the cross-sectoral nature of financial education and the wide range of stakeholders involved, many jurisdictions have established a dedicated, multi-stakeholder entity to promote and coordinate financial education. Some of the key findings are summarized below.

- Forty-nine responding jurisdictions (40 percent) reported having established such an entity. Not surprisingly, jurisdictions with a national financial literacy strategy (or similar) are significantly more likely to have established a dedicated, multi-stakeholder entity.
- In 35 responding jurisdictions (30 percent), financial education has been integrated into at least one government-provided social assistance program. The World Bank Group Toolkit on Integrating Financial Capability into Government Cash Transfer Programs provides suggested key approaches and pretested instruments to help design, implement, and integrate financial education into government cash-transfer programs.

Institutional Arrangements for Leading and/or Coordinating Financial Education

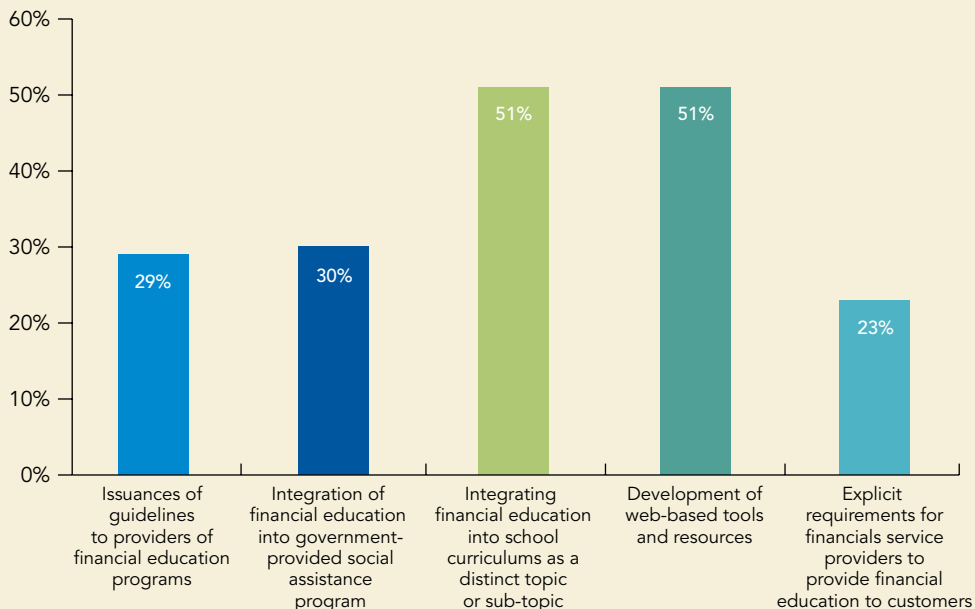
% of responding jurisdictions reporting institutional arrangement



Note: Percentages are based on 121 responding jurisdictions.
Source: WBG 2017a.

BOX 4.2, continued

- Many jurisdictions have chosen to deliver financial education through public schools. Sixty-one out of 120 responding jurisdictions (51 percent) report that financial education has been integrated into public school curriculums to some extent.
- Many relevant authorities also seek to leverage mass media platforms to reach wide audiences with messages, tools, and resources relevant to financial capability. Sixty responding jurisdictions (51 percent) report maintaining a website with the objective of improving the public's financial capabilities. Twenty-four jurisdictions (20 percent) report maintaining a website to disclose information on the pricing and terms of financial products and services.

Approaches to Improve the Quality, Consistency, and Reach of Financial Education

Note: Percentages are based on 119 responding jurisdictions for the first indicator, 120 jurisdictions for the third indicator and 118 responding jurisdictions for the remaining indicators.

Source: WBG 2017a.

KEY FINDINGS: CROSS-CUTTING

Apart from the Banking Guideline requirements to explain certain matters “clearly,” the legal and regulatory framework does not address the abovementioned good practices.

For example, section 5.2.1 of the Banking Guideline refers to the need for banks and their agents to “explain clearly” the key features, risks, and terms of the product and related fees and commissions or charges. There are other references to the need to make clear and prominent disclosures. However, no other provisions otherwise address the abovementioned good practices relating to the format of disclosures.

There are also no requirements for disclosures to customers of deposit accounts concerning pricing (or other) information to be provided in a particular language, and the practice appears to be to provide all documentation in English. In Eswatini, the two official languages are English and siSwati.²⁷ It is also understood that a minority of the people of Eswatini (emaSwati) also speak Zulu.²⁸ Adult literacy levels (age 15 and over with the ability to read and write) are at a relatively high 87.5 percent. However, the extent to which adult emaSwati can read and write both siSwati and English is not known. All the bank and non-bank published fee information, sales brochures, websites, and customer documentation reviewed was in English (including standard terms and conditions and pricing schedules), and banks indicated that it is not their practice to make written information available in siSwati. One interviewee said that customers who don't read English wouldn't read anything anyway (so lack of local language documentation was not considered a concern). Another interviewee also stated that there were practical difficulties in translating financial terms such as *interest* to siSwati. However, the mission team was also told by a few other interviewees that financial-education programs in siSwati on the local radio channel have been effective in reaching a larger audience in the past. Presumably, these programs have used financial terms, which in turn suggests that it may be possible at least to explain relevant accounts in siSwati. The final comment on the use of local language was to note that any translation of consumer documents into siSwati would result in a very lengthy document, which may not provide effective disclosure.

Finally, current Eswatini law also does not appear to provide for electronic disclosures by the providers of savings and transaction accounts. It is understood, however, that FIs (especially banks) do communicate via email and SMS messages.

Recommendations

In at least the medium term, specific disclosure requirements should be introduced, prioritizing the following:

- **Overarching format and manner-of-disclosure requirements for both banks and non-banks:** These provisions should mandate legible, simple, and clear expression in all advertisements, sales materials, mandated disclosures of fees and interest rates, account terms and conditions, and any other account-related documentation.
- **Local language requirements:** Consideration should be given to requiring, at a minimum, that pricing documentation and KFSs (see below) should be made available in both English and siSwati. Further, oral explanations of any information required to be disclosed (especially pricing information) should be given in a language the customer understands on request or if it appears the customer is illiterate or not able to understand the information provided.

In the longer term, regulatory provision should be made for the validity of electronic disclosures and contracts, where the customer clearly consents to receiving information in that form. Given the development of digital financial services, provision should be made allowing for electronic disclosures and contracts. It is especially important that, with the consent of the consumer, required disclosure documents should be able to be delivered electronically. Any such disclosure should be in a form that the consumer can keep for future reference.

4.3. ADVERTISING AND SALES MATERIALS

Summary of International Good Practices

For many consumers, decisions about which financial products to purchase are significantly influenced by information conveyed in advertising and marketing material. Retail customers who rely on misleading or incomplete advertisements can be more likely to select an unsuitable product. In any event, they may suffer inconvenience and lost opportunities by having been attracted to approach a particular bank based on an incorrect understanding. Retail customers with little experience interacting with FIs—including young people and previously unserved individuals—are particularly vulnerable. As noted in the Good Practices, FIs should be required to ensure that their advertising and sales materials do not contain misleading or false information and also that they do not omit information that is important to a customer's decision-making process.²⁹ FIs should also be legally responsible for all statements made in advertising and sales materials, with an adequate recourse for consumers, and the regulators should have adequate recourse for any failure to meet applicable requirements.

Key Findings: Cross-cutting

Limited regulatory requirements relate to advertising and sales material in Eswatini. They can be summarized as follows:

- **The FT Act** contains limited rules on misleading and deceptive conduct and making a false and misleading representations with respect to the price of any goods or services, and a prohibition on bait advertising (ss. 7[1][g] and 13). However, as mentioned above, ECC does not actively enforce the application of this law to the financial sector.
- **The ECCP Regulations** requires that advertising be identifiable and that suppliers identify themselves in advertising and be able to substantiate advertising and marketing claims (s. 8).
- **The Competition Act of 2007** also contains a prohibition on misleading and deceptive advertising (s. 33[1][f]).

Banks (including SBS) could potentially use a wide variety of channels to market savings and transaction accounts. They can include printed sales brochures available in branches; website advertisements; newspaper and radio advertisements; advertisements in retail stores and at post offices; and potentially SMS messages and social media messages. For the purposes of the diagnostic review the focus was on advertising on websites and sales brochures, which appear to be the primary channels for advertising (apart from verbal communication and advertising by bank staff).

A number of broad concerns were identified about pricing information provided (or not provided) on websites and sales brochures. They include the following:

- **Sales brochures:** None of the sales brochures reviewed contained pricing information, although they might relate to specific types of accounts. Instead, the focus is on promoting the attractive features of the account. Presumably, this is because of concerns about the cost of reprinting the information when specific information changes, as well as understandable concerns about pricing information becoming out of date. However, this

approach makes the sales brochures incomplete, not useful for comparison purposes, and, at worse, misleading.

- **Website advertisements:** Most website advertisements reviewed were similar to sales brochures in that they did not disclose pricing information. Rather, the focus again is on describing the benefits of the product, without giving any indication of its likely cost.

Other concerns about advertising and sales materials are discussed in the next two sections on precontractual disclosures of fees and charges and of deposit rates.

Recommendations

As a medium priority, FIs (especially banks and building societies) should be required to include minimum pricing information in all advertisements for savings and transaction accounts (including mobile money accounts), regardless of the channel used for the advertisement. In particular, there should be an explicit and prominent statement that fees and charges will apply to the account and clear advice as to how customers may obtain information on their type, amount, and when they will be payable. This information should be available via a website link. (Customers should not have to go into a branch to obtain it.) Customers should be further advised as to how they can obtain information on deposit rates.

BOX 4.3

International Examples of Rules and Guidance on Marketing of Financial Products

Several jurisdictions have put in place restrictions on the use of potentially misleading terms in marketing materials for financial products and services. For example:

Australia: The Australian Securities and Investments Commission released Advertising Financial Products and Services (Including Credit): Good Practice Guidance (Regulatory Guide 234) in 2012. The objective of the guidance is to help financial service providers comply with their legal obligations (under various legislation applicable to the financial sector) not to make false or misleading statements or engage in misleading or deceptive conduct. The document covers a range of issues, including advertising fees and costs, past performance and forecasts, and consistency with disclosure documents, as well as media-specific guidance (for example, Internet advertising).

Malaysia: Under section 7 of Malaysia's Financial Services Act of 2013, financial service providers

are prohibited from engaging in conduct that is deemed to be inherently unfair to consumers, including, according to the regulator, "describing a financial service or product as 'free' or 'at no cost' when there are charges or conditions imposed during the term of the account or contract."

United States: Regulations under the Truth in Savings Act prohibit advertisements from referring to or describing an account as "free" or "no cost" (or similar term) if any maintenance or activity fee may be imposed on the account (s. 1030.8). According to the official staff commentary, these charges include (i) monthly services fees; (ii) transaction and service fees that consumers reasonably expect to be imposed on a regular basis; (iii) fees imposed to deposit, withdraw, or transfer funds; (iv) fees for exceeding transaction limitations; and (v) fees for failing to maintain a minimum balance.

Sources: ASIC 2012, BNM 2014, and USA 1991.

In the longer term, a more comprehensive regime applicable to advertising savings and transaction accounts should be considered. It could deal with matters such as direct marketing, comparative advertising, and other marketing approaches that can adversely affect consumers savings and transaction accounts, especially in a digital context. There should be clear liability and responsibility for product providers' statements made in advertising materials. Content requirements should also be prescribed to address potential gaps in the awareness of consumers. These should include, for example, details about the relevant regulator (CBE or FSRA) and the relevant ombudsman, and advice to consider the required disclosure documents (such as a KFS) and fee information before deciding whether to acquire the relevant product.

4.4. PRECONTRACTUAL DISCLOSURE OF FEES AND CHARGES

Summary of International Good Practices

It is of fundamental importance that prospective customers should be able to understand easily details of the fees and charges applicable to an account that they are considering. This is critical if the customers are to understand the likely overall cost and how it compares to other products. More specifically, information on the following fees that might apply to a savings and transaction account should be readily available: account-opening, maintenance, and closure fees; transaction fees—on a per-channel basis and including any pay-as-you-transact (PAYT) fees, as well as full details of any applicable fee bundles—checkbook fees; the fees and costs applicable to any overdraft that is allowed; stop-payment fees; direct debit and dishonor fees; and fees applicable to an inactive account. Details of any transaction that is allowed free of charge should also be disclosed.³⁰

Key Findings: Banks

Legal Notice No. 62 contains important provisions requiring banks to publish information about fees. The information must be published on bank websites and displayed at their places of business, and banks must also publish them twice a year in local print media (s. 3).

It is understood that the required newspaper notices are generally published but will cover only fees specified by CBE, not all fees. Although the list of fees appears extensive, the mission team was told that the list may not cover all fees charged by a bank.³¹ Further, the fees are required to be published by reference to "savings" and "current accounts." These descriptions may not fit all account types precisely (for example, e-wallets offered by banks and some investment-type accounts).

Fees and charges are not always displayed as required by Legal Notice No. 62 at all places of business. This was observed in branch visits by the mission team. Further, the mission team was told that post offices acting as agents for banks do not display fee schedules, as they are not considered a place of business of the bank concerned. This view should not be acceptable, given that customers may fill out applications at post offices and undertake banking transactions there.

Fees and charges are usually displayed on bank websites in the form of a Pricing Guide that covers relevant products in broad terms but does not necessarily describe all fees by reference to the precise account type. For example, the fees for savings and transaction accounts may be found under the broad grouping of “Savings or Other Accounts” and also in other sections relating to ATM charges, card fees, electronic services, and payment and clearing charges. Relevant fee information may be in the brochure, but it could be confusing for a consumer to understand exactly which fees apply to the specific type of account he or she has. Not all fees are included in brochures, which are mainly for advertising. Fees are also in different formats, which would make comparisons between banks difficult. The latter issue is discussed in section 4.6.

Further, there are examples of unclear, and potentially misleading, descriptions of fees and charges on websites and in sales brochures. Examples include:

- “Low monthly maintenance fee”
- “Cost effective”
- “Competitive”
- References to “unlimited” ATM withdrawals, swipes, and point-of-sale (POS) purchases without mentioning other transaction fees that may apply
- “Penalty-free withdrawals” without also disclosing the penalty that may apply in certain circumstances
- References to “free” online or cellphone banking without mentioning the fees that might apply to receive online bank statements or online transfers
- References to the customer’s ability to make transfers to linked accounts, without mentioning applicable fees
- Some transactions that are described as “free” may be correct if there is no usage fee associated with the account but incorrect if the customer is paying an account-maintenance fee for the use of the account.
- References to “free cash deposits” might be perceived as misleading by new account holders if the references do not make it clear that the fees are free only because of a regulatory requirement that may change in the future.

The Banking Guideline also contains rules concerning the disclosure of fees and charges. They include the general principle that banks and their agents should “set out and explain clearly the key features, risks and terms of the products, fees, commissions or charges applicable, and make available the details of these to customers” (s. 5.2.1). However, as noted above, banks are not yet compliant with the Banking Guideline, and CBE is not yet seeking to enforce compliance.

There are also concerns with complex fee bundles. These are discussed in section 5.4 of this report.

A final concern in this context is that banks have different ways of describing “low-frills” account offerings for low-income customers, potentially making it difficult for them to work out which product is best for them. Table 4.1 summarizes the available products.

TABLE 4.1: Examples of Low-Income Pay-as-You-Transact Account Offerings³²

TRANSACTION	FNB SICALO TRANSMISSION ACCOUNTS ³³	NEDBANK NGEYAKHO SAVINGS ACCOUNT ³⁴	STANDARD BANK TRANSACT PLUS ³⁵	ESWATINI BANK UMLAMULI SAVINGS ACCOUNT ³⁶	SWAZILAND BUILDING SOCIETY SIPATJI ACCOUNT ³⁷
Account balance requirements	Maximum balance of E 5,000 Higher balance requires the customer to open an FNB Smart Account (with higher monthly fees)	An opening deposit of at least E 20, which must also be maintained monthly	An opening deposit of E 50	E 30 Account-activation amount is E 50 or more	E 50 minimum opening balance
Account-maintenance/service fee	E 6 (monthly)	E 15 (monthly)	<i>Not clear: The bank's website notes only that this account has a "low maintenance fee"</i>	<i>Not clear: The bank's fee schedule lists a monthly account fee of E 47.40 for all personal accounts</i>	E 22.40 <i>Not clear if this is annual, monthly, or one-time</i>
Minimum income for eligibility	E 30,000 or less per annum	Gross monthly income of E 1,500 or less	Less than E 5,000 in a monthly cycle (for offerings focused on low-income earners)	E 2,500 or less per month	Open to all income groups (will be treated as a savings account for nonsalaried individuals)
Cash deposits	Free	Free	Free	Free	Free
Check deposits	E 30 + E 5.2 per check (maximum E 100)	Branch: E 38 ATM: E 38	E 30	Branch: E 33.75 ATM: 33.75	<i>Not specified: Not clear if this service is offered</i>
Cash withdrawals at own ATM	1.20% (minimum E 6)	1.3% (minimum E 8)	E 5.30	Up to E 500 = E 6.75 E 500–1,000 = E 13.5 Above E 1,000 = E 25.85 Above E 2,000 = E 30.35	Up to E 500 = E 8 Below E 1,000 = E 13 Below E 2,000 = E 25 Below E 3,000 = E 34 Above E 3,000 = 1.5%
Debit card purchases and withdrawals or POS withdrawals	POS withdrawals: E 6.10 POS purchase: E 6.10	POS withdrawals: 2.1% (maximum E 2,500) POS purchase: E 6	POS purchase: E 5.5	POS withdrawals: E 43.15 + 1.58% POS purchase: E 6	POS withdrawals: Up to E 500 = E 8.5 E 500–1,000 = E 15 E 1,000–2,000 = E 28 E 2,000–3,000 = E 41 E 3,000–5,000 = E 75 E 5,000 and above = 1.5%
Cash withdrawals at other ATMs (not including international ATMs)	E 15 + 1.25%	E 8 + 1.3% (minimum E 8)	E 45 + 1.1%	2.2% (minimum E 55.10)	<i>Not applicable</i>
Cash withdrawals at branch	E 55 + 1.87%	E 38 + 3.2%	E 45 + 1.8%	Check encashment: 1.89% (minimum 32) below E 5,000; 2.52% (minimum E 134.6) above E 5,000	1.70% (minimum E 70) E 55 (second withdrawal per day)

TABLE 4.1, continued

TRANSACTION	FNB SICALO TRANSMISSION ACCOUNTS ³³	NEDBANK NGEYAKHO SAVINGS ACCOUNT ³⁴	STANDARD BANK TRANSACT PLUS ³⁵	ESWATINI BANK UMLAMULI SAVINGS ACCOUNT ³⁶	SWAZILAND BUILDING SOCIETY SIPATJI ACCOUNT ³⁷
Electronic payments and funds transfers (non-branch)	Electronic payments: E 15 Scheduled payments: E 34 Electronic transfers between personal accounts: free	Cellphone transfer: E 13 Internet transfer: E 13	Internet inter-account transfer: E 5 Internet transfer to another Standard Bank account: E 14 Online bill payments: E 14	ATM transfers: E 7.90 Cellphone transfer: E 10 Internet transfer: E 12 Electronic fund transfers: E 5 (own); E 10 (within Eswatini Bank); E 11 (with other local banks)	ATM transfers: E 5.50 Cellphone transfer: E 7.99 Internet transfer: E 7.26
Branch and staff-assisted funds transfers or payments	E 57	<i>Not specified: Not clear if this service is offered</i>	E 50	<i>Not specified: Not clear if this service is offered</i>	<i>Not specified: Not clear if this service is offered</i>
Prepaid purchases	Airtime: 2.50% (maximum E 10) Electricity: 2.50% (maximum E 10)	Airtime: E 2	Airtime: E 3 Electricity and water: E 3 per 100 (minimum E 4, maximum E 10)	Airtime: E 2	<i>Not applicable</i>
POS declined transaction	E 8.84	<i>Not specified</i>	E 5	<i>Not specified</i>	<i>Not applicable</i>
ATM declined transaction for insufficient funds	E 8.84	<i>Not specified</i>		<i>Not specified</i>	E 5.50
Electronic information enquiries and statements	Email statement (current month): free Email statements older than three months: E 15.25 Cellphone statements: E 5.50 Additional online statements: E 54.50 (daily); E 43.70 (weekly); E 13.50 (bimonthly) Balance enquiry: FNB app/online banking (free); Cellphone (E 1.40); Telephone (E 6.75)	<i>Not specified: Not clear if this service is offered</i>	Mobile banking mini-statement: E 2.5	Mini-statement: E 5 Balance enquiry: E 2	<i>Not specified</i>
Paper statements and enquiries; enquiries at branch	Posted statement: E 18.70 Branch statement/provisional statement: E 15.25 per page Balance enquiry: E 7.80	Branch statement: E 30		Monthly statement: E 32 per page Balance enquiry: E 9	Balance enquiries: E 5.50

TABLE 4.1, continued

TRANSACTION	FNB SICALO TRANSMISSION ACCOUNTS ³³	NEDBANK NGEYAKHO SAVINGS ACCOUNT ³⁴	STANDARD BANK TRANSACT PLUS ³⁵	ESWATINI BANK UMLAMULI SAVINGS ACCOUNT ³⁶	SWAZILAND BUILDING SOCIETY SIPATJI ACCOUNT ³⁷
ATM mini-statements and enquiries	Mini-statement: E 6.45 Balance enquiry: E 2 (own ATM); E 6.50 (other bank's ATM)	Mini-statement: E 2.70 Balance enquiry: free (interbank ATM)	Mini-statement: E 5.3 Balance enquiry: E 2.3 (own ATM); E 6.5 (other bank's ATM)	Mini-statement: E 6.20 (own ATM) Balance enquiry: E 5.65 interbank ATM)	Mini-statement: E 5.45
Electronic notifications	Email: E 0.85 SMS: E 1.60 Fax: E 5.50	SMS: free		Email: E 1 SMS: E 1.60	SMS (for ATM transaction): E 0.95

Key Findings: Building Societies and Savings and Credit Cooperative Societies

No regulatory requirements apply to building societies concerning disclosure of fees and charges. Further, the disclosure issues described above in relation to banks also apply to the only building society operating in Eswatini: SBS.

The fees charged by SACCOs are agreed by members at their annual general meeting and are simpler in structure than bank fees. The two SACCOs interviewed charge an initial joining fee and an annual subscription fee. The mission team was told that other SACCOs have a similar approach. One SACCO also charges a cash-deposit fee of E 10 and another a fee for not attending an annual fee. The mission team was told that these fees are explained to members when they join. The mission team was also told that each SACCO has its own rules on the required frequency of deposits, permitted withdrawals, and associated fees—as per the SACCO's bylaws—changes to which need to be approved by members.

Key Findings: Non-bank Mobile Money Service Providers

The MMSP Practice Note requires MMSPs to display all fees and charges prominently. This must be done at the head office, all branches and places of business, and on websites. Agents also have to display all fees and charges prominently at their “premises” using a summary sheet provided by the MMSP (s. 22.1). It is not clear, however, if this requirement applies to agents who do not have physical premises. (They may work on the street or from markets.)

The main concerns expressed about mobile money fees related to their confusing nature. In particular, there was confusion about the payment of withdrawal fees by receivers of mobile money transfers when the sender had already prepaid the withdrawal fee on behalf of the receiver. Many customers appear to be unaware that any subsequent withdrawal following a partial withdrawal of the received amount would attract a withdrawal fee, even if the withdrawal fee had already been paid. Several of the interviewees also believed that they were being charged multiple fees in a single transaction without being fully aware of what these charges were.

Recommendations

As a medium priority, the rules concerning publication of fee information should be revised so as to require that information about fees and charges is published and made available to customers on a “per account type” basis. This information should be available on websites, in branches, and at agent’s premises, with prominent notices advising customers of its availability. This recommendation is in addition to the recommendations in section 4.6 concerning KFSs.

4.5. PRECONTRACTUAL DISCLOSURE OF DEPOSIT RATES

Summary of International Good Practices

To be able to make an informed choice about a savings or transaction account, customers should have easily available to them the interest rate(s) applicable to an account type they are considering (if any), how interest is calculated, and when it will be credited to the relevant account. This information is especially important in the case of a time deposit, as the interest return will be a key part of any investment decision. In this case, customers should also have readily available the relevant interest rate tiers and the period to which each applies, as well as advice on how interest rate returns will be affected by an early withdrawal.

Key Findings: Banks

The Banking Guideline contains detailed requirements to disclose interest rates on deposit accounts (s. 20). There are requirements to display interest rates applicable to deposit products in places of business and branches and to make available, for all deposit accounts, the applicable interest rate, the basis on which interest will be determined, and the frequency and timing of interest payments. In relation to time deposits, banks must further provide the following information to customers (in summary): the manner in which payment of interest and principal will be made and the costs associated with different methods of withdrawing funds; the manner in which funds will be dealt with at maturity; the interest rate, if any, that will be available on time deposits that have matured but have not been renewed or withdrawn; and the charges that may arise from early or partial withdrawal of deposits. Banks are also required to inform customers of changes in interest rates.

With very limited exceptions, banks do not appear to disclose publicly the interest-rate information required by the Banking Guideline. In particular, applicable interest rates (in numerical terms) were not displayed in any of the branches visited. This information may be available on enquiry, but it is not publicly displayed as required. Actual rates were also not mentioned in any of the sales brochures and websites reviewed, with one exception where details of the rates applicable to each type of account are displayed on the bank’s website. One website also includes a potentially useful “fixed interest deposit calculator.” This calculator shows the applicable interest rate after inputting the amount to be invested, the term (in months), the frequency with which interest is to be paid out, and the estimated start date.

Further, banks use a wide variety of inconsistent and confusing ways to describe interest rates on deposit products on websites and in marketing materials. Examples include “competitive interest rates”; “attractive interest rate”; “interest rates will vary according to contracted period”; “interest rates will also vary with principal sums deposited”; “monthly interest”; “interest calculated daily and paid into the product monthly”; “tiered and competitive interest rates with an opportunity to earn a bonus interest”; “customer gets higher interest rate on higher balances”; “interest at competitive rates monthly”; “interest rates are subject to change, according to market forces”; “prime less x%”; “paid on maturity depending on account balance and term of deposit”; “interest is calculated daily on tiered interest rates and capitalized yearly”; and “tiered interest rates.” The result is that consumers are not likely to be able to compare time deposit products effectively or to understand the applicable interest rates and how they are calculated before they make a decision to open an account. Even if customers are told the rate that will apply on enquiry or account opening, they will not necessarily know when the interest will be debited to their account, or even if they have a choice as to which account it is debited to. This is of serious concern, especially in relation to time deposits.

It is also not clear that banks are providing to customers the other information required by the Banking Guideline. This includes information about the manner of calculating interest, the manner in which time deposits will be dealt with at maturity, and early withdrawal charges for time deposits. While some information is available on the websites of some of the banks regarding frequency of interest paid and early withdrawal charges on fixed deposits, information about how time deposits will be dealt with at maturity is not clearly laid out on websites or in sales brochures for many of the time deposit products. For several of the products, the language on the websites suggest that there “may” be a rollover, or that the principal and interest amount “may be” paid into a transaction account on maturity, but there is no clarity on the steps to be taken for one course of action or the other. This information was not included in any of the standard terms and conditions reviewed. In some cases, term deposits are described as “automatically renewable,” but no information is provided on the mode of calculation of interest on rollover of deposits. To some extent, it may be provided orally on enquiry or on account opening, but it should be required in sales brochures, on websites, and in terms and conditions. The banks (including SBS) interviewed told the mission team that treatment of time deposits generally happens on a case-by-case basis. Bank employees generally contact customers by phone or by email close to the maturity date with instructions on how to treat the account on maturity. Table 4.2 highlights the abovementioned concerns.

Finally, although the CBE Order provides CBE with power to make rules concerning disclosure of interest rates and applicable methods of calculation, this power has not been exercised. In particular, CBE has power to prescribe rules concerning the manner of disclosure to the public and each depositor of the “effective annual interest rate” payable in respect of deposits (s. 41[1][d]). The term *effective annual interest rate* is not defined in the CBE Order, and the power to make such rules has not been exercised. CBE has also not exercised its power to make rules concerning the method of computation, and maximum and minimum rates, of interest payable in respect of any class of deposit (s. 41[1][a]).

TABLE 4.2: Fixed Deposit Examples³⁸

FIXED DEPOSIT PRODUCT	FNB	NEDBANK	STANDARD BANK	ESWATINI BANK	SWAZILAND BUILDING SOCIETY
Minimum deposit	E 1,000	E 1,000	E 1,000	E 10,000	E 1,000
Interest rate and payment	Fixed for the duration of the investment; may be monthly, quarterly, half-yearly, or on maturity as per customer's requirements	Fixed for the duration of the investment; can be quoted on a monthly or term-effective basis	Fixed for the duration of the investment	Paid on maturity depending on account balance and term of deposit	Fixed and paid at the expiry of the fixed deposit
Treatment on maturity/rollover	<i>Not specified</i>	On maturity, a new rate and investment term may be negotiated, or you may reinvest for a further term or withdraw the investment	<i>Not specified</i>	Unrenewed balances will be automatically paid to liquidation account on maturity date	On the expiry of the term, the fixed deposit may be renewed. Alternatively, interest accrued and capital may be credited into another account within SBS.
Early withdrawals	<i>Not specified</i>	Early maturity penalty rates are system driven and variable based on the term of the investment	Fixed deposit breakage fees: three months' worth of interest	A penalty fee of prevailing pricing will be charged for withdrawals before maturity	<i>Not clear if this is possible.</i> <i>Savings accounts attract a premature closure fee of E 82.50.</i>

Key Findings: Building Societies and Savings and Credit Cooperative Societies

No regulatory requirements apply to building societies concerning disclosure of deposit rates. Further, the disclosure issues described above in relation to banks also apply to the only building society operating in Eswatini: SBS.

Also, no regulatory requirements apply to SACCOs concerning disclosure of deposit rates. However, it is understood that the interest rate paid on SACCOs' ordinary savings accounts is usually determined by members at their annual general meeting, although this may be on the basis of a recommendation from the board and will always be subject to the SACCO's audited accounts. It is understood that members are encouraged to attend annual general meetings. This approach is also taken in relation to the dividend paid on members' shares. The interest paid on specific-purpose accounts is likely to be a fixed rate set at the time of account opening. (Presumably, these rates are agreed to by members from time to time, given the nature of SACCOs.) Anecdotally, the mission team was told the interest rate paid on SACCO savings accounts is relatively high compared to that paid on savings and transaction accounts held with banks or SBS. For example, one SACCO paid 11 percent on savings (in addition to a 5 percent dividend on fixed member shares) in 2018, and another paid a return of 12 percent on savings. It is understood that not all SACCOs pay the same rates of interest, and there may be a significant variation between SACCOs. However, given the role of members in confirming interest rates and the likely resulting transparency about current rates, there are not significant concerns with precontractual disclosures of these rates.

BOX 4.4**International Examples of Requirements for Interest-Related Disclosures***Canada*

The 1991 Bank Act provides that “no person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by a bank on an interest-bearing deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated” (s. 442). The relevant regulations passed under the 1991 Bank Act further state that the advertisement should clearly disclose the manner in which the balance of a deposit account will affect the rate of interest and any other circumstance that will affect the rate of interest.

United States

Regulations under the Truth in Savings Act regulate the use of rates in advertisements (s. 1030.8). The regulations require the use of the term annual percentage yield if an advertisement states the rate of return. No other term can be used except for interest rate, provided it is stated in conjunction with the annual percentage yield. The regulations further require the following additional disclosures to be made clearly and conspicuously:

- **Variable rates:** For variable-rate accounts, a statement that the rate may change after the account is opened
- **Time annual percentage yield is offered:** The period of time the annual percentage yield will be offered or a statement that the annual per-

centage yield is accurate as of the specified date

- **Minimum balance:** The minimum balance required to obtain the advertised annual percentage yield
- **Minimum opening deposit:** The minimum deposit required to open the account if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield
- **Effect of fees:** A statement that fees could reduce the earnings on the account
- **Features of time accounts:**
 - Time requirements: The term of the account
 - Early withdrawal penalties: A statement that a penalty will or may be imposed for early withdrawal
 - Required interest payouts: For non-compounding time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis and that require interest payouts at least annually, a statement that interest cannot remain on deposit and that payout of interest is mandatory

Some countries such as Peru have also required that information brochures must include explanatory examples of how a particular interest rate would apply to a sample transaction.

Sources: Canada 1991 and USA 1991.

Key Findings: Mobile Money Service Providers

Interest is not currently paid on the two mobile money accounts on offer. However, the MMSP Practice Note provides that an amount equal to the unclaimed balance of all e-money on issue shall be held in a separate account (a trust account in the case of non-bank), and an MMSP is expected to negotiate the interest rate with the bank, with any proposed use of the interest to be approved by CBE. It is understood that CBE is flexible as to how these funds may be used.

Recommendations

In the short term, CBE should enforce the Banking Guideline requirements for the disclosure of interest rates on deposit accounts and the related information to be given to depositors. This is an especially high-priority recommendation for time deposit accounts, given the amounts that may be involved and the potentially long-term nature of the investments.

There should be a new requirement for all the interest-rate information described in section 20 of the Banking Guideline to be included in sales brochures, on websites, and in terms and conditions.

The authorities should also consider establishing standards for disclosing or explaining interest rates and calculations on time deposit accounts in a simplified and comparable manner. While financial-sector participants may generally understand that various methods can be used to describe interest rates and calculate interest on an investment, many financial consumers are unlikely to be aware of such nuances.

4.6. COMPARISON OF PRODUCT COSTS AND RETURNS

Summary of International Good Practices

Effective disclosures can facilitate product comparisons and encourage competition, which in turn can lower prices and build financial-inclusion levels. As mentioned in the introduction, the focus should be on disclosures that reflect key information, are easily understandable, and for precontractual disclosures, are comparable between providers. This is especially important for consumers with low levels of financial capability and in relation to innovative financial services (such as mobile money).

It also needs to be recognized that a consumer may not read the contractual terms and conditions of an agreement or related fee information. This may occur for a variety of reasons: The information may be presented in a form so complex that it is not readily readable; the information may not be specific to the type of account in question; the customer may have a low level of financial literacy; the time pressure to open the account may be so great that there or is no time to read any material provided; or the salesperson may suggest it is not necessary to read the information in detail.

Against the above background, it has become increasingly recognized that a standardized short-form KFS may be important for filling the comparability gap. The Global Survey reported that 84 responding jurisdictions (68 percent) have some requirements in place to use a KFS—that is, for at least one product in at least one institutional category.³⁹

Key Findings: Banks

The Banking Guideline requires comparable precontractual disclosures, but these requirements have not yet been implemented by banks. In particular, section 5.2.4 provides that “standardised precontractual disclosure practices should be adopted where applicable and

practicable to allow comparisons between products and services of the same nature.” As noted above, however, banks are not yet complying with the Banking Guideline, and compliance is not yet being supervised by CBE. Further, the required form of a “standardised” disclosure has not been prescribed.

Even if a potential customer has found information regarding savings or transaction or fixed deposit accounts from various banks, he or she is likely to find that the disclosed information regarding pricing (and other) issues varies significantly, making accurate product comparisons difficult. The result seems to be wide variation in the scope and detail of product disclosure and limited customer understanding of the information that is provided.

Variations in formats and tools used to disclose product features, fee structures, and terms and conditions further compound the difficulty faced by customers in comparison-shopping. There are no regulatory requirements for FIs to disclose account-specific information to a customer in a standardized format (for example, a KFS) for a savings or transaction account product. The only related requirement is CBE’s requirement to use a specific format for the biannual newspaper notices of fees. However, the mission team was advised that even in that case, comparison across providers is difficult. As a result, a consumer shopping for a transactional account would encounter wide variation in the availability, format, and content of information about potential products (and the applicable fees and interest rates). At one bank, the potential customer may be offered a detailed product brochure; at another bank, a sales representative may discuss a subset of account options with the customer; and at another bank, the potential customer may simply be directed to the bank’s website. The effect is that customers wishing to compare products across banks have no standardized tools with which to do so.

A further complication is that banks use different terminology for the same fees. Table 4.3 contains a few illustrations.

A consumer shopping for a fixed-deposit or term deposit account would observe a wide range of terminology used to described interest rates, ranging from simply “%” to “interest rate” to “% (per annum)” to “prime less [rate]%.” While the most common representation of the interest rate on a fixed-deposit or term deposit account is “%,” there is typically little additional information on how the rate is calculated (for example, whether it compounds, the frequency at which rates might change) or whether it includes or accounts for any fees or

TABLE 4.3: Examples of Similar Fees with Different Terminology⁴⁰

TYPE OF FEE OR CHARGE	TERMINOLOGY 1	TERMINOLOGY 2	TERMINOLOGY 3
Monthly fees	Monthly account fees	Service fees	Account maintenance fees
Account opening	Opening fee	Activation fee	—
Bounced check	Check dishonored due to lack of funds	Dishonor fee	Unpaid item
Cash withdrawal at branch	Over-the-counter withdrawal charge	Branch cash withdrawal fee	Withdrawal fee

taxes. Some products state that the interest “may be” capitalized, but there is little information offered beyond that.

There is also no provision for a centralized website to facilitate easy product comparison on comparable features, prices, and terms of savings and transaction accounts. Such a website may make it easy for consumers to search for and compare product offerings in the market. It may also generate competitive pressures among providers to lower prices and improve product features. The product-comparison website could be developed and maintained by the relevant regulator itself or in coordination with another public or private entity. These sites need to be designed carefully and are most effective when they make it easy for consumers to search and compare standard, commonly available types of accounts. It may be necessary to mandate banks to provide relevant information to the website operator. Results from the 2017 FICP Survey show that financial-sector authorities in 55 jurisdictions report collecting data on rates and fees from financial service providers.⁴¹

Key Findings: Building Societies and Savings and Credit Cooperative Societies

The above issues are relevant to SBS. The issues are also likely to be relevant to building societies that are formed in the future.

Given the simplicity of SACCO products, it is not thought that there is an immediate need for SACCOs to provide KFSs. However, in the interests of providing a level playing field for different types of FIs and the likely low levels of financial capability among SACCO customers, the recommendations below could be applied to SACCOs.

Key Findings: Non-bank Mobile Money Service Providers

The above issues may also be relevant to the two non-bank MMSPs, especially given that two mobile network operators offer mobile money services and considering the increased effort to encourage the use of these services for financial-inclusion purposes. However, the need for KFSs is not perceived to be as immediate as it is for banks.

Recommendations

The highest-priority recommendation is for the introduction of a requirement for banks (and SBS) to provide to consumers a short-form (one- to two-page), standardized document for common savings or transactional accounts summarizing the key features, fees and charges, and deposit rates applicable to the account (that is, a key facts statement). The KFS should be required to be provided at the shopping-around stage when a customer makes an enquiry about the account, on request, and at account opening. Consideration should also be given to requiring standard-form KFSs to be on FIs’ websites. The aim is to provide information to customers that will enable them to compare product offerings and to encourage competition between providers. It is proposed that this requirement should initially apply only to the more common accounts, such as a time deposit or a payments account (including a current account or a mobile money account) or a simple savings account.

The same form of KFS should be required to be used by all FIs offering the relevant product. In particular, a standard template should be prescribed that (i) is concise (one or two pages long); (ii) is written in plain, easy-to-understand language; (iii) requires the use of standard formulas or methodology to calculate any required comparative cost indicators; (iv) requires the disclosure of the features of the account and how it may be used, and applicable fees and charges; and (v) includes appropriate warnings (for example, as to the effect of early withdrawal of a time deposit and the ability of the FI to change fees and charges and deposit rates). FIs should be required to maintain appropriate records of having provided customers with the KFS.

Electronic versions of the KFS should also be developed to facilitate paperless customer-acquisition processes and remote account opening via digital channels. It should be compulsory for KFSs to be made available through all distribution channels, whether physical (for example, branches or agents) or electronic (for example, on websites and mobile phones). The development of such a “digital approach” will require innovative thinking and rigorous testing, including with respect to presenting, sequencing, and layering information in ways that are appropriate for a given platform (for example, an SMS-based approach).

The authorities should develop the KFSs through in-depth consumer testing and behavioral research, as well as through consultation with industry stakeholders. In developing the KFSs, the authorities should leverage a range of consumer research methodologies to test consumers’ abilities to read, understand, and act on information disclosed by financial service providers. Group discussions and in-depth individual interviews with consumers should also be used to inform and test draft KFSs. The authorities should also consult and work with industry to address issues with compliance costs and build familiarity with relevant formats and formulas.

Verbal explanations of KFSs should be mandated in some circumstances. This should be done on request or if it is reasonably obvious that the customer is illiterate or cannot understand the information in the KFS.

In the longer term, it is recommended that future building societies, SACCOs, and MMSPs also be required to provide a KFS to consumers as described above for savings and transaction accounts.

Given the complexity of pricing bundles for transactional accounts and fee-disclosure issues generally, the authorities should also give consideration to the feasibility of including in KFSs an overall cost indicator based on standard or sample usage patterns. Given the complexity of, and variety in, pricing bundles as discussed in section 5.4, it may be difficult, even when using a short-form disclosure document, for consumers to compare such accounts against their likely usage patterns and preferences. A consumer could be assisted in this endeavor if, at the shopping stage, a KFS provides him or her with a total monthly cost for each account based on specified typical monthly usage patterns or scenarios. However, it would be important to research whether the identification and updating of such profiles is feasible. The use cases should be based on detailed and periodically updated consumer

BOX 4.5**International Examples of Standardized Disclosures for Transactional Accounts**

Uganda: Since 2015, the Bank of Uganda has required all financial institutions under its supervisory mandate to provide a key facts document to consumers before they purchase a deposit product. The document is available in eight languages. According to guidance issued by the bank, “the objective of the Key Facts Document is to present the most important information/features of a product that a customer needs to know in a concise, accessible, and comprehensible manner . . . so that customers can, if they wish, compare similar products from different institutions.” The key facts document covers key product features and pricing, including (i) the minimum amount required for the account to be opened; (ii) the minimum balance; (iii) the number of free withdrawals before a fee applies; (iv) withdrawal fees for over-the-counter and ATM withdrawals; (v) the number of statements provided free of charge; (vi) fees for system alerts, SMS alerts, and balance inquiries; (vii) the account closure fee; (viii) options for a customer to deposit and withdraw money; and (ix) recourse channels. The guidance issued by the Bank of Uganda further states that “the last KFD issued to the customer will form part of the contractual agreement between the customer and the [financial institution]. This version must be signed by both the Relationship Officer and the Client.”

Rwanda: In June 2016, the National Bank of Rwanda issued a requirement for all financial service providers to provide customers a KFS for consumer credit products, both when a consumer makes an inquiry (a general KFS) and prior to signing the contract (a personalized KFS). In 2017, the national bank also issued a regulation requiring all providers offering transactions and savings accounts to provide a standardized KFS containing the most common fees and charges relating to a transaction account.

Australia: In Australia, there is a legal requirement that a “product disclosure statement” for a financial product must be “clear, concise and effective” and contain prescribed details about the product. The regulator, the Australian Securities and Investments Commission, has issued the following guidance with regard to how the complexity of a product may affect the complexity of disclosure: “Complexity of the product: Even where product issuers present information in plain language, the complexity of what is being described may create a barrier to consumers’ understanding. . . . A product issuer may also need to provide a greater level of disclosure if the product is not generally understood by consumers (for example, if it is new or complex). . . . In some extreme instances, a product issuer may need to consider simplifying the item or system being described, as well as how information about it is disclosed. For example, some fee arrangements may be so complex that they are difficult to describe in a manner that is clear, concise and effective.”⁴² The Australian legislation provides exemptions from

BOX 4.5, continued

requirements from product-disclosure statements for “basic deposit products,” but these must adhere to strict parameters.

European Union: In May 2017, the European Banking Authority published final draft technical standards establishing standardized formats for a precontractual fee-information document and a post-contractual statement of fees, as well as standardized terminology for services linked to payment accounts. The authority notes that “standardized terminology, coupled with targeted fee information presented in a consistent format covering the most representative services linked to payment accounts, may help consumers to understand and compare fees.” The standards set forth the following eight standardized terms for services linked to payment accounts: (i) maintaining the account, (ii) providing a debit card, (iii) providing a credit card, (iv) overdraft, (v) credit transfer, (vi) standing order, (vii) direct debit, and (viii) cash withdrawal. Member states are able to require key indicators, such as a comprehensive cost indicator, to be provided with the fee-information document. Payment service providers are required to provide customers with a fee-information document “in good time before entering into a contract for a payment account with a consumer.” The publication of the standards followed two and a half years of policy-development work, consumer testing, and a three-month public consultation.

Italy: In line with the European Banking Authority’s technical standards, the Bank of Italy has developed a comprehensive cost indicator based on seven distinct user profiles. Customers select the user profile that most closely describes them, and the provider calculates the expected monthly cost of a given account for that customer. Providers are required to provide the comprehensive cost indicator value as part of the fee-information document, which then allows customers to compare the expected monthly cost of an account across various accounts and providers using a standardized usage profile.

Sources: Bank of Uganda n.d., National Bank of Rwanda 2017, ASIC 2011, and EBA 2017.

research and described in the KFSs in clear, simple terms. Consideration should also be given to including an overall return indicator for time deposits.

In the longer term, consideration should also be given to developing a price-comparison website. This website should enable consumers to compare pricing statistics of common savings and transaction accounts (starting with time deposits and mobile money accounts), based on information to be provided by relevant providers.

As mentioned above in the section on precontractual disclosure of deposit rates, consideration should also be given to establishing standards for disclosing or explaining interest rates and calculations on time deposit accounts in a simplified and comparable manner.

4.7. CONTRACT DISCLOSURES

Summary of International Good Practices

Further to the introductory comments, one of the most fundamental FCP good practices is giving a consumer, on entering into a contract for an account, a copy of the terms and conditions (including all applicable fees). This information should be provided to the consumer in a form that they can keep and retain for future reference.

Key Findings: Banks

Banks are required by the Banking Guideline to make the terms of products and related fees and charges available to customers. The relevant requirement states that “banks and their authorised agents should set out and explain clearly the key features, risks and terms of the products, fees, commissions or charges applicable, and make available the details of these to customers.” However, as mentioned above, the Banking Guideline is not yet being implemented by banks. Further, it is to be noted that the Banking Guideline does not in any event require a copy of standard terms and applicable fees and charges to be provided to customers when they open their account and become bound by the relevant contract.

Most of the banks interviewed (including SBS), however, do not provide consumers with a printed or electronic copy of the standard terms and conditions, or account-specific fees and charges and interest rates, on account opening—unless specifically requested by the customer. One bank said that it does not even have standard terms and conditions. For the other banks, standard terms and conditions are available on some, but not all, websites. For all banks, schedules of fees and charges are available on their websites covering fees for all account types and PAYT transaction fees. All banks said that their customer service representatives explained the fees and charges to individual customers at the time of account opening. In some cases, information about some of the applicable fees and charges are available on an account-specific basis in brochures and on the website, but it is not necessarily the case that all fees applicable to such an account will be disclosed. Customers are expected to look at generic or PAYT fee schedules for other fees. Some banks even pointed out that detailed fee schedules were available on display at branches for customers’ reference. All banks said that they shared copies of fee schedules or interest rates with customers for their own reference, only on the customer’s request, at the time of account opening.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

There are no legislative contractual disclosure requirements for either building societies or SACCOs.

SACCOs make some relevant disclosures at the time a new member joins the SACCO (including of pricing information). Both SACCOs interviewed provide new members with details of the various fees charged by them (of which there are very few). One of the SACCOs also confirmed that it gives this information to new members in writing when they become a member. It is understood that fees charged to SACCOs are relatively few in number and generally flat fees. It seems unlikely that members would have difficulty in understanding fee

structures. However, one of the interviewees mentioned that SACCOs might need to adopt more complex fee structures in the future, given the increasing cost of administering SACCOs. It is also understood that members are required to read and accept the bylaws of the SACCO at the time of joining and that copies are available to members.

Key Findings: Non-bank Mobile Money Service Providers

The MMSP Practice Note makes provision for some disclosures, but they do not meet the abovementioned good practice requirements. An MMSP must prominently display all fees and service charges at its head office, branches, and places of business. Agents have a similar obligation (s. 22.1), and there must be a written, signed agreement with customers (s. 22.3 [i] and [ii]).

The non-bank MMSP interviewed said that its agents do not hand out copies of standard terms or fees and charges at the time of account opening. Customers are expected to read, understand, and accept the terms and conditions of the account provided via their phone. Customers are not given a separate individual copy of the terms and conditions at the time of account opening. Fee schedules are made available on display at physical kiosks and branches where customers open mobile money accounts. In cases where accounts are opened through agents who do not have physical premises, the agent will have a fee brochure for customers' reference. The interviewees also remarked that their products were known and well understood by customers.

Recommendations

All FIs should be required to provide consumers who open a savings or transaction account the standard terms and conditions, fees and charges, and deposit rates for the relevant account type in a form that the consumer can retain and keep. It should be possible to provide this information electronically or in paper form, depending on the consumer's preference. This is an important short-term recommendation so far as banks, SBS, and MMSPs are concerned but could be implemented in the longer term for future building societies and SACCOs.

Standard terms and conditions should also be available on the websites of FIs and in branches. This should be done in the medium term.

4.8. STATEMENTS OF ACCOUNT

Summary of International Good Practices

The Good Practices suggest that an FI should be required to provide a customer with a periodic written statement (which could be in an electronic form) free of charge to the customer. The aim is to provide customers with a means of checking the current account balance, all transactions conducted in the relevant period, and fees and charges debited to the account. Statements need to be self-explanatory, comprehensive, objective, and clear. This is especially important in the case of savings and transaction accounts that can carry significant fees and charges, have risks of mistaken and unauthorized transactions, and involve numerous transactions, as well as have periods of inactivity. The first statement of account in any period should be provided free of charge with the option to receive more frequent statements and account balances via an electronic channel for a minimal cost or free of charge.

Mobile money providers do not usually provide customers with periodic account statements, although they may provide a facility whereby the customer can check the current balance and recent transaction information. At a minimum, however, it should be easy for mobile money account holders to acquire, through their mobile phones, up-to-date statements of the account balance and information about transactions on their accounts.

Key Findings: Banks

No requirements for periodic account statements apply to banks, and most banks (including SBS) interviewed do not provide their customers with them unless it is a feature of their account type. All banks also charge a fee for printed copies of statements to customers on their nonbundled accounts. Some of the banks provide regular email statements free of charge.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

No requirements for periodic account statements apply to building societies or SACCOs.

Key Findings: Non-bank Mobile Money Service Providers

No requirements for periodic account statements apply to MMSPs, although these are provided on request by the non-bank MMSP interviewed. Historical statements containing up to six months of information are readily available to customers on request and free of charge. Customers may also avail of mini-statements of their last ten transactions using a smartphone application, and of the last five transactions using a regular Unstructured Service Data code. Additionally, customers are generally alerted and required to enter a PIN before completing a transaction, and they are also sent alerts immediately after a transaction has been completed. The terms and conditions of the MMSP expressly mention that customers will be sent an SMS message at the end of each transaction containing details of the transaction.

Recommendations

Require, as a medium priority, periodic statements of account for savings and transaction accounts to be provided to holders of savings and transaction accounts with banks, building societies, and SACCOs. These statements should be provided free of charge at intervals relevant to the type of product. For example, a transaction account statement might be provided, say, monthly (especially given the possibility of unauthorized transactions), whereas a fixed deposit product could be provided less frequently. A statement should include the opening and closing balance, details of all transactions, fees debited to the account, and any interest credited. If there has been any change in fees or charges or interest in the statement period, this should be noted as well.

Require MMSPs to make available a facility that allows account holders to acquire, at any time, through their mobile phone, an up-to-date statement of the account balance and information about recent transactions on their account (say, the last 10 transactions). Full details of all transactions (including transactions over a set period) and the account balance, should be available on request.

4.9. TRANSACTION RECEIPTS

Summary of International Good Practices

Transaction receipts are a crucial record of any payments transaction, as they are often the only record available of the transaction.⁴³ They can be used as a personal record of the transaction, as well as in any dispute with the FI concerned or any merchant or payee. If not immediately available when the transaction occurs, they should be made available within a reasonably brief time afterward. According to the World Bank's Good Practices, transaction receipts should contain details of the FI and any agent; payer and payee; the amount, date, time, and nature of the transaction; all fees and charges on an itemized basis; the exchange rate (where relevant); identification details of the instrument or device used for the transaction; and the transaction reference number. Ideally, this information is also provided to the payer before the transaction occurs so the user can confirm the transaction and then immediately after the transaction is processed. Confirmation of the details of a transaction is especially important where there is a risk of mistaken or unauthorized transactions.

The above comments are especially important for mobile money and other electronic payments transactions, but receipts should also be provided for any "over the counter" payments transaction. For example, a receipt should be provided detailing the amount of any deposit into a savings account along with any applicable fee and the balance of the account. Another example is a cash-in, cash-out mobile money transaction conducted by an agent or any branch of an MMSP.

Key Findings: Cross-cutting

The only requirements dealing with transaction receipts are applicable to MMSPs (bank or non-bank). The MMSP Practice Note requires that MMSPs provide a mechanism to verify the name and number of the recipient of funds for confirmation before a transaction is completed as well as written confirmation of execution of the transaction, including the fee charged (s. 22.4). While these requirements are useful, they do not include all the information proposed by the World Bank's Good Practices.

The non-bank MMSP interviewed provided examples of the confirmation of a funds-transfer request, and the receipt provided, both of which are delivered via SMS. These receipts contain most of the information proposed by the World Bank's Good Practices.

Recommendations

Require FIs to provide detailed transaction receipts for electronic payments transactions, as well as confirmation of a transaction before it occurs. This is a medium priority. The receipt should include the information mentioned above under "Good Practices."

In the longer term, FIs should also be required to provide receipts for over-the-counter payments transactions such as deposits.

BOX 4.6**Effects of Better Mobile Money Fee Disclosure in Kenya**

In 2016, the Competition Authority of Kenya ordered MMSPs to disclose all mobile money service fees payable by consumers prior to the completion of a transaction. Service providers were required to present consumers full information on the costs before they used the service on the same screen on which the consumer was transacting. This directive was part of an effort by the Kenyan competition watchdog to promote transparency, price awareness, and product comparisons between various mobile money providers. Competition concerns had arisen in Kenya, particularly in the provision of Unstructured Structured Service Data (USSD)–based transactions that could be carried out without the use of a smartphone.

Subsequent research by the Consultative Group to Assist the Poor in 2018 showed that implementation of these disclosure rules led to increased awareness of mobile money transfer fees, especially for person-to-person transfers. Customers were also more aware of the cost of digital credit. This was a particularly important development because most digital credit users borrowed on non-smartphone application channels, and digital lenders using USSD or SIM toolkits previously would not disclose costs in a transparent manner.

Source: Mazer 2018.

4.10. CHANGES TO FEES AND CHARGES AND DEPOSIT RATES**Summary of International Good Practices**

FIs should be required to notify their customers prior to changing the interest rate to be paid on any savings or transaction account and any applicable fee or charge.⁴⁴ Further, the terms and conditions of the account should clearly state the extent to which interest rates, fees, and charges may be changed and any applicable notice period. If terms and conditions or fees and charges or interest rates are changed without the contractual power to do so, then those changes should not bind the customers. Good practice also suggests that FIs should be required to notify customers if their accounts have become inactive or dormant.

Key Findings: Banks

The Banking Guideline has strict requirements for changes to terms and conditions that affect fees and charges, including on savings and transaction accounts (ss. 7.10 and 8).

In summary:

- The bank must give customers at least five days' notice of any change before making the change.
- Individual notification to customers (written notice, message in an account statement, e-mail or SMS) is preferred.

- Where is this not feasible, other means of notification are (a) press advertisement, (b) prominent display of notice in banking halls, (c) notice on ATM sites or screens, (d) phone-banking message, and (e) notice on the bank's website.

All available terms and conditions for relevant bank products and services make provision for fees and charges to be changed and, in all cases bar one, without prior notice. One bank provides for prior notice of any change to be given "within a reasonable time before the change takes effect." However, it is to be noted that one bank does not have standard terms and conditions. In general, the banks interviewed (including SBS) appear to rely on published newspaper notices of fees and charges and website publication of pricing schedules to inform customers of any changes to fees and charges. However, neither of these forms of notice highlights whether any changes have in fact occurred. One bank said it was developing a plan to notify customers of changes to fees and interest rates via SMS or email.

Only one bank makes reference in their terms and conditions to changes to deposit rates. In that case, it is clear that the bank may change the applicable interest rate at any time. It is not general practice to notify customers individually of changes to deposit rates—or even to have deposit rate information generally available. (See section 4.5.)

Most banks also include in their standard terms a general provision to the effect that the terms may be changed by the bank at any time. In some cases, there is provision for significant changes to be notified in advance. However, there are also examples of provisions that deem customers to have accepted the change unless they end the agreement.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

No legislative requirements concerning changes to the terms and conditions, fees, or interest rates apply to accounts with building societies or SACCOs. The only building society (SBS) prints its very limited terms in a passbook (with no reference to any changes). Both the SACCOs interviewed stated that any increase to fees and charges would first require the approval of the board and then be chaired at an annual general meeting. Members are expected to attend meetings regularly and therefore be informed of any changes to fees, interest rates, and other pricing-related issues. It is understood that this is standard practice for SACCOs; therefore, changes to terms and conditions are not a concern for SACCOs at present.

Key Findings: Non-bank Mobile Money Service Providers

The MMSP Practice Note does not contain provisions requiring notice of changes to fees or charges or other matters to be notified to account holders.

Standard terms and conditions (Conditions of Use) were reviewed for one non-bank MMSP. (The terms and conditions for the other non-bank MMSP were not provided.) The MMSP reserves the right for tariffs and the Conditions of Use to be varied, with notice to be given by daily newspaper, SMS, or its website or any other suitable means. The MMSP further provides that notice will be deemed to have been given regardless of whether the change has come to the account holder's attention.

Recommendations

As a medium priority, FIs should be required to comply with minimum notification requirements for existing customers when making unilateral changes to fees and charges and terms and conditions. These requirements should cover both the timing and manner of disclosure issues.

NOTES

24. As noted in WBG 2017a, chapter 5 (“Financial Capability”), financial-capability stakeholders often use different terminology and definitions. Relevant terms include financial literacy, financial education, and financial capability.
25. For example, consideration has not been given to the requirement in Legal Notice No. 62 that a bank “create a budget to cater for the conduct of campaigns and educational forums for consumer education and general financial literacy.”
26. WBG 2017b, chapter 1, section B.1.
27. CIA 2019, accessed September 23, 2019.
28. Wikipedia n.d.
29. WBG 2017b, chapter 1, section B.2.
30. WBG 2017b, chapter 1, section B.3.
31. CBE 2019b.
32. Fees and features are shown at the time of writing (September 2019). Not all fee types have been included in the table. The focus has been on fees that seemed more likely to be relevant to most customers’ ordinary day-to-day use. The table uses certain language from each bank or financial institution but with some adjustment to facilitate side-by-side comparison.
33. As per FNB’s 2019–20 pricing guide, available at <https://www.fnbswaziland.co.sz/downloads/fnbswaziland/PersonalPricingGuide2018-2019.pdf> (accessed September 13, 2019).
34. As per Nedbank’s 2019 pricing guide, available at <https://www.nedbank.co.sz/content/nedbank-swaziland/desktop/sz/en/personal/rates-and-fees/pricing-guide.html> (accessed September 13, 2019).
35. As per Standard Bank’s 2018 pricing guide, available at <https://www.standardbank.co.sz/standing/Swaziland/Common%20elements/eForms/Web/pricingdec.pdf> (accessed September 13, 2019).
36. As per Eswatini Bank’s schedule of fees and charges, available at <https://www.swazibank.co.sz/mfmb/ib/swazifeesandcharges.jsp> (accessed September 13, 2019).
37. As per SBS’s schedule of fees and charges, available at <https://www.sbs.co.sz/index.php/about-us/fees> (accessed September 13, 2019).
38. Based on information available on the websites of the banks (accessed September 2019). The table uses certain language from each bank or financial institution but with some adjustment to facilitate side-by-side comparison.
39. WBG 2017a, figure 4.5.
40. Based on information available on the websites of the banks (accessed September 2019).
41. The jurisdictions include Australia, Canada, Hungary, Ireland, Malaysia, Mexico, Norway, Peru, and the United Kingdom.
42. ASIC 2011, 168.75–168.78.
43. WBG 2017b, annex 1, section B5.
44. WBG 2017b, chapter 1, section B.6.



FAIR FEES AND CHARGES

5.1. INTRODUCTION

A fundamental principle of FCP good practices is that FIs should be required to treat their customers fairly, at all stages of the customer relationship.⁴⁵ Further, to ensure compliance with this principle, FIs should be required to consider the outcome of their products, services, strategies, and procedures for their customers. It is considered that this principle applies to pricing strategies, as well as to other relevant strategies. Unfair treatment may manifest itself, for example, in the provision of complex pricing alternatives that individual consumers may have difficulty understanding and comparing.

Key pricing issues for banks, non-banks, building societies, and MMSPs are considered below. A range of issues is considered (especially in relation to banks), but this does not include issues relating to levels of profitability (or the appropriateness of profit margins) arising from relatively high fees and charges or relatively low deposit rates. These issues were not within the scope of the diagnostic review.

5.2. UNFAIR FEES

Summary of International Good Practices

Some countries may impose limitations on specific fees where there is evidence of a market failure justifying such controls (for example, because they are anticompetitive) or because the fees are considered in the nature of a penalty or inherently unfair. For example, the European Union and countries such as Australia, Azerbaijan, the Philippines, Singapore, South Africa, and the United Kingdom regulate account-closing fees, account-keeping fees, ATM-withdrawal fees, and loan-prepayment and early-termination fees, and unreasonable enforcement expenses. These types of controls have been imposed because of evidence

of specific market failures (such as account-closure fees that limit the ability to switch providers). Some countries (such as Australia and Malaysia) also impose controls over fees charged by payday lenders and money lenders. New Zealand prohibits the payment of “unreasonable” fees.

The abovementioned good practices do not necessarily suggest that there should be caps on fees and charges and applicable interest rates. A well-designed disclosure regime, coupled with rules on unfair terms, can be a more effective, market-friendly approach.⁴⁶ Recent World Bank research suggests that, while interest rate caps are common⁴⁷ and can have positive effects, they can have unintended side effects. To quote (emphasis added): “The paper . . . presents six case studies of different types of interest rate caps. The case studies indicate that **while some forms of interest rate caps can indeed reduce lending rates and help to limit predatory practices by formal lenders, interest rate caps often have substantial unintended side effects.** These side effects include increases in noninterest fees and commissions, reduced price transparency, lower credit supply and loan approval rates for small and risky borrowers, lower number of institutions and reduced branch density, as well as adverse impacts on bank profitability. Given these potential negative consequences of interest rate caps, the paper discusses alternatives to reduce the cost of credit.”⁴⁸

The alternatives to interest rate caps discussed in the abovementioned World Bank research are summarized as follows: “In light of the possible unintended consequences of interest caps, alternatives to interest caps should also be considered. These include measures to foster competition, reduce risk perception, overhead costs, and cost of funds. Consumer protection and financial literacy measures are also important measures, especially if interest rates are meant to protect consumers from usury rates.”⁴⁹

Controls over fees and charges are also at odds with having a market based on competitive principles supported by appropriate disclosures to consumers. Specific concerns include the following: (i) Financial service providers tend to charge up to the highest allowed amount, undermining competitive initiatives in the banking industry; (ii) regulated fees and charges may not reflect current costs, which may create a disincentive to further development of some banking services; (iii) differences between fees for different types of services may encourage financial service providers to push customers toward a higher-price service (such as pushing customers to use electronic channels and incurring high mobile-data costs if fees for face-to-face transactions are regulated); (iv) restrictions on fees and interest rates may create a potential for regulatory arbitrage, as they will apply only to financial institutions regulated by CBE; and (v) restrictions on specific fees (such as cash deposits) may lead to increases in other fees. Overall, the effect may be anticompetitive and inhibit financial inclusion. It is also to be noted that no international standards support widespread controls over the fees charged by FIs to consumers.⁵⁰

Key Findings: Banks

Consideration has been given above to fees that are potentially unfair for various reasons. Fees that might be considered unfair include the following: (i) fees that have the potential to be anticompetitive (for example, they provide a deterrent to switching providers); (ii) fees that might be considered in the nature of an unfair “penalty” because they seek to recover more

than the actual loss incurred by the bank from the relevant event; and (iii) other fees that might be considered inherently unfair and therefore inconsistent with any overarching obligation to treat customers fairly. Possible examples include the following:

- **Potentially anticompetitive fees:** Account-closure fees beyond reasonable administrative costs could be potentially anticompetitive. However, such fees do not appear to be an issue in Eswatini at present, as none of the banks appear to charge a fee for account closure or reactivation of dormant accounts. Another example could be a fee for using another bank's ATM. The failure to disclose such fees before a transaction is finalized is also a concern and is discussed in section 5.4.
- **Fees in the nature of a penalty:** Excessively high interest or fees for excess/overdrafts, dishonor of checks, declined transactions, or rejected debit orders could all potentially be considered a penalty where the amount charged does not reflect the costs to the provider of the relevant event. Possible examples of such fees identified during the diagnostic review include a fee of three months' interest for breaking the term of a fixed deposit which applies regardless of when the early withdrawal occurs; not paying any interest at all on an investment product with fixed monthly deposits over a specified period "in case of breached contract"; a fee of 15 percent of the amount of any temporary excess regardless of the period over which the excess is provided; and applying penalty interest to an unauthorized overdraft without advising the consumer of the rate. Agreed overdrafts and excesses are, however, generally prenegotiated.⁵¹ It is also to be noted that in Eswatini fees for dishonors or rejected transactions are capped at E 100 under Legal Notice No. 62, and banks appear always to charge up to the cap, with one possible exception. (The bank charges an "Honoring Fee" of E 296.) This could be an example of a penalty, depending on the costs of the relevant event.
- **Fees that seem to be inherently unfair:** The abovementioned penalty fees could all be considered inherently unfair. Another example could be a fee for reactivation of a dormant account (however, no bank seems to charge such a fee at the moment, although some banks note the fee is "free," potentially contemplating that reactivation is something that could be charged for); and charging ongoing account fees on dormant accounts, beyond what might be considered a reasonable period. The charging of fees for disputed transactions might also be considered unfair.

Legal Notice No. 62 contains caps on a few fees that apply to banks. CBE also feels that it applies to SBS. Cash deposit fees are required to be zero, and the penalty fee for a dishonored check or debit order payment is required to be a maximum of E 100. It is expressly stated that fees and charges for withdrawal services shall remain unprescribed. These caps apply in relation to all accounts, regardless of whether they are held by individuals or the largest corporates in Eswatini. No other caps on fees, or interest rate caps, apply to banks.

TABLE 5.1: Examples of Early Withdrawal Penalties on Fixed Deposits⁵²

EXAMPLE 1	EXAMPLE 2	EXAMPLE 3
Fixed deposit breakage—three months' interest	Early maturity penalty rates are system driven and variable based on the term of the investment	A penalty fee under prevailing pricing manual will be charged for withdrawals before maturity

With a few exceptions, banks seem to be complying with the Legal Notice No. 62 caps but are critical of them. Banks also advised that they are complying with an 18-month moratorium on fee increases that was recently introduced by CBE. Only a few examples of noncompliance were identified. At least one bank still charges a cash deposit fee (though no longer listed as a “deposit fee”) for making a deposit to be used to pay school fees, and one bank charges an “Honoring Fee” of E 296. In the case of the only building society (which CBE feels should comply Legal Notice No. 62), there is a “1% minimum E 30” fee on Savings for Kids accounts.⁵³ Further, although banks do not generally charge cash deposit fees, they can (and do) charge fees for check deposits and online or mobile money transfers. The criticisms of the caps relate to lost revenue, and it was also noted that the caps apply to large businesses as well as individual customers. As noted in section 3 above, the FCP legal and regulatory framework does not define which “consumers” are to have the benefit of the framework. This is considered a gap.

The Banking Guideline also contains rules concerning the nature of the fees that can be charged. All fees and charges are required to be “reasonable” (s. 8.1.) However, the term *reasonable* is not defined, and there are concerns about how consistently banks will interpret this concept, as well as the likely supervisory resources that might be needed to assess compliance with this requirement. Further, limits on card fees include the following:

- Card issuers cannot impose an account-inactivity fee on cardholders.
- A fee for violating the terms of an account is required to be reasonable (s. 27).

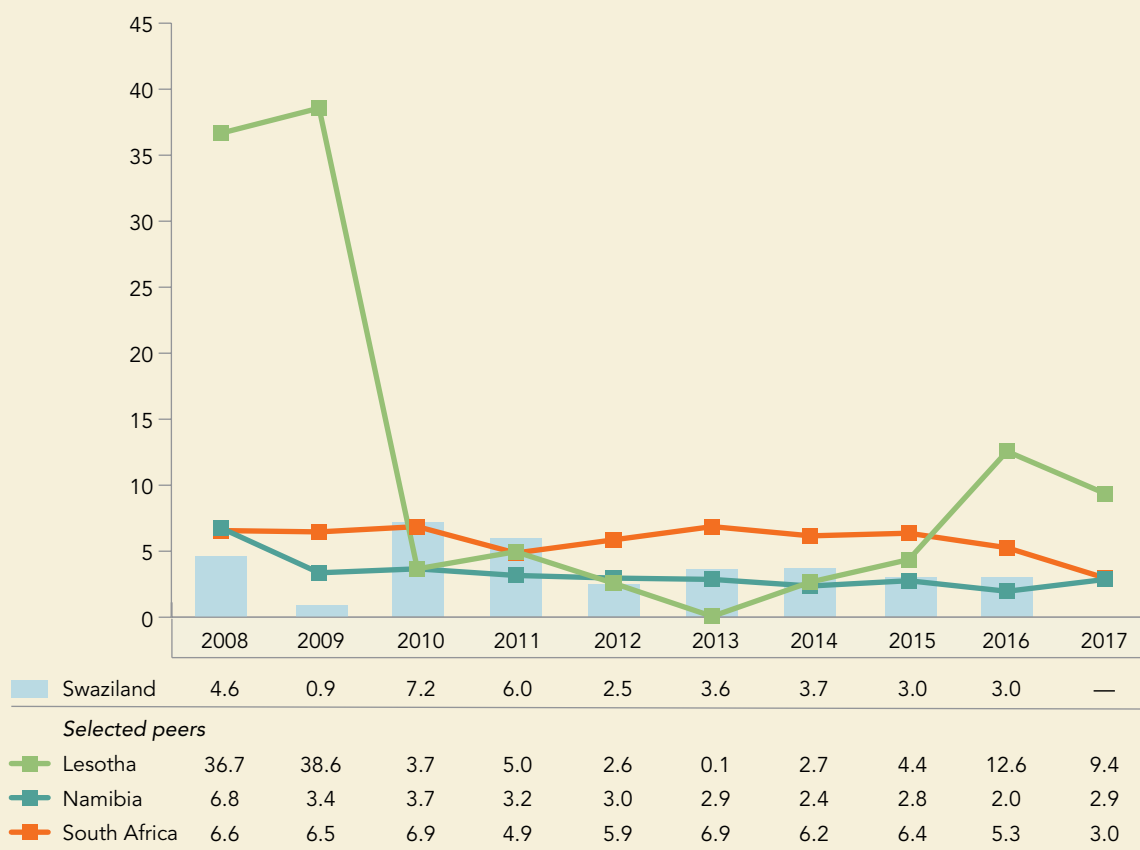
As noted above, at this stage, banks are not complying with the relatively new Banking Guideline.

There is a common perception that banks in Eswatini earn a higher percentage of their income from noninterest sources, in comparison with banks in other CMA countries. However, the World Bank’s Finstats 2019 data suggests that noninterest income earned by the banking sector in Eswatini has been comparable to the rest of the CMA over at least the last decade. Box 5.1 compares noninterest income as a percentage of the total income in Eswatini (referred to as Swaziland) with other CMA countries.

Finally, it is noted that all banks consistently indicated (albeit with varying levels of emphasis) a focus on encouraging customers to use digital and ATM channels as opposed to branches. However, it was not clear that customer testing in fact showed that this approach reflects customers’ transaction preferences but is simply a way of encouraging customers to use the lower-cost option for banks. In fact, several of the stakeholders made references to the high mobile-data charges in Eswatini, implying that digital channels were not necessarily low-cost for customers. However, it is not surprising that banks take this approach, given the commercial imperatives that favor profitability and operational cost drivers.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

No legislative provisions apply to potentially unfair fees charged by building societies and SACCOs. However, in general, the above comments on unfair fees also apply to the building societies and to SACCOs, although SACCO fees seem to be very simple in nature and are approved by members.

BOX 5.1**Bank Income from Noninterest Sources in the Common Monetary Area***Noninterest Income / Total Income (%)*

Source: WBG 2019.

Key Findings: Non-bank Mobile Money Service Providers

No legislative provisions apply to potentially unfair fees charged by MMSPs, and there are only limited criticisms of fees. However, some stakeholders commented that the fees were complex and hard to understand. A specific issue mentioned was that consumers do not understand that, when senders of funds prepay a withdrawal fee on behalf of the receiver of a mobile money funds transfer, the fee covers only one withdrawal by the recipient. So if the recipient does not withdraw the full amount in a single transaction, then a withdrawal fee will be charged to the recipient for the second and any subsequent transaction. This is also a disincentive for receivers keep the money in their mobile money accounts or wallets; instead, receivers withdraw the entire amount in cash.

Recommendations

As a high priority, all fees and charges charged by FIs should be reviewed thoroughly to identify if any should be prohibited because they are likely to be anticompetitive or in the nature of a penalty or inherently unfair. Possible examples are as described above.

It is also recommended that, in the longer term, consideration be given as to removing provisions in the CBE Order relating to controls over interest rates and fees and charges. If this recommendation is accepted, then the implications for Legal Notice No. 62 would need to be considered. If any of the relevant fees were considered to have an anticompetitive effect if allowed, then they could be the subject of specific market-conduct rules under the new rule-making powers to be included in the FI Bill. However, controls over other fees could be removed.

It is also recommended that FSRA adopt the above approach to regulating fees and charges and interest charges. This could be achieved in market-conduct rules made under section 49 of the FSRA Act.

5.3. UNFAIR TERMS

Summary of International Good Practices

It is generally accepted that FIs should be prohibited from using any term or condition in a standard-form consumer contract that is unfair and that, if such a term is used, it should be void.⁵⁴ A term should be considered unfair if it excludes or restricts any legal requirement for FIs to act with skill, care, diligence, or professionalism toward consumers, or if it excludes or restricts liability for failing to do so. A term may also be considered unfair if it causes a significant imbalance in the parties' rights and obligations or if it is not reasonably required to protect the position of the FI. These good practices are intended to reduce the scope for FIs to take advantage of their dominant bargaining position.

However, some jurisdictions exclude from consideration as an unfair term the main subject matter of the contract and, importantly, the up-front price. However, fees that are contingent on a particular event happening could be considered unfair (for example, excessive fees for early withdrawal of a time deposit or for a dishonored debit order or check). Possible examples of such fees are considered in section 5.2.

Key Findings: Cross-cutting

Eswatini does not have in place specific provisions that make void unfair terms in relation to pricing or unfair fee issues. The Banking Guideline does, however, contain a general principle requiring the equitable and fair treatment of customers (s. 5.2).

A review of a sample of current FI terms and conditions indicates various examples of terms relevant to pricing and related issues that could be considered unfair under the abovementioned good practices. The following terms contain provisions that could be considered unfair:

- An account may be debited with any fee or charge set by the provider from time to time without notice.
- The customer is liable to pay fees set out in “rules” that may be made in the future, as well as in a published pricing guide.
- All fees are to be nonrefundable unless agreed by the FI (which could include improperly charged fees).
- The FI is not liable for any error or unauthorized transaction set out in an account statement unless the customer reports the matter to the FI within a specified period from the statement date.
- The customer must review all statements of accounts and report any errors and unauthorized transactions to the FI (even though the FI does not have an obligation to provide regular statement of accounts on all accounts).
- The customer must indemnify all expenses incurred in recovering any amount owed by the customer, regardless of whether the amount is reasonable.
- Not receiving a statement of account detailing a fee or charge payable to an FI cannot be a reason to refuse payment of such fee or charge to the FI.
- An account that becomes dormant or inactive may be operated by the FI in a manner it considers fit in its sole discretion (potentially allowing operation that results in fees or costs).
- A certificate signed by an officer of the FI (who need not prove his or her appointment) about a customer’s account is assumed to be accurate and may be used as evidence against the customer in a court of law.
- The FI is not liable for passing on incorrect information about a customer in good faith to any third party.
- The FI or service provider is entitled to change the terms and conditions, change products, or discontinue any existing products but will notify customers only of material changes (the term *material change* not being defined).
- The FI or service provider may change terms and conditions and fees without prior notice to the customer—newspaper advertisements and changes to the website will be deemed to provide adequate notice even if these may miss the customer’s attention.
- Requiring a customer to switch to a higher-fee account once his or her balance exceeds a certain amount.

Recommendations

It is recommended that, as a medium priority, CBE should conduct a review of a broad sample of standard terms and conditions for savings and transaction accounts with a view to assessing the type and prevalence of unfair terms and any contingent fees that might be considered unfair. Such a review would inform the initial formulation of unfair-terms provisions, including examples that may be included in those provisions, and of any guidance to

be issued alongside them to clarify the requirements for industry. However, it is not considered that CBE should always “approve” the terms of new products and services or review all current standard-form contracts. This is because of CBE’s resource constraints and the possibility that this would be seen as implicit approval of the product by CBE, and because of the desirability of not stifling innovation or causing market distortions.

Also, in the medium term, a prohibition should be introduced against unfair terms in standard consumer contracts, and it should be clear such terms are void. In the short term, this should apply only to banks (but including SBS) and non-bank MMSPs. The changes could be introduced through an amendment to the Banking Guideline and the MMSP Practice Note. Relevant provisions should define what is an “unfair term,” provide examples of terms that are always considered unfair or are likely to be unfair, and specify the consequences of a term being unfair, including what regulatory action may be taken. In the longer term, it is considered that the new regime should apply consistently to all FIs offering savings and transaction accounts (so including SACCOs and any new building societies). The authorities may also wish to apply the new rules to unfair terms on any subject (not just pricing transparency and disclosure, and unfair fees) since that is the usual, and indeed the most logical, approach.

5.4. PRICE BUNDLES

Summary of International Good Practices

A fair-treatment issue relevant to fees and charges concerns price bundles. The simplest form of price bundles under consideration involves a mix of a flat fee for a certain number of transactions coupled with a PAYT fee when this limit is exceeded. However, the precise details of how a pricing bundle works may vary between different types of accounts and different banks. Structural complexity and differences in the content of pricing bundles offered by banks, and in each bank’s individual transaction pricing, are likely to make it difficult for consumers to understand the likely overall cost of a product and undertake meaningful side-by-side comparisons of different offers. A meaningful comparison would require, at a minimum, customers having a good understanding of their transactional patterns and the ability to undertake research through disclosure and comparison tools to overcome product complexity.

Complexity of different bundle offerings can also give rise to other practical difficulties in addition to hampering interbank product comparisons. For example, customers whose transaction habits or patterns change from time to time may not be well served staying with a particular bundle and thus would continue to rely on their bank reviewing their ongoing transaction behavior and suggesting ongoing switching. Further, customers who do not have the minimum level of income to be eligible for a particular bundle cannot upgrade even if it suits their transactional behavior.

Key Findings: Cross-cutting

Some banks in Eswatini offer pricing bundles, typically to customers with salaries higher than those in the lower-income segments. Examples of such bundles include FNB’s Smart

Gold, Gold Cheque Account, and Platinum Cheque Account bundles and Nedbank's Current Account and Private Current Account bundles.

Specific fair-treatment issues with the pricing bundles on offer include the following:

- Each bank's fee schedules are arranged differently, which makes comparisons difficult.
- Sales brochures and websites highlight the benefits of bundles but do not disclose all applicable fees.
- There are references to "free withdrawals," but it is not clear whether this is for withdrawals by any means or is limited to, for example, ATM withdrawals.
- References are made to "unlimited" transactions, but customers may not understand that there will still be limits on any "free" pricing bundle that they have.
- It is not clear whether customers are alerted when they have used up their permitted number of free transactions under a price bundle. Some stakeholders suggested that customers were not always informed of these additional fees.
- Bundled pricing is not described on the fee schedules of most banks, published on websites, or printed in the required biannual newspaper advertisements of some banks.

Recommendations

Price bundles should be required to be described clearly in all published information about fees and charges charged by a bank and, if applicable, in a KFS provided to customers. This is a medium-term recommendation. The explanation provided should include details of any monthly fee, as well as the number and type of any "free" transactions before a PAYT fee becomes payable. Consideration should also be given to requiring FIs to be informed when they exceed the maximum number of "free" transactions.

TABLE 5.2: Examples of Bundled Pricing

TRANSACTION	FNB SMART GOLD ACCOUNT ⁵⁵	NEDBANK CURRENT ACCOUNT BUNDLE ⁵⁶	STANDARD BANK ACHIEVER BANKING BUNDLE ⁵⁷
Monthly fee	E 65	E 129	E 69
Unlimited transactions included in bundled pricing	<ul style="list-style-type: none"> • Online payments • POS swipes • Electronic transfers between personal accounts • Internal and external debit orders 	<ul style="list-style-type: none"> • Debit orders • Standing orders • Electronic transfers and payments • POS swipes • Nedbank ATM withdrawals • Electronic banking subscription • Mobile banking transactions 	<ul style="list-style-type: none"> • Standard Bank third-party debit orders • Interaccount transfers (eBanking/USSD) • Balance enquiries on own ATM or eBanking • Alerts • Beneficiary payments on Internet banking "on-us"
Limited transactions included in bundled pricing	<ul style="list-style-type: none"> • Four free withdrawals 	<ul style="list-style-type: none"> • Overdraft facility of "1 times of gross monthly salary" 	<ul style="list-style-type: none"> • Two free ATM withdrawals • Five free POS purchases (E 7 per swipe thereafter)
PAYT fees	For all other transactions, fees as per FNB's pricing guide	For all other transactions, fees as per Nedbank's pricing guide	For all other transactions, fees as per Standard Bank's pricing guide

5.5. PRICE COMPETITIVENESS

Summary of International Good Practices

It is widely accepted that FIs should be prohibited from engaging in anticompetitive behavior, whether in relation to pricing or other matters. In this regard, principle 10 of the G20 High-Level Principles on Financial Consumer Protection of 2011 provides the following:

“Nationally and internationally competitive markets should be promoted in order to provide consumers with greater choice amongst financial services and create competitive pressure on providers to offer competitive products, enhance innovation and maintain high service quality. Consumers should be able to search, compare and, where appropriate, switch between products and providers easily and at reasonable and disclosed costs.”

Key Findings: Banks

Competition issues involving the banking sector are covered by both the Eswatini Competition Act of 2007 and competition provisions in the CBE Order. The Competition Act provisions prohibit certain practices, including agreements to fix prices (s. 30[5][a]), discriminatory pricing (s. 31), and misleading and deceptive advertising (s. 33[1][f]). Anticompetitive agreements are also prohibited under the CBE Order (s. 54). While a market-competition analysis was not within scope of the diagnostic review, anecdotal information about pricing competition issues was provided by various stakeholders. That information is summarized here.

In January 2019, ECC released the Retail Banking Market Inquiry Report, which analyzed the state of competition in the banking industry. This inquiry was conducted in response to consumer complaints about the retail banking sector, including about “exorbitant” and “unfair” fees and charges imposed on dormant accounts. The report also noted the common perception that bank fees and charges were higher in the Eswatini than in other CMA member states. The described objectives of the inquiry were to identify “(i) the relationship (if any) between the structure of the market, the conduct of the incumbent firms and their performance; and (ii) competition concerns based on the direct and indirect effects of the market structure, performance and the conduct of banks.”

The report described the retail banking market in Eswatini as “oligopolistic,” with five major players (including SBS). However, considering the recent introduction of Farmers Bank, the report also noted that the entry of new players was possible. The following are some of the report’s key findings:

- Bank charges and fees were found to be higher than other CMA member states. Banks in Eswatini earn a higher percentage of their income from noninterest sources. The report also referenced a previous CBE study on bank charges that found that bank charges for basic products and services in Eswatini were higher than those in Lesotho, Namibia, and South Africa.
- People were not aware of the fees and features of the products offered by banks. Customers obtain information on their accounts only at the time of account opening, and account statements issued by banks do not reflect per-transaction fees. Customers have no means of com-

paring the various products offered by banks. The report recommended that banks provide complete and detailed product information at bank branches, and that they use platforms such as the Internet, newspapers, radio and television to provide customer information. Banks should also communicate the deduction of all fees and charges on a per-transaction basis to customers. The report also recommended that banks use simple and understandable language in their statements, rather than complicated accounting jargon.

- The banks' officials meet twice a day to make clearances and settlements among themselves through the Swaziland Automated Electronic Clearing House—in the presence of a representative from CBE. The report raised concerns that this was a possible forum for "collusion" among banks and an opportunity to discuss matters not related to the agenda. However, the report found no evidence that this had happened.
- The report also raised concerns that the monthly meetings of the Eswatini Bankers Association provided an opportunity for banks to "collude" and affect competition.

Most of the banks interviewed expressed concerns about the ECC report and noted that their views had not been taken into consideration. They also disagreed with ECC concerns regarding possible collusion at meetings between bankers. The Eswatini Bankers Association further pointed out that holding meetings between industry participants to discuss common regulatory issues was standard practice across the world.

Most of the banks interviewed said that they considered pricing practices of competitors during the process of setting their own prices, but this was only one of many factors considered. Other factors taken into account include the cost of providing services, as well as the desire to incentivize or disincentivize certain customer behavior (for example, the use of digital channels). All interviewees were of the view that the retail banking market in Eswatini was competitive, despite ECC's findings.

Although the mission team identified only one potential competition issue of concern, that is not to say that other issues may not exist for both banks and non-banks. The issue identified was the failure by most banks to disclose the fee for using another bank's ATM before the relevant transaction is completed. Such disclosures, which are mandated in many countries, enable consumers to decide not to proceed with the transaction (and instead to use their own bank's ATM). It is thought that disclosure of these fees is necessary to encourage competition and desirable in the interests of fairness generally.

Key Findings: Non-banks (Building Societies/Savings and Credit Cooperative Societies)

No competition issues were identified in relation to SACCOs. SBS was covered by the abovementioned Retail Banking Market Inquiry Report.

Key Findings: Non-bank Mobile Money Service Providers

No competition issues were identified in relation to MMSPs.

Recommendations

Consumers who use an ATM at a bank other than their own should be informed of the fee applicable to the transaction before they have completed the transaction. This is a short-term recommendation. The fee advice should be provided on the ATM screen after the transaction is initiated but before it is completed. Consumers should then have the option of not proceeding with the transaction if they do not wish to pay the fee.

More generally, CBE and FSRA should carefully consider competition issues that they become aware of, as well as those that are raised by other authorities such as ECC. A particular focus should be on the potential impact of competition issues on pricing and transparency.

NOTES

45. WBG 2017b, chapter 1, section C2, and see also OECD 2011, principle 3.
46. WBG 2017b, chapter 1, section B.6.
47. The research cited states that at least 76 countries around the world, representing more than 80 percent of global gross domestic product and global financial assets, impose some restrictions on lending rates.
48. Ferrari, Masetti, and Ren 2018.
49. Ferrari, Masetti, and Ren 2018, page 4.
50. Smart Campaign 2019, principle 4, calls for “responsible pricing.” However, this principle does not go so far as calling for regulatory control over the fees that may be charged. Instead, the focus is on “affordable” pricing that is also sustainable for providers.
51. As told to the mission team by the interviewee banks.
52. As per the information available on the institutions’ websites (accessed September 2019) or information furnished by the banks as a follow-up to the mission.
53. As per SBS’s schedule of fees and charges, available at <https://www.sbs.co.sz/index.php/about-us/fees> (accessed September 13, 2019).
54. WBG 2017b, chapter 1, section C1.
55. Based on information available on FNB’s website at <https://www.fnbswaziland.co.sz/downloads/fnbswaziland/SZSmartGoldPricingGuide.pdf> (accessed September 26, 2019).
56. Based on information provided by Nedbank on October 21, 2019.
57. Based on information provided by Standard Bank on September 24, 2019.

COMPLAINTS AND DISPUTE RESOLUTION

6.1. INTERNAL COMPLAINTS HANDLING

Summary of International Good Practices

A well-functioning internal complaint resolution (ICR) system is an essential element of an effective FCP framework, both generally and in relation to pricing transparency and disclosure issues.⁵⁸ Put simply, the most well-designed FCP rules will be ineffective if consumers do not have recourse systems available to them. The aim should be to have a complaints-handling function that can resolve complaints effectively, promptly, and justly and, ideally, is independent of business units. Further, FIs should be required to comply with minimum standards with respect to their complaints-handling function and procedures. For example, the rules could set the maximum number of days for resolving a complaint, describe how the complaints function is to be publicized, and require a wide range of channels to be available for making complaints. Staff and agents should also be adequately trained to handle consumer complaints. Further, FIs should be required to maintain records of the complaints they handle and to make regular reports to the relevant regulator.

Key Findings: Banks

The Banking Guideline contains comprehensive ICR requirements. First, complaints-handling and redress principles cover matters such as requiring simple, efficient, free processes and procedures for complaints management, channels for submitting complaints, and redress and compensation for consumers (s. 5.7). Separately, there are detailed requirements for banks to establish procedures for handling customer complaints “in a fair and speedy manner,” and the need for transparency, accessibility, and effectiveness is described. There are also requirements to advise customers and other interested parties as to how to invoke complaints procedures, to meet specified time limits for responding to complaints, to keep records, to analyze patterns of complaints, and for reporting to the board. Further, CBE is required to set minimum standards for ICR mechanisms and to examine banks’ compliance with these minimum standards (s. 14).

Although banks are likely to have ICR processes and procedures, the Banking Guideline requirements have not yet been fully implemented by banks, and compliance is not actively supervised by CBE at this stage. Several banks, however, confirmed that they have internal complaints-handling policies and processes that can be accessed through different channels, including branches, emails, and customer call centers. In some cases, these processes are under review as a result of the Banking Guideline requirements. However, these ICR processes appear to be at varying levels of development, and the mission team did not see any public materials drawing customers' attention as to how they can make a complaint. It is understood that the delay in supervision is occurring because of limited resources, which are likely to be overcome with the establishment of the CPMC Unit.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

The FSRA Act does not contain any provisions requiring regulated institutions to have standardized ICR processes and procedures. However, provisions provide for the establishment of an ombudsman to deal with disputes. These provisions are discussed below.

Key Findings: Non-bank Mobile Money Service Providers

The abovementioned provisions of the Banking Guideline would apply to MMSPs that are banks. However, they would not apply to non-banks. This obviously leads to an undesirable inconsistency in approach for these providers.

The overlap in the ICR requirements applicable to MMSPs is compounded by provisions in the MMSP Practice Note and in the ECCP Regulations. The MMSP Practice Note requires providers to maintain a "functional dispute and complaints handling desk" for receiving complaints, to have a free telephone hotline in business hours for customers, and to provide details of these mechanisms in customer contracts and at the premises of agents (s. 22.3). Separately, more specific requirements for handling complaints include that they be acknowledged within two working days, be considered free of charge, and have a specific customer reference number (s. 22.5). The ECCP Regulation requires suppliers to have an operational ICR mechanism for consumer complaints that is free and reasonable and provides for complaints to be resolved within five days of the lodging of the complaint (s. 17).

In practice, the dispute-resolution mechanisms followed by MMSPs appear to be ad hoc.

Customers can make calls to a customer service representative to register their complaints—however, no customer complaint- or feedback-handling process is documented on the websites of either of the two MMSPs. Further, one of the MMSPs told us that disputes related to agents were generally handled by "trade marketers," employed by the MMSP, who monitor, train, and manage agents. The company has a policy to reimburse customers in cases where the trade marketer and the agent were found to have colluded to defraud the customer. In cases of mistaken transactions (where the mistake is obvious), the provider may or may not be able to reverse a transaction, depending on whether the money is still in the mistaken receiver's account at the time of reporting.

Recommendations

The Banking Guideline and MMSP Practice Note requirements for complaints handling and redress should be implemented by banks and actively supervised and enforced by CBE. The authorities should also ensure that the requirements are consistent with each other (as well as international good practices) while having regard to the Eswatini context. These are high-priority recommendations.

In the longer term, consistent IDR requirements should be developed that apply to all building societies and SACCOs and are generally consistent with the Banking Guideline. These requirements should not only oblige institutions to have documented IDR procedures but also establish detailed minimum standards for such procedures. The required standards should be similar to those provided for in the Banking Guideline, while bearing in mind that the size of some SACCOs, and the less complex nature of their products, may merit simpler ICR processes and procedures.

All FIs should also be required to make regular reports on complaints to the relevant regulator. These reports should be in a standardized form and highlight any systemic issues, and they should provide the required complaints statistics. Data on complaints is likely to be very useful from a supervisory perspective and may also assist in future thematic reviews on specific issues. Ideally, the data would be shared between relevant regulators (especially CBE and FSRA). These requirements should be implemented in the short term.

In the longer term, consideration should be given to clarifying the apparent overlaps between the ICR provisions in the Banking Guideline, MMSP Practice Note, and ECCP Regulation.

6.2. EXTERNAL DISPUTE RESOLUTION

Summary of International Good Practices

Ideally, once FIs' ICR systems mature, most financial consumer complaints would be successfully resolved without the need for recourse to an external dispute-resolution scheme.⁵⁹ Nevertheless, there remains a need for an independent, transparent, accessible, and free external dispute-resolution scheme for those complaints that are not resolved through an FI's ICR system. The external dispute-resolution scheme should be well publicized through a range of means, including when a complaint is finalized at the provider level. These principles apply to disputes concerning pricing transparency and disclosure and unfair-fee issues, as well as more generally. The mission team conducted a general, high-level review of the functions, powers, and resources of both the CBE Ombudsman and the FSRA Ombudsman with regard to these good practices while noting that their functions extend beyond disputes relating to pricing transparency and disclosure and fair fees.

Key Findings: Banks

The CBE Order provides for the creation of an ombudsman office that is operational. The CBE Order contains a brief provision for CBE to establish within CBE an ombudsman for

financial institutions and to prescribe rules that will “govern controversy between financial institutions and their customers” (s. 42bis). The ombudsman has been appointed, and rules (terms of reference) have been developed but were awaiting approval by the governor at the time of the mission for this diagnostic review. Nevertheless, the CBE Ombudsman is clearly operational; around 33 disputes have been considered since the beginning of 2019. These disputes have related to matters such as the calculation of interest on credit contracts, mortgages, and card-cloning schemes. However, there have not been any complaints concerning the Banking Guideline. This may of course be because customers are not aware of it.

The CBE Ombudsman appears to have very limited resources, especially given the likely increase in demand for its services. The current ombudsman is the Head of Legal, and she is assisted by the one other lawyer in the Legal Department. The ombudsman’s functions are carried out in addition to all the Head of Legal’s other duties. It seems very likely that these resources are inadequate, given factors such as the proposed increase in CBE’s market-conduct functions and powers, ambitious financial-inclusion targets, and the increased availability of digital financial services, all of which may lead to an increase in complaints and related disputes. The ombudsman also advised that awareness of the ombudsman’s office seems to be growing. Further, some banks are advising customers who have unresolved complaints to take up the issue with the ombudsman, and this trend is likely to increase if it becomes mandatory for banks to give this advice. (See below.)

There are significant uncertainties as to the ombudsman’s jurisdiction and powers. The current provisions could be clarified and expanded on in a number of important respects. While it is understood that the provisions are likely to be significantly amended in the proposed CBE Bill, the following points could usefully be considered in that context:

- **Scope of application:** The ombudsman’s powers relate to “controversy between financial institutions and their customers” (s. 61[1]). This suggests that any dispute can be brought before the ombudsman, including those involving corporate entities. As mentioned in section 3 above, such a broad approach is likely to be unsustainable where regulatory resources (in this case, the ombudsman’s resources) are limited. Ideally, only disputes involving individuals should be able to be brought before the ombudsman, although the relevant financial service could be for business or consumer purposes. This would be the simplest approach, although it would exclude any corporate disputes. An alternative would be to say that disputes involving micro and small enterprises (as well as individuals) be allowed to be heard by the ombudsman. However, this approach would require a clear definition of such an enterprise (for example, a definition based on the assets, turnover, or employees of the entity in question).
- **Operational principles:** The CBE Order does not currently describe the principles under which the ombudsman is to operate. International good practices suggest that the principles should cover the need for the scheme to be efficient, transparent, accessible, and free to the customers concerned. Importantly, the detailed operational and structural rules for the CBE Ombudsman should be consistent with those principles. Further guidance on these matters can be found in the World Bank’s Good Practices,⁶⁰ in the World Bank’s 2012 guide *Resolving Disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman*,⁶¹ and in *Guide to Setting Up a Financial Services Ombudsman Scheme* published in 2018 by the International Network of Financial Services Ombudsman Schemes.⁶²

- **“Controversy”:** It is suggested that the more common term *dispute* be used to describe the matters that may be brought before the ombudsman. This term could be usefully defined by reference to a complaint that has been made to the relevant financial institution but has not been resolved, or responded to, within the required time limits. A “complaint” in turn would then need to be defined so that it does not include a mere query that is immediately resolved when first brought to the attention of the financial institution.
- **Powers of ombudsman:** The CBE Ombudsman should have clear information-gathering and investigation powers, as well as powers to order that customers be compensated. In particular, it is important that the ombudsman should be able to order compensation to customers who are overcharged for fees and charges or not paid the required interest in each case as provided for by the legal and regulatory framework and any contract. It is understood that the CBE Ombudsman currently relies on the powers provided to CBE. However, it would ideally have its own powers in this regard.
- **Binding decisions:** International good practices suggest that a decision of the ombudsman should be binding on the financial institution concerned, but not the consumer.⁶³

The CBE Ombudsman service should be more transparent and institutionalized. CBE has not yet published the rules under which the ombudsman operates, and the ombudsman does not yet have a website or publish an annual report. Further, there are no requirements as to when and how relevant customers need to be notified of the ombudsman service. In summary, this should be at physical premises, on websites, in terms and conditions, at the time a complaint is made, and at the time of rejecting a complaint. Another transparency-related issue is that at present the CBE Ombudsman does not have any formal consultations with industry. This might be done, for example, through the Eswatini Bankers Association.

There are also some important, overarching concerns with having the CBE Ombudsman function housed within the relevant regulator, although there may be some short-term advantages. The advantages include that CBE has significant public visibility and trust, it seems to be respected by FIs, it has financial-sector expertise, and this is a resource-efficient option. Concerns with this approach include that there is likely to be a perceived lack of independence given CBE’s dual roles of being the supervisor of the relevant FIs and the entity that handles their disputes. There may also be a conflict within CBE between complaints-handling and supervisory functions and priorities. Also, in the longer term, as the FCP regulatory framework is developed, resources could be diverted from supervisory activities to complaints handling. Finally, dispute-resolution skills and competencies are different from those of prudential supervisors, who may otherwise be asked to assist the ombudsman as the volume of disputes increases.

Key Findings: Building Societies and Savings and Credit Cooperative Societies

The FSRA Act provides for the appointment of an ombudsman. Part 12 of the FSRA Act provides for the appointment of an ombudsman to perform dispute-resolution services. Decisions are to be based on what is considered fair and reasonable (s. 75[1]). The ombudsman’s decisions are stated to be binding if accepted by the customer (s. 75[3]). However, clear enforcement powers are not provided, and this is considered a concern by the ombudsman.

It would be helpful to clarify some aspects of the provisions applicable to the FSRA Ombudsman. These aspects include the following:

- **Scope of application:** It is not clear whether there are any limits as to the complainants who can take advantage of the FSRA Ombudsman services. As with the CBE Ombudsman, it is suggested that only disputes involving individuals should be able to be brought before the ombudsman, although the relevant financial service could be for business or consumer purposes.
- **“Disputes”:** As with the CBE Ombudsman provisions, this term could be usefully defined by reference to a complaint that has been made to the relevant FI but has not been resolved, or responded to, within the required time limits. Similarly, the term complaint could be defined to exclude mere queries.
- **Enforceable decisions:** As mentioned above, the Ombudsman’s power to enforce its decisions needs clarification.

The FSRA Ombudsman is fully operational. The FSRA Ombudsman covers disputes for all types of FSRA-registered non-banks, including SACCOs and potentially building societies. To date, the only relevant disputes considered have been complaints by SACCO members about delays in paying out savings accounts on retirement as a member, and some complaints concerning building society fees. Pricing is not considered an issue for SACCOs since interest rates and fees and charges are determined by members, although there have been some disputes on the method used to calculate interest on loans. The ombudsman nevertheless stressed the need for customers to be educated to read fees and charges and terms and conditions. In 2018, FSRA had 25 formally registered disputes but dealt with many queries that did not become registered disputes.

The concerns raised above about having the CBE Ombudsman function housed within the relevant regulator also apply to the FSRA Ombudsman. Both functions could be considered together having regard to these concerns.

The CBE Ombudsman and the FSRA Ombudsman have a memorandum of understanding. It was not available to the mission team. However, it is understood that, pursuant to the memorandum, the CBE Ombudsman and the FSRA Ombudsman will meet quarterly and exchange information on trends with complaints. There is also provision for a system whereby disputes may be referred by one ombudsman to the other.

Key Findings: Non-bank Mobile Money Service Providers

The abovementioned comments concerning the FSRA Ombudsman are relevant to disputes involving non-bank MMSPs.

Recommendations

As a medium priority, provisions should be included in the CBE Order to provide more fully for the scope of application, operational principles, transparency, and powers of the CBE Ombudsman. Of particular importance are needs to identify the customers who may make

use of the ombudsman's resources, to confirm the ability of the ombudsman to make decisions that bind the financial institution concerned (but not the customer), to give the ombudsman power to order compensation and redress with respect to fees and charges and interest, to prescribe and publicize the ombudsman's operational rules, and to increase the transparency of the ombudsman service among the public.

In the medium term, a careful assessment should also be undertaken of the resource needs of the CBE Ombudsman service. It is not entirely clear exactly what resources the ombudsman needs, but this issue should be studied carefully when considering the currently proposed amendments to the CBE Order and the FI Act, and the following factors: the likely increase in the disputes that may come before the ombudsman under CBE's new market-conduct powers, the increasing availability of more complex digital financial services, greater public awareness of the ombudsman service, and increasing levels of financial inclusion.

A campaign should also be undertaken to increase public awareness of the CBE and FSRA Ombudsman services. However, in the case of CBE, it is suggested that the design and implementation of such a campaign should be deferred pending the abovementioned assessment of the CBE Ombudsman's resource needs and implementation of any recommendations. It is less obvious that such an assessment is necessary in the case of FSRA. **The FSRA Act provisions applicable to the FSRA Ombudsman should also be clarified in the medium term.** The proposed changes are not so extensive as with the CBE Ombudsman provisions but include the needs to clarify the types of customers who may use the FSRA Ombudsman services, to provide the ombudsman with compensation and redress and enforcement powers, and to clarify the definition of a *dispute* and a *complaint*.

In the longer term, consideration should be given to options for establishing an independent ombudsman covering (at least) disputes concerning savings and transaction accounts. Realistically, consideration would also need to be given to covering other types of disputes relevant to CBE and FSRA functions. The aim would be for the new body to absorb the functions of both the CBE Ombudsman and the FSRA Ombudsman, with a view to ensuring an independent ombudsman scheme and consistency in decisions on disputes. The implementation of an independent ombudsman for the financial sector is a high-priority policy action under the FSDIP.⁶⁴ In considering options to implement this recommendation, detailed consideration would need to be given to the functions and powers of the ombudsman and especially which parts of the financial sector should be within its jurisdiction. Further, it should be noted that any change to existing arrangements would require legislative changes and is likely to require significant regulatory time and resources, as well as extensive stakeholder consultations.

NOTES

58. WBG 2017b, chapter 1, section E1.

59. WBG 2017b, chapter 1, section E2.

60. WBG 2017b, chapter 1, section E2.

61. Frizon and Thomas 2012.

62. INFO Network 2018 (accessed September 27, 2019).

63. WBG 2017b, chapter 1, section E2(a)(i).

64. Kingdom of Eswatini 2017a, table 5, section 3.



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ANNEX 1

LIST OF CONSULTED INSTITUTIONS

Public sector
Ministry of Finance
Central Bank of Eswatini (including Office of the Ombudsman housed within the Central Bank)
Financial Services Regulatory Authority
Financial Services Regulatory Authority, Office of the Ombudsman
Ministry of Industry, Commerce, and Trade
Eswatini Competition Commission
Centre for Financial Inclusion
Eswatini Communications Commission
Financial institutions
First National Bank
Standard Bank
Nedbank
Eswatini Bank
Swaziland Building Society
Bunye Buhle Betfu SACCO
Green Pastures SACCO
Eswatini Posts and Telecommunications Corporation
FINCORP
Mobile network operators
MTN
Industry associations
Eswatini Bankers Association
Consumer Association
Other stakeholders
Joseph Waring Attorneys
Times of Swaziland



ANNEX 2

EXAMPLES OF FINANCIAL CONSUMER PROTECTION MANDATES

The most appropriate form of FCP mandate needs to reflect country context and local legal frameworks. However, good practice suggests that the authorities should have an explicit legal mandate for FCP in relevant sectors. Other authorities rely on an implicit mandate. Regardless of the type of mandate, it is important that any mandate is supported by adequate and unquestionable regulatory, supervisory, monitoring, investigatory, and enforcement powers. Examples of an explicit FCP mandate are provided below.

Authorities with an explicit FCP mandate:

- **Armenia:** In 2008, amendments were made to the Law on the Central Bank of Armenia to add “ensure essential conditions for protection of the rights and lawful interests of the financial system consumers”⁶⁵ to the list of its main objectives.
- **Australia:** Australia is a “twin peaks” country with separate prudential and FCP regulators. The Australian Securities and Investments Commission is Australia’s corporate, markets, and financial-services regulator. The commission’s express functions and powers include “promoting the protection of consumer interests.”⁶⁶
- **France:** A separate entity housed within the Bank of France has been created to supervise (from both an FCP and a prudential perspective) banks, PSPs, and other types of credit institutions. Its mandate is explicitly mentioned in the Monetary and Financial Code,⁶⁷ which provides that such entity is charged with ensuring that all licensed entities within its purview respect FCP principles stemming from laws, regulations, code of conduct, and industry practices. It has similar sanction powers for prudential and consumer-protection enforcement.
- **Indonesia:** Indonesia’s Financial Services Authority was established under the Financial Services Authority Law No. 21 of 2011. Objectives of the Financial Services Authority are stated to include, in summary, ensuring that the “overall activities in the financial services sector are . . . (a) implemented in an organized, fair, transparent and accountable manner . . . and . . . [are] capable of protecting the Consumers and public interests.”⁶⁸

- **Malaysia:** Under the Central Bank of Malaysia Act 2009, Bank Negara Malaysia’s primary functions include “to promote a sound, progressive and inclusive financial system.”⁶⁹ Further, under the Financial Services Act 2013, Bank Negara Malaysia has additional powers and functions to foster fair, responsible, and professional business conduct of financial institutions and must strive to protect the rights and interests of consumers of financial services and products.⁷⁰ The latter act makes specific reference to the powers in the Central Bank Act and specifies that in order to achieve its mandate, including ensuring the protection of consumers, Bank Negara Malaysia can use powers contemplated in both acts.⁷¹
- **Morocco:** The law regulating credit institutions⁷² and the general law on consumer-protection measures⁷³ grant the Central Bank (Bank Al-Maghrib) competence in matters regarding FCP. These relate mainly to the power to regulate on this subject matter and to monitor the implementation of relevant rules by credit institutions.
- **South Africa:** The Financial Sector Regulation Act 2017 established a “twin peaks” type of regulatory system for South Africa, with the establishment of the Prudential Authority and the Financial Sector Conduct Authority.⁷⁴ The objectives of the Financial Sector Conduct Authority include to “protect financial customers by—(i) promoting fair treatment of financial consumers by financial institutions.”⁷⁵ The Financial Sector Conduct Authority also has objectives relating to the integrity of financial markets, financial literacy, and the maintenance of financial stability.
- **United Kingdom:** Following the global financial crisis of 2008, the United Kingdom introduced a “twin peaks” model under which the market-conduct regulator is the Financial Conduct Authority, and the lead prudential regulator is the Prudential Regulation Authority, which is part of the Bank of England. The objectives of the Financial Conduct Authority include a consumer-protection objective of “securing the appropriate degree of protection for consumers.”⁷⁶
- **United States:** The Consumer Financial Protection Bureau is the federal agency responsible for FCP. The statutory purpose of the bureau is to “seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”⁷⁷

NOTES

65. Armenia 1996, article 5, section 1(f).

66. Australia 2000, section 12A(3).

67. France n.d., article 612-1.

68. Indonesia 2011, article 4.

69. Malaysia 2009, section 5.

70. Malaysia 2013, section 6.

71. Malaysia 2013, section 7.

72. Morocco 2015.

73. Morocco 2011.

74. Republic of South Africa 2017.

75. Republic of South Africa 2017, section 57.

76. UK 2000, section 5.

77. USA 2010, section 1021(a)

ANNEX 3

SUMMARY OF APPLICABLE LAWS

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
Constitution of Eswatini 2005 (Constitution)		<p>The Constitution of Eswatini provides that CBE “shall supervise the operations of financial institutions in the Kingdom” (s. 206[2][d]). The term financial institutions, however, is not defined.</p> <p>For completeness, it is noted that the Constitution also sets out certain fundamental rights and freedoms in chapter 3, “Protection and Promotion of Fundamental Rights and Freedoms.” However, none is directly relevant to pricing transparency and disclosure issues affecting savings and transaction accounts.</p>
The Central Bank of Eswatini Order, 1974 (CBE Order)	CBE	<p>Objects</p> <p>The CBE Order does not provide CBE with a specific regulatory or supervisory mandate in relation to FCP. However, the CBE Order provides that its objects include the supervision of “banks, credit institutions and other financial institutions to the end of promoting a sound financial structure” (s. 4[g]).</p> <p>Regulated institutions</p> <p>The terms <i>bank</i> and <i>financial institution</i> are defined by reference to the Financial Institutions (Consolidation) Order No. 23 of 1975. This is presumably a reference to the FI Act.</p> <p>Section 2 of the FI Act defines <i>bank</i> to mean (in summary) an incorporated company licensed to carry on “banking business” under the FI Act. The term <i>financial institution</i> has a similar meaning—it means “any person licensed under this Act to carry on banking business.” The term <i>other financial institution</i> is defined in the FI Act as “any institution which may be licensed by or otherwise subject to the supervision and regulation of the [CBE].”</p> <p>The term <i>banking business</i> is in turn defined, in summary, to mean the acceptance of deposits on demand or for a fixed term and the use of those funds for loans, advances, investments, or other operations authorized by law. The term also includes any other activity authorized by CBE as “customary banking practice” (s. 2).</p> <p>The term <i>credit institution</i> is not defined in the CBE Order but is defined in the FI Act to mean “any financial institution other than a bank” (s. 2).</p> <p>Pricing transparency and disclosure</p> <p>The CBE provisions of most relevance to pricing transparency and disclosure for savings and transaction accounts are in section 41. Under this section, CBE has broad powers to regulate</p>

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
		<ul style="list-style-type: none"> • Methods of computation, and maximum and minimum interest payable for deposits and other similar liabilities; • Minimum and maximum commissions, service charges, and other fees for any class of transactions with the public; and • The manner of disclosure to depositors of the effective annual interest rate. <p>CBE also has powers to regulate maximum interest rates relating to loans and other credit products, as well as to require disclosure of the terms of credit, including the effective interest rate (ss. 41[1][b] and 41[1][d][ii]).</p> <p>Section 41 has been used as the basis for issuing the Regulation of Banking Fees and Charges Notice of 2016. (See below.) However, CBE has not otherwise sought to rely on its section 41 powers.</p> <p>More generally, the board of CBE may make bylaws and issue directives to regulate the conduct of the business of the bank (s. 9), and regulations may be made by the minister in consultation with CBE “for the better carrying out of the purposes and provisions of this Order” (s. 57). The only relevant instrument of this nature that the authors are aware of is the Banking Guideline. (See below.)</p> <p>The CBE Order also provides for CBE to create an ombudsman for financial institutions to deal with controversy between financial institutions and their customers (s. 42bis).</p>
Financial Institutions Act, 2005 (FI Act)	CBE	<p>Objects</p> <p>The FI Act does not contain specific objects.</p> <p>Regulated institutions</p> <p>The FI Act, in summary, provides for the licensing and regulation of entities carrying on “banking business” (part 2). The act also covers the authorization of entities carrying on “deposit taking business” (s. 9). The latter term may be defined by the Minister for Finance. Relevant definitions of the regulated entities are described above in relation to the CBE Order.</p> <p>The FI Act does not apply to a building society covered by the Building Societies Act of 1962, a cooperative society covered by the Co-operative Societies Act of 2003, or an insurance company covered by the Insurance Act of 2005. However, CBE may make specific provisions covering such institutions after consultation with the minister (s. 3).</p> <p>Pricing transparency and disclosure</p> <p>The FI Act does not contain provisions dealing specifically with pricing and transparency issues or unfair fees. Further, none of the specific topics covered by the regulation and bylaw-making powers cover this topic (ss. 62 and 63).</p> <p>The FI Act does, however</p> <ul style="list-style-type: none"> • Provide for CBE to impose conditions on a license it considers appropriate (s. 6[8]); • Prohibit anticompetitive agreements and conduct (s. 54); and • Impose penalties for noncompliance with CBE orders, regulations, bylaws, and agreements (s. 46). <p>Complaints/disputes</p> <p>The only provision of relevance is section 42bis, which is a brief provision to the effect that CBE is required both to establish an ombudsman for financial institutions covering disputes with their customers and to prescribe relevant rules. However, there are no provisions covering the ombudsman’s powers or delineating whether the ombudsman’s decisions are binding and how they can be enforceable.</p>

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
		<p>Purpose</p> <p>The Banking Guideline states that it is issued by CBE under the CBE Order and the FI Act and came into force on July 1, 2018 (s. 1.1). It aims to foster confidence in the banking system by (a) prescribing minimum standards for banks in how to deal with customers, (b) increasing transparency in the provision of banking services and enhancing customer understanding of what to expect from banks, (c) promoting a culture of fair and equitable business practices, considering customers’ interests, and (d) ensuring availability of consumer redress and development of robust grievance-redress mechanisms that are fair, expeditious, inexpensive and accessible. (s. 2)</p> <p>Regulated institutions</p> <p>The Banking Guideline applies to all banking institutions regulated by CBE, their agents, and outsourced entities (s. 1.4).</p> <p>Pricing regulation and disclosure</p> <p>See, for example, sections 5.2, 5.8, 7.7, 7.10, and especially 8, 20, 24, and 27 (for debit cards).</p> <p>The Banking Guideline contains extensive provisions relevant to pricing transparency and disclosure.</p> <p><i>General principles</i></p> <p>First, general principles relate to the following matters (s. 5.2):</p> <ul style="list-style-type: none"> • Make available to customers clear explanations of the key features, risks, and terms of the products and applicable fees, commissions, or charges. • Additional disclosures and warnings in line with the nature and risks of the products and services. • All promotional material must be accurate, honest, understandable, and not misleading. • Standardized precontractual disclosure practices must be adopted where practicable to allow comparisons between products and services of the same nature. • Ensure that any advice provided is as objective as possible, based not only on the customer’s profile but also on product complexity, associated risks, and the customer’s financial objectives, knowledge, capabilities, and experience. <p>General principles relate to various other matters, such as financial education and awareness, responsible business conduct (including an obligation to assess the suitability of any product offered to a customer), protection of customer assets and personal data, complaints handling and redress, and switching of accounts, which should be easy to do at reasonable and disclosed costs (ss. 5.3–5.9). There are also more detailed provisions in the Banking Guideline on many of these matters.</p> <p><i>Terms and conditions</i></p> <p>There are also specific obligations relating to terms and conditions (ss. 7 and 8). Importantly, the terms and conditions must</p> <ul style="list-style-type: none"> • Be readily available to customers and provided on application “as far as possible”; • Be provided to customers in sufficient time to be read and understood; • Be in plain language and presented in a reasonable layout and readable font; and • Highlight fees, charges, penalties, relevant interest rates, and the customer’s liabilities and obligations. <p><i>Fees and charges</i></p> <p>Further, under section 8, fees and charges must be</p> <ul style="list-style-type: none"> • “Reasonable” (the term is not defined); • In line with applicable legislation; • Displayed at the bank’s principal place of business and in branches, on its website, and in newspapers as required by legislation; • Advised to customers separately, if not standard; and • Be advised to customers promptly after being debited.

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
		<p>Changes affecting fees and charges</p> <p>The Banking Guideline has strict requirements for changes to terms and conditions that affect fees and charges, including on savings and transaction accounts (ss. 7.10 and 8). In summary:</p> <ul style="list-style-type: none"> • The bank must give at least five days' notice of any change to customers before making the change. • Individual notification to customers (written notice, message in an account statement, e-mail, or SMS) is preferred. • Where is this not feasible, other means of notification are (a) press advertisement, (b) prominent display of notice in banking halls, (c) notice on ATM sites or screens, (d) phone banking message, and (e) notice on the bank's website. <p>Deposit products</p> <p>Specific obligations also apply to deposit products (s. 20). In summary, they include obligations for banks to</p> <ul style="list-style-type: none"> • Display interest rates at their principal place of business and branches (except for negotiable rates); • Make readily available to customers not only interest rates on their accounts but also the basis of calculation of interest and the frequency and timing of interest payments; • For timed deposits, inform customers how payments will be made, costs associated with withdrawal, treatment of funds at maturity, interest rates on deposits that have matured but have not been withdrawn, and charges associated with early or partial withdrawal; and • Inform customers of changes in interest rates (except those that change daily) through notices in offices or branches, account statements, and press advertisements. <p>Card services</p> <p>Chapter 3 of the Banking Guideline deals with card services, including debit and credit cards. In summary:</p> <ul style="list-style-type: none"> • Card issuers should make readily available general descriptive information on the use of cards, in addition to terms and conditions (s. 25.2). • The attention of customers should be drawn to major terms and conditions that impose significant liabilities or obligations (s. 26.2). • Terms and conditions should be in plain language and presented in a reasonable layout and readable font (s. 26.4). • For credit cards only, a KFS summarizing major terms and conditions must be provided (s. 26.3). There is not, however, a prescribed form. <p>There are also restrictions on fees and charges for card services (s. 27). In summary:</p> <ul style="list-style-type: none"> • Card issuers are not allowed to charge account-inactivity fees. (This restriction seems to apply only to card accounts.) • Fees for violating terms and conditions must be set at a reasonable amount.
The Regulation of Banking Fees and Charges Notice No. 62 of 2016 (Legal Notice No. 62)	CBE	<p>Overview</p> <p>Legal Notice No. 62, which was issued under section 41 of the CBE Order, contains caps on some fees and limited disclosure requirements for fees and charges.</p> <p>Regulated institutions</p> <p>Legal Notice No. 62 applies to all banks in Eswatini (s. 2).</p> <p>Pricing transparency and disclosure</p> <p>A bank must display all fees and charges on its website and at its place of business and further publish the fees semi-annually in local print media the format prescribed by CBE (s. 3).</p> <p>Prescribed fees and charges</p> <p>Legal Notice No. 62 further states that no fee or charge is permitted for cash deposit-related services, irrespective of the product. However, it clearly states that fees and charges for "withdrawal services" are unprescribed. Penalty fees for dishonored checks or debit orders are capped at E 100 per defaulted transaction.</p>

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
Mobile Money Service Provider Practice Note, 2019 (MMSP Practice Note)	CBE	<p>Overview</p> <p>The MMSP Practice Note contains authorization, licensing, and operational requirements for all MMSPs and their agents.</p> <p>Objectives of the MMSP Practice Note include the promotion of financial inclusion while applying sufficient safeguards to mitigate any stability or integrity risk, extending safe and convenient financial services to the poor and unbanked population (s. 1).</p> <p>CBE is stated to be the only regulatory authority to regulate the provision of mobile money services in Eswatini (s. 11). However, the role of other regulators, including ECC, is acknowledged (s. 11).</p> <p>Scope of application</p> <p>The MMSP Practice Note applies to any MMSP licensed or authorized by CBE, including banks and non-banks (s. 4).</p> <p>The MMSP Practice Note applies in relation to “mobile money services.” This term is defined to include services provided by the MMSP to support the utility of mobile money for the consumer, such as cash-in, cash-out and mobile payments services (s. 2).</p> <p>Pricing transparency and disclosure, and unfair fees</p> <p>Relevant obligations include the following:</p> <ul style="list-style-type: none"> • An MMSP must prominently display all fees and service charges at its head office, branches, and in places of business. Agents have a similar obligation (s. 22.1). • There must be a written, signed agreement with customers (s. 22.3 [i] and [ii]). • There are requirements for MMSPs to provide complaints-resolution services (ss. 22.3[iii]–[v] and 22.5). <p>Further, it is clear that MMSPs are liable for the actions of the agents (s. 24.2.9).</p>
Electronic Communications Consumer Protection Regulations, 2016 (ECCP Regulations)	ESCCOM	<p>Overview</p> <p>The objectives of the ECCP Regulations include (among other matters) the regulation of fair-business practices, advertising and marketing, disclosure of terms and conditions, and the use and disclosure of information about payments (s. 4).</p> <p>It is clear that the ECCP Regulations are intended to apply in addition to any other law, code, or regulatory mechanism (s. 6).</p> <p>Scope of application</p> <p>The ECCP Regulations apply to any business engaging in “electronic commerce” directed at consumers (s. 5).</p> <p>The term electronic commerce is defined by reference to the definition in the Communications Commission Act of 2013. The definition is defined in broad terms to mean “a transaction, business or services of a commercial nature generated, communicated, processed, sent, received, recorded or conveyed through electronic means” (s. 2).</p> <p>The term consumer is defined by reference to the definition in the Competition Act, which defines a consumer as including, in summary, any person to whom a service is rendered, as well as purchases of goods (s. 2).</p> <p>Pricing transparency and disclosure, and unfair fees</p> <p>The ECCP Regulations contain various provisions relevant to price transparency and disclosure, including requirements to provide</p> <ul style="list-style-type: none"> • Clear and complete terms and conditions, with an adequate opportunity to review before entering into the contract (ss. 10 and 12); • Information about costs of transactions (s. 11); • Internal complaints-handling mechanisms (s. 17); and • Alternative dispute-resolution adjudicators to be appointed by the commission (ss. 18–29)

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
Financial Services Regulatory Authority Act, 2010 (FSRA Act)	FSRA	<p>Overview</p> <p>The FSRA Act provides for the establishment of FSRA, licensing and regulation of financial services providers, and related matters.</p> <p>FSRA objects</p> <p>FSRA's principal objects cover market conduct-related matters relevant to pricing transparency and disclosure. They include the fostering of "the highest standards of conduct of business by financial services providers"; "the promotion of fair competition between different financial services providers for the benefit of stakeholders"; and "the fairness, efficiency and orderliness of the Swaziland non-bank financial sector" (s. 4).</p> <p>Further, FSRA functions include the regulation and supervision of "the conduct of the business activities of financial service providers" and also investigations and measures to suppress "illegal, dishonourable and improper practices, market abuse and financial fraud" (s. 5).</p> <p>Regulated institutions</p> <p>FSRA objects and functions relate to a "financial service provider," which is defined to mean a "non-bank financial services provider." (s. 2). The latter term is then defined by reference to the types of institutions listed in the Second Schedule (for example, insurers, retirement funds, and SACCOs) and any other person or institution declared by the Minister for Finance. Although building societies are not listed in the Second Schedule at present, it is clear that FSRA is intended to take on the role of the Registrar of Building Societies (s. 83[2]).</p> <p>Pricing transparency and disclosure</p> <p>The FSRA Act contains broad statements of principle concerning the conduct of business of financial services providers, including that they must "observe high standards of market conduct" and take reasonable steps to give stakeholders "in a comprehensible way, any information needed to enable the stakeholder to make a reasonable and informed decision" (s. 46 [d] and [f]). Apart from this general obligation, nothing refers to the need to give consumers pricing information or to ensure fees are fair.</p> <p>FSRA also has power to prescribe rules "for regulating the market practice of authorised financial services providers" (s. 49[1]). However, the mission team was told that no such rules have been prescribed.</p> <p>Complaints/disputes</p> <p>Part 12 of the FSRA Act provides for the appointment of an ombudsman to provide dispute-resolution services. Decisions are to be based on what is considered fair and reasonable (s. 75[1]). The ombudsman's decisions are stated to be binding if accepted by the customer (s. 75[3]), but clear enforcement powers are not provided.</p>
Competition Act, 2007 (Competition Act)	ECC	<p>Overview</p> <p>The Competition Act provides for the establishment of ECC and prohibits certain anticompetitive trade practices.</p> <p>Scope of application</p> <p>The Competition Act applies to "all economic activity within the country or having an effect in the country" (s. 3). This is subject to stated exceptions, none of which is relevant for present purposes.</p> <p>Pricing transparency and disclosure, and unfair fees</p> <p>Prohibited practices include, for example, agreements to fix prices (s. 30[5][a]), discriminatory pricing (s. 31), and misleading and deceptive advertising (s. 33[1][f]).</p>

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
Fair Trading Act, 2011 (FT Act)	Ministry of Trade and Commerce/ ECC	<p>Overview</p> <p>The FT Act contains broad fair-trading rules of general application. It is understood that the act is now administered by ECC, but the commission does not actively supervise compliance with the act insofar as FIs are concerned.</p> <p>Scope of application</p> <p>The FT Act applies to “trade,” which in turn refers to any trade, business, and so forth relating to the “supply or acquisition of goods or services” (s. 2[2]). Importantly, the broad definition of the term services explicitly includes “a contract between a bank and a customer of a bank,” as well as contracts for the granting of credit or acceptance of deposits (s. 2[2]).</p> <p>Pricing transparency and disclosure, and unfair fees</p> <p>The FT Act contains broad prohibitions on misleading and deceptive conduct and false representations. It includes a specific prohibition on making false or misleading representations with respect to the price of any goods or services (s. 7[g]). Also prohibited is bait advertising, including the provision of services where there are not any reasonable grounds to believe services can be supplied at the relevant price for a period that is reasonable (s. 13).</p>
<p>Consumer Credit Act, 2016 (Consumer Credit Act)</p> <p><i>Note: Although the mission team did not consider credit products (as requested), this act was considered for comparison purposes and to help understand the regulatory landscape on pricing transparency and disclosure and fairness of fees and charges.</i></p>	Registrar of Credit, a department in FSRA (ss. 12–15)	<p>Regulated institutions/activities</p> <p>All persons providing credit must be licensed under the act (s. 5, and see part 5). This would seem to include banks and other credit providers. There are also licensing provisions for pawnbrokers, debt counsellors, and credit bureaus.</p> <p>The Consumer Credit Act applies to a “consumer credit agreement between parties dealing at arm’s length” (s. 3), but there are exceptions. The act does not apply to a company whose assets or turnover exceeds a threshold prescribed by the minister, to the government, to a group savings scheme, or to a credit agreement of a “<i>liholiswane</i>,” which is understood to be a revolving savings group. (See section 3 and related definitions.)</p> <p>A “credit agreement” is broadly defined in section 20 of the Consumer Credit Act to refer, in summary, to an agreement for credit of “any type.” There are some exceptions—for example, a contract of insurance and a group savings scheme.</p> <p>Significantly, if a credit agreement is not consistent with the Consumer Credit Act, then it is void from inception unless protected under transitional provisions (ss. 7 and 113).</p> <p>Pricing transparency and disclosure, and unfair fees (credit only)</p> <p>Numerous provisions relate to pricing issues for credit contracts. These provisions are of interest, as they may provide guidance as to the approach preferred in Eswatini. The provisions concern the following:</p> <ul style="list-style-type: none"> • A prohibition on charging amounts for fees and charges/interest in excess of that permitted by the act (s. 38) • The maximum amount that can be charged in a credit agreement (s. 39) • Default interest (the rate must not exceed the highest rate payable under the agreement) (s. 41) • Changes to interest rates and credit fees and charges (at least five days’ notice is required for most changes, but 30 days’ notice is required for changes to variable rates) (s. 42) • Maximum rates of interest, fees, and charges applicable to each subsector of the consumer credit market (s. 43) • Credit insurance (s. 44) • Statements of account (ss. 45–52)

NAME OF LAW/ REGULATIONS/ GUIDELINES	REGULATORY/ SUPERVISORY AGENCY	SUMMARY OF RELEVANT SECTIONS
Building Societies Act, 1962 (Building Societies Act)	Minister for Finance Registrar (Governor of Monetary Authority)	<p><i>Only relevant to extent covers any issue about pricing transparency and disclosure for savings and transaction accounts.</i></p> <p>Repealed provision requiring mode of calculation of interest to be displayed in advertisements (s. 29).</p> <p>Overview The Building Societies Act provides for the registration of building societies, their powers (which include power to take deposits), their management and administration, and incidental matters.</p> <p>Scope of application The Building Societies Act applies to a “building society,” which is defined, in summary, to mean any entity whose name or title includes the words “building society” or whose principal object is the marking of advances on security of the mortgage of urban immovable property (s. 2).</p> <p>Pricing transparency and disclosure, and unfair fees The Building Societies Act does not contain any provisions dealing specifically with pricing transparency and disclosure or unfair fees.</p>
Co-operative Societies Act, 2003 (Co-ops Act)	Minister for Commerce, Industry and Trade Commissioner of Cooperatives	<p>Overview The Co-ops Act provides for the registration of cooperatives, the rights and duties of cooperatives and their members, and incidental matters.</p> <p>Scope of application The Co-ops Act applies to a “co-operative” as defined in section 3 (in summary, an association of people who come together for a common purpose to be achieved through a democratically controlled organization and equitable contributions from members, with risks and benefits to be shared).</p> <p>Pricing transparency and disclosure, and unfair fees The Co-ops Act does not contain any provisions dealing specifically with pricing transparency and disclosure or unfair fees.</p>

