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FINANCE AND MARKETS GLOBAL PRACTICE

DIAGNOSTIC REVIEW OF CONSUMER PROTECTION AND FINANCIAL LITERACY: VOLUME 2

VIETNAM

MAY 2015

DISCLAIMER

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ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
ADR	Alternative dispute resolution
ATM	Automatic Teller Machine
AML Law	Law on Prevention of Money Laundering (No. 07/2012/QH13)
AUM	Assets under management
AVI	Association of Vietnamese Insurers
BISA	Banking Inspection and Supervision Agency
BOD	Board of Directors
CCP	Central Counterparty
CGAP	Consultative Group to Assisst the Poor
CI	Credit institution as defined by the CI Law
CI Law	Law on Credit Institutions (No. 47-2010-QH12)
CIS	Collective investments
CPE	Continuous professional education
CP Law	Law on Protection of Consumers' Rights (No.59/2010/QH12)
CPFL	Consumer Protection and Financial Literacy
CPFL	Consumer Protection and Financial Literacy
CPD	Consumer Protection Department of VCA
Credit Information Decree	Decree on Credit Information Activities (No. 10/2010/ND-CP)
DIV	Deposit Insurance of Vietnam
ETF	Exchange-Traded Fund
GDP	Gross Domestic Product
HNX	Hanoi Stock Exchange
HOSE	Ho Chi Minh City Stock Exchange
IAIS	International Association of Insurance Supervisors (IAIS) and the Organization for Economic Co-operation and Development (OECD)
IB Law	Law on Insurance Business (No. 24/2000/QH10)
IFC	International Finance Corporation
IOSCO	International Organization of Securities Commissions
ISA	Insurance Supervision Authority
MFI	Micro-Finance Institution
MFWG	Microfinance Working Group
MoCI	Ministry of Culture and Information
MoET	Ministry of Education and Training
MoF	Ministry of Finance

MoIT	Ministry of Industry and Trade
MoJ	Ministry of Justice
NBCI	non-bank credit institution
NCIC	National Credit Information Center of Vietnam
NGO	non-governmental organization
OECD	Organization for Economic Co-operation and Development
PCB	Private Credit Bureau
PCF	People's Credit Fund
PCR	Public Credit Registry
ROSCA	Rotating Savings and Credit Association
SBV	State Bank of the Socialist Republic of Vietnam
SBV Law	Law on State Bank of Vietnam (No. 46/2010/QH12)
SC Law	Securities Law (No. 70/2006/QH11)
SME	Small and medium enterprise
SOE	State-owned enterprise
SSC	State Securities Commission
STI	Securities Training Institute
UPCOM	A platform for trading in unlisted public companies
VBARD	Vietnam Bank for Agriculture and Rural Development
VBSP	Vietnam Bank for Social Policies
VCA	Vietnam Competition Authority
VINASTAS	Vietnam Standards and Consumers Association
VND	Vietnamese Dong
VSD	Vietnam Securities Depository
WB	World Bank

Currency and Equivalent Units
(As of 1 May 2014)
Currency Unit = Vietnamese Dong (VND)
US$ 1 = VND 21,124.79

Government Fiscal Year
January 1–December 31

I. Good Practices: Banking Sector

The Vietnamese banking sector has evolved dramatically over the past twenty years. In the early 1990s, the entire commercial banking sector consisted of four wholly owned state banks. Today, the credit industry that includes both banks and non-bank credit institutions is made up of:

a) commercial banks (of which 2 are wholly state-owned, 3 are some 70 percent state owned, 4 are classified as "joint-ventures", 37 are classified as "joint-stock", 5 are wholly foreign-owned, and 50 are branches of foreign banks);
b) one development bank and one social policy bank;
c) one cooperative bank and some 1,130 People's Credit Funds; and
d) 2 licensed microfinance institutions.

Taken together, the banking system's[1] total assets in 2012 were US$258.9 billion, which accounted for 166 percent the country's 2012 GDP. As noted in the IFC Responsible Finance report, commercial banks were responsible for 89 percent of the total assets in the banking sector, while VBSP represented 2 percent of the total assets.[2]

Given the considerable number of newly established joint-stock Vietnamese banks, the merger and consolidation of many of these has now become a Government policy imperative.[3] There is significant concentration in the banking industry with the top 10 banks accounting for approximately 78 percent of the assets of the entire banking system.[4] The largest bank in the country in terms of assets, capital, customer base and the extent of its network is the Vietnam Bank for Agriculture and Rural Development (VBARD) that is wholly owned by the State. It alone controls some 10 percent of the banking sector's total assets[5] and, with some 3,800 offices throughout all parts of the country, has by far the largest network of bank branches in Vietnam.

[1] Including also 17 finance companies, 12 finance leasing companies, 1,146 People's Credit Funds and 2 licensed microfinance institutions.
[2] Responsible Finance in Vietnam, 50 (IFC, 2014).
[3] *See,* Decision 254 of 2012 of the Prime Minister on restructuring the system of credit institutions to 2015; and Circular 04 of 2010 of SBV's Governor on Regulating the Merger, Consolidation and Acquisition of Credit Institutions.
[4] Source: SBV.
[5] VBARD 2011 Annual Report and the authors' calculation.

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	***Consumer Protection Regime*** **The law should provide clear consumer protection rules regarding banking products and services, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.** **a. Specific statutory provisions should create an effective regime for the protection of a consumer of any banking product or service.** **b. A general consumer agency, a financial supervisory agency or a specialized financial consumer agency should be responsible for implementing, overseeing and enforcing consumer protection regarding banking products and services, as well as for collecting and analyzing data (including inquiries, complaints and disputes).** **c. The designated agency should be funded adequately to enable it to carry out its mandates efficiently and effectively.** **d. The work of the designated agency should be carried out with transparency, accountability and integrity.** **e. There should be co-ordination and co-operation between the various institutions mandated to implement, oversee and enforce consumer protection and financial system regulation and supervision.** **f. The law should also provide for, or at least not prohibit, a role for the private sector, including voluntary consumer organizations and self-regulatory organizations, in respect of consumer protection regarding banking products and services.**
Description	***Paragraph (a)*** There are two main laws that provide for consumer protection rules in the banking sector: (i) the Law on the Protection of Consumers' Rights (CP Law)[6]; and (ii) the Law on Credit Institutions (CI Law)[7]. Whereas the former establishes a general framework for consumer protection that applies to all "*organizations or individuals trading goods, services*",[8] the latter regulates exclusively credit institutions as defined by the law.[9] More specifically, the CP Law provides clear consumer protection rules applicable to the products and services of all business organizations and imposes numerous statutory obligations on all business entities in their dealings with consumers.[10] The CI Law applies to all credit institutions defined by the Law (including banks) and provides for a limited number of market conduct rules, particularly in a single article headed "*Protection of Client Interests*"[11]. This article requires credit institutions and branches of foreign banks to fulfill five obligations: • to participate in deposit insurance and publish information regarding deposit insurance at their head offices and branches; • to "*create favorable conditions for customers to deposit and withdraw money*" and ensure the full and timely payment of principal and interest of any sum of deposit; • to refuse any investigation or transfer of a customer's deposits, except when requested by a competent state authority or with the consent of the customer; • to publish interest rates applicable to deposits and service fees, and the rights and responsibilities of customers regarding each type of product and service supplied; and • to announce their official hours for transactions and maintain operations during such times.

Beside the CP Law and the CI Law, there are general laws providing limited rules relating to market conduct rules, for instance: the Civil Code[12], the Commercial Law[13] and the Law on Enterprises[14]. Indirectly, consumer protection is also promoted by the Law on Competition.[15] The Law on Advertising[16] also contains rules for consumer protection regarding advertising activities.

The views regarding the application of the CP Law to financial institutions, however, differ. According to the principle for the application of laws in Vietnam, sector specific laws take precedence over generic laws. In the area of consumer protection, currently the CP Law is the generic law and therefore sector specific laws such as the Law on Credit Institutions precede. Thus, the CP Law is applicable, unless otherwise specified or stipulated by sector-specific laws. This view seems to be shared by Vietnamese state authorities including SBV.

However, the mission team noticed alternative interpretations regarding the issue of precedence. Some Vietnamese experts argue that the CP Law takes precedence over sector laws since it covers all services by all business organizations. The CI Law itself does not shed much light on the issue. Article 3(2) of the CI Law provides that *"[w]here this Law and another law contain different provisions on establishment, organization, operation, special control, restructuring and dissolution of credit institutions….the provisions of this Law shall prevail."* Regarding market conduct and consumer protection, the quoted provision is only relevant with respect to Article 10 of the CI Law which provides for protection of client interests and thus may potentially interfere with provisions of the CP Law. In any event, the CP Law is monitored and enforced by sector supervisors and VCA only to a limited extent so far as the financial sector is concerned. There has also not yet been any issuance by SBV of a Circular or Decision specifically aimed at guiding comprehensively the operation of banks in respect of matters of consumer protection.[17] Nor has there apparently been any continuous SBV management and evaluation of banks' observance of current law regarding matters of consumer protection in banking and the handling by it of any bank's failure to comply properly with the law in these respects.[18] Moreover, meetings held by the mission team with banks, and the terms and conditions, which were reviewed, suggest that there are common breaches of the laws that apply[19] and only basic internal monitoring of compliance with the relevant requirements exercised by banks.

Besides the consumer protection rules established by the above-mentioned laws, there is implementing subsidiary legislation including decrees, decisions, ordinances and circulars. Subsidiary legislation is crucial as the mission team was told that financial institutions primarily apply subsidiary legislation, with laws being rarely referred to given their rather vague formulation. This means that where subsidiary legislation is missing rules as prescribed by laws may not be actively implemented and followed.

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[6] Law No. 59/2010/QH12.
[7] Law No. 47/2010/QH12.
[8] Article 2 of the CP Law.
[9] Article 1 and 2 of the CI Law.
[10] These include rules regarding: (a) the protection of consumers' information; (b) prohibition on business entities providing misleading or inaccurate information to consumers; (c) the public display of prices; (d) information to be provided to consumers before a transaction takes place; (e) the obligations of third parties in providing a consumer with information; (f) the form of contracts with consumers; (g) contractual terms which are null and void; (h) the abolition or revision of standard contractual language which violates the rights of consumers; and (i) the methods of dispute resolution between consumers and businesses.
[11] Article 10 of the CP Law.
[12] *See, e.g.* Article 630 of the Law No. 33/2005/QH11 Civil Code.
[13] *See, e.g.* Article 14 of the Commercial Law as promulgated by the Presidential Order No. 10/2005/L-CTN.
[14] *See, e.g.* Article 28 of the Law No. 60/2005/QH11 on Enterprises.
[15] Law No. 27/2004/QH11 on Competition.
[16] Law No. 16/2012/QH13 on Advertising.
[17] As potentially could be forthcoming by the powers granted to SBV under Article 88, Clause 1 of Government Decree no. 59 of 2009. In the same vein, see also the requirement of SBV to prepare guidelines and conditions for banking operations contained in Article 2, Section 2, item c) of Prime Ministerial Decision no. 83 of 2009 regarding BISA.
[18] This is contrary to the requirement of Article 88, Clause 2 of Decree no. 59 of 2009.
[19] Examples in these respects are provided under Paragraph (b) of Good Practice B. 7 below.

	Consumers appear to be unaware of their rights and obligations under the abovementioned laws. Moreover, the complexity and scattered character of the Vietnamese regulatory framework makes it challenging for consumers to learn of their rights and obligations, to understand them and, thus, to be able to rely on them. ***Paragraph (b)*** Institutional arrangements reflect the diffuse regulatory framework as well as country-specific features. In general, pursuant to the CP Law, "*the protection of consumers' rights*" is a function of the Government.[20] Within the Government, it is MoIT, which is primarily responsible for implementation of "*the state administration on the protection of consumers' rights.*"[21] In order to exercise this role, MoIT has established the Vietnam Competition Administration Department[22], also known as the Vietnam Competition Authority. VCA's organizational structure is built on multiple expert committees, including the Committee of Consumer Protection. While VCA has broad powers under the CP Law to issue regulations regarding matters of consumer protection applicable to all business organizations (including credit institutions), and to monitor and supervise the proper application of these regulations, as well as to see that penalties are applied for infractions, with minor exceptions[23]. VCA has just a limited capacity to exercise its supervisory functions with regard to the whole financial industry. Specifically, VCA: • considers matters of competition its primary focus;[24] • has a total staff of about 100 of whom only 11 make up the Consumer Protection Department (CPD); • is authorized by the CP Law to play significant roles in respect of matters of consumer protection for Vietnam's entire population of some 90 million people, and understandably focuses its attention on issues it deems of highest priority, namely those posing risks to health and physical safety; and • tends naturally to defer to SBV on consumer protection matters of relevance to the banking industry, especially since it has only one CPD staff member with any practical experience of Vietnam's financial services industry and, since CPD's inception in 2011, only some 18 cases of consumer complaints have been received by it regarding financial institutions and the services they provide.[25] However, it is to be noted that VCA is in the process of undertaking training sessions regarding consumer protection issues for the finance industry[26] and is considering standard form contract issues in relation to banking matters. Moreover, VCA and SBV are willingn to cooperate in different relevant areas: for instance, the VCA have colaborated with SBV on multiple occasions (e.g. intervention with regard to e-banking, bank accounts, ATM withdrawals) as noted in the IFC report.[27]

[20] Article 47(1) of the CP Law.
[21] Article 47(2) of the CP Law.
[22] Decree No. 06/2006/ND-CP on Functions, Duties, Powers and Organizational Structure of Vietnam Competition Administration Department.
[23] As noted in an IFC report "*[t]the VCA has tried to solve issues arising in the [financial] market, but it has not played a comprehensive role in financial consumer protection.*" *See* Responsible Finance in Vietnam, 15 (IFC, 2014).
[24] *See* VCA's Annual Report for 2012.
[25] This represents some 1 percent of all consumer complaints received to date by CPD. Source: interview with VCA/CPD officials May 2014.
[26] The Task Team Leader for the mission, Ms. Ros Grady, spoke at one of these training sessions in Ho Chi Minh City on 19 May 2014.
[27] Responsible Finance in Vietnam, 15 (IFC, 2014).

	On the local level, People's Committees, that is, local government entities "*shall state-manage the protection of the interests of consumers at their localities.*"[28] In addition, although rules regarding the content and method of advertising are to be followed by all businesses in accordance with the Law on Advertising, the mission team was not able to find any evidence that this Law is actively supervised in respect of credit institutions by the Ministry of Culture, Sports and Tourism (also known as the Ministry of Culture and Information - MoCI) as referred to in that Law.[29] ***Paragraph (c)*** With a staff of only eleven individuals focused on matters of consumer protection within VCA's Consumer Protection Department, VCA has limited capacity to perform its role of protecting consumers effectively across all sectors of the Vietnamese economy, including the financial (or specifically banking) sector. Likewise, there has been no funding within SBV to employ specialized staff to focus exclusively on matters of consumer protection in the banking industry, including the formulation of relevant subsidiary legislation, the monitoring of the application of all relevant laws and subsidiary legislation and the seeking of remedies for any violations of the resulting rules. ***Paragraph (d)*** At this point, it is premature to consider any matters of transparency, accountability and integrity. ***Paragraph (e)*** In compliance with the requirement of the CP Law[30], more co-ordination and co-operation among the various institutions mandated to implement, oversee and enforce consumer protection and financial system regulation and supervision is needed. Beside the example of cooperation between SBV and VCA mentioned above, no memorandum of understanding exists among SBV, MoF, MoIT, VCA, MoCI, and sector supervisors such as SSC and the Insurance Supervisory Authority regarding their respective roles in dealing with consumer protection matters in the financial services industry generally or among SBV, MoF, MoIT, VCA and MoCI in respect of credit institutions, in particular. However, SBV and VCA (CPD) are now cooperating in hosting day-long seminars devoted to consumer protection issues of particular relevance to the banking industry. **Paragraph (f)** The CP Law provides for the establishment of social organizations to protect consumers' rights.[31] The CP Law grants such social organizations important powers, including the power to file a lawsuit on behalf of consumers harmed by a credit institution.[32] The CP Law sets forth other extensive provisions in respect of voluntary consumer organizations.[33] Although it is not entirely clear which entities might be considered "*social organizations to protect consumers' rights,*" it is plausible to include VINASTAS and its member associations among them. However, VINASTAS has limited resources and does not have a clear focus on financial consumer protection issues, although relevant officers indicated interest in the subject and they deal with very occasional complaints about financial products and services. The establishment of industry associations is permitted by Article 9 of the Commercial Law and is governed by the Law on Associations. See Good Practice A.2 concerning the Vietnam Banks' Association (VBA).

[28] Article 47(4) of the CP Law.
[29] Article 5(2) of the Law on Advertising.
[30] *See* Article 47 (3) of the CP Law.
[31] Chapter 3 of the CP Law.
[32] Article 28(1)(b) of the CI Law.
[33] *See* Articles 27, 28 and 29 of the CP Law.

<table>
<tr><td>Recommendation</td><td>The Government should reconsider the institutional arrangements regarding financial consumer protection, and especially the role of MoIT (and VCA).[34] One option would be to have each financial sector regulator clearly delineated by law as the sole agency in charge of business conduct supervision in the relevant part of the financial sector. This option would presumably easily fit the specialized, multi-agency model of supervision currently existing in Vietnam. Also, such arrangements have been implemented in many jurisdictions with the specialized (multi-agency) model. This option offers multiple advantages: (i) responsibility for business conduct supervision would reside with an agency responsible for the segment of the financial sector concerned, (ii) such agency would have knowledge of the segment concerned, emerging issues and inherent risks and would already establish working relationship with relevant stakeholders, (iii) financing of business conduct activities would be secured through budget of each individual supervisory agency, (iv) there would be no need to create and finance establishment of a new agency, (v) multiple agencies would promote competition of supervisory approaches, and importantly (vi) implementation of this option should not require too much resources in terms of time and funding. On the other hand, scattered institutional framework with multiple agencies responsible for only one sector of the financial market may lead to regulatory arbitrage, uneven playing field, and lack of a holistic view of the financial market and the industry as a whole. Multiple agencies may also engage in ‘turf wars’ and competition over scarce resources - particularly in terms of supervision staff with required expertise and skills.

A second option would be to establish a specialized supervisory agency with jurisdiction to deal with all aspects of financial consumer protection. Such an agency would be responsible for consumer protection and market conduct issues throughout Vietnam’s financial services sector, while having a separate branch or department focused exclusively on each separate segment of the financial sector. Although this option may only be considered in the longer-term perspective, as it would require a substantial review of the existing institutional arrangements, it offers some important advantages: (i) economy of scale and scope; (ii) a holistic view of the whole market; (iii) highly specialized and focused expertise; and (iv) clearly defined responsibility for the area of financial consumer protection and financial literacy. On the other hand, establishing such an agency would require substantial resources. Moreover, it is not a common solution in the specialized (multi-agency) model of institutional arrangements (the Consumer Financial Protection Bureau in the U.S. is a rare example of such arrangements). Alternatively, SBV could take on such a role of the specialized supervisory agency given the depth of its experience in relation to the financial sector and with a view to minimizing the costs associated with establishing a new agency.[35]

A third option would be for VCA to build its capacity significantly so as, in fact, to become the lead agency regarding financial consumer protection. The biggest disadvantage of this option is the fact that VCA currently has only limited expertise and experience with financial markets and even if enough resources were spent building the needed expertise, the agency would likely remain detached from the industry and relevant supervisory agencies, thus creating cooperation and coordination issues. Thus, in the short term the first option appear to be more practicable, while the second option is the preferred one in the long term. Each of these options would require sufficient resources and capacity to be provided to the authority responsible for financial consumer protection.

In the short-term, it is recommended that a coordination mechanism for financial consumer protection be formalized among all relevant regulators, including SBV, MoF, VCA, SSC and the ISA.

Careful consideration should also be given to developing a single regulatory regime that would:</td></tr>
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	• introduce a banking-specific consumer protection regime (including in respect of the relationship between credit institutions and their actual and potential retail customers and the products and services provided by credit institutions to their customers) which, where appropriate, would adopt, adapt and add to the existing general consumer protection regime. In the longer term such a regime could be applied to the financial sector more generally. Such a regime should, for example, cover transparency and disclosure, responsible lending standards, sales practices, staff and intermediary training requirements, advertising, privacy and data protection, and dispute resolution mechanisms; • ensure that SBV is the primary institution with sole authority to devise all consumer protection-related Decrees, Circulars and Decisions in respect of credit institutions and their retail customers and other consumers; and • require SBV to monitor the application of all of these regulations and any relevant Laws, and other Decrees, Circulars and Decisions with a view to ensuring consistent industry-wide application and enforcement.
Good Practice A.2	***Code of Conduct for Banks*** **a. There should be a principles-based code of conduct for banks that is devised by all banks or the banking association in consultation with the financial supervisory agency and consumer associations, if possible. Monitored by a statutory agency or an effective self-regulatory agency, this code should be formally adhered to by all sector-specific institutions.** **b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.** **c. The principles-based code should be augmented by voluntary codes of conduct for banks on such matters as facilitating the easy switching of consumers' current accounts and establishing a common terminology in the banking industry for the description of banks' charges, services and products.** **d. Every such voluntary code should likewise be publicized and disseminated.**
Description	***Paragraph (a)*** No principles-based code of conduct for Vietnamese commercial banks has been devised by these banks or by any banking association whether in consultation with SBV and any consumer association or otherwise. Vietnam Banks' Association (VBA) exists to promote the interests of its 55 financial institution members. Membership in the VBA is voluntary and not all-inclusive. There is no association of all credit institutions or of all commercial banks. The VBA is currently drafting a Code of Conduct with the objective of having the Code formally approved by the VBA's membership by end of 2014. In its present form, the most relevant provisions of the draft: • Require honesty and fairness on the part of members in dealing with retail customers; • Set criteria for the professional training of members' front-line staff; • Require members "*to support*" retail customers; • Provide for the quality of members' financial products and services; • Require help to be provided by members to disadvantaged consumers and prohibit discrimination in members' dealings with retail customers; and • Deal with issues regarding the protection of customers' data. However, the Code does not deal with important matters such as facilitating the easy switching of consumers' current accounts and establishing a common

[34] As required by Article 47 of the CP Law.
[35] See also responsible Finance in Vietnam, 2, 14 and 16 (IFC, 2014).

	terminology in the banking industry for the description of banks' charges, services and products. Once approved, the Code of Conduct is to be placed on VBA's website. However there are no plans at this stage to do more to publicize and disseminate it more widely to the general public or to allow retail customers to bring complaints to VBA-member credit institutions based on any alleged violation of the terms of the Code. Rather, strict application of the Code is intended to be monitored by VBA, with what it deems to be relatively minor infractions resulting in "*naming and shaming*", while more serious transgressions could, in the worst case, result in widely publicized expulsion of the member institution from VBA. ***Paragraph (b)*** Not applicable. ***Paragraph (c)*** All commercial banks interviewed have their own internal codes of conduct that, among other things, inform their staff members on how they are to treat each other and to deal with matters of ethics. These internal codes are not for external publication and appear to have little direct relevance to a bank's relationship with its retail customers. ***Paragraph (d)*** Not applicable
Recommendation	Consideration should be given to encouraging VBA to strengthening their proposed Code to deal with the following issues (and requiring all banks to join VBA or an equivalent industry association), or developing a statutory Code of Conduct which does so: • Governing principles and objectives of the code; • Complaints handling and alternative dispute resolution; • Good conduct relating to communication, privacy and disclosure; • Design of appropriate products and services; • The switching of consumers' current accounts; • The establishment of a common terminology in the banking industry for the description of banks' charges, services and products; • Issues relating to different payment methods; • Credit, debit and ATM cards, liability and merchant card services; • Internet and mobile phone banking; • Issues regarding the provision of credit; • Safeguarding PINs and passwords; and • Statements and account information. Compliance by banks with the requirements of the Code should be actively monitored and enforced by VBA and SBV (with appropriate powers for the VBA as a self-regulatory organization).
Good Practice A.3	***Appropriate Allocation between Prudential Supervision and Consumer Protection*** **Whether prudential supervision of banks and consumer protection regarding banking products and services are the responsibility of one or two organizations, the allocation of resources to these functions should be adequate to enable their effective implementation.**
Description	SBV's mandate in respect of consumer protection issues concerning credit institutions comes from the SBV Act and the CI Law. The SBV Law provides that "*The State Bank shall conduct the State's management over … banking activities*".[36] SBV is also responsible for "*State administration of organization and operation of credit institutions and foreign bank*

[36] SBV Law, Article 2(3).

	branches" and is further obliged to carry out the examination, inspection and supervision of all credit institutions and foreign bank's branches, representative offices of foreign credit institutions and of any other foreign institutions engaging in banking activities.[37] Further, SBV has responsibility for consumer protection: "*[banking inspection and supervision shall be aim at ensuring the safe and sound development of the credit institution system and finance system; protecting legal rights and interests of depositors and customers of the credit institutions; maintaining and enhance the confidence of the public in the credit institution system…*"[38] CIs are required to: • Provide timely, sufficient and accurate information and documents as requested by SBV during the process of its inspections and supervisions; • Be responsible for the accuracy and truthfulness of the information and documents provided; • Report and make clarifications regarding any recommendations and warnings on risks and safety made by SBV; • Implement recommendations and warnings on risks and safety made by SBV; and • Implement SBV's inspection conclusions.[39] Under the current regulatory framework, SBV is not specifically required to monitor, supervise or enforce market conduct rules as compared to prudential norms, with exceptions mentioned in this report (e.g. Article 50 of the SBV Law quoted above). Against this background, SBV has limited focus on the inspection and supervision of matters regarding the conduct of credit institutions towards their retail customers. At present, the on-site and off-site prudential supervisory work of SBV is carried out by staff within BISA and SBV's Departments 1 and 2, while on-site and off-site supervision both for prudential and market conduct regulation is performed by the same staff. Apparently, the essential purpose of BISA and SBV's Departments I and II is to ensure that SBV's prescribed prudential rules are properly applied so as to ensure the stability of Vietnam's banking system and, thus, the country's entire financial system.
Recommendation	Early consideration should be given to having on-site and off-site prudential and business conduct supervision of credit institutions carried out by separate departments or teams within SBV. Having prudential and business conduct supervision performed by the same individuals creates a risk of conflict of interests.[40] Also, there is the need for quite different skills and training for those who are to perform either one of the two quite distinct supervisory roles. Training should cover, for example, the details of consumer protection laws and regulations; analysis of consumer disclosure documents; review of advertisements and distribution arrangements; analysis of consumer complaints and any systemic issues verification of calculations of fees and rates; and the design and implementation of market testing arrangements. Given the breadth if its functions and related responsibilities, it is suggested that SBV be the first regulator to implement this approach.

[37] CI Law, Articles 158(2) and 159.
[38] SBV Law, Article 50.
[39] *Id.*, Article 160.
[40] For instance, there may be cogent reasons from a prudential standpoint to allow interest rates on consumer loans to increase over time with a view to improving institutional financial stability, while such increases may well prove hard to manage by consumers.

Good Practice A.4	***Other Institutional Arrangements*** **a. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter in respect of a banking product or service is affordable, timely and professionally delivered.** **b. The media and consumer associations should play an active role in promoting banking consumer protection.**
Description	***Paragraph (a)*** The mission team was advised that consumers rarely initiate court actions against their banks or other credit providers. The reasons are likely to include the extent of the formalities and delays involved, concerns regarding knowledge about financial products and services,[41] costs associated with legal proceedings, the unpredictability of results, as well as cultural concerns and the availability of alternative informal dispute resolution avenues at the village commune level. ***Paragraph (b)*** The State has responsibility for promoting the press, radio, television, cinema, publishing, libraries and other means of mass communication.[42] SBV also disseminates information to the media about SBV's activities, particularly regarding its monetary policy[43] and new regulations.[44] The interaction between SBV and the media is also illustrated by the participation of SBV's Governor in a Vietnamese Television channel program called "*People ask, Ministers answer*," where he has touched upon various issues regarding consumer finance.[45] Furthermore, SBV publishes a periodical entitled "*Banking Review*". The immediate or lasting impacts of any such activities on consumers have, however, not yet been studied. Although a role is prescribed for public media in order to publicize court judgments and decisions that settle civil cases initiated by consumer protection associations in order to protect the interests of consumers,[46] the mission team was not able to identify any such judgment or decision. While the CP Law provides important roles for voluntary consumer organizations generally in respect of consumer protection in Vietnam and requires state funding to be made available to these organizations to allow these roles to be performed in accordance with this Law,[47] to date, there has apparently been little state funding for voluntary consumer organizations in Vietnam dealing with financial services issues. As the main consumer protection NGO, VINASTAS has minimal resources to enable it to carry out an effective role in relation to financial products or services or complaints about the conduct of financial institutions towards their retail customers.
Recommendation	SBV should continue and further strengthen its cooperation with the media in the area of consumer protection and financial literacy, for example, by coordinating financial education activities targeted to journalists. SBV, perhaps with the support of financial industry associations, should cooperate to develop financial education training for judges that cover consumer disputes in financial services. SBV should support the strengthening of consumer organizations, starting by coordinating training programs for members of these organizations, so that they better understand financial services. SBV should also consider initiatives where the consumer organizations could support SBV's work on consumer protection and financial education, such as by frequently reporting on consumer complaints in financial services, conducting mystery shopping, distributing financial education materials, organizing consumer roundtables or focus groups, etc. SBV could also usefully initiate such activities with mass organizations and local authorities (People's Committees). It is also recommended that, in the near to medium-term, consideration be given to providing state funding to VINASTAS on a sustainable annual basis. The aim should to enable VINASTAS to perform its Government-decreed consumer protection roles effectively in respect of the financial services industry.
Good Practice A.5	***Licensing***

	All banking institutions that provide financial services to consumers should be subject to a licensing and regulatory regime to ensure their financial safety and soundness and effective delivery of financial services.[48]
Description	While all banking institutions that provide financial services to consumers are subject to SBV licensing and a regulatory regime to ensure their financial safety and soundness, there is no explicit requirement that, in order to be licensed, they must demonstrate their capability to deliver financial products and services to consumers effectively, thoroughly and in accordance with all relevant laws and subsidiary legislation.
Recommendation	By means of a future amendment to the CI Law, SBV should be required: (i) to assess the degree to which any applicant for a banking license demonstrates the capability to deliver financial products and services to consumers effectively, thoroughly and in accordance with all relevant laws and subsidiary legislation; and (ii) to reject any application for a banking license that does not - or is unlikely to - meet each of SBV's criteria, including in respect of market conduct towards retail customers in accordance with all relevant laws and subsidiary legislation.
SECTION B	**DISCLOSURE AND SALES PRACTICES**
Good Practice B.1	***Information on Customers*** **a. When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer to enable the bank to render an appropriate product or service to that consumer.** **b. The extent of information the bank gathers regarding a consumer should:** **(i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and** **(ii) enable the bank to provide a professional service to the consumer in accordance with that consumer's capacity.**
Description	***Paragraph (a)*** Provisions of the type described are provided for in relation to credit products but no other types of products (such as term deposits, or investment or insurance products distributed by a bank). Before making a decision approving extension of credit, a credit institution must request data from a customer in order to assess whether (i) the purpose of the loan is feasible and lawful; (ii) the customer has relevant financial capability; and (iii) the customer has means to secure the loan.[49] Credit institutions must also maintain loan files, including information about the purpose of the loan and customer's financial status for a period specified by law.[50] Regarding responsible lending requirements, credit institutions are required to set lending limits based on the borrowing requirements of clients and their capacity to

[41] As in many other countries, very few judges in first instance courts are trained in respect of matters concerning financial products and services and the prevailing rights and obligations of consumers and banks in respect of them.
[42] *See* the Constitution, Article 33.
[43] *See, e.g.* Press release: SBV meets with journalists on Vietnam Revolutionary Journalism Day available at www.sbv.gov.vn (last visited on June 13, 2014).
[44] *See, e.g.* Press release Initial results in implementation of Circular 35 available at www.sbv.gov.vn (last visited on June 13, 2014).
[45] Verbatim of the interview - SBV Governor participates in VTV program of "People ask, Ministers answer" is available at www.sbv.gov.vn (last visited on June 13, 2014).
[46] *See* CP Law, Article 45.
[47] *See* Articles 27, 28 and 29 of the CP Law.
[48] Based on Basel Core Principle 3, this Good Practice constitutes the basis for enforcement of consumer protection in any banking system.

[49] Article 94(1) of the CI Law. The requirement is further detailed by the provision of Article 7 of the Regulations on Lending by Credit Institutions to Clients issued with Decision 1627-2001-QD-NHNN1 of the Governor of the State Bank dated 31 December 2001).
[50] Article 96 of the CI Law.

	repay.[51] Moreover, credit institutions must consider and evaluate the feasibility and effectiveness of a loan and its purposes ("investment project or plan for production") or a relevant plan for servicing living conditions and the capacity of the client to repay the loan.[52] Also, anti-money laundering legal requirements require every credit institution governed by the CI Law to obtain[53] and store[54] detailed personal information regarding every retail customer. However this does not include advice about the suitability of products or services for a specific customer – they are more aimed at identifying the customer and detecting suspicious or unlawful transactions. ***Paragraph (b)*** The Good Practice described under paragraph (b) also seems to be met in relation to credit products, but not other types of products. There is a general requirement that a potential borrower must submit to the credit institution a loan proposal and the documents necessary to prove that all conditions for borrowing (as listed under the paragraph a. above) have been satisfied. Clients are responsible for the accuracy and lawfulness of the documents that they submit to credit institutions, while credit institutions must guide clients on the types of documents that they require from them.[55] When conditions for borrowing have not been met, credit institutions are required to refuse provision of a loan.[56]
Recommendation	SBV should actively monitor compliance with the abovementioned responsible lending rules and consider the introduction of new provisions to deal with the consequences for a financial institution if it makes a loan in breach of these rules (for example, by allowing a court to unilaterally change the credit contract terms to reduce the re-payment obligations of the customer under the contract or to change the loan term or the applicable interest rate). Consideration should also be given to introducing more general product suitability standards for non–credit products sold or distributed by a bank which are consistent with this Good Practice.

[51] Article 12(1) of the Regulations on Lending by Credit institutions.
[52] Article 15(2) of the Regulations on Lending by Credit institutions.
[53] *See* Government Decree no. 74 of 2005, Article 8, Sections 1, 2 and 3.
[54] *Id.*, Article 8, Section 5. All credit institutions are responsible for keeping customer identification information for at least 5 years after the closing of all accounts of the customer or the completion of all transactions of the customer, whichever comes later.
[55] Article 14 of the Regulations on Lending by Credit institutions.
[56] Article 25(1)(a) and (b) od the Regulations on Lending by Credit institutions.

Good Practice B.2	***Affordability*** **a. When a bank makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.** **b. The consumer should be given a range of options to choose from to meet his or her requirements.** **c. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.** **d. When offering a new credit product or service significantly increasing the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.**
Description	***Paragraphs (a) to (d)*** There are some provisions in the regulatory framework regarding this Good Practice – see Good Practice B.1 and B.7 – although no provision in law or any subsidiary legislation deals explicitly with the issue of affordability. Further, without Key Facts Statements,[57] it is inevitably difficult for any consumer to have sufficient information on any product or service so as to enable his or her selection of what is most suitable and affordable or to compare products offered by different banks.
Recommendation	The disclosure requirements referred to in this Good Practice should appear in a future draft Circular that deals with the disclosure of information to retail customers of credit institutions (hereinafter "the Disclosure Notice") and this draft should then be circulated widely for review and comment before being revised, as appropriate, and then promulgated, applied and enforced. See also the recommendations in Good Practice B.1 and B.7.
Good Practice B.3	***Cooling-off Period*** **a. Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a cooling-off period of a reasonable number of days (at least 3-5 business days) immediately following the signing of any loan agreement between the bank and the consumer.** **b. On his or her written notice to the bank during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.**
Description	***Paragraph (a) and (b)*** While there is no provision that deals with these matters in the CI Law or any subsidiary legislation that flows from it, upon entry into a standard contract with a consumer, the CP Law requires every business organization (including every credit institution) to provide "*a reasonable period of time for the consumer to consider the contract*".[58] However the aforementioned provision does not define what constitutes a reasonable period; nor does it deal with any aspect of the second part of this Good Practice. Further, as mentioned in Good Practice A.1, the CP Law is not enforced in relation to credit institutions.
Recommendation	The regulatory framework should be amended in order to clearly provide for cooling-off periods regarding consumer credit (e.g. 14 days), including an explicit provision banning NBCIs from charging termination fees, penalties or unreasonable additional costs in the case of early termination during the cooling-off period in accordance with this Good Practice.

[57] *See* Good Practice B. 9 below.
[58] *See* CP Law, Article 17, Section 1.

Good Practice B.4	***Bundling and Tying Clauses*** **a. As much as possible, banks should avoid bundling services and products and the use of tying clauses in contracts that restrict the choice of consumers.** **b. In particular, whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.**
Description	***Paragraph (a) and (b)*** According to the provisions in Article 5 of the Draft Inter-Circular between the Ministry of Finance and SBV on the distribution of insurance through credit institutions: "*[c]redit institutions, overseas bank branches must not influence customers to purchase insurance, providing wrong information or providing no necessary information to life insurers; must not advise or prompt, in any way, customers to cancel an effective insurance policy*." Currently, there are no other provisions dealing explicitly with the matter of tying and bundling. The mission team found that banks have insurance requirements for customers taking out a loan and provide borrowers with a list of approved insurance companies. This list is likely to include any insurance company that is affiliated with the bank (i.e. has direct or indirect common ownership), without necessarily disclosing that affiliation to the customer. In many countries, bundled products are offered to consumers, especially low-income consumers who do not fully understand that the bundled product requires additional monthly payments, the commissions that may be payable or the nature of the related insurance product.
Recommendation	Although in practice it seems that tying and bundling is not yet a significant issue in Vietnam, it is important that legal provisions are in place as the market develops. It is accordingly recommended that a clear prohibition on insurance forcing practices be introduced, coupled with disclosure and rebate provisions. The 'insurance forcing' prohibition would apply to a requirement to acquire insurance from a particular supplier as a condition of providing a banking service (such as a loan) and to a requirement to pay for such insurance. However there could be an exception to such a prohibition in certain cases – for example, where the requirement is for insurance over mortgaged property or where insurance is required by law. Further, where there is a tied insurance contract, credit providers should be required to give a proportionate refund of the applicable premium if the consumer pays out a loan early. It is further recommended to introduce a requirement for disclosure of insurance commissions and premiums. Finally, it is recommended that there be a requirement for at least three insurers on the list presented to the consumer when there is a tying and bundling situation, and that notice of any affiliation between the bank and the listed insurance company be provided. SBV could also play a more active role in this area, by undertaking studies on the level of bundling and tying practices and the effect of these practices in the cost of credit offered by credit institutions.

Good Practice B.5	***Preservation of Rights*** **Except where permitted by applicable legislation, in any communication or agreement with a consumer, a bank should not exclude or restrict, or seek to exclude or restrict:** **(i) any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any financial service or product; or** **(ii) any liability arising from the bank's failure to exercise its duty to act with skill, care and diligence in the provision of any financial service or product to the consumer.**
Description	In cases where a standardized contract contains provisions exempting the liability of the credit institution that has offered the standardized contract, while abolishing or seeking to abolish any legitimate interest of a retail customer, such provisions are invalid, unless otherwise agreed by the institution and its customer.[59] And furthermore, no business organization (including any credit institution) has the right to dispossess or reduce the legitimate rights and interests of any consumer.[60] Also, any business organization that abuses the law and subsidiary legislation on the protection of consumers' rights and thereby violates the legitimate rights and interests of any individual is responsible before the law.[61] And, finally, any clause of a contract entered into by a business organization with a consumer is null and void if it purports to exclude the business organization from liability to the consumer in accordance with the law.[62] Thus, for example, the legitimacy should be questioned of any statement in a standard form contract to the effect that a bank's maximum liability to a customer will be limited to actual direct loss in the principal amount wrongfully or erroneously withdrawn from the customer's account due to the bank's gross negligence or willful misconduct. And likewise, so should the legality of any statements in a standard contract to the effect that: (i) the customer must indemnify the bank against any and all liabilities, costs and losses whatsoever, and however and wherever arising, in connection with the provision of the bank of an account to the customer of the granting to the customer of any banking service or facility; and (ii) the bank may debit any account of the customer with any such liabilities, costs and losses.
Recommendation	No recommendation
Good Practice B.6	***Regulatory Status Disclosure*** **In all of its advertising, whether by print, television, radio or otherwise, a bank should disclose the fact that it is a regulated entity and the name and contact details of the regulator.**
Description	No bank is required by law or subsidiary legislation to disclose the fact that it is a regulated entity and the name and contact details of the regulator. The mission team did not see any examples of any bank doing this voluntarily.
Recommendation	It is suggested that SBV give consideration in the medium- to long- term to requiring the application of this Good Practice by the issuance of a Circular or other appropriate legislative instrument. In particular, all commercial banks and other credit institutions should state in their advertisements that they are regulated by SBV.

[59] *See* the Civil Code, Article 407, Clause 3.
[60] *See* CP Law, Article 4, Section 2.
[61] *Id.*, Article 4, Section 4.
[62] *Id.*, Article 16, Section 1, items a) and b).

<table>
<tr><td>Good Practice B.7</td><td>Terms and Conditions

a. Before a consumer opens a deposit, current (checking) or loan account at a bank, the bank should make available to the consumer a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these Terms and Conditions should include:

i. disclosure of details of the bank's general charges;
ii. a summary of the bank's complaints procedures;
iii. a statement regarding the existence of the office of banking ombudsman or equivalent institution and basic information relating to its process and procedures;
iv. information about any compensation scheme that the bank is a member of;
v. an outline of the action and remedies which the bank may take in the event of a default by the consumer;
vi. the principles-based code of conduct, if any, referred to in A.2 above;
vii. information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer;
viii. any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer, and the procedures for closing an account; and
ix. clear rules on the reporting procedures that the consumer should follow in the case of unauthorized transactions in general, and stolen cards in particular, as well as the bank's liability in such cases.

b. The Terms and Conditions should be written in plain language and in a font size and spacing that facilitates the reading of every word.</td></tr>
<tr><td>Description</td><td>Paragraph (a)

The mission team was advised that, before a consumer opens a deposit, current (checking) or loan account at a bank, the bank will make available to the consumer a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Any bank or other business organization that uses any general transaction conditions in a contract with a consumer must make these conditions public: (a) before any such contract is entered into; and (b) at so-called "viewable places" for the transaction in question.[63]

The terms and conditions form part of a standard contract that the retail customer is required to sign if he or she wants the product or service on offer. That contract typically states that: (a) the customer has read, agrees to and is bound by the terms and conditions (as may be unilaterally amended by the bank from time to time); and (b) these terms and conditions form part of a valid, binding contract between the customer and the bank.

From a limited survey by the mission team it appears that bank terms and conditions include:

• reference to the bank's general charges, but without any indication of how these are calculated;
• the interest rate to be paid or charged to the consumer, but without a complete and easily understood statement of the method for calculating that rate;
• relevant non-interest charges or fees related to the product offered to the consumer, but, again, without any indication as to how these are calculated;
• allowance for unilateral amendments, revisions to or cancelations of any term and condition (including any bank charge) at the sole discretion of the bank, with the amendment, revision or cancellation taking effect once</td></tr>
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	it is brought to the attention of the customer (whether actually or notionally) by whatever means the bank deems fit; • references to other specific terms and conditions which apply to particular services and types of accounts but which are only available upon the customer's request; • a requirement for the customer to pay charges in accordance with the bank's policy from time to time in the event a time deposit is terminated early; • the right of the bank to revise, at any time and without prior notice, the minimum amount and the minimum time for each time deposit; • the right of the bank at any time to close any account of a customer, without notice to or cause given to the customer and without incurring any liability in so doing; • the right of the bank to suspend the operation of an account when there has been no transaction on such account for 6 months but to apply a charge over any amount remaining on deposit as fixed by the bank's tariff from time to time until the account balance reaches zero and the account is then closed without notice; • the requirement that the customer take all steps as may be desirable in the discretion of the bank to ensure that all check transactions comply with the laws of Vietnam; • the right of the bank to impose a service charge as it deems appropriate in the event of a returned or overdrawn check; • the imposition by the bank of deposit charges on credit balances from time to time as the bank, in its sole discretion, thinks fit; • the request of the customer to the bank that, to the maximum extent permitted by applicable laws, the bank should collect, use, store, process, transfer, compile, match, obtain and/or exchange information and personal data relating to the customer (the "Data") to or with such persons or organizations as the bank may consider necessary for whatever purpose; • the declaration of the customer that no part of the Data constitutes a private secret of the consumer;[64] and • a requirement for the customer to defend and indemnify the bank against any and all liabilities, costs and losses whatsoever and howsoever and wherever arising in connection with the provision by the bank of any product or service to the customer, with the bank being entitled to debit any account of the customer with any such liabilities, costs and losses. And, also from the limited survey, it would appear to be typical for a bank's terms and conditions only rarely to provide: • a summary of the bank's complaints procedures; • procedures for the switching of retail customer accounts; • the restrictions, if any, on account transfers by the consumer; • information about the DIV scheme the bank is a member of; • an outline of the action and remedies the bank may take in the event of a default by the consumer; • an easily understandable and comparable means of computing interest rates paid or charged to any retail customer, as well as any relevant non-interest charges or fees related to the product offered to the consumer; • the service charges that are to be paid by the consumer and how they are calculated; • the procedures to be followed for closing an account; or

[63] *Id.*, Article 18, Sections 1 and 2.

[64] This is to prevent the application of Article 3 of Government Decree no. 19 of 2012 on Consumer Protection which allows a consumer to declare that certain of his or her personal information is "secret" and cannot be disclosed.

	• clear rules on the reporting procedures that the consumer should follow in the event of unauthorized transactions in general, and stolen cards in particular, as well as the bank's liability in such cases. ***Paragraph (b)*** Contrary to this Good Practice, it appears that terms and conditions are frequently written in less than plain language and in a very small font size and with narrow spacing that makes reading the text difficult. The terms and conditions in standard contracts must be written in a font size not less than 12. Otherwise, a fine of merely from 10,000,000 VND to 20,000,000 VND (i.e. about $475 to $950) may be imposed on any bank or other organization.[65] In the above-respects, what is apparently common practice simply does not accord with legal requirements. And, without adequate or any SBV supervision and inspection of standard consumer contracts in banking, such non-compliance is likely to continue.
Recommendation	Of high priority in the short-term, subsidiary legislation should be issued that requires every credit institution - before a consumer opens any account - to provide to the consumer a written copy of the credit institution's general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these terms and conditions should: • disclose details of the credit institution's general charges; • provide a summary of the credit institution's complaints procedures; • provide information about the DIV deposit insurance scheme the credit institution is a member of; • outline the action and remedies which the credit institution may take in the event of a default by the consumer; • make it clear that whenever a borrower is obliged to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower is free to choose the provider of the product; • state the methods of computing interest rates paid by or charged to the consumer, and any relevant non-interest charges or fees related to the product offered to the consumer; • set forth when, and on what basis, a floating interest rate may adjust, in respect of a loan, ideally with reference to an objective and widely-publicized reference point; • indicate that the customer will be notified in writing of any change in the applicable interest rate and any fees and charges a reasonable period in advance of the effective date of the change (say 20 days although there might be some exceptions for variable interest rates where movements in rates are outside the control of the credit institution); • state the rights of the customer to exit the contract if the revised terms are unacceptable to the customer (subject to reasonable break costs in respect of fixed rate contracts and a reasonable administrative fee); • disclose any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer, and the procedures for closing an account; • provide clear rules on the reporting procedures that the consumer should follow in the case of unauthorized transactions in general, and stolen cards in particular, as well as the credit institution's liability in such cases; • provide an explicit cooling-off period as indicated in Good Practice B.3 above; • have its terms and conditions and all related contractual language written in plain language and in a font size of not less than 12 and with spacing between lines that facilitates the reading of every word; and

[65] *See* Government Decree no. 19 of 2012, Article 10, Clause 1, item a).

	• ensure that its Terms and Conditions and all related contractual language complies with the requirements of the CP Law, the CI Law, and the Law on Advertising, as well as all pertinent Decrees, Circulars and Decisions; and • provide each retail customer a written copy of his or her contract on signing. The rules concerning minimum font size should be actively enforced and expanded to apply to all terms in a consumer contract and new rules should be introduced requiring contractual documents to be expressed in simple, clear language. It is also considered that every credit commercial bank should be required to provide the business conduct supervision department of SBV - for its review and appropriate supervisory follow-up – all of its standard form contracts (including all terms and conditions) required to be signed by a consumer before acquiring any product or service. Furthermore, of high priority in the medium-term, SBV in cooperation with relevant industry associations and consumer associations should develop - and SBV should require the application by all credit institutions of - a standard methodology for all credit institutions to disclose the price or cost of any financial product to consumers, being the interest rate consisting of a publicized reference rate (if applicable) plus a stated margin, as well as all applicable fees, commissions and charges ('effective interest rate'). And finally, given the lack of transparency specifically as to how, when and why floating interest rates may legitimately be adjusted, it is suggested that the SBV, in technical discussions, look to these issues as a matter of some urgency so that clear guidance in these respects can be forthcoming to all banks and their retail customers as soon as possible.
Good Practice B.8	***Key Facts Statement*** **a. A bank should have a Key Facts Statement for each of its accounts, types of loans or other products or services and provide these to its customers and potential customers.** **b. The Key Facts Statement should be written in plain language and summarize in a page or two the key terms and conditions of the specific banking product or service.** **c. Prior to a consumer opening any account at, or signing any loan agreement with, the bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received, read and understood the relevant Key Facts Statement from the bank.** **d. Key Facts Statements throughout the banking sector should be written in such a way as to allow consumers the possibility of easily comparing products that are being offered by a range of banks.**
Description	***Paragraph (a) to (d)*** Although commercial banks typically issue brochures on their products available to consumers for sales or marketing purposes, apparently no commercial bank provides consumers a short-form Key Facts Statement which highlights the most important information and features of a product.
Recommendation	Of high priority in the medium term, SBV should require all commercial banks to issue Key Facts Statements which comply with all aspects of this Good Practice. A standardized Key Facts Statement for each type of standard retail financial service would help consumers understand the key conditions of their contracts. For financial services, consumers need a short standardized description written in plain language that is comparable across products provided by different institutions. The format for key facts disclosure should allow consumers easily and quickly to identify the key terms and conditions of financial contracts. Requiring that all financial institutions prepare their offers for commonly-used retail financial services in a standardized format will further facilitate the ability of consumers to

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shop around and compare offers—and, thus, ultimately increase transparency and competition in the financial sector.
For example, for a standard consumer credit product, the Key Facts Statement could summarize in a page or two the following key information:

the Annual Percentage Rate (APR);
the effective interest rate;
the total amount of the credit;
the amounts of monthly payments;
the final maturity of the credit;
the total amount of payments to be made;
all mandatory fees—particularly application, prepayment and overdue penalty fees—and any other charges that could be incurred;
the creditor's right to unilaterally change the contractual terms and conditions;
any required deposits or advance payments;
if the interest rate is variable, the basis on which the calculation is made or the applicable reference rate and a published source (such as a newspaper) where the consumer can verify the base rate;
if any insurance (such as car insurance) is required to maintain the credit and, if so, the nature and extent of necessary coverage; and
the name of the department (with telephone number, fax number and email address) where inquiries, complaints and disputes can be submitted.

If the credit is being provided by a retailer to finance a consumer product, such as a television or washing machine, the consumer should also be advised of the cash price of the product without financing charges. Special attention should also be paid to credit card disclosures, where consumers need to be clearly informed of the financial impact on them of paying only the minimum amount due. For the credit reporting system, a brochure could explain to consumers the procedures for correcting inaccurate information in the credit registers.
Although Key Facts Statements obviously do not replace a contract for legal purposes, each credit institution should be obliged to ensure that it's Key Facts Statements include no incorrect or materially misleading information.
Key Facts Statements should also include information on risks and responsibilities such as legal obligations and sanctions the consumer may face in case of breach of contract. A similar warning should be included for guarantors when required.
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Good Practice B.9	***Advertising and Sales Materials*** **a. Banks should ensure that their advertising and sales materials and procedures do not mislead customers.** **b. All advertising and sales materials of banks should be easily readable and understandable by the general public.** **c. Banks should be legally responsible for all statements made in their advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements).**
Description	**Paragraph (a)** Banks are required to comply with the Law on Advertising[66] and the Government Decree[67] which elaborates on certain articles of this Law, as well as the requirements regarding advertisements found in the CP Law and marginally in other legislation. Thus, banks are legally responsible for all statements made in their advertising and sales materials (i.e. are subject to penalties under the law for making any false or misleading statement). Among other things, advertisements are prohibited if they: • state anything incorrectly or cause confusion about business competence, the ability to provide goods and services and/or the quantity, quality, prices, features, kinds, and methods of service of any goods or services; or • directly compare the prices, quality or efficiency of goods and services of one business organization to that of another's goods and services of the same kind.[68] Furthermore, all advertisers, including banks, must ensure that the quality of their products and services is consistent with their advertisements.[69] In addition, consumers are expressly entitled to receive truthful information about the quality, features and effects of goods and services and to request a bank, as advertiser, to pay compensation when any goods or services are inconsistent with the quality, quantity, features, effects, prices or any other contents as advertised by the bank.[70] The contents of any advertisement must be truthful, accurate and clear and not cause damage to any "advertisement receiver" (i.e. any consumer).[71] Also, in theory at least, it is prohibited for any business organization (i.e. any bank or other credit institution) to provide consumers with any inaccurate, misleading or inexact information or to hide information about: • any good or service provided by that business organization; • the reputation, goodwill, business capacity, capacity to supply goods, services and any other characteristic of that business organization; or • the nature or any characteristic of a transaction between a consumer and that business organization.[72] And finally, there is an obligation on third parties (such as media organizations through their advertising services) that provide consumers with information about products and services of any business organization to ensure that the information supplied is complete and accurate. The third party will be jointly liable with the business organization in question for any inaccurate information where that third party has failed to take adequate steps to ensure the accuracy of the information.[73] **Paragraph (b)** There is no requirement for all advertising and sales materials of banks to be easily readable and understandable by the general public. The Law on Advertising only requires that the content of advertisements be in Vietnamese with some exceptions, such as for media permitted to be published in Vietnam's ethnic languages.[74] Moreover, there are some specific requirements regarding readability of particular information prescribed for different types of advertisements. **Paragraph (c)**

	A credit institution that publishes an advertisement that either misleads or deceives a consumer about any of its products or services, its business ability or the contents and characteristics of any transaction with a consumer is subject to a modest fine of between 20 and 30 million VND (i.e. some $940 to $1,400) and, among other things, the requirement to make a public correction.[75] The making of false advertisements regarding goods or services that cause "serious consequences" can also carry significant penalties for the responsible individuals, being a fine of between ten million and one hundred million VND, non-custodial reform of up to three years or a prison term of between six months and three years.[76] And offenders may also be banned from working in or for a bank for one to five years.[77] In practice, however, apparently only very rarely, if ever, has an advertisement of any bank been the subject of official scrutiny and the application of any penalty[78]. This is notwithstanding the fact that, at least on occasion, banks produce advertising and sales materials that cannot possibly be easily read and understood by the general public. SBV, MoIT for VCA, and other ministerial-level agencies are required to cooperate with the Ministry of Culture, Sports and Tourism in managing advertising "within their scope of duties and authority".[79] However, formal cooperation arrangements have not been established.
Recommendation	The content of advertisements should be monitored either by the Ministry of Culture, Sports and Tourism or SBV. It should also be clear that banks bear responsibility for their agents' actions when advising or offering a product or service to consumers. In many countries, banks place large font advertisements claiming zero percent borrowing rates and hide the APR in small font fine print. In other cases, banks disclose key information in small print that moves quickly at the bottom of a television advertisement. Monitoring needs to occur in order to ensure that such advertising does not occur.

[66] Law no. 16 of 2012.
[67] Decree no. 181 of 2013.
[68] *Id.*, Article 8, Clauses 9 and 10.
[69] *Id.*, Article 12, Section 2, item b).
[70] *Id.*, Article 16, Sections 2 and 3.
[71] *Id.*, Article 19, Section 1.
[72] *See* CP Law, Article 10, Section 1.
[73] *Id.*, Article 13, Section 1.
[74] Article 18 of the Law on Advertising.
[75] *See* Sections 1 and 3 of Article 6 of Government Decree no. 19 of 2012 on Consumer Protection.
[76] *See* the Criminal Code, Article 168, Section 1 - The term "serious consequences" is not defined.
[77] *Id.*, Section 2.
[78] By Article 26, item 5 of Decree no. 181 of 2013, the Ministry of Culture, Sports and Tourism is responsible for carrying out inspections and imposing penalties for violations pertaining to advertising as prescribed by law.
[79] *See* Law no. 16 of 2012 on Advertising, Article 5, Clauses 2 and 3.

Good Practice B.10	***Third-Party Guarantees*** **A bank should not advertise either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless there is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee.** **In the event such an agreement exists, the advertisement should state:** **the extent of the guarantee;** **the name and contact details of the party providing the guarantee; and** **in the event the party providing the guarantee is in any way connected to the bank, the precise nature of that relationship.**
Description	There is nothing in any law or subsidiary legislation (including the Advertising Law, the CP Law, the CI Law and the Civil Code) that deals with advertisements of guarantees of a bank deposit or of guarantees of an interest rate payable on a bank deposit.
Recommendation	The law should require that no advertisement by a bank may be made that describes either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless: • there is a legally enforceable agreement between the bank and a third party who or which has provided the guarantee; and • the advertisement states: • the extent of the guarantee; • the name and address of the party providing the guarantee; and • in the event that that party is in any way connected to the bank, the precise nature of that connection.
Good Practice B.11.	***Professional Competence*** **a. In order to avoid any misrepresentation of fact to a consumer, any bank staff member who deals directly with consumers, or who prepares bank advertisements (or other materials of the bank for external distribution), or who markets any service or product of the bank should be familiar with the legislative, regulatory and code of conduct guidance requirements relevant to his or her work, as well as with the details of any product or service of the bank which he or she sells or promotes.** **b. Regulators and associations of banks should collaborate to establish and administer minimum competency requirements for any bank staff member who: (i) deals directly with consumers, (ii) prepares any Key Facts Statement or any advertisement for the bank, or (iii) markets the bank's services and products.**
Description	***Paragraph (a)*** Requirements exist in terms of the qualifications of administrators, managers and certain other senior positions in all credit institutions.[80] It is also obviously in the interests of banks and their customers to ensure their staff members are appropriately qualified, experienced and trained and the mission team is aware that some efforts are made in this regard. However there are no statutory requirements as to the minimum qualifications and experience for staff members and there are no mandated training requirements to ensure that staff members have up to date knowledge of relevant laws and of the specific financial products and services that are on offer. There can accordingly be no certainty that consistent standards are applied by all banks for any bank staff member who deals directly with consumers, prepares any documentation for consumers, drafts any advertisement for a bank or markets a bank's services and products (or indeed those of a third party where a bank acts as an intermediary). ***Paragraph (b)***

	There is no industry-wide training program for bank employees or minimum competency requirements for bank staff. Further, to the mission team's knowledge SBV and VBA have never collaborated in relation to these matters.
Recommendation	As a high priority in the short term, it is recommended that requirements be introduced for a training program for bank staff dealing with retail customers covering the rights and obligations of consumers in their dealings with commercial banks and the features of relevant products and services. Enrollment and a passing grade should be prerequisites for all staff and agents of commercial banks who: • deal directly with consumers and retail customers; • prepare any sales, marketing and/or advertising materials within or for any commercial bank; • prepare any standard account opening, standard loan or other standard agreement for retail customers within or for any commercial bank; • market any bank services and products; or • in the future, prepare any Key Facts Statement for any bank. Refresher courses should be required from time-to-time to ensure that all staff members in question receive training regarding changes in relevant laws, subsidiary legislation and the specific products and services on offer to retail customers of banks.

SECTION C	**CUSTOMER ACCOUNT HANDLING AND MAINTENANCE**
Good Practice C.1	***Statements*** **a. Unless a bank receives a customer's prior signed authorization to the contrary, the bank should issue, and provide the customer free of charge, a monthly statement of every account the bank operates for the customer.** **b. Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.** **c. Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.** **d. Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.** **e. A bank should notify a customer of long periods of inactivity of any account of the customer and provide a reasonable final notice in writing to the customer if the funds are to be treated as unclaimed money.** **f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.**

[80] *See* Article 50 of the CI Law.

Description	*Paragraph (a)* There is no statutory obligation on the part of a bank or other credit institution to issue and provide its retail customers free of charge, a monthly statement of every account the bank operates for the customer, unless the bank receives a customer's prior signed authorization to the contrary. Rather, a bank is simply required to notify account holders of transactions and the balances in their accounts at the latter's request.[81] *Paragraph (b)* There are neither requirements nor guidelines as to what any such statement is to provide, whether in terms of transactions concerning the account, the details of the interest rate(s) applied to the account or otherwise. *Paragraph (c)* In addition, although credit card statements may set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment, there is no provision in law or subsidiary legislation that requires this to happen. *Paragraph (d)* Furthermore, there is no provision in law or subsidiary legislation that requires a mortgage or other loan account statement to indicate (whether clearly or not) the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid. *Paragraph (e)* Also, there is no obligation on the part of a credit institution to notify a customer of any long period of inactivity of any account of the customer and to provide a reasonable final notice in writing to the customer if the funds are to be treated as unclaimed money. *Paragraph (f)* When a customer signs up for paperless statements, there is no statutory requirement that such statements be in an easy-to-read and readily understandable format. Notwithstanding the above, however, on the basis of a narrow sampling, it appears that bank statements in respect of transaction accounts: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement. In addition, it appears that credit card statements set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment. Furthermore, it appears that mortgage or other loan account statements indicate the amount paid during the period covered by the statement, and the total outstanding amount still owing, as well as the allocation of payment to principal and interest. Invariably, the practice in respect of all aspects concerning statements varies from bank to bank and according to their specific contracts with customers. Some banks provide monthly statements while others do not. Some charge fees for the privilege, while others do not. What is contained in such statements varies as well. In addition, there is no requirement for banks to track down the holders of inoperative accounts, just as there is no regulation providing for the forfeiture of funds to the State on the expiry of a specified number of years, provided proven attempts to notify the account holder have been made but have failed.

[81] Article 84, Section 1 of Government Decree no. 59 of 2009 on Commercial Banks.

Recommendation	The proposed new disclosure requirements should deal with all aspects of this Good Practice, with all banks being required to apply each aspect subject to possible exceptions for certain accounts (e.g. where there interest rates, fees and charges and repayments cannot be changed or where the debt has been written off). Statements from a bank should be regarded by the bank and customer alike as the most valid record and evidence of all of the customer's transactions. Thus, statements need to be self-explanatory and clear. They should allow the customer to comprehend the financial consequences of the "*number*" in the statement and take necessary action based on the statement. This is particularly important in the case of any statements that carry finance charges, penalty interest and state the serious consequences of default or of delay in payment. Also, when customers choose paperless statements, the access to the statements, their format and details should be a fair substitute for paper statements.
Good Practice C.2	***Notification of Changes in Interest Rates and Non-interest Charges*** **a. A customer of a bank should be notified in writing by the bank of any change in:** **(i) The interest rate to be paid or charged on any account of the customer as soon as possible; and** **(ii) A non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.** **b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.** **c. The bank should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the bank.**
Description	***Paragraph (a)*** There is no law or subsidiary legislation that requires a bank to notify its retail customers in writing of any change in the interest rate to be paid or charged on any account of the customer as soon as possible. Nor is there any law or subsidiary legislation that requires a bank to notify a retail customer of any change to a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change. What governs these events, are the standard form contractual provisions that are part of each bank's own general terms and conditions. These typically specify when and by what means any notice of any such change is to be brought to the attention of the retail customer. Inevitably, therefore, the practice differs from bank to bank. However, there is also a regulatory issue regarding this practice. Pursuant to Article 16(1)(c) of the CP Law a contract shall have no effect if it allows a subject acting for a business purpose to unilaterally change conditions agreed in advance with the consumer. The general prohibition is partially overridden by the CI Law, which provides that *"[a] credit institution shall have the right to make decisions exempting or reducing interest rates and fees for clients in accordance with its own internal rules"*[82] and that credit institutions shall have the right to fix interest rates for raising capital and fees for provided services.[83] These provisions are further detailed by Article 23 of the Regulations on Lending by Credit Institutions, which provides that credit institutions may decide on exemptions from, and reduction of, loan interest payable by a client when the client suffers losses in respect of the assets relating to the loan, resulting in financial difficulties. In such cases the rate of exemption from or reduction of, loan interest must be consistent with the financial capacity of the credit institution in accordance with relevant regulations. A possible interpretation of these provisions is that any unilateral change is possible only if it is in favor of the customer. That is, it is not possible to unilaterally increase interest rates or fees. However, such a conclusion would effectively ban variable interest

[82] Article 95(4) of the CI Law.
[83] Article 91(1) of the CI Law.

	rates as well as variable deposit rates, which does not correspond to the current practice as revealed during the mission (see paragraphs (b) and (c) below) and was probably not intended. ***Paragraph (b)*** It follows from the above, that there is no law or subsidiary legislation that grants the right to a retail customer of a credit institution to exit his or her contract without penalty if: (i) the revised terms are not acceptable to the customer; and (ii) such right is exercised by the customer within a reasonable period. Indeed, if a customer wants to exit a contract before its term expires, he or she is typically subject to a penalty in the range of 3 percent to 4 percent of the outstanding balance of the credit in question (even though this may, in practice, be waived in whole or in part if the bank is concerned about losing the customer as a result). ***Paragraph (c)*** Without any such right flowing to retail customers, there is nothing for a bank to inform its customers in these respects. While the CP Law provides that any clause of a standard form contract that has been entered into with a consumer and that purports to provide a business organization the right unilaterally to change the initially agreed commercial obligations is supposedly null and void,[84] this provision, in practice, has no relevance in respect of loan agreements that involve variable or floating rates of interest.
Recommendation	Consideration should be given to requiring advance notice of any unilateral change in a contract's terms and conditions. At a minimum, notice of changes in interest charges, repayments and fees and charges be given as follows: (i) notice of a change in interest rates should be given before the change takes effect, either personally or by newspaper notice (in the latter case, the notice should be also be given in the next statement of account); (ii) there should be at least 20 days advance, personalized notice of a change in the amount of a repayment (but if it is a reduction, it could be notified in the next statement of account); and (iii) 20 days advance, personalised notice of a change in the amount of a fee, or a new fee should also be given. A prohibition should also be introduced on charging a fee payable on early repayment of all or part of a consumer loan (pre-payment fee) to the extent the fee exceeds reasonable costs (such as administrative costs and, in the case of a fixed rate contract, a charge to reflect any loss to the credit institution due to an adverse movement in interest rates).
Good Practice C.3	***Customer Records*** **a. A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:** **(i) a copy of all documents required to identify the customer and provide the customer's profile;** **(ii) the customer's address, telephone number and all other customer contact details;** **(iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;** **(iv) details of all products and services provided by the bank to the customer;** **(v) all documents and applications of the bank completed, signed and submitted to the bank by the customer;** **(vi) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank; and** **(vii) any other relevant information concerning the customer.**

[84] *See* CP Law, Article 16, Section 1, Item c).

<table>
<tr><th></th><th>b. A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready access to all such records free of charge or for a reasonable fee.</th></tr>
<tr><td>Description</td><td>Paragraph (a)

See Banking Sector Good Practice B.1.

The Decree on Anti-Money Laundering[85] sets out what information a commercial bank must receive before opening a consumer deposit or savings account and what a commercial bank must maintain thereafter. The list of information and documents regarding every retail customer is as follows:

• the date, month and year of opening of his or her account or conducting the transaction;
• his or her full name, passport number, copy of identity card or another personal identity paper, address of residence; and
• his or her tax payment registration number.[86]

Missing from this list, however, are the following:

• the customer's telephone number and email address, if any;
• any information or document in connection with the customer that has been prepared in compliance with any statute or regulation;
• details of all products and services provided by the bank to the customer;
• all documents and applications of the bank completed, signed and submitted to the bank by the customer; and
• a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank.

Paragraph (b)

Every commercial bank is required to maintain all documents associated with their customers at least 5 years after the date of the closing of their accounts or the termination of transactions with them.[87]</td></tr>
<tr><td>Recommendation</td><td>In addition to the requirements of the Anti-Money Laundering Decree, all commercial banks should be required by subsidiary legislation, in the medium to long-term, to maintain an up-to-date file in respect of each customer containing the following:

• the customer's telephone number and email address, if any;
• any information or document in connection with the customer that has been prepared in compliance with any statute or regulation;
• details of all products and services provided by the bank to the customer;
• all documents and applications of the bank completed, signed and submitted to the bank by the customer; and
• a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the bank.

Also, the customer should be provided the right to ready access to all of his or her records maintained by a commercial bank either free of charge or for a modest set fee.

In the event the consumer seeks to borrow or has borrowed from a commercial bank, the same legislation could also usefully require the filing of:

• the employment certification and salary of the consumer or the amount of his or her income per year;</td></tr>
</table>

[85] Decree no. 74 of 2005.
[86] *Id.*, Article 8, Section 3.
[87] *Id.*, Article 9, Section 5.

	• the materials needed to confirm and evaluate the borrower's financial condition and his or her capacity to repay the loan according to the agreed conditions; • the decision regarding loan approval issued by the bank's authorized body, and containing the maturity date, interest rate and other conditions under which the loan has been approved; • documents showing the collateral or guarantee related to the loan; • a record of the changes and additions to the loan agreement, if any, after the loan approval; • documentation confirming and defining any required action; and • all correspondence and documents relating to communications between the bank and the borrower after approval of the loan agreement. And, finally, banks should be required to maintain any retail customer's loan file as long as the loan in question has not been repaid or liquidated in some other way and for a reasonable period afterwards (for example, in case a dispute arises).
Good Practice C.4	***Paper and Electronic Checks*** **a. The law and code of conduct should provide for clear rules on the issuance and clearing of paper checks that include, among other things, rules on:** **(i) checks drawn on an account that has insufficient funds;** **(ii) the consequences of issuing a check without sufficient funds;** **(iii) the duration within which funds of a cleared check should be credited into the customer's account;** **(iv) the procedures on countermanding or stopping payment on a check by a customer;** **(v) charges by a bank on the issuance and clearance of checks;** **(vi) liability of the parties in the case of check fraud; and** **(vii) error resolution.** **b. A customer should be told of the consequences of issuing a paper check without sufficient funds at the time the customer opens a checking account.** **c. A bank should provide the customer with clear, easily accessible and understandable information regarding electronic checks, as well the cost of using them.** **d. In respect of electronic or credit card checks, a bank should inform each customer in particular:** **(i) how the use of a credit card check differs from the use of a credit card;** **(ii) of the interest rate that applies and whether this differs from the rate charged for credit card purchases;** **(iii) when interest is charged and whether there is an interest free period, and if so, for how long;** **(iv) whether additional fees or charges apply and, if so, on what basis and to what extent; and** **(v) whether the protection afforded to the customer making a purchase using a credit card check differs from that afforded when using a credit card and, if so, the specific differences.** **e. Credit card checks should not be sent to a consumer without the consumer's prior written consent.** **f. There should be clear rules on procedures for dealing with authentication, error resolution and cases of fraud.**

<table>
<tr><td>Description</td><td>
Paragraph (a)
Law No. 49/2005/QH11 on Negotiable Instruments, Decision No. 30/2006/QD-NHNN promulgating the regulation on Supply and use of Checks and Decree No. 101/2012/ND-CP on Non-Cash Payments are the source of the rules on the issuance and clearing of (paper and electronic) checks that cover topics listed under this Good Practice.[88] Among others, this regulatory regime includes the following provisions:
i. In case of insufficient funds, the drawee should be liable to make a partial payment if so requested by the beneficiary up to the amount of available funds of the drawer (Article 71(5) of the Law), otherwise the drawee's consent to the overdraft is required to secure the necessary funds[89]. Further, the drawee must notify the drawer of insufficient funds, provide information necessary to identify the check concerned and inform the drawer of beneficiary rights under such circumstances; and the drawee must also concurrently notify the check presenter[90].
ii. The beneficiary may request the drawee to make a written certification of refusal to pay the whole sum, or pay part of the sum[91].
iii. A check presented in a timely manner should be paid on the day of presentation or on the next working day[92].
iv. A drawer has the right to require stop payment of a check drawn by the drawer by notifying the drawee in writing[93].
v. The Decision includes a limited set of rules regarding charges, specifically (in multiple articles) it provides that collection charges can be charged.
vi. The Law provides for rights and obligations of the parties concerned regarding lost checks. In case of loss, the beneficiary must immediately notify in writing the drawee, the drawer or the issuer by telephone and/or other means if so agreed by the parties (where the person who lost the check is not the beneficiary, such person should immediately notify the beneficiary). Upon receipt of such notice, the issuer and the drawee should not be allowed to pay the check. Where a lost check is misused before the drawee or the issuer receives notice of loss, the drawee or issuer should be relieved from their responsibility if they conducted properly the check inspection ('control') and otherwise complied with rules prescribed by the Law. However, the drawee and/or issuer should be obliged to compensate the beneficiary for damage and loss if the drawee or issuer paid the check after receipt of notice of loss[94].
vii. Pursuant to Article 79(1) of the Law "disputes in relation to negotiable instruments may be settled at a court or a commercial arbitration body."
Paragraph (b)
It is not a common practice for a bank to notify its retail customers when opening checking accounts of any consequences of issuing a paper check on an account with insufficient funds.
</td></tr>
</table>

[88] It is to be noted, however, that cash is the primary payment medium in Vietnam, particularly for low-value retail transactions. And, checks are rarely used except apparently as well for low-value retail transactions. In fact, as noted by SBV, the use of checks in Vietnam consitues less than 1 percent of the total non-cash payments.
[89] Article 13(1)(b) of the Decision.
[90] Article 17(4) of the Decision.
[91] Article 17(4) of the Decision.
[92] Article 71(1) of the Law.
[93] Article 73(1) of the Law.
[94] Article 13 of the Law.

	Paragraphs (c) to (e) There are no requirements of the kind described in the Good Practice specific to electronic checks. However, presumably the Law and Decision described above apply to electronic checks (Article 15 of the Decision). No rules have been explicitly adopted to apply to credit card checks as yet. This may be because such checks are not in widespread use in Vietnam. ***Paragraph (f)*** Upon receiving a check, the drawee is obliged to inspect the check to ensure, among other things, that it has been drawn in accordance with the Law and that it is valid. When detecting errors, the drawee is obliged to return the check to the presenter. When the drawee fails to comply with the obligation to inspect the check and such failure leads to abuse of the check or property loss, the drawee is liable for such loss.[95] If a check payment is refused because the check is drawn improperly due to the drawer's fault, the beneficiary may request the drawer to issue another check for replacement on the day of the request or the following working day[96].
Recommendation	Requirements relating to disclosures to consumers with regard to checks and electronic checks should be strengthened to reflect all the above requirements of this Good Practice. This is a long term recommendation given SBV's advice that the use of checks in Vietnam now is limited (less than 1 percent of the total non-cash payments). Further, consideration should be given to establishing a regulatory framework for credit card checks that would reflect the Good Practices listed above if such facilities become commonly used in Vietnam.
Good Practice C.5	***Credit Cards*** **a. There should be legal rules on the issuance of credit cards and related customer disclosure requirements.** **b. Banks, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment.** **c. Banks should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.** **d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.** **e. Among other things, the legal rules should also:** **(i) restrict or impose conditions on the issuance and marketing of credit cards to young adults (below age of 21) who have no independent means of income;** **(ii) require reasonable notice of changes in fees and interest rates increase;** **(iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;** **(iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits;** **(v) prohibit a practice called "double-cycle billing" by which card issuers charge interest over two billing cycles rather than one;** **(vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and**

[95] Article 17 of the Decision.
[96] Article 3(2) of the Decision.

	(vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit. **f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.** **g. Banks and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.**
Description	***Paragraph (a)*** Vietnam's legal requirements regarding the issuance and use of bank cards[97] need to be improved to comply with the essential matters of this Good Practice. Indeed, the current regulatory framework does not offer substantial protection to consumers regarding the issuance and use of credit cards, including any detailed customer disclosure requirements. ***Paragraph (b)*** Credit card issuers are not required to ensure that personalized disclosure requirements are made in all credit card offers, including the fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment. ***Paragraph (c)*** There is no prohibition on a bank imposing charges or fees on pre-approved credit cards that have not been accepted by the customer. However, Article 10(4) of the CI Law stipulates that credit institutions and branches of foreign banks are responsible to "*publicly announce the deposit rate, service fees, customer rights and obligations for each type of products and services being supplied".* Further, Article 20(1) of Decision No. 20/2007/QD-NHNN, promulgating the regulations on the Issuance, Payment, Use and Supply of Bank Cards provides that: "*the card issuers shall be obliged to notify the clients of full information on the fees payable by the pre-paid card owner before the card is issued"*. Accordingly, card issuers must disclose all fees before the credit card is used so that consumers may decide whether to use the card or not. ***Paragraph (d)*** Consumers are not required to be given personalized minimum payment warnings on each monthly statement and to be informed in writing of the total interest costs that will accrue if the cardholder makes only the requested minimum payment. Indeed, there is no requirement for a card issuer to provide a cardholder a monthly statement, although this may occur as a matter of practice.[98] ***Paragraph (e)*** There are no legal rules corresponding to the Good Practice such as: • restricting or imposing conditions on the issuance and marketing of credit cards to those younger than 21 who have no independent means of income;[99] or • limiting fees that can be imposed, such as those charged when consumers exceed their credit limits.[100]

[97] *See* the Regulation on the Issuance, Use and Payment of Bank Cards promulgated by Decision no. 20 of 2007 of the Governor of SBV.

[98] *See*, *id.*, Article 21, Clause 3 which "*entitles*" a cardholder to be provided information by his or her card-issuing organization regarding his or her card transactions, balances and limits related to the use of his/her card simply in accordance with whatever regulations in these respects the card-issuing organization may have adopted and whether on a "*regular or irregular basis*".

[99] *See*, *id.*, Article 11, Section 1, item a) which requires a cardholder to have full civil act capacity as prescribed by law. "*Civil act capacity*" means 18 years of age or older as per Articles 17, 18 and 19 of the Civil Code.

[100] Cardholders are required pay charges for the use of card services, with types and rates of charges being simply as prescribed by card-issuing organizations. *See*, *id.*, Article 6, Section 1. And, as a corollary, by Article 22, Section 2, it is the obligation of every

	Paragraph (f) Although there are rules on error resolution[101] and the reporting of unauthorized transactions and of stolen cards, in the latter respects the provisions are potentially particularly favorable to the card issuer. While a cardholder is required to report a loss of a card to the issuer of the card without delay, the card issuer has up to 10 working days to confirm a cardholder's report of the loss. And, until such confirmation is provided, the cardholder is wholly liable for any loss caused by the illegal use of his or her card.[102] In addition, there is no requirement that the possibility of ensuing liability for the customer be made clear to the customer prior to his or her acceptance of the card. ***Paragraph (g)*** Banks and other card issuers have never conducted consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.
Recommendation	Of high priority in the medium-term, legal requirements[103] should be introduced that deal comprehensively with all aspects of the issuance, use and payment of bank cards, including in respect of specific matters of required disclosure and all other issues of relevance for consumer protection. In particular, consideration should be given to introducing requirements which reflect the terms of this Good Practice.
Good Practice C.6	***Internet Banking and Mobile Phone Banking[104]*** **a. The provision of internet banking and mobile phone banking (m-banking) should be supported by a sound legal and regulatory framework.** **b. Regulators should ensure that banks or financial service providers providing internet and m-banking have in place a security program that ensures:** **(i) data privacy, confidentiality and data integrity;** **(ii) authentication, identification of counterparties and access control;** **(iii) non-repudiation of transactions;** **(iv) a business continuity plan; and** **(v) the provision of sufficient notice when services are not available.** **c. Banks should also implement an oversight program to monitor third-party control conditions and performance, especially when agents are used for carrying out m-banking.** **d. A customer should be informed by the bank whether fees or charges apply for internet or m-banking and, if so, on what basis and how much.** **e. There should be clear rules on the procedures for error resolution and fraud.** **f. Authorities should encourage banks and service providers to undertake measures to increase consumer awareness regarding internet and m-banking transactions.**

cardholder to pay to his or her card-issuing organization fully and on time all charges and interest arising from the use of the card as agreed upon in the card-issuer's standard form card use contract.

[101] *See*, *id.*, Article 20, Clause 1, item a) and Article 21, Clause 5, item a).

[102] *Id.*, Article 13, Sections 1 and 2.

[103] Article 35 of the Regulation on the Issuance, Use and Payment of Bank Cards, provides that SBV's Governor may, at any time, make amendments and supplements as deemed appropriate.

[104] "Internet banking" is defined as banking services that customers may access via the Internet. The access to the Internet could be through a computer, mobile phone ("mobile phone banking"), or any other suitable device. Payment services that are only initiated via the Internet using a mobile phone (e.g. by a mobile banking application using an app on a smart phone) are not considered to be mobile payments; instead they are categorized as internet payments. This interpretation is consistent with the view of the Committee on Payment and Settlement Systems (CPSS) of the Bank for International Settlements (BIS), which is the relevant standard setting body on payment and settlement systems. However, for practical reasons and due to the potential importance of mobile money in Vietnam, Good Practice C.6 is intended here as also covering mobile payments and, to some extent, e-money.

<table>
<tr><td>Description</td><td>The growth of internet and mobile phone banking in Vietnam in recent years has been remarkably robust from a very low base and is likely to expand exponentially. However, while the existing legal regime provides for electronic payments,[105] as well as for the modes of conducting banking e-transactions,[106] Vietnam still needs to build a legal regime that deals comprehensively with consumer protection matters of relevance in the provision of digital financial services.[107] These services are fundamentally different from conventional financial services due to:
• the high speed with which information is transmitted and transactions are completed;
• the limited records of accounts and transactions readily available to consumers;
• the provider of the service frequently not being regulated;
• the roles of agents;
• the involvement of numerous other entities;
• the rapidity of innovation; and
• the potentially large scale of these services and the risks related to them.

It needs to be noted, however, that after the mission SBV has adopted new rules relevant to the area of digital payments: Circular No. 39/2014/TTR-NHNN, on payment intermediary services and Circular No. 46/2014/TT-NHNN, on non-cash payment services.</td></tr>
<tr><td>Recommendation</td><td>It is recommended that relevant authorities continue enhancing the regulatory framework for digitally delivered financial products and services with input from SBV regarding internet and mobile phone banking that, among other things, requires: (i) providers to have and apply a comprehensive security program; (ii) banks to monitor third-party control conditions and performance; (iii) disclosure to consumers of all applicable fees and charges and their method of calculation; and (iv) procedures to be followed in the event of errors or fraud. Among other things, the regulatory framework should deal with:
• the protection of consumers' funds;
• how electronic contracts and disclosures can be made with legal effect;
• electronic storage of records and the systems for their retrieval;
• who is liable for fraud, system malfunctions, identity theft, third party hacking, misuse of PINs, unauthorized payments, mistaken payments, and lost and stolen mobile devices;
• the requirements for privacy and data protection;
• recourse mechanisms in the event of a consumer complaint;
• product suitability rules;
• responsible lending rules;
• the collection and verification of information on identity;
• the supervision and training of agents and the liability of product issuers for their agents;
• the application of DIV's deposit insurance program to e-money;
• the obligation to keep records regarding accounts and transactions;
• the security rules applicable to the systems used for digital finance; and
• the rules applicable to the licensing or registration of issuers of digital financial services.</td></tr>
</table>

[105] *See*, Decision 226/2002/QD-NHNN of SBV's Governor on the Issuance of the Regulation on Payment Activities through Payment Service Suppliers.

[106] *See,* SBV Law, Chapter III; CI Law, Chapter III; the Law on Electronic Transactions; Government Decree 101/2012/ND-CP dated Nov. 22, 2012 on Non-cash Payments; Government Decree 35/2007/ND-CP on Electronic Transactions in Banking; Circular 35/2012/TT-NHNN dated December 28, 2012, of SBV regulating fees of domestic debit cards; Circular 36/2012/TT-NHNN dated December 28, 2012, of SBV regulating the installment, management, operation and safety in the operation of ATMs; and Decision 20/2007/QD-NHNN dated May 15, 2007, issued by SBV's Governor stipulating regulations on issuance, payment, use and provision of supporting services for bank cards.

[107] This term covers the delivery of financial services using digital electronic means to access accounts with credit institutions and to permit the banked and unbanked access to e-payment and value storage services.

<table>
<tr><td></td><td>SBV should continue a project that has been set up in order to adopt improvements in consumer protection rules applicable to agent banking.[108] The project should benefit from both the experience with existing digital financial services (e-wallets) and multiple pilot projects recently set up to explore the area and further potential of mobile financial services (e.g. Viettel Mobile Plus Pilot, or LienViet Post Bank's mobile e-wallet).

See also the recommendations in relation to Good Practice C.7.</td></tr>
<tr><td>Good Practice C.7</td><td>Electronic Fund Transfers and Remittances

a. There should be clear rules on the rights, liabilities and responsibilities of the parties involved in any electronic fund transfer.
b. Banks should provide information to consumers on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include:

(i) the total price (e.g. fees for the sender and the receiver, foreign exchange rates and other costs);
(ii) the time it will take the funds to reach the receiver;
(iii) the locations of the access points for sender and receiver; and
(iv) the terms and conditions of electronic fund transfer services that apply to the customer.

c. To ensure transparency, it should be made clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose this information without imposing any requirements on the consumer.
d. A bank that sends or receives an electronic fund transfer or remittance should document all essential information regarding the transfer and make this available to the customer who sends or receives the transfer or remittance without charge and on demand.
e. There should be clear, publicly available and easily applicable procedures in cases of errors and frauds in respect of electronic fund transfers and remittances.
f. A customer should be informed of the terms and condition of the use of credit/debit cards outside the country including the foreign transaction fees and foreign exchange rates that may be applicable.</td></tr>
<tr><td>Description</td><td>Paragraph (a)

Although the Law on E-transactions[109] of 2005 establishes the beginnings of a regulatory framework for electronic business, its application and scope is very limited and mostly concerned with the issue of electronic signature. The Government Decree of two years later on Banking E-transactions[110] does, however, set forth responsibilities of all organizations providing or using banking e-transaction services,[111] as well as certain responsibilities of individuals using banking e-transactions.[112] There is, though, no explicit statement of the rights of the parties involved in any electronic fund transfer.

Paragraph (b)

Government Decree No. 101/2012/ND-CP, on non-cash payment requires credit institutions to disclose to customers information about prices and services for electronic money transfers, in particular:</td></tr>
</table>

[108] Responsible Finance in Vietnam, 32 (IFC, 2014).
[109] Law No. 51/2005/QH11.
[110] Decree No. 35/2007/ND-CP of March 8, 2007.
[111] *Id.*, Article 5.
[112] *Id.*, Article 5, Section 2.

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- Article 17(1) on the announcement of the payment fee schedule stipulates that: *"payment service providers and the appointed payment intermediary service providers must publicly list the service fee rates"*
- Article 22(2) on provision of transaction information to customers provides that: *"payment service providers and the payment intermediary service providers are obliged to provide transaction and payment account balance information to the account owners in accordance with applicable legislations"*

Paragraph (c)

Banks are, likewise, under no statutory obligation to inform the sender of an electronic fund transfer if the price or other aspects of the service vary according to different circumstances, let alone to disclose this information without imposing any requirements on the consumer.

Paragraph (d)

While a bank that sends or receives an electronic fund transfer or remittance is required to document all essential information regarding the transfer,[113] no bank is under any statutory obligation to make this information available to the customer who sends or receives the transfer or remittance, whether with or without charge and with or without prior notice.

Paragraph (e)

Although there are statutory provisions dealing with the settlement of disputes, complaints and denunciations and the handling of violations,[114] there is no requirement that the applicable procedures be publicly available and easily applicable.

Paragraph (f)

There is no statutory requirement for a consumer to be informed of the terms and conditions of the use of credit/debit cards outside Vietnam, including the foreign transaction fees and foreign exchange rates that may be applicable.
</td></tr>
<tr><td>**Recommendation**</td><td>

As a matter of high priority in the medium-term, it is recommended that the legislative framework for electronic fund transfers and remittances be expanded by means of a Government Decree that will:

- strengthen requirements for the disclosure of information to consumers regarding prices and features of services (and notification of their changes);
- set out the documentation required for such operations;
- require this documentation to be made available to the consumer;
- provide for publically available and easily applicable procedures in cases of errors and frauds; and
- indicate the terms and conditions for the use of Vietnamese credit and debit cards outside Vietnam.

See also the recommendations in relation to Good Practice C.6.
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[113] *Id.*, Articles 18 through 22 and 24.
[114] *Id.*, Chapter IV.

<table>
<tr><td>Good Practice C.8</td><td>Debt Recovery

a. A bank, agent of a bank and any third party should be prohibited from employing any abusive debt collection practice against any customer of the bank, including the use of any false statement, any unfair practice or the giving of false credit information to others.
b. The type of debt that can be collected on behalf of a bank, the person who can collect any such debt and the manner in which that debt can be collected should be indicated to the customer of the bank when the credit agreement giving rise to the debt is entered into between the bank and the customer.
c. A debt collector should not contact any third party about a bank customer's debt without informing that party of the debt collector's right to do so; and the type of information that the debt collector is seeking.
d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:

(i) notified of the sale or transfer within a reasonable number of days;
(ii) informed that the borrower remains obligated on the debt; and
(iii) provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.</td></tr>
<tr><td>Description</td><td>Paragraph (a)

In all dealings with citizens, the Vietnamese Constitution strictly prohibits the use of all forms of harassment, coercion, torture, and violation of their honor and dignity.[115] In addition, the specific requirements regarding the collection of debts are governed by Decree.[116] In any given case, a debt collection agency can act either for a credit institution or for an individual debtor, but not for both. Also, before doing so, the agency must be registered and its employees properly trained and carrying appropriate and readily visible agency identification.

Whether acting for a creditor or debtor, debt collection agencies are prohibited from:

• conducting, directly or indirectly, any activities that infringe upon life, health, dignity, honor, personal freedom, property rights and other civil rights of any creditor, debtor and any related organization and individual;
• using information obtained performing debt collection services for purposes other than those of activities they are mandated to conduct or disclose such information to other organizations and individuals to the disadvantage of any creditor or debtor, unless otherwise provided for by law; and
• conducting any activity or taking any action which is beyond their rights recognized by law or the scope of activities they are mandated by a creditor or debtor to conduct.[117]

There is, however, no explicit prohibition on the use of false statements by debt collectors or their giving of false credit information to others.

Paragraph (b)
On the signing of consumer loan agreements, it is rarely the practice of banks to inform their retail borrowers of the type of debt that can be collected on their behalf, the person(s) who can collect any such debt and the manner in which that debt can be collected.</td></tr>
</table>

[115] *See* Article 71, 3rd paragraph.
[116] *See* Government Decree 104 of 2007 on the Provision of Debt Collection Services.
[117] *Id.*, Article 11, Clause 2.

<table>
<tr><td></td><td>

Paragraph (c)

There is no provision in Vietnamese law or subsidiary legislation that prohibits a debt collector from contacting any third party about a bank customer's debt without informing that party of: (i) the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking.

Paragraph (d)

Finally, as a general rule, the Civil Code allows a business organization, as obligee, to transfer its rights to a third party, with the obligee simply being required to notify the obligor (such as an individual debtor) in writing of the transfer of these rights. Also, unless otherwise agreed or "*provided for by law*", any such transfer does not require the consent of the obligor.[118] It is, however, otherwise provided for by the CP Law, which declares that any clause of a contract (whether in general transaction conditions or otherwise) that is entered into with a consumer is null and void if it allows any business organization (including any credit institution) to transfer its rights and obligations to a third party without the prior agreement of the consumer.[119] Thus, no sale or transfer of a debt of a consumer can be made without that consumer's consent.

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<tr><td>Recommendation</td><td>

In the long-term, consideration should be given to amending the Decree on the Provision of Debt Collection Services so as to:

- provide an explicit prohibition on the use of false statements by debt collectors or their giving of false credit information to others;
- require all credit institutions, on the signing of consumer loan agreements, to inform their retail borrowers of the type of debt that can be collected, the person(s) who can collect any such debt and the manner in which that debt can be collected; and
- prohibit a debt collector from contacting any third party about a retail customer's debt to a credit institution without informing that third party of: (i) the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking.

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<tr><td>Good Practice C.9</td><td>

Foreclosure of mortgaged or charged property

a. **In the event that a bank exercises its right to foreclose on a property that serves as collateral for a loan, the bank should inform the consumer in writing in advance of the procedures involved, and the process to be employed by the bank to foreclose on the property it holds as collateral and the consequences thereof to the consumer.**
b. **At the same time, the bank should inform the consumer of the legal remedies and options available to him or her in respect of the foreclosure process.**
c. **If applicable, the bank should draw the consumer's attention to the fact that the bank has a legal right to recover the balance of the debt due in the event the proceeds from the sale of the foreclosed property are not sufficient to fully discharge the outstanding amount.**
d. **In the event the mortgage contract or charge agreement permits the bank to enforce the contract without court assistance, the bank should ensure that it employs professional and legal means to enforce the contract, including regarding the sale of the property.**

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[118] *See* the Civil Code, Article 309, Clauses 1 and 2.
[119] *See* CP Law, Article 16, Clause 1, item m).

Description	***Paragraph (a)*** If a bank exercises its right to foreclose on a property that serves as collateral for a loan, it is under no obligation to inform the borrower/consumer in advance of: (i) the procedures involved and the process the bank will be employing to foreclose on the property; and (ii) the consequences thereof to the borrower/consumer.[120] ***Paragraph (b)*** Likewise, there is no obligation on any bank to inform the consumer of the legal remedies and options available to him or her in respect of the foreclosure process. ***Paragraph (c)*** If, however, the proceeds from the sale of the foreclosed property prove to be insufficient fully to discharge the outstanding amount, the bank will likely draw the consumer's attention to the fact that the bank has a legal right to recover the balance of the debt due, even though there is no legal obligation to do so. ***Paragraph (d)*** Although there is no prohibition on a mortgage or charge agreement permitting a bank as creditor to enforce the agreement without first obtaining a court order, in practice a court order will be needed whenever, as apparently proves to be common, the mortgagor must be ordered to give up possession. While a bank that is able to foreclose by agreement without proceeding to court must, of course, employ legal means to do so and the hiring of professionals will undoubtedly be a wise idea, no bank is under any legal obligation to employ professional assistance in these respects, including for the purpose of selling the property.
Recommendation	Consideration should be given by SBV to requiring every bank to honor the requirements of paragraphs a., b., and d. of this Good Practice.
Good Practice C.10	***Bankruptcy of Individuals*** **a. A bank should inform its individual customers in a timely manner and in writing on what basis the bank will seek to render a customer bankrupt, the steps it will take in this respect and the consequences of any individual's bankruptcy.** **b. Every individual customer should be given adequate notice and information by his or her bank to enable the customer to avoid bankruptcy.** **c. Either directly or through its association of banks, every bank should make counseling services available to customers who are bankrupt or likely to become bankrupt.** **d. The law should enable an individual to:** **(i) declare his or her intention to present a debtor's petition for a declaration of bankruptcy;** **(ii) propose a debt agreement;** **(iii) propose a personal bankruptcy agreement; or** **(iv) enter into voluntary bankruptcy.** **e. Any institution acting as the bankruptcy office or trustee responsible for the administration and regulation of the personal bankruptcy system should provide adequate information to consumers on their options to deal with their own unmanageable debt.**

[120] Secured transactions are governed by the Civil Code, Government Decree no. 163 of 2006 on security transactions, as amended by Decree no. 83 and Decree no. 11 of 2012, and Circular no. 05 of 2011 of the Ministry of Justice regarding registering and providing information about secured transactions and contracts, and enforcing foreclosure judgments.

Description	Vietnam has no laws or subsidiary legislation that deal with the bankruptcy of individuals. Thus, the elements of this Good Practice are incapable of assessment. In addition, banks do not provide counseling services as a matter of course to customers who are either unable to pay their debts as they become due or are likely to find themselves in this situation. Furthermore, there is no statutory right provided to borrowers to propose debt agreements with their banks.
Recommendation	In the long-term, Government should give consideration to formulating and enacting a law on personal bankruptcy which, among other things, complies with the provisions indicated above. As part of this law, borrowers should have the statutory right to propose debt agreements with their banks. Subject to certain criteria, including: (i) the inability to pay debts as and when they fall due; (ii) regular employment; and (iii) unsecured debts and equity in assets below a specified statutory minimum. The benefit of a debt agreement to an insolvent consumer would potentially include: • making affordable regular payments over a fixed period and having these payments tailored to the consumer's budget; • having unpaid debt legally written off (including interest); and • making arrangements binding on all creditors of the consumer.
SECTION D	**PRIVACY AND DATA PROTECTION**
Good Practice D.1	***Confidentiality and Security of Customers' Information*** **a. The banking transactions of any bank customer should be kept confidential by his or her bank.** **b. The law should require a bank to ensure that it protects the confidentiality and security of the personal data of its customers against any anticipated threats or hazards to the security or integrity of such information, as well as against unauthorized access.**
Description	***Paragraph (a)*** The CI Law requires credit institutions and foreign bank branches to ensure the confidentiality of all information relating to their customers' accounts, deposits, deposited properties and transactions at the institutions or branches in question.[121] ***Paragraph (b)*** Vietnam has no consolidated data protection law. Rather, in addition to the provision in the CI Law referred to in the previous paragraph above, the CP Law, the Civil Code, the E-Transactions Law, the Law on Information Technology and the Criminal Code[122], as well as certain subsidiary legislation,[123] all have provisions dealing explicitly with - or having relevance to - privacy and data protection. By the terms of the CP Law, unless "*authorized agencies*" demand otherwise, a consumer's information is protected (i.e. must be maintained in confidence) when he or she enters into a transaction to purchase goods or receive services.[124] In case, however, that information on a consumer must be collected, used and handed over by a business organization (including any credit institution) that organization must: • disclose to the consumer the purpose of collecting and using his or her personal information before doing so;

[121] CI Law, Article 14, Section 2.
[122] *See* Article 226 of the Criminal Code regarding the crime of illegally using information in computer networks and computers.
[123] *See*, e.g. SBV Decision 1087 of 2007 on State Secrets in Banking, SBV Circular no. 1 of 2011 on Ensuring Safety and Keeping Secrets within Information Technology Systems in Banking Operations; and SBV Circular no. 29 of 2011 on the Safety and Confidentiality in the Provision of Banking Services over the Internet.
[124] CP Law, Article 6, Section 1.

	• use the received information for the purpose disclosed to the consumer; • ensure the safety, integrity and preciseness of the consumer's personal information during the process of collecting, using and storing it as well as the process of handing it over; • take measures to update and adjust the received information if the consumer discovers that any of it is incorrect; and • unless otherwise provided by law, transfer the received information to any third party only after obtaining the consent of the concerned consumer.[125] According to the Civil Code, an individual has a right to so-called "*personal secrets*" which must be respected and protected by law.[126] The basic premise is that the collection and publication of information and materials regarding the private life of an individual requires that individual's consent.[127] In addition, the "*safety*" and confidentiality of the letters, telephone conversations and telegrams of an individual are guaranteed, as are all forms of an individual's electronic information.[128] By the Law on e-Transactions, individuals have the right to select security measures in accordance with the provisions of the law when conducting e-transactions.[129] Unless otherwise provided for by law and the consent of the individual has been granted, Government agencies, business organizations and individuals must not use, provide or disclose information on the private and personal affairs of that individual or information regarding that individual from any other government agency, business organization and/or individual which is accessible by them or under their control in e-transactions. In addition, the Law on Information Technology provides important rules regarding the collection, processing and use of personal information in the so-called "*network environment*"[130] and the storage and supply of personal information in this environment,[131] as well as provisions regarding the safety and confidentiality of information.[132]
Recommendation	An agency with a leading role in protection of consumers' data and privacy should be identified. Regarding financial institutions, it might be considered to entrust SBV with these powers. In the long-term, the Government might consider enacting a Personal Data Protection Law that consolidates the existing disparate provisions referred to above and requires all financial entities, including banks, to protect the confidentiality and security of all personal data in respect of their customers, including all data regarding them that are stored electronically. Protection should be against unauthorized access and any anticipated threats or hazards to the security or integrity of such information. This law could also apply generally to all personal information.

[125] *Id.*, Section 2.
[126] *See* the Civil Code, Article 38, Section 1.
[127] *Id.*, Section 2.
[128] *Id.*, Section 3. The inspection of an individual's letters, telephone calls, telegrams and/or other forms of electronic information is only permissible when provided for by law and required by a competent state agency.
[129] *See* the Law on e-Transactions, Article 46.
[130] *See* Law on Information Technology, Articles 21. By Article 4, items 3 and 4, "network environment" means the environment in which information is provided, transmitted, collected, processed and exchanged via a system of equipment serving the production, transmission, collection, processing, storage and exchange of digital information, including telecommunications networks, the internet, computer networks and databases.
[131] *Id.*, Article 22.
[132] *Id.*, Article 72.

Good Practice D.2	***Sharing Customer's Information*** **a. A bank should inform its customer in writing:** **(i) of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and** **(ii) as to how it will use and share the customer's personal information.** **b. Without the customer's prior written consent, a bank should not sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing.** **c. The law should allow a customer of a bank to stop or —opt out of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, every bank should be required to inform each of its customers in writing of his or her rights in this respect.** **d. The law should prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.**
Description	***Paragraph (a)*** A bank is under no statutory obligation to inform its customer in writing: • of any third-party dealing for which the bank is obliged to share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and • as to how it will use and share the customer's personal information. ***Paragraph (b)*** The general rule is that information can only be used in conformity with the purpose informed to consumers and with the consent by these same consumers.[133] Thus, although there is no specific focus on the provision of information for telemarketing or direct mail marketing, information, without its customer's prior consent (whether in writing or not), a bank cannot sell or share account or personal information regarding that customer to or with any party not affiliated with the bank for either of these purposes. ***Paragraph (c)*** There is no statutory provision that allows a customer of a bank to stop or opt out of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information for the first time, the requirement that a bank inform each of its customers in writing of his or her rights in this respect. ***Paragraph (d)*** The law does not specifically prohibit the disclosure by a third party of any banking-specific information regarding a customer of a bank.
Recommendation	In the longer term, provisions should be introduced that deal specifically with each aspect of this Good Practice.

[133] *See* CP Law, Article 6, Section 2, Items a) and b).

Good Practice D.3	***Permitted Disclosures*** **The law should provide for:** **(i) the specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;** **(ii) rules on what the government authority may and may not do with any such records;** **(iii) the exceptions, if any, that apply to these rules and procedures; and** **(iv) the penalties for the bank and any government authority for any breach of these rules and procedures.**
Description	***Sub-paragraph (i)*** There is a general obligation on the part of a private sector business organization to maintain the confidentiality and security of all information it collects or receives regarding a retail customer in respect of any transaction between the organization and the customer. And the same general rule applies to a business organization when information is received or collected by it regarding any of its retail customers before, at or subsequent to the customer's use of any goods or services provided by the organization. In addition, there is also a broad exemption to these two general requirements for state agencies.[134] And the same general rule also applies specifically to all credit institutions and branches of foreign banks. All such entities are prohibited from providing information concerning deposits, deposited properties and transactions of any of their retail customers to any other organization and/or individual, except when requested to do so by a competent state authority in accordance with the law or in the event that the customer has given consent to do so.[135] Furthermore, along the same lines, a bank may refuse a request by an organization or individual for supply of information related to deposits and property of its clients and its operations unless such request is made by a competent state agency under law or agreed by its clients.[136] Two statutorily recognized exceptions are: (a) the right that is given to any credit institution to exchange information on its clients with any other credit institution; and (b) the requirement for a bank to report and supply information to SBV on its organization and business activities at the latter's request and may be supplied by SBV with information related to banking operations of its clients. [137] ***Sub-paragraph (ii)*** No law or subsidiary legislation, however, sets out any specific rules and procedures concerning the release to any government authority of the records of any customer of a bank. Therefore, no law or subsidiary legislation provides rules on what any government authority may and may not do with any such records. ***Sub-paragraph (iii)*** In addition, it of course also follows that no statutory exceptions can be given that are to apply to these rules and procedures. ***Sub-paragraph (iv)*** No penalties can be provided for a bank and for any government authority for any breach of these rules and procedures.
Recommendation	In the longer term, provisions should be introduced that deal specifically with each aspect of this Good Practice.

[134] CP Law, Section 6, Section 1.
[135] CI Law, Article 14, Section 3.
[136] *See* Government Decree no.59 of 2009 on Commercial Banks, Article 85, Section 2.
[137] *Id.*, Article 84, Sections 2 and 3.

Good Practice D.4	***Credit Reporting***
	a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority. **b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.** **c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.** **d. In facilitating cross-border transfer of credit data, the credit reporting system should provide appropriate levels of protection.** **e. Proportionate and supportive consumer rights should include the right of the consumer** **(i) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;** **(ii) to access his or her credit report free of charge (at least once a year), subject to proper identification;** **(iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;** **(iv) to be informed about all inquiries within a period of time, such as six months;** **(v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;** **(vi) to reasonable retention periods of credit history, for instance two years for positive information and 5-7 years for negative information; and** **(vii) to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.** **f. The credit registries, regulators and associations of banks should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.**
Description	***Paragraphs (a) to (c)*** Vietnam has already adopted some of the relevant international good practices, yet, from a consumer rights perspective, the legal and regulatory framework for credit reporting needs to be strengthened. While Vietnam has a legal and regulatory framework for private credit reporting set by Decree No. 10/2010/ND-CP on Credit Information Operations, National Credit Information Center of Vietnam (NCIC), the public registry, remains the dominant source of credit information in the economy and is not bound by these same legal and regulatory guidelines as it is subject to provisions of Circular No. 3/2013/TT-NHNN providing on credit information activity of the State Bank of Vietnam. There seems to be only a limited off-site supervision of a private credit bureau (PCB) and there is no clear mechanism in place for supervising the public credit registry. There is also potentially a conflict of interest issue, as the Circular No. 16/2010/TT-NHNN which guides the operation of private credit registries gives the NCIC a role in relation to oversight and supervisory supervision. For instance, NCIC chekcs the completeness and validity of other information provided by applicants for the credit bureau certificate (see Article 7(2)(a)(ii) of Circular No. 16/2010/TT-NHNN as amended). Further, during inspection of operations BISA may request NCIC to appoint their officers to join the inspection team (see Article 16(2) of Circular No. 16/2010/TT-NHNN as amended).[138].

[138] Article 16(2) of Circular No. 16/2010/TT-NHNN as amended.

More generally, it is to be noted that there is limited competition in the credit reporting sector due to the very strong position of NCIC and the potential conflict of interest noted above. NCIC is operating in some ways more like a private credit bureau. NCIC is self-sustaining financially, with fees collected from financial institutions for credit data more than covering expenses.[139] Further, the mission team were advised that the NCIC has plans to expend their business to cover the development of consumer credit scoring and collection of data from non-financial firms and utilities. These are roles that more commonly the domain of private credit bureaus.[140] Thus, a space for establishment of private credit bureaus and their mutual competition is highly limited.

A lack of competition in the credit reporting industry is also a consumer protection issue because it increases the power of the sole or dominant firm, which is likely to result in higher prices for consumer services, reduced incentives for data quality (as there is no alternative) and reduced incentives to innovate.

Paragraph (d)

There are no specific provisions ensuring consumer protection in cases of cross-border sharing of data.

Paragraph (e)

Although consumers have the right of consent to information sharing, (Article 11 of Decree No. 10-2010-ND-CP) the law does not specify common language to be used in credit applications or other aspects of how consent clauses are to be presented and discussed with consumers. As a result, a concern is that consent to information sharing may be placed at any point in a contract and consumers may lack understanding, and even awareness, of the consent they are providing.

Article 16 of the Decree also provides for one free credit report each year for consumers upon demand. It is not clear, however, to what extent consumers are availing them of this opportunity.

There is no obligation on the part of financial providers to disclose to consumers that data in their credit report was used to take a negative decision such as denial of credit. Adverse action notification is important because it provides consumers with the knowledge that their credit report exists (which not all people know, especially in a market where consumer credit and credit reporting are relatively new), that their credit history affects their financial opportunities and that they have negative information in their credit report which is affecting their ability to secure credit or other commercial activities. This information disclosure at the time of a negative decision is timely and creates a "teachable moment" for consumers who are especially interested in understanding their credit report and resolving any problems with the data, whether this means correcting erroneous data or paying outstanding obligations.

The legal and regulatory framework does not provide any guidance or rules relating to the inclusion of inquiries to the data as part of the credit report. This is important information for lenders, who can see the application history of clients, as well as for borrowers who can identify instances of improper access to the data (where consent was not provided and no lending operation was involved).

Article 19 of the Decree provides specific guidance for complaints handling including acceptable timeframes for a first response from the credit reporting firm (5 business days after the complaint is received). If this first response requires going to the financial institution that reported the data, the response must be

[139] In 2013, revenues were approximately double expenses, creating a surplus which NCIC plans to use for various expansion projects including the development of consumer credit scoring, collection of data from non-financial firms and utilities and modernization of the technology used.

[140] In the vast majority of countries, the public credit registry only collects data from regulated financial institutions, in keeping with the remit of the financial regulator (who usually has responsibility for the PCR) to oversee the financial system. According to the World Bank's Doing Business global data on credit reporting (2013), only 3 of the 88 countries which operate a public credit registry collect alternative data from other sources such as utilities and retailers: Belgium, The Republic of Korea and Mauritius. It is also worth noting that two of these countries – Belgium and Mauritius – do not have a private credit bureau.

	provided to the consumer within another 10 business days. If no solution to the contested information is possible, a conciliation process is also described in the Decree. Similar provisions are to be found in Article 17 of the Circular No. 3/2013/TT-NHNN. Further, since the mission SBV issued Decision No. 37/QD-TTTD regarding the operations of NCIC and Decision No. 265/QD-TTTD promulgating regulations on dispute resolution, particularly appeals and resolution of appeals with regard to disputed credit information registered by NCIC. However, there are only a few complaints being made to either the public or private credit information providers (see below). The legal and regulatory framework is silent on the ability of consumers to flag or include a comment on disputed data, and the ability of consumers to determine the extent to which their personal information is shared with third parties. The Decree provides broad guidance on the types of consumer data which can be collected and stored, indicating that the data should focus on identification and credit behavior (payment behavior). However, Article 11(dd) of the Decree allows for "other information" as long as it does not breach the rights of borrowers, but with no specific guidance on this point. This ambiguity, together with a lack of effective oversight and supervision (discussed below) create a potential area for abuse. Retention of data follows international good practices, and is set on a five year window in Article 12 of the Decree. The Decree provides for transfer of credit histories (data) in the context of a failure / closure of a private credit bureau. This is important to safeguard the historical record and "reputation collateral" that consumers develop through a credit reporting system. Private credit reporting firms are also to follow specific rules and technical precautions to protect the data they collect and store. ***Paragraph (f)*** There is currently limited outreach to consumers on credit reporting activities, which are effectively all still handled by the NCIC. One indication of the lack of outreach is the limited number of complaints sent to the NCIC in spite of the fact that they are providing credit data on millions of Vietnamese consumers.[141] The PCB has engaged in some outreach via the internet and newspapers, however, these efforts are relatively limited in terms of media penetration and impact on the national population in Vietnam. Discussions in Vietnam with key stakeholders suggest that only relatively more sophisticated financial consumers are aware of the credit reporting system in the country. People who are borrowing from private or international banks are more likely to be aware, but lower income consumers are not thought to be familiar with the credit reporting system.
Recommendation	There is a need to strengthen the existing legal and regulatory framework for public and private credit information sharing including, especially, regarding in the area of adverse action notification, the sharing of data with third parties, general consent laws and the creation of an effective (and well understood) mechanism for complaints and dispute resolution. On the latter point, it is noted that, since the CPFL Diagnostic Review mission, a Customer Support Department has been established which may be able to fulfill this role. An overall regulatory and supervisory arrangement for public and private sector credit reporting should avoid any conflict of interest and promote competition between credit information providers. To make the credit reporting system more effective in Vietnam, by encouraging consumer awareness of their rights and responsibilities, a public outreach

[141] In 2014, NCIC processed written 24 complaints from both credit institutions and borrowers requesting a review of registered information, although they received over 1000 queries and requests for information review through various means of communication such as telephone calls or emails.

	campaign should be developed. The appropriate media tools for this activity would need to be assessed. Given the high level of cell phone penetration, mobile technologies (apps, SMS) should be explored. Internet based approaches are also likely to be useful, but may reach a more affluent or educated demographic than some mobile-based technologies due to more limited access to computers or 3G/4G (internet enabled) mobiles. Print materials should be carefully evaluated as this may be a relatively high cost approach which does not provide a return on investment commensurate with the expense, or value compared to other technology-based approaches. While not specifically a consumer protection issue, it is also worth raising concerns with several key components of the Decree and Circular for private credit reporting which are limiting competition and having an adverse impact on development of this activity in Vietnam. In order to initiate a credit reporting firm, at least 20 supervised financial institutions must sign on as members. Further, these institutions may only be members of one private credit information firm. These rules are effectively creating a monopoly in the private sector and have even made it difficult for the first firm (PCB) to reach critical mass so that they can begin operations. There is no clear rationale for this restriction, which is highly anti-competitive. In many cases competition is in fact a consumer protection issue, in that having an alternative provider allows consumers to choose firms with better quality services. In this case the financial providers are typically the direct "consumers" of credit reports, but even so, the lack of alternative private bureaus is likely to increase costs and decrease quality over the long run which is detrimental to both the financial institutions and to their customers.
SECTION E	**DISPUTE RESOLUTION MECHANISMS**
Good Practice E.1	***Internal Complaints Procedure*** **a. Every bank should have in place a written complaints procedure and a designated contact point for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank's Terms and Conditions referred to in B.7 above and an indication in the same Terms and Conditions of how a consumer can easily obtain the complete statement of the procedure.** **b. Within a short period of time following the date a bank receives a complaint, it should:** **(i) acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and** **(ii) provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank.** **c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at reasonable intervals of time.** **d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant.** **e. When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank should not require, however, that a complaint be in writing.** **f. A bank should maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.**

	g. The record should contain the details of the complainant, the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis. **h. The bank should make these records available for review by the banking supervisor or regulator when requested.**
Description	Consumers have a statutory right to complain to or about - and give comments to - the business organizations they deal with (including credit institutions) concerning the price, quality of goods and services, manner of being served, method of transaction and any other detail relating to any of their transactions with those business organizations.[142] ***Paragraph (a)*** There is, however, no statutory requirement for banks to have in place a written complaints procedure as contemplated by this Good Practice. Nevertheless, all banks interviewed do have their own complaints procedures and either have a 24 hour hot-line line call center or are in the process of the establishing one to be the initial contact point. ***Paragraph (b)*** There is no statutory requirement for banks, within a short period of time following their receipt of a complaint: • to acknowledge in writing to the customer/complainant its receipt of his or her complaint; and • to provide the complainant with the name of one or more individuals appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank. ***Paragraph (c)*** In addition, there is no statutory requirement for a bank to provide a complainant with a regular written update on the progress of its investigation of the complaint at any intervals of time. ***Paragraph (d)*** Even though a bank invariably informs its customer/complainant of the results of its investigation soon after it has been completed, there is again no statutory requirement for it: (i) to do so within a few business days of its completion; (ii) to inform the customer/complainant in writing of the outcome; and, where applicable, (iii) to explain the terms of any offer or settlement being made to the customer/complainant. ***Paragraph (e)*** When a bank receives a verbal complaint, there is also no statutory requirement for it to offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint. Also, the law is silent on whether a complaint must be in writing. ***Paragraphs (f) and (g)*** Furthermore, there is no statutory requirement for a bank to maintain an up-to-date record of all complaints it has received and the action it has taken in dealing with them.

[142] *See* CP Law, Article 8, Section 4.

	Paragraph (h) And finally, there is also no statutory requirement for a bank to make all such records available for review by SBV on a regular basis or otherwise. It follows from the above that banks inevitably employ their own procedures and practices in dealing with consumer complaints, with some invariably treating customers more expeditiously and fairly than others as a result.
Recommendation	Of high priority in the short-term, the Government should require all credit institutions: • to have and to publicize a common, consistent process for their handling of any compliant of a retail customer; • to have a unit (or, in the case of smaller institutions, a designated officer) in charge of receiving and handling all such complaints; • to disclose the name, telephone number and street and email address of this unit; • to provide in all agreements between a credit institution and any of its retail customers a synopsis of the procedures to be followed by the credit institution and its retail customers with a view to resolving any dispute; • to publicize for all actual and potential retail customers the procedures to be followed in dealing with any complaint of a retail customer; and • to deliver regularly to SBV all data compiled consistently across all credit institutions regarding all complaints.
Good Practice E.2	***Formal Dispute Settlement Mechanisms*** **a. A system should be in place that allows customers of a bank to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of one or more of customers is not resolved in accordance with the procedures outlined in E.1 above.** **b. The existence of the banking ombudsman or equivalent institution and basic information relating to the process and procedures should be made known in every bank's Terms and Conditions referred to in B.7 above.** **c. Upon the request of any customer of a bank, the bank should make available to the customer the details of the banking ombudsman or equivalent institution, and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions.** **d. The banking ombudsman or equivalent institution should be appropriately resourced and discharge its function impartially.** **e. The decision of the banking ombudsman or equivalent institution should be binding upon the bank against which the complaint has been lodged.**
Description	***Paragraphs (a) to (e)*** Every citizen has the right to file complaints and denunciations with the competent State authorities against the illegal doings of any so-called "economic body" (including any credit institution).[143] And, all acts that damage the rights and lawful interests of individual citizens are required to be dealt with severely and equitably by the law.[144] Individuals have also rights to protect their rights by the means set in Article 25 of the Civil Code (e.g. "*[r]equest the infringer or competent agencies or organizations to order the infringer to pay compensation for damage*"[145]). Furthermore, consumers have the right to complain about, denounce or file a lawsuit against any business organization in accordance with the CP Law and all other relevant laws.[146] They are also empowered to seek enforcement of all laws

[143] *See* The Constitution, Article 74.
[144] *Id.*, Article 28, paragraph 1.
[145] Civil Code, Article 25, Section 3.
[146] CP Law, Article 8, Section 6.

	dealing with the protection of consumers[147] as well as propose a social organization to take a lawsuit in order to protect their rights.[148] Chapter 4 of the CP Law establishes a framework for settlement of disputes between consumers and organizations or individuals trading goods and/or services. Consumers may choose primarily one of the following options to have their dispute resolved: • negotiation; • reconciliation; • arbitration; or • lawsuit. The CP Law includes general rules for each of the abovementioned methods for dispute resolution. Negotiation and mediation is not permitted when a dispute may cause damage to the interests of the state, the interests of many consumers or the public interest.[149] Negotiation must not last longer than seven working days after receipt of the request sent by a consumer.[150] If successful, the result of a negotiation shall be made in writing if not agreed otherwise by the parties.[151] Mediation is required to be conducted by a third party in a way that ensures objectivity, honesty and confidentiality of the process.[152] Mediation proceedings must be recorded. When the agreed solution is not implemented within the specified timeframe, the other party has right to file a lawsuit at court to enforce the settlement. Under specific circumstances prescribed by the Law, a specialized mediation organization may be established.[153] In case of arbitration[154] (and also civil cases), which is governed by the Law on Commercial Arbitration, consumers are not required to prove the fault of the service provider, while the provider must prove that he/she did not cause the damage/loss.[155] Where an arbitration clause forms part of a business's standard form contract with a consumer, the CP Law entitles the consumer to choose whatever other method of dispute resolution he or she would prefer.[156] Pursuant to Article 41 of the CP Law, civil cases regarding consumer disputes are being decided in a simplified procedure and consumers are not required to pay court charges in advance.[157] Further, consumers have the right to file a complaint with the MoIT[158], People's Committee[159] or file a lawsuit. Nevertheless, there is no evidence that consumers actually complain about financial services. The mission team was repeatedly told by different stakeholders that complaints are not an issue for the industry. Although this may well indicate that products and services meet high standards of quality keeping a vast majority of consumers satisfied, it is reasonable to assume that the low number of "recorded" complaints may be attributed to a lack of consumer awareness or other challenges consumers face when filing a complaint. SBV also has the power to inspect and examine complaints and denunciations and handle violations of law in the monetary and banking sector according to its competence.[160] Handling of denunciations and complaints is regulated by the Law on Complaints and the Law on Denunciations and related Decrees and Circulars,

[147] *Id.*, Section 5.
[148] Article 8(7) of the CP Law.
[149] Article 30(2) of the CP Law.
[150] Article 31(2) of the CP Law.
[151] Article 32 of the CP Law.
[152] Article 33 and Article 34 of the CP Law.
[153] Article 35 of the CP Law.
[154] Article 40 of the CP Law.
[155] Article 42(1) and (2) of the CP Law.
[156] CP Law, Article 38.
[157] Article 43(2) of the CP Law.
[158] Article 48(5) of the CP Law.
[159] Article 49(4) of the CP Law.
[160] Article 22 of the Decree No. 96/2008/ND-CP Defining the Functions, Tasks, Powers and Organizational Structure of the State Bank of Vietnam.

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which establish a regulatory framework for a formal procedure to handle and solve complaints and denunciations regarding acts of state agencies and their staff but do not apply directly to complaints of consumers against providers of financial services. Relevant CIs are required to report complaints to SBV on a quarterly basis and the mission team was told they receive notice of around 1,000 complaints per quarter. SBV also receives denunciations and suggestions from consumers, which it refers to the relevant financial institution for resolution. However SBV does not have power to make binding decisions on consumer complaints.

Beside the abovementioned options, consumers may also complain to a consumer association - VINASTAS - that offers mediation. Nevertheless, a low number of complaints regarding financial services that are sent to VINASTAS (circa 50 a year) indicates that consumers are not aware of this option. Moreover, VINASTAS does not have any formal power to bring the parties to the negotiating table, or make a binding decision.

There is no system in place that allows customers of a bank or other credit institution to seek affordable and efficient recourse to a third-party banking ombudsman or equivalent institution, in the event the complaint of one or more of customers is not resolved internally.
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<tr><td>Recommendation</td><td>
In the long-term, SBV, MoF and MoJ should analyze the likely costs and benefits of establishing an independent ombudsman or other Alternative Dispute Resolution (ADR) service by law in order to deal with all disputes of retail customers of credit institutions or any other financial services institutions that do not get resolved satisfactorily internally. In the interim, it is also suggested that consideration be given to having SBV perform the role of a financial ombudsman (at least in respect of complaints against CIs).

The analysis should take account of issues of independence, sustainability, accessibility for consumers, and capacity to make binding decisions to ensure the effectiveness of the formal dispute settlement system. Several institutional options can be evaluated based upon international experience. A scheme could be established by law to function as an independent institution as has been the case in the United Kingdom. Alternatively, there could be a requirement for financial institutions to join an ombudsman scheme with binding rules for all such institutions which would replicate the Armenian model. The purpose in carrying out such an assessment would be to ensure the expeditious, independent, professional and inexpensive handling of consumer disputes that are not resolved internally by banks or other financial institutions.

Regardless of how the service is established, however, it should be developed by SBV in close consultation with all relevant stakeholders, including all relevant Ministries, the financial services industry, industry associations and consumers' associations. The funding for the Ombudsman could be shared among banks and other financial institutions on a sliding scale, with the Government perhaps making a modest contribution.

The rules of an Ombudsman service would need to cover:
• the institutions which would be members (i.e. the institutions with unresolved consumer disputes which would be required to submit to the Ombudsman service's jurisdiction);
• the nature of disputes which could be dealt with by the Ombudsman and any applicable claims' limits (bearing in mind that the service would be for consumers);
• compensation caps;
• the fees for membership and for dealing with disputes (which should be paid by the financial institutions and not by consumers);
• how the service would be resourced so as to discharge its functions impartially;
• how the office would operate throughout Vietnam;
• the fact that decisions are to be binding on financial institutions;
• the confidentiality of complainant information;
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	• the circumstances in which legal action could be launched in court while a matter is with the Ombudsman (for example, if a statutory limitation period is about to expire); • record keeping and publication of information about caseloads, processing times, systemic issues and cases of serious misconduct, such as fraud; • wide-ranging publication of the existence of the service, including in every bank's Terms and Conditions referred to in B.7 above; and • the requirement that, at any customer's request, every bank make available to the customer the details of the ombudsman service and its applicable processes and procedures, including the binding nature of decisions and the mechanisms to ensure the enforcement of decisions. An Ombudsman should also identify complaints that are high in importance for consumer confidence in the banking sector, thereby enabling banks, SBV and any other relevant authority to take measures to their root cause. Further guidance may be obtained from the World Bank's 2012 publication on *Resolving Disputes between Consumers and Financial Businesses: Fundamentals for a Financial Ombudsman.*[161] Pending the establishment of a financial sector ombudsman or equivalent scheme, all financial sector regulators should establish a dedicated unit to address consumer complaints, publicize complaints data and with power to make binding decisions. Each regulator should publicize the processes and procedures for making complaints and the timelines for dealing with them. They should also provide on their websites consolidated data regarding complaints on a regular basis (including details of the most common complaints); set up a complaints hotline and have power to make binding decisions. If this option is pursued, it will also be important that the financial sector regulators have a clear mandate to investigate, assess and finally decide disputes between consumers and financial institutions.
Good Practice E.3	***Publication of Information on Consumer Complaints*** **a. Statistics and data of customer complaints, including those related to a breach of any code of conduct of the banking industry, should be periodically compiled and published by the ombudsman, financial supervisory authority or consumer protection agency.** **b. Regulatory agencies should publish statistics and data and analyses related to their activities in respect of consumer protection regarding banking products and services generally and regarding consumer complaints in particular so as, among other things, to reduce the sources of systemic consumer complaints and disputes.** **c. Banking industry associations should also analyze the complaint statistics and data and propose measures to avoid the recurrence of systemic consumer complaints.**
Description	***Paragraph (a)*** Statistics and data regarding the complaints that retail customers have with their credit institutions are not periodically compiled and published by SBV, VCA or any other agency. ***Paragraph (b)*** Neither SBV nor VCA publishes statistics, data and analyses related to consumer protection regarding banking products and services generally and regarding consumer complaints in particular so as, among other things, to learn of the sources of systemic consumer complaints and disputes with a view to taking steps to see these reduced.

[161] Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman (World Bank, 2012), available at: http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Vol1_Fundamentals.pdf (last visited on September 02, 2014).

	At present, there is no requirement for SBV to analyze data provided by commercial banks on the complaints these banks have received with a view to devising appropriate changes in regulations to deal with any issues of general concern. ***Paragraph (c)*** The Vietnam Banks' Association does not receive and analyze complaint statistics and data and then propose measures to avoid the recurrence of systemic consumer complaints.
Recommendation	SBV (and other financial regulators) should be required to: (a) analyze all data concerning consumer complaints in respect of the business practices of credit institutions; (b) publicize widely, at least once every year, the total number of consumer complaints, the most common concerns of consumers, and the percentage of cases that have been acknowledged in writing by the consumer as having been resolved satisfactorily; and (c) take appropriate corrective measures and publicize these measures as a result.[162] SBV should also give consideration to requiring all banks, by regulation, to centralize all data on the complaints they receive and to analyze these data periodically. The analysis performed by each bank would be to identify the most common reasons for consumer complaints, and, thus, to change business practices so as to avoid these, to the extent feasible, in the future. The complaint data analysis showing categories of complaints, time to resolve, unresolved complaints, etc., should be sent at least quarterly to SBV and should permit SBV to analyze and publish aggregate data on its website on a regular basis. Reviewing and checking such reports should be part of SBV's on-site and off-site supervision activities in respect of the business conduct of every bank. Publication of the statistics and data regarding consumer complaints should be required in order to inform the public of common problems affecting consumers and to increase consumer awareness regarding these issues. By analyzing the statistics and data, SBV will be able to identify recurring problems and areas of weakness in banking practices. Steps can then be taken to deal with the source of these problems. The analyses in time may also be critical in terms of identifying correlations between issues raised in complaints and systemic issues or weaknesses that may affect the soundness of the Vietnamese banking system itself.
SECTION F	**GUARANTEE SCHEMES AND INSOLVENCY**
Good Practice F.1	***Depositor Protection*** **a. The law should ensure that the regulator or supervisor can take necessary measures to protect depositors when a bank is unable to meet its obligations including the return of deposits.** **b. If there is a law on deposit insurance, it should state clearly:** **(i) the insurer;** **(ii) the classes of those depositors who are insured;** **(iii) the extent of insurance coverage;** **(iv) the holder of all funds for payout purposes;** **(v) the contributor(s) to this fund;** **(vi) each event that will trigger a payout from this fund to any class of those insured; and** **(vii) the mechanisms to ensure timely payout to depositors who are insured.** **c. On an on-going basis, the deposit insurer should directly or through insured banks or the association of insured commercial banks, if any,**

[162] In future, these functions may be taken over by the Ombudsman when deemed appropriate.

	promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations. **d. Public awareness should, among other things, educate the public on the financial instruments and institutions covered by deposit insurance, the coverage and limits of deposit insurance and the reimbursement process.** **e. The deposit insurer should work closely with member banks and other safety-net participants to ensure consistency in the information provided to consumers and to maximize public awareness on an ongoing basis.** **f. The deposit insurer should receive or conduct a regular evaluation of the effectiveness of its public awareness program or activities.**
Description	***Paragraph (a)*** The Law on Deposit Insurance provides for SBV and Deposit Insurance of Vietnam (DIV) to take necessary measures to protect depositors when a bank is unable to meet its obligations, including the return of deposits. ***Paragraph (b)*** Vietnam's law on deposit insurance[163] states clearly all the information listed under this good practice. ***Paragraph (c)*** On an on-going basis, DIV does not actively promote public awareness of the deposit insurance system, as well as how the system works, including its benefits and limitations, whether directly or through DIV member banks. ***Paragraph (d)*** According to DIV, at least, there is a reasonably high level of public awareness of the financial instruments and institutions covered by deposit insurance and the coverage and limits of deposit insurance, if not the reimbursement process. ***Paragraph (e)*** DIV has yet to work closely with all member banks in order to ensure consistency in the information provided to consumers and to maximize public awareness on an ongoing basis. ***Paragraph (f)*** Also, DIV has yet to receive or to conduct any regular evaluations of the effectiveness of DIV-related public awareness programs or activities.
Recommendation	SBV in cooperation with DIV should give careful consideration to: • promoting public awareness of the deposit insurance system; • educating the public on the financial instruments and institutions covered by deposit insurance, the coverage and limits of deposit insurance and the reimbursement process; • requiring members banks to advertise the fact of deposit insurance and how it applies in a manner which is consistent among all banks; and • receiving or conducting regular evaluations of the effectiveness of public awareness programs or activities regarding deposit insurance.

[163] Law no. 06 of 2012, on Deposit Insurance.

Good Practice F.2	***Insolvency*** **a. Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.** **b. The law dealing with the insolvency of banks should provide for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.**
Description	***Paragraph (a)*** In the liquidation process of a bank, retail depositors are entitled to payments from Deposit Insurance of Vietnam of up to VND 50 million per depositor within 60 days from the date that SBV issues an official document: • terminating the special control regime of the relevant bank; or • indicating the non-application of recovery measures or the termination of unsuccessful recovery measures; or • Stating, in relation to a branch of a foreign bank, that it has lost the ability pay deposits to depositors. Any deposit exceeding the above threshold is considered unsecured debt which is payable after payment of bankruptcy fees and unpaid wages, severance allowances and social insurance and other rights pursuant to the signed collective labor agreement and any other relevant labor contract. In the result, depositors enjoy higher priority than other unsecured creditors in the liquidation process of a bank. ***Paragraph (b)*** Furthermore, the law dealing with the insolvency of banks provides for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.[164]
Recommendation	No recommendation
SECTION G	**CONSUMER EMPOWERMENT**
Good Practice G.1	***Broadly based Financial Capability Program*** **a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.** **b. A range of organizations, including those of the government, state agencies and non-government organizations, should be involved in developing and implementing the financial capability program.** **c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.**
Description	In Vietnam there is no broad based financial education program or financial capability strategy. Instead, there are a number of isolated programs or interventions, several of these supported by foreign commercial banks operating in Vietnam. Examples include: • The *Practical Money Skills Program* funded by Visa and delivered by the public relations firm Ogilvy;[165] • The *Global Financial Education Program* funded by the Citi Foundation and delivered by the Dariu Foundation and Save the Children;[166] • The *MoneyMinded Program* run by ANZ;[167]

[164] *See* CI Law, Chapter VIII and Decree no. 05 of 2010 on the application of the Law on Bankruptcy to credit institutions.
[165] More information is available at www.practicalmoneyskills.com.vn (last visited on July 1, 2014).
[166] More information is available at dariu.org/projects/financial-education (last visited on July 1, 2014).
[167] More information is available at www.fpt.edu.vn/en/story/fpt-students-learn-how-control-money-anz (last visited on July 1, 2014).

	• The *Junior Achievement More than Money* program in elementary schools supported by HSBC;[168] Each of these programs is reaching thousands of people each year using a variety of online, social media and in-person training activities. However, in a population of approximately 90 million, these efforts are not reaching scale, at least not yet, for significant impact at the country level. These initial efforts in Vietnam reflect a reliance on partnerships – especially between the private sector, NGOs and civil society and academia / schools. Up to this point the government has been relatively absent while others pilot a variety of small scale interventions and programs. To scale up financial education and capability efforts in Vietnam it will be necessary for financial sector regulators, and especially SBV, to take a more active role in coordination and developing a strategy for awareness raising and engagement with consumers.
Recommendation	A Government agency such as MoF, with the active support of SBV and other key regulators, should be appointed to a leadership role in financial capability and financial education. This role would involve using its convening power to assemble key stakeholders such as the ones listed above, identifying critical financial sector issues where consumer awareness or skills can contribute to effective financial inclusion efforts and to a more sustainable and efficient financial sector, developing data on financial capability levels, sharing best practices and, in some instances, supporting the delivery of financial capability efforts. In many cases, however, it may be both cost effective and more impactful for others to lead implementation efforts. One example is the potential for integrating financial capability into the new curriculum reform efforts for K-12 education. This potential opportunity should be seized if at all possible as it would present a unique chance to develop a coordinated and sustainable approach to financial education for children and support good financial habit formation. In the mid-term horizon a national strategy for financial capability should be developed. This would give the financial sector regulators time to develop a more complete view of what options exist for financial capability in Vietnam, to evaluate the strengths and weaknesses of different stakeholders and to conduct a national financial capability survey to help determine critical knowledge and behavior gaps and areas of relative strength.
Good Practice G.2	***Using a Range of Initiatives and Channels, including the Mass Media*** **a. A range of initiatives should be undertaken by the relevant ministry or institution to improve people's financial capability regarding banking products and services.** **b. The mass media should be encouraged by the relevant ministry or institution to provide financial education, information and guidance to the public regarding banking products and services.** **c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, banking regulators, the banking industry and consumer associations in the provision of financial education, information and guidance regarding banking products and services.**
Description	As described above, there are currently only a few relatively small-scale financial capability activities in Vietnam. While most of the existing initiatives focus on a classroom teaching model, there are also some important variations in terms of the population served (children, university students, microfinance clients, etc.) and the tools used (beyond classroom instruction there are fairs, role-plays, social media, competitions, etc.). Up to this point mass media has not been engaged in financial capability outreach. The mission met with media representatives from Vietnam Television channel 1

[168] More information is available at juniorachievementvietnambulletin.wordpress.com/about/ja-more-than-money/ (last visited on July 1, 2014).

	(VTV1) who indicated interest in developing possible media tools and programs addressing financial capability and consumer protection issues. The various roles of government including as a convener, coordinator, data and knowledge generator and implementer are described above.
Recommendation	SBV, and other relevant regulators, should do a stocktaking of existing financial capability activities and analyze the strengths and weaknesses of various approaches. The insights developed from both international good practice, rigorous impact evaluations in other countries and qualitative research from financial capability activities in Vietnam should all contribute to the selection and scaling up of future initiatives. Opportunities to work with mass media, including VTV1, should be pursued given the penetration levels and the resulting cost-effectiveness per person reached.
Good Practice G.3	***Unbiased Information for Consumers*** **a. Regulators and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs– of the main types of banking products and services.** **b. The relevant authority or institution should encourage efforts to enable consumers to better understand the products and services being offered to consumers by banking institutions, such as providing comparative price information and undertaking educational campaigns.**
Description	**Paragraph (a)** Currently there is no single source of information that would facilitate access to information relevant to consumers. Further, the mission did not identify any unbiased or third party comparison of financial products, in either the public or private / non-profit sectors. **Paragraph (b)** While regulations provide some guidance on the way in which key product features, such as interest rates on loans must be calculated and presented, these still seem to leave ample room for each provider to customize products and terms so that comparison shopping is difficult. Educational campaigns offered by financial institutions focus on issues such as promoting savings and learning to budget money and invest - issues which are aligned with the interests of the providers.
Recommendation	In cooperation with other supervisory agencies and relevant stakeholders, SBV should consider establishing a website or creating a section within its current website as a single source of information for consumers, where all relevant information regarding consumer rights and consumer protection would be found. The following information might be included on the website: • roles of SBV regarding consumer protection; • roles of other state authorities, including local government bodies; • contact information to SBV and other state authorities involved in consumer protection; • contact information to consumer associations and advocacy groups; • summary of rights and obligations of consumers on financial markets; • guidelines and recommendations regarding financial products and services; • warnings regarding unfair practices, operation of unlicensed entities or fraudulent schemes. In the long-term, SBV should publish on its website a list of contact information (regularly reported by licensed entities) where consumers may file a dispute against the respective financial service provider. Also, considerations should be given on whether to establish a price comparison website that would display costs of credit as reported by all licensed/registered credit institutions. It may also be possible to develop some other technology-enabled tools which facilitate comparison shopping by consumers, provided either by public or non-profit entities.

	The financial capability strategy developed in Vietnam should include skills needed for comparison shopping, negotiation and seeking redress among the key objectives.
Good Practice G.4	***Consulting Consumers and the Financial Services Industry*** **a. The relevant authority or institution should consult consumers, banking associations and banking institutions to help them develop financial capability programs that meet banking consumers' needs and expectations.** **b. The relevant authority or institution should also undertake consumer testing with a view to ensuring that proposed initiatives have their intended outcomes.**
Description	***Paragraphs (a) and (b)*** There is currently no government authority or public institution responsible for coordinating financial capability efforts, but this is a recommendation of this mission. Up to this point, none of the small scale financial capability initiatives in Vietnam have been rigorously studied for impact.
Recommendation	Going forward well-designed impact evaluations should be undertaken as is possible given resource and time constraints. This goes beyond consumer testing to include carefully designed evaluations with randomization and control groups where feasible.
Good Practice G.5	***Measuring the Impact of Financial Capability Initiatives*** **a. The financial capability of consumers should be measured, amongst other things, by broadly-based household surveys and mystery shopping trips that are repeated from time to time.** **b. The effectiveness of key financial capability initiatives should be evaluated by the relevant authorities or institutions from time to time.**
Description	***Paragraph (a)*** No comprehensive survey of financial capability has been implemented in Vietnam. There have been only small scale efforts to measure financial knowledge and skills, such as the five question survey implemented by Visa in 2012 in Vietnam and 27 other countries worldwide.[169]In that survey Vietnam was ranked low, in only 25th place in terms of financial knowledge and behaviors. DIV is interested in performing a national survey of financial capability, which would include information of specific relevance for deposit insurance such as consumer awareness of this protection. SBV is also interested in conducting a national survey of financial capability in the future to establish a national baseline on this topic and to help identify specific gaps in terms of issues, understanding and more vulnerable population groups. ***Paragraph (a)*** No government authorities are currently involved in any kind of oversight or evaluation of existing financial capability initiatives.

[169] Financial Literacy Barometer (Visa, 2012), available at practicalmoneyskills.com/resources/pdfs/FL_Barometer_Final.pdf (last visited on July 1, 2014).

Recommendation	The Government of Vietnam should perform a national survey of financial capability as one of the early steps in the development of a national strategy or approach to this issue. SBV should lead this effort in collaboration with other interested financial regulators and agencies. The survey should reflect international good practices. The World Bank surveys for financial capability provide a good starting place for development of a national survey in Vietnam and would facilitate comparisons with other countries.[170] Further, a public outreach campaign should be developed. Ideally this would be based on data from the national survey. However, a number of well-targeted focus groups and interviews across different population segments (urban consumers of different income levels, rural consumers, young vs. old, women vs. men, etc.) should also be adequate to develop a targeted outreach effort on various financial capability-related issues. This could involve for instance improved education efforts at the time a loan is requested / received through materials to be provided by financial institutions as well as other outreach efforts in mass media, social media, etc. Another example of a critical moment for educating consumers might be the requirement of adverse action notification described above[171], as this is the moment when they are likely to have the greatest motivation to learn about their credit report, correct any errors which may exist and change their behavior to strengthen their credit report. The use of innovative delivery mechanisms, such as entertainment education, short message service (SMS) reminders, engaging people on social media, etc. should also be part of any outreach and education campaign. These tools are highly effective and may be especially useful among the less educated, less literate segment of the population which is also at more risk for financial frauds and abusive financial practices.
SECTION H	**COMPETITION AND CONSUMER PROTECTION**
Good Practice H.1	***Regulatory Policy and Competition Policy*** **Regulators and competition authorities should be required to consult one another for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.**
Description	Although SBV and VCA apparently do consult with each other periodically on an informal basis, there is no formalized mechanism established by them to do so for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of banking or any other financial services. While competition in any sector must abide by the principles of honesty and non-infringement of the lawful rights and interests of consumers,[172] the Competition Law contains no specific obligations of banks in their dealings with their retail customers. That said, it is a prerequisite of credit institutions seeking to be licensed by SBV that they have a feasible establishment project or business plan that, in the process of being implemented, will not create a monopoly, any constraint to competition or any unfair competition in Vietnam's system of credit institutions.[173] Furthermore, the CI Law expressly prohibits any constraints on competition or acts of unfair competition that damage or are likely to damage the safety of the banking system or the rights and lawful interests of any organizations (including credit institutions) and individuals.[174] However, although the Government is to issue a Decree that provides details of actions constituting unfair competition in banking and the remedies for any such actions,[175] this Decree is still awaited.

[170] More information is available at http://responsiblefinance.worldbank.org/surveys/users-of-financial-services (last visited on July 30, 2014).
[171] Banking Good Practice D.4(e)(iii).
[172] Competition Law, Article 4, Clause 2.
[173] *Id.*, Article 20, Clause 1, Item e).
[174] *Id.,* Article 9, Clause 2.
[175] *Id.*, Clause 3.

<table>
<tr><td>Recommendation</td><td>SBV and VCA should coordinate in establishing, applying and enforcing consistent policies to ensure a consistently high level of competition in the delivery of all banking services in Vietnam. And, in this respect, consideration should be given to formulating a Memorandum of Understanding between SBV and VCA to encourage consultations between them in these respects.

In addition, pursuant to the CI Law, the Government should formulate and issue its Decree providing details of actions constituting unfair competition in banking and the remedies for any such actions.</td></tr>
<tr><td>Good Practice H.2</td><td>Review of Competition

Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should:

(i) monitor competition in retail banking;
(ii) conduct, and publish for general consumption, periodic assessments of competition in retail banking (such as the range of interest rates across banks for specific products); and
(iii) make recommendations publicly available on enhancing competition in retail banking.</td></tr>
<tr><td>Description</td><td>VCA does not engage in the activities described in this Good Practice.</td></tr>
<tr><td>Recommendation</td><td>VCA should be staffed, equipped and funded so as to permit it to:

• carry out effective monitoring of competition in retail banking; and
• provide well-researched assessments of competition in retail banking (such as the range of interest rates, fees and charges across banks for specific products) on a periodic basis, with the results being made widely available to the general public and closely discussed with SBV.[176]</td></tr>
<tr><td>Good Practice H.3</td><td>Impact of Competition Policy on Consumer Protection

The competition authority and the regulator should evaluate the impact of competition policies on consumer welfare, especially regarding any limitations on customer choice and collusion regarding interest and other charges and fees.</td></tr>
<tr><td>Description</td><td>To date, no evaluations of any kind have been made by VCA on its own (or in conjunction with SBV) of the impact of Vietnam's competition policies on the welfare of consumers of banking services.</td></tr>
<tr><td>Recommendation</td><td>In the medium to long-term, VCA and SBV should adopt and carry out this Good Practice.</td></tr>
</table>

[176] The Banking Enquiry of the Competition Commission of South Africa provides an example of the way in which such assessments have been conducted, as well as of the sorts of recommendations that have been made as a result. *See*, http://www.compcom.co.za/enquiry-in-to-banking.

II. GOOD PRACTICES: SECURITIES SECTOR

Vietnam is an MSCI frontier market.[177] The market infrastructure comprises of two exchanges – the Ho Chi Minh City Stock Exchange (HOSE) and the Hanoi Stock Exchange (HNX) – and the central securities depository and securities settlement system for equities and debt known as the Vietnam Securities Depository (VSD). As of December 31, 2013, 308 stocks were listed in the HOSE with total market capitalization of approximately VND 842,105 billion or 23.5 percent of GDP[178]. As of December 31, 2013, 377 companies were listed in the HNX with total market capitalization of approximately VND 87,512 billion.[179] The total market capitalization of both HOSE and HNX in 2013 stood at approximately VND 949 trillion, equivalent to 26.5 percent of GDP.[180]

HOSE is the leading stock market in Vietnam, currently accounting for 85 percent of total market capitalization. HOSE has attracted the most large-scale companies that represent the national economy. The average turnover ratio was 42.05 percent during the first half of 2013. At present, there are 94 securities companies as members of HOSE, providing services for over 1.3 million trading accounts in which domestic individual investors account for 1,282,071 accounts or close to 80 percent of the total number of trading accounts with securities companies. The majority of listed firms are former SOEs that have undergone partial privatization ("equitization").

A new trading floor for unlisted public companies (UPCOM) was launched at the Hanoi Securities Center in June 2009. At the end of 2011, 132 companies were listed on UPCOM. In September 2009, a separate trading floor for government bonds was established. Brokers can grant access to electronic platforms to certain customers through broker order routing systems and internet based systems. Trading also occurs over-the-counter by voice broking, negotiation or otherwise and the exchange data reflect a substantial number of negotiated "put-throughs" or reports to the market's price reporting system of upstairs block trades; approximately 20 percent in the case of equities on HSX, and the majority in the case of bonds at HNX.

Vietnam's formal market is a highly retail market.[181] As at the end of 2012, the number of investors' accounts in VSD system was 1,264,030 of which domestic investors made up more than 98 percent.[182] Additionally, more than 90 percent of transactions by volume were by retail investors.

Vietnam stock markets are highly concentrated, and relatively illiquid. The top 40 companies by market capitalization account for three fourth of the entire market. Both market capitalization and turnover are between 30 percent to 40 percent of GDP. Retail investors access a narrow range of products in the securities markets, including listed shares and corporate bonds and open-end collective investment funds. Efforts are underway to introduce new products on the exchange such as ETF, REITs and derivatives.

[177] MSCI Frontier Markets Indexes available at www.msci.com/products/indexes/country_and_regional/fm/ (last visited on July 29, 2014).

[178] HOSE's Annual Report 201342 (HOSE, 2013), available at http://www.hsx.vn/hsx_en/Modules/annual/annual_files/BCTN-ANNUAL percent20REPORT percent202013.pdf (last visited on August 13, 2014).

[179] HNX's Annual Report 2013, available at http://hnx.vn/documents/18/133563/BCTN+HNX+2013+ percent28English percent29.pdf?version=1.0 (last visited on August 13, 2014).

[180] SSC's Annual Report 2013.

[181] As an example, 94 securities companies which are members of HOSE provide services for over 1,282,071 individual trading accounts or close to 80 percent of their total number of trading accounts.

[182] VSD Annual Report 2012, 20 (VSD, 2012), available at vsd.vn/Systems/2013/07/16/2vsd-ar12_0407-15h-full.pdf (last visited on August 13, 2014).

As at end of December 31, 2013, there were 104 licensed securities companies and 381 licenses to securities practitioners. These comprised 289 brokerage licenses and 92 analyst licenses. For the asset management industry, SSC has issued 147 professional fund management licenses and 1,099 fund management professional certificates.[183] Industry assets under management (AUM) are roughly 100 trillion VND (about US$4.8 billion). They offer a limited product mix of public mutual funds and privately offered "member" funds.

Due to the industry's small size and the high degree of competition, few asset managers have achieved significant scale in terms of AUM. Industry penetration is extremely low, with less than five percent of the population owning any investments aside from real estate, gold, and cash. A limited product mix of public mutual funds and privately offered "member funds" is available to retail customers. Although there is no data available on mutual fund sales channels, anecdotal feedback from industry participants suggest that banks and securities companies share a percentage of the commission/fee with the fund manager should they refer their clients to the fund manager.

SECTION A.	INVESTOR PROTECTION INSTITUTIONS
Good Practice A.1	***Consumer Protection Regime*** **The law should provide for clear rules on investor protection in the area of securities markets products and services, and there should be adequate institutional arrangements for implementation and enforcement of investor protection rules.** **a. There should be specific legal provisions in the law, which create an effective regime for the protection of investors in securities.** **b. There should be a governmental agency responsible for data collection and analysis (including complaints, disputes and inquiries) and for the oversight and enforcement of investor protection laws and regulations.**
Description	***Paragraph (a)*** The Securities Law of 2006 (SC Law) governs the securities markets and intermediaries/institutions as well as securities practitioners who are individuals working in securities intermediaries. The consumer/investor protection mandate of MoF and the State Securities Commission (SSC) is provided in the specific provisions in the SC Law and its subsidiary legislation relating to investor protection. For example, Article 4 of SC Law stipulates the principles of securities markets and activities to be underpinned by "*fairness, publicity and transparency*" and "*the protection of the lawful rights and interests of investors*". In this regard, MoF and SSC using their broad powers to protect the public interest and the interest of investors, have issued numerous decrees, circulars and decisions covering many aspects of consumer protection, including disclosure, business conduct and prudential rules. The provisions on consumer rights and obligations across these laws are at the level of principles and many are similar, but not the same. There also many regulations (Decrees, Decisions, Circulars) under the SC Law. Other laws impacting on consumer protection in the securities sector include: • Civil Code; • Enterprise Law; • Penal Code; • Commercial Law;

[183] SSC's Annual Report 2013.

	• Law on Protection of Consumers' Rights; and • Law on Advertising. ***Paragraph (b)*** The current regulatory framework places the State Securities Commission, a State supervisory management agency, under the MoF. The MoF addresses issues related to the development of primary (laws) and secondary legislation (norms, circulars, decrees, decisions, ordinances) subject to input from SSC, oversees the development of accounting standards, accredits auditors, and has particular responsibilities related to the operation of the government and private bond market and debt management. SSC is responsible for the day-to-day monitoring and supervision of the securities market and securities businesses including licensing of securities businesses (e.g., funds management and securities companies) and their representative offices and branches; approves public offers of securities and public takeovers; and issues infringement notices for breaches of securities regulations. SSC also oversees the operations of HOSE, HNX and VSD, which have supervisory responsibilities vis-à-vis the operations of the market, listing and continuous listing compliance. SSC utilizes the prudential examiners and existing compliance and enforcement resources to address consumer protection issues. The integration of examination, compliance and enforcement resources for prudential and consumer protection matters may result in economies of scale, but its effectiveness in identifying and addressing consumer protection issues adequately must be cautioned[184]. Despite articulating the vision in the Capital Market Roadmap[185] to enhance protection of individual investors, SSC does not appear to have developed a business plan that sets out specifically how it would set strategies, allocate resources and plan supporting activities to achieve such objectives. While it appears that the inspection department of SSC receives complaints from investors and coordinates with other departments of the SSC, it is not immediately clear if the Inspection Department has a clear written mandate for financial consumer protection as discussed above that is well understood within SSC and the market participants. According to the 2013 Annual Report SSC had issued 108 decisions on sanctioning with administrative violations with total fines of VND 8 billion.[186] SSC had also suspended one company's brokerage operations and one fund manager. Further, the Ministry of Trade and Industry (MoTI) is responsible for administering the CP Law acting through the Vietnam Competition Authority. Nonetheless, VCA is not proactive in identifying shortcomings in securities intermediaries not complying with consumer protection requirements.

[184] The recent experience of UK, South Korea and US would indicate the risks of mixed mandates even though many other countries with mixed mandates have worked well too.
[185] Vietnam Capital Market Roadmap: Challenges and Policy Options (ADB, 2014).
[186] Annual Report 2003, 89 (SSC, 2003).

Recommendation	The overlap of general laws and the SC Law in regard to consumer protection raises a certain level of ambiguity and legal uncertainty. With the CP Law, the Advertisement Law and the Competition Law each appearing to apply to the financial services sector including the securities sector, there is some ambiguity on how these general laws operate along with the Securities Law and the subsidiary legislation. Hence, establishing effective coordination mechanisms between MoF, SSC and other relevant authorities and defining joint priorities and clarifying roles and responsibilities would help provide some legal certainty to the market participants and consumers. Consideration should be given to the rationalization of the legal and regulatory framework for consumer protection in securities (or in financial services) in order to make understanding of the requirements easier and clarifying the roles of different government agencies. One possible approach could be to carve out consumer protection provisions in respect of financial services from the general laws and place those relevant to securities in the SC Law and make SSC responsible for the oversight and ensuring compliance as well as arbitrating on customer disputes. The role of SSC in financial consumer protection should be strengthened in order to ensure improved monitoring and compliance with legal requirements and enforcement in case of violations of market conduct regulations. To equip the inspectors to supervise market conduct issues effectively, it would be useful to provide targeted training to relevant staff on understanding consumer protection laws and regulations; analysis of complaints and consumer contracts and other disclosure documents; verification of calculations of fees and rates; and the ability to design and carry out market testing. It would be useful if SSC develops a 3 to 5 year business plan on its strategy of enhancing consumer protection and the resources it would need to meet the goals as set out in such a business plan as well as providing a clear written delegation of powers to the relevant department to handle consumer protection matters within SSC.
Good Practice A.2	***Code of Conduct for Securities Intermediaries and Collective Investment Undertakings.*** **a. Securities Intermediaries and CIUs should have a voluntary code of conduct.** **b. Securities Intermediaries and CIUs should publicize the code of conduct to the general public through appropriate means.** **c. Securities Intermediaries and CIUs should comply with the code and an appropriate mechanism should be in place to provide incentives to comply with the code.**
Description	***Paragraphs (a)*** The Association of Stockbroking Companies and Asset Managers, which was established in June 2003 as a voluntary organization representing 56 securities companies and 11 fund managers and 3 commercial banks, does not assume any self-regulatory responsibilities at this stage nor has it adopted a code of conduct for its members. A draft code of conduct was prepared in 2007,[187] however, it was not adopted by the Association. The interviewed securities companies and fund management companies have all adopted internal codes of conduct, which are not necessarily consistent with each other. Article 24 of Circular 212/2012 for fund managers also requires fund management companies to comply with their codes of conduct and ensure fairness, honesty and the best interests of their customers. However these codes do not represent an industry code of conduct of the type contemplated by this Good Practice.

[187] It appears the draft Code was prepared with assistance from the ADB.

	Paragraph (b) Article 47 of Circular 210/2012 requires securities companies to "*promulgate rules of practice in accordance with their operations*" and it seems that at least one securities company has published its code on the company's website. However, generally such codes of conduct are not known to consumers. ***Paragraph (c)*** None of the codes of conduct is well-known to investors, even to the members of each association.
Recommendation	More needs to be done to encourage industry participants to be actively involved in developing and promoting high conduct standards, which should be clearly enforceable. Thus far, industry standards have been largely driven by laws and regulations rather than initiatives of the industry. Industry codes of conduct could be developed for this purpose for each segment of the securities sector or one could be prepared for use across the securities sector. The value of a code of conduct is its widespread distribution so that consumers know that, in principle, securities intermediaries have agreed to provide minimum levels of service and to respond to complaints and disputes. Codes should be as similar as possible across segments, ideally based on basic common rules for all segments and only specifics added for each individual segment, to make sure conditions are equal for financial products that have similar features but are legally different (such as mutual funds and structured and leveraged products). Any code of conduct adopted by securities companies and fund managers should be disseminated broadly and be provided to consumers as part of the application process. In addition, these codes of conduct should be placed in securities intermediaries' retail offices and on their websites particularly in regard to business conduct with customers of the securities intermediary. Consumers should be advised upfront that if an intermediary fails to comply with the code of conduct, a complaint can be submitted to the institution, the professional association and SSC. There should be a strong mechanism to investigate breaches of the codes of conduct, including the possibility that these breaches be publicized and that SSC use these breaches as warning signals for supervisory action. In the longer term, the application of a policy of "comply or explain" could be useful to strengthen the enforcement of codes of conduct. Non-compliance and non-explanation would be considered a misleading business practice and be subject to sanctions as such. The same policy could be applied to standard contract provisions, where the need to deviate from a standard contract provision would have to be explained.

Good Practice A.3	***Other Institutional Arrangements*** **a. The judicial system should provide an efficient and trusted venue for the enforcement of laws and regulations on investor protection.** **b. The media should play an active role in promoting investor protection.** **c. The private sector, including voluntary investor protection organizations, industry associations and, where permitted, self-regulatory organizations should play an active role in promoting investor protection.**
Description	***Paragraph (a)*** The hierarchy of Vietnamese courts include: (1) Supreme Court; (2) Provincial Courts; and (3) District Courts. The courts operate in five divisions: criminal, civil, administrative, economic, and labor. Parallel to the court system is the People's Procuracy, which is responsible for supervising the operation of judicial authorities. The People's Procuracy can protest a judgment or ask for a review of a case. In addition, Vietnam has a system of independent arbitration centers, established under the Commercial Arbitration Ordinance (2003), which can grant enforceable arbitral awards. Foreign and domestic arbitral awards are legally enforceable in Vietnam, although in practice it can be hard to ensure enforcement.[188] ***Paragraph (b)*** See Banking Sector Good Practice A.4, Paragraph (b). ***Paragraph (c)*** The Vietnam legal framework does not expressly include a self-regulatory organization category but Vietnamese stock exchanges and VSD have supervisory responsibilities vis-à-vis the operations of the market, listing and continuous listing compliance and SSC considers them to be the front line overseers of the markets and market systems that they operate. Recently, Circular 689/2012/QD/IBCK states clearly the oversight responsibilities of the exchanges such as in respect of disclosure, corporate governance, market abuses, accounting and auditing and market practitioners. See Banking Sector Good Practice A.4, Paragraph (c).
Recommendation	See Banking Sector Good Practice A.4.
Good Practice A.4	***Licensing*** **a. All legal entities or physical persons that, for the purpose of investment or speculation, solicit funds from the public should be obliged to obtain a license from the supervisory agency.** **b. The securities supervisory agency should have broad powers to investigate fraudulent schemes.**
Description	***Paragraph (a)*** There are clear, minimum entry standards for all market intermediaries under the SC Law and Circulars 210/2012 and 212/2012 for securities companies and fund management companies respectively. The eligibility criteria also include fitness and competency standards for securities practitioners (individuals working for securities intermediaries) and a specified number of personnel must hold a securities practitioner certificate for each operation performed by the licensed securities intermediary. In addition, the fit and proper criteria also apply to holders of more than 10 percent interests and include a review for any record of prior criminal activity. The fit and proper standards are also applicable to fund management companies. Despite authority under the SC Law since 2006 for open ended and other types of funds, the only collective investments (CIS) that are

[188] 2012 Investment Climate Statement – Vietnam (U.S. Department of State), available at: www.state.gov/e/eb/rls/othr/ics/2012/191263.htm.

operating are public listed closed end funds offered on HOSE and member funds sold to no more than 30 professional investors (defined in the law as commercial banks, insurance companies, securities companies, financial companies and financial leasing companies). All CIS are now subject to the constitution, investment operations and treatment of customers' funds as provided under Circular 224.

According to SSC there are no free standing financial analysts or other evaluators. Advisory services are not typically part of brokerage operations. SSC evaluates existing consultancy services under the provisions related to securities companies where internal control requirements are intended to insulate the process of providing advice from internal conflicts.

Paragraph (b)

SSC has extensive powers of supervision and investigations through its inspectorate that permits it to engage in routine and *ad hoc* examinations, reviews, inspections and investigations directly. Where the conduct in question is of an unlicensed entity or of a third party (that is, a non-regulated entity), while it is also a criminal offense, the investigation team may have to cooperate with the police.

SSC operates a routine periodic inspection program, approved annually by MoF, through its own Inspectorate. On its own recognizance, it also conducts numerous inquiries, examinations and thematic reviews based on department-specific off-site reviews and other activities such as the review of issuers' disclosure, accounting oversight, fund oversight and follow up of ad hoc on-site or off-site activities originated in response to rumors or "denunciations."

Periodic inspections are typically announced approximately 10 days in advance, but ad hoc reviews, for which the 24-hour notice may be given, can be performed on a surprise basis and SSC has in fact performed surprise audits.

When inspected, securities companies must cooperate and provide full and accurate information to SSC on request.[189] Failure to respond can be sanctioned by SSC.

SSC's Surveillance Department also conducts surveillance of trading activity and cooperates with SSC's Inspectorate in further investigating serious matters exposed by abnormal price or suspicious activity reports received from the exchanges. A stock exchange must provide all securities trading records to SSC upon request as must VSD pursuant to Article 30 of Decree 36/2007 ND-CP and Circular 38/2007 TT-BTC. Under Article 130 of SC Law, the stock exchange and VSD may be sanctioned if they fail to comply.

Articles 119 to 130 of SC Law list multiple types of breaches (including manipulation and insider trading) that constitute violations of the SC Law and also establish that both the Chief of the Securities Inspectorate and the Chairman of SSC have the authority to issue warnings and apply pecuniary penalties. These breaches include both misconduct and the failure to follow specific affirmative legal requirements, including: fraud, insider trading, manipulation, misuse of customer funds or securities, violation of listing requirements and public offering requirements, abuse of customer orders, failure to undertake an inquiry into the financial capacity and "risk" appetite of a customer, guaranteeing profits to customers, failure to report, audit violations, violations related to the registration, deposit, clearing and payment requirements, providing false information, impersonating another and violation of the responsibilities of supervising banks and so forth.

The abovementioned authorities are also permitted to suspend operations, revoke licenses and practitioner certificates, to suspend or cancel a public

[189] Article 114(2) of the SC Law.

	offering, force delisting, and confiscate profits earned from illegal acts and/or the securities used to commit such acts. The SC Law also gives SSC the power to enjoin specific activities, and the power to compel: (i) correction of recorded information; and (ii) restitution of a customer's deposits. These powers are then more specifically set forth by subsidiary legislation. For example, Government Decree 85/2010 ND CP on Sanctioning of Administrative Violations in the Field of Securities and the Securities Markets applies to domestic and foreign individuals and institutions that intentionally or unintentionally commit violations of the law on securities and the securities markets, which are not serious enough for penal sanctions. Depending on the nature and seriousness of the breach and extenuating and aggravating circumstance, a wide array of fines of various levels, ranging from VND 5,000,000 to VND 500,000,000, are specified for multiple types of breaches. These penalties may be applied both against licensed public interest entities, such as securities companies and practitioners, and against third parties. SSC also has the capacity to impose administrative fines on a stock exchange for failure to strictly comply with member obligations under Clauses 2 and 4 of Article 39 of the SC Law or for failing to submit new types of trading or systems to SSC or to promptly handle violations. In addition to being subject to the main penalty and additional penalties as stipulated, an offender may also be subject to one or more of the following types of measures in order to remedy consequences of the breach: • compulsory compliance with law; • compulsory rescission or correction of incorrect or false information; and • pecuniary sanctions, such as for example one to five times the amount illegally earned where someone offers securities without obtaining a Certificate of Public Offering. While SSC has access to all documents that are maintained by a securities intermediary, third parties cannot be compelled to provide any evidence without assistance of the police. Hence, SSC does not have direct access to records outside the scope of its regulatory ambit and beneficial ownership records related to third parties. However, SSC can refer offenses to the criminal investigatory authorities, that is, the police, for investigation (inspection/control), which then can be referred to the prosecutor. The Ministries of Justice, Finance and Public Security (police) cooperate with SSC pursuant to an inter-ministerial decree that defines borders between criminal actions that must proceed in the criminal counts and administrative powers to sanction violations that can be used by SSC, based on the amount of damages or profit and the nature of the case. The enforcement of the law is not perceived by market participants as sufficiently consistent and rigorous to be an effective deterrent and penalties are not sufficiently dissuasive. To the extent SSC must seek assistance from the police, timing may be outside the control of SSC and the process is heavily dependent on ongoing cooperation. More work is being done in this area, but the lines of authority remain ambiguous.

Recommendation	The authorities responsible for supervision and enforcement of law against entities operating on the capital market, led by SSC, should be commended for devising mutual cooperation arrangements. Nonetheless, the enforcement powers of SSC need to be enhanced. In particular, the inability to follow the money to bank accounts and to follow the transfer of securities due to the remnants of the bearer share regime may hamper the ability of SSC to conduct full and complete investigations, especially of the transfer of ownership of public companies outside the registry. Hence: • In the long term, considerations should be given to require the mandatory immobilization of all listed shares to eliminate the problems relating to bearer shares. • Further, more needs to be done to clarify the lines of authority and responsibilities between the different authorities in the investigation of criminal offences particularly in relation to what SSC can do in the course of investigation of criminal offences. • SSC should seek to apply sufficiently stringent and consistent penalties to achieve an enforcement program that is perceived as dissuasive, proportionate and effective. This can be done by developing clear and transparent criteria for enforcement actions particularly in relation to administrative actions. An effective enforcement program would necessitate the development of clear, transparent and accountable processes in relation to decision-making. In this regard, SSC should be given independent powers without having its decisions being reviewed or revised by MoF.
SECTION B	**DISCLOSURE AND SALES PRACTICES**
Good Practice B.1	***General Practices*** **There should be disclosure principles that cover an investor's relationship with a person buying or selling securities, or offering to do so, in all three stages of such relationship: pre-sale, point of sale, and post-sale.** **a. The information available and provided to an investor should inform the investor of:** **(i) the choice of accounts, products and services;** **(ii) the characteristics of each type of account, product or service; and** **(iii) the risks and consequences of purchasing each type of account, product or service.** **b. A securities intermediary or CIU should be legally responsible for all statements made in marketing and sales materials related to its products.** **c. A natural person acting as the representative of a securities intermediary or CIU should disclose to an investor whether he is licensed to act as such a representative and by whom he is licensed.** **d. If a securities intermediary, investment adviser or CIU delegates or outsources any of its functions or activities to another legal entity or physical person, such delegation or outsourcing should be fully disclosed to the investor, including whether the person to whom such function or activity is delegated is licensed to act in such capacity and who licenses the person.**

Description	**_Paragraph (a)_** There are various provisions in the SC Law and related subsidiary legislation that provide for the responsibilities of securities intermediaries in relation to their customers but these provisions do not clearly identify their responsibilities in each stage of the relationship. Under the SC Law and relevant decrees and circulars including Circulars 210/2012 and 212/2012, there are broad disclosure principles that cover an investor's relationship with a person buying or selling securities, or offering to do so, in all three stages of such relationship. For example, Article 71(3) of the SC Law requires a securities company to sign a written contract with a client and to provide "*complete and truthful information*" to the client. Article 48(2) of SC Law provides that a securities company is obliged to explain to its customers the terms for opening securities trading accounts and related procedures when implementing securities transactions for customers. Article 71(5) of the Law requires a securities company to collate and understand information relating to the financial status, investment objectives and risk profile of its clients. Article 36(4) of Circular 212/2012 provides that advisory staff of a fund management company shall be responsible for explaining to customers that their guidance on customers' investments are only for reference and investment decisions made by customers are at their own risk. Article 73(1) and 73(3) of the SC Law provide that a securities intermediary must not misleadingly inform customers that their investment is guaranteed or that they may not suffer losses. Article 31(3) of Circular 212/2012 requires fund management companies to *"draw out"* the investment principles and policies consistent with requirements of customers based on information it has collected from the customer pursuant to Article 31(1) of Circular 212/2012. Investment policies shall be clear, detailed and reflect all basic information on levels and types of risks, structures of sample portfolios, management expenses, rights and responsibilities of parties and other related important information. Investment policies shall form a part of investment management contracts. Article 36(1) of Circular 212/2012 also provides that investment advisory services of a fund management company shall be provided to a customer in a voluntary, equitable and truthful manner and information shall be provided on a full, timely and accurate basis so that customers may make their own investment decisions. Nonetheless, there is no provision in the law requiring description of the choices available to a securities intermediary's customers. Neither is there any provision requiring a description of all services that are offered. **_Paragraph (b)_** There are various provisions in Circulars 210/2012 and 212/2012 that impose liability of a securities intermediary in relation to *"the mistakes and violations"* of such a securities intermediary against its customers. These provisions are, however, broadly phrased and are not specific in terms of holding the securities intermediary being legally responsible for all statements made in its marketing materials and information that is provided to its customers. Nonetheless, the SC Law also establishes civil liability of securities intermediaries for any breaches of the Law and subsidiary legislation. Article 57 of the SC Law provides that where a securities company provides investment advisory services to its customers, it is prohibited from any *"advertising that claims that the content, performance, or its security analysis methods are of higher value of other securities companies"*. The securities company is also prohibited from providing false information to *"lure or entice customers to purchase and sell a certain type of securities"* or providing false, fraudulent or misleading information for customers.

	All securities practitioners represent the relevant securities company when executing transactions with customers and a securities company is responsible for all the activities of its securities practitioners.[190] Article 30 of Circular 212/2012 provides that a fund management company must not through the contracts it enters with its customers contain clauses that enable the fund management company to *"evade legal obligations to compensate customers resulting from its own mistakes or willful violations*" of laws and regulations. Further, the contract which a fund management company enters into with its customers must not restrict the scope of compensation and financial responsibilities to customers, without justifiable reasons, or transfers risks to customers in cases of mistakes and willful violations. Article 31(4) of Circular 212/2012 provides that where fund management companies fail to observe investment policies as prescribed in investment management contracts, they shall adjust portfolios as soon as possible and bear all expenses incurred in connection with such transactions and may not charge management fees for portfolios inconsistent with investment policies. Further, Article 31(5) of the same circular provides that for all damages or profits resulting from investments which are inconsistent with investment policies and objectives, or from portfolios which are inconsistent with investment policies, portfolio structures specified with customers or resulting from other mistakes of fund management companies, fund management companies shall be responsible for compensating investors in accordance with written agreements between the two parties or recognizing all arising profits as those of portfolios of customers right after completing the adjustment of portfolios. Article 36 of Circular 212/2012 requires that, in relation to investment advisory operations of a fund management company, such services shall be provided to its customers in a voluntary, equitable and truthful manner and information shall be provided on a full, timely and accurate basis so that customers may make investment decisions by themselves. Further, the fund management company must ensure that economic information, data and forecasts are provided to customers on the basis of actual events and accompanied by reliable references, which are published by professional financial and economic organizations and have been publicly announced. In addition, fund management companies and advisory staff are both required to disclose their interests in relation to an asset in a situation of a potential or real conflict such as when the fund management company has a position in these securities. ***Paragraph (c)*** Article 38(3) of the SC Law stipulates that securities practitioners are the ones representing the securities company to execute transactions with customers and the securities company is responsible for all activities of the securities practitioners when carrying out the business of the securities company. The securities practitioners are not entitled to use money or securities in the customer's account when they are not authorized to do so under the trust of customers to a securities company in writing. There is no particular provision in the regulatory framework that requires a securities practitioner to disclose to a customer that he/she is licensed by SSC. ***Paragraph (d)*** Such outsourcing arrangements do not exist for the securities industry as the SC Law only allows licensed securities intermediaries and practitioners to conduct securities activities entirely through their own operations.

[190] Article 38(3) of Circular 210/2012.

Recommendation	It would certainly help to further clarify the regulatory framework on principles relating to an investor's relationship with a person buying or selling securities, or offering to do so, in all three stages of such relationship: (i) pre-sale; (ii) point of sale; and (iii) post-sale. While there are a number of provisions in the SC Law and related regulations on the obligations of the securities intermediaries in explaining their services to the customers, the current provisions are scattered and do not quite clarify at which part of the sale product cycle the principles on fair dealing and disclosure relate to. It would be useful to further clarify that one of the legal responsibilities of a security intermediary in the regulatory framework is to be responsible for all information and marketing materials that are made to its customers which can be a basis of claim by the customer for compensation under the relevant SC Law provision. The regulatory framework should in any event be amended to require more extensive disclosure to investors regarding the choice of services offered and entities that the broker will use in conducting the investors business, including disclosure by a securities practitioner that he/she is licensed under the SC Law and for which securities intermediary is the practitioner working. The securities company should provide these disclosures regardless of whether the customer/investor requests them.
Good Practice B.2	***Terms and Conditions*** **Before commencing a relationship with an investor, a securities intermediary or CIU should provide the investor with a copy of its general terms and conditions, and any terms and conditions that apply to the particular account.** **Insofar as possible, the terms and conditions should always be in a font size and spacing that facilitates easy reading.** **The terms and conditions should disclose:** **a. Details of the general charges;** **b. The complaints procedure;** **c. Information about any compensation scheme that the securities intermediary or CIU is a member of, and an outline of the action and remedies which the investor may take in the event of default by the securities intermediary or CIU;** **d. The methods of computing interest rates paid or charged;** **e. Any relevant non-interest charges or fees related to the product;** **f. Any service charges;** **g. The details of the terms of any leverage or margin being offered to the client and how the leverage functions;** **h. Any restrictions on account transfers; and** **i. The procedures for closing an account.**
Description	The SC Law and related subsidiary legislation requires a securities intermediary to adopt an agreement at the time of opening of an account with its customer. Article 26(3) of Circular 212/2012 provides for terms and conditions of contracts between a fund management company and its customers. Appendices 6 and 21 of the Circular requires the content of an investment contract to include: • investment targets and risk tolerance of investors; • principles, policies of investment and asset types; • rights and obligations of a customer; • reports by fund management company of changes on invesetment policies, report and disclosure obligations; • disclosures to a customer on fees and charges and payment method; procedures for client protection such as cash and custody management, procedures of cash and asset contribution or withdrawal; contract termination conditions and structure and procedures to liquidate contract.

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Article 48 of Circular 210/2012 also requires that all securities companies provide minimum content for agreements entered into with their customers which deals with the following subjects:

protocol for taking orders from customers;
fees and charges;
obligations of the securities company and customers;
confidentiality;
representations and Warranty;
indemnities;
amendment and termination of the agreement; and
governing laws;
dispute resolution.

Article 48 of Circular 210/2012 also imposes responsibility on a securities company to explain its agreement and the implications of the terms and conditions to its customers. It prohibits the securities company from including in an agreement provisions which would allow it to avoid its legal obligations, limit the scope of compensation or transfer its own risks to its customers and cause an unfair disadvantage to the customers.
Article 49(4) of SC Law provides that securities companies must disclose the securities transaction fee before the customers make transactions.
Regulations Guiding Securities Margin Trading issued with Decision 637-QD-UBCK provide, among other things, minimum terms in a margin financing agreement between a securities company and its customer. Article 9 of the Regulations requires that margin agreements (contracts opening a margin trading account) must have as a minimum the following terms and conditions:

information about the client, namely full name, date of birth, people's identity card number, contact address, email and fax number (if any) and a contact telephone number;
objective, namely to purchase securities by way of margin trading;
initial margin ratio;
maintenance margin ratio;
time-limit and method for making payment pursuant to a call to supplement mortgaged assets (securities);
limit on financing/loans;
interest rate on loans;
term and effective date of the contract, and time for commencing to calculate interest on financing/loans;
method of realizing mortgaged assets in the margin trading account if the client fails to correctly perform the contract, and priority order for using proceeds from sale of mortgaged securities of the client;
provision on protection of interests of contracting parties;
method of dispute resolution;
method of contract liquidation; and
undertaking from the client that the broker has adequately explained risks arising from conduct of transactions on a margin trading account.

The terms and conditions in standard contracts must be written in a font size not less than 12. Otherwise, a fine of merely from 10,000,000 VND to 20,000,000 VND (i.e. about $475 to $950) may be imposed on any bank or other organization.[191]
On the websites of some brokers, the special terms and conditions are provided in English and Vietnamese. However there is no rule prescribing the font type and size for special terms and conditions to facilitate ease of reading by customers/prospective customers of a securities intermediary.
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[191] *See* Government Decree no. 19 of 2012, Article 10, Clause 1, item a).

Recommendation	While there are multiple provisions in the regulatory framework on the responsibilities of a securities intermediary in relation to terms and conditions of customer contracts it would appear that the customers may not fully understand the implications of such contracts. In fact, in spite of contracts that appear to be easy to understand, a common complaint received is that consumers did not eventually understand the terms and conditions of the service contracts they signed. Therefore, SSC should make sure through effective investor education/awareness programs that the public clearly understands the disclosed standard terms and conditions and knows how to use it to make informed decisions. Further, there should be a regulatory requirement that the terms and conditions of contracts entered into between a securities intermediary and its customers should be in minimum font size and spacing to facilitate customers' reading of such terms and conditions. SSC/MoF should also require securities intermediaries who distribute investment products and mutual funds to provide its customers with a Key Fact Statement. The Key Fact Statement would provide disclosures in simple language of the costs, returns and risks relating to the type of investment product that is marketed to the customer. Consumer testing of standard terms and conditions and proposed Key Facts Statements would be helpful.
Good Practice B.3	***Professional Competence*** **Regulators should establish and administer minimum competency requirements for the sales staff of securities intermediaries and CIUs, and collaborate with industry associations where appropriate.**
Description	The SC Law and subsidiary legislation requires securities practitioners who deal with clients to meet minimum competency requirements including passing an examination that is administered by the Securities Training Institute. Article 38(4) of SC Law requires all securities practitioners to participate in mandatory training courses on legal documents, transactional systems, new types of securities held by SSC and the stock exchange. Article 79(1) of the SC Law provides that an individual may be licensed by SSC as securities practitioner if he/she (i) has legal capacity and is not subject to any ban from professional practice by a court or criminal penalty; (ii) has a university degree and professional expertise in securities; and (iii) has passed an examination held by SSC (through the Securities Training Institute). The securities practitioner may only work for one securities intermediary and such intermediary is fully liable for the acts of the securities practitioner. SSC also requires that securities practitioners undergo continuous professional education (CPE) but to-date the Securities Training Institute has not organized any CPE for the industry. This could be due to the lack of resources at the Securities Training Institute. However, it would appear that securities companies normally arrange training for their staff depending on their internal training requirements on an ongoing basis.
Recommendation	The Securities Training Institute should be actively encouraged by SSC to develop CPE program standards for the industry in collaboration with relevant professional bodies (such as CFA and accounting bodies etc.) and service providers currently providing "in-house" training programs for securities intermediaries. Otherwise SSC should mandate such training requirements.
Good Practice B.4	***Know Your Customer (KYC)*** **Before providing a product or service to an investor, a securities intermediary or CIU should obtain, record and retain sufficient information to enable it to form a professional view of the investor's background, financial condition, investment experience and attitude toward risk in order to enable it to provide a recommendation, product or service appropriate to that investor.**

Description	The SC Law requires securities companies to ensure that advice and recommendations given to clients are suitable and appropriate for their clients.[192] In addition, under the SC Law and subsidiary legislation, all securities intermediaries are required to assess their clients' age, financial situation, and investment objective and investment experience when making any recommendation for buying or selling any security to their clients. For example, Article 71(8) of SC Law requires a securities company to retain complete source documents and accounts reflecting in detail and accurately all transactions of clients and of the company. In respect of investment advisory services provided by a securities company, pursuant to Article 56(2) of Circular 210/2012, the securities company is obliged to collect information about the client's financial status, investment targets, and ability to take risks and experience and knowledge of investments. The securities company must also ensure that the customer is fully informed of the risks of products/services before making an investment Article 31 of Circular 212/2012 provides that fund management companies shall be responsible for summarizing information on customer identification, including information on beneficiaries (if any), financial capacity, investment experience, investment period, investment objectives, risk tolerance, investment restrictions and sample portfolios and other requirements (if any) on customers. Article 31(2) of Circular 212/2012 also requires fund management companies to update information on identification of entrusting customers on a quarterly basis. When there is a change in such information, entrusting customers shall be obliged to provide related information to fund management companies in a full and timely manner. Fund management companies shall be entitled to refuse to provide portfolio management services to customers in case the customer fails to provide required information in a full and timely manner. Pursuant to the Circular 148/2010 relating to AML that established various KYC and CDD guidelines, securities intermediaries are required to obtain and document information on the purpose and intended nature of the account to be opened/ maintained with them and to develop a profile of the client based on the results of client identification and the risk assessment. Information regarding the intended investment plan of the client must also be obtained to the extent possible and must be documented.
Recommendation	No recommendation
Good Practice B.5	***Suitability*** **A securities intermediary or CIU should ensure that, taking into account the facts disclosed by the investor and other relevant facts about that investor of which it is aware, any recommendation, product or service offered to the investor is suitable to that investor.**
Description	Article 71(5) of the SC Law provides that a securities company is obliged to collect and understand the information relating to the financial status, investment objectives and risk profile of its clients and to make recommendations and give advice that is appropriate to the risk profile of the clients. Article 49(1) of Circular 210/2012 provides that when a securities company advises its customers in respect of trading, such securities company must gather sufficient information on customers and not guarantee securities values which it recommend the investment. Similarly, pursuant to Article 36(2) of the Circular advisory contents shall be based on results of informed analysis which are conducted in a prudent and reasonable manner. Reports on analysis of securities and the securities market, trading recommendations shall specify reference sources, persons responsible for the contents of such reports. Article 31(3) of Circular 212/2012 requires fund management companies to "*draw out*" the investment principles and policies consistent with requirements

[192] Article 71(5) of the SC Law.

	of customers based on information summarized it has collected from the customer pursuant to Article 31(1) of Circular 212/2012. Investment policies shall be clear, detailed and reflect all basic information on levels and types of risks, structures of sample portfolios, management expenses, rights and responsibilities of parties and other related important information. Investment policies shall form a part of investment management contracts. Article 31(4) of Circular 212/2012 provides that where fund management companies fail to observe investment policies as prescribed in investment management contracts, they shall adjust portfolios as soon as possible and bear all expenses incurred in connection with such transactions and may not charge management fees for portfolios inconsistent with investment policies. Further, Article 31(5) of the same circular provides that for all damages or profits resulting from investments which are inconsistent with investment policies and objectives, or from portfolios which are inconsistent with investment policies, portfolio structures specified with customers or resulting from other mistakes of fund management companies, fund management companies shall be responsible for compensating investors in accordance with written agreements between the two parties or recognizing all arising profits as those of portfolios of customers right after completing the adjustment of portfolios. It would appear that securities companies and fund management companies do conduct training for their staff in respect of new products and their responsibilities in dealing with clients. However, the training would appear to be skewed towards "product pushing".
Recommendation	Special training should be required for the securities practitioners who deal with retail customers as to their responsibilities to ensure suitability. Different investors, due to factors such as age, health, investment goals and risk appetites, will have different suitability for different type of financial instruments. Determining which investments are appropriate for the investor requires full and clear disclosure of the characteristics of the investment and expert advice as to the benefits and risks with each investment. In this regard, more practical training programs for securities practitioners who deal with customers would be useful. When providing information to customers, a firm should pay regard to its target market, including its likely level of financial capability; should take account of what information the customer needs to understand the product or service, its purpose and the risks, and communicate information in a way that is clear, fair and not misleading; and should have in place systems and controls to manage effectively the risks posed by providing information to customers. In the area of post-sale responsibility, a firm should be required: (i) in supplying information to the customer, to ensure that the information is communicated in a way which is clear, fair and not misleading; (ii) periodically review products whose performance varies materially to check whether the product is continuing to meet the general needs of the target audience that it was designed for, or whether the product's performance is or is likely to be significantly different from what the provider originally expected and communicated to the distributor or customer; and (iii) act fairly and promptly when handling claims or when paying out on a product that has been surrendered or reached maturity. In doing this, the provider should meet any reasonable customer expectations that it may have created with regard to the outcomes or how the process would be handled. Ideally there would also be an industry code of conduct to make clear the requirement that a broker or CIS or investment advisor advise a client as to the suitability of an investment for the client.

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<tr><td>Good Practice B.6</td><td>Sales Practices

Legislation and regulations should contain clear rules on improper sales practices in the solicitation, sale and purchase of securities. Thus, securities intermediaries, CIUs and their sales representatives should:

a. Not use high-pressure sales tactics;
b. Not engage in misrepresentations and half-truths as to products being sold;
c. Fully disclose the risks of investing in a financial product being sold;
d. Not discount or disparage warnings or cautionary statements in written sales literature;
e. Not exclude or restrict, or seek to exclude or restrict, any legal liability or duty of care to an investor, except where permitted by applicable legislation.

Legislation and regulations should provide sanctions for improper sales practices.</td></tr>
<tr><td>Description</td><td>Paragraph (a)

There are provisions in the SC Law and related circulars that provide that a securities intermediary is not to provide information that misleads or distorts the risks involved in respect of investments by the investor.

For example, Article 47 of the SC Law provides that a securities company must not “make the judgment or assure customers of the level of income or profit earned on their investments or assure customers of not being lost, except for investments in securities with fixed income”.

Further, a securities company must not do anything that can mislead the customers and investors about stock prices. Article 45 of the Law lays down the principle that where a securities company makes any recommendations in relation to a specific class of securities on the media, it must specify the basis of such an analysis and cite information sources. Article 47(4) of the Law provides that a securities company is prohibited from “giving an opinion on the increase or decrease in the securities price without foundation to entice customers to participate in the transaction or making agreement or offer specific interest rate or share profits or losses with customers to entice customers to participate in the transaction”.

Similarly, Article 36(5) of Circular 212/2012 provides that in respect of the securities investment advisory operations of a fund management company, its staff must ensure that they do not advise customers to invest in assets without providing customers with sufficient information on such assets and issuers. In addition, they must not to provide to customers unverified information, rumors, misleading information, false information, make forecasts or do anything with a view of soliciting, luring, inciting customers to trade in a certain type of assets which is not consistent with investment objectives, experience, risk awareness and tolerance and financial capacity of the customer.

The staff of a fund management company is also prohibited from providing information, which misleads customers about potential profits and risks involving investments assets. Neither can a fund management company present gifts nor use any other means to solicit or lure customers to trade in any type of assets. The fund management company is also prohibited from making any forecast of the prices of assets in the future, guarantee investment results (except for investments in fixed-income products or capital-preserving investment products) or agree with customers on profit or loss division.

Paragraph (b)

See the Good Practice B.4 and B.5.

Paragraph (c)</td></tr>
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Paragraph (d)

While there are broad principles regulating the conduct of securities intermediaries in relation to their interaction with customers to ensure that customers are treated fairly and be provided full information in a full, timely and accurate manner (see descriptions in Paragraph (a)) above, there are no specific provisions in the regulatory framework that prohibits the security intermediary from discounting or disparaging warnings or cautionary statements in written sales literature.

Paragraph (e)

Article 48(3) of the SC Law requires that a contract which is entered into between a securities company and its customer must not contain any terms that:

• avoid legal obligation of the securities company without plausible reasons;
• limit the scope of compensation of the securities company without plausible reason or transfer a risk from the securities company to the customer;
• compel the customer to execute unfair compensation obligation; and
• cause an unfair disadvantage to the customer.

Article 30(2) of Circular 212/2012 provides that investment management contracts between a fund management company and its customers must not:

• contain clauses which enable the fund management companies to evade legal obligations to compensate the customer resulting from their mistakes or willful violations;
• restrict the scope of their compensation, financial responsibilities to customers without justifiable reasons; or transfer risks to customers in cases there are their mistakes or willful violations; or
• contain clauses which facilitate unfair treatment towards customers.</td></tr>
<tr><td>Recommendation</td><td>There should be a provision in the regulatory framework that prohibits the security intermediary (for both securities company and fund management company) from discounting or disparaging warnings or cautionary statements in written sales literature that are distributed to their customers.

There is anecdotal evidence that there is some commission sharing arrangements between banks and a securities intermediary for any referrals of the banks’ customers made to the securities intermediary. Even though the market for such wealth management products is not significant in Vietnam to-date, given the potential for rapid growth of this segment of the market, SSC may wish to work out appropriate arrangements with SBV and MoF to ensure that sales practices in such referrals are subject to similar standards of investor protection as are imposed on securities intermediaries including disclosure to investors of accurate information on charges and fees in such arrangements.</td></tr>
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<tr><td>Good Practice B.7</td><td>Advertising and Sales Materials
a. All marketing and sales materials should be in plain language and understandable by the average investor.
b. Securities intermediaries, CIUs and their sales representatives should ensure their advertising and sales materials and procedures do not mislead the customers.
c. Securities intermediaries and CIUs should disclose in all advertising, including print, television and radio, the fact that they are regulated and by whom.</td></tr>
<tr><td>Description</td><td>See Banking Sector Good Practice B.9.

Paragraph (a)
Under the general Advertising Law the contents of any advertisement must be truthful, accurate and clear and not cause damage to any “advertisement receiver” (i.e. any consumer).[193] It is prohibited for any business organization (in this case, any securities intermediary and fund management company or their practitioners) to provide consumers with any inaccurate, misleading or inexact information or to hide information about:
• any good or service provided by that business organization;
• the reputation, goodwill, business capacity, capacity to supply goods, services and any other characteristic of that business organization; or
• the nature or any characteristic of a transaction between a consumer and that business organization.[194]

Paragraph (b)

Securities intermediaries, among others, are legally responsible for all statements made in their advertising and sales materials (i.e. are subject to penalties under the law for making any false or misleading statement). Furthermore, all advertisers must ensure that the quality of their products and services is consistent with their advertisements.[195] Moreover, there is an obligation on third parties (such as media organizations through their advertising services) that provide consumers with information about products and services of any business organization to ensure that the information supplied is complete and accurate. The third party will be jointly liable with the business organization in question for any inaccurate information where that third party has failed to take adequate steps to ensure the accuracy of the information.[196]

Paragraph (c)

No regulatory status disclosure requirements have been prescribed.</td></tr>
<tr><td>Recommendation</td><td>All securities intermediaries should be responsible for the offers they make in their advertising, whether by means of newspaper, radio, television or otherwise. They should also bear responsibility for their agents’ actions when advising or offering a product or service to consumers. All securities intermediaries should be legally responsible for any statements made in their advertisements.

Supervision of advertising in the securities market should also be strengthened by SSC. However, responsibility for the implementation and enforcement of advertising and marketing rules for the securities market should be supervised not just by SSC but also by the professional bodies such as the Association of Stockbroking Companies and Fund in the longer term.

For all provisions in the Advertising Law regarding consumer disclosure, SSC in particular should, through effective investor awareness/education programs, make sure that the public clearly understands the disclosed information and knows how to use it to make informed decisions. While supervisory staff is</td></tr>
</table>

[193] *Id.*, Article 19, Section 1 of the Advertisements Law.
[194] *See* CP Law, Article 10, Section 1.
[195] *Id.*, Article 12, Section 2, item b).
[196] *Id.*, Article 13, Section 1.

	limited within the Ministry of Culture, Sports and Tourism and SSC, advertisements made by securities intermediaries should be reviewed from time to time. The content of these advertisements should be monitored either by the Ministry of Culture, Sports and Tourism or SSC. At the same time, consideration may be given to requiring that all securities intermediaries state in their advertisements that they are licensed and regulated by SSC. More specific guidance could also usefully be provided by SSC/MoF in the form of policy explanatory notes to the industry on what may constitute legitimate advertising by securities intermediaries and what is meant by the "*unreliable and misleading*" advertisement rule under the securities laws. At present there are no detailed regulations on permissible advertising practices in the securities sector other than the general requirement not to make misleading statements. The result of the lack of specific guidance is that compliance with the abovementioned rules would inevitably be dependent on individual securities company's or fund management company's compliance capacity.
SECTION C	**CUSTOMER ACCOUNT HANDLING AND MAINTENANCE**
Good Practice C.1	***Segregation of Funds*** **Funds of investors should be segregated from the funds of all other market participants.**
Description	There are multiple provisions in the SC Law and subsidiary legislation that mandate the segregation of funds of investors from the funds of the securities intermediaries. For example, Article 46 of the SC Law requires VSD to manage separately the assets of customers. Article 71 of the SC Law spells out the obligations of a securities company to include, among other things, the duty to manage the securities of each investor, and separately manage the assets of a customer from the monies and securities of the securities company. In addition, Circulars 210/2012 and 212/2012 specifically require a securities company and a fund management company to segregate the funds of investors from the assets and monies of such securities company or fund manager and from its other customers. Further, the SC Law and Circulars 210/2012 and 212/2012 all provide that a custodian bank must separate the cash and assets of an investor from its own assets and other assets it manages and must not use investors' asset to make loans or to provide guarantees or to pay the debts of other investors.
Recommendation	No recommendation.

Good Practice C.2	***Contract Note*** **Investors should receive a detailed contract note from a securities intermediary or CIU confirming and containing the characteristics of each trade executed with them, or on their behalf. The contract note should disclose the commission received by the securities intermediary, CIU and their sales representatives (expressed as total expenses as a percentage of total assets purchased).**
Description	Article 52(7) of Circular 210/2012 provides that a securities company must provide confirmation of a trade order to a customer. However, it is not clear if a prescribed format for such confirmation is used. It would appear that it is the practice of all securities companies to send a text message and email to their customers (as nearly all their customers have online access to their trading account) notifying them of the matched orders and the price at which they were matched. The commission received by the securities company and the fund management company are disclosed upfront at the time of signing the contract by the customer as specified in Circular 210/2012.
Recommendation	A useful step would be for the stock exchanges together with the securities company industry group to develop standardized contracts—or at least standard provisions of contracts. The standardized contract should include all the key terms and conditions of the financial product or service. The contract note needs to include whether the securities company acted as a dealer on the trade and, if the price is based on a mark-up, there should be no brokerage fee.
Good Practice C.3	***Statements*** **An *investor* should receive periodic, streamlined statements for each account with a securities intermediary or CIU, providing the complete details of account activity in an easy-to-read format.** **a. Timely delivery of periodic securities and CIU statements pertaining to the accounts should be made.** **b. Investors should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.** **c. When an investor signs up for paperless statements, such statements should also be in an easy-to-read and readily understandable format.**
Description	***Paragraph (a)*** There is an obligation of a securities company of a fund management company to provide information to its customers in relation to their trades/portfolio under the SC Law and subsidiary legislation. For a fund management company, pursuant to Circular 212/2012 Appendix 8, a prescribed format of a portfolio must be given to the customers. Article 38(3)(d) requires a fund management company to supply to its customers account statements of portfolios, transaction statements certified by custodian banks, and information on investment management activities, answer all questions raised by customers at any time. For trades on the stock exchanges, the securities company would send the confirmation by both text and email to customers once their orders are matched. However, there appears no regulatory requirement on the regularity for such statements to be sent to customers. ***Paragraph (b)*** Further, there are provisions to allow customers to contest the accuracy of the securities balances even though there is the assumption that since customers access their accounts online they could check it anytime. ***Paragraph (c)***

	Securities companies interviewed advised that their customers are generally internet savvy and use online trading. They have online access to their securities account and the balance anytime. However, at the request of customers who want printable statements, these securities companies would provide them printed versions at no cost.
Recommendation	Provisions should be introduced relating to paperless statements in compliance with this Good Practice. It would also be helpful to introduce more specific regulations as to the procedure for contesting the accuracy of statements.
Good Practice C.4	***Prompt Payment and Transfer of Funds*** **When an investor requests the payment of funds in his or her account, or the transfer of funds and assets to another securities intermediary or CIU, the payment or transfer should be made promptly.**
Description	Prior to 2012, it was a commonplace for securities companies to use clients' monies that were supposed to be kept in trust account. However, under current regulatory requirements all necessary payments to customers of the securities companies must be done by custodial banks so that the former do not handle the money side of the transaction.[197]
Recommendation	No recommendation
Good Practice C.5	***Investor Records*** **A securities intermediary or CIU should maintain up-to-date investor records containing at least the following:** **a. A copy of all documents required for investor identification and profile;** **b. The investor's contact details;** **c. All contract notices and periodic statements provided to the investor;** **d. Details of advice, products and services provided to the investor;** **e. Details of all information provided to the investor in relation to the advice, products and services provided to the investor;** **f. All correspondence with the investor;** **g. All documents or applications completed or signed by the investor;** **h. Copies of all original documents submitted by the investor in support of an application for the provision of advice, products or services;** **i. All other information concerning the investor which the securities intermediary or CIU is required to keep by law; and** **j. All other information which the securities intermediary or CIU obtains regarding the investor.** **Details of individual transactions should be retained for a reasonable number of years after the date of the transaction. All other records required under a. to j. above should be retained for a reasonable number of years from the date the relationship with the investor ends. Investor records should be complete and readily accessible.**
Description	Article 69 of Circular 210/2012 requires a securities company to keep all documents relating to customers' transactions and its operations for a period of 10 years. Article 40 of Circular 212/2012 requires a fund management company to *"keep, on a full, accurate, timely and systematic basis, all documents, records and update information, data related to their operations. A backup copy of information on the company's operations shall be kept at a location outside the headquarters of the company*". Further, Article 52(3) of the Circular provides that where a securities company receives an order online, via phone, fax and other transmission lines, it must:

[197] Article 50 of Circular 202/2012.

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comply with the law on electronic transactions, and guiding documents;
ensure full recording of information at the time of receiving an order and keeping proof of executing the customers' order;
ensure principles of confirmation with customers prior to entry of order to the trading system;
take measures to ensure the safety, security of transmission lines and appropriate remedies upon failure of entry of customers' order into transaction system due to company's fault.

Article 40(2) of Circular 212/2012 provides that all fund management companies, supervisory banks, custodian banks, distribution agents shall maintain, in a full, systematic, accurate and consistent manner, documents related to:

the offering and distribution of fund certificates;
the confirmation of the ownership of investors of securities investment funds/companies;
financial statements, accounting books; systems of accounts, invoices, transaction documents to ensure that they reflect, on a detailed, accurate and timely basis, all daily transactions of such fund management companies including information on the sequence of orders placed, transactions made;
documents, electronic information used to determine the net asset value;
original copies of legal documents on ownership registration and original copies of legal documents certifying the ownership related to assets; asset transactions and related documents, if any, which shall be maintained by fund management companies and supervisory and custodian banks during the operation process of securities investment funds;
reports on valuation, investment analysis, investment decision, investment management, capital withdrawal and related documents;
final reports on asset management operations, portfolios, figures, transaction documents; and
accounting books, accounting accounts, documents, electronic information related to assets, transactions in assets of securities investment funds/companies.

Securities companies and fund management companies and other market intermediaries are required to maintain duplicates of confirmation issued to customers and maintain books of accounts and other documents for a period of not less than 10 years.
</td></tr>
<tr><td>Recommendation</td><td>No recommendation</td></tr>
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SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	***Confidentiality and Security of Customers' Information*** **Investors of a securities intermediary or CIU have a right to expect that their financial activities will have privacy from unwarranted private and governmental scrutiny. The law should require that securities intermediaries and CIUs take sufficient steps to protect the confidentiality and security of a customer's information against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access to, or use of, customer information.**
Description	The SC Law and subsidiary legislation provide for the protection of confidentiality of customers and information relating to their activities. For example, Article 57 of the SC Law provides that VSD and its members (all securities companies) must protect confidentiality of information of clients including the ownership of securities unless consent is provided by the clients or if it is in accordance with law (such as when information is required by a State body). Circulars 210/2012 and 212/2012 also provide for obligations on the part of the securities companies and fund management companies to protect confidentiality of information relating to their clients. Vietnam has no consolidated data protection law. Rather, in addition to the provision in the SC Law referred above, the CP Law, the Civil Code, the E-Transactions Law, the Law on Information Technology and the Criminal Code[198], as well as certain subsidiary legislation,[199] all have provisions dealing explicitly with - or having relevance to - privacy and data protection. See Banking Sector Good Practice D.1.
Recommendation	See the Banking Sector Good Practice D.1.
Good Practice D.2	***Sharing Customer's Information*** **Securities intermediaries and CIUs should:** **a. Inform an investor of third-party dealings in which they should share information regarding the investor's account, such as legal enquiries by a credit bureau, unless the law provides otherwise;** **b. Explain how they use and share an investor's personal information;** **c. Allow an investor to stop or "opt out" of certain information sharing, such as selling or sharing account or personal information to outside companies that are not affiliated with them, for the purpose of telemarketing or direct mail marketing, and inform the investor of this option.**
Description	***Paragraph (a) and (b)*** The SC Law allows various agencies such as SSC and other authorized agencies which can solicit client information to aid in carrying out of their functions. Pursuant to various contractual documents, investors are informed that information relating to their accounts can be shared with the authorized federal agencies/institutions as provided in the law. ***Paragraph (c)*** Contractually, an investor has the right to insist on privacy of information of his account and bar the intermediaries from sharing information with third parties except in relation to the provision of information to the agencies/institutions that are authorized to receive such information for official use. Nonetheless, it would appear that not many investors are aware of their right to stop or "opt out" of certain information sharing, such as selling or sharing account or

[198] *See*, Article 226 of the Criminal Code regarding the crime of illegally using information in computer networks and computers.

[199] *See, e.g.*, SBV Decision 1087 of 2007 on State Secrets in Banking, SBV Circular no. 1 of 2011 on Ensuring Safety and Keeping Secrets within Information Technology Systems in Banking Operations; and SBV Circular no. 29 of 2011 on the Safety and Confidentiality in the Provision of Banking Services over the Internet.

	personal information to outside companies that are not affiliated with them, for the purpose of telemarketing or direct mail marketing.
Recommendation	The rules on information sharing in the SC Law should be redrafted to: (i) provide a clear set of rights for investors regarding the sharing of information and their right to opt out of any sharing agreements; and (ii) to clearly set out the obligation of the securities intermediary/asset manager to provide investors with information on sharing of information and any "opt-out" provisions.
Good Practice D.3	***Permitted Disclosures*** **a. The law should state specific procedures and exceptions concerning the release of customer financial records to government authorities.** **b. The law should provide for penalties for breach of investor confidentiality.**
Description	***Paragraph (a) and (b)*** Article 45(6) of Circular 210/2012 provides that a securities company must not disclose information about customers except if the customer gives consent or if it is at the request of the competent State management. Article 57 of the SC Law provides that VSD and its members must protect the confidentiality of information of clients (including as to ownership of securities) unless consent is provided by the clients or if it is in accordance with law (such as when information is required by a State body). Further see the Banking Sector Good Practice D.3.
Recommendation	In the long term, the authorities should consider providing guidance to financial intermediaries including securities companies and fund management companies and other market institutions on what are the parameters for relevant agencies to solicit and obtain information relating to customers' accounts.
SECTION E	**DISPUTE RESOLUTION MECHANISMS**
Good Practice E.1	***Internal Dispute Settlement*** **a. An internal avenue for claim and dispute resolution practices within a securities intermediary or CIU should be required by the securities supervisory agency.** **b. Securities intermediaries and CIUs should provide designated employees available to investors for inquiries and complaints.** **c. Securities intermediaries and CIUs should inform their investors of the internal procedures on dispute resolution.** **d. The securities supervisory agency should provide oversight on whether securities intermediaries and CIUs comply with their internal procedures on investor protection rules.**
Description	***Paragraph (a) and (b)*** Article 133(1) of the SC Law clearly provides that an individual has the right to complain or institute legal proceedings in accordance with law. Further, Article 132 (1) of the SC Law empowers any person who has suffered loss or damages to claim compensation from the defaulting person (including a securities intermediary). Article 131(1) goes on to provide that, in the event of a dispute between an individual and a securities intermediary, such a dispute can be resolved either by negotiation, arbitration or through the courts. Circulars 210/2012 and 212/2012 require all securities intermediaries to have internal complaints handling procedures for their clients. A securities company must set up a dedicated department to handle all communications with customers and to address all complaints from such customers.[200] Various procedures in regard to the time required to resolve disputes are stipulated in Article 131 of SC Law but it is not clear whether the time-bound procedures

[200] Article 49(6) of Circular 210/2012.

	are equally applicable to securities intermediaries as they are to SSC (which is the designated agency to receive complaints from consumers under the SC Law). There is concern over the quality of internal complaints handling systems and the resources that are allocated to them by securities intermediaries (particularly those that are smaller). The stock exchanges (HNX and HOSE) are also required to provide a dispute resolution forum for resolving errors, cancellations and other matters. Annual reports of the exchanges, however, do not contain statistics on this activity. ***Paragraph (c)*** While the stock exchanges have information on their websites regarding how to complain against member companies of such exchanges, there appear to be no explicit requirements in the exchanges' member rules that require their members to have minimum requirements on internal complaints handling procedures. ***Paragraph (d)*** SSC's on-site inspection examines the effectiveness of the complaints handling procedures of the securities intermediary. SSC may also examine the complaints on an ad-hoc basis should it determine necessary where there are complaints against the securities intermediary outside the onsite inspection cycle.
Recommendation	In the short-term, the MoF/SSC should require all securities intermediaries to: • publicize a common, consistent process for their handling of any compliant of a retail customer; • establish a unit in charge of receiving and handling all such complaints and disclose the name, telephone number and street and email address of this unit; • provide in all agreements between a seucrities intermediary and its retail customers a description of the procedures to be followed by the securities intermediary and its retail customers with a view to resolving any dispute; and • deliver regularly to SSC all data compiled regarding all complaints in a standardized format prescribed by SSC. SSC should assess the quality of the internal complaints handling procedures and processes for all securities intermediaries and develop structured processes within its operations to be able to assess the effectiveness of internal complaints handling operations of the securities intermediaries. For example, SSC should specifically require that securities intermediaries provide on their website, in client communications and on request, information on how to seek a remedy, including redress, for problems arising out of interactions with the securities intermediaries. Intermediaries should also be required to prepare an annual report of compliance with their dispute-resolution policy to SSC. Relevant industry bodies (such as the exchanges and the Association of Stockbroking Companies and the Fund Managers Association) should also review their rules/codes of conduct to ensure that minimum standards and processes on internal complaints handling are required of their members and develop mechanisms to monitor their effectiveness.

<table>
<tr><td>Good Practice E.2</td><td>Formal Dispute Settlement Mechanisms

There should be an independent dispute resolution system for resolving disputes that investors have with their securities intermediaries and CIUs.

a. A system should be in place to allow investors to seek third-party recourse, such as an ombudsman or arbitration court, in the event the complaint with their securities intermediary or CIU is not resolved to their satisfaction in accordance with internal procedure, and it should be made known to the public.
b. The independent dispute resolution system should be impartial and independent from the appointing authority and the industry.
c. The decisions of the independent dispute resolution system should be binding upon the securities intermediaries and CIUs. The mechanisms to ensure the enforcement of these decisions should be established and publicized.</td></tr>
<tr><td>Description</td><td>Article 131(3) of the SC Law vests SSC with an explicit mandate to resolve complaints made by individuals in accordance with law. However there is no dedicated centralized unit that monitors and analyzes these complaints to ensure effectiveness.

While the SC Law and Circulars 210/2012 and 212/2012 require securities companies and fund managers to establish complaints handling policies and process within these institutions, SSC does not receive data relating to the number and types of complaints that are channeled to these institutions. Thus, SSC does not have a consolidated database of complaints that can help in identifying the vulnerabilities such as the breakdown of complaints by types of institutions (securities companies/fund managers) and the issues complained about.

Under Article 131(1) of the SC Law, disputes between securities intermediaries and their customers may also be resolved through negotiation, mediation, arbitration or the court. However, these avenues are not likely to be cost-effective or efficient for retail investors.</td></tr>
<tr><td>Recommendation</td><td>It is considered that SSC could further strengthen its own transparency and accountability regarding treatment of consumer complaints. This is because both disputes and inquiries provide valuable early warning signals to both the intermediaries' management and the supervisor regarding possible future problems.

Over the medium term it might be useful for SSC to establish a centralized unit within SSC that would monitor and analyze data such as the total number of complaints, types of complaints and time for them to be resolved as a basis of analyzing the key risks and trends that can inform supervision and policy formulation. Ideally complaints would be able to be received through a variety of mechanisms, including a hotline, in writing and via email. Considering the broad range of supervisory responsibilities of SSC and the capacity constraints, in the immediate term, a designated team within the Securities Supervision Department responsible for financial consumer protection would be helpful as an intermediate step.

A consolidated database of complaints could help the regulators in identifying vulnerabilities as follows:

• the medium of complaints;
• the institution that received the complaint;
• breakdown of complaints by types of institutions (securities companies/fund managers etc.), industry and province;
• the time taken to resolve the complaints;
• the issues complained about;
• the time taken to resolve;
• number of complaints that were not resolved;
• policy changes based on complaints; and</td></tr>
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- literacy efforts directly related to analysis of complaints.

SSC should also require all securities intermediaries and market institutions (exchanges) to report on complaints received on a periodical basis.

SSC should also be required to: (i) publicize widely, at least once every year, the total number of consumer complaints, the most common concerns of consumers, and the percentage of cases that have been acknowledged in writing by the consumer as having been resolved satisfactorily; (ii) publicize appropriate corrective measures; and (iii) of those complaints that went into dispute resolution - the number resolved in favor of the investors and the number in favor of the securities intermediary.

A low-cost Ombudsman for resolution of disputes for retail customers could be considered for the securities sector in the longer term. The arbitration system should still be maintained when it relates to larger size disputes.

See also Banking Sector Good Practice E.2.
</td></tr>
<tr><td>SECTION F</td><td>GUARANTEE SCHEMES AND INSOLVENCY</td></tr>
<tr><td>Good Practice F.1</td><td>

Investor Protection

a. **There should be clear provisions in the law to ensure that the regulatory authority can take prompt corrective action on a timely basis in the event of distress at a securities intermediary or CIU.**
b. **The law on the investors guarantee fund, if there is one, should be clear on the funds and financial instruments that are covered under the law.**
c. **There should be an effective mechanism in place for the pay-out of funds and transfer of financial instruments by the guarantee fund or insolvency trustee in a timely manner.**
d. **The legal provisions on the insolvency of securities intermediaries and CIUs should provide for expeditious, cost-effective and equitable provisions to enable the timely payment of funds and transfer of financial instruments to investors by the insolvency trustee of a securities intermediary or CIU.**
</td></tr>
<tr><td>Description</td><td>

The regulatory framework today does not provide for an investor compensation scheme as contemplated by this Good Practice. However, there is a current project within SSC to consider developing such a regime.

Currently, however, individual securities companies/fund management companies and individual brokers are required to have professional liability insurance (although the amounts are not clear) and a compensation arrangement to protect against errors and losses caused by brokerage staff.

Vietnam insolvency law further protects transfers to customers and transfers for clearing and settlement purposes made within the 90 days prior to opening of a bankruptcy proceeding. The law also permits the auction or sale of a securities company to another company and for the transfer of customer accounts. However, there remain ambiguities as to the treatment of customers, as opposed to general creditors, once a bankruptcy is declared if a sale or recapitalization is not possible.

The following paragraphs describe in more detail the limited provisions which currently exist in relation to insolvency and related situations in the securities markets.

SSC possesses powers to issue directions and orders to securities intermediaries to take prompt corrective action in the event of distress of such securities intermediaries. For example, Article 74 of the SC Law states that a warning shall be given to a firm whose amount of capital does not exceed 120 percent of capital as required by MoF. A firm has only 30 days to return to a non-warning level. Further, Article 70 of the SC Law and Circulars 210/2012 and 212/2012 permits suspension by SSC of a securities company or fund
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	management company that fails to rectify the required status and suffers a cumulative loss of 50 percent of its charter capital or fails to meet its ongoing operating requirements. Under the SC Law, SSC can also transfer the accounts of a financially troubled securities intermediary to a solvent securities intermediary. MoF also has direct powers to suspend trading subject to input from SSC and SSC appears to have the power to move positions. However, SSC does not have power to appoint an administrator or liquidator as all insolvencies in Vietnam are court supervised. If members default on posting cash in time, under VSD rules, the financial guarantee fund provides an automatic loan if the shortfall is within the limit prescribed by VSD. If the amount still is not sufficient to fund delivery of securities, this could lead to removal of transactions from settlement, engendering settlement risk and the reversal or cancellation of trades. Further, if the customer and/or the broker cannot repay the above mentioned loan, Decision 87-2007QD-BTC explains that VSD member is accountable for settlement on behalf of customers and in the event of the failure of the cash or securities leg, that either the settlement fund or a loan from a paying bank may be used or in the case of a security, the security may be borrowed. Securities companies have been unable in certain cases to complete transactions on the settlement system, where customer credit was extended, but the customer failed to settle the cash leg. This has resulted in charges first to the settlement fund at the exchange, and in the case of insufficiency of funds in the settlement fund, borrowings from the settlement. VSD and SSC have discouraged such failures to settle, and after three warnings, can suspend, and have suspended, access to the settlement system. Such discouragement is not considered sufficient by market participants, who believe other measures, including a central counterparty ("CCP"), harsher consequences (prompt corrective action), and more coordination with the markets, should be explored.
Recommendation	The insolvency regime for the securities industry should be reviewed to align treatment of customers of insurers and securities intermediaries with international standards (i.e. IOSCO Principles of Securities Regulation). In particular, full and effective powers should be developed for the entity overseeing the insolvency of a securities intermediary in order to allow it to fully protect investor assets, promptly return the assets to investors and resolve creditor claims. Any consideration of an investor protection scheme should be carefully considered to ensure it is appropriate to the stage of development of securities market development in Vietnam. Typically, the existence of an investor protection fund will secure the assets of investors in the event of a broker's insolvency and fraudulent conduct[201]. In the event of an unauthorized trade, which a broker cannot cover in the open market due to insolvency, the protection fund would be available to restore the investor's assets. The use of a guarantee fund is a powerful way of building investors' confidence that their assets are safe if a securities intermediary misappropriates their assets or becomes bankrupt. It is mandatory in the EU and exists for equity transactions in the US. However, it should be pointed out that countries with smaller capital markets frequently do not have such a fund, since the securities intermediaries do not want to incur the costs. In that instance, the government may want to consider initiating such a fund that is partially funded from government resources or from other resources such as a securities transactions tax. The government would

[201]Such a compensation fund is required in the European Union and exists in various forms in the United States, Turkey, Malaysia, Hong Kong and South Korea, among many other countries.

	need to weigh the cost/benefits of such a fund in creating increased investor confidence in the market.
SECTION G	**CONSUMER EMPOWERMENT**
Good Practice G.1	***Broadly based Financial Capability Program*** **A broadly based program of financial education and information should be developed to increase the financial capability of the population.** **a. A range of organizations –including the government, state agencies and non-governmental organizations– should be involved in developing and implementing the financial capability program.** **b. The government should appoint a ministry (e.g. the Ministry of Finance), the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.**
Description	Financial education efforts related to securities and investments are currently provided by the major stock exchanges in Hanoi and Ho Chi Minh City. These activities, however, seem to be directed at relatively knowledgeable investors, such as brokerage employees or active traders, not at retail investors who are novices at trading. The mission did not learn of financial capability efforts at SSC.
Recommendation	As Vietnam develops a financial capability strategy, knowledge of securities and investments should be included among the related objectives, as these products are important for long-term savings and resource mobilization. The securities regulator should participate with SBV in the development of the financial capability strategy. Outreach specific to securities and investments, such as training provided by the stock exchanges, brokerages or securities regulator, should place greater emphasis on awareness raising and basic skills and knowledge (especially of the opportunity to invest and the risks involved in different products and strategies).
Good Practice G.2	***Using a Range of Initiatives and Channels, including the Mass Media*** **a. A range of initiatives should be undertaken to improve people's financial capability.** **b. This should include encouraging the mass media to provide financial education, information and guidance.**
Description	***Paragraph (a)*** Currently the stock exchanges are taking the lead on providing investment training to consumers, mainly through workshops and seminars featuring expert speakers from Vietnam and abroad. These events are taught in person, sometimes at the exchange, and reach as many as several hundred participants at one time. The stock exchange in Ho Chi Minh City has also developed a website for investors, which is a source of information on investment opportunities but the extent to which it offers online training is not clear. ***Paragraph (b)*** See Banking Sector Good Practice G.2.
Recommendation	Financial capability interventions for securities and investments would benefit from a broader range of interventions, including use of technology enabled tools, games and the use of mass media to raise awareness and provide skills, including entertainment education. More of the attention on securities and investment training should involve basic concepts and issues such as portfolio diversification, the tradeoff between risk and return, risks / costs from excessive trading volatility, etc.

Good Practice G.3	***Unbiased Information for Investors*** **a. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks –and where practicable the costs- of the main types of financial products and services.** **b. Non-governmental organizations should be encouraged to provide investor awareness programs to the public regarding financial products and services.**
Description	See Banking Sector Good Practice G.3.
Recommendation	See Banking Sector Good Practice G.3.
Good Practice G.4	***Measuring the Impact of Financial Capability Initiatives*** **a. The financial capability of consumers should be measured through a broad-based survey that is repeated from time to time.** **b. The effectiveness of key financial capability initiatives should be evaluated.**
Description	See Banking Sector Good Practice G.5.
Recommendation	See Banking Sector Good Practice G.5.

III. Good Practices: Insurance Sector

The insurance industry is still nascent but growing fast along with the growth in the economy. While gross premiums written and industry assets have more than doubled over the last 5 years, the insurance penetration ratio (gross premiums as a share of GDP) has increased only marginally to approximately 1.85 percent. Non-life insurance business grew 10.3 percent in 2012 reaching VND 22.8 trillion, while in the same time the life insurance grew 14.8 percent reaching VND 18.4 trillion.[202] Agents[203] are the main distribution channel for personal lines non-life products and life products, but insurers are beginning to use banks, telemarketing, on-line platforms and post offices as alternative channels.[204]

Both the non-life and life insurance sectors have numerous insurers but most of the business is concentrated in a few insurers. The non-life insurance market has 29 insurers with a limited number of foreign stakeholders and is reasonably concentrated with the top 5 insurers writing approximately 70 percent of the premiums.[205] The main personal lines products are motor vehicle, health and personal accident, and property with claims ratios (claims as a percent of premiums) for these classes being respectively 53, 22 and 37, so profitability is good. The life insurance market has 15 insurers with a high degree of foreign ownership or investment and is quite concentrated with the top 3 insurers receiving approximately 75 percent of the premiums. The major products are endowment savings, term life and investment insurance, with very few whole of life or annuities sold, and life insurers can also provide health insurance as part of a life insurance package. There are over 200,000 agents, but many are part-time and there is very a high turnover, as well as agents shifting between insurers.[206]

Insurance is highly regulated, including detailed regulation of non-life mandatory insurance products and all life and health insurance products. Some types of non-life insurance are compulsory (e.g. civil liability for motor vehicle owners) and for these the Ministry of Finance sets the policy clauses, premium scales and minimum sums insured and an insurer licensed for these classes cannot refuse to underwrite. Insurance policy clauses and premium scales for health insurance and life insurance products must be ratified by MoF. Life agent training, certification and management are also heavily regulated. MoF also sets caps on commissions' payable for all insurance products, which vary by product type.

[202] Overview of Vietnam Insurance Market in 2012 (AVI, 2012).

[203] Until the end of 2012, total number of agents in the market was 225,963 agents, up 11.3 percent. *See*, Overview of Vietnam Insurance market in 2012, 12 (Insurance Association of Vietnam, 2012).

[204] Overview of Vietnam Insurance market in 2012, 12 (Insurance Association of Vietnam, 2012) and data available at AVI's website: http://avi.org.vn.

[205] *Id.*

[206] *Id.*

<table>
<tr><th>SECTION A</th><th>CONSUMER PROTECTION INSTITUTIONS</th></tr>
<tr><td>Good Practice A.1</td><td>Consumer Protection Regime

The law should provide for clear rules on consumer protection in all matters of insurance and there should be adequate institutional arrangements for implementation and enforcement of consumer protection rules.

a. There should be specific provisions in the law, which create an effective regime for the protection of retail consumers of insurance.
b. The rules should prioritize a role for the private sector, including voluntary consumer organizations and self-regulatory organizations.</td></tr>
<tr><td>Description</td><td>Paragraph (a) and (b)

The Law on Insurance Business 2010 (IB Law) governs the organization and operation of insurance business and defines the rights and obligations of organizations as well as individuals participating in insurance. The IB Law does not apply to social, health and other insurances of a non-commercial nature provided by the State. IB Law Chapter II covers the content and operation of insurance contracts, and the rights and obligations of insurance enterprises and insurance buyers.
Other laws impacting on consumer protection in insurance include:

• Civil Code;
• Commercial Law;
• Law on Protection of Consumers' Rights; and
• Law on Advertising.

The provisions on consumer rights and obligations across these laws are at the level of principles and many are similar, but not the same. There is also a substantial body of subsidiary legislation (Decrees, Decisions, Circulars) under the IB Law. This plethora of laws and regulations is likely to make it difficult for insurance consumers and advisers to understand their obligations and rights under all of this legislation.

The MoF is responsible for administering the IB Law and the Insurance Supervisory Authority (ISA, which is part of the MoF) is responsible for supervision of the insurance industry. Insurance is heavily regulated, including detailed regulation of non-life insurance mandatory products and all life and health insurance products[207]. Some types of non-life insurance are compulsory (e.g. civil liability for motor vehicle owners) and for these the MoF sets the policy clauses, premium scales and minimum sums insured and an insurer licensed for these classes cannot refuse to underwrite. Insurance policy clauses and premium scales for health insurance and life insurance products must be ratified by the MoF. Insurance agent training, certification and management are also heavily regulated. The MoF also sets caps on commissions payable for all insurance products, which vary by product type.

There is no evidence that VCA responsible for consumer protection (See Banking Sector Good Practice A.1) is proactive in trying to identify shortcomings in insurers' complying with consumer protection requirements, and there appears to be minimal complaints to the VCA, or evidence that VCA investigates complaints against insurers to achieve rectification and improved industry practice.</td></tr>
</table>

[207] *See*, IB LAW Article 39 – Responsibilities of Ministry of Finance for State administration of insurance business. In particular Clauses 3, 9 and 10.

	The Association of Vietnamese Insurers (AVI) represents all licensed insurers and its main roles are dealing with MoF on insurance policy and legislation issues, publishing insurance business statistics, arranging forums on insurance regulatory matters, and assisting insurers manage agents through its database of all agents in the industry. At this stage it has developed one specific self-regulatory arrangement for the life insurance industry[208] and it has developed an industry-wide agent database which has some regulatory backing.
Recommendation	Consideration should be given to the rationalization of the legal and regulatory framework for consumer protection in insurance in order to make understanding of the requirements easier, clarify the roles of government agencies, and focus the key agencies to achieve effective consumer protection. One way to achieve this may be to carve out consumer protection provisions in respect of financial services from the general laws and place them in a specific financial services consumer protection law. Improved consumer outcomes from such a change would also likely require a specialist agency to effectively monitor financial service provider practices, apply sanctions and possibly handle and arbitrate on customer disputes. Another option is to carve out relevant consumer protection provisions from the general laws and place them in the Law on Insurance Business and make the Insurance Supervisory Authority responsible for effectively monitoring compliance, applying sanctions and arbitrating on customer disputes. This may be the most practicable option in the short term.
Good Practice A.2	***Contracts*** **There should be a specialized insurance contracts section in the general insurance or contracts law, or ideally a separate Insurance Contracts Act. This should specify the information exchange and disclosure requirements specific to the insurance sector, the basic rights and obligations of the insurer and the retail policyholder and allow for any asymmetries of negotiating power or access to information.**
Description	The general regulatory framework for insurance contracts is set by Section 11 of the Civil Code (Articles 567 to 580). Insurance contracts are categorized by the Code into the following three categories: (i) contracts for *"human insurance*" (e.g. life insurance); (ii) contracts for property insurance; and (iii) contracts for civil liability insurance.[209] All insurance contracts must be in writing.[210] Section 11 of the Civil Code further briefly summarizes rights and obligation of the parties to insurance contracts, including the obligation to pay premiums, provide information prevent damage or pay compensation for claims. Chapter II of the IB Law contains numerous requirements in relation to insurance contracts, including provisions relating to: • the form and contents of insurance contracts; • insurable interests; • when liability arises and the basis for indemnity; • the rights and obligations of insurers; • the rights and obligations of insurance buyers; • voidance and termination; • amendment and assignment; and • time-limits for premium payments, claims settlement and lawsuits. The IB Law also requires insurers to fully supply contract information at sale, explain the insurance terms and conditions, and keep insurance buyer information confidential. The ISA[211]: • sets the policy terms, premium scales and minimum sums insured for compulsory non-life insurance products; • ratifies insurer's policy terms, premium scales and sales brochures for life and health insurance products;

[208] AVI "Customer Service Commitments of Life Insurers".
[209] Article 568 of the Civil Code.
[210] Article 570 of the Civil Code.
[211] *See*, Circular 124 of 2012 – Section 4. Selling Insurance.

	• requires life savings product benefit illustrations to be approved by the insurer's actuaries; and • sets maximum caps on commissions payable for all insurance products. The CP Law also contains general provisions regarding accurate information, clear contracts and the form of contracts. Although life insurers provide good summaries of the key benefits of their products there is no regulatory requirement for insurers to provide Key Facts Statements on common retail insurance products to allow customers to easily compare insurers' products. As the market matures and consumer's needs and financial understanding develops, the ability to make product comparisons will become more important.
Recommendation	Insurers should be required to provide Key Facts Statements about their common retail products to assist consumers to better understand and compare insurance products.
Good Practice A.3	***Codes of Conduct for Insurers*** **a. There should be a principles-based code of conduct for insurers that is devised in consultation with the insurance industry and with relevant consumer associations, and that is monitored and enforced by a statutory agency or an effective self-regulatory agency.** **b. If a principles-based code of conduct exists, insurers should publicize and disseminate it to the general public through appropriate means.** **c. The principles-based code should be augmented by voluntary codes for insurers on such matters specific to insurance products or channels.** **d. Every such voluntary code should likewise be publicized and disseminated.**
Description	***Paragraphs (a) to (d)*** There are no legally enforceable codes of conduct for how insurers deal directly with customers, either generally or in relation to specific activities (e.g. customer disputes handling). As the mission team was advised, AVI has issued the "Customer Service Commitments of Life Insurers" which covers: • professionalism; • transparency; • customer privacy protection; • selling "right products" to "right customers"; • quality of insurance products; • information update during contract period; • fairness in claims settlement; and • public interests. The selling of insurance, in particular through agents, is highly regulated through detailed requirements covering: • principles for selling insurance, including prohibited acts during selling[212]; and • agent training, including agent examination and certification[213]. Major insurers have internal procedures for customer interactions, other than at the time of sale (i.e. mostly for customer complaints handling), but industry codes do not exist. During its on-site inspections of insurers ISA examines insurer practices in dealing with customers.

[212] *See* Circular 124 of 2012 – Section 4. Selling Insurance.
[213] *See* Chapter III of Decree 45/2007/ND-CP – Guidelines for Implementation of a number of Articles of Law on Insurance Business.

Recommendation	Consideration should be given to establishing a (legally enforceable) code of conduct for insurer practices as contemplated by this Good Practice.
Good Practice A.4	***Other Institutional Arrangements*** **a. Prudential supervision and consumer protection can be placed in separate agencies or lodged in a single institution, but allocation of resources between prudential supervision and consumer protection should be adequate to enable the effective implementation of consumer protection rules.** **b. The judicial system should provide credibility to the enforcement of the rules on financial consumer protection.** **c. The media and consumer associations should play an active role in promoting consumer protection in the area of insurance.**
Description	ISA's regulation and supervision (including inspections) of insurer practices covers both prudential and consumer protection issues. In respect of consumer protection issues it is heavier and more intensive than in many other jurisdictions. It covers insurance contract terms and conditions, materials provided to consumers, insurer procedures and insurer actual practices. ISA is also responsible for ensuring that insurers fulfil their undertakings to insurance purchasers[214]. The lack of consumer awareness, cultural approach, time and cost involved in using the judicial system means it does not provide credible enforcement of financial consumer protection rules, even though the Civil Procedure Code clearly provides for the courts to be used to resolve disputes[215]. There is no evidence that the media plays any role in promoting insurance consumer protection and the consumer associations simply react to the small volume of complaints rather than take an active promotional role.
Recommendation	See Banking Good Practice A.4 regarding support for consumer associations.
Good Practice A.5	***Bundling and Tying Clauses*** **Whenever an insurer contracts with a merchant or credit grantor (including banks and leasing companies) as a distribution channel for its contracts, no bundling (including enforcing adhesion to what is legally a single contract), tying or other exclusionary dealings should take place without the consumer being advised and able to opt out**
Description	Some life insurers partner with banks to enable bank staff to sell the insurer's products on an individual basis to bank customers. This is mostly in respect of credit life products and some unemployment insurance. It appears that in practice lenders generally do not require borrowers to take out insurance such as credit life or unemployment insurance. While lenders providing secured finance for major assets (e.g. housing and motor vehicles) will often require the borrower to have the assets insured there is no specific evidence that they are requiring borrowers to take out the insurance with specific insurers, with whom they have tied or exclusionary arrangements. There are broad requirements under IB Law regulations[216] that prohibit insurers from coercing customers to purchase insurance.
Recommendation	Even though specific evidence of tying or bundling is not apparent, the requirements related to non-coercion in the purchase of insurance should be reviewed so that the practice of bundling or tying is prohibited with very limited exceptions, thus enabling consumers to choose their own insurance arrangements, even where the borrower requires insurance. See also Banking Good Practice B.4.

[214] *See* Article 39, Clause 4 of Decree 45/2007/ND-CP – Guidelines for Implementation of a number of Articles of Law on Insurance Business.
[215] *See* Article 29 of the Civil Procedure Code 2004.
[216] *See* IB Law Article 10.2(b), Article 17.3 of Decree 45 of 2007 and Article 38.2 of Circular 124 of 2012 (these may be able to be interpreted to prohibit bundling or tying).

SECTION B	DISCLOSURE & SALES PRACTICES
Good Practice B.1	***Sales Practices*** **a. Insurers should be held responsible for product-related information provided to consumers by their agents (i.e. those intermediaries acting for the insurer).** **b. Consumers should be informed whether the intermediary selling them an insurance contract (known as a policy) is acting for them or for the insurer (i.e. in the latter case the intermediary has an agency agreement with the insurer).** **c. If the intermediary is a broker (i.e. acting on behalf of the consumer) then the consumer should be advised at the time of initial contact with the intermediary if a commission will be paid to the intermediary by the underwriting insurer. The consumer should have the right to require disclosure of the commission and other costs paid to an intermediary for long-term savings contracts. The consumer should always be advised of the amount of any commission and other expenses paid on any single premium investment contract.** **d. An intermediary should be prohibited from identically filling brokering and agency roles for a given general class of insurance (i.e. life and disability, health, general insurance, credit insurance).** **e. When a bank is the intermediary, the sales process should ensure that the consumer understands at all times that he or she is not purchasing a bank product or a product guaranteed by the bank.** **f. Sanctions, including meaningful fines and, in the case of intermediaries, loss of license, should apply for breach of any of the above provisions.**
Description	***Paragraphs (a) to (f)*** The commercial agency provisions of the Commercial Law mean principals bear joint responsibility for their agent's acts and the IB Law and regulations make insurers responsible for their product-related information, and liable for loss or damage caused by agent activities. There are no specific regulations requiring insurance intermediaries to disclose to consumers their status in respect of who they are acting for, or if they have any conflicts of interest. As the market develops insurance advisers/intermediaries are likely to diversify and increase in number. Then consumers will need to know more about the status and competence of intermediaries. Brokers are not required to disclose if they will receive payment from the underwriting insurer and, for long term savings products, consumers do not have the right to request from the broker details of any commission, or other payment, from the insurer to the broker. There are only 12 brokers in the market and they operate essentially for commercial clients seeking advice on non-life products. There are no specific requirements which require that consumers are informed that when they purchase an insurance product through a bank, that they are not purchasing a bank product or a product guaranteed by the bank. The detailed regulation of agents and insurer management of agents, and ISA supervision of insurer management of agents, means that agent breaches would result in fines and/or banning of agents.
Recommendation	Insurance intermediaries should disclose their status to consumers, and brokers should be required to disclose any commissions to be received, especially as the market develops. Requirements should be developed for banks to disclose the insurance products they sell are not their products and not guaranteed by them.

<table>
<tr><td>Good Practice B.2</td><td>Advertising and Sales Materials

a. Insurers should ensure their advertising and sales materials and procedures do not mislead customers. Regulatory limits should be placed on investment returns used in life insurance value projections.
b. Insurers should be legally responsible for all statements made in marketing and sales materials they produce related to their products.
c. All marketing and sales materials should be easily readable and understandable by the general public.</td></tr>
<tr><td>Description</td><td>Paragraph (a)

The IB Law and regulations[217] require that:

• insurers fully supply consumers with information on insurance contracts;
• insurers explain insurance terms and conditions to buyers;
• insurer's advertising and sales materials are truthful and not misleading;
• insurer's advertising and sales materials are clear and comprehensible; and
• insurers are responsible for statements made in their marketing and sales materials.

Also, under the CP Law consumers are entitled to compensation if services provided are not in accordance with what was advertised or pledged. Moreover, life and health insurance product materials are ratified by ISA.

Benefit illustrations used in life and health insurance product sales materials must be clear and accurate, and the bases for the calculation of the illustrations must be approved by the insurer's actuaries. For policies with refundable values, the conditions for refund must be provided in documents along with the illustrated amounts.

Paragraph (b)
See Banking Sector Good Practice B.9.

Paragraph (c)

There is no requirement implementing this Good Practice.</td></tr>
<tr><td>Recommendation</td><td>Existing rules should be amended in order to provide for the requirement that all marketing and sales materials should be easily readable and understandable by the general public.</td></tr>
<tr><td>Good Practice B.3</td><td>Understanding Customers' Needs

The sales intermediary or officer should be required to obtain sufficient information about the consumer to ensure an appropriate product is offered. Formal —fact finds should be specified for long-term savings and investment products and they should be retained and be available for inspection for a reasonable number of years.</td></tr>
<tr><td>Description</td><td>Under IB Law regulations[218] insurers have a general obligation to analyze customer needs in order to recommend appropriate products, and for life insurance products the analysis and recommendation must be in writing. For unit-linked insurance contracts there are more detailed requirements[219] on the insurer to analyze the client's demand for such a contract and the suitability of the contract for the client. There are also specific requirements in relation to universal life insurance products[220] about client needs analysis and client certification of their understanding of the product.</td></tr>
</table>

[217] Especially Circular 124 of 2012, Section 4. Selling Insurance.
[218] *See* Article 37.1(g) of Circular 124 of 2012 – Section 4. Selling Insurance.
[219] *See* Article 12 of Circular 135 of 2012 – Guiding the Provision of Unit-Linked Insurance Products.
[220] *See* Article 18 of Decision 96 of 2007 – Promulgating the Regulation on Provision of the Universal Life Insurance Product.

	Even though agent training would cover these obligations it is not clear that such needs analysis actually occurs when non-life products are sold. For life insurance (apart from unit-linked and universal life products, which are a small volume of business sold) it appears that the needs analysis is basic, covering only the customers employment situation and income level, and that the life insurers' record keeping is varied and unlikely to be accessible after a number of years when needed if a dispute arises.
Recommendation	Needs analysis requirements should be reviewed and updated to ensure they result in appropriately detailed analyses being undertaken, and that records are retained for lengthy periods to enable the facts of the analysis to be available to identify mis-selling and for dispute handling.
Good Practice B.4	***Cooling-off Period*** **There should be a reasonable cooling-off period associated with any traditional investment or long-term life savings contract, after the policy information is delivered, to deal with possible high pressure selling and mis-selling.**
Description	Cooling-off or free-look periods of between 15 to 21 days are routinely provided for in life insurance products. There is a specific requirement[221] for a cooling-off period of 21 days for unit-linked insurance products. It also appears that AVI has promulgated sample provisions for insurance contracts which include cooling-off periods. ISA process of ratifying life insurance policy terms[222] would also consider if a cooling-off period is included as it specifically recommends insurers use AVI sample provisions.
Recommendation	It is desirable that there are clear regulations requiring reasonable cooling-off periods for life insurance savings and investment type products.
Good Practice B.5	***Key Facts Statement*** **A Key Facts Statement should be attached to all sales and contractual documents, disclosing the key factors of the insurance product or service in large print.**
Description	The IB Law and regulations[223] require insurers to explain insurance terms and conditions in a clear, understandable and not misleading way and supply introductory documents which satisfy these requirements. The heavy regulation of insurance products has led to retail insurance products being relatively simple. However, insurers are not required to provide Key Facts Statements to consumers. At this early stage of development of the market, the insurance needs of most consumers are basic and consumers are more likely to rely on what the agent tells them, rather than examine the product material themselves when making their purchase decision. As the market matures and consumer's needs and financial understanding develops product comparing will become more important. It does appear from insurer websites that for the common life and health insurance products many insurers do in fact provide good information on the key components of these products.
Recommendation	It should be considered at what stage in the development of the insurance market insurers should be required to provide Key Facts Statements about their products to assist consumers to better understand and compare insurance products, and what the specific content of the key features statements should be.

[221] *See* Article 14.1 (b) of Circular 135 of 2012 – Guiding the Provision of Unit-Linked Insurance Products.
[222] *See* Article 39 of Circular 124 of 2012.
[223] *See* IB Law Article 19.1 and Article 37 of Circular 124 of 2012.

<table>
<tr><td>Good Practice B.6</td><td>Professional Competence
a. Sales personnel and intermediaries selling and advising on insurance contracts should have sufficient qualifications, depending on the complexities of the products they sell.
b. Educational requirements for intermediaries selling long-term savings and investment insurance products should be specified, or at least approved, by the regulator or supervisor.</td></tr>
<tr><td>Description</td><td>Paragraphs (a) and (b)
There are general requirements that employees of insurers must be professionally competent and ethical, and that agent intermediaries must possess agent certificates or certificates about insurance services being provided[224].
There are legislated requirements related to insurance agent training[225]. Insurers are responsible for training their agents and certifying their agent competency. Any agent training facility must meet minimum conditions covering:
• the content of the training program;
• the professional competency of the trainers;
• the material facilities for training; and
• it must be approved by ISA.
The content of the training program must cover:
• general knowledge on insurance;
• agent responsibilities and ethics;
• insurance law;
• insurance product contents;
• insurance selling skills;
• rights and obligations of insurers and agents; and
• professional practices of an agent.
ISA inspects agent training activities and can require suspension of training if requirements are not met. Agent training facilities must report annually to ISA on the number of training courses conducted, the number of agents trained and agent certificates issued.
AVI maintains a database of agents across the industry and it is a legislated requirement that insurers notify AVI (as well as ISA) of any agent whose contract has been terminated due to legal or professional breaches.</td></tr>
<tr><td>Recommendation</td><td>No recommendation</td></tr>
<tr><td>Good Practice B.7</td><td>Regulatory Status Disclosure
a. In all of its advertising, whether by print, television, radio or otherwise, an insurer should disclose: (i) that it is regulated, and (ii) the name and address of the regulator.
b. All insurance intermediaries should be licensed and proof of licensing should be readily available to the general public, including through the internet.</td></tr>
<tr><td>Description</td><td>Paragraph (a)
The general Law on Advertising and the requirements in relation to insurance selling and insurance agents require honesty and no misleading information. However, there appear to be no requirements that an insurer disclose in its advertising that it is regulated and the contact details of the regulator.
Paragraph (b)
While insurance agents must be certified and insurance brokers licensed, it appears that there are no requirements that an insurance intermediary must</td></tr>
</table>

[224] *See* Article 37.1 (b) of Circular 124 of 2012.
[225] *See* Chapter III Decree 45 of 2007.

	disclose proof of their status or licensing to a customer, or that such details should be readily available to the public through some means.
Recommendation	It is desirable that insurers be required to disclose in their advertising that they are regulated by ISA. Given the existence of AVI database of insurance agents, consideration should be given to making agent's basic details from the database available to the public (e.g. through the internet).
Good Practice B.8	***Disclosure of Financial Situation*** **a. The regulator or supervisor should publish annual public reports on the development, health, strength and penetration of the insurance sector either as a special report or as part of the disclosure and accountability requirements under the law governing it.** **b. Insurers should be required to disclose their financial information to enable the general public to form an opinion with regards to the financial viability of the institution.** **c. If credible claims paying ability ratings are not available, the regulator or supervisor should periodically publish sufficient information on each insurer for an informed commentator or intermediary to form a view of the insurer's relative financial strength.**
Description	***Paragraph (a)*** Currently ISA does not publish annual material on the development, health, strength and penetration of the insurance sector. AVI produces annually an "Overview of the Vietnam Insurance Market" which covers market developments and market growth, but it does not contain much, if any, information about the financial strength of the insurance sector or individual insurers. ***Paragraph (b)*** The IB Law requires that an insurer annually publicize its financial reports[226]. An insurer is required[227] to publicize: • On its website its entire audited financial statements along with audit opinion; and • In newspapers its annual report, summary financial statement and audit opinion. ***Paragraph (c)*** While some Vietnamese insurers have obtained credible claims paying rating most have not. ISA does not publish periodically individual insurer information which is sufficient to allow an informed commentator or intermediary to form a view of an individual insurer's relative financial strength.
Recommendation	ISA should develop a high level summary balance sheet and solvency information format (from the data collected in Forms No. 7 & 8 – PNT) and publish the data for each insurer annually, to enable informed persons to assess individual insurer financial strength.

[226] *See* Article 104 of Law on Insurance Business 2010.
[227] *See* Article 36 of Circular 125 of 2012 – On Guiding Financial Regime Applicable to Insurers, Reinsurance Businesses, Insurance Brokers and Branches of Foreign Non-life Insurers.

SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	***Customer Account Handling*** **a. Customers should receive periodic statements of the value of their policy in the case of insurance savings and investment contracts. For traditional savings contracts, this should be provided at least yearly, however more frequent statements should be produced for investment-linked contracts.** **b. Customers should have a means to dispute the accuracy of the transactions recorded in the statement within a stipulated period.** **c. Insurers should be required to disclose the cash value of a traditional savings or investment contract upon demand and within a reasonable time. In addition, a table showing projected cash values should be provided at the time of delivery of the initial contract and at the time of any subsequent adjustments.** **d. Customers should be provided with renewal notices a reasonable number of days before the renewal date for non-life policies. If an insurer does not wish to renew a contract it should also provide a reasonable notice period.** **e. Claims should not be deniable or adjustable if non-disclosure is discovered at the time of the claim but is immaterial to the proximate cause of the claim. In such cases, the claim may be adjusted for any premium shortfall or inability to recover reinsurance.** **f. Insurers should have the right to cancel a policy at any time (other than after a claim has occurred – see above) if material non-disclosure can be established.**
Description	***Paragraph (a)*** Life insurance policyholders must be notified of their contract status every year[228], but no details are specified as to what contract status means. In practice contract status information includes cash values for savings or investment contracts. There are more specific details required to be provided in respect of unit-linked contracts[229] but the contract information does not need to be provided more frequently than annually, although insurers must provide unit prices every week on its website and in the newspaper. In practice some insurers provide product statements twice each year, with the mid-year amount estimated and the final year amounts based on audited financials. ***Paragraph (b)*** Insurers are responsible for the information they provide to customers about their products and when an insurance contract is issued insurers must provide the customer with the address for settling complaints, enquiries and disputes. ***Paragraph (c)*** For life and health insurance products which have a refundable value the illustration documents provided at time of sale must contain the benefits and monetary values to be received by customers and the conditions for a refund to be paid. ***Paragraph (d)*** There do not appear to be specific legislative requirements detailing renewal processes or the timing and content of renewal notices. It appears that these are covered in the terms and conditions of the insurance contracts.

[228] *See* Article 37.1 (e) of Circular 124 of 2012.
[229] *See* Article 28 of Circular 135 of 2012.

	Paragraph (e) Apart from the customer's general obligation to declare fully and honestly all details relating to the insurance contract, there do not appear to be any specific legislative requirements dealing with the consequences of immaterial non-disclosure by customers. ***Paragraph (f)*** Insurers can unilaterally suspend the performance of an insurance contract if an insurance buyer intentionally supplies untruthful information with a view to entering an insurance contract to receive claims money.[230] Similarly, *"[i]n cases where the insurance buyer intentionally provides false information in order to enter into the contract for enjoying the insurance indemnity, the insurer shall be entitled to unilaterally terminate the performance of such contract and collect the insurance premium up to the time of termination of the contract*."[231]
Recommendation	It should be considered if specific legislative requirements detailing renewal processes, timings and notice contents are needed, or if standard insurance contract terms regarding renewals are required by ISA, and are adequate to provide certainty and protection to customers.
SECTION D	**PRIVACY & DATA PROTECTION**
Good Practice D.1	***Confidentiality and Security of Customers' Information*** **Customers have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.**
Description	Insurers are required to keep confidential the information supplied by insurance buyers[232] and not doing so is specified as a violation[233] which may be administratively fined, examined for penal liability, or if causing damage result in compensation having to be made.[234] The mission team was informed that customer privacy protection is covered in AVI "Customer Service Commitments of Life Insurers".
Recommendation	No recommendation

[230] *See* Articles 17.1 (c) and 19.2 of IB Law.
[231] Article 573(2) of the Civil Code.
[232] *See* Article 19.1 of IB Law.
[233] *See* Article 124.6 of IB Law.
[234] *See* Article 125.1 of IB Law.

SECTON E	DISPUTE RESOLUTION MECHANISMS
Good Practice E.1	***Internal Dispute Settlement*** **a. Insurers should provide an internal avenue for claim and dispute resolution to policyholders.** **b. Insurers should designate employees to handle retail policyholder complaints.** **c. Insurers should inform their customers of the internal procedures on dispute resolution.** **d. The regulator or supervisor should investigate whether insurers comply with their internal procedures regarding consumer protection.**
Description	***Paragraph (a)*** There do not appear to be any legislative requirements on insurers to have internal dispute settlement mechanisms. However, insurers have developed their own specific means for dealing with customer enquiries and complaints. Generally this involves the customer making contact with the insurer for instance through the insurers contact or call center. ***Paragraph (b)*** Insurer practices regarding which insurer staff handle customer complaints seems to vary with some insurers having specific staff separate to underwriting, policy administration, accounts or claims staff, while other insurers have their underwriting, policy administration, accounts or claims staff (i.e. whichever is relevant to the specific complaint) handle the complaint, but with oversight from senior management. ***Paragraph (c)*** Insurers are required when issuing the insurance contract to inform customers of the address to use if they want to make an enquiry or complaint. But there is no requirement for insurers to inform customers of the internal procedures that insurers utilize to deal with complaints. Fairness in claims settlement is covered in AVI *"Customer Service Commitments of Life Insurers*". ***Paragraph (d)*** ISA on-site inspections of insurer operations cover many insurer practices and do specifically cover insurer procedures for handling customer complaints. It appears that ISA inspection staff actually look at some individual customer complaints to see how they were resolved, if this was in accordance with the insurer's own procedures and to check there were no legislative breaches in handling the complaints.
Recommendation	It is highly desirable that there be a legislative requirement that insurers have internal mechanisms for handling customer disputes and that insurers are required to inform customers about these procedures. It is also desirable that insurers be required to provide ISA complaints data such as the volume of complaints, type of complaint and how long complaints take to resolve, or if they remain unresolved.

Good Practice E.2	***Formal Dispute Settlement Mechanisms*** **a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, which could be an ombudsman or tribunal, in the event the complaint with the insurer cannot be resolved to the consumer's satisfaction in accordance with internal procedures.** **b. The role of an ombudsman or equivalent institution *vis-à-vis* consumer disputes should be made known to the public.** **c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority and the industry.** **d. The decisions of the ombudsman or equivalent institution should be binding upon the insurers. The mechanisms to ensure the enforcement of these decisions should be established and publicized.**
Description	***Paragraphs (a) to (d)*** There is no external dispute handling arrangements such as an ombudsman or tribunal for customers to use to achieve affordable and efficient resolution if they cannot achieve satisfactory resolution directly through the insurer. ISA would only become involved in specific customer disputes with insurers if it was asserted that the insurer was breaching legislative requirements.
Recommendation	Considerations should be given on whether to establish an external dispute handling mechanism, such as an ombudsman or tribunal, especially given the access to and use of the courts to resolve insurance disputes is very limited. However, at this stage of development of the insurance market it may be preferable to focus on improving insurer's internal dispute handling procedures and obtaining complaints data to improve understanding to assess if an external dispute handling mechanism is warranted (see the Good Practice E.1 above).
SECTION F	**GUARANTEE SCHEMES AND INSOLVENCY**
Good Practice F.1	***Guarantee Schemes and Insolvency*** **a. With the exception of schemes covering mandatory insurance (and possibly long-term insurance), insolvency guarantee schemes are not to be encouraged for insurance because of the opaque nature of the industry and the scope for moral hazard. Strong governance and prudential supervision are better alternatives.** **b. Nominal defendant arrangements should be in place for mandatory insurances such as motor third party liability insurance to cover situations where there is no insured guilty party.** **c. Assets covering life insurance mathematical reserves and investment contract policy liabilities should be segregated or at the very least earmarked, and long-term policyholders should have preferential access to such assets in the event of a winding-up.**
Description	***Paragraph (a)*** A guarantee fund called the Fund for Protection of the Insured[235] exists to support payments due to policyholders of bankrupt insurers. Payments into the fund come from levies on all insurance contracts. AVI administers the fund under guidance and management from MoF. The fund has its own bank account and makes its own investments into government or government guaranteed bonds and deposits at commercial banks.

[235] *See* Section 4 of Decree 123 of 2011 – No. 123/2011ND-CP.

	Paragraph (b) There are no specific nominal defendant arrangements to cover situations where there is no identified insured guilty party. ***Paragraph (c)*** Life insurers must separately account for enterprise owners' capital fund (e.g. equity injections) and policyholder funds. The policyholder funds comprise premiums paid in, investment income on policyholder assets, less expenses and claims paid out. The policyholder funds are further segregated into those in respect of policyholders with contracts that participate in sharing investment returns and those that do not. The policyholder funds have to be managed so that the assets of the funds exceed the actuarial or mathematical reserves to cover the liabilities in respect of the fund's life insurance contracts. Any shortfall must be made up from the enterprise owners' capital fund. Any insurance bankruptcy would be administered[236] in accordance with the Bankruptcy Law[237], which itself does not appear to contain provisions which would provide life policyholders preferential access to their policyholder funds. It appears that the order of distribution in an insurer bankruptcy would follow Article 37 of the Bankruptcy Law, namely: • bankruptcy charge; • employee entitlements; • unsecured creditors (which includes policyholders).
Recommendation	It is desirable that life policyholders have preferential access to their policyholder funds in the event of the bankruptcy of their insurer. While the Fund for Protection of the insured could be accessed to cover any shortfall to policyholders this effectively means that all the life policyholders in the industry would fund a shortfall that might otherwise be funded by unsecured creditors, but not policyholders of the insurer.
SECTION G	**CONSUMER EMPOWERMENT**
Good Practice G.1	***Broadly based Financial Capability Program*** **a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.** **b. A range of organizations–including government, state agencies and non-governmental organizations–should be involved in developing and implementing the financial capability program.** **c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.**
Description	***Paragraph (a)*** There is no broadly based program of financial education aimed at improving the public's financial capability. However, ISA is responsible for financial education efforts according to the relevant regulations that encourage insurers to provide financial education materials to their clients but do not prescribe for supervision of such efforts. Without oversight it is not possible to know whether the materials are more oriented to product marketing or to unbiased financial education.

[236] *See* Article 83 of IB Law.

[237] *See* Bankruptcy Law – No. 21/2004/QH11 of June 15, 2004 and Article 8 of Decree 114 of 2008, Detailing the Implementation of a number of articles of the Bankruptcy Law applicable to Enterprises engaged in Insurance, Securities and Other Financial Business Activities.

	Financial capability outreach by insurers consists mainly of printed materials and information available on websites. The activities of ANZ, which focus on students, are one exception, as they include classroom training. ***Paragraph (b)*** There are no government and non-government organizations systematically involved in developing any financial capability programs. ***Paragraph (c)*** Almost nothing is done to educate consumers about insurance. Major life insurers run customer seminars on insurance needs and products, which are really aimed at warming up customers for a sale, but they do coincidentally provide some insurance education. Apart from individual insurance product materials there is no industry material or promotions about the basics of insurance.
Recommendation	Consideration should be given to the development of a broad based financial education program to increase the financial capability of the population. This would need to be led by a single central agency (such Ministry of Education and Training, MoF or SBV) to drive it forward. Particularly with regard to the insurance sector, ISA should develop an approach to supervising the financial capability outreach provided by insurers. This approach should include activities during both on and off site supervision. The insurance supervisor should also begin to develop their own approach to the topic and to their role on improving financial skills and knowledge related to insurance. The regulator should also take on a role as convener and coordinator for financial capability efforts among the private sector and civil society communities. Finally, data on knowledge and use of insurance products should be part of a national financial capability survey.
Good Practice G.2	***Unbiased Information for Consumers*** **a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.** **b. Financial regulators should provide, via the internet and printed publications, independent information on the key features, benefits and risks—and where practicable the costs–of the main types of financial products and services.** **c. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.**
Description	***Paragraphs (a) to (c)*** The only insurance information available to any consumer is that which is provided by insurers about their specific insurance products. This is really marketing type material which coincidentally may provide some basic insurance information.
Recommendation	As the market develops consideration could be given to establishing mechanisms to provide unbiased consumer information about the features and costs of common retail insurance products such as comparison websites. The possible use of various technology enabled tools for product comparisons should be reviewed by the regulator. Attention to regulations to increase uniformity on how product information is presented to consumers is a critical element of increasing transparency in this market. If requirements for key features statements for insurance products are introduced this will provide a base of information which a government or non-government organization could use to develop some detailed unbiased information that consumers could use to assess and compare insurance products.

Good Practice G.3	*Measuring the Impact of Financial Capability Initiatives* **a. Policymakers, industry and advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.** **b. The financial capability of consumers should be measured through a broad-based household survey that is repeated from time to time.** **c. The effectiveness of key financial capability initiatives should be evaluated.**
Description	See Banking Sector Good Practice G.5
Recommendation	See Banking Sector Good Practice G.5

IV. Good Practices: Non-Bank Credit Institutions

The non-bank credit institutions (NBCI) sector is diverse, with some parts remaining out of the SBV's jurisdiction. The different categories of NBCIs include: (i) formal and legally fully recognized CIs operating in accordance with the Law on Credit Institutions; and (ii) semi-formal entities operating as private businesses in accordance with general laws (e.g. the Civil Code, the Commercial Law and the Law on Enterprises), and (iii) informal lenders. The first category, as defined by the CI Law, comprises: (i) non-banking credit institutions, (ii) micro-finance institutions (MFIs) ("*a form of credit institution which mainly conducts a number of banking activities aimed at satisfying requirements of low-income individuals and households and of super-small enterprises*"), and (ii) Peoples' Credit Funds (PCFs) (defined, in summary, as cooperative formed to carry out banking activities in accordance with the CI law and the Law on Cooperatives with the mutual assistance to develop "*production and business activities and living standards*"[238]). The category of non-banking credit institutions is defined to mean "*a form of credit institution which is permitted to conduct one of a number of banking activities in accordance with this Law, except for receipt of deposits from individuals and provision of payment services via accounts of clients*" and is specifically stated to include: (i) finance companies (e.g. Home Credit), (ii) finance leasing companies (e.g. Vietnam International Leasing Company), and (iii) other non-banking credit institutions.[239]

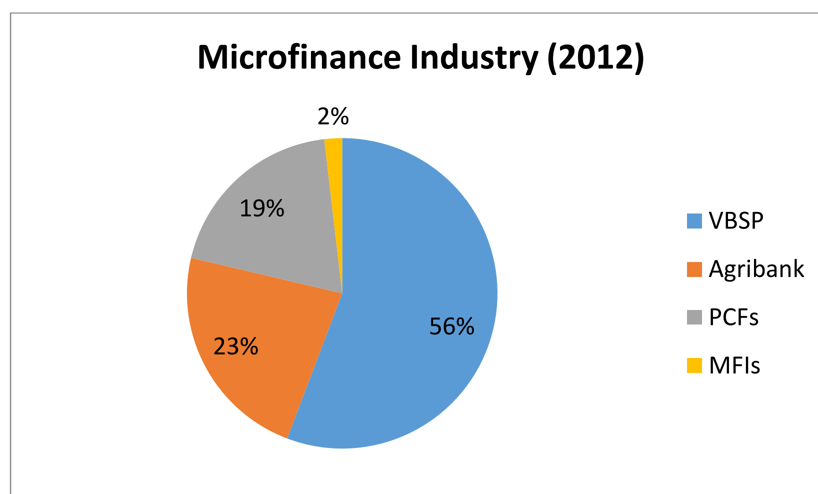
NBCIs not licensed under the CI Law include different types of entities. Namely, different donor-driven non-governmental organizations (NGOs) providing microcredit (e.g. CEP, Binh Minh MFI), and the remaining categories of informal NBCIs ranging from rotating savings and credit associations (ROSCAs), to different types of money-lenders (such as pawn shops). The system of NBCIs is further complemented by the Vietnam Bank for Social Policies (VBSP), which is a state-owned institution providing micro–credit services to poor and near–poor households.[240] VBSP is state-subsidized and is excluded from prudential regulation and supervision exercised by SBV.[241]

[238] Article 4(1) of the Law on Credit Institutions.
[239] Article 4(4) of the Law on Credit Institutions.
[240] VBSP was established by Decision No.131/2002/QD-TTg on establishment of Vietnam Bank for Social Policies.
[241] The Government guarantees solvency of VBSP and VBSP is exempted from deposit insurance, tax and other obligations to the state budget. Supervision of VBSP's operations is ensured by its specific governance model: members of the governing board that consists of the Board of Directors (BOD) at central level and BOD representatives in provincial and district level are appointed by state agencies and mass organizations. The Governor of the State Bank of Vietnam is the BOD Chairperson. *See* Development Strategy up to 2020, 2 (VBSP, 2012).

Given the fact that a number of NBCIs are not subject to licensing and supervision by SBV, it is difficult to be precise about the number of NBCIs operating in Vietnam. The data provided to the mission team suggests that there are currently (i) two licensed MFIs (M7-MFI and TYM), (ii) one policy bank providing microcredit (VBSP), (iii) a cooperative bank (the Cooperative Bank of Vietnam) which provides capital and other support services to member people's credit funds (PCF), (iv) 1,146 PCFs, (v) 18 finance companies (such as Home Credit), (vi) 12 leasing companies, (vii) around 50 semi-formal MFIs, and (vii) an unspecified number of informal credit providers. Indeed, the total size of the NBCI sector, including informal providers who primarily extend consumption credit, is difficult to measure. However, as indicated by the World Bank Global Findex data, there is an important difference between the total number of borrowers and people who have actually borrowed money from a formal financial institution.

The NBCI industry reflects various country-specific features. In particular, microfinance lending (including facilities offered by MFIs and VBSP) is partially intertwined with the system of local government through the involvement of the Peoples' Committees and mass organizations such as Women's Union and the Farmers' Union. Those institutions help to identify and approve potential borrowers in need and assist with supervising repayments. Moreover, the Women's Union owns 100 percent of a licensed microfinance institution – TYM. A specific role is played by VBSP which manages a portfolio of outstanding loans of 113,921 billion VND[242] as compared to 99 billion VND[243] and 608 billion VND[244] in the case of M7-MFI and TYM respectively. Asset-wise the three pillars of the NBCI sector (VBSP, PSFs and MFIs) are depicted in Graph 1 below and compared to the largest financial institution in the country – Agribank (also known as VBARD).

Graph 1: Concentration in the Microfinance (2012)



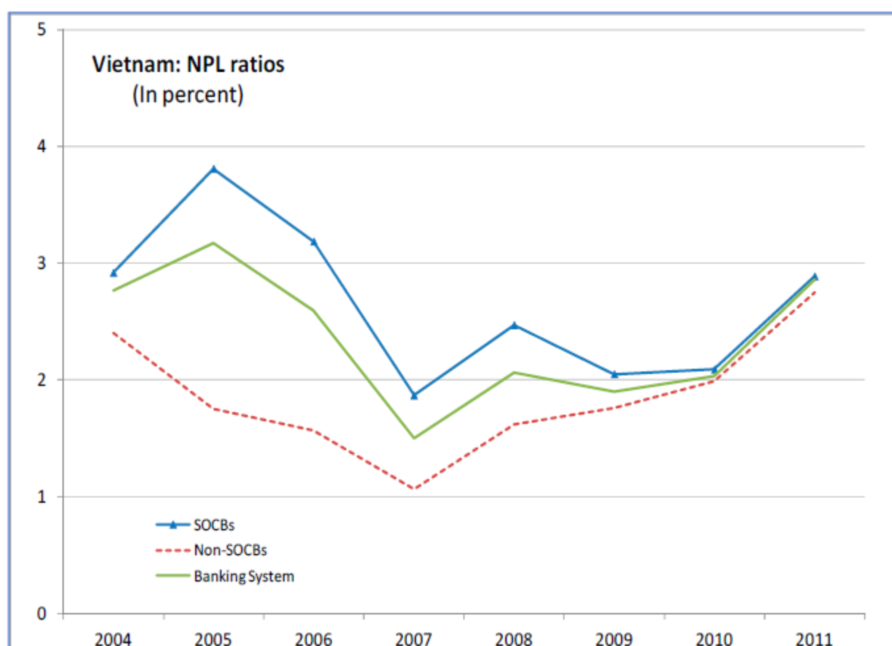
Source: The Sustainability of Microfinance Institutions in Vietnam: Circumstances and Implications (Nguyen Kim Anh, Le Thanh Tam, 2013)

Lending is recovering after the sudden increase in NPLs in 2010. The NPL ratio increased due to a combination of both internal factors (e.g. poorly designed credit models)[245], and external factors (the difficult economic environment). In 2013, lending growth was estimated at 17.6 percent as compared to 16.4 percent in 2012.[246] Yet, with the still-significant level of NPLs (estimated around 4.6 percent in 2013), the mission team was told that responsible and sound

[242] Data refers to December 2012. *See* VBSP Annual Report 2012.
[243] Data refers to December 2013. *See* M7-MFI Progress Report 2014.
[244] Data refers to December 2013. *See* TYM Annual Report 2013.
[245] Vietnam Banking Survey 2013, 20 (KPMG, 2013).
[246] Industry Report: Financial Services in Vietnam, 3 (The Economist Intelligence Unit, 2013).

lending remains a significant concern for the industry, although in specific segments NPLs have decreased dramatically as mentioned further in this report.

Graph 2 – NPL Ratio (IMF Vietnam's Financial Sector Presentation, 2012)



Sources: SBV, and Fund staff calculation

SECTION A	CONSUMER PROTECTION INSTITUTIONS
Good Practice A.1	***Consumer Protection Regime*** **The law should provide clear consumer protection rules in the area of non-bank credit institutions, and there should be adequate institutional arrangements to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules, as well as of sanctions that effectively deter violations of these rules.** **a. There should be specific statutory provisions, which create an effective regime for the protection of consumers of non-bank credit institutions.** **b. There should be a government authority responsible for implementing, overseeing and enforcing consumer protection in the area of non-bank credit institutions.** **c. The supervisory authority for non-bank credit institutions should have a register which lists the names of non-bank credit institutions.** **d. There should be coordination and cooperation among the various institutions mandated to implement, oversee and enforce consumer protection and financial sector regulation and supervision.** **e. The law should provide for, or at least not prohibit, a role for the private sector, including voluntary consumer associations and self-regulatory organizations, in respect of consumer protection in the area of non-bank credit institutions.**

Description	**_Paragraph (a)_** See Banking Sector Good Practice A.1 for a discussion of the ambiguity in relation to the application of the CP Law to credit institutions (including NBCIs) and of the limited nature of the consumer protection provisions in the CI Law. A further important issue that negatively affects the establishment of an effective regime for the protection of consumers of NBCIs is that there appears to be large numbers of semi-formal and informal NBCIs which are not licensed under the CI Law. This group includes unlicensed MFIs, ROSCAs, pawn shops and various forms of informal money-lenders. Unlicensed semi-formal and formal NBCIs are currently unsupervised by SBV. However arguably they are within the scope of the CI Law, and should be licensed, given the abovementioned broad scope of application of the CI Law. Further support for this view is that Article 4(2) of the Commercial Law states that "[*p]articular commercial activities provided for in other laws shall comply with the provisions of such laws*." That is, the quoted provision may well mean that each person engaging in activities regulated by a specific law must comply with such a law (regardless of whether the person acts with or without a license). The uncertainty on this issue is particularly problematic with regard to semi-formal NBCIs such as unlicensed MFIs, which provide services comparable to the services provided by formal NBCIs, including deposit-taking. Pending any clarification of the issue, there appear to be two different supervisory regimes for NBCIs: (i) credit institutions which are licensed and supervised by SBV under the CI Law and most likely the CP Law as well; and (ii) other NBCIs which may be registered as traders under the Commercial Law or as enterprises under the Law on Enterprises, and who are more clearly subject to the CP Law but are not supervised by SBV. The result is an uneven playing field with potential for regulatory arbitrage to the detriment of consumers. **_Paragraph (b)_** The mission team was told that neither VCA nor People's Committees – the institutions primarily responsible for supervision and enforcement of the general consumer protection rules as provided for in the CP Law and in theory the only supervisory bodies overseeing semi-formal NBCIs – actively and continuously supervise either formal NBCIs or semi-formal and informal NBCIs (money lenders, pawn shops, ROSCAs) in respect of market conduct supervision. In particular, it appears that the primary focus of SBV's inspections is on prudential rules. Other ministries, ministerial-equivalent bodies and People's Committees are responsible for *"state administration of credit institutions*"[247] within their competence. In other words, the regulatory and supervisory power of the SBV is not exclusive and appears to overlap with the powers of other authorities such as VCA, although the mission team was told that this does not cause difficulties in practice. See also Banking Sector Good Practice A.1. and A.3. **_Paragraph (c)_** All commercial enterprises (including semi-formal NBCIs) must be registered with a commercial register[248] that is publicly available in local offices. Moreover, enterprises are required to publish information about their registration *"in the business website of the business registration office or in*

[247] Article 158(3) and 158(4) of the CI Law.
[248] Article 7 of the Commercial Law and Article 27 of the Law on Enterprises.

	three consecutive issues of a newspaper or electronic newspaper"[249]. SBV does not however publish a list of licensed and registered NBCIs. ***Paragraph (d)*** See Banking Sector Good Practice A.1, paragraph (f). ***Paragraph (e)*** See Banking Sector Good Practice A.1, paragraph (f). Currently there are two relevant industry organizations: (i) the Working Group for Microfinance operating under the Vietnam Association of Small and Medium Enterprises (MFWG); and (ii) the Association of People's Credit Funds. The Working Group for Microfinance, which associates both formal and semi-formal MFIs, intends to issue a code of conduct as discussed below (see Good Practice A.2 below). The Association of People's Credit Funds acts as a lender of lenders, a training center and a representative of PCFs. The Association also has some limited self-regulatory functions, however, these powers are not used in order to deepen or strengthen consumer protection beyond what is already provided for by general laws such as the CP Law or CI Law.
Recommendation	The financial consumer protection legal regime covering NBCIs requires clarification so that there is a level playing field established in the sense that the same consumer protection provisions apply to NBCIs carrying out similar functions. Ideally, all NBCIs (including currently unlicensed MFIs) would be either licensed or registered, and supervised, by SBV from the consumer protection perspective, whilst bearing in mind the need to focus on the areas of highest risk (which could be particular types of products, services, providers or market segments) and on developing a proportionate, scalable approach to supervision. Registered and licensed NBCIs should be listed in a register maintained by SBV and made publicly available on SBV's website and at its branches. See also the recommendations in Banking Sector A.1 and A.3 concerning, in particular, the application of the CP law to credit institutions and the role of VCA, enhancement of SBV's approach to a single financial sector specific consumer protection regime.
Good Practice A.2	***Code of Conduct for Non-Bank Credit Institutions*** **a. There should be a principles-based code of conduct for non-bank credit institutions that is devised in consultation with the non-bank credit industry and with relevant consumer associations, and that is monitored by a statutory agency or an effective self-regulatory agency.** **b. If a principles-based code of conduct exists, it should be publicized and disseminated to the general public.** **c. The principles-based code should be augmented by voluntary codes on matters specific to the industry (credit unions, credit cooperatives, other non-bank credit institutions).** **d. Every such voluntary code should likewise be publicized and disseminated.**
Description	***Paragraph (a)*** At the time of the mission, the MFWG had recently drafted a Code of Conduct, which had been approved by the MFWG's BOD and the members, but was not yet in force. The Code covers both prudential and market conduct issues such as: (i) demand-driven planning and management; (ii) client protection and education; (iii) accountability and professional conduct; (iv) asset quality; (v) efficiency and cost-coverage; (vi) financial management; (vii) accounting practices; (viii) sustainability; and (ix)

[249] Article 28 of the Law on Enterprises.

	transparent reporting. The Code also expressly incorporates principles of the SMART Campaign[250] (the core principles relate to appropriate product design and delivery, prevention of over-indebtedness, transparency, responsible pricing, fair treatment of clients, privacy of client data, and complaint resolution mechanisms). Once in force, the Code will be binding on the members and will be enforced by the MFWG leadership: the Code gives the MFWG rights of admission to applicant members and the power to exclude a member. The MFWG's Code has potential to promote a level playing field among the licensed and unlicensed MFIs that are MFWG's members, since it applies identical rules to all of them. However, the MFWG's Code will cover only its member institutions[251], thus leaving other credit providers out. Besides the MFWG's there is no other code of conduct comprehensively covering a specific sector of NBCIs, even though the mission team was advised that the Association of People's Credit Funds may decide to issue product-related standards that may be voluntarily adhered to by APCF's members. ***Paragraph (b)*** Pursuant to the MFWG's Code of Conduct "*[t]he [MFWG] Board of Directors (Steering Committee) will adopt and regularly review this Code of Conduct, and will ensure wide publicity and dissemination of the Code to all stakeholders*". ***Paragraph (c) and (d)*** Currently, there is no industry-specific code of conduct, besides the proposed MFWG's Code of Conduct.
Recommendation	The MFWG's Code of Conduct should be implemented as soon as possible, with training provided to member MFIs and an appropriate public awareness campaign. The Association of People's Credit Funds should be similarly encouraged to develop a Code of Conduct for its members, building on the general principles already included in the CP Law and CI Law. A starting point for such a Code could be implementation of the Client Protection Principles developed by the Smart Campaign (as has been done in the MFWG Code). Prospectively, supervision and enforcement of the industry codes of conduct could be undertaken by SBV.
Good Practice A.3	***Other Institutional Arrangements*** **a. Whether non-bank credit institutions are supervised by a financial supervisory agency, the allocation of resources between financial supervision and consumer protection should be adequate to enable their effective implementation.** **b. The judicial system should ensure that the ultimate resolution of any dispute regarding a consumer protection matter with a non-bank credit institution is affordable, timely and professionally delivered.** **c. The supervisory authority for non-bank credit institutions should encourage media and consumer associations to play an active role in promoting consumer protection regarding non-bank credit institutions.**

[250] *See* www.smartcampaign.org (last visited on May 19, 2014).
[251] MFWG has currently 87 official members including 38 individuals and 49 organizations operating in the microfinance sector. *See* www.microfinance.vn/category/members/current-members (last visited on August 29, 2014).

Description	***Paragraph (a)*** See Banking Sector Good Practice A.1. ***Paragraph (b)*** In theory, consumers may initiate civil lawsuits in order to protect their legitimate rights and interests. To facilitate consumers' access to justice, the CP Law provides that when initiating a lawsuit consumers *"are not obliged to pay in advance their court charges and court fees*."[252] In practice, however, consumers only rarely go to courts to have their cases resolved, presumably for the concerns identified in Banking Sector Good Practice A.4. ***Paragraph (c)*** See Banking Sector Good Practice A.4, paragraph (b).
Recommendation	The capacity of BISA should be strengthened so that it can properly undertake all its responsibilities and effectively supervise and enforce consumer protection regulation during on-site and off-site inspections in respect of NBCIs, and bearing in mind the differences in NBCI products as compared to those in the commercial banking sector. Prospectively, a unit specialized in consumer protection should be established within BISA. At the same time, an institutional needs assessment should be conducted to clearly identify the resources needed to implement all functions assigned to SBV in the area of consumer protection supervision. This assessment should provide the needed inputs to prepare a long-term capacity building program within SBV. See the further recommendations in Banking Sector Good Practice A.3 and A.4.
Good Practice A.4	***Registration of Non-Bank Credit Institutions*** **All financial institutions that extend any type of credit to households should be registered with a financial supervisory authority.**
Description	See Good Practice A.1 above concerning the fact that there are significant numbers of NBCIs which are not licensed, or supervised, under the CI Law notwithstanding its apparently broad scope of application.
Recommendation	See Good Practice A.1 above.
SECTION B	**DISCLOSURE AND SALES PRACTICES**
Good Practice B.1	***Information on Customers*** **a. When making a recommendation to a consumer, a non-bank credit institution should gather, file and record sufficient information from the consumer to enable the institution to render an appropriate product or service to that consumer.** **b. The extent of information the non-bank credit institution gathers regarding a consumer should:** **(i) be commensurate with the nature and complexity of the product or service either being proposed to or sought by the consumer; and** **(ii) enable the institution to provide a professional service to the consumer in accordance with that consumer's capacity.**

[252] Article 43(2) of the CP Law.

<table>
<tr><td>Description</td><td>Paragraph (a)

VBSP and MFIs have developed a specific model that ensures collection and assessment of information on creditworthiness of customers and affordability of loans. The system builds on the structure of mass organizations (primarily the Women's Union) and local communities. Borrowers and potential borrowers are organized in small groups (sometimes called Savings and Credit Groups) ranging from 5 to 20 members depending on the size of the community. The group decides on the eligibility of its members for credit – a list of eligible borrowers is voted upon based on financial situation and needs of the members, who are usually assessed as households rather than as individuals. Furthermore, a representative of the respective NBCI visits the potential borrower in his/her home to examine the financial situation on-site. In the case of VBSP and MFIs, as noted by SBV, according to the PM Decision 03 VBSP and micro-finance institutions have become mandatory members of NCIC. Thus, VBSP is participating in the credit registry, while from the three licensed MFIs only one has been actively using NCIC although, most likely, the other two will start in 2015. Further, advice has been received from SBV since the mission that NCIC has provided guidelines and developed an e-portal for information exchanges between NCIC and credit institutions.

See also Banking Sector Good Practice B.1.

Paragraph (b)

See Banking Sector Good Practice B.1.</td></tr>
<tr><td>Recommendation</td><td>See Banking Sector Good Practice B.1.</td></tr>
<tr><td>Good Practice B.2</td><td>Affordability

a. When a non-bank credit institution makes a recommendation regarding a product or service to a consumer, the product or service it offers to that consumer should be in line with the need of the consumer.
b. Sufficient information on the product or service should be provided to the consumer to enable him or her to select the most suitable and affordable product or service.
c. When a non-bank credit institution offers a new credit product or service that significantly increases the amount of debt assumed by the consumer, the consumer's credit worthiness should be properly assessed.</td></tr>
<tr><td>Description</td><td>Paragraph (a)

See Good Practice B.1 above and see Banking Sector Good Practice B.2.

Paragraph (b)

There are various disclosure requirements both at the general, as well as the sector-specific level to provide information about the offered product or service.[253] A specific emphasis is put on disclosure of price (interest rates) and information about the provider. However, the requirements are rather general (for instance formal requirements on disclosures are missing), which may cause difficulties in practical application. Moreover, current disclosure requirements mostly prescribe for general publication of information, while individualized (customer-tailored) pre-contractual disclosure requirements are fragmented and incomplete.[254]

See Banking Sector Good Practice B.2.</td></tr>
</table>

[253] *See, e.g.* Article 8(2) of the CP Law, Article 14(1) of the Commercial Law, the articles 6 and 13(2) of the Law on Prices, the articles 10(4), 10(5), 25, 39, and 91(1) of the CI Law, Article 14(2) of the Decree on Consumer Protection, Article 6(2) of the Circular on ATMs, or Article 5(2) and (3) of the Circular on Debit Card Charges.

[254] Requirements regarding individualized pre-contractual disclosure are mainly set in the articles 8(2), 12(6), and 17(1) of the CP Law.

	Paragraph (c) See Good Practice B.1 above and see Banking Sector Good Practice B.2.
Recommendation	See Banking Sector Good Practice B.2. The recommendations there should apply to all NBCIs, not only those operating under the CI Law.
Good Practice B.3	***Cooling-off Period*** **a. Unless explicitly waived by the consumer in writing, a non-bank credit institutions should provide the consumer a cooling-off period of a reasonable number of days immediately following the signing of an agreement between the institution and the consumer.** **b. On his or her written notice to the non-bank credit institution during the cooling-off period, the consumer should be permitted to cancel or treat the agreement as null and void without penalty to the consumer of any kind.**
Description	***Paragraphs (a) and (b)*** No cooling-off period has been established by law. However, in the case of distance contracts, when a trader fails to disclose information as required by the Decree No. 99/2011/ND-CP, a consumer may unilaterally terminate the contract within 10 days after its conclusion without any penalty or costs being charged.[255] Similarly, in the case of door-to-door contracts any contract may be terminated by a consumer within 3 working days after its conclusion.[256] See also Banking Sector Good Practice B.3.
Recommendation	See Banking Sector Good Practice B.3.
Good Practice B.4	***Bundling and Tying Clauses*** **a. As much as possible, non-bank credit institutions should avoid the use of tying clauses in contracts that restrict the choice of consumers.** **b. In particular, whenever a borrower is required by a non-bank credit institution to purchase any product, including an insurance policy, as a pre-condition for receiving a loan, the borrower should be free to choose the provider of the product and this information should be made known to the borrower.** **c. Also, whenever a non-bank credit institution contracts with a merchant as a distribution channel for its credit contracts, no exclusionary dealings should be permitted.**
Description	***Paragraphs (a) and (b)*** In the NBCI sector, tying and bundling does not seem to be a significant issue yet, mostly due to the relatively underdeveloped market for ancillary consumer financial products. Instead of mandatory insurance or other ancillary products, MFIs may require and do require compulsory deposits. Currently, there is no legal provision prohibiting tying and bundling practices; however consumers are expressly granted the right to select goods and services according to their actual needs and conditions.[257] ***Paragraph (c)*** Besides general anti-trust requirements[258] there is currently no prohibition of exclusionary dealings between credit institutions and merchants.
Recommendation	See Banking Sector Good Practice B.4.

[255] Article 17(3) of the Decree No. 99/2011/ND-CP, detailing and guiding a number of articles of the Law on Protection of Consumer Rights.
[256] Article 19(3) of the Decree No. 99/2011/ND-CP, detailing and guiding a number of articles of the Law on Protection of Consumer Rights.
[257] Article 8(2) of the CP Law.
[258] Law No. 27/2004/QH11 on Competition.

Good Practice B.5	*Key Facts Statement* **a. Non-bank credit institutions should have a Key Facts Statement for each type of account, loan or other products or services.** **b. The Key Facts Statement should be written in plain language, summarizing in a page or two the key terms and conditions of the specific financial product or service, and allowing consumers the possibility of easily comparing products offered by different institutions.**
Description	***Paragraph (a) and (b)*** Currently there are no requirements to provide consumers with a Key Facts Statement. (For discussion on disclosures refer to Good Practice B.7)
Recommendation	SBV should require non-bank credit institutions to provide consumers with standardized Key Facts Statements that allow them to easily understand and compare offers by different financial service providers. The Key Facts Statements should be drafted in cooperation with the industry association, VINASTAS and its members, mass organizations and local authorities, taking into account the most important concepts for each type of basic retail financial product they offer and specific features characteristic to different types of credit providers. These formats should be tested using consumer research tools such as focus groups or interviews, and revised, approved and incorporated into SBV regulations. See also Banking Sector Good Practice B.8.
Good Practice B.6	***Advertising and Sales Materials*** **a. Non-bank credit institutions should ensure that their advertising and sales materials and procedures do not mislead customers.** **b. All advertising and sales materials should be easily readable and understandable by the general public.** **c. Non-bank credit institutions should be legally responsible for all statements made in advertising and sales materials (i.e. be subject to the penalties under the law for making any false or misleading statements).**
Description	***Paragraph (a)*** The primary source of rules on advertisements is the Law on Advertising.[259] The Law includes a general prohibition of false, misleading or unfair (in the sense of anti-competitiveness) advertising.[260] For more details refer to Banking Sector Good Practice B.9, paragraph (c). ***Paragraph (b)*** See Banking Sector Good Practice B.9, paragraph (b). ***Paragraph (c)*** Advertisers must ensure that the provided service is consistent with the advertisement.[261] Advertisers, as well as advertising service providers and advertisement publishers, are also responsible for accuracy of information used in advertisements.
Recommendation	See Banking Sector Good Practice B.9.

[259] Law No. 16/2012/QH13 on Advertising.
[260] Article 8(9) and Article 19 of the Law on Advertising. The rules are repeated in Article 109 of the Commercial Law.
[261] Article 12(2)(b) of the Law on Advertising.

<table>
<tr><th>Good Practice B.7</th><th>General Practices

Specific rules on disclosure and sales practices should be included in the non-bank credit institutions' code of conduct and monitored by the relevant supervisory authority.</th></tr>
<tr><td>Description</td><td>Multiple legal sources provide for disclosure requirements and sales practices:

i. CI Law
• Public announcement of deposit interest rates, service fees, and customers' rights and obligations [Article 10(4)];
• Public announcement of the office hours [Article 10(5)];
• Pre-operation disclosure [Article 25];
• Publication of changed deposit rates and fees [Article 91(1)];

ii. P Law
• Provision of (accurate and complete) information about the offered service and provider [Article 8(2)];
• Publication of prices at "places of business" [Article 12(2)];
• Disclosure of "form-based" contracts and general conditions for transaction [Article 12(6) and Article 17(1)];
• Public announcement of general trading conditions [Article 18(1)];

iii. Law on Prices[262]
• Publicity of prices [Article 6(2)];

iv. Decree on Consumer Protection
• Publication of model (standard) contracts and general transaction conditions on websites [Article 14(2)];

v. Circular on ATMs
• Disclosure of fees and terms and conditions [Article 6(2)];

vi. Circular on Debit Card Charges
• Publication of card-related charges [Article 5(2)];
• Publication of information regarding use of cards [Article 5(3)].

The MFWG's Code of Conduct (as described above in more detail) provides for transparency requirements in compliance with the SMART Campaign Principles: member institutions must present to customers the total amount payable, installments and terms and conditions in simple language. Further, the Code sets rules covering sales practices such as the rules for appropriate product design and delivery channels, responsible lending and responsible pricing, or fair and respectful treatment of customers. The Code is not in force, however, and it is not subject to SBV's supervision.</td></tr>
<tr><td>Recommendation</td><td>SBV should require that all types of financial services contracts for consumers are well explained and available for consumers to review before signing (even outside the premises if needed). Specific requiremenst should be adopted for individualized pre-contractual disclosure (See the discussion regarding Key Facts Statements – Good Practice B.5 above).

In order to facilitate access to and understanding of the disclosure requirements, the requirements should be consolidated.</td></tr>
</table>

[262] Law No. 11/2012/QH13 on Prices.

Good Practice B.8	***Disclosure of Financial Situation*** **a. The relevant supervisory authority should publish annual public reports on the development, health, strength and penetration of the non-bank credit institutions, either as a special report or as part of the disclosure and accountability requirements under the law that governs these.** **b. Non-bank credit institutions should be required to disclose their financial information to enable the general public to form an opinion regarding the financial viability of the institution.**
Description	***Paragraph (a)*** SBV is required to disclose information about the monetary and banking developments,[263] while the Governor must decide on contents of the information to be disclosed in the State Bank's annual reports.[264] The most recent annual report (issued for the year of 2011) includes a chapter on activities of credit institutions. The chapter provides general information and aggregate data on governance and management activities, financial capacity, soundness indicators, and operational risks (including the NPL ratio). Further, SBV publishes on its website market-wide, aggregate information such as: the total amount of deposits, yearly growth in deposits, cash flow, outstanding credit to economy, growth in outstanding credit to economy, statistics for different types of supervised entities, including total assets, charter capital, own capital, ratio of credit vs. deposit mobilization, NPL ratio, the number of different types of cards, the number of deposit accounts and account balance. ***Paragraph (b)*** Credit institutions are required to make public their financial statements no later than 120 days after the end of the fiscal year. Credit providers other than formal credit institutions shall publish their annual statements in accordance with the Law on Accounting.[265]
Recommendation	SBV should revise the content of its annual reports in order to provide the information described in Good Practice B.8. Also, SBV should issue its annual reports on a regular basis so that information about the previous year is readily available to the general public in a reasonable time after the end of the year.

[263] Article 37(2) of the Law No.: 46/2010/QH12 on the State Bank of Vietnam.
[264] Article 11(1) of the Circular No: 35/2011/TT-NHNN Providing for the Disclosure and Provision of Information of the State Bank.
[265] Law No. 03/2003/QH11, on Accounting.

SECTION C	CUSTOMER ACCOUNT HANDLING AND MAINTENANCE
Good Practice C.1	***Statements*** **a. Unless a non-bank credit institution receives a customer's prior signed authorization to the contrary, the non-bank credit institution should issue, and provide the customer with, a monthly statement regarding every account the non-bank credit institution operates for the customer.** **b. Each such statement should: (i) set out all transactions concerning the account during the period covered by the statement; and (ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.** **c. Each credit card statement should set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.** **d. Each mortgage or other loan account statement should clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.** **e. A non-bank credit institution should notify a customer of long periods of inactivity of any account of the customer and provide reasonable final notice in writing to the customer if the funds are to be transferred to the government.** **f. When a customer signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.**
Description	***Paragraph (a)*** Vietnamese law requires credit institutions to provide account holders with information on conducted transactions and account balances in accordance with the agreement concluded between the credit institution and the customer.[266] In other words, it depends exclusively on the agreement between the credit institution and the customer whether and when an account statement is provided. Borrowers of MFIs are informed about their account balance and previous transactions with help of mass organizations and local groups. For instance, VBSP makes public up-to-date lists of borrowers, including the total principal amount and outstanding balance. The list is displayed at VBSP's transaction centers. ***Paragraphs (b) to (f)*** No requirements have been prescribed.
Recommendation	The requirements set by Article 13(1) of the CI Law should be further amended in order to comply with the Good Practices listed above. In particular, there should be requirements to cover the minimum content of account statements and periodicity (at least monthly if not agreed otherwise). However, there should be enough flexibility in the requirements for NBCIs of different categories to implement the requirements in a proportionate manner. For example, there might not be a requirement to provide statements for a loan from an MFI for a short fixed term with a fixed interest rate.

[266] Article 13(1) of the CI Law.

Good Practice C.2	***Notification of Changes in Interest Rates and Non-Interest Charges*** **a. A customer of a non-bank credit institution should be notified in writing by the non-bank credit institution of any change in:** **(i) he interest rate to be paid or charged on any account of the customer as soon as possible; and** **(ii) a non-interest charge on any account of the customer a reasonable period in advance of the effective date of the change.** **b. If the revised terms are not acceptable to the customer, he or she should have the right to exit the contract without penalty, provided such right is exercised within a reasonable period.** **c. The non-bank credit institution should inform the customer of the foregoing right whenever a notice of change under paragraph a. is made by the institution.**
Description	See Banking Sector Good Practice C.2. Given the general restriction of unilateral changes, there are no detailed rules on consumers' rights in the case of actual unilateral change of a contract. While consumers have always an option to repay their loans earlier, in the case or early repayment, a penalty fee is charged up to 150 percent of the principal interest rate calculated from the outstanding amount by some NBCIs.
Recommendation	SBV should clarify to what extent any unilateral change of contracts or terms and conditions is possible under the current regulatory framework. Under all circumstances, non-bank credit institutions should be required by regulation to notify customers in writing of changes in interest rates and non-interest charges. The regulatory framework should allow consumers to exit a contract without penalty in the circumstances described in Banking Sector Good Practice C.2. Credit institutions should be required to inform customers of such right whenever a notice of change of interest rates and non-interest charges is made.
Good Practice C.3	***Customer Records*** **a. A non-bank credit institution should maintain up-to-date records in respect of each customer of the non-bank credit institution that contain the following:** **(i) a copy of all documents required to identify the customer and provide the customer's profile;** **(ii) the customer's address, telephone number and all other customer contact details;** **(iii) any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code of conduct;** **(iv) details of all products and services provided by the non-bank credit institution to the customer;** **(v) a copy of all correspondence from the customer to the non-bank credit institution and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer;** **(vi) all documents and applications of the non-bank credit institution completed, signed and submitted to the non-bank credit institution by the customer;** **(vii) a copy of all original documents submitted by the customer in support of an application by the customer for the provision of a product or service by the non-bank credit institution; and**

<table>
<tr><td></td><td>(viii) any other relevant information concerning the customer.
b. A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready free access to all such records.</td></tr>
<tr><td>Description</td><td>Paragraph (a)
There are multiple provisions requiring NBCIs to collect and store information about their customers:
• The AML Law requires credit institutions to collect information on their customers including their full name, date of birth, nationality, occupation, position, phone number, identity card number or passport number, date and place of issue and address of permanent residence and current residence, in the case of foreign citizens also the passport number, date and place of issue, visa, and the address of residence abroad.[267] Further, information about the purpose of the relationship between the credit institution and the customer must be recorded.[268] Credit institutions must also classify customers on the basis of risk by type of customers, product/service used, and place of residence of the customer.[269]
• On the general level, all traders must keep concluded contracts until they expire.[270]
Credit institutions must maintain loan files, including:
• loan contracts and data clearly specifying the purpose of use of loans and files on security measures;
• reports on actual financial status of clients;
• decisions extending credit signed by competent persons; where such decisions are collectively made, there must be minutes specifying the decision which was passed; and
• data related to the loan contract arising in the course of using the loan.[271]
The requirements listed under (v), (vi), (vii) and (viii) of this Good Practice above are missing.
Paragraph (b)
Credit institutions must maintain loan files, including information about the purpose of the loan and customer's financial status for a period specified by a law. However, such a period has been specified exclusively for the records collected in accordance with the AML Law - the record must be kept for the 5-year period.[272] Also, all traders must keep concluded form-based contracts until expiration.[273]</td></tr>
<tr><td>Recommendation</td><td>See Banking Sector Good Practice C.3.</td></tr>
</table>

[267] Article 9(1)(a) of the AML Law.
[268] Article 9(3) of the AML Law.
[269] Article 12(1) of the AML Law.
[270] Article 17(2) of the CP Law.
[271] Article 96(1) of the CI Law.
[272] Article 27 of the AML Law.
[273] Article 17(2) of the CP Law.

Good Practice C.4	***Credit Cards*** **a. There should be clear rules on the issuance of credit cards and related customer disclosure requirements.** **b. Non-bank credit institutions, as credit card issuers, should ensure that personalized disclosure requirements are made in all credit card offers, including fees and charges (including finance charges), credit limit, penalty interest rates and method of calculating the minimum monthly payment.** **c. Non-bank credit institutions should not be permitted to impose charges or fees on pre-approved credit cards that have not been accepted by the customer.** **d. Consumers should be given personalized minimum payment warnings on each monthly statement and the total interest costs that will accrue if the cardholder makes only the requested minimum payment.** **e. Among other things, the rules should also:** **(i) restrict or impose conditions on the issuance and marketing of credit cards to young adults (below age of 21) who have no independent means of income;** **(ii) require reasonable notice of changes in fees and interest rates increase;** **(iii) prevent the application of new higher penalty interest rates to the entire existing balance, including past purchases made at a lower interest rate;** **(iv) limit fees that can be imposed, such as those charged when consumers exceed their credit limits;** **(v) prohibit a practice called —double-cycle billing‖ by which card issuers charge interest over two billing cycles rather than one;** **(vi) prevent credit card issuers from allocating monthly payments in ways that maximize interest charges to consumers; and** **(vii) limit up-front fees charged on sub-prime credit cards issued to individuals with bad credit.** **f. There should be clear rules on error resolution, reporting of unauthorized transactions and of stolen cards, with the ensuing liability of the customer being made clear to the customer prior to his or her acceptance of the credit card.** **g. Non-bank credit institutions and issuers should conduct consumer awareness programs on the misuse of credit cards, credit card over-indebtedness and prevention of fraud.**
Description	Regulatory requirements regarding the issuance of credit cards are set by the Regulation on Issuance, Use and Payment of Bank Cards and Provision of Bank Card Support Service,[274] which applies on banks as well as non-bank credit institutions. For more details see Banking Sector - Good Practice C.5.
Recommendation	See Banking Sector Good Practice C.5.
Good Practice C.5	***Debt Recovery*** **a. All non-bank credit institutions, agents of non-bank credit institutions and third parties should be prohibited from employing any abusive debt collection practice against any customer of the non-bank credit institution, including the use of any false statement, any unfair practice or the giving of false credit information to others.** **b. The type of debt that can be collected on behalf of a non-bank credit institution, the person who can collect any such debt and**

[274] Promulgated by Decision No. 20/2007/QD-NHNN.

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<tr><td></td><td>the manner in which that debt can be collected should be indicated to the customer of the non-bank credit institution when the credit agreement giving rise to the debt is entered into between the non-bank credit institution and the customer.
c. A debt collector should not contact any third party about a non-bank credit institution customer's debt without informing that party (i) of the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking.
d. Where sale or transfer of debt without borrower consent is allowed by law, the borrower should be:
(i) notified of the sale or transfer within a reasonable number of days;
(ii) informed that the borrower remains obligated on the debt; and
(iii) provided with information as to where to make payment, as well as the purchaser's or transferee's contact information.</td></tr>
<tr><td>Description</td><td>The Vietnamese credit market is experiencing low levels of NPLs ratios below 3 percent[275] after quite turbulent previous years. MFIs report NPLs below 1 percent. Based on the information collected during the mission, the low levels of NPLs may be partially explained due to strict underwriting policies applied by some of the credit institutions. Moreover, in the case of MFIs (and VBSP) their underwriting policies are effectively complemented by debt recovery mechanisms that use structures of local government, mass organizations and local communities. The mission team was told that MFIs try to distinguish between reasons for late payments: if the reasons are objective (e.g. illness), the MFI mobilizes the relevant group to help the borrower to deal with the situation (another option would be to "freeze" the loan, that is, postpone repayment of interests); when the reason for late payments is deemed unreasonable, then a peer pressure will be exercised through mass organizations or local groups in order to ensure repayment.

Paragraph (a)

The Vietnamese regulatory framework expresses a preference for debt restructuring in the case of default: pursuant to the Regulation on Lending by Credit Institutions to Clients in the case when (i) repayment of principal or interest falls due, (ii) the customer is unable to repay on time, and (iii) the repayment period of principal or interest is not adjusted or extended, the credit institution shall reclassify the whole of the outstanding debt as an overdue debt.[276] Overdue payments may be rescheduled when (i) a client is unable to repay the principal on the due date as agreed in the credit contract and makes a written request to adjust the schedule for repayment; (ii) a client fails to repay the whole of the principal within the loan term as agreed in the credit contract and makes a written request to extend the term of the debt.[277]

For information on debt collection, refer to Banking Sector Good Practice C.8.

Paragraph (b)

No such a requirement is prescribed.</td></tr>
</table>

[275] State Bank of Vietnam: Annual Report 2011, 39 (SBV, 2011). On the other hand, Vietnam News Brief issued on 22.5.2014 indicates inconsistencies in the reported numbers: "[t]he non-performing loan (NPL) ratio, as reported by the credit institutions, fell sharply in the fourth quarter of 2013 and down to 3.61 percent at the end of the year."
[276] Article 13(2) of the Regulations on Lending by Credit Institutions to Clients.
[277] Article 22 of the Regulations on Lending by Credit Institutions to Clients. For short term loans, the maximum period of debt term extension shall be 12 months, while for medium and long term loans, the maximum period of debt term extension shall be equal to one half of the loan term agreed in the credit contract. The chairman of the board of management or the general director (director) of the credit institution may decide on exceptions and report it to SBV.

	Paragraph (c) No such a requirement is prescribed. ***Paragraph (d)*** If not agreed otherwise with the customer, credit institutions have the right to deal with the assets securing the loan as agreed in the credit contract in order to recover the debt or to require the guarantor to fulfill the obligations in the guarantee where the customer has provided a guarantee for the loan.[278] Credit institutions may also trade in debts in accordance with SBV regulations and carry out debt restructurings, debt blockades or debt write-offs in accordance with regulations of the Government.[279] The Civil Code establishes general rules under which business organizations may transfer their rights to a third party, while they shall notify in writing the obligor, whose consent is not required if not otherwise prescribed by law or agreed by parties.[280] Specific provisions require credit institutions to obtain the consumer's consent with any transfer of the obligation is included in the CP Law: a clause of contract that allows any business organization to transfer its rights and obligations to a third party without the consumer's consent is null and void.[281] There are no further detailed rules regarding this Good Practice.
Recommendation	See Banking Sector Good Practice B.5. Industry associations should consider the inclusion of provisions on debt collection practices in codes of conduct applicable to all their members and adequately enforced by the associations.

[278] Article 25(1)(e) of the Regulations on Lending by Credit Institutions to Clients.
[279] Article 25(1)(g) of the Regulations on Lending by Credit Institutions to Clients.
[280] Article 309(1) and (2) of the Civil Code.
[281] Article 16(1)(m) of the Civil Code.

SECTION D	PRIVACY AND DATA PROTECTION
Good Practice D.1	***Confidentiality and Security of Customers' Information*** **a. The financial transactions of any customer of a non-bank credit institution should be kept confidential by the institution.** **b. The law should require non-bank credit institutions to ensure that they protect the confidentiality and security of personal data of their customers against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.**
Description	***Paragraph (a)*** Regulation of privacy and data protection is very limited and there is currently no authority exclusively supervising and enforcing personal data protection rules. The most comprehensive regulation of protection of consumers' information is set by Article 6 of the CP Law, which provides that consumers' information must be kept safe and confidential when they participate in transactions except where competent state agencies require the information. Consumers must be *"clearly and openly"* informed in advance about the purpose of the collection and use of their personal data and must provide their consent with the use of such data. The information shall not be used for any other purpose than for the one on which the consumer was notified. Further, credit institutions must ensure confidentiality of information about accounts, deposits, deposited assets and transactions of clients conducted at such credit institution.[282] Confidential information may be disclosed only with the customer's consent.[283] ***Paragraph (b)*** Pursuant to Article 6(2)(c) of the CP Law the organizations and individuals trading goods and/or services must ensure safety, accuracy and completeness of information. Regarding technological aspects of data protection and IT security SBV has issued Circular No. 01/2011/TT-NHNN on the Information Technology Safety in Banking Operations. Further, specific provisions regulate the provision of Internet banking services.[284] Besides requirements on confidentiality and security, the Circular on Internet Banking prescribes for pre-contractual disclosure[285] and disclosure regarding collection and processing of customers' data.[286] Further specific requirements covering use of personal information in the digital environment have been set by the Law on Information Technology.
Recommendation	An agency with a leading role in protection of consumers' data and privacy should be identified. Regarding financial institutions, it might be considered to entrust SBV with these powers. SBV should review the current practice in which information about borrowers is being publicly displayed: for instance VBSP and some other microfinance institutions post information about their borrowers (including names, loans disbursed or actual balance) at branches or other public places. SBV should assess the practice against the regulatory framework

[282] Article 14(2) of the CI Law.
[283] Article 14(3) of the CI Law.
[284] *See, e.g.* the articles 3(1) or 4 of Circular No.29/201/TT-NHNN Defining Safety, Confidentiality over Provision for Banking Service on the Internet (Circular on Internet Banking).
[285] Article 5(a) of the Circular on Internet Banking.
[286] Article 55(b) of the Circular on Internet Banking.

	as described above. Furthermore, SBV should identify the risks that such practice may pose to privacy and safety of consumers and to consumers' rights. See also Banking Sector Good Practice D.1.
Good Practice D.2	***Credit Reporting*** **a. Credit reporting should be subject to appropriate oversight, with sufficient enforcement authority.** **b. The credit reporting system should have accurate, timely and sufficient data. The system should also maintain rigorous standards of security and reliability.** **c. The overall legal and regulatory framework for the credit reporting system should be: (i) clear, predictable, non-discriminatory, proportionate and supportive of consumer rights; and (ii) supported by effective judicial or extrajudicial dispute resolution mechanisms.** **d. Proportionate and supportive consumer rights should include the right of the consumer** **(i) to consent to information-sharing based upon the knowledge of the institution's information-sharing practices;** **(ii) to access his or her credit report free of charge (at least once a year), subject to proper identification;** **(iii) to know about adverse action in credit decisions or less-than-optimal conditions/prices due to credit report information;** **(iv) to be informed about all inquiries within a period of time, such as six months;** **(v) to correct factually incorrect information or to have it deleted and to mark (flag) information that is in dispute;** **(vi) to reasonable retention periods of credit history; and** **(vii) to have information kept confidential and with sufficient security measures in place to prevent unauthorized access, misuse of data, or loss or destruction of data.** **e. The credit registers, regulator and associations of non-bank credit institutions should undertake campaigns to inform and educate the public on the rights of consumers in the above respects, as well as the consequences of a negative personal credit history.**
Description	VBSP and MFIs have developed specific features of the underwriting process as previously discussed (e.g. local credit groups) and they have recently started using NCIC as well.[287] Finance institutions use NCIC too. For more information see Banking Sector Good Practice D.4.
Recommendation	See Banking Sector Good Practice D.4.

[287] Responsible Finance in Vietnam, 36 (IFC, 2014).

SECTION E	**DISPUTE RESOLUTION MECHANISM**
Good Practice E.1	***Internal Complaints Procedure*** **Complaint resolution procedures should be included in the non-bank credit institutions' code of conduct and monitored by the supervisory authority.**
Description	Pursuant to the CP Law, consumers have the right to complain[288] and this right cannot be restricted.[289] Besides this general rule, there is a specific provision in the Circular on Debit Card Charges that lists among the responsibilities of card issuers the obligation to answer and in a timely manner handle questions, complaints or technical problems of cardholders.[290] Otherwise, there is a lack of precise complaints handling requirements, which translates into a rather diverse approach towards handling of consumer complaints. In general, NBCIs do not have written internal policies regarding complaints handling, which opens a space for inconsistency in complaints resolution. Moreover, complaints are only rarely recorded. Therefore any substantial data on number of complaints, their frequency and matters is missing. Credit institutions keep open different channels to file a complaint: (i) in person, (ii) through a complaints box, (iii) over the phone, mail or e-mail. However, there is a little evidence that the information on the channels for lodging complaints is properly disclosed to consumers. Since complaints are not recorded, NBCIs do not have precise statistics on the number of complaints received, they do not assess complaints to identify root causes of the most frequent complaints and to adopt an adequate action plan to address the root causes. NBCIs also do not report to SBV on the complaints received.
Recommendation	SBV should issue a regulation in order to prescribe for minimum requirements regarding complaints handling. The requirements should cover the following areas: • disclosure requirements; • channels for filing a complaint; • a single complaints database; • time limits; • resolution of complaints; • assessment of data on complaints; and • reporting. See also Banking Sector Good Practice E.1.

[288] Article 8(7) of the CP Law.
[289] Article 16(1)(b) of the CP Law.
[290] Article 5(4) of the Circular No. 35/2012/TT-NHNN Stipulating on Charges of the Domestic Debit Card Service.

Good Practice E.2	***Formal Dispute Settlement Mechanisms*** **a. A system should be in place that allows consumers to seek affordable and efficient third-party recourse, such as an ombudsman, in the event the complaint with the non-bank credit institution is not resolved to the consumer's satisfaction in accordance with internal procedures.** **b. The role of an ombudsman or equivalent institution in dealing with consumer disputes should be made known to the public.** **c. The ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the industry and the parties to the dispute.** **d. The decisions of the ombudsman or equivalent institution should be binding upon non-bank credit institutions. The mechanisms to ensure the enforcement of these decisions should be established and publicized.**
Description	See Banking Sector Good Practice E.2.
Recommendation	See Banking Sector Good Practice E.2.
SECTION F	**CONSUMER EMPOWERMENT**
Good Practice F.1	***Broadly based Financial Capability Program*** **a. A broadly based program of financial education and information should be developed to increase the financial capability of the population.** **b. A range of organizations–including government, state agencies and non-governmental organizations–should be involved in developing and implementing the financial capability program.** **c. The government should appoint an institution such as the central bank or a financial regulator to lead and coordinate the development and implementation of the national financial capability program.**
Description	Currently, there are no coordinated activities focused on financial education relating to NBCIs. However, some NBCIs publish leaflets in order to promote and explain their products. Further, mass organizations and local groups are used to educate clients, including method of calculation of interest rates. In some cases, the training may be mandatory in order for a borrower to be eligible for a loan. For more information see Banking Sector Good Practice G.1.
Recommendation	See Banking Sector Good Practice G.1.
Good Practice F.2	***Using a Range of Initiatives and Channels, including the Mass Media*** **a. A range of initiatives should be undertaken by the relevant authority to improve the financial capability of the population, and especially from low-income communities.** **b. The mass media should be encouraged by the relevant authority to provide financial education, information and guidance to the public, including on non-bank credit institutions and the products and services they offer.** **c. The government should provide appropriate incentives and encourage collaboration between governmental agencies, the supervisory authority for non-bank credit institutions, the associations of non-bank credit institutions and consumer associations in the provision of financial education, information and guidance to consumers.**
Description	See Banking Sector Good Practice G.2
Recommendation	See Banking Sector Good Practice G.2

<table>
<tr><td>Good Practice F.3</td><td>Unbiased Information for Consumers

a. Consumers, especially the most vulnerable, should have access to sufficient resources to enable them to understand financial products and services available to them.
b. Supervisory authorities and consumer associations should provide, via the internet and printed publications, independent information on the key features, benefits and risks – and, where practicable, the costs – of the main types of financial products and services, including those offered by non-bank credit institutions.
c. The relevant authority should adopt policies that encourage non-government organizations to provide consumer awareness programs to the public regarding financial products and services, including those offered by non-bank credit institutions.</td></tr>
<tr><td>Description</td><td>See Banking Sector Good Practice G.3.</td></tr>
<tr><td>Recommendation</td><td>See Banking Sector Good Practice G.3.</td></tr>
<tr><td>Good Practice F.4</td><td>Consulting Consumers and the Financial Services Industry

The relevant authority should consult consumer associations and associations of non-bank credit institutions to help the authority develop financial capability programs that meet the needs and expectations of financial consumers, especially those served by non-bank credit institutions.</td></tr>
<tr><td>Description</td><td>See Banking Sector Good Practice G.4.</td></tr>
<tr><td>Recommendation</td><td>See Banking Sector Good Practice G.4.</td></tr>
<tr><td>Good Practice F.5</td><td>Measuring the Impact of Financial Capability Initiatives

a. Policymakers, industry and consumer advocates should understand the financial capability of various market segments, particularly those most vulnerable to abuse.
b. The financial capability of consumers should be measured, amongst other things, by broadly based household surveys that are repeated from time to time.
c. The effectiveness of key financial capability initiatives should be evaluated by the relevant authority from time to time.</td></tr>
<tr><td>Description</td><td>See Banking Sector Good Practice G.5.</td></tr>
<tr><td>Recommendation</td><td>See Banking Sector Good Practice G.5.</td></tr>
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